



Financed from EWBIF by a contribution from the EU IPA Multi-Beneficiary Programme for Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo*, Montenegro and Serbia

Western Balkans Investment Framework Infrastructure Project Facility Technical Assistance 4 (IPF 4)

WB11-ALB-ENE-01

Gas Master Plan for Albania & Project Identification Plan

Institutional Review and Organisational and Institutional Assessment Report

Final
18 April 2016

COWI | IPF

European Western Balkans Joint Fund (EWBJF)

Western Balkans Investment Framework (WBIF)

Infrastructure Projects Facility

Technical Assistance 4 (IPF 4)

Infrastructures: Energy, Environment, Transport and Social

WB11-ALB-ENE-01

Gas Master Plan for Albania &

Project Identification Plan

**Institutional Review and Organisational and
Institutional Assessment**

Final

18 April 2016

The technical assistance operation is financed under the Western Balkans Investment Framework (WBIF) which is a joint initiative of the EU, International Financial Institutions, bilateral donors and the governments of the Western Balkans which supports socio-economic development and EU accession across the Western Balkans through the provision of finance and technical assistance for strategic investments, particularly in infrastructure, energy efficiency and private sector development.

Disclaimer: *The authors take full responsibility for the contents of this report. The opinions expressed do not necessarily reflect the view of the European Union or the European Investment Bank.*

Document no.	WB11-ALB-ENE-01 IR
Version	Final
Date of issue	10 February 2016
Prepared	Nijaz Dizdarević, Alban Çausi, Jurica Brajković, Damir Pešut
Checked	Ole Johansen
Approved	Martyn Osborn

Contents

1	INTRODUCTION	1
2	OBJECTIVES OF THE SUBPROJECT	2
3	PURPOSE, OBJECTIVE AND INTENTION OF THE REPORT	4
4	SUMMARY OF THE REPORT	6
5	OVERVIEW OF CURRENT EU GAS-RELATED REGULATIONS	8
5.1	Introduction	8
5.2	Gas Acquis Communautaire	9
5.2.1	Directive 2009/73/EC	10
5.2.2	Regulation (EC) No 715/2009	12
5.2.3	Directive 2004/67/EC	13
5.2.4	Regulation (EU) No 994/2010	14
5.3	Conclusions	16
6	REVIEW OF CURRENT GAS REGULATIONS IN ALBANIA	18
6.1	Introduction	18
6.2	Legal and Regulatory Framework	18
6.3	Current State of Compliance in the Natural Gas Sector	23
6.4	Recent activities on transposition of the TEP	28
6.5	Conclusions	32
7	OTHER LEGAL ASPECTS SUPPLEMENTING THE DEVELOPMENT OF THE GAS INFRASTRUCTURE	34
7.1	The list of laws and regulations which are not directly related to gas legislation	34
7.2	The limitations of spatial master plans and urban planning	37
7.2.1	Spatial Planning and Construction	37
7.2.2	An environmental assessment of gas development in Albania	42
7.3	Land utilisation/expropriation	51
7.4	Conclusions	57

8	INITIAL RECOMMENDATIONS FOR REQUIRED CHANGES	58
8.1	Introduction	58
8.2	Main Next Steps in the Natural Gas Sector	58
8.2.1	Necessity to proceed along the transitory provisions of the new gas related law	60
8.2.2	Unbundling of the gas transmission system operator	61
8.2.3	Unbundling of the gas distribution system operator(s)	64
8.2.4	Regulatory certification of the gas transmission system operator	67
8.2.5	Stately designation of the gas transmission system operator	68
8.2.6	Certification of the gas transmission system operator in relation to third countries	69
8.2.7	Other legal aspects supplementing the development of the gas infrastructure	70
8.3	Conclusions	71
9	BASIC GAS MARKET MODELS	78
9.1	Introduction	78
9.2	Organisation of the natural gas market	79
9.3	The gas market operator	81
9.3.1	Gas market code	82
9.4	The gas transmission system operator	82
9.4.1	Gas transmission grid code	85
9.4.2	Charges for access to networks	87
9.4.3	Third party access services	88
9.4.4	Capacity allocation and congestion management	89
9.4.5	Transparency requirements	90
9.4.6	Balancing rules	91
9.4.7	Trading of capacity rights	92
9.5	The gas distribution system operator(s)	92
9.5.1	Gas distribution grid code	94
9.5.2	Gas distribution tariff system	95
9.6	Gas suppliers	96
9.7	Gas traders	97
9.8	Gas customers	97
9.8.1	Supply of gas to household customers and small enterprises	98
9.8.2	Regulation of gas prices for household customers and small enterprises	100
9.9	Way forward	101
9.10	Conclusions	101

10	BASIC GAS SUPPLY AND TRANSPORTATION CONTRACTUAL ARRANGEMENTS	105
10.1	Introduction	105
10.2	General agreement concerning the delivery and acceptance of natural gas – gas supply/purchase agreement	105
10.3	Gas transportation agreements	110
10.4	Conclusions	115
11	ASSESSMENT AND EVALUATION OF THE EXISTING INSTITUTIONAL FRAMEWORK	116
11.1	Introduction	116
11.2	Institutional and Organisational Framework	116
11.3	Institutional and Organisational Assessment	120
11.3.1	MoEI Assessment	121
11.3.2	ERE Assessment	124
11.3.3	Gas TSO Assessment	129
11.4	Conclusions	136
12	DESCRIPTION OF EXAMPLES OF AND METHODOLOGIES FOR CERTIFICATION AND DESIGNATION OF THE GAS TRANSMISSION SYSTEM OPERATORS	138
12.1	Introduction	138
12.2	Procedure of Certification	139
12.3	The Ownership Unbundled Transmission System Operator (OU-TSO)	143
12.4	Documents and Statements Relating to the Application for Certification	150
12.5	The List of the EC's Opinions Related to the Certification According to the OU Model	155
12.6	The EC's Opinions of 2011/2012/2013/2014 - EU Member States - Certification of the OU-TSOs	160
12.6.1	Procedure	160
12.6.2	Description of the Draft Certification Decision	161
12.6.3	Comments/Lessons Learned	161
12.6.4	Conclusion	179
12.7	Conclusions	179
12.7.1	Background	179
12.7.2	General	180
12.7.3	The OU-TSO	181
12.7.4	Certification	182
12.7.5	Situation in the EU and Albania	182
12.7.6	Situation in Albania – procedural aspects	183
12.7.7	Situation in Albania – natural gas	183

12.7.8	Positioning on the TSO unbundling in the natural gas sector	185
12.7.9	Significance of the management of shares	186
13	DESCRIPTION OF EXAMPLES OF AND METHODOLOGIES FOR UNBUNDLING OF THE GAS DISTRIBUTION SYSTEM OPERATORS	187
13.1	Introduction	187
13.2	Legal unbundling	188
13.3	Functional unbundling	188
13.3.1	Management separation	188
13.3.2	Effective decision-making rights	190
13.3.3	Preservation of confidentiality	190
13.4	Accounting unbundling	191
13.5	Exemptions for the gas DSOs serving less than 100,000 connected customers	191
13.5.1	Application in practice — two basic scenarios	192
13.5.2	Discretion of the EnC Contracting Parties and the EU Member States in applying the exemption	193
13.6	Resources	193
13.7	Compliance	194
13.8	Rebranding	195
13.9	Consumer perspective	196
13.10	Price control	196
13.11	Gas closed distribution systems	197
13.12	Conclusions	198
14	Appendix I: The Gas Market Secondary Legislation Action Plan	202

List of Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
AKBN	Agjencia Kombëtare e Burimeve Natyrore (National Agency of Natural Resources)
ALB	Albania (Republic of)
bcm	Billion Cubic Meter
DCF	Discounted Cash Flow
DSO	Distribution System Operator
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECRB	Energy Community Regulatory Board
ECS	Energy Community Secretariat
EDS	Energy Development Strategy
EFET	European Federation of Energy Traders
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EMAS	Environmental Management System
ENTSO	European Network of Transmission System Operators
ENTSO-G	European Network of Transmission System Operators Gas
ERRA	Energy Regulators Regional Association
ERE	Enti Rregullator i Energjisë (Energy Regulatory Entity)
ESIA	Environmental and Social Impact Assessment
EnC	Energy Community
EU	European Union
FEC	Final Energy Consumption
FS	Feasibility Study
GDP	Gross Domestic Product
GoA	Government of Albania
IAP	Ionian-Adriatic Pipeline
IFI	International Financial Institutions
IRR	Internal Rate of Return
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
mcm	Million Cubic Meter
MEDREG	Mediterranean Energy Regulators
MoEI	Ministry of Energy and Industry
NAoA	National Assembly of Albania
NGOs	Non-Governmental Organisations
NPV	Net Present Value
NRA	National Regulatory Authority
OLNGF	Operator of LNG Facility
PCI	Project of Common Interest
PECI	Projects of Energy Community Interest
PHLG	Permanent High Level Group
PS	Public Supplier
PSO	Public Service Obligation
RSFEC	Reference Scenario Final Energy Consumption

SAEI	Strategic Assessment of Environmental Impact
SCADA	Supervisory Control and Data Acquisition
SEP	Second Energy Package
SMEs	Small and Medium-Sized Enterprises
SO	System Operator
SSO	Storage System Operator
TAP	Trans-Adriatic Pipeline
TEP	Third Energy Package
ToR	Terms of References
TSO	Transmission System Operator
UNCITRAL	The United Nations Commission on International Trade Law
WBIF	Western Balkans Investment Framework

List of Tables

Table 1	Phased approach in the implementation of activities	74
Table 2	Time sequence of the official gas TSO certification procedure	76
Table 3	Phased approach in the implementation of activities	103
Table 4	Positions and background for each assignment of Gas Sale Centre Fier	134
Table 5	Time sequence of the official certification procedure	140

List of Figures

Figure 1	The MoEI's organisational chart	123
Figure 2	The ERE's organisational chart	126
Figure 3	The Albpetrol SH.A's organisational chart	133
Figure 4	The Albpetrol SH.A' Patos' organisational chart	134
Figure 5	Structure of the joint venture	145
Figure 6	The first impermissible basic corporate structure of the OU-TSO	147
Figure 7	The second impermissible basic corporate structure of the OU-TSO	147
Figure 8	Permissible basic corporate structure of the OU-TSO	148

1 INTRODUCTION

Project Title:	Gas Master Plan for Albania & Project Identification Plan
Project Number:	WB11-ALB-ENE-01
Contractor:	COWI IPF Consortium
Beneficiary:	Ministry of Energy and Industry (Lead), Albpetrol and ERE
Project start date:	2 June 2015
Project Duration:	16.5 months
Anticipated completion:	October 2016

2 OBJECTIVES OF THE SUBPROJECT

Study

This subproject consists of preparation of a study to develop a comprehensive gas master plan for Albania, including:

- 1) gas demand and supply scenarios,
- 2) development of a project identification plan, gas pricing policy, tariffs, and regulations,
- 3) prefeasibility level analysis of potential infrastructure projects,
- 4) promotion of utilisation of natural gas in Albania, and
- 5) development of local knowledge and skills within the line ministry (MoEI), the gas TSO (Albpetrol SH.A) and the NRA (ERE).

This is a subproject within overall IPF4 Project.

Overall objectives

Overall objectives of the subproject are to:

- 1) develop a comprehensive mid-term gas master plan,
- 2) develop a Project Identification Plan; and
- 3) develop local knowledge and skills within the relevant institutions in Albania.

Specific objectives

Specific objectives of the subproject are to:

- 1) address the existing national institutional framework of the gas sector,
- 2) estimate the potential for future private sector participation,
- 3) identify and resolve key impediments to increasing national gas delivery,
- 4) assess existing relevant studies on gas market development and to take stock of what has emerged from those,
- 5) review current market conditions, including existing and predicted system bottlenecks, with a view to addressing these against a projection of the mid-term gas supply/demand balances while assessing the present and future average and peak demand requirements which would take into account growth in industrial production, power generation, transport, commercial and household sectors, and
- 6) assess the existing institutional framework related to gas, energy and related sectors that are, or will be, influenced by the creation of a gas market in Albania, and make appropriate recommendations to improve the

institutional context and support the knowledge and skills development in the beneficiaries.

*Use of the
subproject's
deliverables*

Following the successful implementation of the subproject, and the definition of the Project Identification Plan, the subproject's deliverables will be used as a basis for the GoA and IFIs (EBRD and others to be determined), to make infrastructure investment decisions.

Capacity building, as well as consultancy support in developing the gasification policy, legal, regulatory and institutional framework will be performed as one of the subproject's activities in order to facilitate development of gas sector in Albania, in line with Albania's Energy Development Strategy and obligations toward the EnC.

ToR reflection

This Institutional and Market Review Report, as the subproject's starting point, uses the ToR as a basis. It covers the legal and regulatory, and the institutional and organisational issues, and is followed by the separate Market Development Report.

3 PURPOSE, OBJECTIVE AND INTENTION OF THE REPORT

Purpose

This Report firstly provides guidance and makes recommendations on the legal and regulatory, as well as the institutional and organisational frameworks of the Albanian gas sector. Secondly, it identifies the current state of compliance within the Albanian gas sector and provides guidance and makes recommendations on the provisions for the gas market rules. Thirdly, it reflects the basic gas supply and transportation contractual arrangements. The purpose is stated and addressed in line with the EU requirements (EU *acquis communautaire* in natural gas) stemming from the EnC Treaty to which Albania is one of the Contracting Parties.

Objective

This Report firstly supports the determination of remedial legislation and the associated changes, if required, to the legal and regulatory as well as the institutional and organisational frameworks for management of the gas sector in Albania. Secondly, it proposes rational contractual arrangements including the principal provisions for consumer rules and regulations, and for the supply of gas to the transmission network.

In line with the purpose and the objective, this Report:

- 1) identifies the current status of the domestic gas market rules as well as the impediments to its fast track development,
- 2) recommends future development of the domestic gas market rules as well as the solutions to alleviate and/or remove the impediments,
- 3) highlights what has already been achieved, by looking into the existing legal and regulatory as well as the institutional and organisational frameworks governing the sector and identifying key policy gaps that require urgent attention, and
- 4) proposes options for the GoA's consideration in determining what policy actions it should take for transforming the sector to increase supply in the domestic gas market and the way forward by prioritising key items that require urgent institutional attention.

Intention

The intention of this Report is to address, in detailed manner, the most important aspects of the legal and regulatory as well as the institutional and organisational frameworks. Firstly, it reflects the legal policy actions arising in particular from the new gas related law in Albania (the Law on Natural Gas Sector of 2015), such as unbundling of the gas TSO and DSO(s), regulatory certification and stately designation of the gas TSO, as well as certification of the gas TSO in relation to third countries. Secondly, it reflects the most important market rules arising from the new gas related law transposing the TEP relating to natural gas. Thirdly, it reflects the contractual arrangements necessary for proper functioning of the natural gas sector in Albania. Assessment of the standard elements of the gas sector is based upon the Law on Natural Gas Sector of 2015.

The Report provides a deep analysis and explains to the beneficiaries the (re)gasification of Albania within the legal and regulatory as well as the institutional and organisational frameworks particularly from the viewpoint of Albania's obligations assumed within the EnC's *acquis communautaire* in natural gas, as defined by the EnC Treaty. All recommendations given in the Report are based on the recommendations and requirements given by the ECS relating to EU Directives and Regulations making the subject gas *acquis*, as well as from ACER's, ENTSO-G's and other competent authorities' guidelines which EU Member States or EU Accession Countries are obliged to implement in their national legislation.

4 SUMMARY OF THE REPORT

<i>Main topic of the Report</i>	This Report identifies key legal and regulatory as well as institutional and organisational gaps that need to be addressed in the implementation of the Gas Master Plan. This includes evaluating different market models for positioning of the gas TSO and DSO(s). Commercial best practices are addressed, as well as the issues in attracting the private sector to develop gas in Albania.
<i>The three main analytical elements of the Report</i>	An overview of the current EU gas related regulations and recommendations is given here first. These are compared to the existing ones in Albania, followed by providing basic recommendations for amendments. The basics of market models implemented in modern gas markets are presented next. The functions, rights and obligations of each market participant are described for suppliers and traders, transmission and distribution system operators, market operator, and energy regulatory authority. Analysis of the existing institutional and organisational framework related to gas, energy and related sectors are performed at the end. The gas sector related competences are evaluated, major shortcomings and bottlenecks are identified, and recommendations delivered.
<i>Aim</i>	This Report helps to develop knowledge and skills within the MoEI, the ERE and Albpetrol SH.A, being the line ministry in charge for energy/natural gas, the national regulatory authority for energy/natural gas, and a holder of licences for transmission and distribution of natural gas, relating to the two main frameworks: the legal and regulatory and the institutional and organisational ones. The Report helps determining remedial legislation and associated changes to the frameworks for management of natural gas sector in Albania. The effectiveness of regulations that are pertinent to the efficacy of the new gas related law are also mapped and analysed. The recommendations for remedial legislation and strengthening the frameworks for natural gas sector management are provided.
<i>Recommendations</i>	The recommendations focus, in particular, on the appropriateness of policies, institutional roles and mandates, organisation and coordination, and sufficiency of the beneficiaries' capacities for implementation of responsibilities across the natural gas sector. The Report is based on lessons learned from major EU gas related rules and best practices, particularly focusing on the legal policy actions and the provisions for market rules. Particular focus is put on the unbundling, licensing and certification of the gas TSO, and the unbundling and licensing of the gas DSO(s). These are ongoing processes across the EU as well as the EnC, where significant engagement of each beneficiary is needed and expected (of the MoEI in the PHLG and the Ministerial Council, of the ERE in the ECRB, and of Albpetrol SH.A in the Gas Forum and all initiatives that are discussed there).
<i>On the legal policy actions</i>	<p>Recommendations which correspond to the legal policy actions are given on the:</p> <ol style="list-style-type: none">1) Necessity to proceed along the transitory provisions of the Law on Natural Gas Sector of 2015 (all);2) Unbundling of the gas TSO (Albpetrol SH.A);

- 3) Determination and unbundling of the gas DSO(s) (Albpetrol SH.A and eventually others);
- 4) Regulatory certification of the gas TSO (Albpetrol SH.A);
- 5) Statelty designation of the gas TSO (Albpetrol SH.A);
- 6) Certification of the gas TSO (Albpetrol SH.A) in relation to third countries, if relevant in Albania; and
- 7) Other legal aspects supplementing the development of the gas infrastructure.

*On the provisions for
gas market rules*

Recommendations which correspond to the provisions for gas market rules are the following:

- 1) The natural gas market has to be organised, operated and developed by the gas MO throughout the whole territory of Albania. Generally, the gas MO's tasks and duties may be assumed either by the gas TSO (Albpetrol SH.A) or performed in a separate legal entity (owned by either the gas TSO or the State directly). Specifically, the Law on Natural Gas Sector of 2015 opts for the gas MO to be a company owned by the gas TSO (supposedly Albpetrol SH.A, although several gas TSOs can be licensed in the country).
- 2) The gas TSO shall be a specialised and independent natural gas undertaking with the status of a legal person incorporated under the laws of Albania. Establishment, formation and corporate setup of the gas TSO, including legal status and competencies of its corporate bodies, shall be regulated under the applicable laws, but without prejudice to the requirements for its independence and unbundling from the TEP. The gas TSO shall maintain, upgrade and expand its gas transmission network, operate its gas transmission system and connect it to the transmission networks of other States.
- 3) For its service area in the territory of Albania where it performs the gas distribution activity, the gas DSO shall be responsible for the maintenance and, when deemed cost-effective, the upgrade and expansion of the distribution system it operates, for the operation of its distribution system and shall be obliged to secure its connection to the gas transmission system. The gas DSO shall be independent at least in terms of its legal form, organization and decision making from other activities not relating to the gas distribution.

*Workshop and
meetings*

Main issues from the Report are discussed in the related Workshop (on the legal and institutional policies, as well as on the organisational and institutional development), as well as in the meetings conducted in premises of the beneficiaries in Albania, in order to reflect the beneficiaries' feedback on the suggested recommendations.

5 OVERVIEW OF CURRENT EU GAS-RELATED REGULATIONS

5.1 Introduction

This Chapter outlines the EU *acquis communautaire* currently in force in the EnC for the natural gas sector. By adopting the EnC Treaty, as one of the Contracting Parties, Albania has made international legally binding commitments to adopt core EU energy legislation, the so-called *acquis communautaire*¹. Besides the EnC Treaty, Albania is also a signatory of the Energy Charter Treaty². However, due to subject-wise more direct and time-wise more pressing issues which the institutions in Albania face in the natural gas sector, only the EnC Treaty is paid attention to.

The EnC Treaty and its energy-related *acquis communautaire* include the natural gas sector, among others, in the updated manner. This ensures that Albania keeps pace with EU developments and continuously aligns its legal and regulatory framework in the gas sector to that of the EU. As Albania agreed to implement the EU *acquis communautaire*, it also develops its institutional and organisational framework in line with the legal and regulatory one.

The focus within Albania as one of the Contracting Parties will soon have to shift from the adoption of primary legislation in accordance with the *acquis communautaire* to the development of secondary one (Appendix I), such as tariff systems, network codes, supply rules, and market code. These types of future activities are not to be underestimated, as they will lay the foundations for the functioning Albanian gas sector, including its elementary (to start with) gas market.

In the course of transposing the TEP in Albania, the Law on Natural Gas Sector of 2015 has been adopted, completing thereby the transposition of the TEP in Albania, after intensive work on its drafting in 2014-2015. In the public consultations, which were held in the same period, the draft Law was sent for comments and suggestions to ministries, institutions and entities (such as AKBN, ISHTI, Albpetrol SH.A) as well as interested parties / entities involved in the natural gas activities in Albania (such as TAP AG, Bankers Petroleum Albania Ltd., SHELL International, Petromanas Albania GMH, Stream Oil & Gas Ltd, Phoenix Petroleum Gas Society, etc). Moreover, it was also submitted twice for comments to the ECS, which both times replied positively³. Finally, the draft Law was sent by the GoA to the NAOA for consideration and consequently voting in favour of it on 23 September 2015.

¹ The EnC Treaty was ratified by the NaoA by Law No. 9501, dated 3.4.2006 "On the ratification of the Treaty Establishing the Energy Community".

² The Energy Charter Treaty was ratified by the NAOA by Law No. 8261, dated 12.11.1997 "On ratification of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects".

³ According to Art 67(b) of the EnC Treaty, the ECS shall review the proper implementation by the Parties of their obligations under the Treaty, and submit yearly progress reports to the Ministerial Council.

In light of the TEP transposition, the Directive 2004/67/EC may not be overlooked. It should be mentioned that Albania, where only limited gas infrastructure is operated, has in fact already adopted a large number of elements of Directive 2004/67/EC into its legislation. However, full compliance is still required in the area of security of natural gas supply as governed by this Directive, in particular relating to distribution of duties and powers between the ERE and the MoEI with regard to the security of natural gas supply. Furthermore, a definition of minimum security of natural gas supply standards, as well as a list of instruments for security of natural gas supply, is currently still missing (in accordance with Article 6 of the Law on Natural Gas Sector of 2015, the standards will be set in the "Emergency Plan").

5.2 Gas Acquis Communautaire

The TEP comprises the following:

- › Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, with general implementation deadline of 1 January 2015; and
- › Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, with general implementation deadline of 1 January 2015.

Before that, the SEP comprised the following:

- › Directive 2003/55/EC of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, with general implementation deadline of 1 July 2007; and
- › Regulation (EC) No 1775/2005 of 28 September 2005 on conditions for access to the natural gas transmission networks, with the general implementation deadline of 31 December 2008.

Previously, Directive 2003/55/EC and Regulation (EC) No 1775/2005 from the SEP established the main principles of the gas market liberalisation and cross-border trade. In the Contracting Parties, the deadline for market opening for households in the gas sector was set for 1 January 2015. The general implementation deadline for market opening for non-households was set for 1 January 2008. Nowadays, for the TEP, Decision 2011/02/MC-EnC sets separate deadlines for Article 9 of Directive 2009/73/EC on unbundling of the gas TSO, namely of 1 June 2016 and 1 June 2017 for Article 9(1) and Article 9(4) respectively. Article 11 on certification in relation to third countries is to be implemented no later than 1 January 2017.

As an expression of its significance, the EnC Treaty makes several references to the security of natural gas supply. To this end, three distinct measures were designed to advance security of natural gas supply in the EnC. These comprise: 1) Security of Supply Statements; 2) Safeguard measures; and 3) Mutual assistance. To guarantee the implementation of the mutual assistance obligation, the EnC Ministerial Council decided (Decision 2007/06/MC-EnC) to extend the *acquis communautaire* to Directive 2004/67/EC in the December 2007 meeting.

The *acquis communautaire* on security of natural gas supply in the EnC comprises the following:

- › Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, with general implementation deadline of 31 December 2009.

At the February 2014 Security of Supply Coordination Group meeting, the Group discussed in great detail options how to incorporate the main elements of the Regulation (EU) No 994/2010 concerning measures to safeguard security of natural gas supply and repealing Directive 2004/67/EC in the EnC framework. As a result, the ECS was requested to draft a proposal for the Regulation's adaptation and present it to the PHLG for further discussions in June 2014. A decision on a mandatory implementation was not foreseen in 2014. In April 2015, the ECS also provided its views on the European Commission's public consultation concerning the revision of Regulation (EU) No 994/2010. However, a decision on a mandatory implementation is not yet foreseen.

5.2.1 Directive 2009/73/EC

Aim

This Directive aims at introducing common rules for the transmission, distribution, supply/trade and storage of natural gas. It concerns mainly natural gas, LNG, biogas and gas from biomass.

Rules for the organisation of the gas sector

The rules for the organisation of the gas sector are aimed at creating a competitive, secure and environmentally sustainable market in natural gas. The State may impose on undertakings operating in the gas sector public service obligations which cover issues of security and security of supply, regularity and quality of service, price, environmental protection and energy efficiency. All customers shall have the right to choose their gas supplier and to change supplier easily, with their operator's assistance, within three weeks. Customers shall receive relevant consumption data. The State is responsible for monitoring security of natural gas supply issues and in particular those related to the balance of supply and demand on the national market, available supplies, maintenance of the networks and the measures to be taken in the event of supply problems. Regional or international cooperation may be put in place to ensure security of natural gas supply. The State shall ensure the integration of national markets at one or more regional levels, as a first step towards the integration of a fully liberalised internal market. In this context, the NRAs shall cooperate with the ACER.

Transmission, storage and LNG

From 1 June 2016 (the Contracting Parties) and 3 March 2012 (the EU Member States) the gas transmission systems and the gas TSOs shall be unbundled. A gas undertaking must first be certified before being officially designated as the gas TSO. The gas TSO which is designated by the State shall then be published in the Official Gazette of the State and appropriate web-site of the EnC (the Contracting Parties), and the Official Journal of the EU (the EU Member States). In addition, the State shall designate one or more storage and/or LNG system operators responsible for: 1) operating, maintaining and developing transmission systems, storage and/or LNG facilities with due regard to the environment; 2) ensuring non-

discrimination between system users; 3) providing information to any other gas TSO, any other gas SSO, any other OLNGF and/or any gas DSO to ensure the interconnection of the transmission and storage of natural gas; and 4) providing system users with the information they need to access the system. The gas TSO shall build sufficient cross-border capacity to integrate the European transmission infrastructure. Every year, the gas TSO shall submit to the NRA a ten-year network development plan indicating the main infrastructure that needs to be built or modernised as well as the investments to be executed over the next ten years.

Distribution and supply

The State shall designate the gas DSO(s) or require gas undertakings which own or are responsible for distribution systems to do so. The gas DSO(s) shall be responsible for: 1) ensuring the long-term capacity of the system(s) in terms of the distribution of gas, operation, maintenance, development and environmental protection; 2) ensuring transparency with respect to system users; 3) providing system users with information; and 4) covering energy losses and maintaining reserve capacity. The gas DSO(s) shall be independent in legal terms from other activities not relating to distribution. Distribution systems used for distributing natural gas within a geographically confined industrial, commercial or shared services site may be classified by the competent authorities as closed distribution systems. On this basis, they may be exempted from the requirement to have their tariffs, or the methodologies underlying their calculation, approved in advance.

Unbundling and transparency of accounts

The State and the competent authorities shall have right of access to the accounts of natural gas undertakings but shall preserve the confidentiality of certain information. Natural gas undertakings shall keep separate accounts for all of their activities relating to the supply of gas, such as transmission and distribution.

Organisation of access to the system

The State or the competent regulatory authorities shall define the conditions for access to storage facilities and line-pack. They shall take measures to ensure that eligible customers can obtain access to upstream pipeline networks. Moreover, they shall organise a system of third party access to transmission and distribution systems. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where access to the system would compromise the performance of their public service obligations. Substantiated reasons shall be given for any such refusal.

Final provisions

The State may take the necessary safeguard measures in the event of a sudden crisis in the market or where the safety of persons is threatened. These measures shall be notified to the other Contracting Parties and to the ECS (the Contracting Parties) and to the other EU Member States and to the European Commission (the EU Member States). This Directive repeals Directive 2003/55/EC as from 1 January 2015 (the Contracting Parties) and 3 March 2011 (the EU Member States).

Context

The 2007 Commission Communications entitled '*Prospects for the internal gas and electricity market*' and '*Sector inquiry into the gas and electricity markets*' highlighted the inadequacy of the rules and measures in force relating to the internal market in gas in meeting the objectives laid down for the proper functioning of the internal market. The adoption of new rules was required.

5.2.2 Regulation (EC) No 715/2009

<i>Aim</i>	This Regulation aims at laying down rules for natural gas transmission networks, gas storage and LNG facilities. It concerns access to infrastructures, particularly by determining the establishment of tariffs (solely for access to networks), services to be offered, allocation of capacity, transparency and balancing of the network.
<i>Certification of the gas TSO</i>	The NRA shall send to the ECS (the Contracting Parties) and the European Commission (the EU Member States) notification of a decision relating to the certification of the gas TSO. The ECS/the Commission then has a period of four/two months to deliver its opinion to the NRA. The NRA then adopts the final decision concerning the certification of the gas TSO. This decision and the ECS's/the Commission's opinion are published.
<i>European Network of Transmission System Operators for Gas (ENTSO-G)</i>	Relating to the establishment of the ENTSO-G, by 3 March 2011, the gas TSOs shall submit to the Commission and to the ACER the draft statutes for the ENTSO-G, a list of members and draft rules of procedure. Relating to the tasks of the ENTSO-G concerning network codes, the Commission shall consult the ACER and the ENTSO-G in order to establish an annual list of the priorities which are to contribute to developing network codes. These codes shall be developed using a non-binding framework guideline submitted by the ACER to the Commission. The codes include rules and procedures relating in particular to: 1) network security and reliability; 2) data interchange; 3) technical and operational exchanges; 4) transparency rules; 5) harmonised transmission tariff structures; and 6) energy efficiency. Relating to the tasks of the ENTSO-G, the ENTSO-G is responsible for adopting: 1) common network operation tools; 2) a ten-year network development plan; 3) recommendations relating to the coordination of technical cooperation between Community gas TSOs; 4) an annual work programme; 5) an annual report; and 6) annual summer and winter supply outlooks.
<i>Costs and tariffs</i>	The NRA shall determine tariffs or methodologies for their calculation. The State may take decisions relating to tariffs such as fixing auction arrangements.
<i>Third party access services</i>	The gas TSO shall offer its services equitably to all network users on a rolling basis in the long- and short-term. LNG and storage facility operators must also offer their services according to the procedure described above and make them compatible with the use of interconnected gas transport networks.
<i>Allocation of capacity and congestion management</i>	All market participants must have access to maximum network capacity as well as storage and LNG facilities. Infrastructure operators shall implement and publish non-discriminatory and transparent congestion management procedures which facilitate cross-border exchanges in gas on a non-discriminatory basis.
<i>Final provisions</i>	This Regulation repeals Regulation (EC) No 1775/2005 as from 1 January 2015 (the Contracting Parties) and 3 March 2011 (the EU Member States).
<i>Context</i>	The 2002 and 2003 European Gas Regulatory Forums (the Madrid Forums) were at the origin of guidelines on best practice. However, experience acquired has demonstrated that these guidelines should be made legally enforceable. This

Regulation is based on the guidelines in order to strengthen the internal market in natural gas.

5.2.3 Directive 2004/67/EC

The ‘*Green Paper on security of energy supply*’ drew attention to the worrying level of dependence on gas imports from sources outside the EU. Furthermore, over 40% of the EU’s natural gas consumption is at present imported, and the forecasts indicate that this level of dependence could rise to 70% in 2020. In the context of a European gas market in transition, the task of organising security of natural gas supply cannot be entrusted to just one player on the market. In this respect, the Contracting Parties (in the EnC) and the EU Member States (in the EU) are under an obligation to define the roles and responsibilities of all the players on the market with regard to security of natural gas supply.

Directive 2009/73/EC recognises the right of the State to regard security of natural gas supply as a public service obligation. It has established the common rules for the internal market in natural gas that enable the State to take the requisite measures to safeguard supply in the event of a sudden crisis in the energy market. The internal gas market is currently being liberalised, which is why there is a growing need to guarantee the security of gas supplies. However, various obstacles to competition still need to be overcome: high network access tariffs, guarantee of general conditions that are non-discriminatory and transparent in terms of access to the network, difficulties confronting new entrants, monitoring of the production and import of gas by one or two companies, etc.

This Directive establishes a common framework within which the Contracting Parties (in the EnC) and the EU Member States (in the EU) can define general security of natural gas supply policies that are transparent, solidarity-based, non-discriminatory and consistent with the requirements of a single market in gas.

Security of natural gas supply for specific customers

The State will ensure that supplies for household customers inside its territory are protected at least in the event of: 1) a partial disruption of national gas supplies during a period to be determined by the State taking into account national circumstances; 2) extremely cold temperatures during a nationally determined peak period; and 3) periods of exceptionally high gas demand during the coldest weather periods statistically occurring every 20 years. At the same time, the State may: 1) extend the scope to SMEs and other customers that cannot switch their gas consumption to other energy sources; 2) set or require the industry to set indicative minimum targets for a possible future contribution of storage, either located within or outside the State, to security of natural gas supply; 3) take the appropriate measures in cooperation with another State, including bilateral agreements, to achieve the security of natural gas supply standards using gas storage facilities located within that other State; 4) set or require the industry to set indicative minimum targets for a possible future contribution of storage, either located within or outside the State, to security of natural gas supply; and 5) adopt and publish national emergency provisions.

Monitoring

Given the importance of securing gas supply, the ECS (in the EnC) and the Commission (in the EU) should monitor, on the basis of the national reports from the States: 1) the extent to which gas supply is covered by new long-term contracts for imports from third countries; 2) the existence of adequate liquidity of gas supplies; 3) the level of working gas in storage and of the withdrawal capacity of gas storage; 4) the degree of interconnection of the national gas systems of the States; and 5) the foreseeable gas supply situation at Community level concerning specific geographic areas in the Community. The ECS and the Commission will, in the light of the manner in which the Contracting Parties and the EU Member States have implemented this Directive, report on the effectiveness of the instruments used and their effect on the internal gas market and on the evolution of competition on the internal gas market.

Gas Coordination Group

A Gas Coordination Group has been established to facilitate coordination of security of natural gas supply measures by the Community in the event of a major supply disruption. This group could also assist the EU Member States in coordinating measures taken at national level. The Group will be composed of representatives of the EU Member States, of representative bodies in the industry concerned and of relevant consumers, under the chairmanship of the Commission.

Reporting

The State will adopt and publish a report covering in particular the following points: 1) the competitive impact of the measures taken to implement the Directive; 2) the levels of storage capacity; 3) the long-term gas supply contracts concluded by companies established and registered on its territory, and in particular their remaining duration; and 4) the regulatory frameworks to provide adequate incentives for new investment in exploration and production, storage and transport of gas and of LNG.

5.2.4 Regulation (EU) No 994/2010

Aim

This Regulation aims to safeguard the security of natural gas supply by ensuring both prevention and a coordinated response in the event of a supply disruption and by securing the proper and continuous functioning of the internal gas market. The Regulation establishes a common framework where the security of natural gas supply is a shared responsibility of natural gas undertakings, EU Member States and the Commission. It also provides transparent mechanism, in a spirit of solidarity, for a coordinated response to an emergency at national, regional and EU levels.

Security of natural gas supply for protected customers

The Regulation sets out a common concept of the customers whose gas supplies have to be protected. All households are protected customers. EU Member States may also include as protected customers SMEs and essential social services (provided that these additional customers do not represent more than 20% of the final use of gas) and/or district heating installations.

Common infrastructure and supply standards

The Regulation provides common standards at EU level: 1) Infrastructure standard (EU Member States must ensure that by 3 December 2014 at the latest, in the event of a disruption of the single largest infrastructure, they are able to satisfy total gas demand during a day of exceptional high gas demand. The Regulation also

requires reverse flows to be established in all cross border interconnections between EU Member States by 3 December 2013.); and 2) Supply standard for protected customers (natural gas undertakings must secure supplies to protected customers under severe conditions, i.e. in the event of a seven day temperature peak and for at least 30 days of high demand, as well as in the case of an infrastructure disruption under normal winter conditions).

*Risk assessment,
preventive action
plan and emergency
plan*

By 3 December 2011, the competent authority shall make a full assessment of the risks affecting the security of natural gas supply. The risk assessment shall take into account the supply and infrastructure standards, all relevant national and regional circumstances, various scenarios of exceptionally high gas demand and supply disruption and the interaction and correlation of risks with other EU Member States. On the basis of the results of the risk assessment, no later than 3 December 2012, the competent authority shall adopt, make public and notify the Commission of a preventive action plan, containing the measures needed to remove or mitigate the risk identified, and an emergency plan containing the measures to be taken to remove or mitigate the impact of a gas supply disruption. The risk assessment and the plans shall be updated every 2 years. The Commission shall assess those plans in consultation with the Gas Coordination Group.

*EU and regional
emergency*

The Regulation defines three main crisis levels: early warning level, alert level, and emergency level. The emergency plan shall build upon these crisis levels. The Commission plays an important role with regard to the declaration of EU or regional emergency. The Commission may declare an EU or a regional emergency at the request of a competent authority that has declared an emergency. When the request comes from at least two competent authorities, the Commission shall declare an EU or regional emergency.

*The Gas
Coordination Group*

The Gas Coordination Group is established to facilitate the coordination of measures concerning security of natural gas supply. The Group shall be consulted and shall assist the Commission on security of natural gas supply issues. The Group shall be composed of representatives of the EU Member States, in particular of their competent authorities, as well as the ACER, the ENTSO-G and representative bodies of the industry concerned and those of relevant customers. The Commission shall chair the Group.

*Transparency and
information
exchange*

During an emergency, the natural gas undertakings concerned shall make available certain information to the competent authority on a daily basis. In the event of an EU or regional emergency, the Commission is entitled to request that the competent authority provides at least information on the measures planned to be undertaken and already implemented to mitigate the emergency. By 3 December 2011 at the latest, EU Member States shall inform the Commission of existing inter-governmental agreements concluded with non-EU countries. EU Member States must also notify the Commission when any new such agreements are concluded.

Context

Directive 2004/67/EC established for the first time a legal framework at EU level to safeguard security of natural gas supply. The Russian-Ukrainian gas crisis in January 2009 demonstrated that the provisions of the Directive and their uneven

implementation by the EU Member States was not sufficient to prepare for, and to respond to a supply disruption, and there was a clear risk that measures developed unilaterally by the EU Member States could jeopardise the functioning of the internal market.

5.3 Conclusions

Main areas

The latest round of EU gas market legislation, known as the TEP, has been enacted in the EnC (for the Contracting Parties) and the EU (for the EU Member States) to improve the functioning of the internal gas market and resolve structural problems. It covers five main areas: 1) unbundling energy suppliers from network operators; 2) strengthening the independence of the NRAs; 3) establishment of the ACER; 4) cross-border cooperation between the gas TSOs and the creation of ENTSO-G; and 5) increased transparency in retail markets to benefit consumers.

Unbundling

Unbundling is the separation of energy supply and generation from the operation of transmission networks. If a single company operates a transmission network and generates or sells energy at the same time, it may have an incentive to obstruct competitors' access to infrastructure. This prevents fair competition in the market and can lead to higher prices for consumers. Under the TEP, unbundling must take place in one of three ways, depending on the preferences of individual Contracting Party/EU Member State: 1) Ownership Unbundling (OU), where all integrated energy companies sell off their gas and electricity networks – in this case, no supply or production company is allowed to hold a majority share or interfere in the work of a TSO; 2) Independent System Operator (ISO), where energy supply companies may still formally own gas or electricity transmission networks but must leave the entire operation, maintenance, and investment in the grid to an independent company; and 3) Independent Transmission Operator (ITO), where energy supply companies may still own and operate gas or electricity networks but must do so through a subsidiary and all important decisions must be taken independent of the parent company. The Commission publishes guidance documents which explain how these unbundling models should be applied. Operators that comply with the unbundling rules can apply for certification with their NRA. Every operator must be certified and the ECS (in the EnC) and the Commission (in the EU) provides its opinion on the certification procedure.

NRAACER

A competitive internal gas market cannot exist without independent regulators who ensure the application of the rules. Under the TEP, the requirements for the NRA have undergone a number of changes. Specifically: 1) regulators must be independent from both industry interests and government (they must be their own legal entity and have authority over their own budget; governments must also supply them with sufficient resources to carry out their operations); 2) regulators can issue binding decisions to companies and impose penalties on those that do not comply with their legal obligations; 3) electricity generators, gas network operators, and energy suppliers are required to provide accurate data to regulators; and 4) regulators from different Contracting Parties (in the EnC) and the EU Member States (in the EU) must cooperate with each other to promote competition, the opening-up of the market, and an efficient and secure energy network system.

<i>ACER</i>	<p>In order to help the different NRAs cooperate and ensure the smooth functioning of the internal energy market, the EU established the ACER. ACER is independent from the Commission, national governments, and energy companies. Its work involves: 1) drafting guidelines for the operation of cross-border gas pipelines and electricity networks; 2) reviewing the implementation of EU-wide network development plans; 3) deciding on cross-border issues if national regulators cannot agree or if they ask it to intervene; and 4) monitoring the functioning of the internal market including retail prices, network access for electricity produced from renewables, and consumer rights.</p>
<i>Cross-border cooperation</i>	<p>National TSOs are responsible for ensuring natural gas (and electricity) is effectively transported through pipelines (and grids). Due to the cross-border nature of Europe's gas market, they must work together to ensure the optimal management of EU gas networks. This is done through the ENTSO-G. This organisation: 1) develops standards and drafts network codes to help harmonise the flow of gas across different gas transmission systems; and 2) coordinates the planning of new network investments and monitors the development of new transmission capabilities. This includes publishing a Europe-wide 10 year investment plan to help identify investment gaps every two years.</p>
<i>Open and fair retail markets</i>	<p>The TEP includes rules designed to benefit European energy consumers and protect their rights. They include the right to choose or change suppliers without extra charges, receive information on energy consumption, and quickly and cheaply resolve disputes.</p>

6 REVIEW OF CURRENT GAS REGULATIONS IN ALBANIA

6.1 Introduction

This Chapter reviews gas regulations in Albania, where the current availability of gas is reduced only to use by Albpetrol SH.A and ARMO SH.A (the only crude oil refinery that meets the technological requirements). Successful achievement of the gas sector related goals is strongly linked with the international commitments of Albania towards EU standards. The most important effort now is to ensure that the legal and regulatory as well as the institutional and organisational frameworks in the gas sector are sustained to support the gas infrastructure development. In line with the economic development of Albania, and with the energy practices and relevant standards for candidate countries for EU accession, it is necessary to establish adequate legal and regulatory as well as institutional and organisational frameworks required for sustainable development in the gas sector. After first describing the legal and regulatory framework, the analysis is augmented next by identifying the current state of compliance in the gas sector. Moreover, current activities on the transposition of the TEP are reflected upon. Conclusions are given in the end. The information used to compile this Chapter have been extracted from public sources provided by the GoA, MoEI, ERE, Albpetrol SH.A, and ECS. In addition, some complementary information have been obtained from data that are made public by IFIs (i.e. EBRD and World Bank). All these served to the scope of the work of this subproject with the aim to identify the requirements to be fulfilled in terms of the TEP and enable the gasification in Albania.

6.2 Legal and Regulatory Framework

Basis

Until recently (more precisely, until October 2015), the legal and regulatory framework for the natural gas market in Albania was defined by the Law on Natural Gas Sector of 2008⁴ which was adopted in 2008 and amended in 2013. With the Law on Natural Gas Sector of 2008, Albania transposed obligations arising from the SEP (Directive 2003/55/EC and Regulation (EC) No. 1775/2005, as well as Directive 2004/67/EC) of EU legislation. It should be mentioned that Albania, where only limited gas infrastructure is operated, has also in fact already adopted a large number of elements of Directive 2004/67/EC into its legislation.

The Law on Natural Gas Sector of 2008 (the old gas related law)

The Law on Natural Gas Sector of 2008 (the old gas related law) determined natural gas activities and conditions to perform them, as well as the manner of organising and functioning of the natural gas market. It defined the following natural gas activities: 1) transmission of natural gas; 2) distribution of natural gas; 3) supply of natural gas; 4) trading in natural gas; 5) operation of natural gas storage facilities; and 6) operation of LNG facilities. For the operation of a direct line, no licence was required to be issued by the ERE. The role of the gas MO was not assigned. In general, the major principles on main activities in the natural gas

⁴ Law on Natural Gas Sector, No. 9946 dated 30 June 2008, No. 6 dated 2013

sector, the rights and duties of gas market participants, and the principles of PSOs will be retained as defined there, however with taking on board new elements which make difference between the SEP and TEP.

The SEP and TEP

The SEP was the *acquis communautaire* in energy until 31 December 2014, in line with the EnC Treaty⁵ to which Albania is the Contracting Party⁶. Starting from 1 January 2015, all Contracting Parties, including Albania, shall transpose provisions and implement obligations arising from the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009, as well as Directive 2004/67/EC) of EU legislation. In addition, the *acquis communautaire* in competition (Articles 81, 82 and 87 of Annex III of the EnC Treaty) is to be implemented in the natural gas sector too.

The TEP in Albania

The transposition of the TEP was completed in Albania after intensive drafting in 2014-2015. The NAOA voted in favour of the Law on Natural Gas Sector of 2015 on 23 September 2015⁷. Earlier, the draft Law was submitted for comments twice to the ECS, which replied positively both times. The transposition of the TEP is an important step in terms of further legal development in the natural gas sector.

The Law on Natural Gas Sector of 2015 (the new gas related law)

The Law on Natural Gas Sector of 2015 (the new gas related law) determines natural gas sector as the one comprising natural gas, LNG and biogas, as well as gas from biomass or other types of gas that from technical and safety viewpoint, can be injected and transported through the natural gas system. It determines conditions to perform the natural gas activities, as well as the manner of organising and functioning of the natural gas market. The natural gas activities that are under the authority of the ERE are: transmission of natural gas, distribution of natural gas, supply of natural gas, trading in natural gas, operation of natural gas storage facilities, operation of LNG facilities, and operation of the natural gas market. The role of the gas MO shall be assumed by a legal person owned by the gas TSO. With the new gas related law, the ERE will be given enlarged jurisdiction over gas related issues in Albania.

The Law on Hydrocarbons Exploration and Production of 1993

In parallel to the Law on Natural Gas Sector of 2008 previously and of 2015 nowadays, the Law on Hydrocarbons Exploration and Production⁸ determines the area of upstream operations in the area of natural gas, i.e. all those operations that are related to hydrocarbon deposits (in particular exploration and production). This Law is in compliance with Directive 94/22/EC, establishing that the future production of hydrocarbons will be performed in a transparent manner and in accordance with the best international practice.

The main activities from the two Laws

Natural gas activities from the Law on Natural Gas Sector of 2015 and the Law on Hydrocarbons Exploration and Production are briefly described hereafter:

- › Exploration of natural gas is subject to the Law on Hydrocarbons Exploration and Production of 1993, which defines the maximum duration

⁵ Treaty establishing Energy Community, 25 October 2005, EnC's web-site

⁶ Law on Ratification of the Treaty establishing the Energy Community, No. 9501 dated 3 April 2006

⁷ Law on Natural Gas Sector, No. 102/2015 dated 23 September 2015

⁸ Law on Hydrocarbons Exploration and Production, No. 7746 dated 28 July 1993

*Exploration and
production of natural
gas*

for performing specific activities, as well as the maximum size of blocks and exploitation fields. The right of exploration (and production) of hydrocarbons may be granted to one or more business organisations, legal entities or natural persons, upon signing an obligatory concession contract of a priority type. Production of natural gas is also subject to the same Law, which in this respect defines that the production shall be performed by producers in accordance with technical regulations, norms and best practice standards adopted by the MoEI, while undertaking the necessary measures to increase the exploitation rate and prevent waste of hydrocarbons and reservoir energy from the deposits. Additionally, the Law on Natural Gas Sector of 2008 previously and 2015 nowadays allow the producers that have signed a hydrocarbon agreement to request to be connected to the transmission or distribution network complying with technical terms and standards set forth in the transmission or distribution grid codes. Expenses for connection of the producers to the transmission or distribution network shall be borne by the producers. The producers may construct direct lines to meet their own needs or to supply one or more eligible customers. They may also carry out the activities of trade in or supply of natural gas to eligible customers, subject to acquiring licences by the ERE for these activities. The access to upstream networks is considered legit based upon transparency and non-discriminatory principles and is a deregulated activity. However, general terms and conditions for the access to upstream pipeline networks shall be established by the Law on Hydrocarbons Exploration and Production of 1993 (natural gas undertakings and eligible customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced);

*Transmission and
distribution of natural
gas*

- › Under the Law on Natural Gas Sector of 2015, the activities of the transmission and distribution of natural gas are subject to licensing by the ERE. The transmission and distribution of natural gas shall be performed as services of public interest by the gas TSO and the gas DSO(s). These are responsible for the maintenance, upgrade and development of the gas transmission and distribution system(s). Furthermore, the gas TSO and the gas DSO(s) shall manage the flow of gas within the network of pipelines and control the quality of gas delivered to final customers and other gas market participants through the gas transmission and distribution systems, respectively. The gas TSO and the gas DSO(s) shall perform their activities in accordance with the conditions of licences issued by the ERE and on basis of non-discriminatory conditions for network users and classes (categories) of transmission and distribution system users;

*Supply of and trade
in natural gas*

- › The activities of the supply of (retail side) and trade in (wholesale side) natural gas shall be performed by the gas supplier and the gas trader in accordance with the Law on Natural Gas Sector of 2015 and the terms and conditions of the licences issued by the ERE. The supply of natural gas consists of acquisition, delivery and sale, including resale, of gas to

customers. The trade in natural gas means the purchase and sale in wholesale of natural gas, and excludes dealing with final customers (end-users). For household customers and small enterprises, the supply of natural gas may be performed by the supplier under public service obligation, the so-called gas PS (an entity to be appointed by the ERE or the GoA following consultations with the ERE). In case the objectives of the public service to households and small enterprises could not be achieved otherwise under market conditions, the ERE may regulate the end-users' prices provided it complies with the terms and conditions established by the Law. The GoA shall designate the supplier of last resort based on an open tender procedure. Eligible customers are free to select their gas suppliers. They may be supplied by any qualified gas supplier licensed by the ERE and chosen by them. The gas supplier shall ensure the necessary conditions for a regular and safe gas supply to the final customers;

Operation of natural gas storage and LNG facilities

- › The activities of the operation of natural gas storage and LNG facilities are defined as the activities of public interest and shall be performed by the gas SSO and the OLNGF in compliance with the Law on Natural Gas Sector of 2015, the terms and conditions of the licences issued by the ERE and other rules on environmental protection. The activity of the operation of natural gas storage facility can be performed by any company that is in possess of gas storage facilities under a hydrocarbon agreement or under any other legal form. Each possessor of such facilities shall: 1) manage them in coordinated and integrated way in order to guarantee their optimization and the security of the natural gas system, and 2) secure and provide the stocking services to persons that make a request for use of gas storage facilities provided that these services based on established criteria are technically and economically feasible. The activity of the operation of LNG facility can be performed by a natural gas undertaking which owns the LNG facility and is designated as the OLNGF by issuance of a license for the operation of the LNG facilities by the ERE. The OLNGF carries out the function of liquefaction of natural gas, or the import, export, offloading, and re-gasification of LNG and is responsible for operating the LNG facility;

Operation of the natural gas market

- › The organisation of the natural gas market is the activity performed by the gas MO on the basis of a licence issued by the ERE and in accordance with the Market Code, which the gas MO shall adopt subject to the prior approval of the ERE. The gas MO is responsible for the organisation of the day-ahead market for physical trade in natural gas in Albania, as well as for its connecting with other organised natural gas markets. The gas MO shall be a company owned by the gas TSO. The gas TSO shall ensure its functional independence from the gas MO and shall include respective measures preventing the discriminatory conduct in its compliance programme. The gas MO shall apply the fee for organisation of the natural gas market set by the ERE in accordance with the annual operational plan and financial plan of the gas MO. The gas MO shall keep a separate account for the transactions involving purchase and sale of natural gas.

The main undertakings and their documents

The natural gas activities, as provided by the Law on Natural Gas Sector of 2015, shall be performed by natural gas undertakings, i.e. the gas TSO, the gas DSO(s), the gas PS, the gas SSO, the OLNGF, and the gas MO. These undertakings shall perform respective activities according to the licences^{9 10}, issuance of which falls to the authority and the scope of work of the ERE, and in line with the following relevant documents (which still need to be developed and adopted):

Gas TSO relevant documents

- › 1) The methodology for setting fees for connection and tariffs for access to the natural gas transmission network (to be adopted by the ERE); 2) The methodology for setting tariffs for access to cross-border infrastructures (to be adopted by the ERE); 3) The regulation on the certification of the gas TSO (already adopted by the ERE); 4) The transmission grid code; 5) The metering code; 6) The congestion management rules, including capacity allocation; 7) The methodology for the provision of balancing services (to be adopted by the ERE); 8) The balancing rules of the transmission system; and 9) The compliance programme;

Gas DSO relevant documents

- › 1) The methodology for setting fees for connection and tariffs for access to the natural gas distribution network (to be adopted by the ERE); 2) The rules regarding the unbundling of the gas DSO (to be adopted by the ERE); 3) The distribution grid code; 4) The metering code; and 5) The compliance programme;

Gas PS relevant documents

- › 1) The general conditions for the supply of natural gas (to be adopted by the ERE); 2) The methodology for setting tariffs for the supply of natural gas to household customers and small enterprises, as well as tariffs for the supply of last resort (to be adopted by the ERE); 3) The operational rules for suppliers which carry out the supply of natural gas as a public service obligation (to be adopted by the ERE);

Gas SSO/OLNGF relevant documents

- › 1) The usage rules for the gas storage system; 2) The metering code for the gas storage system; 3) The usage rules for the LNG terminal; 4) The metering code for the LNG terminal; 5) The methodology for setting tariffs for access to the LNG facilities;

Gas MO relevant documents

- › The gas market code (the rulebook on gas market organisation);

ERE relevant documents

- › 1) The licensing rules; 2) The supplier switching rules; 3) The rules and regulations for public consultations; 4) The rules of practice and procedure;

GoA relevant documents

- › The rules regarding the criteria, conditions and procedures for granting the permits for the construction and utilisation of facilities, equipment or installation falling under the natural gas sector.

Recommendation

⁹ Rules and procedures on licensing, modification, partial/full transfer, revocation and renewal of licences in the natural gas sector, Decision of the ERE No. 9 dated 11 February 2011

¹⁰ Register of licensees, ERE's web-site

As regards the legal and regulatory framework in the gas sector, it is necessary first to proceed along the transitory provisions from the recently adopted Law on Natural Gas Sector of 2015 to start harmonising in practice with the TEP and next to start adopting necessary bylaws in the natural gas sector (Appendix I), as defined by the new gas related law, within the deadlines set by the EnC institutions. The legal and regulatory framework needs to achieve adoption of the regulations required firstly for the transmission and distribution system operation and secondly for the gas market operation. The definitions of terms related to the gas TSO's unbundling (particularly control and vertically integrated undertaking) need to be understood exactly as given in Directive 2009/73/EC enabling a proper implementation of the regulatory certification.

6.3 Current State of Compliance in the Natural Gas Sector

Gas infrastructure development

The gas exploitation for industrial use in Albania dates back to 1963, a period when the extent of condensed gas in Bubullima (Kallm Zone) was put into operation. Later on, in 1964 the natural gas reserve in Divjaka was also put into operation, followed then with finding and using other natural gas sources at Frakull (1972), Finiq-Krane (1974), Ballaj (1983), Povelça (1987), Panaja (1989), and Delvina (1989). Historically, natural gas has been an important element for the electricity supply in Albania, but its contribution is currently very low due to minimum production levels and impossible import from the international gas pipelines. The studies undertaken so far have identified several alternatives for linking Albania with the European gas network. The gas reserves have recorded a continuous decrease since 1985, reaching a minimum level in the early 90', due to the lack of new discoveries and investments in the existing resources. Until 1990, the natural gas extracted was used in chemical waste industry, oil industry, electricity production and a very small amount in the household sector. The state-owned Albpetrol SH.A (also the largest producer of crude oil in Albania) is active in gas extraction, management and development of gas reserves in Albania. Daily production of gas is used by Albpetrol SH.A and also by ARMO SH.A, the only crude oil refinery that meets the technological requirements. Gas network is spread in all western part of Albania, ending in ORC (Binary plants) in Ballsh. Gas fields stretch from Durres (located in the centre of Albania) to Delvina (in the south of the country), thus creating an opportunity for the consumers to connect to the network. Local gas infrastructure in some places is not in operational condition and major rehabilitation works are needed. Parts of the network are not able to transport gas due to corrosion and destruction. According to forecasts, the existing gas network will need to be completely replaced.

Legal framework development

As a Contracting Party to the EnC, Albania shall implement its obligations which are enshrined in related laws and regulations. These come from the transposition of EU Directives and Regulations making the EnC's *acquis communautaire*. The legal framework in Albania until recently consisted of the Law on Natural Gas Sector of 2008, which already transposed the main principles of Directive 2003/55/EC and vested the ERE with regulatory powers in the natural gas sector. The Law was complemented in 2011 by the Rules and Procedures on Licensing, Modification, Partial/Full Transfer, Revocation and Renewal of Licences adopted

by the ERE. Except for the issuance of two licences in 2012 for operation of the natural gas transmission and distribution system to Albpetrol SH.A, this legislation has not been implemented further in practice. The Law on Natural Gas Sector of 2015 was adopted on 23 September 2015, after numerous preparatory activities in that direction. This law supposedly transposed all provisions from the TEP which has become mandatory in the EnC Contracting Parties from 1 January 2015.

*Focus and progress
in the natural gas
sector*

Besides focusing on the development of a gas master plan, Albania has also focused its activities in the natural gas sector to development of the TAP. In line with the Market Test Guidelines issued by the three NRAs involved (of Greece, Albania and Italy), the TAP launched the second phase of the Market Test, the binding capacity booking phase, between 17 March 2014 and 19 May 2014. One of the companies booking capacity was Albpetrol SH.A. According to the Joint Opinion on TAP's exemption issued by the Greek, Albanian and Italian NRAs, the TAP is required to be fully certified before the start of the construction of the pipeline, and not later than 1 January 2018, according to the ITO model as an exemption. The ECS issued the Opinion 1/2013 on the exemption of the TAP from certain requirements under Directive 2009/73/EC by the ERE (such as unbundling, third party access and tariff regulation), and later on the Opinion 1/2015 on the prolongation of the exemption. Due to events beyond its control, the TAP AG company requested a postponement of the date by which the commercial operation would take place, namely until 31 December 2020. The ECS noted in its 2015 Implementation Report for Albania that the TEP compliant Law on Natural Gas Sector which was adopted by the NAOA on 23 September 2015 provides a legal basis for certification of the TAP in Albania. In parallel to these activities, Albania is strengthening its administrative capacities related to the natural gas sector with the support of Swiss financial assistance. The Swiss donation will also include support for implementing the technical rules and standards in the natural gas sector.

Compliance

Despite the lack of a functional gas market in Albania, the Law on Natural Gas Sector of 2008 transposed the main principles of the SEP, and provided a basis for further legal and regulatory developments in the natural gas sector of the country, as well as for gas penetration plans. The Law on Natural Gas Sector of 2015 transposed the TEP in Albania, which is important for further legal development in its natural gas sector. The current state of compliance, including implementation, in the natural gas sector of Albania, which is just between the two laws (of 2008 and 2015), is briefly presented hereafter, according to the ECS's observations¹¹:

*Authorisation
Procedure*

- › The Law on Natural Gas Sector of 2008 required all natural gas undertakings to be issued with a licence by the ERE before starting activities in the natural gas sector, except for the operation of direct pipelines. Detailed procedure has been specified in the Licensing Rules adopted by the ERE in 2011¹². The conditions and procedure for

¹¹ Based on information provided by the ECS (https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/Implementation/Albania/Gas), including in the 2015 Implementation Report (https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/Implementation/IR_2015)

¹² Natural Gas Sector Rules and Procedures on Licensing, Modification, Partial/Full Transfer, Revocation and Renewal of Licenses, approved by the ERE's Decision Nr.9 date 11/02/2011.

licensing are in general defined in compliance with Directive 2009/73/EC (however, the ERE needs to align them with the Law on Natural Gas Sector 2015). The only exception is that they lack a provision stipulating that refusal to grant a licence should be notified to the ECS. The construction and use of natural gas infrastructure, including direct lines, requires a permit by the GoA. The new gas related law requires that the ECS is notified in case of refusal. Albpetrol SH.A, a vertically integrated oil and gas company, has been licensed as the gas TSO and DSO;

Unbundling

- › The Law on Natural Gas Sector of 2008 required the gas TSO to be independent at least in terms of its legal form, organisation and decision-making from other activities not relating to transmission – this has not materialised in practical terms with respect to Albpetrol SH.A which has been granted a licence for natural gas transmission in 2012. Since further criteria for unbundling and independence of the gas TSO (or DSO) have been introduced by the TEP, the Law on Natural Gas Sector of 2008 was not compliant with the new unbundling and certification requirements. Albania transposed the OU model in the Law on Natural Gas Sector of 2015 and will need to implement it in practice as the only possible unbundling model for the gas TSO. The only exception would be a situation where a new infrastructure for transmission is exempted from this obligation, which would require the certification procedure model envisaged by the exemption decision. Moreover, Albpetrol SH.A (which produces natural gas in Albania and is licensed as both the country's only gas TSO and DSO) is thus not unbundled from natural gas production and supply/trade activities in accordance with either Directive 2003/55/EC (legal, functional and accounting) or with Directive 2009/73/EC requirements. Additional requirements for unbundling of the gas DSO(s) and the gas SSO have been introduced in line with Directive 2009/73/EC. Albania has undertaken steps to achieve a state of compliance in this respect from legal viewpoint, however still without a practical realisation.

Third Party Access

- › The requirements for non-discriminatory access to the transmission and distribution networks, as well as storage and LNG facilities, were established already by the Law on Natural Gas Sector of 2008. The conditions for refusal of access were aligned with the gas *acquis*. As for the mainline, access shall be granted pursuant to the rules and tariffs approved by the ERE. However, the tariff setting principles have then transposed Directive 2009/73/EC only partially as the ERE's competences were not made compliant with the *acquis*. There were no obligatory provisions to establish a separate tariff for each entry and exit point to/from the transmission grid, as required by Regulation (EC) No. 715/2009. In addition, neither of the tariff systems have been adopted. The most serious shortcoming, however, has been the different treatment of national and cross-border (transit) gas transmission, which runs counter to the gas *acquis*. The gas TSO is required to adopt the transmission grid code, which would transpose third party access services, capacity allocation, congestion management and, partly, transparency obligations of Regulation (EC) No. 715/2009. Albpetrol SH.A has failed to adopt the code;

*Exemptions from
Third Party Access*

- › The possibility for an exemption from third party access to new infrastructure was defined in the Law on Natural Gas Sector of 2008 considering requirements of Directive 2003/55/EC. It means that the exemption from third party access was not then transposed fully in line with the TEP. However, it is worth noting that the exemption granted to the TAP was already based on the corresponding rules and procedures of the TEP. The TAP Tariff Code has been later approved by the NRAs of Albania, Greece and Italy, including forward and reverse flow conditions. These tariffs will remain unchanged for 25 years. Next, the TAP was granted a prolongation of the exemption from regulated tariffs for initial and expansion capacity in forward flow for 25 years, also following the TEP procedure;

Balancing

- › The majority of the provisions of Regulation (EC) No. 1775/2005 were transposed into the primary legislation of Albania, including those related to balancing and imbalance charges. The Law on Natural Gas Sector of 2008 provided that the balancing rules have to be prepared by the gas TSO and approved by the ERE. The Law did not envisage that such balancing rules must be market based as required later by Regulation (EC) No. 715/2009. This was rather a general legal basis upon which more detailed secondary legal acts were needed once the natural gas market comes into existence. Despite having a transmission system operator (TSO) licence since 2012, Albpetrol SH.A has failed to adopt the balancing rules and imbalance charges;

Eligibility

- › The definition of eligible customers stipulated in the Law on Natural Gas Sector of 2008 was not compliant with Directive 2003/55/EC. The Law limited eligibility to three defined groups of customers, namely: 1) final customers that consume more than an amount of natural gas defined by the ERE during a year, 2) power plants that consume natural gas for generation of electricity, and 3) power plants that consume natural gas for the combined production of electricity and heat. All customers should have been proclaimed eligible by 1 January 2015. Albania thus breached the relevant gas *acquis* provisions from the EnC Treaty and needed to correct this;

*Market Opening and
Price Regulation*

- › Deadlines for market opening, required by Directive 2003/55/EC as adapted in the EnC, had not been set by the Law on Natural Gas Sector of 2008. This constituted a case of non-compliance with the gas *acquis*, and has been corrected by the Law on Natural Gas Sector of 2015 which ensures full opening of the market from 1 January 2015, even if at the moment such opening is of no significant practical effect. Furthermore, the fact that all eligible customers may still be supplied by the gas DSO under regulated tariffs must be reconsidered as it both impedes market opening and violates the unbundling requirements for distribution networks. This is contrary to the market opening principles and also goes against the unbundling requirements for distribution networks. Across-the-board price regulation must be replaced by a phase-out approach to the regulation of supply prices, if price regulation cannot be abandoned immediately and completely once a market comes into existence;

*Customer Protection
and Protection of
Vulnerable
Customers*

- › The Law on Natural Gas Sector of 2008 did not envisage the right of customers to receive all relevant data. It also lacked provisions on single points of contact, which should provide customers with the necessary information concerning their rights. The provisions of Directive 2009/73/EC dealing with customer protection measures were not transposed by that Law and such situation needed a correction. The Law envisaged the gas public supply (the gas PS is at the same time supplier of vulnerable customers) and the supply of last resort. A vulnerable customer was defined as a customer who, based on his income, cannot afford the price of gas and thus benefits from the GoA's subsidies. Furthermore, the MoEI is obliged to develop programmes for protection of vulnerable customers in cooperation with other authorities;

*Security of Natural
Gas Supply*

- › The Law on Natural Gas Sector of 2008 transposed the general provisions of Directive 2004/67/EC and Directive 2009/73/C on reporting in relation to security of natural gas supply. It required that the GoA adopts secondary legislation which will define supply standards and a list of instruments for security of natural gas supply. However, such legislation has never been adopted. The Law also defined the key institutions and market players responsible for the supply and in principle defines safeguard measures and mechanisms in case of a major disruption of supplies; and

NRA

- › The ERE was established as the single authority for regulating the gas and electricity sector of Albania, as required by the TEP. It is headed by a Board of five Commissioners appointed by the NAOA based on a proposal of a selection team. The Board members' terms are five years, based on a rotation scheme. The ERE's competences needed to be extended to the set of regulatory powers and objectives foreseen under the TEP. The ERE is granted a significant level of independence by law, including explicit reference to autonomous and directly binding decision-making that is subject to judicial review only. The Board is exclusively responsible for defining the authority's organisation. Also, the selection procedure for appointment of Board members provides for relevant transparency and neutrality. Dismissal of Board members is by law limited to cases of conflict of interest or the carrying out of a criminal act and thereby uncritical in terms of potential political intervention. In practical terms the ERE, however, does not live up to its legally granted independence to the maximum possible extent. The ERE still does not take up the active role necessary for tackling competition barriers in the Albanian energy market. The ERE complies with transparency standards required in the context of independence by publishing Board decisions, as well as information on the ERE's organisation and structure, on its web-site. Deliberative sessions and hearings of the Board are open to the public. The corresponding publications in English should be duly updated. Financial independence is, in principle, foreseen in legislation by granting the ERE the right to autonomously set regulatory fees for licensees, which form the regulator's budget. Also, the Board has the exclusive authority to define the salaries of the ERE's staff and hire external experts. The Board members' salaries are defined by the NAOA. However, salaries of technical staff are by law required to follow those of

civil servants which leads to brain drain to the regulated industry with significant negative effects on the ERE's human resources.

Now and onwards...

Albania missed the deadline for implementation of the TEP of 1 January 2015, failing to comply (both from the legal viewpoint and from the viewpoint of practical implementation) with numerous provisions related to the powers and duties of the ERE, access to networks, unbundling and TSO certification. However, the Law on Natural Gas Sector of 2008 was eventually replaced by the new one of 2015 (in September 2015, with the entry into force from October 2015), which ensured full and proper transposition of the TEP. Onwards, Albania needs to develop numerous secondary legal acts, which are required by the Law on Natural Gas Sector of 2015. Shortly after its adoption, in November 2015, the ECS and the MoEI reached an agreement on the Gas Market Secondary Legislation Action Plan (Appendix I). The Plan envisages joint interactive work in the upcoming legislative and regulatory developments. The ECS has already started with the preparation of initial drafts following the agreed schedule. The Law on Natural Gas Sector of 2015 is to a large extent aligned with the gas *acquis*, that is with the provisions of Directive 2009/73/EC and Regulation (EC) No. 715/2009. It is of utmost importance that Albania proceeds along the transitory provisions. The gas TSO certification must not be put at risk. To that extent, the ERE has already adopted the Regulation on Certification of the Transmission System Operator for Gas. Furthermore, the certification procedure of the TAP has also been enacted. The (three) NRAs involved have already issued their positive decisions on its certification as well as the opinions of the EC and the ECS. The legal changes need to be complemented by increasing the capacity of the ERE and other competent institutions such as the gas TSO. The following adjustments in the legal and regulatory practice should be the ERE's key priorities: (1) competences need to be extended to the complete set of regulatory powers and objectives foreseen under the TEP, in particular related to the right to carry out investigations, impose measures to promote competition and proper market functioning and issue penalties to gas and electricity undertakings that do not comply with their obligations or to propose to the Albanian NCA or a competent court to impose such penalties; (2) transparency should be improved in relation to decision-making rules and information on the reflection of stakeholders' views in Board decisions; (3) the ERE needs to make more active use of its independence; (4) staff salaries need to correspond to salary levels of the regulated industry and should be entirely decided by the ERE's management; and (5) the ERE's staffing level needs to be extended in order to address the additional duties under the TEP. The gas TSO must be properly unbundled, certified and licensed by the ERE and then designated by the GoA.

6.4 The transposition of the TEP

The transposition

Albania has undergone a very intensive period of drafting of the Law on Natural Gas Sector of 2015 in order to transpose the TEP. These activities were conducted in close cooperation with the ECS. The new gas related law (the Law on Natural Gas Sector of 2015), aligned with the gas *acquis*, was approved on 22 July 2015 by the GoA and transmitted to the NAoA which adopted it on 23 September 2015.

The new gas related law

The TEP is transposed in Albania by way of adopting the new gas related law (the Law on Natural Gas Sector of 2015), dealing with national gas market and cross-border exchange of natural gas. Its provisions have the following main characteristics:

- › The energy activities in natural gas are defined (transmission of natural gas; distribution of natural gas; supply of natural gas; trading in natural gas; operation of natural gas storage facilities; operation of LNG facilities; operation of the natural gas market). The activity of exploration and production of natural gas is subject to the Law on Hydrocarbons Exploration and Production no. 7746, dated 28.07.1993, as amended;
- › Respective operators are defined (transmission system; distribution system; storage facility, LNG facility, gas market);
- › Activities of the public interest are noted (transmission of natural gas; distribution of natural gas);
- › Activities to be performed as the public services are noted (transmission of natural gas; distribution of natural gas; supply of natural gas to households and small enterprises; supply of natural gas in last resort);
- › Chapter IV is on the NATURAL GAS SECTOR ACTIVITIES;
 - Chapter IV SECTION I is on the TRANSMISSION OF NATURAL GAS (TSO, Unbundling of the TSO, Certification of the TSO, Certification of the exempted TSO, Monitoring of the unbundling of the TSO, Certification in relation to third countries; TSO responsibilities, Third Party Access to the Transmission System, Refusal of access rights, Transmission Grid Code, Principles of capacity-allocation mechanisms and congestion-management procedures concerning the TSO, Network development and investment decisions, Compliance programme and compliance officer, Transparency requirements, Regional and international cooperation by the TSO);
 - Chapter IV SECTION II is on the DISTRIBUTION OF NATURAL GAS (DSO, Unbundling of the DSO, Exemption from the unbundling of the DSO, Tasks of the DSO, Third Party Access to Distribution System, Distribution Grid Code, Development of the distribution network and investment plan);
 - Chapter IV SECTION III is on the PRODUCTION OF NATURAL GAS (Producers, Access to upstream pipeline networks);
 - Chapter IV SECTION IV is on the STORAGE OF NATURAL GAS (SSO, Unbundling of the SSO, Tasks of the SSO, Storage activity, Organisation of the access to storage facilities and linepack, Third party access services concerning storage facilities, Principles of capacity-allocation mechanisms and congestion-management procedures concerning storage facilities, Transparency requirements

concerning storage facilities, Usage rules for the gas storage system);

- Chapter IV SECTION V is on the OPERATION OF LNG FACILITIES (OLNGF, Duties of the OLNGF, Rights of the OLNGF, Third party access services concerning LNG facilities, Principles of capacity-allocation mechanisms and congestion-management procedures concerning LNG facilities, Transparency requirements concerning LNG facilities, Usage rules for the LNG terminal);
- Chapter IV SECTION VI is on the NATURAL GAS SUPPLY (Supply activities, Supplier Switching Rules, Record keeping);
- Chapter IV SECTION VII is on the OTHER INFRASTRUCTURES OF NATURAL GAS (Exemptions for New Infrastructure, Derogations in Relation to Take or Pay Commitments, Combined Operator, Direct Lines);
- › Chapter V is on the NATURAL GAS MARKET (Market opening and reciprocity, Organisation of trade in natural gas, Natural gas market, Organisation of the natural gas market, Measures to promote market opening, Rules on gas market organisation);
- › Chapter VI is on the PUBLIC SERVICE OBLIGATIONS (PSOs, Natural gas supply of last resort, Obligations of the supplier of last resort, Supply of natural gas under public service obligations, Standard Supply Contract);
- › Chapter VII is on the CONSUMER PROTECTION AND DISPUTE RESOLUTION (Final customers, Natural gas supply contract, Obligations of suppliers to final customers, Protection of vulnerable customers, Dispute Resolution);
- › Chapter VIII is on the INSPECTION, SUPERVISION ADMINISTRATIVE OFFENCES AND SANCTIONS (The responsible authority for the inspection and supervision, Supervision and inspection, The State Inspectorate in charge of the gas sector, Arrangement of combined inspections, Duties of the natural gas undertakings, the public sector entities and natural gas system users, Natural Gas Metering, Proceeding in cases of non-implementation of legal requirements, Administrative offences, Confidentiality obligations, European Union Guidelines and Network Codes);
- › Chapter IX is on the TRANSITORY AND FINAL PROVISIONS (Transitory provisions with regard to unbundling of the TSO, Transitory provisions with regard to certification in relation to third countries, Transitory provisions with regard to unbundling of the DSO, Transitory provision with regard to the adoption of the consumer checklist, Treatment of existing permits and requests for construction of gas pipelines and other gas infrastructure installations, Treatment of existing

rights and licenses issued by ERE, Binding effects of the current statutory laws, Bylaws, Revocation of laws, Entrance into force).

Coverage

For the needs of the subproject (particularly having in view the key issues mentioned hereafter), the provisions of the new gas related law sufficiently and satisfactorily cover related major subject matters.

The key issues

The key issues are properly addressed in the transposition exercise:

- › Terms such as control, TSO certification, and vertically integrated undertaking are correctly defined;
- › Requirements for the unbundling of the gas TSO, as well as of the gas DSO, are fully transposed;
- › The ERE is tasked to adopt the Regulation on the Certification of the TSO determining rules on procedure and timelines for the certification (including for the certification of the exempted gas TSO) – accomplished;
- › The certification and designation of the gas TSO is prescribed;
- › Licences to perform the activities of natural gas distribution, and operation of storage and LNG facilities simultaneously present acts on designation of respective operators;
- › The ERE is tasked to inform relevant international bodies on the gas TSO's designation; and
- › The certification of the gas TSO with regard to third countries is required too.

To be noted

It should be noted that the trade in natural gas for re-sale purposes, which does not include the sale to final customer not having a balance responsibility, still requires a licence to perform it. This is not a solution which supports the development of the wholesale gas market.

Transitory period

In the transitory period:

- › With regard to unbundling of the gas TSO, conditions for independence and unbundling of the gas TSO, as required by this Law, shall be properly implemented by 1 June 2016;
- › With regard to certification in relation to third countries, relevant requirements and obligations shall apply from 1 January 2017 and the gas TSO shall provide the ERE with all relevant data and information necessary for their proper implementation in timely manner;
- › With regard to unbundling of the gas DSO(s), the gas DSO(s) and, where relevant, the VIU or any private entities or public bodies related thereto shall harmonise their internal organisation, corporate structure, contractual arrangement and activities with the provisions of this Law with

regard to the rules regarding the unbundling of the gas DSO(s) within 18 months from the date of entry into power of this Law (i.e. by April 2017), except in case of exemption from the unbundling of the gas DSO(s);

- › With regard to the adoption of the consumer checklist, the ERE shall ensure that natural gas suppliers take all the necessary steps to provide their consumers with a copy of the consumer checklist;
- › With regard to treatment of existing permits and requests for construction of gas pipelines and other gas infrastructure installations, concession permits for construction and use of gas pipelines and other gas infrastructure installations granted by the GoA shall be valid for the term they are issued. The ERE shall issue the relevant licence to persons who have received a concession permit for construction and use of gas pipeline and other gas infrastructure installations for performing one or more activities in the natural gas sector according to provisions of this Law. All natural gas undertakings which were granted a licence or permit for activities in the natural gas sector prior to the entry into force of this Law shall pursue such activities on the basis of the conditions imposed by such licence or permit. When such license or permit has come to an end, natural gas undertakings shall immediately proceed with a request for a new licence or, where appropriate, permit on the basis of the rules set out in this Law. Proceedings initiated before the entry into force of this Law shall be completed by applying the provisions of the respective legal and regulatory requirements which have been in force at the date of the start of such proceedings.

ECS to give final assessment

Despite a positive assessment above, the very final one, including on the implementation, is subject to the remarks of the ECS – it is the responsible institution of the EnC which reviews proper implementation by the Parties of the obligations assumed under the Treaty (as per its Article 67(b)).

6.5 Conclusions

Priority in the short-term

After full transposition, concrete steps towards the implementation of the TEP through the new gas related law remain the short-term priority in the natural gas sector despite the fact that Albania currently disposes only of limited natural gas reserves and does not have access to the international natural gas markets yet. Depending on the results of exploration in the next 5-10 years as well as on the development of the TAP, Albania may wish to consider the possibility of exploiting and transporting natural gas more widely. In parallel, it should also consider distribution of natural gas in the State, which even in the most favourable conditions cannot be expected before 2020.

Focus in the short-, medium- and long-term

Due to such uncertainty and long lead times (if connection to the TAP is delayed and/or results of further exploration in Albania indicate commercial non-cost-effectiveness of the reserves), the best approach would be to focus in the short-term on unbundling, certifying, licensing and designating the gas TSO first and then the gas DSO next. Such focus is motivated by the clear commitment of Albania towards EU integration and active role in international cooperation in the

field of natural gas within the EnC Treaty. The planned connection to the TAP and natural gas distribution in the country at the earliest from 2020 onwards, as well as possible findings and exploitation of domestic gas, would determine the details of natural gas market later on. Therefore, preparation of bylaws in this area (the detailed model, design and structure of the natural gas market in Albania) is seen as the medium-term priority since there are more urgent issues to be resolved in the short-term period, primarily related to the natural gas transmission and distribution system operation rather than the gas market operation. Organisation and development of a competitive natural gas market will be put in focus in the long-term after resolving issues linked with regulation of the gas sector, such as access to and use of natural gas network and the methodology for determining tariffs.

7 OTHER LEGAL ASPECTS SUPPLEMENTING THE DEVELOPMENT OF THE GAS INFRASTRUCTURE

Other legislation that is to be included in the development of the gas infrastructure consists of the laws and regulations of the Republic of Albania which are addressed hereinafter.

7.1 The list of laws and regulations which are not directly related to gas legislation

The legal aspects that regard laws and regulations which are not directly connected with energy and gas legislation are subject to the laws below.

The National legal framework comprised by the following regulations in force set the rules for the procedure of territory planning and development:

- › Albanian Constitution
- › Civil Code, Administrative Code, Road Code, Maritime Code;
- › Law No. No.107/2014, dated 31.07.2014 “On territory planning and development”, as amended and respective bylaws:
 - CMD No. 42, dated 16.01.2008, “Criteria and procedures of issuing professional implementation licenses, classification and disciplining of legal entities exercising construction activities”, amended;
 - CMD No. 459, dated 16.6.2010 for “Approval of unique geodesic and GIS standards”;
 - CMD No. 460, dated 16.6.2010 for “Organization and functioning of the register of territory planning”;
 - CMD No. 408, dated 13.05.2015 “On the approval of regulation for the territory development”;
 - CMD No. 671, dated 29.07.2015 “On the approval of regulation for the territory planning”;

Energy related activities including activities in the gas sector are regulated by the following pieces of legislation:

- › Laws and bylaws of the energy sector in general and gas sector in particular:
 - Law No. 8261, dated 12.11.1997 "On ratification of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects";
 - Law No. 9501, dated 3.4.2006 "On the ratification of the Treaty Establishing the Energy Community";

- Law No. 102/2015, dated 23.09.2015 “On natural gas sector”;
- Law No. 43/2015 dated 30.04.2015 “On the power sector” and relevant bylaws;
- Law No. 7746, dated 28.07.1993 “On hydrocarbons (exploration and development)” as amended which determines the area of upstream operations in the area of natural gas, i.e. all those operations that are related to hydrocarbon deposits, specified as exploration and production of natural gas;
- Law No. 8450, dated 24.02.1999 “On processing, transport and trade of oil, gas and their byproducts” as amended;
- Law No. 10304, dated 15.07.2010 “For mining sector in the Republic of Albania” as amended.

The following laws and bylaws and secondary legislation in force set the rules of fundamental constitutional and administrative issues such as the property right, organization and functioning of local authorities, local taxes, administrative procedures, administration of land, arable and forest land, urban and informal land, legalization of informal buildings, land compensation, etc. as:

- Law No. 7501, dated 19. 07. 1991 “On land” as amended;
- Law No. 33/2012, dated 21.03.2012 “On Registration of Immovable Property”;
- Law No. 8318, dated 01.04.1998 “On leasing the arable land, forest land, meadows and pastures which are state property” as amended;
- Law No. 8561, dated on 22.12.1999 “The expropriation and taking over the temporary usage of private property for public interest”;
- Law No. 8743, dated 22.02.2001 “On state immovable property” as amended;
- Law No. 8744, dated 22.02.2001 “On the transfer of state public immovable properties to local governments” as amended;
- Law No. 9244, dated 17.06.2004 “On protection of agricultural land” as amended;
- Law No. 7699, dated 21.04.1993 “On the compensation in cash of the former owners of arable lands” as amended;
- Law No. 8337, dated 30.04.1998 “On the transfer of ownership on arable and forest lands, meadows and grazing lands” ;
- Law No. 7983, dated 27.07.1995 “On the sale/purchase of arable land, meadows, and grazing lands that are state-owned”;
- Law No. 8318, dated 1.04.1998 “On leasing arable land, meadows and grazing lands that are state-owned”;
- Law No. 7980, dated 27.07.1995 “On the sale and purchase of construction sites” as amended;
- Law No. 8752, dated 26.03.2001 “On establishing the structures responsible for land administration and protection”;
- Law No. 8312, dated 26.03.1998 “On undivided agricultural land”, as amended;

- Law No. 8318, dated 01.04.1998 “On leasing the agriculture land, forest land meadows and pastures which are state property” as amended;
- Law No. 8652, dated 31.07.2000 “On organization and functioning of local governments” as amended;
- Law No. 9385, dated 04.05.2005 “On forests and forest service” as amended;
- Law No. 92/2014, dated 24.07.2014 “On value added tax”;
- Law No. 9920, dated 19.05.2008 “On tax procedures” as amended;
- Law No. 8438, dated 28.02.1998 “On Income tax” as amended;
- Law No. 9632, dated 30.10.2006 “On the local tax system” as amended;
- Law No. 9975, dated 28.07.2008 “On national tax” as amended;

The following sectorial laws and bylaws in force set the rules for agriculture, education and health, forest and pastures, water administration, tourism and cultural heritage, fauna and flora, hydrocarbons and mining, civil emergencies, hydrocarbons, environment, fire protection, construction and housing, transport and infrastructure, electronic communications:

- Law No. 10431, dated 9.6.2011 “On environmental protection” as amended;
- Law No. 9700, dated 26.03.2007 “On environmental protection from trans-boundary impact”;
- Law no. 10448, dated 14.7.2011 “On environmental permits”;
- Law No. 10440, dated 07.07.2011 “On environmental impact assessment”;
- Law No. 91/2013, dated 28.02.2013 “On strategic environmental assessment”;
- Law No. 8897, dated 16.05.2002 “On air protection from pollution” as amended;
- Law No. 8906, dated 06.06.2002 “On protected areas” as amended;
- Law No. 8905, dated 06.06.2002 “On protection of marine environment from pollution and damage” as amended;
- Law No. 9251, dated 08.07.2004 “Marine Code of the Republic of Albania” as amended;
- Law No. 10463 dated 22.09.2011 “On integrated management of solid waste” as amended;
- Law No. 10463 dated 22.09.2011, “On integrated waste management” as amended;
- Law No. 9115 dated 24.07.2003 “On environmental treatment of waste waters” as amended;
- Law No. 9478, dated 16.02.2006 “On the accession of the Republic of Albania to decisions II/14 and III/7, amendments of ESPOO for the environmental impact assessment in the trans boundary context”;

- Law No. 9055, dated 24.04.2003 "On the accession of the Republic of Albania to the Convention on sea rights";
- Law No. 9774, dated 12.07.2007 "For the assessment and administration of noise in the environment" as amended;
- Law No. 10062, dated 29.01.2009 "On the accession of the Republic of Albania to the protocol "On the control of emissions of nitrogen oxides or their trans boundary flows" of 1979th convent "On trans boundary air pollution in long distance";
- Law N.9501, dated 03..04.2006 On the ratification of the Treaty on establishing the Energy Community"
- Law No. 9548, dated 01.06.2006 "For the accession of the Republic of Albania to the protocol "On the records of discharge and transfer of contaminants" of the Aarhus convention. "On the public right for environmental information, its participation in decision making and to address the court on environmental issues";
- Law No. 111/2012 dated 15.11.2012, 'On integrated management of water reserves';
- Law No. 9048, dated 07.04.2003 "On cultural heritage" as amended;
- Law No. 8756, dated 26.03.2001 "On civil emergencies" as amended;
- Law No. 8766, dated 02.04.2001 "On fire protection and rescue" as amended;
- Law No. 7643 dated 2.12.1992 "On state sanitary inspectorate" as amended;
- Law No. 93/2015, dated 27.7.2015 "On tourism".

7.2 The limitations of spatial master plans and urban planning

The impact of state and local authorities in the planning and construction of gas infrastructure will have to be realised by applying the provisions of the Law on Territory Planning and Development and the adoption of appropriate planning documents with public participation and the enactment of permits authorising the construction and use of gas infrastructure. Energy/gas facilities shall be constructed pursuant to the Law on Territory Planning and Development, technical and other regulations and with a previously obtained authorisation issued pursuant to the Law on Natural Gas Sector. Territory, planning and construction regulations that have to be applied in the process of establishing a gas infrastructure in Albania will have to be determined.

7.2.1 Spatial Planning and Construction

Introduction

The impact of state and local authorities in the planning and construction of the gas infrastructure is realised through the application of the provisions of the Law on

Territory Planning and Development 13 and the adoption of appropriate planning documents with public participation and by granting permits authorizing the construction and use of gas pipelines and other infrastructure facilities. Application of the Law ensures assessment and planning of measures in order to avoid or mitigate adverse impacts on the environment. The Law also stipulate on property rights on the land in order to use the land for construction of the gas infrastructure and associated facilities. The Law regulates the system of territory planning of Albania, the manner and conditions for construction of objects of different nature, and other questions regarding territory planning and development.

Principles of territory planning and development

Territory planning in Albania is based on the following principles: 1) harmonised public with private and national with local interest; 2) planning anticipated the development (planning is mandatory to all relevant authorities); 3) transparency during the planning process and development inspection; 4) characteristics of the developed area should be taken into consideration during the planning process; 5) decentralisation and subsidiarity; 6) integrated planning system; 7) plan's hierarchy; 8) harmonised approximation with European norms and standards including environmental criteria and protection of biodiversity and protected areas; 9) tacit approval, etc.

Construction of facilities

Construction is based on the following principles: 1) sustainable development that guarantees the necessity for social equality, economic development and environmental protection; 2) territory development is an issue of national importance; 3) compulsory insurance of buildings, civil and professional responsibility; 4) environmental protection, protection from natural and technological disasters; 5) rational use of energy and energy efficiency; 6) one stop shop; 7) compliance with European norms and standards; 8) stability and durability of facilities; 9) seismic design and construction of facilities, etc.

Public participation

Everyone has the right, according to the Law, to have access on matters of territory planning and development of facilities. The public has the right pursuant to the law to participate in activities related to the discussions and drafting of planning documents and development inspection during the implementation of such plans.

Issues, areas and objects of national interest

Issues, areas and objects of national interest are considered all issues, areas and objects of State or national interest during the territory planning or those issues, areas and objects related to State or national interest during the territory planning. The regulation on territory planning defines that natural resources pipelines and national infrastructure facilities are State's objects of national interest.

Planning documents

Planning documents regarding territory planning determine the organisation, use and purpose of a sustainable territory development, as well as guidelines and measures for biodiversity, natural resources and environmental protection and for the construction and development of national public infrastructure. Planning documents are made on the State level and on the local level.

¹³ Law No. Nr.107/2014, dated 31.07.2014 "On territory planning and development", as amended, has been published in the Official Gazette of Albania No. 137, dated September 1, 2014. The Law on Territory Planning and Development has entered into force on October 1, 2014.

*Planning documents
on the state level*

On the State level, there are three state planning documents:

- 1) General National Plan of Albania, covering the entire territory of the Republic of Albania;
- 2) Sectional National Plan covering the entire or a part of the Republic of Albania, and
- 3) Detailed Plans for areas of national interest;

*General National
Plan of Albania*

A strategic document that sets general mandatory conditions for all plans prepared for the territory planning in Albania. It sets state goals and principles for a sustainable and balanced territory development, offers conditions for region development and protection of ecosystems, biodiversity, natural and cultural resources which should be in line and harmonised with the instructions and guidelines of the document of the European perspective concerning the special development. The following items are described: strategic vision and development objectives, policy for use of space, long term policy for organisation of space, proposals for strategic infrastructure projects, environmental strategic assessment study, guidelines for improving institutional and legal framework etc.

*Sectional National
Plan*

A document that is prepared in the ministerial level for the strategic development of one or several sectors that are governed by the relevant authority. The specific sectors designated by the law include national security, energy development, industry, transport, infrastructure, tourism, economic zones, sport, cultural and natural heritage, agriculture, etc.

*Detailed Plans for
areas of national
interest*

A document that is made for a region where an object is to be constructed that is of national interest to the Republic of Albania in order to ensure protection, prevention and sustainable development of areas of national interest. It is especially made for the State's object of common interest such as 1) facilities of historical, cultural, social, economic or environmental importance; industrial parks; areas or systems of particular interest that directly contribute to implementing the national interest such as priority tourism development areas; facilities of national infrastructure, etc. 2) facilities of social, cultural, sport, health, educational nature and 3) requirements related to protection of life and public health and security.

*Planning documents
at the local level*

Local planning documents are:

- 1) Sectional Plans in district level;
- 2) General Local Plan; and
- 3) Detailed Local Plans.

Sectional Plans

Local governments are divided into units consisting in municipalities and districts. District units adopt Sectional Plans for the implementation of General National Plans and/or Sectional National Plans. Being passed by the local government' units it provides an equilibrium of national and local interest affecting the territory

development at district levels and should regulate pursuant to requirements of the legislation in force, the conservation and use of natural-historical areas.

General Local Plan A document that determines the compulsory conditions for construction and every development within the administrative territory of the local government unit (within the administrative territory of a municipality), in line with the guidelines and criteria of the National Local Plan.

Detailed Local Plans A document that can be adopted for one or several smaller areas/units where a more detailed local plan is needed or in case the unit/area has been determined as an area having a development priority. The relevant authority responsible for the General Local Plan should determine the necessity to adopt a Detailed Local Plan which regulate the development and/or redevelopment of an area/unit, regeneration of an urban area/unit and construction of public infrastructure.

Territory Plans' The responsibilities of territory planning are divided into central and local levels. At the central level, the responsible planning authorities include: (i) the Council of Ministers, (ii) the National Territory Council ('NTC'), (iii) the ministry responsible for territory planning and development; whereas at the local level, planning competencies are vested with the districts (i.e. District Council) and the municipalities (i.e. the Municipality Council as well as the Mayor).

Decision making bodies

In reference to territory development, the NTC and the mayors have been appointed as competent authorities. The competences of the NTC include the approval of the development and construction permits for a variety of complex developments that are related to areas or objects of public and national interest or strategic investments.

The initiative to make a General National Plan of Albania as well as a Sectional National Plan is made by the minister responsible for the relevant sector (i.e. urban planning and development) and National Territory Council though its decision approves such initiative. The National Territory Council is the responsible authority that approves the General National Plan of Albania.

The initiative to make a Detailed Plans for areas of national interest can be undertaken by the minister responsible for the relevant sector or interested parties from public or private sector which can request from the responsible ministry to initiate the process of drafting a detailed plan for areas of national interest

Public interest With the adoption of a planning document, public interest should be taken into consideration to authorise expropriation of property for territory planning and construction of planned objects.

Construction Objects can be constructed on the basis of a construction permit based on the set of technical documentation. The use of objects can be allowed on the basis of an exploitation permit. Technical Documentation is a collection of written, numerical and graphical documents that determine the concept and conditions needed for the construction of an object. The Technical Documentation consists of:

Technical Project

- 1) The Technical Project defines the location, capacity, and the architectural, technical and functional characteristics of the object. It sets the organisational elements of the construction of the object, as well as elements regarding the maintenance of the object. It includes the schedule for completing the construction works and states the value of the overall works related to construction.
- Equipment and Installations Project* 2) The Equipment and Installation Project is the project that defines the equipment and installations to be installed concerning the electrical equipment, heating and cooling systems, equipment for fire protection, installations for energy efficiency emergency exits etc.
- Property Rights* 3) The documents that certify the property rights over the land that is undergoing a development should be presented. Proof of property rights, or other rights that certify the right to use the land for further development.

Other documents include all relevant approvals, consents, licenses, authorisations, permit and other opinions required by special regulations, proof of payment of municipal fees; and proof of liability insurance of the investor.

Construction permits Construction permits for the building of objects are issued based on the decision of local government authorities. In specific cases of complex constructions and territory developments, as the following, the National Territory Council will resolve and issue a construction permits: 1) power plants that constitute part of the national electricity system and other systems of public and national infrastructure (railway and subway system, roads, highways etc.); 2) facilities for production and refining of natural resources such as natural gas and/or crude oil production and refining, gas and oil pipelines, crude oil and its by-products storage facilities, quarries etc; 3) construction of airports, passenger's port terminals; 4) construction of health and educational centres, national theatres and museums ; 5) custom offices and military structures and infrastructure etc. The National Territory Council constitute the relevant authority that will approve the construction and territory development in relation to issues, areas or objects determined of national interest, including the structure that are intended to be constructed in state properties not transferable to local government units.

Usage of facilities A certificate of occupancy is issued by the competent authority for issuing construction permits. The certificate of occupancy should be obtained upon submission of the declaration of compliance from the relevant authority that certifies that all construction works has been performed pursuant to the norms and security standards in force. The principle of tacit approval apply unless the inspection documents confirm irregularities with regard to implementation of construction permit' conditions or in case the certificate of occupancy will be granted for construction works with high risk.

Concluding remarks The gas transmission system has to be planned on the State level and the local level. The drafting of planning documents assumes active public participation in the process of their adoption especially regarding nature protection and settlement of property rights. It is necessary to emphasise that the adoption of territory plans

determines the State's interest for expropriation of property for territory planning and development.

7.2.2 An environmental assessment of gas development in Albania

Albania's obligations vis-a-vis EU in respect of environmental protection and waste management are established in the Stabilization and Association Agreement and the National Implementation Plan. According to the National Implementation Plan, the Albanian government has undertaken the obligation to actively participate in all activities related to development of gas infrastructure projects. According to these documents, the main tasks in respect to environmental protection are the approximation of legislation with the respective EU directives and the rehabilitation of hot spot areas. Since 2011, Albania's legal framework and institutional capacities in the environmental sector were developed so as to transpose EU environmental laws into domestic legislation and to strengthen environmental institutions. Specifically, the following EC Directives are fully approximated:

- 1) Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage;
- 2) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, amended;
- 3) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, amended;
- 4) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.

In principle, each activity with an impact on the environment (including gas pipeline) must first obtain an environmental permit. As it is the case with most environmental permits, an Environmental Impact Assessment Report ("EIA Report") is a precondition to obtain an environmental permit, though some activities do not require an EIA Report (simple or in-depth).

Basic requirements for the Project arising from environmental regulations relate to the obligation to prepare an environmental impact assessment report and to ensure public participation in the relevant procedure. Article 59 of the Albanian Constitution, "Social objectives" provides explicitly that: "1. The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with: e. - a healthy and ecologically adequate environment for the present and future generations; f. - rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development....".

Aarhus Convention was ratified by Law No. 8672, dated 26. 10. 2000. According to Article 122 of the Albanian Constitution, every ratified international agreement is part of the domestic legal system and thus directly applicable, except the cases when it is not self-executing and its enforcement requires the issuance of an implementing law.

Furthermore, an international agreement that has been ratified by law prevails over the laws of the country that might not be compatible. This means, Aarhus Convention is the guaranty for third parties, that the right to a healthy and ecological environment will be respected.

Legal and institutional framework for protection of environment and nature

The legal framework for environmental and nature protection comes from the provisions of the Law on Environmental Protection as the framework law for this area, the Law on Environmental Impact Assessment, the Law on Air Protection from Pollution, the Law on Protected Areas, the Law on Environmental Protection from Trans-Boundary Impact, the Law on Environmental Permits, the Law on Forest and similar sectorial laws that are mainly presented hereinafter.

The institutional framework for environmental and nature protection includes, inter alia, the Ministry for Environment and relevant environmental agencies, which is responsible for a system of integral protection of the environment, the implementation of measures for sustainable development in the field of environmental protection, integrated coastal zone management, integrated protection of the sea from pollution, the conclusion of international agreements, monitoring of international standards, and the negotiation, coordination and implementation of international conventions and agreements as well as monitoring the Agency for Environmental Protection. The Ministry of Environment is responsible for development policy in water management, use of water, land and aquifers for water supply, water protection from pollution, regulation of water and watercourses and protection from harmful water, development policy in the field of forestry, forest husbandry, and improvement of forest health and protection of forests, as well as international cooperation in forestry.

The National Environmental Protection

The Agency for Environmental Protection, which carries out technical and related administrative activities in the field of environmental protection, as monitoring of the environment; preparation analyses and reports, adopting approvals and communication with the public and relevant institution.

The Law on Environmental Protection

The Law on Environmental Protection¹⁴ was published at the Official Gazette No. 89, dated 30. 06. 2011, and it's into force since January 1, 2013. The Law on Environmental Protection constituted is the framework law on environmental protection in Albania that regulates principles of environmental protection and sustainable development, subjects and instruments of environmental protection, public participation concerning environmental issues and other issues related to

¹⁴ Law No. 10 31, dated 09.06.2011 "On environmental protection" as amended by Law No. 31/2012 "Introducing some amendments and changes to Law Nr. 10 431, dated 09.06.2011 "On environmental protection".

environmental protection. Every entity, who requests to exercise activities which can have a significant impact on the environment, should be subject to the process of environmental impact assessment, and an environmental permission needed, before the approval and implementation of the construction. Environmental protection from pollution and damages is a national priority in the Republic of Albania. In the sense of this Law, the degradation consists of: air, land, water and sea, vegetation and animal life; phenomena and actions: climate, noise and vibrations; as well as man-made environment: cultural and historical heritage, infrastructure, industrial and other facilities. Environment protection is ensured by the State bodies, bodies of state administration, local government, domestic and foreign natural and legal persons, nongovernmental organisations, citizens and associations of citizens. They have to ensure control and prevention from all forms of pollution and degradation of environment and as well as mutual cooperation and communication.

Institutional framework for environmental protection

National and Regional Environmental Agencies are the authorised agencies organised under the Ministry of Environment that performs administrative tasks regarding environmental protection area such as licensing, monitoring, analysing, reporting, inspection and communication with relevant domestic and international bodies, organisations and with the public.

Documents of environmental sustainable development and protection

Documents of sustainable development and environmental protection are:

- 1) Stabilization and Association Agreement,
- 2) National Implementation Plan for European Integration 2014-2020
- 3) National Action Plans and strategies drafted separately for each environmental component,
- 4) local environmental protection and action plans and strategies, and
- 5) development plans.

Stabilisation and Association Agreement

Albania has entered into a Stabilization and Association Agreement (SAA) that was effective from 12.06.2006; the main purpose of this agreement is to set guidelines for the approximation of its legislation with that of the EU. Serving to this purpose, the Ministry of Environment has drafted the National Implementation Plan for European Integration 2014-2020 that underlines the strategy intended to be followed in order to transpose the EU' directives within the national legal framework.

The National Implementation Plan for European Integration 2014-2020

A document which directs the long-term economic and social development and environmental protection towards sustainable development. It sets guidelines for long term operation, defines goals and identifies measures for implementation, taking into account the current situation and international commitments. It is set by the GoA on a periodical basis.

Base on the provisions of the National Implementation Plan for European Integration and other relevant national plans and in compliance with the provisions

<i>National Action Plans and strategies</i>	of National Plans, the GoA adopts national plans and strategies with focus to particular environmental components (i.e. air protection from pollution, management of water resources, waste management etc.). Such strategies and plans should be revised and updated on a regular basis, given the casual necessities.
<i>Local environmental protection plans and strategies</i>	Documents which develop measures from the National Implementation Plan for European Integration 2014-2020 related to the area, according to local characteristics and features of the area for which the plan is adopted. The plan sets goals and objectives relevant to the protection of the environment and sustainable development at local level.
<i>Development plans</i>	Instrument provided by Law No.107/2014, dated 31.07.2014 “On territory planning and development”, as amended with regard to territory planning, local and integrated planning. During the process of preparing the development plans, the environmental sensitivity should be taken into consideration and an assessment of impacts over natural resources, cultural inheritance and sensitive environmental issues should be considered.
<i>Instruments of environmental protection</i>	<p>Instruments of environmental protection are:</p> <ol style="list-style-type: none"> 1) Environmental quality standards as defined by the Law; 2) Technical standards for the protection of the environment as defined by special regulation; 3) Strategic assessment of the environmental impact; 4) Assessment of the environmental impact; 5) Environmental protection measures for projects that do not require assessment of the environmental impact; 6) Integrated Pollution Prevention and Control; 7) Prevention and control of accidents involving hazardous substances; 8) Planning; 9) Emergency measures in the event of pollution beyond the legal limit; and 10) other instruments of environmental protection stipulated by special regulations and international conventions ratified by the Albanian Parliament. <p>Preventing accidents is related to installations in which or through which an activity is executed with hazardous substances. A list of dangerous substances and prohibited chemicals, the method of determining the amount, the allowed amount and criteria for the classification and characterization of hazardous substances, and other issues relevant to proceedings regarding prevention of accidents are</p>

specified by relevant pieces of legislation i.e. DCM N.100, dated 3.02.2008, “On determining the list of hazardous substances” Law N.10463 dated 22.09.2011 “On waste integrated management” etc.

A legal entity or entrepreneur who engages in the activity that requires an in-depth environmental impact assessment has to prepare an information which shall provide a description of the location, a detailed description of the production process, a list of impacts on the environment and a list of measures for the prevention and reduction of environmental pollution.

*The Law on
Environmental
Impact Assessment*

The Environmental Impact Assessment Procedure is defined by the Law on Environmental Impact Assessment¹⁵ and relevant secondary legislation. Under the Environmental Protection Law public or private projects of legal and natural persons impacting the environment will be submitted to an Environmental Impact Assessment (“EIA”) prior to the approval and implementation. Domestic and foreign, natural or legal persons are requested to disclose to the local government agencies, to the public and environmental non-governmental organisations the type of activity to be carried out. The Environmental Impact Report is one of the key documents to be attached to the application for an environmental permit. The Law regulates the procedure of environmental impact assessment, participation of the institutions, procedures for the valuation and approval of projects, methods of informing countries in the region about projects that can have important impact on their environment, supervision and other important issues of the EIA. The Law on Environmental Impact Assessment was adopted to regulate the procedural aspects of an EIA.

The subject of the EIA regards projects that are planned and implemented, that can significantly affect the environment or human health. The EIA is carried out for projects in the fields of industry, mining, energy, transport, tourism, agriculture, forestry, water management and utilities, as well as all the projects planned in protected areas and within protected zones of cultural property. The Law provides for two types of EIA to be conducted depending on the activity to be carried out: the “in-depth” EIA and the “summary” EIA. Construction of gas pipelines that serves for the gas transport and which have a diameter of more than 800 mm and a length of more than 40 km has been provided as one of the activities requiring a in-depth process of environmental impact assessment to be prepared in advance for such an activity.

Sub-legal acts have been introduced to further detail the certification of environmental specialists for preparation of an EIA and environmental auditing. The sub-legal legislation also provides for other related processes, such as the methodology of the EIA process and report. The in-depth EIA is a more comprehensive investigation of the project’s expected impact as opposed to the summary EIA.

¹⁵ Law no. 10 440, dated 7.7.2011 “On environmental impact assessment” was published at the Official Journal no. 101, dated 1.08.2011, and it’s into force since March 1, 2013.

Impact Assessment Procedure

Stages in the in-depth Environmental Impact Assessment Procedure are:

- 1) Assessing the need for an in-depth EIA;
- 2) Consultation with relevant institutions and local government units on the scope and content of the in-depth EIA, and
- 3) Deciding on the approval of the EIA.

The project holder that is subject to preparation of an in-depth EIA, should submit a request enclosed with all relevant documents and its conceptual project to the Ministry of Environment. The ministry will make an assessment of the necessity to prepare an in-depth or only a summary EIA Report. The content of the documentation which is submitted with the request is provided by the Council of Ministers Decision on rules, responsibilities and timeline for conducting the process of environmental impact assessment¹⁶. The relevant ministry forwards its suggestions and the relevant file to the National Environmental Agency for further assessment. This agency is focused on providing the project to 1) other ministries depending on the type of project, 2) institutions depending on the project type, and 3) to the Regional Environmental Agency in order to ensure participation of local governmental units in decision-making process. The Regional Environmental Agency will provide a copy of the project to unit(s) of local government that are responsible for the territory where the project will be implemented. Following the receipt of suggestions from all relevant authorities, the National Environmental Agency will deliver to the project holder a decision on the scope and content of the in-depth EIA Report and also informs the Ministry of Environment, about the: 1) requirements that should be taken into consideration and elaborated into the in-depth EIA Report, 2) assessment of the possible alternative regarding the implementation of the project; 3) provide guidance on studies and methods concerning the accessibility of environmental information and the obligation to predict possible environmental impacts during the preparation of the in-depth EIA Report, 4) the structure and information ranking and 5) provide guidance in case the project is subject to environmental impact assessment process in the trans boundary context. Such decision should be rendered within forty five days commencing from the moment the project holder informs the ministry on the in-depth EIA. Following the decision of the NAE, the project holder prepared the in-depth draft EIA Report and conducts the public hearing. The public should be involved based on the principles of public participation, the right to be informed and involvement of public in decision-making process as provided in the Law N. 8627, dated 26.10.2000 "On the ratification of the AARHUS Convention on access to information, public participation in decision-making and access to justice in environmental matters. Upon completion of public hearing, the project holder drafts the in-depth EIA Report. The EIA shall analyse and evaluate the request and the impact the project could have on certain areas, the relative impact of current and planned activities, predictions of direct and indirect impacts of the implementation of a project on the environment, as well as measures and requirements for the

¹⁶ Council of Ministers Decision No. 686, dated 29.07.2015 "On approving the rules, responsibilities and timeline for conducting the process of environmental impact assessment (EIA) and the procedure of transfer of the decision of environmental declaration", published in the Official Gazette no. 145/2015.

prevention, elimination, mitigation or remediation of any harmful impacts on the environment and human health. Upon the preparation of the final in-depth EIA Report, the project holder submit to the Ministry of Environment such report and all relevant documents attached to it as its integral part, for purposes of obtaining the Environmental Declaration, as the administrative document approving the implementation of the project as considered in compliance with provisions of environmental legislation in force.

➤ **EIA Report**

The EIA Report is one of the key documents; a precursor report prepared prior the obtainment of environmental permit. The EIA Report is prepared by specialists and technical experts, certified by the Ministry of Environment for conducting the environmental impact assessment and environmental auditing. The EIA Report is a comprehensive investigation of the project's expected impact over the environment affected by the designated project. Such report is required to provide the information described below:

- Information related to the applicable methodology for preparation of the report, which include a brief description of the environmental legal and institutional framework related to the project; consultations conducted during the preparation of the report and a description of the difficulties (technical deficiencies or knowledge) that the company that will implement the project has encountered during the preparation of the information required.
- Description of the project in detail (for each process such as the construction, operation and where applicable, the planning phase of rehabilitation of the surface after finishing the operation of the project) including description of the location, the existing data on use of land rights during the construction or installation phase, plans of the project facilities and project structures and existing access roads, information for possible connections to other existing projects around/near the project area.
- An analysis of alternatives for the implementation of the project and the clarification of the main reasons for choosing the proposed alternative, considering the environmental impacts of each alternative.
- A description of the situation and existing environmental values that may be affected by the implementation of the proposed project (such as climatic factors, seismicity, geology and soils, surface and groundwater, biodiversity, main habitats and description of vegetation and fauna in each habitat, description of protected areas near the project including protected natural monuments).
- A description of environmental quality and existing impacts, including the quality of water, the air quality, the level of noise, waste management in the area of the project and other problems (if recorded) such as soil erosion, fires, historical pollution etc.
- A description of the social characteristics of the project area.

- A description of significant negative impacts of the project over the environment.
- A description of significant positive impacts of the project over the environment.
- Proposed measures to protect the environment from any adverse impact identified.
- Management Plan, Environmental Monitoring of environmental impacts during project implementation and the remediation plan, which will detail the responsibilities for implementation of each proposed measure to protect the environment at each stage of the project and costs related to the implementation of the proposed measures for environmental protection.

The Law on Strategic Environmental Assessment

The Law on Strategic Environmental Assessment¹⁷ defines the conditions, manner and procedure of assessment of impact of certain plans and programmes on the environment by applying principles of environmental protection in the procedure of preparation, adoption and realisation of plans and programs that have a significant impact on the environment. The Law defines the goals and principles of making a strategic assessment. Strategies, plans, programs and other planning documents that are subject to the national legislation regarding the processing, transport and trade of oil, gas and their by-products are considered as plans or programs that have a negative environmental impact and therefore will be subject to strategic environmental assessment¹⁸.

Strategic assessment

Strategic assessment is carried out for plans and programs when there is a possibility that their implementation has consequences for the environment. The making of a strategic assessment is obligatory for plans and programs in the field of every activity that is subject to Law on Environmental Impact Assessment. The strategic assessment procedure consists of the following phases:

- 1) Notification of proposal from the authority to the ministry;
- 2) Consultation with group of interest regarding the issues that should be covered by the strategic environmental assessment;
- 3) Preparation of interim strategic environmental assessment report and the report on consultation with group of interest;
- 4) Preparation of final strategic environmental assessment report;
- 5) Review of draft proposal and minister's declaration in this regard;

¹⁷ Law No. 91/2013, dated 28.02.2013 "On strategic environmental assessment", published in the Official Gazette of Albania No. 36/2013.

¹⁸ Council of Ministers Decision No. 507, dated 10.06.2015 "On approving the detailed list of plans or programs with negative environmental impact that should be subject to strategic environmental assessment".

- 6) The decision on approval of a report on strategic assessment from the competent authority; and
- 7) Monitoring of the approved plan and program and reporting of consequences caused to environment.

For plans and programs co-financed by foreign institutions, a strategic impact assessment is carried out in accordance with this procedure.

*The Law on
Protected Areas*

The Law on Protected Areas¹⁹ describes the general provisions of nature protection measures. This Law regulates nature protection and preservation; protection of natural assets; sustainable use of natural resources and assets and the control of their use; preservation of the ecological network and biological and natural resources of protected areas; offers conditions for promotion of environmental tourism; provides measures for informing and educating the public; implementation of documents related to the special nature protection and other important issues related to nature conservation in protected areas. Nature, biodiversity and natural habitats is of state interest and enjoys special protection in accordance with the law. The Law defines the six categories of protected areas and for each of them provides a special protection level. The list of activities prohibited and those that can be performed upon a relevant approval has been determined for each of the categories of protected areas. The relevant authority responsible for the management of a protected areas, is appointed in the decision of the Council of Ministers of Albania that declares an area as a protected area. Further, the Environmental Protection Law applies the “polluter pays” principle meaning that any damage caused to the environment shall be compensated by the transgressor. The polluter pays principle seeks to impose the costs of environmental harm on the party responsible for the pollution irrelevant of the status of the area as protected or not.

The Law on Forests

The Law on Forests²⁰ regulates the cultivation, protection, conservation and enhancement, planning, manner and terms of use of forest, construction and maintenance of forest roads, forest monitoring, as well as other issues of importance to the forest, forestland and forestry.

Concluding remarks

Environmental protection in Albania is defined as a national priority outlined in detail through the text of strategic planning documents and provisions of the Law on Environmental Protection as the framework law and other environmental legislation.

During the planning of a project of strategic state interest, impacts on environment, measures for reduction of negative impacts as well as measures for compensation have to be analysed. Therefore, the Strategic assessment of environmental impact is an instrument used to describe and evaluate significant impacts of planned

¹⁹ Law No. 8906, dated 06.06.2002 “On protected areas”, as amended by Law No. 9868, dated 04.02.2008 “Introducing some amendments and additions to Law No. 8906, dated 06.06.2002 “On protected areas”.

²⁰ Law No. 9385, dated 04.05.2005 “On forests and forest service”, Amended by Law no. 9556, dated 15.05.2006, Law no. 971, dated 23.07.2007, Law no. 15/2012. Law no. 36/2013, law no. 38/2013.

solutions to the environment that may assist the implementation of the plans and programs and determine the measures to mitigate negative impacts on the environment and human health. The strategic assessment procedure consists of the following phases: notification of proposal from the authority to the ministry; consultation with group of interest regarding the issues that should be covered by the strategic environmental assessment; preparation of interim strategic environmental assessment report and the report on consultation with group of interest; preparation of final strategic environmental assessment report; review of draft proposal and minister's declaration in this regard; the decision on approval of a report on strategic assessment from the competent authority; and monitoring of the approved plan and program and reporting of consequences caused to environment.

The project holder cannot commence a project without the in-depth EIA procedure and approval of the in-depth EIA Report (in case of activities subject to an in-depth EIA) by the competent authority – the Ministry of Environment. The EIA procedure is divided into 3 stages: assessing the need for an in-depth EIA, consultation with relevant institutions and local government units on the scope and content of the in-depth EIA and deciding on the approval of the EIA. At all these stages, the National Environmental Agency shall inform the concerned central and local authorities and organisations. The project holder following the recommendations of the National Environmental Agency on the content of the in-depth EIA Report, shall organise and hold public hearings on the draft EIA Report under the conditions set by the Law.

Regarding the construction of the gas infrastructure, special attention has to be given to natural areas that enjoy specific State's protection, according to regulations on nature protection particularly according to the provisions of the Law on Protected Areas.

Finally, in the process of the project preparation and development, the project holder has to consider all other documents, acts and procedures regarding environmental and nature protection.

7.3 Land utilisation/expropriation

Introduction

Property relations, as the legal basis for the right to build the energy and gas facilities, constitute one of the main pre-conditions for the operation of the Gas infrastructure projects. Therefore, the provision of the legislation governing the acquisition of property rights or other proprietary rights (right to build) in order to obtain the right of construction through the contractual arrangement of property relations (right of way), expropriation or through temporary taking over or expropriation process etc., are overviewed hereafter.

Overview

An overview of legal framework concerning the acquisition and registration of property is provided hereunder. These legal framework on property related issues allies with the principles of the Constitution of Albania, the Civil Code, Law On the Restitution and Compensation of the Property to the ex-owners, Land Law, Law on

the State Property, the Law on Expropriation, and the Law on Registration of Immovable Property.

*The Civil Code
Methods of
Acquiring property
rights*

The Civil Code of Albania in the Chapter II regulates the methods for acquisition of property rights. There are several ways for acquiring the property rights, through i.e. Contract, Inheritance, Good Faith acquisition, Adverse Possession, Expropriation and few other methods. Further the Civil Code regulates the right of ownership i.e. possession, disposal, enjoyment. The legal owner is entitled to dispose the property rights in different forms i.e. transfer the title or dispose the temporary transfer of its rights i.e. possession through easement, usufructs, lease.

*Restriction for
obtaining property
rights over
Immovable
Properties for foreign
Citizens*

There are limited exceptions to the liberal investment regime in Albania vis-à-vis the foreign investors. The foreign investor cannot purchase agricultural land or plots. The later property can be purchased provided that proposed investment is worth three times the price of the plot. However, when it comes to the investment of certain scale and when there is a public interest, the Government may expropriate the immovable property and transfer the title to the foreign investor.

*Categories and the
status of Immovable
Properties*

The Immovable Properties in Albania are privately or publicly owned. Before 1990 the immovable properties and the subordinated rights were owned by the state, but following the collapse of the communist regime a process for the restitution of the immovable properties to the former owners was initiated. The process for the restitution and compensation of the properties to the former owners is still undergoing although significant progress has been done towards the completion of the restitution process which will be followed by the compensation process. The categories of immovable properties are the following:

A. Categories of Private Immovable Properties

Agricultural lands (arable land), previously controlled by collective and state farms, were to be divided into plots of equal size/value and distributed to the collective members and farm employees in family ownership;

Housing properties, including apartments and houses with small land plots, were to come into the ownership of their occupants were to be transferred by means of purchase/sale documents, noting as owners the names of all adult family members.² (2) Small houses, recognized as "personal property" under Communist law, remain in the ownership of their occupant families supported by evidence given by any historic document of purchase or administrative transfer.

Trade, industrial and service premises, buildings and land may be transferred in ownership (or a lease subordinate to state ownership) to juridical persons or entrepreneurs in the process of "privatization".

Families that were owners of land and property prior to 1945 have been able to claim restitution of their non-agricultural properties, or alternatively to receive other property or financial compensation.

B. Categories of State Owned Immovable Properties

State and municipal ownership also is distinguished among several land use categories. In rural areas, these encompass forest, pasture and water-related lands. In urban areas, they include streets and public places. In addition, the state has retained some lands of former state farms, "refused" agricultural lands (lands that eligible families have rejected), and lands of discontinued industrial enterprises. In cities, the state has retained the open lands surrounding apartment houses and other commercial and service buildings. The state is nominal owner of parcels on which claims of restitution have not been resolved, or other private parties have failed to take their ownership documents. In tourism development zones, the state has retained much of the land as pasture and forest. All state-owned properties are subject to inventory and a process of division in which municipal governments may acquire ownership or right of use. In particular, commune administrations are acquiring control of forests and pastures, located close to the villages, for subordinate use by their residents. Local public facilities (schools, health clinics, streets, etc.) are being transferred to municipal ownership. The Local and Central Government are owners of the public buildings i.e. governmental buildings and related infrastructures, utility services infrastructures etc.

*Acquiring State
Owned immovable
Properties through
the Law on Strategic
Investments*

One way to acquire usage right over the state owned immovable properties is through the law N.55/2015 "On Strategic Investments in the Republic of Albania". The Albanian Parliament has recently adopted the law on the strategic investments, which provides for the establishment of new regulations and structures for the boost of investments. According to the draft law, all types of investments in the main sectors of the economy which will vary from EUR 1 ml to EUR 100 ml will be considered as strategic investments.

This law foresees the establishment of the Committee of Strategic Investments, as a collegial body of the Council of Ministers, which will be headed by the Prime Minister of the Republic of Albania. The Committee will have the right to take decisions on giving the status to investments as associated or specific strategic investments. The government also will establish the Fund of Real Estates for the Support of Strategic Investments which will finance various projects regarding the improvement of investments' management.

The Committee of Strategic Investments will estimate the proposed investments by Albanian or foreign investors and will be discussed along with the respective Ministry, depending on the sector the investment will take place. This governmental agency will monitor the functioning of the "Unique Window" system for services provided to investors, the performance and the impact of strategic investments and will approve the concrete supportive programs and funds for strategic investments. Investors which meet the criteria for being qualified as strategic investor may be granted the right to use state owned immovable properties. The modality for the usage of immovable property will be determined in the subsidiary legislation which is expected to be approved shortly by the Council Ministers.

*Acquiring private
properties through
the expropriation
and temporary
possession process*

Expropriation and temporary possession of the private properties:

The Law on Expropriation²¹ defines the basic terms concerning expropriation, the procedure of establishing public interest, preparation of actions necessary for expropriation, the procedure of expropriation and compensation for expropriation. Expropriation means dispossession or limitation of the ownership right on property, when required so by public interest, with a compensation based on the market value. The expropriation and temporary possession of private property is carried out for a public interest that otherwise cannot be realized or protected in another manner, only for the reasons and with respect to the procedures explicitly set out in this law, to the extent that is essential for the realization of the purpose of the expropriation and in any case against a fair compensation. The price for the compensation of the expropriated property is to be borne by the applicant who sought the expropriation. The procedure for the expropriation is conducted by the public authority in any case. Once the expropriation process is completed the public authority transfer the title over the expropriated in the name of whom the expropriation was done. The same procedure applies when it comes to the temporary possession of the private property. During construction of energy and gas infrastructure facilities it might be required that certain properties are needed to be taken in possession for temporary use. The request to take temporary possession over e certain property needs to be addressed to the public authority, describing the property, the reason, the term and the compensation for the owner. The process of expropriation and the temporary possession of the private properties can be challenged in the court only vis-à-vis the compensation price.

*Other ways to
acquire private or
public properties*

Public easement

The law on territory planning²² regulates the public easement regime, which may be required by a local or national planning instrument, or by a development application made by third parties who might have an interest to invest in project with public interest. Public easements established for public interests shall not, as a rule, be subject to compensation. Nevertheless, the owner may apply for compensation, when establishment of a public easement results in the modification in the prior status of the land or structure, which thereof incurs a direct and definite material damage. The request for compensation must be submitted to the authority in charge to the establishment of the public easement within six (6) months from the date of incurring damage. In case of lack of agreement among the parties, the compensation shall be determined by the court, which shall take into consideration the added value provided to the property due to the application of a specific planning instrument against the ordinary use of land prior to the establishment of the public easement. Therefore, the public easement regime can be easily applied to large gas infrastructure projects

Public land reservation

Public land reservation is another legal instrument which can prevent the potential damages or additional costs for the expropriation of properties targeted for large gas infrastructure projects. The planning authority shall inform the real estate owners, which may be affected by the decision on public land reservation, about

²¹ Law No. 8561, dated 22.12.1999 "On Expropriations and Temporary Possession of Private Property for a Public Interest";

²² Law N.107/2014 "On territory development and planning".

the purpose and the reasons for applying such measure, at least, sixty (60) days prior to the decision of the relevant authority. Public land reservation may be established, without compensation, for a term not exceeding (18) months, provided that the reserved property will not incur any damage. After the expiration of the reserved period, the planning authority shall initiate the expropriation procedure provided that the parties have not reach an agreement to purchase the reserved property. The owner of the private property shall be compensated for the expropriation of property in accordance with the Civil Code and the legislation on expropriation.

Right of Transfer

The Council of Ministers enjoys the right to decide on the transfer of public immovable property, owned by local government in favour of the Central Government for the purpose of investing in national public infrastructure in compliance with the planning instruments. The Government will acquire title over the immovable property under the ownership of the local government by paying the value of the immovable property which shall not be lower than the market value of such immovable property at the time of title transfer. Compensation of the value shall be made through state budget funds or funds from the private investor that is planning to make the investment of public interest. The local government shall receive notification from the competent line Ministry, at least, 60 days before making the decision. The establishment of the amount and the modalities of compensation shall be consulted amongst the central Government and local government involved in the process, and in the event of disagreement, the compensation value will be determined by the court. A lawsuit and judicial review does not constitute grounds for the interruption or suspension of the title transfer in favour of the Government. The amount of compensation for the transferred property shall be paid within 6 months from the date of decision.

Right of Preference/ Right of the first refusal

The law on territory planning provides the right of preference/right of first refusal regime which may be applied against the private property. The planning authorities in order to prevent the increase of economic cost during the expropriation process, i.e. it can apply the right of first refusal regime.

The right of preference/ right of first refusal shall be exercised for private real estate or parts of it, according to the preferred areas determined by the planning authority. Prior to conveying the property title, the owner of private immovable property shall inform the relevant planning authority on the intention to transfer the ownership title as well as to inform the financial arrangements with the prospective owner. The relevant planning authority must make a decision on whether to exercise the right of the first refusal. The property purchased through the exercise of the right of preference/right of first refusal shall be used only for a specific public interest for which is has been reserved. In the event that, during the first 5 years, the relevant planning authority decides to sell the property purchased through the right of first refusal, it must notify the former owner, or his/her heirs, whether they are interested in buying it back.

Private Easement/ Servitude/Right of Way

*The Law on
Registration of
Immovable Property*

The servitude right gives property owners (dominant property) the right to take certain action for the purposes related to this property on the estate belonging to another owner (servant property) or to request the owner of servant property to restrain themselves from certain actions on the property, which they would normally have the right to take. The servitude is likely to be used during the construction of gas infrastructures. It is important to note that servitude rights can be established for a certain period of time, on the basis of a legal transaction, or by decision of a state authority.

In accordance with “On the Registration of Immovable Property”²³ immovable property should be registered in the immovable property register. This register is open to the public and is administrated by local Immovable Property Registration Offices. The local Immovable Property Registration Offices report to the Immovable Property Registration Office which is governed by a Board of Directors and the Chief Registrar.

The register of immovable property includes all information related to the immovable property identity of its owner, the boundaries of the property, the date of registration and the relative deed of ownership acquisition and plans that show the location of property. In addition, any mortgage, easement, usufruct, right to use or any other right connected to or deriving from the immovable property that is transferred to any third party, should be recorded in the register.

Any contract or other instrument effecting transactions involving an immovable property should be filed with the competent Immovable Properties Registration Office within 30 days of its execution. The Immovable Properties Offices operate on a first come, first served basis, principle, and thus the time of filing a transactional document with the said Offices determines the priority of its registration. The Immovable Properties Registration Office will issue the relevant certificate (of ownership, usufruct, easement, etc.) at the request of the owner or holder of the relevant right. An immovable property that is registered for the first time is subject to temporary registration.

The relevant Immovable Properties Registration Office issues a temporary registration for 45 consecutive days. During this period any interested party can file with the Office any claim or request for the correction of mistakes. No claim submitted after the expiry of the temporary period shall be considered. If no claim is made within the temporary period or if any claim submitted has been settled in agreement between the parties, the said property will be classified as permanently registered.

Where there is a claim and the parties fail to agree a solution, the competent court shall have jurisdiction to rule on the dispute. The registrar shall record in the register the nature of the dispute and indicate the court that is hearing the case. The Immovable Properties Offices keep separate registers for the registration of construction/development permits and buildings under construction.

*Register of
immovable property*

The register of Immovable Property contains data on:

- 1) land – cadastral area,

²³ Law no. 33/2012 “On the Registration of Immovable Property”.

- 2) structures,
- 3) separate parts of the structure (i.e. apartments),
- 4) property rights and other rights on immovable property and holders of these rights, and
- 5) burdens and limitations on the property.

*Immovable property
certificate*

The immovable property certificate represents the core document on immovable property and rights on it, the following data is stated on it:

- 1) land – parcel,
- 2) holder of right on the land – parcel,
- 3) structures and separate parts of structures and holders of rights thereof,
- 4) utility lines and holders of rights thereof, and
- 5) burdens and limitations.

7.4 Conclusions

As with every infrastructural activity, the basis for the construction of the gas infrastructure system lies in the settlement of the property rights of the land that is to be used for the gas infrastructure projects. Property relations on land on which facilities will be built for gas infrastructure is one of the core activities during the project preparation process. Therefore, the project holder needs to settle property issues, and other property rights such as servitude or right of passage, by entering into relations with land owners by signing agreements in order to settle property relations regarding the land. There is also the possibility to start an expropriation procedure, in line with the Law on Expropriation. A proposal for expropriation can be submitted only after the public interest for expropriation has been determined in accordance with the law. The expropriation user shall bear the costs of expropriation and will acquire the right to enter into possession of the expropriated property on the day that expropriation decision becomes officially valid.

8 INITIAL RECOMMENDATIONS FOR REQUIRED CHANGES

8.1 Introduction

The Albanian natural gas sector has been identified as one of the strategic growth sectors; often referred to as the enabler for the country's economic recovery. A reform of the natural gas sector has been started in line with the EnC Treaty. However, there still remains significant efforts to be made, which includes the (re)gasification of the country. Albania, as the Contracting Party to the EnC Treaty, has assumed international legally binding obligations to align its legal and regulatory framework with the respective EU *acquis communautaire*. In other words, irrespective of the country's status in relations to the EU integration process, the natural gas sector is already bound to adopt the corresponding EU *acquis communautaire* in line with the implementation dynamics determined by the EnC institutions according to the Treaty's provisions. Therefore, in the context of the Gas Master Plan, the key issues related to the alignment of the Albanian natural gas sector with the relevant EU *acquis communautaire* are reflected upon hereafter, giving corresponding recommendations for each of them. In this way, the development priorities in the legal and regulatory framework governing the natural gas sector are established to ensure that the country is making credible and measurable progress towards the widespread introduction of gas in Albania, and towards its obligations stemming from the Treaty.

8.2 Main Next Steps in the Natural Gas Sector

Energy Development Strategy

Albania does not have access to the international natural gas markets yet. The Energy Development Strategy, in its updated version, will need to identify both legal works and infrastructure investments needed to gain that access. Efforts on designing the legal and regulatory framework conducive to the plans will be needed. Preparations in the area of compliance (implementation-wise) with the requirements of the TEP shall be speeded up.

Legal framework development

As a Contracting Party to the EnC, Albania will have to implement its obligations which shall be enshrined in the respective laws and other secondary regulations. These come from the transposition of EU Directives and Regulations making the EnC's *acquis communautaire*. Albania adopted the Law on Natural Gas Sector of 2008 in 2008 and amended it in 2013. On 23 September 2015, it adopted the Law on Natural Gas Sector of 2015. This transposes provisions from the TEP which has become mandatory in the EnC Contracting Parties from 1 January 2015.

Change of regime

Legal unbundling and separate accounting has not been enforced yet according to Directive 2003/55/EC. Furthermore, from 1 January 2015 onwards Directive 2009/73/EC became the EnC's *acquis communautaire* in gas and the new corresponding unbundling regime will have to be applied in line with its new requirements for both the gas TSO and the prospective gas DSO(s). According to Directive 2009/73/EC, the gas TSO shall be unbundled from other activities not

only legally but also in terms of ownership. The gas TSO – Albpetrol SH.A, which is by now licensed by the ERE, should be unbundled according to the OU model. Other gas TSO unbundling models are not applicable. Moreover, relating to the independence criteria, the gas TSO should develop and adopt a compliance program and appoint a compliance officer.

The gas TSO certification

The Law on Natural Gas Sector of 2015 has provided for a certification procedure for the gas TSO. The aim of this certification is to verify compliance with the requirements of the OU model only, i.e. the separation of the gas TSO from energy (both gas and electricity) suppliers/traders and producers. The ERE will have to be asked to certify the gas TSO operating completely separately from gas and electricity suppliers/traders and producers. Alongside the certification procedure, the gas TSO will have to be designated by the GoA's/MoEI's decree.

Remaining issues

Not all provisions on the market opening were in line with the EnC's *acquis communautaire*. Deadlines for the gas market opening have to be established and followed firmly. The eligibility status may not be determined by the clusters nor the level of consumption defined by the ERE instead of granting the eligibility status to all customers (from 1 January 2015).

Supply of gas

In relation to the supply of gas, the eligible customers may not enjoy the status of tariff customers. The accounts for the supply of customers under PSO and the supply of eligible customers under market terms and conditions have to be separated. The auditing provisions shall be put in place. The role of the gas PS and the gas supplier of last resort shall be made clearly distinct. The majority of provisions related to third party access, tariffs, balancing, capacity allocation, congestion management, and transparency are foreseen in the legislation providing a necessary legal basis upon which the secondary regulations should be subsequently developed and adopted.

Security of natural gas supply

The security of natural gas supply provisions are transposed not only in line with Directive 2003/55/EC but also Directive 2004/67/EC which establishes measures to safeguard an adequate level for the security of natural gas supply. The minimum security of natural gas supply standard is still missing. Criteria for the restriction of supply to certain customer categories, for security of natural gas supply needs, are rather rudimentary and have to be developed in line with Directive 2004/67/EC.

Regulated system

A regulated system will be applied to the transmission (apart for the TAP's exemption), distribution, storage and any LNG terminal's activities. The transmission activity, which will be performed by the gas TSO, including tariff aspects, will be regulated by the ERE in accordance with the new gas related law. Further on, that law will need to be supplemented with decrees concerning both tariffs and more technical aspects of grid access and gas trading. Moreover, as the TEP is already transposed into that law, some new major requirements are introduced for certification of the gas TSO and positioning of its owner(s).

Access conditions

The conditions for access to the gas infrastructure will have to be set out. These should be seen as a set of operational and commercial rules that lay down the framework within which the gas TSO signs contracts with users of the transmission, storage and LNG infrastructure. They should consist of several

documents all of which must be submitted by the gas TSO to the ERE for approval: access rules, service programmes and service agreements, and connection agreements.

Public consultations A range of public consultations concerning these conditions have to be held before entering into force. System users need to be consulted while the documents are being drafted to ensure that the services offered are tailored as closely as possible to the gas market requirements. Only after these consultations can the documents be submitted to the ERE for approval.

Contractual framework The provisions for gas trading will require the following contractual framework for the supply of gas:

- › An agreement on the sale and purchase of gas between the producer and the supplier, including between any two wholesale customers;
- › An agreement on the transmission of gas by trunk pipelines between the supplier and the gas TSO (gas transmission company);
- › An agreement on the transportation of gas by distribution networks between the supplier and the gas DSO (gas distributing company);
- › An agreement between the supplier and the final customer (gas consumer); and
- › Agreements regarding the economic management, use and operation of the elements of the gas transmission system (between owners, gas transporting companies, and gas distributing companies).

A number of key issues is identified in relation to above mentioned main next steps. These are singled out hereafter in a structured and comparable manner.

8.2.1 Necessity to proceed along the transitory provisions of the new gas related law

Current Status

Until recently, the legal and regulatory framework for the gas market in Albania was defined by the Law on Natural Gas Sector of 2008, which was adopted in 2008 and subsequently amended in 2013. With the Law on Natural Gas Sector of 2008, Albania transposed partially its obligations arising from the SEP (Directive 2003/55/EC and Regulation (EC) No. 1775/2005, as well as Directive 2004/67/EC) of EU legislation. The SEP was the EU *acquis communautaire* in gas until 31 December 2014, in line with the EnC Treaty²⁴ to which Albania is a Contracting Party. Starting from 1 January 2015, all Contracting Parties, including Albania, shall transpose provisions and implement obligations arising from the TEP

²⁴ Treaty establishing Energy Community, 25 October 2005, EnC's web-site

(Directive 2009/73/EC and Regulation (EC) No. 715/2009, as well as Directive 2004/67/EC) of EU legislation. This task has been recently completed and its related activities are briefly described here – the Law on Natural Gas Sector of 2015 is assessed.

Recommendation

It is hereby recommended first to study and analyse the transitory provisions of the new gas related law and next to start developing and adopting necessary bylaws in the natural gas sector, as defined by this law (Appendix I), within the deadlines set by the EnC institutions. The legal and regulatory framework needs to comprise the regulations required firstly for the transmission and distribution system operation and secondly for the gas market operation. The definitions of terms related to the gas TSO's unbundling (particularly control and vertically integrated undertaking) need to be understood exactly as given in Directive 2009/73/EC in order to enable proper implementation of the regulatory certification.

Way Forward

Background

The transposition of the TEP in Albania has been completed recently, following intensive work on drafting in 2014-2015, including public consultations with interested stakeholders. Drafts of the new gas related law were assessed positively by the ECS twice. The GoA sent the final draft Law to the NAOA in July 2015. The NAOA voted positively on 23 September 2015. The transposition of the TEP is an important step in terms of further legal development in the natural gas sector.

Emphasis

The new gas related law emphasizes the following topics: 1) Subject matter and scope; 2) Definitions; 3) Public service obligations and customer protection; 4) Authorisation procedure; 5) Monitoring of security of natural gas supply; 6) Regional solidarity; 7) Promotion of regional cooperation; 8) Technical rules; 9) Unbundling of transmission system and TSO; 10) Designation and certification of TSO; 11) Certification in relation to third countries; 12) Tasks of TSO; 13) Confidentiality for TSO; 14) Designation of DSO(s); 15) Tasks of DSO(s); 16) Unbundling of DSO(s); 17) Confidentiality obligations of DSO(s); 18) Closed distribution systems; 19) Combined operator; 20) Right of access to accounts; 21) Unbundling of accounts; 22) Third party access; 23) Access to upstream pipeline networks; 24) Refusal of access; 25) New infrastructure; 26) Market opening and reciprocity; 27) Direct lines; 28) Designation and independence of NRA; 29) General objectives of NRA; 30) Duties and powers of NRA; 31) Regulatory regime for cross-border issues; 32) Compliance with the Guidelines; 33) Record keeping; 34) Retail markets; 35) Safeguard measures; 36) Level playing field; 37) Derogations in relation to take-or-pay commitments; and 38) Emergent and isolated markets. The provisions of the new gas related law (version from 14 April 2015) sufficiently and satisfactorily cover related major subject matters.

8.2.2 Unbundling of the gas transmission system operator

Current Status

Albpetrol SH.A is the main gas undertaking in the natural gas sector. It is a 100% State-owned company established by the GoA in 1993 (the GoA's Decision No. 159 dated 20.3.1993) for research and production of the hydrocarbons. It is directly responsible to the MoEI. According to the ERE's decision (of 22 August 2012), this gas undertaking is licensed to perform transmission and distribution activities in the area where it owns the pipelines. It owns all gas infrastructures in Albania, i.e. cca. 500 km of pipelines, which are mostly not operational or partially missing. In reality, it currently operates only some 10 km of transmission and distribution networks, supplying small entrepreneurs and households in the city of Kucova. It is expected that it would become fully active gas TSO, unbundled according to the OU model, once gas transmission infrastructure is rebuilt and put in operation, i.e. as soon as Albania either gains access to international gas corridors or the exploitation of domestic gas resources becomes effective. Albpetrol SH.A will play an important role in planning and development of the connection of Albania to the regional gas pipelines and also provide further support to the State in the gasification of Albania. However, Albpetrol SH.A may actually become the gas TSO only if it fulfils the unbundling requirements from the new gas related law. Its current licence will need to be reconfirmed in the ERE's regulatory proceedings resulting in its designation (i.e. designation is a legal term from Directive 2009/73/EC according to which the gas TSO shall be designated upon implemented certification). The MoEI (in association with MZHETTS) is currently working on the Albpetrol SH.A's unbundling by way of creating a new gas company.

Recommendation

It is hereby recommended firstly to unbundle, certify and license Albpetrol SH.A by the ERE, and secondly to designate it by the State (the GoA or the MoEI). The current licence granted to the company by the ERE's decision shall be reconfirmed in a sequence of the regulatory steps resulting in its designation as the gas TSO. This will enable it to become proactive in planning and developing the connection of Albania to the regional gas pipelines (actually to become ENTSO-G member) and to support the State in further gasification of the country.

Way Forward

Background

The new gas related law determines the transmission of natural gas as one of the natural gas activities. It also defines conditions to perform it by the gas TSO, as well as the manner of organising and functioning of the gas market by the gas MO (which shall be a legal person owned by the gas TSO). The transmission of natural gas as one of the activities is subject to licensing by the ERE. The transmission of natural gas shall be performed as a service of public interest by the gas TSO, which shall be responsible for the maintenance, upgrade and development of the gas transmission system. Furthermore, the gas TSO shall manage the flow of gas within the network of pipelines and control the quality of gas delivered to final customers and other gas market participants through the gas transmission system. The gas TSO shall perform its activity according to the conditions of licence issued by the ERE and on basis of non-discriminatory conditions for network users and classes of users.

Performance

The gas TSO shall perform its activity according to the licence, issuance of which falls to the authority and the scope of work of the ERE, and in line with the following relevant documents (which still remain to be developed and adopted, in accordance with the new gas related law): 1) The methodology for setting fees for connection and tariffs for access to the natural gas transmission network (to be adopted by the ERE); 2) The methodology for setting tariffs for access to cross-border infrastructures (to be adopted by the ERE); 3) The regulation on the certification of the gas TSO (already adopted by the ERE); 4) The transmission grid code (to be approved by the ERE); 5) The metering code (to be approved by the ERE); 6) The congestion management rules, including capacity allocation (to be approved by the ERE); 7) The methodology for the provision of balancing services (to be adopted by the ERE); 8) The balancing rules of the transmission system (to be approved by the ERE); and 9) The compliance programme (to be approved by the ERE);

Unbundling

The Law on Natural Gas Sector of 2008 defined the principles and activities in the natural gas sector and provided for unbundling of the gas TSO in line with the provisions of Directive 2003/55/EC (requiring at least a legal unbundling of activities), including requirements for the unbundling of accounts. Despite the fact that the unbundling requirements had been properly transposed in line with the provisions of the SEP, Albpetrol SH.A has been licensed by the ERE, however, without fulfilling all stated requirements for the legal person to start up the gas TSO's activities. Therefore, it needs to be developed further on and that in line with the unbundling requirements of the TEP. In that regard, Albania has transposed in the new gas related law the OU model for the gas TSO unbundling as the only applicable option in the natural gas sector. Now, Albpetrol SH.A shall implement it. No other unbundling model can be applied since for any new transmission system the only allowed model is the OU one. Relating to the independence criteria, the gas TSO shall develop and adopt a compliance program and appoint a compliance officer.

Requirements

Considering the requirements of the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009), the very first step in making Albpetrol SH.A as fully operational gas TSO is to implement the OU requirements from the very start. More specifically, since Article 9 of Directive 2009/73/EC is fully transposed in the new gas related law, this needs to be subsequently implemented when it comes to the unbundling of the gas TSO. Moreover, provisions related to unbundling and transparency of accounts from Articles 30 (on the right of access to accounts) and 31 (on the unbundling of accounts) of Directive 2009/73/EC are transposed as well and these need to be implemented too. The gas TSO will have to perform its activity on the basis of the licence issued by the ERE, a precondition for which is the proper unbundling. Upon licensing, the gas TSO as the licensee shall submit to the ERE the annual and long-term investment plans, to assure proper and efficient gas transmission system operation. The investment plans shall give both general and specific overview of the expected gas transmission infrastructure construction or expansion. The current gas TSO licence of Albpetrol SH.A granted by the ERE's decision will have to be subject to further regulatory proceedings for its certification as the OU gas TSO. Albpetrol SH.A cannot be simultaneously both the supplier/trader or producer and the OU gas TSO. It is the GoA's authority (making

the General Shareholders Assembly of the company) to define further steps in the restructuring of the company, based on the MoEl's proposal.

Establishment

The gas TSO shall be established in such way that it complies with the OU requirements, to be confirmed by the ERE in its draft and final certification decisions. In other words, the ERE needs to confirm the gas TSO's compliance with the OU requirements, which means that the undertaking which is the owner of the gas transmission system also acts as the gas TSO. The gas TSO's main functions are: 1) the planning, constructing, maintaining, and financing of gas transmission network; and 2) the operation of the gas transmission system. The third related function, the operation of the gas market, will be performed in Albania by the gas MO – a legal person owned by the gas TSO. This assumes that the gas TSO shall be responsible for granting and managing third party access on a non-discriminatory basis to gas transmission system users, collecting access charges, congestion charges, and payments under the inter-TSO compensation mechanism, and maintaining and developing the gas transmission network. As regards investments, the owner of the gas transmission system shall be responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning.

Emphasis

The OU gas TSO shall emphasize at least the following elements relating to the unbundling: 1) Ownership of the gas transmission network; 2) Direct ownership and the property law; 3) Indirect ownership through participation in another company; 4) Joint Venture(s); 5) Extent of the gas transmission network; 6) Directly and indirectly required resources for the operation of the gas transmission network; 7) Exception: permissibility of usage rights (the so-called "leasing model"); 8) Control and rights in the gas OU-TSO; 9) Basic corporate structures; 10) Control in the undertaking; 11) Rights in the undertaking; 12) Appointment of members of the Supervisory Body; 13) Ensuring resources; and 14) Transferring sensitive information. All these listed elements need to be addressed in the application for certification which the gas TSO will submit to the ERE. The way and manner of proceeding with the listed elements is explained in detail later on in this Report.

8.2.3 Unbundling of the gas distribution system operator(s)

Current Status

The gas DSO(s) will develop natural gas distribution network(s) in a number of cities and their surrounding areas in Albania (the list of proposed cities to receive gas will be one of the outputs of the Gas Master Plan). However, it is necessary to ensure all institutional, legal and regulatory prerequisites are developed (currently none of these is put in place) in order that the gas DSO(s) can become properly unbundled and licensed by the ERE when such need emerges. The gas DSO(s) will have to enable the gasification (via distribution gas pipelines to end users) in accordance with the Energy Development Strategy, following the principles of the development of a competitive gas market. At this moment, only Albpetrol SH.A is licensed as a specific gas undertaking to perform the role of the gas DSO.

Recommendation

It is hereby recommended to determine, unbundle and license relevant gas undertaking(s) as the gas DSO(s). The gas DSO(s) determination may be subject to prior identification of those companies expressing an interest in becoming the gas DSO. However, this is not seen as an immediate priority now since it should be undertaken subject to fulfilling other conditions. Initial determination of the gas DSO(s) by the GoA shall be followed by the ERE's licensing to enable the gas DSO(s) to become proactive in planning and developing the gasification of the country. The establishment of the gas DSO(s) shall be performed in close supervision, control and monitoring by the ERE, however without conducting a certification procedure such as in the case of the gas TSO.

Way Forward

Background

The Law on Natural Gas Sector of 2015 determines the distribution of natural gas as one of the natural gas activities. It also defines the conditions to perform it by the gas DSO(s). The distribution of natural gas as one of the activities is made subject to licensing by the ERE. It shall be performed as a service of public interest by the gas DSO(s), which shall be responsible for the maintenance, planning, upgrade and development of the gas distribution system. Furthermore, the gas DSO(s) shall manage the flow of gas within the network of pipelines and control the quality of gas delivered to final customers and other gas market participants through the gas distribution system. The gas DSO(s) shall perform its activity according to the conditions of licence issued by the ERE and on basis of non-discriminatory conditions for network users and classes of users.

Concession

The distribution of natural gas as one of the natural gas activities should be organised as a regulated activity and performed on the basis of a concession. The concessions should be issued by the GoA according to the provisions of the law no.8450, dated 24.02.1999 'On refining, transporting and trading of oil, gas and their by-products', as amended. The size of a distribution area in terms of geographic area should be defined in a way that it allows for proper system planning (it is recommendable to optimise technical and economic aspects of the gas system development in small areas, such as municipalities) and market volume should provide an adequate return on the investment. The gas DSO should be appointed in time to allow the development of the basic elements of the gas distribution system, and before the gas is available in its distribution territory. Prior to the gas DSO concession tender, a detailed distribution development feasibility studies should be performed (together with the basic design of the gas distribution system) and all other tender documents. It is recommended that a concession period is defined for a minimum of 20 and preferably for a period of 30 years. In the concession period the gas DSO should recover their investment including an appropriate return on the invested capital.

Performance

The gas DSO shall perform its activity according to the licence, issuance of which falls to the authority and the scope of work of the ERE, and in line with the following relevant documents (which still remain to be developed and adopted, in accordance with the new gas related law): 1) The methodology for setting fees for connection and tariffs for access to the natural gas distribution network (to be

adopted by the ERE); 2) The rules regarding the unbundling of the gas DSO (to be adopted by the ERE); 3) The distribution grid code; 4) The metering code; and 5) The compliance programme.

Unbundling

The Law on Natural Gas Sector of 2008 provided for unbundling of the gas DSO(s) in line with the provisions of Directive 2003/55/EC (requiring at least a legal unbundling of activities), including requirements for the unbundling of accounts. Despite the fact that the unbundling requirements had been transposed in line with the provisions of the SEP, Albpetrol SH.A has been licensed by the ERE, however, without fulfilling all stated requirements for the legal person to start up the gas DSO's activities. Therefore, the gas DSO(s) need to be developed further on and that in line with the gas DSO unbundling requirements of the TEP. These are made slightly stronger than before, however without requesting strict OU as in the case of the gas TSO (the gas DSO can still be a part of the vertically integrated undertaking which may retain the ownership of the network assets). Relating to the independence criteria, the gas DSO(s) shall develop and adopt a compliance program and appoint a compliance officer.

Requirements

Considering the requirements of the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009), the gas DSO(s) related unbundling requirements contained in Article 26 of Directive 2009/73/EC are fully transposed in the new gas related law. However, Albania may decide not to apply these (which are defined in Article 26 of Directive 2009/73/EC) to integrated natural gas undertakings serving less than 100.000 connected customers. Moreover, the operation of a combined transmission, LNG, storage and distribution system operator shall not be prevented provided that such combined operator complies with Article 29 of Directive 2009/73/EC. Furthermore, provisions related to unbundling and transparency of accounts from Articles 30 (on the right of access to accounts) and 31 (on the unbundling of accounts) of Directive 2009/73/EC are transposed and shall be implemented. The gas DSO(s) shall have the licence issued by the ERE, a precondition for which is the proper unbundling. Upon licensing, the gas DSO(s) as the licensee(s) shall submit to the ERE the annual and long-term investment plans, to assure proper and efficient gas distribution system operation. The investment plans shall give both general and specific overview of the expected gas distribution infrastructure construction or expansion. The determination of any gas company by the GoA as the gas DSO will have to be subject to further regulatory proceedings. Simultaneous functioning as both the gas DSO and the gas supplier is subject to the application of '100.000 customers rule'.

Establishment

The gas DSO(s) shall be established complying with the unbundling requirements, as confirmed by the ERE. In other words, the ERE shall issue the licence confirming the gas DSO(s)'s compliance with the unbundling requirements. The gas DSO(s)'s main functions are: 1) the planning, constructing, maintaining, and financing of gas distribution network; and 2) the operation of gas distribution system. This assumes that the gas DSO(s) shall be responsible for granting and managing third party access on a non-discriminatory basis to gas distribution system users, collecting access charges, and maintaining and developing the gas distribution network. As regards investments, the owner of the gas distribution system shall be responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning.

Emphasis

The unbundled gas DSO(s) shall fulfil at least the following criteria relating to the unbundling: 1) Communication in relation to the separation of identity/rebranding between DSO(s) and other energy actors (branding criterion); 2) Availability of the necessary human, technical and financial resources to meet unbundling requirements so that a DSO can fulfil its role effectively (resources criterion); 3) Independent observation and monitoring of DSO(s) to ensure no discriminatory conduct (compliance officer criterion); and 4) Classification of systems which distribute energy in a confined industrial or commercial setting and not to household customers (closed distribution systems criterion). All listed criteria need to be addressed in the application for licence which the gas DSO will submit to the ERE. The way and manner of proceeding with the listed criteria is explained in detail later on in this Report.

8.2.4 Regulatory certification of the gas transmission system operator

Current Status

The Law on Natural Gas Sector of 2008 transposed obligations arising from the SEP (Directive 2003/55/EC and Regulation (EC) No. 1775/2005). It did not refer to the regulatory certification of a TSO, which is an obligation introduced later in the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009) and consequently into the new gas related law.

Recommendation

It is hereby recommended firstly to study and analyse the regulatory certification of a TSO as given in the new gas related law transposing related provisions from the TEP, and secondly to oblige Albpetrol SH.A as the gas TSO and the ERE as the NRA to conduct them according to the timelines given by the EnC institutions. For the sake of swift and seamless implementation, it is recommended that the ERE leads the certification procedure according to the Regulation on Certification of the Transmission System Operator for Gas. The gas TSO will have to follow the Regulation in view of unbundling and applying for certification before the ERE.

Way Forward

Background

Albania is clearly committed towards EU integration and takes an active role in international cooperation in the field of natural gas within the EnC. To become fully active gas TSO, Albpetrol SH.A shall be properly unbundled. Appropriateness of the unbundling regime shall be certified by the ERE in line with set criteria.

Aim

The aim of the certification is to verify compliance with the OU requirements only, i.e. the separation of the gas TSO from energy (both gas and electricity) suppliers/traders and producers. The ERE shall certify that the gas TSO operates completely separately from energy suppliers/traders and producers. In other words, the ERE shall conduct the process of certification of the gas TSO according to the requirements from the TEP.

Requirements

The TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009) contains provisions relating to the certification. More specifically, this means that Article 10 of Directive 2009/73/EC and Article 3 of Regulation (EC) No. 715/2009 shall be fully implemented when it comes to the certification of the gas TSO. With the certificate (issued by the ERE upon its draft and final certification decisions), the ERE will confirm that the undertaking is established in such way that it complies with the OU requirements, meaning that the undertaking which is the owner of the gas transmission system also acts as the gas TSO and fulfils control-related criteria, among others. In order to enable the undertaking to formalise its request for certification, the ERE has adopted the Regulation on Certification of the Transmission System Operator for Gas to guide and focus the process.

Emphasis

The ERE shall emphasize at least the following elements relating to the certification: 1) Choice of the OU-TSO model; 2) Ownership of the gas transmission network; 3) Tasks of the gas TSO; 4) Exercise of control over and rights in the gas TSO; 5) Appointment of members of the Board, composition of the Board and independence of members of the Board; 6) Separation within the State; 7) Refusal of the certification due to reasons of lack of financial resources; 8) Requirement to certify another gas TSO as a prerequisite; and 9) Requirement relating to participation of companies from third countries. All these listed elements need to be addressed in the application for certification which the undertaking will submit to the ERE. The way and manner of proceeding with the listed elements is explained in detail later on in this Report.

8.2.5 Stately designation of the gas transmission system operator

Current Status

The Law on Natural Gas Sector of 2008 transposed obligations arising from the SEP (Directive 2003/55/EC and Regulation (EC) No. 1775/2005). It did not state any preconditions to approving and designating the gas TSO relating to the certification, which is an obligation introduced later in the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009) and consequently into the new gas related law. Albpetrol SH.A may be approved and designated by the GoA or the MoEI as the gas TSO only upon its certification, i.e. on the basis of the unbundling certificate issued by the ERE.

Recommendation

It is hereby recommended to precondition the approval and designation of the gas TSO by the GoA or the MoEI with its regulatory certification. The new gas related law has transposed related provisions from the TEP, obliging the GoA and the MoEI to follow that procedure and act sequentially.

Way Forward

Background

Only after the ERE verifies compliance with the OU requirements in the certification procedure, the GoA or the MoEI may approve and designate the undertaking as the gas TSO. This is one of the requirements from the TEP.

Requirements

The TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009) contains provisions relating to the approval and designation. More specifically, this means that Article 10 para 1 of Directive 2009/73/EC shall be fully implemented when it comes to the certification and sequentially approval and designation of the undertaking as the gas TSO. The ERE shall first confirm that the undertaking is established in such way that it complies with the OU requirements, and then the GoA or the MoEI may approve and designate it as the gas TSO.

Emphasis

The GoA or the MoEI shall emphasize at least the following elements relating to the state designation: 1) Closing the certification procedure with the appointment of the gas TSO by formal notification in the Official Gazette of Albania, together with the ECS's opinion, and in the appropriate section of the web-site of the EnC, in appropriate form; and 2) Notification of the ECS by the ERE accordingly about the designation. The way and manner of proceeding with the listed elements is explained in detail later on in this Report.

8.2.6 Certification of the gas transmission system operator in relation to third countries

Current Status

The Law on Natural Gas Sector of 2008 transposed obligations arising from the SEP (Directive 2003/55/EC and Regulation (EC) No. 1775/2005). It did not state any conditions to the certification in relation to third countries, which is an obligation introduced later in the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009) and consequently transposed into the new gas related law. Where a certification is requested by a transmission system owner or a TSO which is controlled by a person or persons from a third country or third countries, the ERE shall conduct a special procedure.

Recommendation

It is hereby recommended firstly to study and analyse the regulatory certification of a TSO in relation to third countries from the new gas related law transposing related provisions from the TEP, and secondly to oblige the gas TSO, the ERE and the MoEI to conduct them according to the timelines given by the EnC institutions. The Regulation on Certification of the Transmission System Operator for Gas, adopted by the ERE, contains related instructions on third countries.

Way Forward

Background

To ensure respect for the international obligations of the EnC and solidarity and energy security within the EnC, the ECS has the right to give an opinion on a certification in relation to a transmission system owner or a TSO which is controlled

by a person or persons from a third country or third countries. Persons from third countries may therefore only be allowed to control a transmission system or a TSO if they comply with the requirements of effective separation that apply inside the EnC.

Requirements

The TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009) contains provisions relating to the certification in relation to third countries. More specifically, this means that Article 11 of Directive 2009/73/EC shall be fully implemented when it comes to the certification of the gas TSO in relation with third countries. It is necessary to assess whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the EnC.

Emphasis

The ERE shall emphasize at least the following elements relating to the certification in relation to third countries: 1) Involvement of one or more persons from one or more countries which are not members of the EnC; 2) Informing of the ECS by the ERE in the certification procedure; 3) Participation of the MoEI and its assessment of the impact on the security of natural gas supply; 4) Participation of the ECS and its opinion on whether the TSO or a transmission system owner meets the requirements and on whether there is a threat to the energy security of the EnC; and 5) Decision of the ERE and its publication, including publication of the MoEI's review. All these listed elements need to be addressed in the application for certification which the gas TSO will submit to the ERE. The way and manner of proceeding with the listed elements is explained in detail later on in this Report.

8.2.7 Other legal aspects supplementing the development of the gas infrastructure

Other legislation that is to be included in the development of the gas infrastructure consists of the following laws and regulations of Albania.

Spatial Planning and Construction

The Law on Territory Planning and Development²⁵ will have to be applied during the development of the gas infrastructure. A gas infrastructure is to be developed with application of the provisions of the Law on Territory Planning and Development and the adoption of appropriate planning documents with public participation and the enactment of permits authorising the construction and use of gas network facilities. Application of this Law ensures analysis and planning of measures in order to avoid or mitigate adverse impacts on the environment. This Law also enables the settlement of property rights on the land in order to use the land for construction of the gas infrastructure and associated facilities.

The legal framework for environmental and nature protection comes from the provisions of the Law on Environmental Protection, the Law on Environmental Impact Assessment, the Law on Strategic Environmental Impact Assessment, the Law on Protected Areas, Law on Pastures and the Law on Forest.²⁶ Environmental

²⁵ Law No. 107/2014, dated 31.07.2014 "On territory planning and development", as amended.

²⁶ Law No. 10431, dated 9.6.2011 "On environmental protection" as amended; Law No. 9700, dated 26.03.2007 "On environmental protection from trans-boundary impact"; Law No. 10440, dated 07.07.2011 "On environmental impact assessment"; Law No. 91/2013, dated 28.02.2013 "On strategic

Legal and institutional framework for protection of environment and nature

protection in Albania is defined as a constitutional objective outlined in detail through the text of strategic planning documents and provisions of the Law on Environmental Protection as a framework law and through other environmental legislation. During the planning of a project of strategic state interest, impacts on environment, measures for reduction of negative impacts and measures for compensation have to be analysed.

Legislation concerning property relations

Regulations regarding the organisation and registration of property rights are contained in the Law on Registration of Immovable Property, the Law on the State Property, the Law on Expropriation and the Law on Land.²⁷ Property rights can be acquired by Law, by legal transaction, by inheritance and by decision of a state authority in a way and under conditions set out in relevant laws and regulations. Use and management of the State Property (movable and immovable goods estate belonging to Albania and movable and immovable goods estate under municipal ownership) is regulated by the Law on State Property. General rules regarding property rights apply for the acquisition and cessation of ownership rights and other property rights regarding the State Property. Other legal instruments to acquire private or public properties include public easement (such regime can be easily applied to large gas infrastructure projects), public land reservation (which is used to prevent the potential damages or additional costs for the expropriation of properties targeted for large gas infrastructure projects), right of transfer (of public immovable property, owned by local government in favour of the Central Government for the purpose of investing in national public infrastructure), right of preference / right of the first refusal and private easement/ servitude/right of way. Expropriation is defined as dispossession or limitation of ownership rights on property if so required by the public interest. Expropriation has to be compensated based on the market value of the property. All ownership rights and other information regarding immovable goods are registered in the Registration Office of Immovable Properties.

In general

The current legal framework regarding immovable goods of Albania will apply to the planning, development and construction of any gas infrastructure. In order to realise a gas network, the current legal framework does not need to be amended – there are enough legal institutions in the legislation of Albania that can apply to a gas infrastructure. All procedures are defined in the current laws. Any impediments in these legal procedures are known and not necessarily related to the development of a gas infrastructure.

8.3 Conclusions

Highlights

This Chapter highlights what has already been achieved, by looking into the old and new legal and regulatory framework governing the natural gas sector and identifying key legal policy gaps that require urgent attention. It also addresses

environmental assessment"; Law No. 8906, dated 06.06.2002 "On protected areas" as amended; Law No. 9385, dated 04.05.2005 "On forests and forestry service" as amended; Law No. 9693, dated 19.03.2007 "On pastures" as amended.

²⁷ Law No. 33/2012, dated 21.03.2012 "On Registration of Immovable Property"; Law No. 7501, dated 19. 07. 1991 "On land" as amended; Law No. 8743, dated 22.02.2001 "On state immovable property" as amended; Law No. 8561, dated on 22.12.1999 "The expropriation and taking over the temporary usage of private property for public interest";

options for the GoA's consideration in determining what legal policy actions it should take for establishing the basic institutional framework in the natural gas sector to enable supply in the Albanian gas market. Since there is only very limited gas infrastructure available in Albania now, the actions are prioritised for development from nearly zero level. The priorities are likely to differ at other development levels.

Emphasis

The emphasis is put firstly on the proceeding with the transitory provisions of the new gas related law, starting to align with the provisions from the TEP (phase A of priority type – Laws, in the very short-term). Secondly, the administrative capacities of the relevant institutions – the MoEI and the ERE – need to be strengthened, to support legal and regulatory framework in the natural gas sector (phase B of priority type – Institutions, in the short-term). Thirdly, the system operators – the gas TSO and the gas DSO(s) – need to be determined and properly unbundled/licensed, to develop the gas infrastructure (phase C of priority type – Operators, in the medium-term). Fourthly, the gas infrastructure – transmission and distribution networks – need to be constructed, final customers connected and systems operated (phase D of priority type – Infrastructures, in the long-term). Positioning of activities in time domain can also overlap, subject to prioritising development of transmission infrastructure over distribution one (assuming that transmission infrastructure is to be developed first due to construction of large gas pipelines in the region, although hypothetically the distribution infrastructure can be developed at least in parallel by constructing the compressed natural gas distribution infrastructure as a precursor to standard transmission-connected distribution systems).

Key impediments

The following key impediments to the fast track development of the Albanian gas market are identified and belonging recommendations provided:

The new gas related law

- 1) Firstly to study and analyse provisions of the new gas related law which harmonises with the TEP and secondly to start adopting necessary bylaws in the natural gas sector, as defined by this law, within the deadlines set by the EnC institutions. The legal and regulatory framework needs to comprise the regulations required firstly for the transmission and distribution system operation and secondly for the gas market operation. The definitions of terms related to the gas TSO's unbundling (particularly control and vertically integrated undertaking) need to be understood exactly as given in Directive 2009/73/EC to enable proper implementation of the regulatory certification.

Unbundling of the gas TSO

- 2) Firstly to unbundle, certify and license Albpetrol SH.A by the ERE, and secondly to designate it by the State (the GoA or the MoEI). The company shall follow the regulatory steps resulting in its designation as the gas TSO (designation is a legal term from Directive 2009/73/EC according to which the gas TSO shall be designated upon implemented certification). This enables it to become proactive in planning and developing the connection of Albania to the regional gas pipelines and to support the State in further gasification of the country. The GoA should decide on the preferred option for restructuring of the company based on the MoEI's proposal.

<i>Unbundling of the gas DSO(s)</i>	3) To determine, unbundle and license relevant gas undertaking(s) as the gas DSO(s). The gas DSO(s) determination may be subject to prior identification of those companies expressing an interest in becoming the gas DSO(s). However, this is not seen as an immediate priority now since it should be undertaken subject to fulfilling other conditions. Initial determination of the gas DSO(s) by the GoA shall be followed by the ERE's licensing to enable the gas DSO(s) to become proactive in planning and developing the gasification of the country. The establishment of the gas DSO(s) shall be performed in close supervision, control and monitoring by the ERE, however without conducting a certification procedure such as in the case of the gas TSO.
<i>Regulatory certification of the gas TSO</i>	4) Firstly to study and analyse the regulatory certification of a TSO from the new gas related law transposing related provisions from the TEP, and secondly to oblige the gas TSO and the ERE to conduct them according to the timelines given by the EnC institutions. For the sake of swift and seamless implementation, the ERE adopted the Regulation on Certification of the Transmission System Operator for Gas, which the gas TSO will have to follow in unbundling and applying for certification before the ERE.
<i>Stately designation of the gas TSO</i>	5) To precondition the approval and designation of the gas TSO by the GoA or the MoEI with its regulatory certification. The new gas related law has transposed related provisions from the TEP, obliging the GoA and the MoEI to follow that procedure and act sequentially.
<i>Certification of the gas TSO in relation to third countries</i>	6) Firstly to study and analyse the regulatory certification of a TSO in relation to third countries from the new gas related law transposing related provisions from the TEP, and secondly to oblige the gas TSO, the ERE and the MoEI to conduct them according to the timelines given by the EnC institutions. The Regulation on Certification of the Transmission System Operator for Gas, adopted by the ERE, contains related instructions on the certification from third countries.
<i>Other aspects</i>	7) The current legal framework for immovable goods of Albania will apply to the planning, development and construction of any gas network. To realise a gas network, the framework does not need to be amended – there are enough legal institutions in the legislation of Albania that can apply to a gas infrastructure. All procedures are defined in the current laws. Any impediments in these legal procedures are known and not necessarily related to the development of a gas infrastructure.
<i>Phased approach</i>	<p>Based on the stated priorities, as well as the key impediments and belonging recommendations, the phased approach in the implementation of activities is proposed (next Table).</p> <p>This approach lists the priorities and concrete actions that need to be undertaken in appropriate time domains and by relevant institutions (the MoEI and the ERE) and operators (the gas TSO and the gas DSO(s)).</p>

Table 1 Phased approach in the implementation of activities

Phase	Type	Period	No.	Activity Description	Allocation of Responsibility
A	LAWS	< 6 months (very short-term)	A.1	Completion of the new gas related law	MoEI (ERE to give inputs, accomplished)
			A.2	Adoption of the new gas related law	NAoA (GoA to submit, accomplished)
			A.3	Entry into force of the new gas related law	Upon publication in the Official Gazette of Albania (accomplished)
			A.4	Proceeding along the transitory provisions	GoA, MoEI, ERE, Albpetrol SH.A (in progress)
			<i>Milestone 1:</i> The new gas related law entered into force and started up.		
B	INSTITUTIONS	6 – 18 months (short-term)	B.1	Establishment of departments for gas in the MoEI and the ERE	MoEI (accomplished) and ERE (not)
			B.2	Staffing of departments for gas in the MoEI and the ERE	MoEI (accomplished) and ERE (not)
			B.3	Drafting and adopting the secondary legislation (legal part) as defined by the new gas related law	MoEI (ERE to give non-binding opinion)
			B.4	Drafting and adopting the secondary regulations (regulatory part) as defined by the new gas related law	ERE (including public consultations)
			<i>Milestone 2:</i> The departments for gas in the MoEI and ERE are established and staffed. <i>Milestone 3:</i> The sets of secondary legislation and regulations entered into force.		
C	OPERATORS	18 – 36 months (mid-term) C.1-C.6	C.1	Determination of the gas TSO (in accordance with the chosen option of the restructuring of Albpetrol SH.A due to the unbundling requirements)	GoA (MoEI to propose the preferred option) (preferred option – either Albpetrol SH.A or any new company undertaking its gas TSO activity)

Phase	Type	Period	No.	Activity Description	Allocation of Responsibility
		(TSO)	C.2	Establishment of the gas TSO	The gas TSO
			C.3	Unbundling of the gas TSO	The gas TSO according to the ERE's instructions
			C.4	Certification of the gas TSO	ERE upon the gas TSO's application for certification (the gas TSO shall submit duly reasoned and documented application) Detailed timetable is shown in the next Table
			C.5	Licencing of the gas TSO	ERE upon taking the final certification decision
			C.6	Designation of the gas TSO	GoA by publishing in the Official Gazette of Albania and informing the ECS
		Milestone 4: The gas TSO is legalised and operational.			
		> 36 months (long-term) C.7-C.10 (DSO)	C.7	Determination of the gas DSO(s)	GoA (MoEI to propose)
			C.8	Establishment of the gas DSO(s)	The gas DSO(s)
			C.9	Unbundling of the gas DSO(s)	The gas DSO(s) according to the ERE's instructions
			C.10	Licencing of the gas DSO(s)	ERE upon the gas DSO(s)' application for licencing
			Milestone 5: The gas DSO(s) are legalised and operational.		
D	INFRASTRUCTURES	6 – 18 months (short-term) (TSO)	D.1	Transmission network planning	The gas TSO according to the ERE's approval of the gas TSO's transmission network development plan
		Milestone 6: The gas TSO's transmission network plan is adopted.			

Phase	Type	Period	No.	Activity Description	Allocation of Responsibility
		(mid-to-long-term) (TSO)	D.2	Transmission network works and construction	The gas TSO according to the transmission network development plan
			Milestone 7: The gas TSO's transmission network is constructed.		
		(mid-to-long-term) (TSO)	D.3	Transmission network facility and equipment operation and maintenance	The gas TSO according to the ERE's approval of the transmission grid code and adoption of the transmission tariff system
			Milestone 8: The gas TSO's transmission system is operational.		
		(long-term) (DSO)	D.4	Distribution network planning	The gas DSO(s) according to the ERE's approval of the gas DSO(s)' distribution network development plan(s)
			Milestone 9: The gas DSO(s) distribution network plan(s) are adopted.		
			D.5	Distribution network works and construction	The gas DSO(s) according to the distribution network development plan(s)
			Milestone 10: The gas DSO(s)' distribution network(s) are constructed.		
			D.6	Distribution network facility and equipment operation and maintenance	The gas DSO(s) according to the ERE's approval of the distribution grid code and adoption of distribution tariff system
			Milestone 11: The gas DSO(s)' distribution system(s) are operational.		

The overview of the gas TSO's certification procedure follows in the Table below.

Table 2 Time sequence of the official gas TSO certification procedure

1 June 2016	The latest time for the ERE to receive the application from the applicant for the gas TSO.
-------------	--

	4 months	Deadline for the ERE to issue the draft certification decision (beginning with complete application).
	Without delay	Sending by the ERE of the draft certification decision to the ECS and the applicant for the gas TSO.
	4 months	Deadline for the ECS to send a response (the opinion) to the ERE. When preparing the opinion, the ECS shall request the ECRB to provide its opinion on the ERE's decision.
	2 months	Deadline for the ERE to issue the final certification decision (beginning with reception of the ERE's opinion) or the fiction of inaction, taking the utmost account of that opinion.
	X	Publication of the decision in the Official Gazette/web-site of the EnC → naming at the same time.

9 BASIC GAS MARKET MODELS

9.1 Introduction

This Chapter presents basic gas market models in order to provide guidance and make recommendations on the provisions for market rules needed in the Albanian gas sector. The following key items are reflected upon next in relation to the required market rules to govern the Albanian natural gas sector:

- 1) Organisation of the natural gas market;
- 2) The gas market operator (MO);
 - a. Gas market code;
- 3) The gas transmission system operator (TSO);
 - a. Gas transmission grid code;
 - b. Charges for access to networks;
 - c. Third party access services;
 - d. Capacity allocation and congestion management;
 - e. Transparency requirements;
 - f. Balancing rules;
 - g. Trading of capacity rights;
- 4) The gas distribution system operator(s) (DSOs);
 - a. Gas distribution grid code;
 - b. Gas distribution tariff system;
- 5) Gas suppliers;
- 6) Gas traders;
- 7) Gas customers;
 - a. Supply of gas to household customers and small enterprises; and
 - b. Regulation of gas prices for household customers and small enterprises.

The duties of the mentioned parties are noted, as well as the necessary content of the mentioned codes and other documents. Corresponding recommendations are given for each of these key items. In this way, the priorities in the market rules organising the gas sector are established to ensure that the gas market will be established properly once gas is reintroduced in Albania, according to its obligations stemming from the Treaty.

9.2 Organisation of the natural gas market

Gas market operator

The natural gas market has to be organised, operated and developed by the gas MO throughout the whole territory of Albania. Generally, the gas MO's tasks and duties may be assumed either by the gas TSO or performed in a separate legal entity (owned by either the gas TSO or the State directly). Specifically, the new gas related law provides that the gas MO will be a legal person owned by the gas TSO. The gas TSO's task is to ensure its functional independence from the gas MO and include respective measures preventing the discriminatory conduct in its compliance programme.

Gas transmission, distribution and combined system operators

A legal entity that holds the licence on gas transmission (the gas TSO) cannot hold licences on gas production and gas trade/gas supply (including supply of last resort) activities. A legal entity performing gas distribution activity (the gas DSO) cannot hold licences on gas production, transmission, gas market organisation and operation, and gas trading/gas supply (including supply of last resort) activities. The gas TSO and the gas DSO(s) will be obliged to adopt and submit for approval to the ERE their compliance programmes, which will in particular anticipate measures aimed at preventing discriminatory behaviour and will stipulate relevant responsibilities for the employees, pursuant to the provisions of the new gas related law. A legal entity may act as combined operator of gas transmission and distribution systems (and gas storage and LNG facilities too). Any such combined operator can be issued gas transmission and distribution licences (and for operation of gas storage and LNG facilities too). The combined operator holds the same rights and obligations as the ones held separately by the gas TSO and the gas DSO, as stipulated in the new gas related law. The combined operator cannot be issued a licence on gas production and gas trade/gas supply activities.

Gas storage and LNG operators

The gas SSO/the OLNGF will be entitled to connect its gas storage system/LNG facility to the transmission or distribution system, in line with the new gas related law and relevant methodologies. Moreover, it shall be entitled to purchase gas for the needs of optimal operation of the gas storage system/the LNG facility, own consumption, compensation of losses in the gas storage system/the LNG facility due to works on the system/the facility, compensation of operational losses, and maintenance of basic volume of gas in the gas storage system/the LNG facility. Furthermore, it shall be entitled to reject the access to the gas storage system/the LNG facility under specified conditions, as well as to limit or temporarily stop contracted gas storing. The gas SSO shall store gas on the basis of concluded contracts.

Gas producer

The gas producer will be entitled to connect its network of upstream gas pipelines to the transmission or distribution system in line with the new gas related law and

relevant methodologies. Moreover, it will be entitled to contract sale of gas with the wholesale gas supplier, the gas supplier, the gas supplier of last resort, and the gas trader. Furthermore, it will be entitled the right to access the gas storage system in line with the new gas related law too. As a last recourse, the gas producer will be entitled to limit or stop the delivery of gas, as well as to reject the access to the network of upstream gas pipelines according to pre-set conditions. The GoA may oblige the gas producer to ensure that the total produced quantity of gas is primarily offered to the wholesale gas supplier and the gas supplier of last resort in the State.

Wholesale gas supplier

The wholesale gas supplier will be designated by the GoA as the gas undertaking which is obliged to ensure reliable and secure supply of gas to household customers and small enterprises, including its import to the State. The wholesale gas supplier will be entitled to purchase gas from the gas producer, according to regulated conditions, and/or from import, according to market conditions, and to sell it to the gas suppliers of last resort for the needs of household customers and small enterprises, according to regulated conditions. The wholesale gas supplier will be designated for a period of maximum three years. The gas suppliers of last resort will be obliged to purchase gas for the needs of household customers and small enterprises from the wholesale gas supplier which will purchase it from the gas producer and/or from import.

Gas supplier of last resort

The gas supplier of last resort will supply the final customers in the State connected to the gas transmission or distribution network who do not have signed contracts with any gas supplier or whose previous gas supplier has discontinued the implementation of obligations from the gas supply contracts. The ERE will approve the gas purchase rules prepared by the gas supplier of last resort, which will stipulate in detail the terms and conditions, manner and procedure for gas purchase, based on the principles of transparency and non-discrimination. For the purpose of meeting the demand of its final customers, the gas supplier of last resort will secure the necessary transmission and/or distribution capacity and other services from the gas TSO and the gas DSO(s), under prices and tariffs approved and previously published by the ERE. The gas supplier of last resort will invoice the gas and services supplied, in compliance with the Tariff System on gas sale to final customers supplied by the gas supplier of last resort, based on the metering performed by the relevant system operators, pursuant to the Rules on Gas Supply of Last Resort and the relevant Grid Code. The gas supplier of last resort will be obliged to develop demand balances for its final customers and submit them to the gas TSO and/or DSO(s), pursuant to the relevant Grid Code.

Gas supplier

The gas supplier will be entitled to sell gas to final customers, gas traders, other gas suppliers, including gas suppliers of last resort, electricity and/or heating energy producers, gas TSO or gas DSO(s), as well as to customers abroad. For the gas demand of final customers with whom it has signed gas supply contracts, the gas supplier will supply gas produced within the State and/or purchased from abroad. For the gas it has committed to supply to its final customers, the gas supplier will secure the relevant transmission and/or distribution capacity and regulated services pursuant to the applicable tariffs, the Transmission Grid Code and the Distribution Grid Code. The gas supplier, based on metering performed by the relevant system operator, will invoice final customers with whom it has signed

gas supply contracts for the gas supplied, at the agreed price and including the transmission and/or distribution system use charges.

Gas trader

The gas trader will purchase gas in the State and from abroad, for the purpose of selling it to other gas traders, gas suppliers, electricity and/or heating energy producers, gas TSO and gas DSO(s), as well as to customers abroad. As an exception, the gas trader in the capacity of gas supplier can sell gas to final customers that fulfil the requirements for independent participation in the gas market, if stipulated so in the Market Code. The mutual rights and obligations between the gas trader and final customer, as well as the obligations towards the gas TSO and/or the gas DSO(s) will be stipulated by means of a contract. The gas trader will be obliged to promptly submit to the gas TSO information on the gas quantities and relevant time schedules related to all gas purchase/sale contracts which it has committed to deliver to its customers, as well as related to the transit contracts through the transmission system. When performing gas export or transit, the gas trader will be obliged to secure sufficient transmission, including cross-border transmission, capacity and/or distribution capacity and related services, pursuant to the applicable tariffs and the Transmission Grid Code.

Gas final customers

Final gas customers will be entitled to purchase gas from gas suppliers, subject to the gas supplier's agreement, pursuant to the terms and conditions stipulated in the Supply Rules. As an exemption, final gas customers that meet the requirements for independent participation in the gas market, if stipulated so under the Market Code, as well as electricity and/or heating energy producers can purchase gas from traders and from abroad. Final gas customers may purchase gas from a supplier who is registered in another State, which has acceded to any relevant international treaty in the area of gas that Albania has also ratified, provided that such gas supplier follows the applicable trading and balancing rules. In this regard, the GoA will take all measures necessary to ensure that the relevant administrative procedures, which are in force, will not discriminate against any such gas supplier.

9.3 The gas market operator

The gas MO will organise, operate and develop the natural gas market in accordance with the rules defining the organisation of the natural gas market, i.e. the Market Code. The gas MO will adopt the Code subject to prior approval of the ERE. The Code will be based on the principles of publicity, transparency, non-discrimination, and competitiveness.

The gas MO will be obliged to provide the services falling under its competences, pursuant to the new gas related law, the Market Code and the terms and conditions stipulated in the licence it holds. Its main competence will be the organisation of the day-ahead and intra-day gas markets for physical trade in natural gas throughout the whole territory of Albania, as well as for connecting it with other organised natural gas markets. The gas MO will prepare and promptly submit to the gas TSO the information required for the development of dispatching schedules, pursuant to the Market Code.

The gas MO will calculate the natural gas consumed, transited or delivered between the gas market participants, as well as the imbalances occurred in regard to announced and realised transactions and will submit these calculations to the gas TSO.

The gas MO will calculate the gas market use charge (fee) based on announced transactions and by applying the published tariff, which will have been previously approved by the ERE. The gas market use charge (fee) will be settled by suppliers or traders, on behalf of final customers in Albania with whom they have signed gas supply or purchase contracts.

9.3.1 Gas market code

For the gas market it operates and organises, the gas MO will be obliged to adopt, following prior approval from the ERE, and publish in the Official Gazette of Albania and on its web-site the Market Code, which will stipulate in particular:

- › the gas market organisation;
- › the terms and conditions to be met by gas market participants;
- › the manner and terms and conditions for grouping of gas customers and/or sellers into balancing groups for the purpose of reducing balancing costs;
- › the establishment, organisation and control over gas and ancillary services trading, including cross-border trading;
- › the methodology for setting the balancing charge and manner of charge collection, as well as the financial guarantees for the liabilities of gas market participants related to the settlement of balancing services;
- › the procedure on the calculation of deviations between the agreed and realised transactions, based on the metered data from the gas TSO and the gas DSO(s);
- › the terms and conditions, manner and procedure of gas and ancillary services purchases made by gas undertakings performing gas activities, for the purpose of implementing the purchases in a transparent and non-discriminatory manner, and securing equal access to all interested domestic and foreign bidders; and
- › the procedure and manner of data collection and submission to the ERE as regards the status and events on the gas market.

9.4 The gas transmission system operator

The gas TSO will be a public enterprise or company owned and organised in accordance with the TEP regulations, and will maintain, upgrade and expand its gas transmission network, operate its gas transmission system and connect it to

the transmission networks of other States. The gas TSO should be state owned or at least majority state owned because it will be obliged to:

- › secure reliable, safe, cost-effective and quality gas transmission and delivery through its transmission system, in a non-discriminatory and transparent manner and at a stipulated quality;
- › secure reliable and safe operation of the gas transmission system it operates, and promote operational arrangements in order to ensure the optimum management of its network pursuant to the applicable regulations that stipulate the technical rules and in accordance with the commitments assumed by Albania under ratified international treaties;
- › provide access to final customers and the gas DSO(s) based on the principles of objectivity, transparency and non-discrimination and pursuant to the provisions of the new gas related law and of the Transmission Grid Code;
- › promptly provide gas system users with the information they need for efficient access to, including use of, the gas transmission system in accordance with the provisions of the new gas related law and of the Transmission Grid Code;
- › publish in its web-site the list of all charges for each category of customers, which have been previously approved by the ERE;
- › ensure adequate means to meet its PSOs;
- › plan the development of the gas transmission system it operates in a cost-effective way for the purpose of reliable and efficient operation of the transmission system, and by taking due care of environmental regulations and pursuant to the applicable regulations that stipulate the technical rules, to secure the long-term system ability to meet the reasonable gas transmission demand;
- › plan the construction of new interconnection capacities with transmission systems abroad, by taking due care of the efficient use of existing interconnection capacities and balancing the investment costs and benefits for the final customers;
- › adopt its transmission system development plan pursuant to the Transmission Grid Code and submit it to the ERE for approval, as well as to publish the plan on its web-site;
- › provide cross-border gas flow through its transmission network within the available transmission capacity;
- › develop, upgrade and maintain its gas transmission system for the purpose of the safe and efficient system operation pursuant to the applicable regulations that set out the relevant technical rules and to

ensure the long-term ability of the transmission system it operates to address reasonable gas transmission demand;

- › adopt the gas transmission system maintenance plan pursuant to the Transmission Grid Code and submit it to the ERE for approval, as well as to publish the maintenance plan on the web-site of the gas TSO;
- › approve gas transmission system users' applications for connection to its transmission system;
- › allow third party access for the use of the gas transmission system it operates, pursuant to the new gas related law and the Transmission Grid Code, and based on the principles of objectivity, transparency and non-discrimination;
- › refrain from discriminating between gas transmission system users or classes of system users, particularly in favour of its related undertakings;
- › award available transmission capacities and address peak loads in its gas transmission network, pursuant to the Transmission Grid Code and the Market Code;
- › harmonise operations in its gas transmission system with the gas transmission systems it is directly connected to, as well as cooperate and exchange data with operators of other gas transmission systems, pursuant to the commitments Albania has assumed under the international treaties or the commitments of the gas TSO stemming from its membership in international associations;
- › promote the development of gas exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms;
- › publish data and promptly provide information to other gas TSOs, on available transmission capacities at interconnectors with the neighbouring gas transmission systems or transnational gas pipelines, for the purpose of securing efficient, non-discriminatory, objective and transparent access to and use of its gas transmission system and the relevant gas interconnection system;
- › purchase gas to cover losses in its gas transmission system and necessary ancillary services, under market terms and conditions and in a transparent and non-discriminatory manner, pursuant to the rules previously approved by the ERE;
- › provide daily dispatch of planned import and export transactions and transit transactions through the gas transmission system it operates, based on the nominations submitted by gas market participants, and to

update the schedule of regular time intervals, pursuant to the Transmission Grid Code;

- › balance deviations between the actual and planned gas consumption in real time, pursuant to the Market Code;
- › provide transparent and non-discriminatory application of balancing procedures to announced and realised gas transactions and service billing and collection;
- › keep records and physical transaction schedules and calculate deviations from announced transactions and charge the users for the imbalances occurred;
- › establish the required changes to the gas dispatching schedule in cases of risks to the reliability of gas supply, outages and major deviations in gas consumption from the determined quantities;
- › secure confidentiality of commercial and business data of system service users;
- › promptly provide information to the gas TSOs and the gas DSOs to which it is connected, for the purpose of securing reliable and efficient operation of the systems and interconnectors;
- › prepare reports on the financial and actual volume of planned and realised services and to submit them to the ERE, in a manner, under terms and conditions and within the deadlines stipulated in the licence;
- › keep dispatch logs, records on the gas transmission system reliability, data from the supervision and operation system, and metered data, and keep such data, logs and records for at least ten years; and
- › keep records on the operation of its gas transmission system and make reports to the ERE and any other competent State authority, on request.

9.4.1 Gas transmission grid code

For the gas transmission system it operates, the gas TSO will be obliged to adopt and following prior approval from the ERE, publish in the Official Gazette of Albania and on its web-site the Transmission Grid Code, which will stipulate in particular:

- › technical and technological terms and conditions on connecting facilities, devices and plants to the gas transmission network;
- › terms and conditions, manner and methodology of setting the transmission network connection charge, based on the principles of transparency and non-discrimination;

- › procedure on approving users' applications for connection to the transmission network, as well as the cooperation and obligations of the gas TSO;
- › the manner of gas system use at electricity and heating energy generation facilities holding temporary operation licence;
- › the terms and conditions and manner of third party access to the gas transmission system it operates, based on the principles of transparency and non-discrimination and compatible with the market mechanisms and with the network access systems in the region;
- › technical and other terms and conditions for the reliable and safe operation of the gas transmission system it operates;
- › the maintenance and development planning of the gas transmission system it operates;
- › the contents of the development and maintenance plans of the gas transmission system it operates, as well as the manner and procedure under which gas system users will submit data required for the preparation of these plans;
- › the manner and procedure of gas demand forecasting, as well as the obligations of the gas transmission system users (gas suppliers and final customers directly connected to the gas transmission system, which the gas TSO operates) related to the submission of data required for preparing the gas demand forecasts;
- › the measures, activities and procedures in cases of outages and emergencies;
- › the operational requirements and accuracy class of metering devices, as well as the gas metering method;
- › the criteria on the provision of ancillary services;
- › the manner and procedure of announcing and allocating available transmission capacity and of addressing peak loads in the gas transmission system, which the gas TSO operates;
- › the manner and procedure of access to installations and metering-regulation stations that are an integral part of the transmission system and are owned by final customers or users;
- › the quality of services provided by the gas TSO for the users;
- › the functioning of the operating systems (SCADA and similar);
- › the manner of publishing information, which it is obliged to publish pursuant to the new gas related law;

- › the manner and procedure on information provision for gas system users; and
- › the manner of cooperation between the gas TSOs.

9.4.2 Charges for access to networks

The charges applied by the gas TSO for access to the gas transmission network it operates will:

- › be transparent;
- › be applied in a non-discriminatory manner;
- › take into account the need for integrity of the relevant gas transmission system and its improvement; and
- › reflect the actual costs incurred²⁸, insofar as such costs correspond to those of an efficient and structurally comparable gas TSO and are transparent, whilst including an appropriate return on investments.

The charges applied by the gas TSO for access to the gas transmission network it operates will take account of the benchmarking of tariffs by the ERE.

The ERE may decide that charges for access to the gas transmission network may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the ERE.

The gas TSO will apply charges for access to the gas transmission network it operates, which will:

- › facilitate efficient gas trade and competition;
- › avoid cross-subsidies between gas system users; and
- › provide incentives for investment and for maintaining or creating interoperability for gas transmission network.

The charges applied by the gas TSO for gas system users will be non-discriminatory and set separately for every entry point into or exit point out of the gas transmission system. The relevant cost-allocation mechanisms and rate setting methodology regarding entry points and exit points will be approved by the ERE. Network charges will not be calculated on the basis of contract paths.

The gas TSO will apply charges for access to the gas transmission network it operates, which will neither restrict market liquidity nor distort trade across borders

²⁸ Costs covered by subsidies or grants provided by the GoA or donor agencies shall not be reflected in the costs of business operation (not to be recovered from final gas customers).

of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, the relevant gas TSOs will, in close cooperation with the relevant NRAs, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

The charges for access to the gas transmission network will be settled by all final customers in Albania, who are supplied with gas through the relevant transmission network. The gas TSO will invoice the charge for network use pursuant to the tariff previously approved and published by the ERE, to the following:

- › final customers that act independently on the gas market and are directly connected to the relevant transmission system, and
- › suppliers for final customers that do not meet the requirements for independent participation in the gas market and that are connected to the relevant transmission system or to distribution system(s) connected to the transmission system in question.

The charge for access to the gas transmission network will be comprised of two portions, those being: gas transmission and gas transmission system operation, where:

- › the portion related to gas transmission will be calculated on the basis of the maximum regulated income of the gas TSO; and
- › the portion related to gas transmission system operation will be set on the basis of regulated income of the gas TSO, including the costs for maintaining the assets that are not owned by the gas TSO.

The ERE, by means of relevant regulations and methodologies specified in the new gas related law, will stipulate the method through which the gas TSO will distribute the income generated on the basis of charges for access to the gas transmission network it operates, which have been collected. The ERE can task the gas TSO and the gas suppliers to separately present portions concerning gas transmission and gas system use in the invoices.

The gas TSO will invoice the gas market participants for the deviations occurred from the announced physical transactions, under prices calculated pursuant to the price-setting methodology for balancing services, which is contained in the Market Code.

9.4.3 Third party access services

The gas TSO will:

- › ensure that it offers network access services on a non-discriminatory basis to all gas system users;

- › provide both firm and interruptible third party access services and make sure that the price of interruptible capacity shall reflect the probability of interruption; and
- › offer gas system users both long and short-term services.

Where the gas TSO offers the same service to different customers, it will do so under equivalent contractual terms and conditions, either using harmonised gas transport contracts or a common network code approved by the ERE.

Any gas transport contract entered into by the gas TSO with non-standard start dates or with a shorter duration than a standard annual gas transport contract will not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service provided.

Where appropriate, the gas TSO may grant third party access services subject to the provision by gas system users of appropriate guarantees with respect to the creditworthiness of such users. Such guarantees will not constitute undue market-entry barriers and will be non-discriminatory, transparent and proportionate.

9.4.4 Capacity allocation and congestion management

The gas TSO will, after taking into account the integrity of the gas transmission system it operates and the efficient network operation, make available to gas market participants the maximum capacity of the gas interconnections and/or the gas transmission network affecting cross-border flows.

The gas TSO will implement and publish non-discriminatory and transparent capacity allocation mechanisms, which will:

- › provide appropriate economic signals for the efficient and maximum use of technical capacity, facilitate investment in new infrastructure for gas and facilitate cross-border exchanges in gas;
- › be compatible with the gas market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and
- › be compatible with the gas network access system of Albania.

The gas TSO will implement and publish non-discriminatory and transparent congestion management procedures, which will facilitate cross-border exchanges in gas on a non-discriminatory basis and which will be based on the following principles:

- › in the event of contractual congestion in the gas transmission system it operates, the gas TSO will offer unused capacity on the primary market at least on a day-ahead and interruptible basis; and

- › gas transmission system users, who wish to re-sell or sublet their unused contracted capacity in the system of the gas TSO on the secondary market, will be entitled to do so, provided that they notify in advance the gas TSO.

In the event that there exists physical congestion in the gas transmission system it operates, the gas TSO will apply non-discriminatory and transparent capacity allocation mechanisms.

The gas TSO will regularly assess market demand for new investment. When planning new investments, the gas TSO will assess market demand and take into account security of natural gas supply.

9.4.5 Transparency requirements

The gas TSO will be obliged to continuously publish and update on its web-site detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for gas system users to gain effective network access. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas transmission network it operates, the gas TSO will publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.

For the services it provides, the gas TSO will be obliged to continuously publish and update on its web-site information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly and standardised manner. The ERE, after consultation with the gas system users, will approve the relevant points on which such information will be made public by the gas TSO. The gas TSO will always disclose the information required by the new gas related law in a meaningful, quantifiably clear and easily accessible manner and on a non-discriminatory basis.

The gas TSO will make public ex-ante and ex-post supply and demand information, based on gas nominations, forecasts and realised flows in and out of the gas transmission system. The ERE will ensure that all such information is made public in a prompt and timely manner. The level of detail of the information that is made public will reflect the information available to the gas TSO. The gas TSO will make public measures taken as well as costs incurred and revenue generated to balance the gas transmission system it operates.

The gas MO, the gas TSO and the gas DSO(s) will keep the records of gas physical transactions, based on the information on gas purchase/sale and transit transactions submitted by gas system users, including duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives. The ERE may decide to make available to the gas market participants elements of these information, provided that commercially sensitive information on individual market

players or individual transactions is not released. The gas MO will be obliged to secure confidentiality of commercial and business data which the gas market participants are obliged to submit.

The gas supplier, the gas supplier of last resort and the gas trader will make all data related to all its transactions contracted for at least five years for the purchase and sale of gas and its derivatives with wholesale customers, as well as with the gas TSO, the gas DSO(s) or the gas MO, available to the ERE, the body/institution responsible for protection of competition and to any other competent institutions pursuant to the commitments assumed by Albania under ratified international treaties. These data will include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

9.4.6 Balancing rules

The gas TSO will apply balancing rules, which will:

- › be designed in a fair, non-discriminatory and transparent manner;
- › be based on objective criteria;
- › reflect genuine gas system needs, after taking into account the resources available to the gas TSO; and
- › be market-based.

In order to enable gas system users to take timely corrective action, the gas TSO will provide sufficient, well-timed and reliable on-line based information on the balancing status of gas system users. The information provided will:

- › reflect the level of information available to the gas TSO in question and the settlement period for which imbalance charges are calculated; and
- › be made available free of any charge or payment.

The gas TSO will apply imbalance charges, which will:

- › be cost-reflective to the extent possible, whilst providing appropriate incentives on gas system users to balance their input and off-take of gas;
- › avoid cross-subsidisation between gas system users; and
- › not hamper the entry of new gas market entrants.

The gas TSO will make public the calculation methodology for imbalance charges as well as the final tariffs.

The gas TSO will endeavour to harmonise the balancing regime of Albania with the corresponding regimes of the neighbouring States and to streamline the relevant balancing structures and levels of balancing charges in order to facilitate gas trade.

9.4.7 Trading of capacity rights

The gas TSO will take reasonable steps to allow gas capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner.

The gas TSO will develop harmonised gas transport contracts and procedures on the primary market to facilitate secondary trade of gas capacity and will recognise the transfer of primary capacity rights, where so notified by gas system users.

The gas TSO will notify the harmonised gas transport contracts and procedures to the ERE.

9.5 The gas distribution system operator(s)

For the service area in the territory of Albania where it performs the relevant activity, the gas DSO will be responsible for the maintenance and, when deemed cost-effective, the upgrade and expansion of the distribution system it operates, as well as for the operation of the distribution system in question and will be obliged to secure its connection to the gas transmission system.

The gas DSO will be obliged to:

- › secure reliable, safe, cost-effective and secure operation of the distribution system it operates, pursuant to the applicable regulations that stipulate the technical rules;
- › secure reliable, safe and quality gas distribution through the distribution system it operates, in a transparent and non-discriminatory manner;
- › connect final customers to the distribution network it operates, as well as to allow third party access for the use of the distribution system in question, pursuant to the new gas related law and the Distribution Grid Code, and based on the principles of objectivity, transparency and non-discrimination;
- › promptly provide any other gas DSO and TSO with sufficient information to ensure that the transport of gas in the distribution system it operates takes place in a manner compatible with the secure and efficient operation of the interconnected gas system;
- › promptly provide gas system users with the information they need for efficient access to, including use of, the gas distribution system it operates in accordance with the provisions of the new gas related law and of the relevant Distribution Grid Code;

- › publish in its web-site the list of all charges for each category of customers, which have been previously approved by the ERE;
- › develop, upgrade and maintain the distribution system it operates, pursuant to the applicable regulations that stipulate the technical rules and to provide long-term system ability to address the reasonable gas distribution demand;
- › develop the network maintenance plan for the distribution system it operates pursuant to the Distribution Grid Code, and submit it for approval to the ERE and as well to publish it on its web-site;
- › purchase the necessary gas quantities required to perform its activity, under transparent, non-discriminatory and market-oriented procedures, pursuant to the rules previously approved by the ERE;
- › meter gas quantities and quality delivered to final customers and submit metered data to gas suppliers;
- › allow users access to metering devices owned by the gas DSO, pursuant to the new gas related law and Distribution Grid Code;
- › prepare reports on the financial and actual volume of planned and realised services and submit them to the ERE, in a manner and under terms and conditions and within deadlines stipulated in the licence;
- › keep the dispatch log, records on communication systems reliability, data from the supervision and operation system, metered data and logs and records thereof, and keep such data for at least ten years;
- › secure confidentiality of commercial and business data of the system users of the distribution system it operates and prevent information about its own activities, which may be commercially advantageous, from being disclosed in a discriminatory manner; and
- › not to abuse – in the case of sales or purchases of gas – any commercially sensitive information obtained from third parties in the context of providing or negotiating access to the gas distribution system it operates.

When the distribution system, which the gas DSO operates, is not connected to the gas transmission system and is supplied with compressed natural gas transported by means of road or rails tanks or other forms of transport, the gas DSO in question will be obliged to stipulate the purchase of ancillary services and real time balancing of deviations between the actual and planned gas consumption as part of the Distribution Grid Code.

The gas DSO will be obliged to meter the gas quantities it delivers to its customers by means of metering devices, pursuant to the new gas related law and the Distribution Grid Code/the Metering Code. The metering devices will be owned by the gas DSO. The location of metering devices will be determined by the gas DSO,

depending on the technical possibilities at the site and they can be located on or outside the final customer's property. When the metering device is located on the user's property, the user will be obliged to allow the person authorised by the gas DSO access to any property or facility where the metering device is located, for the purpose of:

- › reading metering devices;
- › control, installation, supervision, change or replacement of metering devices;
- › disconnecting the user, when it has acted contrary to the terms and conditions for the distribution system use stipulated in the Distribution Grid Code; and
- › disconnecting the final customer, on the request from the gas supplier, pursuant to the provisions contained in the Supply Rules.

9.5.1 Gas distribution grid code

For the gas distribution system it operates, the gas DSO will be obliged, within the deadline stipulated in the licence, to adopt following prior approval from the ERE, and publish in the Official Gazette of Albania and on its web-site the Distribution Grid Code for the distribution system it operates, which will stipulate in particular:

- › the technical terms and conditions for connecting gas final customers to the distribution network, based on the principles of transparency and non-discrimination;
- › the methodology on setting the distribution network connection charge, based on the principles of transparency and non-discrimination;
- › the terms and conditions and manner of third party access to the distribution system, based on the principles of transparency and non-discrimination;
- › the technical and other terms and conditions on reliable and safe distribution system operation;
- › the measures, activities and procedures in case of outages and emergencies;
- › the manner and procedure on distribution system supervision and testing;
- › the manner and procedure on regulating gas flow and pressure through the distribution system;
- › the manner and procedure on harmonising the operations in the distribution system with the operations in the gas transmission system;

- › the operational requirements and accuracy class of metering devices, as well as gas metering method;
- › the distribution system maintenance and development planning;
- › the contents of distribution system development plans, as well as the manner and procedure under which gas system users will submit information required for the preparation of development plans;
- › the quality of gas delivery, pursuant to the Supply Rules;
- › the gas demand forecasting, based on data obtained from gas suppliers and final customers' development plans;
- › the manner and procedure on information provision for gas system users; and
- › the manner of cooperation with other gas system operators.

In the case there are more gas DSOs, the ERE should secure harmonisation of separate Distribution Grid Codes.

9.5.2 Gas distribution tariff system

For the gas distribution system it operates, the gas DSO will be obliged, within the deadline stipulated in the licence, to adopt following prior approval from the ERE, and publish in the Official Gazette of Albania and on its web-site the Distribution Tariff System for the distribution system it operates, which will stipulate in particular:

- › the regulation model for the gas distribution activity;
- › the formulae and elements for calculation of allowed revenue of the gas DSO;
- › the procedure for revision of the allowed revenue of the gas DSO;
- › the tariff items and tariff models;
- › the manner, elements and criteria for calculation of amounts of tariff items, as well as of expected total revenue of the gas DSO;
- › the characteristics and preconditions for establishing regulatory account, as well as the manner, elements and criteria for calculation and for revision of amounts of tariff items in the model of regulatory account;
- › the procedure of submitting the application for determining or change of amounts of tariff items; and

- › the data, documentation and other underlying documents which are used for calculation and revision of the allowed revenue and for calculation of amounts of tariff items.

In the case there are more gas DSOs, the ERE should secure harmonisation of separate Distribution Tariff Systems.

9.6 Gas suppliers

The gas supplier will be obliged to:

- › operate in compliance with the Supply Rules as regards the confidentiality of data and reliability of gas quantities supplied to users;
- › meet the financial guarantee requirements stipulated by the gas TSO and related to the balancing between anticipated and realised transactions;
- › provide information of all its customers in an uncomplicated manner and on a free-of-charge basis about the potential exercise by a customer of its right to switch gas supplier, get access to the services of the gas supplier of last resort, and submit complaints and settle dispute out of court in accordance with the provisions of the new gas related law;
- › set up and implement specific procedures for the provision of information to its customers and for the submission and handling of customers' complaints;
- › take appropriate measures for ensuring the protection of vulnerable customers and the equal treatment of all customers living in remote areas;
- › publish on its web-site all terms and conditions of its gas supply agreements for each category of customers;
- › operate on the basis of objectivity, transparency and non-discrimination and to publish general statistical data relating to its customers as well as of its activities;
- › submit the ERE, on request and within a given deadline, reliable information and reports of its transactions and business activities originating from, terminating in or transiting the territory of Albania;
- › invoice its customers the gas supplied, as well as the transmission and/or distribution capacity secured;
- › settle the gas quantity purchased, as well as the reserved capacity and regulated services from the gas TSO and/or the gas DSO(s); and
- › operate in compliance with the new gas related law and other regulations in Albania, the regulations adopted by the ERE and the Transmission and Distribution Grid Codes.

The gas supplier, including the gas supplier of last resort, will set up an adequately staffed single contact point from which its final customers will be promptly provided with all the necessary information and notifications concerning their rights, current regulations and the existing and available means of dispute settlement. The ERE will set the requirements relating to the single contact point. In relation to the single contact point, the ERE can specify additional requirements for the gas supplier of last resort.

The gas supplier, including the gas supplier of last resort, will undertake any necessary steps required to protect the interests of the final customers, as well as to handle any complaints of the final customers in an efficient way, including out-of-court dispute settlements. The ERE will monitor the way in which those complaints are handled pursuant to the provisions of the new gas related law and other rules adopted by the ERE.

The Supply Rules may further specify the obligations of gas suppliers depending on the various categories of their customers and the particularity of each such category with regard to consumption and its respective financial and negotiating power.

9.7 Gas traders

The gas trader will be obliged to:

- › fulfil the financial guarantee requirements stipulated by the gas TSO and related to the obligations on balancing between anticipated and realised transactions;
- › submit to the ERE, on request and within a given deadline, information and reports on the transactions and business activities originating from, terminating in or transiting the territory of Albania;
- › invoice its customers the gas delivered, as well as transmission and/or distribution capacity secured, provided it was authorised to secure the capacity in question by the customer;
- › operate in compliance with the new gas related law and other regulations in Albania, the regulations adopted by the ERE and the relevant Grid Code; and
- › operate in compliance with the Supply Rules as regards the confidentiality of data and gas quantities delivered to customers.

9.8 Gas customers

From 1 January 2015, all gas customers will be deemed eligible gas customers. In order to avoid imbalance in the opening of gas markets, contracts for the supply of gas with an eligible customer in the system of another State, which has acceded to any relevant international treaty in the area of natural gas that Albania has also

ratified, will not be prohibited if the customer is considered as eligible in both systems. For the purpose of meeting their own demand, gas customers will secure relevant transmission and/or distribution capacity or will transfer this obligation to their gas suppliers.

All eligible gas customers will be entitled to switch to a new gas supplier, provided that the customer in question has respected the contractual conditions of the relevant supplier's agreement. The procedure for switching gas supplier will be effected in no more than three (3) weeks from the date at which the gas customer in question has served notice to that effect to the relevant gas supplier. Gas customers will be entitled to receive all relevant consumption data from their respective gas suppliers. The specific content of the data will be further elaborated in the Supply Rules. The rights vested in gas customers will be effected in a non-discriminatory manner as regards cost, effort or time.

The following two sub-chapters refer to supply of gas to household customers and small customers and related regulation of prices. It is to be read in the context of the need for a smooth transition to the introduction of a gas market in Albania, as well as the need to provide to some gas customer categories a phased entrance to the gas market. Certainly, this needs to be done without distortions to competition and without reverting to market destructive approaches. Consequently, the price regulation should not lead to gas prices below the commercially incurred costs and the corresponding practices, if and when implemented, should lead to a sustainable gas market and to sustainable investments to gas infrastructures.

9.8.1 Supply of gas to household customers and small enterprises

For a limited time period not longer than three years and according to the ERE's previous opinion, the GoA may decide to:

- › designate the wholesale gas supplier, which will sell gas to the gas supplier(s) of last resort for the needs of household customers and small enterprises under regulated conditions and ensure reliable and secure supply of gas to household customers and small enterprises, including gas import;
- › oblige the gas producer in the territory of the State to sell gas to the wholesale gas supplier, under regulated conditions, which further on supplies the gas supplier(s) of last resort for the needs of household customers and small enterprises;
- › grant the priority to the designated wholesale gas supplier in the procedure of booking and allocation of the gas storage system capacity;
- › determine the price of gas at which the gas producer will sell gas produced in the territory of the State to the wholesale gas supplier which further on sells that gas to the gas supplier(s) of last resort for the needs of household customers and small enterprises; and

- › determine the price of gas at which the wholesale gas supplier will sell gas to the gas supplier(s) of last resort for the needs of household customers and small enterprises.

In case of taking such decision, the gas supplier(s) of last resort will within 15 days from the day of taking that decision submit to the wholesale gas supplier data on the volumes of gas sold to household customers and small enterprises per each individual month, and data on the booked and used capacities of the transmission system per each individual connection in the previous three calendar years.

By taking such decision, the GoA will oblige the gas producer in the territory of the State to sell a specified volume of gas to the wholesale gas supplier on annual basis (in MWh per each of three years), where such obligation also includes the required volume on daily basis (in MWh per each day of the year). The wholesale gas supplier may be allowed to deviate $\pm 10\%$ from the volume on annual basis and $\pm 15\%$ on daily basis. The wholesale gas supplier will be obliged to sell that volume of gas only to the gas supplier(s) of last resort for the needs of household customers and small enterprises. This obligation may also include the supply of gas to those energy undertakings (legal and physical persons) which supply the heating energy generated from gas to household customers and small enterprises in line with the new gas related law.

The place of delivery of a specified volume of gas that the gas producer is obliged to sell to the wholesale gas supplier will be a virtual trading point which is determined by the Market Code and the Transmission Grid Code. The gas producer will be obliged to sell a specified volume of gas, in line with the allowed deviations, to the wholesale gas producer in the maximum period of three years. The gas producer will make a contract on the sale and purchase of gas with the wholesale gas supplier which further supplies the gas supplier(s) of last resort for the needs of household customers and small enterprises in line with the GoA's decisions, including the ones relating to the price of gas.

The GoA may decide to grant the priority to the wholesale gas supplier in the procedure of booking and allocating the gas storage system capacity, i.e. available number of standard packages of storage capacity as determined by the gas SSO. When performing that procedure, the gas SSO will allocate 70% of total available standard packages of storage capacity to the designated wholesale gas supplier in the duration of three years.

The GoA may determine the price of gas (€/kWh) at which the gas producer will sell gas produced in the territory of the State to the wholesale gas supplier. That price will comprise all dependable costs of the gas producer, including all fees for use of the transmission system up to the virtual trading point, all fees and costs which are paid in line with laws and sub-laws regulating the gas market and other special regulations, except the value added tax. The price will be determined for the period of one year.

Moreover, the GoA may determine the price of gas (€/kWh) at which the wholesale gas producer will sell gas to the gas supplier(s) of last resort for the needs of household customers and small enterprises. That price will comprise the cost of

fees for use of the transmission system and the cost of fees for excessive use of contracted capacity in line with the Transmission Grid Code, the cost of fees for use of the gas storage system and for use of other services in line with provisions of the Gas Storage System Code, the cost of fee for organisation and operation of the gas market and all costs based on the settlement in line with provisions of the Market Code. The price does not include the fee for excessive (over and under) gas taking in comparison to the contracted gas volume defined in the contract on sale and purchase of gas to the gas supplier(s) of last resort nor the value added tax. The price will be determined for the period of one year.

The gas supplier(s) of last resort will conclude the contract on the sale and purchase of gas for the needs of household customers and small enterprises with the wholesale gas supplier within 15 days from the day of entry into force of the GoA's decision (adhesion type contract). In the same time, the gas supplier(s) of last resort will, in the secondary market of capacities, by concluding the contract on transfer of the contract on transmission of gas, in line with provisions of the Transmission Grid Code, transfer to the wholesale gas supplier the amount of contracted capacity in the exit points from the transmission system which was previously contracted with the gas TSO for the needs of household customers.

9.8.2 Regulation of gas prices for household customers and small enterprises

Liberalisation of the gas market depends on the effective enforcement of the EU law (the TEP, including competition and state aid rules), and the removal of barriers to the export and import of gas. Opening of the gas market is needed to improve the investment climate and create incentives for new entrants. Competition in the gas market will not be limited, neither in the wholesale nor in the retail market. Both wholesale and retail gas prices will be deregulated. Both the gas TSO and the gas DSO(s) unbundling processes will be completed.

Regulated gas prices at the retail level should be removed for household customers and small enterprises too. However, if the regulated gas prices are higher than the market ones, then final customers may consider switching gas suppliers by themselves unless being overly inert or insufficiently interested. By the EU law itself (the TEP), the gas price regulation is allowed as PSO, but subject to stringent conditions. If sound Supplier Switching Rules are implemented, then unobstructed and simple change of gas supplier is enabled additionally contributing to competitiveness in the retail market.

Notwithstanding the foregoing, some necessary steps should be taken towards either fully competitive retail market or a hybrid one which meets certain set criteria. To promote competitiveness in the retail market, the following criteria may be introduced: 1) allowing free opting in and out of regulated gas prices; 2) setting the regulated gas price at least equal to or above cost; and 3) updating the regulated gas price to reflect the sourcing cost as much and as frequently as possible. In this way, they can facilitate the development of retail competition, which will in turn create the conditions for the removal of regulated gas prices.

In the given context, the households- and small enterprises-related quota system for the gas producer in the regulated segment of the gas market should be removed (the "supplier of suppliers" concept). Under the "supplier of suppliers" concept, two PSOs are actually imposed: 1) obligation imposed to the gas producer to offer its gas primarily to the gas supplier(s) of last resort for the needs of household customers and small enterprises (located in the territory of the State), and 2) obligation imposed to the gas supplier(s) of last resort to primarily purchase gas from the gas producer. Moreover, the "supplier of suppliers" function cannot be imposed to a single gas undertaking (the wholesale gas supplier) obliging it to purchase the necessary gas first from the gas producer at a regulated price and sell it further on to the gas supplier(s) of last resort also at a regulated price.

Under the "supplier of suppliers" concept, gas procurement is realised at regulated prices whereas in the same period of time household customers' and small enterprises' gas price is kept regulated. Such regulated gas prices prevent alternative gas supplier from entering the retail and wholesale markets and represent obstacles to cross-border gas flows. These clearly contradict the commitments under the EU law (the TEP). Thus, if at all, the "supplier of suppliers" concept is possible only temporarily, i.e. during three-year transitional period before complete liberalisation of the gas market, and will be eliminated afterwards.

9.9 Way forward

The new gas related law has been aligned with the provisions of the TEP (Directive 2009/73/EC and Regulation (EC) No. 714/2009). Further progress in its implementation is linked with the adoption of detailed rules and regulations necessary for the gasification. Several major steps should be made to establish a properly functioning gas market, not only domestically but also for the purpose of the regional gas market. Allowing both domestic and cross-border trade in gas will make investments attractive and competition functioning for the benefit of the country's economy. Albania still needs to adopt the necessary secondary acts concerning the functioning of the natural gas sector (Appendix I). In terms of the legal and regulatory framework, it is necessary to draft and approve specific rules envisaged under the primary legislation, such as the Market Code, Transmission Grid Code, Distribution Grid Code, Capacity Allocation and Congestion Management Rules, Quality of Service Rules etc. Preparation of these rules needs specialised expertise. Strengthening of the administrative capacity of the institutions and market players is a prerequisite.

9.10 Conclusions

Highlights

This Chapter provides the recommendations relating to the key issues in the gas market that require urgent attention. Related set of recommendations is provided, however keeping in mind that only very limited gas infrastructure is available in Albania now – therefore, the recommendations are given as the priorities for action from a nearly zero level. They may change as gas market development proceeds.

*Current status
relating to the
compliance*

The Law on Natural Gas Sector of 2008 already specified the activities and regulated the terms and conditions for performing them. It ensured quality and secure supply of gas to final customers, public services and other activities in the gas sector of public interest. The new gas related law has introduced new requirements stemming from the TEP on the gas market liberalisation. It has defined general principles, such as the right to choose the gas supplier, the protection of vulnerable customers, the quality of gas supply etc. Eligibility has been granted to all customers. Considering the absence of the gas market in Albania, the provisions related to eligibility and supplier switching have no practical relevance at the moment nor in near future. However, non-discriminatory and unlimited market access will be allowed in line with Directive 2009/73/EC and the EnC Treaty once the gas infrastructure is developed. The ERE is the single authority for regulating the energy sector of Albania, independent from the State authorities and energy undertakings. Its competences, tasks and objectives (issuing licences, setting tariffs, monitoring, and adopting secondary regulations) are established. Additionally, the new gas related law has made them fully in line with the TEP. The ERE will have the right to carry out investigations, the right to impose measures to promote competition and proper market functioning, and the right to issue penalties to gas (and electricity) undertakings that do not comply with their obligations or to propose to a competent court to impose such penalties. Legal unbundling and separate accounting was enforced according to Directive 2003/55/EC until recently. The new unbundling regimes from the TEP has been applied in line with its new requirements for the gas TSO and the gas DSO(s).

*Recommendations
relating to the gas
market rules*

Third party access to upstream gas pipelines shall be addressed adequately. All provisions on the gas market opening shall be in line with the EnC *acquis communautaire*. Deadlines for the gas market opening have to be established. The eligibility status may not be determined by the clusters nor the level of consumption defined by the ERE. The eligibility status shall be granted to all customers (from 1 January 2015). In the supply of gas, the eligible customers (other than household customers and small enterprises) may not enjoy the status of tariff customers. The accounts for the supply under PSO and the supply under market terms and conditions have to be separated. The auditing provisions shall be put in place. The gas PS and the gas supplier of last resort shall be made clearly distinct. Provisions on third party access, tariffs, balancing, capacity allocation, congestion management, and transparency shall be foreseen in the legislation providing a necessary legal basis upon which the secondary regulations should be developed and adopted next. A regulated system shall be applied to the transmission (apart from the TAP's exemptions), distribution, storage and the LNG terminal's activities. The transmission activity which belongs to the gas TSO, including tariff aspects, will have to be regulated by the ERE in accordance with the new gas related law which needs to be supplemented with decrees concerning both tariffs and more technical aspects of grid access and gas trading. The TEP has been transposed, with some new major requirements. The conditions for access to the gas infrastructure shall be set out. A set of operational and commercial rules shall lay down the framework within which the gas TSO signs contracts with users of the transmission, storage and LNG infrastructure. Several documents must be submitted by the gas TSO to the ERE for approval: access rules, service programmes and service agreements, and connection agreements. A range of public consultations on these conditions shall be held before entering into force.

Way forward

Despite the fact that there is only very limited gas infrastructure in Albania now, the main principles of the SEP had already been transposed. Further progress is linked with the implementation of the new gas related law and detailed rules and regulations necessary for the gasification. In that view, the activities on the three most important frameworks – legal, regulatory and operational – shall be emphasised and assigned the highest priorities. Since the new gas related law has been aligned with the provisions of the TEP, the necessary regulatory acts and specific rules shall be adopted as envisaged in the primary legislation, and the needed operational codes shall be put in place to enable proper functioning of the natural gas sector. Since the preparation of these rules needs a specialised expertise, strengthening of the administrative capacity of the institutions and market players is seen as a prerequisite.

Emphasis

Firstly, the emphasis shall be put on the proceeding along the transitory provisions of the new gas related law which was adopted recently by the NAoA on the proposal from the GoA, establishing the legal framework in line with the TEP (phase A of priority type – Laws, in the very short-term). Secondly, the necessary regulations shall be adopted by the ERE, to establish the regulatory framework in the natural gas sector (phase B of priority type – Regulations, in the short-term). Thirdly, the operating codes shall be adopted by the system operators (the gas TSO and the gas DSO(s)), to enable the operational framework of the gas systems and market (phase C of priority type – Codes, in the medium-term). Positioning of the system operators' activities in time domain can also overlap, however subject to prioritising development of transmission infrastructure over distribution one.

Phased approach

Based on the emphasised priorities, as well as the current state of compliance, key issues and belonging recommendations, the phased approach in the implementation of activities is proposed (next Table). It lists the emphasised priorities and concrete actions that need to be undertaken in appropriate time domains and by relevant institutions (the NAoA/GoA/MoEI and the ERE) and operators (the gas TSO and the gas DSO(s) as the gas system operators, as well as the gas MO as the gas market operator) should the gas transmission and distribution systems, as well as the gas market be properly operated.

Table 3 Phased approach in the implementation of activities

Phase	Type	Period	No.	Activity Description	Allocation of Responsibility
A	L A W S	< 6 months (very short-term)	A.1	Completion of the new gas related law	MoEI (ERE to give inputs) (accomplished)
			A.2	Adoption of the new gas related laws	NAoA (GoA to submit) (accomplished)
			A.3	Entry into force of the new gas related law	Upon publication in the Official Gazette of Albania (accomplished)

Phase	Type	Period	No.	Activity Description	Allocation of Responsibility
			A.4	Proceeding along the transitory provisions	GoA, MoEI, ERE, Albpetrol SH.A
			<i>Milestone 1:</i> The new gas related law entered into force and started up.		
B	REGULATIONS	6 – 18 months (short-term)	B.1	Adoption of the tariff systems for transmission, distribution and supply of gas	ERE
			B.2	Adoption of the open season rules	ERE
			B.3	Adoption of the general conditions for gas supply	ERE
			B.4	Adoption of the quality of service rules	ERE
			<i>Milestone 2:</i> The set of regulatory related regulations entered into force.		
C	CODES	18 – 36 months (mid-term)	C.1	Adoption of the transmission grid code	TSO (upon prior approval by the ERE)
			C.2	Adoption of the capacity allocation and congestions management rules	TSO (upon prior approval by the ERE)
			C.3	Adoption of the distribution grid code	DSO (upon prior approval by the ERE)
			C.4	Adoption of the market code	MO (upon prior approval by the ERE)
			C.5	Adoption of the balancing code	TSO (upon prior approval by the ERE)
			C.6	Adoption of the hub trading code	MO (upon prior approval by the ERE)
			<i>Milestone 3:</i> The set of operatory related codes entered into force.		

10 BASIC GAS SUPPLY AND TRANSPORTATION CONTRACTUAL ARRANGEMENTS

10.1 Introduction

This Chapter addresses the gas supply and transportation relations, which are regulated by the following set of contracts/agreements:

- 1) agreement on the sale and purchase of gas between the producer and the supplier, including between any two wholesale customers,
- 2) agreement on the transportation of gas by trunk pipelines between the supplier and the gas TSO – gas transportation agreement,
- 3) agreement on the transportation of gas by distribution networks between the supplier and the gas DSO (gas distributing company) – gas distribution agreement,
- 4) agreement on the supply of gas to final customer between the supplier and the final customer (gas consumer) – gas sales agreement, and
- 5) agreements regarding economic management, use and operation of the elements of the gas transmission system between owners, gas transporting companies, and gas distributing companies – agreements on the management of the transportation and distribution systems relating to the suppliers' ownership of the transportation or distribution system assets and managerial unbundling.

The gas purchase is the most complex of all purchase/supply series of contracts, whereas the gas transportation is the most complex of series of transportation/distribution. Other contracts have similar structure, but are of less complex. Due to that reason the most complex gas purchase/supply and gas transportation agreements contents are described hereafter.

10.2 General agreement concerning the delivery and acceptance of natural gas – gas supply/purchase agreement

EFET's practices in the General Agreement

The gas purchase/sales agreement can have many different forms, and relation between parties can be regulated in more or less details. The main form of the contract used in the open markets is described next. In recent years, gas purchase and sales practices of the EFET are drafted in the '*General Agreement Concerning the Delivery and Acceptance of Natural Gas Template*' and used for the gas purchase/sales transactions. The EFET is a group of more than 100 energy trading

companies from over 27 European countries dedicated to stimulate and promote energy trading throughout Europe.

Topics of the General Agreement

The General Agreement covers the following topics: subject of agreement, definitions and construction, concluding and confirming individual contracts, primary obligations for delivery and acceptance of and payment for natural gas, primary obligations for options, delivery, measurement, transportation and risk, non-performance due to force majeure, remedies for failure to deliver or accept the contract quantity, off-spec gas, suspension of delivery or acceptance, term and termination rights, calculation of the termination amount, limitation of liability, invoicing and payment, VAT and taxes, floating prices and fall-back procedure for market disruption, guarantees and credit support, performance assurance, provision of financial statements and tangible net worth, assignment, confidentiality, representations and warranties, governing law and arbitration and miscellaneous.

Terms and definitions

The General Agreement defines all long term aspects of the contractual relations. The technical aspects of the agreement (defined terms) and aspects which are subject of regular changes (such as price elements or detailed gas sales/purchase volumes) are suggested to be defined as the General Agreement's annexes or individual contracts.

Transactions

The General Agreement governs all transactions when Parties are entering into purchase, sale, delivery and acceptance of natural gas including options on the purchase, sale, delivery and acceptance of natural gas (each such transaction being an 'individual contract'). The Parties enter into the General Agreement and into individual contracts on the understanding that all individual contracts and the General Agreement will form a single agreement between the Parties.

Use of energy units

For the use of energy units, the General Agreement defines that if the terms of an individual contract do not specify which energy units will apply, the Parties will operate such individual contract in MWh unless the Parties agree otherwise. In the General Agreement it is also said that related individual contracts may be concluded in any form of communication and will be legally binding and enforceable from the time the terms of such individual contract are concluded.

Schedule

The natural gas is contracted and delivered based on the Schedule. Schedule are all those actions necessary for transaction, which may include nominating, scheduling, matching, notifying, requesting and confirming with the other parties and the Network Operator the Contract Quantity, for each Time Unit for each Individual Contract, the Nomination and Allocation Arrangements and any applicable rules and/or procedures of the Network Operator.

Seller and buyer

The Seller will schedule and deliver, or cause to be delivered, at the delivery point the contract quantity during each time unit of the total supply period and the Buyer will schedule and accept, or cause to be accepted, at the delivery point the contract quantity during each time unit of the total supply period.

Measurement

Measurement of natural gas deliveries and receipts are defined in accordance with the Nomination and Allocation Arrangements at the Delivery Point and the

allocation statements of the relevant Network Operator. Gas quality should be within the border of agreed gas quality specification. The special attention is given to the actions related to the delivery of the off-spec gas. Seller will bear all risks associated with and will be responsible for any costs or charges imposed on or associated with scheduling, transportation and delivery of the contract quantity up to the delivery point as well as that Buyer will bear all risks associated with and will be responsible for any costs or charges imposed on or associated with scheduling, acceptance and transportation of, the contract quantity at and from the delivery point.

Failures

The General Agreement also defines remedies for failure to deliver or accept the contract quantity. It is agreed that in the event of exceeding the contract quantity, the one Party will pay another as compensation for its resulting losses an amount equal to the product of the amount, or the default quantity.

Force majeure

Moreover, special attention is given to the non-performance due to force majeure. Force majeure should be defined within the agreement and can be: natural disasters (earthquakes, floods, lighting, storms, drought, ice and other), epidemics, explosions that are not the consequence of improper and careless handling and that could not be foreseen, and which are not the consequence of the regular wear and tear of materials and equipment, war, rebellion or sabotage, cyber/internet attacks, regulatory related administrative actions, non-performance of the network operators and similar. Claiming Party will as soon as practicable after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and provide to it a bona fide non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party will use all commercially reasonable efforts to mitigate and overcome the effects of the Force Majeure. In the event that a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations will also be released. In the event, and to the extent that a Buyer's acceptance obligations are released by Force Majeure, the Seller's corresponding delivery obligations will also be released. Long term force majeure will arise if force majeure exceeds more than fifty (50) per cent of the contracted quantity during contracting period. Then the Party which is not the Claiming Party will have the right to terminate such Contract forthwith by written notice to the Claiming Party. Such termination will be without prejudice to the accrued rights and obligations of the Parties under such Contract up to the date of termination. Neither Party will have any liability whatsoever to the other in respect of the unexpired portion of the Total Supply Period under such Contract after the date of termination.

Business related obligations

Remedies related to failure to deliver or accept the contract quantity are very much important in the gas business related obligations (this relates to most commonly known 'take or pay' obligations). Related to that, following event can occur: under-delivery, under-acceptance, over-delivery and over-acceptance. In the case of under-delivery (contract quantity exceeds the delivered quantity by more than the tolerance by reason of seller's default) the Seller will pay to the Buyer an amount equal to the product of the amount at which the Buyer would be able to acquire in an arm's length purchase from a third party an equivalent quantity of gas to replace the default quantity, exceeds the contract price together with the Default Quantity price (this amount should be increased for other related reasonable expenses). In

case of under-acceptance, the Buyer should pay the Seller same amount as described above, but only for the losses incurred in the selling process of the unaccepted gas. Over-delivery implies that the seller delivers more gas than contracted. Than cost related to the buyers selling of the over-delivered gas should be reimbursed to the buyer. If under-delivery, over-delivery, under-acceptance and over-acceptance occur where there is more than one Individual Contract between the Parties in respect of a Time Unit and a Delivery Point, the Contract Quantity will be the Net Contract Quantity, the Contract Price will be the energy weighted average of the Contract Prices of the relevant Individual Contracts for that Time Unit and that Delivery Point in respect of which the Net Buyer is the Buyer and the Default Quantity will be the difference between the Net Contract Quantity and the Delivered Quantity.

Off-spec gas

The General Agreement also specifies what actions should be taken and related remedies in the event when natural gas is off-spec gas. It is said that Seller's obligation is that natural gas delivered at the delivery point conforms to the transportation requirements. As soon as reasonably practicable after the Seller becomes aware that natural gas which is being delivered at the delivery point, or which is about to be delivered, is off-spec gas, it will serve notice of that fact on the Buyer, specifying the nature and extent of the non-conformity with the transportation requirements, and the cause and probable duration of the non-conformity as well as take such steps as are reasonably practicable to procure that natural gas which conforms with the transportation requirements is made available as soon as reasonably practicable. The Seller will keep the Buyer fully informed in relation to the problem and the steps being taken to remedy it. If the Buyer becomes aware that natural gas which is being delivered at the delivery point is off-spec gas, before it receives notice from the Seller, it will notify the Seller of that fact and of any information available to it as to the nature, extent and cause of the non-conformity. Any non-delivery due to the off-spec gas will constitute an under-delivery due to Seller's Default. Any losses that may occur at the buyer side related to the off-spec gas will be reimbursed to the Buyer in accordance to the under-delivery provisions.

Payment

The General Agreement's provisions are very strict related to the payment that are due to the Agreement: should a Party default on any payment that is due under the Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Credit Support Document or any Performance Assurance as required pursuant to the Agreement, the Non-Defaulting Party will be entitled, no earlier than three (3) Business Days after sending a written notice to the Defaulting Party immediately to cease further delivery or acceptance of Natural Gas. the Non-Defaulting Party will have the right to withhold payments owed by it to the Defaulting Party under the Agreement in each case until such time as the Non-Defaulting Party, has received either the required Credit Support Document or Performance Assurance or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Non-Defaulting Party.

Entry into force

The General Agreement will come into force as of the effective date and will terminate on the expiration date and 30 day termination notice (ordinary termination) or by termination for material reason (early termination). In the event of ordinary termination, the General Agreement will remain legally binding on the

Parties until, but only in respect of, all rights and obligations already created or existing under the Agreement prior to the date of the ordinary termination are fully performed by both Parties. If a material reason with respect to a Party has occurred and is continuing, the other Party may terminate the Agreement by giving the other Party notice. Reason for early termination are usually defined as non-performance, cross default and acceleration (payment/credit support related issues), winding-up/insolvency/attachment (insolvency, bankruptcy or similar), failure to deliver or accept and representation or warranty.

Termination amount

Moreover, the General Agreement also provides the calculation of the termination amount. It is said that the terminating Party will calculate an amount to be paid by calculating the sum (whether positive or negative) of all settlement amounts for all individual contracts and taking account of any or all other amounts payable between the Parties under or in connection with the Agreement. If the termination amount is negative, an amount equal to the absolute value of the termination amount will be payable to the terminating Party by the other Party. If the termination amount is positive, an amount equal to the termination amount will be payable by the terminating Party to the other Party.

Limitation of liability

Regarding limitation of liability, it is stated that a Party and its employees, officers, contractors and/or agents, will not be liable to the other Party for any loss, cost, expense or damages incurred by the other Party under or in connection with the Agreement, except in under payment related provisions of the agreement and in amounts payable where such damages are due to the negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under the Agreement.

Invoicing and payment

Invoicing and payment are also described in details in the Agreement. Each Party who is a Seller of natural gas in an individual contract will transmit to the other Party in the course of the calendar month following delivery of natural gas under individual contract(s) for the previous month an invoice setting forth the total quantities of natural gas that were sold by it under each individual contract in the previous calendar month (invoice should include all other costs related to the failure to deliver or accept, off-spec gas and similar). It is also stated that a Party owing an invoiced amount will pay, by wire transfer in freely available funds, the amount set forth on such invoice to the payment address or bank account provided by the other Party on or before the later to occur of the 20th day of the calendar month or if not a business day the immediately following business day or the 10th day following receipt of an invoice. Late payments will accrue interest.

Tax

There is emphasized that all amounts referred to in the General Agreement are exclusive of VAT and other taxes in the agreement. The VAT and other taxes treatment of the supply of Natural Gas under an Individual Contract will be determined pursuant to the laws of the jurisdiction where a taxable transaction is deemed to take place. If VAT or other taxes are payable on any such amounts, the Buyer will pay to the Seller an amount equal to the VAT and other taxes at the rate applicable from time to time; provided that such amount will only be required to be paid once the Seller provides the Buyer with a valid VAT and other taxes invoice (applicable in the jurisdiction of supply) in relation to that amount. VAT and other taxes related issues should be detailed in the agreements.

<i>Market disruption</i>	The General Agreement also refers to the floating prices and fall-back procedure for market disruption. In the event the contract price is based on an index, exchange or any other kind of variable reference price the contract price will be determined on the settlement date at the settlement price as specified in the applicable individual contract. The settlement price will be determined in accordance with the calculation method on the calculation date as specified in the individual contract. The calculation date is the date specified as such in the individual contract on which the settlement price for the specific delivery is determined. The calculation agent will provide prompt notice of the settlement price determined as well as the amount to be paid on the due date. Upon the occurrence of a market disruption event, the calculation agent will determine an alternative price to which the relevant individual contract will be settled according to the applicable fall-back mechanism.
<i>Performance assurance</i>	Performance assurance is very important part of this agreement. It should be described in details. Regarding confidentiality obligation, the General Agreement states that neither Party will disclose the terms of an individual contract to a third party.
<i>Governing law and arbitration</i>	At the end of the General Agreement the representations and warranties are explained as well as option A and option B regarding governing law and arbitration (governing law and arbitration courts are usually either German or English). In the miscellaneous regulation of this Agreement some other important items such as recording telephone conversations, notices and communications, amendments, partial invalidity and third party rights are defined.

10.3 Gas transportation agreements

<i>Complexity</i>	The complexity of the gas transportation agreement will very much depend on level of the development of the gas market regulations, and on the position of the transportation pipeline within the open and regulated market. Where the markets are fully open and regulated, the contract will define only mayor contractual obligations related to parties involved, basic payment related information and contact information and rules. All other technical, organizational and price related rules are defined within the tariff system, general rules for transmission system use, market rules and network code. All this rules and regulations are defined as the integral part of the gas transportation agreement. Agreement template, and all rules and regulations should be publically available: all with the final purpose of achieving non-discriminatory access condition for all users of the gas transmission system. Appendix to the agreements are usually Facilities, the Delivery Point and the Input Point, Measurement, the Reserved Capacity tables, the Input Point Specification and the Delivery Point Specification and Principles of the Pipeline System Rules. Where gas markets are not fully open and regulated, or exemptions related to the implementation of the prescribed rules is granted, gas transportation agreement is more detailed.
<i>Topics of the agreement</i>	The agreement should cover the following topics: definitions and interpretation, duration, start date and conditions, obligations, facilities, capacity reservation, commissioning gas, initial and replacement line-fill gas, fuel gas, title and risk,

taxes, ship or pay, make up gas, tariff, invoicing and payment, nominations and deliveries, lost gas, quality and off-specification gas, measurement, maintenance, force majeure, liabilities and limitations, transfers and control, termination, confidentiality, arbitration, expert determination, insurance, notices, warranties and representations, representatives, general, pipeline system rules, applicable law and process. This will be accompanied with the several appendix (schedules) detailing technical and nontechnical issues related the facilities, the delivery point and the input point, measurement, the reserved capacity sheets, the input point specification and the delivery point specification and principles of the pipeline system rules.

<i>Definitions</i>	Definitions and interpretation part of the contract gives detailed definition for the terminology used in the contract.
<i>Conditions</i>	The conditions relate to the duration of the agreement, the procedures that will lead to start of the transportation services and related conditions are defined under the duration, start date and conditions provisions of the contract. The detailed obligation of the Transporter related to the Shipper are defined at this part of the agreement provisions. All definitions related to the necessary approvals to conduct transportation services or approvals to do shipping are defined here too.
<i>Facility</i>	Facility related part of the agreement deals with the technical and nontechnical part of the agreement implementation facilities. Technical facilities are transportation facilities and related obligation of the transporter and shipper related to the repair and operation are described here. Nontechnical facilities are the contact persons and obligations related to sharing information and are also described here. Provisions related to the access to facilities, input points and delivery point related issues (such as requests and related obligations for new input or delivery point) should also be defined here.
<i>Reserved capacity</i>	Reserved capacity provisions deals with the process of the capacity reservation, use of the reserved capacity (conditions related to shippers use of capacity or transporters use of the capacity if it is not fully utilized), reserved capacity reduction conditions (procedures related to capacity reduction notice) and related restrictions. This part of the agreement also deals with the procedures and conditions related to the capacity reductions priorities.
<i>Commissioning gas</i>	Commissioning gas and initial and replacement line-fill gas provisions details obligations of the Shipper to deliver the gas required during the commissioning period of the transmission facilities. It is common that no tariff is payable for the delivery of such gas, and transporters payment obligations are also defined here. The commissioning gas will be transferred to the transporter, while line-fill gas will stay in the shipper ownership. Custody and risk of loss for line-fill gas is transferred to the transporter with all responsibilities and costs that may arise from that.
<i>Fuel gas</i>	Gas transporter can use, depending on the number of the compressor stations and other facilities, bigger or smaller quantities of gas – fuel gas. Relations regarding delivery and payment of fuel gas are defined within the Fuel gas provisions of the agreement.

<i>Title of gas</i>	Title of the gas to be transported will remain with the shipper whilst gas is within the pipeline. Custody of and the risk of loss of all quantities of gas to be transported will transfer to the transporter whilst gas is within the pipeline.
<i>Tax</i>	Agreement stipulates that all taxes related to the use of the pipeline will be paid either by the shipper or the transporter. The shipper related taxes obligation in general stays with the shipper, while at the same time transporter can transfer taxes to the shipper if such liability incurs in respect of shipper actions. Shipper pays taxes related to the transportation tariff, while transporter pays taxes related to the fuel gas, commissioning gas or any other transaction payable by the transporter to the shipper.
<i>Ship or pay</i>	The ship or pay related provisions of the contract defines that almost all of the reserved capacity should be paid. Certain small percentage of the adjusted contracted capacity (reserved capacity corrected for the force majeure or similar situation quantities of gas not delivered by the shipper or transporter) (10-20 percent) should not have to be paid.
<i>Make up gas</i>	Make up gas provisions should be defined in details. Make up right is an option that can be achieved through provision that the ship or pay payment made in one year (for capacity booked but not used) should lead to the discount of a tariff or adjustment to the ship or pay obligation for the next year. Interest of the shipper is to have big, but of the transporter is to have small make up gas option.
<i>Tariff calculation</i>	The tariff can be calculated based on the capacity, volume/energy or combination of the capacity and volume/energy booking. All related to the tariff will be in details described within the tariff related provisions of the contract (in case where the pipeline is exempt from the regulatory obligations) or reference to the applicable tariff regime should be made here. Shipper may require tariff equivalence provisions, where it is stipulated that if transporter agrees a tariff with any shipper which is lower than the contract tariff then, for each day in which such lower tariff is in effect, the transporter will ensure that the shipper also receives the benefit of the lower tariff.
<i>Tariff payment</i>	Tariff are usually paid on the monthly bases based on the monthly statement prepared by transporter where very detailed tariff calculation should be prepared. At the end of each year the transporter is obliged to prepare annual reconciliation statement with detailed tariff calculation on the yearly bases. The timely manner of payments, currency, and bank accounts and similar should be also defined within the Tariff provisions of the agreement. The shipper may set-off any payment that are owned by the transporter to the shipper but not more than certain monthly payment amount (defined in percentage). If shipper fails to make payment, then interest may be calculated and billed. If the un-payment continues up to the threshold amount than transporter may notice shipment of its intention to suspend or terminate the transportation agreement. Shipper may require and transporter should produce any necessary reasonable evidence to verify the invoice, statement or computation. For the inaccuracy in any previous invoice, the adjustment invoice with interest from the day when inaccuracy arose should be prepared and paid. Disputed amounts should be analysed and governed by the resolution of the appointed third party Expert.

<i>Nominations</i>	<p>Very detailed provisions related to the nominations should be presented in the contract. Nominations are the bases of the invoicing and tariff calculation.</p> <p>Nominations provisions deals with the nominated quantity, daily notices, variation notices, good faith nominations, daily, weekly and monthly estimates, service and format of notices, transporter inability to deliver gas within the nomination period, shipper inability to deliver or to take delivery of gas within the nominated period and similar.</p>
<i>Liability</i>	<p>The transporter liability for lost gas, its definition, price and payment are defined within the lost gas provisions of the contract.</p>
<i>Off-spec gas</i>	<p>Detailed provisions deals with the quality and the off-specification gas. Detailed provisions will deal with specification of the gas and pipeline input and delivery point pressure, commingling of the gas in the pipeline, notices and necessary actions related to the input and delivery point of the off-specification gas, refusal to take delivery of input point and delivery point off-specification gas, knowingly and unknowingly taking delivery of input point or delivery point off-specification gas, delivery of gas in comingled stream and expert determination.</p>
<i>Measurement</i>	<p>Measurement are very important part of any transmission agreement. All technical (equipment and similar) and nontechnical (procedures and similar) aspects of measurement related issues are due to its complexity usually annex to the main transportation agreement.</p>
<i>Maintenance</i>	<p>To enable the maintenance of the transporter's and the shipper's facilities maintenance procedures are also defined. Each party usually have the right to give notice of a reduction to the reserved capacity (the Maintenance RC Reduction) in respect of certain maintenance days during the next contract Year. Maintenance related provisions details the contents and the procedures related to the maintenance notification, maximum maintenance related capacity reduction, and consequences related to the scheduled maintenance.</p>
<i>Force majeure</i>	<p>Force majeure is any event or circumstance which prevents, impedes or delays the performance by the transporter or shipper of any covenant or obligation related to the agreement which are otherwise validly claimed. The very detailed definition of force majeure event, force majeure event exclusions (events or circumstances that will not constitute a force majeure event), third parties, relief for a force majeure event, force majeure estimates, content of force majeure estimates, expert related to force majeure determination and similar are defined here.</p>
<i>Liability</i>	<p>If breach of the agreement occurs, the liability should be paid. The limit of the total aggregate liability should be defined. Resulting consequential losses should be not paid. The limitations and exclusions do not apply for the obligations related to the tariff payments or other payments related to the normal activities of the shipper or transporter. Liability should be paid for shipper or transporters property and personnel loss or damage and for the third party losses. The conduct of claims is also defined in details.</p>
<i>Transfer of rights</i>	<p>The contract defines that parties will not transfer, cede, assign or otherwise divest any of its rights, interests, covenants or obligations (in whole or in part) and defines</p>

which rights can be transferred to the third party and prescribes procedures how to do that. The contract defines how to conduct financing transfers or how to transfer some of the obligations related to the contract to the third party.

<i>Termination</i>	Provision of the agreement related to termination stipulate the conditions related to the termination upon the first to occur. Termination for an act of insolvency, accumulated lost gas, prolonged force majeure and abandonment of the pipeline are defined in more details. The post termination consequences and actions should be defined too.
<i>Confidentiality</i>	The contract should define what information should be deemed as confidential and duration of the confidentiality, or the way to make any public statement or announcement regarding the agreement. The contract should also define permitted disclosures.
<i>Dispute</i>	Any dispute arising between the Parties which is not a dispute which will be determined by an Expert will (unless the Parties otherwise agree in writing) be finally resolved by arbitration conducted in accordance with the UNCITRAL Rules in force at the time such arbitration is commenced. Commencement of arbitration, procedures for the appointment of arbitrators, conflicting interest of appointed arbitrator, disqualification to act as an arbitrator, the arbitration award and similar are defined too. Some disputes within the parties can be referred to an Expert for determination. Procedures related to the determination and appointment of an expert, who can be an expert, appointment of a replacement expert, conflicting interests and disqualification to act as an expert are defined in this part of the contract.
<i>Insurances</i>	The insurances that should be effected by the transporter and the shipper should be defined by the contract. The method of giving notices, confirmation and receipt of the notices are also described in the contract in details.
<i>Warrants</i>	The contract defines transporter warrants and represents to the shipper and shipper warrants and represents to the transporter. The date and duration of warranties and representations and notice regarding warranties and representations and actions related to the breach of warranty are defined.
<i>Nominations</i>	The representative of the transporter or the shipper should be nominated to deal with the giving and receiving of all nominations, notices, statements and information required in accordance with agreement, performance of the responsibilities of the transporter or shipper in accordance with measurement and other purposes as the transporter or shipper may give notice to the other side. Any notices are valid only if it are given to or from the assigned representative.
<i>Rules</i>	Transporter is obliged to issue and execute the pipeline system rules. Upon the appointment of the pipeline system rules the provision of the agreements related to the nominations and deliveries, measurement, the input point specification and the delivery point specification, and principles of the pipeline system rules will cease to apply and will have no further effect.

Applicable law and jurisdiction

Applicable law and jurisdiction should be defined, together with the nomination of the agent to deal with the legal process.

Other

Under the general part of the agreement the issues related to the amendment, waiver and exercise, severability, waiver of sovereign immunity, rounding, disclaimer of agency, further assurances, exclusion of implied terms, language, and costs should be detailed.

10.4 Conclusions

The gas purchase and the gas transportation agreements (the most complex of all purchase/supply and transportation/distribution series of contracts) are reviewed thoroughly in this Chapter. The most important contracting related processes related to gas supply and transportation are presented and explained here. Materials addressed present a well-founded basis for future contractual activities and arrangements that will take place in Albania.

11 ASSESSMENT AND EVALUATION OF THE EXISTING INSTITUTIONAL FRAMEWORK

11.1 Introduction

This Chapter deals with the existing institutional and organisation framework in the natural gas sector and explains the extent to which the development of gas infrastructure relies on the expertise of the Albanian institutions. They have already made the first steps in relation to the development of the TAP project in Albania. Considering the importance of that project for further development of the gas market in Albania and its integration into the EU gas market, the Albanian institutions need to focus on the actual implementation which relies on their capacity and strength. In particular, the ERE's significance is emphasized in the beginning since it is responsible for developing most of the secondary legislation, handling licensing procedures, setting tariffs, and monitoring the process.

11.2 Institutional and Organisational Framework

The State's strategic role

The institutional and organisational framework in Albania is based on the legal and regulatory one, following the State's proclamation to retain an important strategic role of being: 1) the bearer of the energy policy, 2) the regulator of the sector, and 3) the owner of the strategic share in terms of energy infrastructure.

Institutions/agencies

In that context, the responsibility for various aspects of the natural gas sector is split amongst a number of different public institutions/agencies with a direct and indirect impact on its development:

- › *National Assembly of Albania.* Conducts the legislative process that consists in the approval of the laws and the approximation of Albanian legislation with the EU acquis. Oversees the activity of the GoA and of ministers in particular. Oversees not only the executive institutions, but also the constitutional ones or the ones created by it pursuant to the law, in order to monitor the enforcement of the legal framework. Approves the members of the ERE Board and the organisational chart;
- › *President of Albania.* Declares all primary legislation, investors' agreement approved by the NAOA or international treaties ratified by the NAOA. Has a right to exercise a veto on a bill, whenever he/she does not agree, and only once for a particular bill;
- › *Government of Albania.* Defines the principal direction of the general state policy and of specific strategies, such as the Energy Development Strategy. Defines the rules on the terms and conditions for granting permits to construct and operate natural gas system pipelines and infrastructure. Approves special permit for the construction and operation of natural gas pipeline infrastructure for the transmission and distribution of natural gas, natural gas storage facilities, direct lines and

interconnection lines with neighbouring systems. Administers the petroleum sub-sector and takes care of production sharing agreements;

- › *Ministry of Energy and Industry.* Drafts the policies applying to the development of the gas sector in compliance with requirements set forth in the EnC Treaty and objectives set in the National Plan of Implementation of the Stabilization and Association. Approves new Natural Gas Infrastructures Plans. Issues temporary authorisation for construction permits of new gas infrastructure. Designs technical and safety rules and proposes them to the GoA for adoption. Plays a crucial role in the harmonization with the EU standards and regulations in the gas sector and for the inter-operability of Albanian natural gas systems;
- › *Other Ministries.* Fulfil duties and issue orders relating to the natural gas sector to implement the National Strategies (Energy Development Strategy, National Plan of Implementation of the Stabilization and Association etc.). Provide opinions, comments and/or suggestions, and recommendations on the issues of the natural gas sector. The environmental permits are issued by the Ministry of Environment and National Licensing Centre;
- › *Energy Regulatory Entity.* Adopts and issues rules and regulations required to fulfil obligations under the Law on Natural Gas Sector of 2015. Issues licenses for the operation in the natural gas activities. Sets tariffs and prices pursuant to the terms under the Law on Natural Gas Sector of 2015. Monitors, controls and enforces compliance with terms from the laws and licenses. Ensures consumer protection with respect to tariffs;
- › *Albpetrol SH.A.* Has the exclusive rights, as the State-owned company, for the development of all oil and gas fields under its management. Signs contracts with organisations and persons according to the laws and regulations. Involved in production and supply of natural gas. Owns all gas infrastructures in Albania, i.e. cca. 500 km of pipelines, which are mostly not operational or partially missing. Has Hydrocarbon Agreements with a number of companies, including PHOENIX Petroleum which is operating existing gas fields. Licensed by the ERE (since 22 August 2012) to perform transmission and distribution activities in the area where it owns the pipelines. Operates currently only some 10 km of transmission and distribution networks, supplying small entrepreneurs and households in the areas of Kucova and Patos-Marinez;
- › *National Agency of Natural Resources.* Drafts the strategy in the energy sector, monitors its implementation, plans the needs for energy in the future, issues recommendations, as well as implements policies of the GoA in the field of minerals, petroleum and hydro-energy. Negotiates and signs production sharing agreements. Consults, proposes and cooperates with relevant governmental structures to design its policies in the field of hydrocarbons;

- › *National Technical and Industrial Inspectorate.* Monitors the natural gas activities and technical safety in the design, construction, and the use of various types of gas infrastructure;
- › *Province and Municipal Authorities.* Fulfil duties and issue orders regarding gas investments within the geographical area of the authority;
- › *Other organisations/institutions.* Civil society organizations and cultural institutions play a role in the gas sector through advocacy, mobilization and dialogue with communities.

Dominant institutions and agencies

The majority of duties and responsibilities in the natural gas sector is distributed between the GoA, the MoEI, the AKBN, the ERE, and Albpetrol SH.A as the gas TSO and the gas DSO. These are briefly reviewed hereafter.

GoA

The GoA is the main responsible institution for the preparation of a national oil and gas policy as well as petroleum administration and production sharing agreements. On 25 August 2010, the GoA adopted the Decision No. 713 'On defining the rules on the terms and conditions for granting permits to construct and operate natural gas system pipeline and infrastructure'. This decision sets out the rules, procedures and criteria for the application, assessment and granting of permits for the construction and use of pipelines and the respective infrastructure for the transmission and distribution of natural gas. The construction and operation of the natural gas pipeline infrastructure for transmission and distribution of natural gas, the natural gas storage facilities, the direct pipelines and interconnection pipelines with neighbouring systems is subject to a special permit by the GoA. The special permit is granted for a period of thirty years, renewable upon agreement of the signing parties.

MoEI

The MoEI is vested with powers to draft the policies related to the development of the natural gas sector to ensure a safe and consistent development of the gas sector with requirements set forth in the EnC Treaty and objectives set in the National Plan of Implementation of the Stabilization and Association. It establishes policies and plans to ensure a sustainable development of the natural gas sector. It develops policies on implementation of natural gas objectives and policies, encouragement of investments in the natural gas sector as well as environmental protection measures. The MoEI has a crucial role in the harmonization with the EU standards and regulations in the natural gas sector, particularly for the inter-operability of Albanian natural gas systems. In response to governmental changes of mid-September 2013, the MoEI has been re-organized. The Hydrocarbons Policy and Development Directorate has been established, with a special unit (sector) for the natural gas sector – the Policies and Development Gas Sector. The main responsibilities of this new Directorate are to propose acts to the GoA (including on the conditions and manner of gas supply), regulate the conditions for issuance of energy permits, energy licences and environmental permits, and design and prepare technical rules. It also has a central role in environmental protection (however, the environmental permits are issued by the Ministry of Environment and National Licensing Centre).

AKBN

The AKBN was established in accordance with the GoA's Decision²⁹. The AKBN is the outcome of the merge of the former National Agency of Petroleum and the Institute for Extraction and Processing of Minerals. It is a sub-institution with direct dependence on the MoEI. It serves as a specialized body for drafting the strategic policies, monitors its implementation, plans the State's needs for energy in the future, issues recommendations, as well as implements the GoA's policies in the field of minerals, petroleum and hydro-energy. All natural gas deposits existing in their natural condition within the jurisdiction of Albania, including maritime areas, are the exclusive property of the Albanian State. The ownership of the natural gas is transferred to the producer through a Production Sharing Agreement with the MoEI, which is represented by the AKBN. The AKBN's main responsibilities include, inter alia: consulting, proposing and cooperating with relevant governmental structures to design its policies in the field of hydrocarbons; negotiating of a Production Sharing Agreement under the legislation in force; auditing expenditures made by companies pursuant to a Production Sharing Agreement; and preparing the documentation and practices necessary for the issuance of permits, licences and authorizations.

ERE

The ERE is an independent public legal entity vested by the law with the power to determine regulatory policies governing activities in the field of natural gas. According to the Law on Natural Gas Sector of 2015, the ERE also sets obligations related to public services, defines the stages of market opening, defines requirements to be met in order to obtain the status of eligible customer and defines the general terms of supply, including establishment of transparent general contractual terms.

Albpetrol SH.A

Albpetrol SH.A is the State-owned company in Albania. It is entitled to handle the GoA's commercial interests in the natural gas sector, e.g. the State's participation in licensing and marketing the country's share of oil and gas production received in kind. Although this will become more relevant when production begins, the period before production shall be used to build capacities in order to be able to play the role when production will start. The specific roles of Albpetrol SH.A include: the management of the business aspects of the State's participation, development of expertise in the oil and gas industry, optimization of its shareholders value, as well as investigation and proposals for new upstream, midstream and downstream ventures initially locally and later internationally. Albpetrol SH.A operates exclusively in some areas, conducting hydrocarbon operations in those areas, like crude oil and gas production. It has signed 7 petroleum agreements with three companies (Bankers Petroleum Albania Ltd, Stream Oil & Gas Ltd, and Visoka Oil Corporation). The Privatization Law³⁰ states that 100% of the capital shares of Albpetrol SH.A are offered to the strategic investors, which are specialized oil and gas companies. The selling of shares will be realized through an opened procedure. As foreseen in the aforementioned Privatisation Law, Albpetrol SH.A will have the exclusivity of giving the permit for the exploring of new gas and oil wells even after privatisation in the Albania territory. Albpetrol SH.A is licensed to

²⁹ *Decision on the establishment of National Agency of Natural Resources*, The Council of Ministers, No. 547 dated 9 August 2006

³⁰ *Privatization Law on determining the form and structure of the privatization formula of the company Albpetrol SH.A*, No.10490 dated 15 December 2011

perform the activities of transmission and distribution for a period of 30 years. As the privatisation process failed, Albpetrol SH.A remained a State-owned company.

DSO(s) At this moment, apart from Albpetrol SH.A, no other specific gas undertakings are recognised as the most promising candidates for the gas DSO(s) which would develop natural gas distribution network(s) in Albania. However, it is necessary to ensure all institutional, legal and regulatory prerequisites in order to have the gas DSO(s) properly unbundled and licensed before the ERE too. The gas DSO(s) will enable the gasification (via distribution gas pipelines to end users) in accordance with the Energy Development Strategy, following the principles of the development of a competitive gas market.

PS, SSO and OLNGF Furthermore, at this moment, no specific gas undertakings are recognised as the most promising candidates for the gas PS, the gas SSO nor the OLNGF too.

Combined operator Under the new gas related law, it is made possible that the management of the transmission system, distribution system(s), LNG (and LPG) facilities, and storage system may be performed by one operator being called the combined system operator. Such combined operator shall be subject to conditions related to its independence with regard to performing the activities of production and sale/trade.

11.3 Institutional and Organisational Assessment

Aim The following analysis points out to the necessity to establish the gas market and cooperate with neighbouring countries. It aims to offer an assessment of the institutions and organisation in the natural gas sector in order to support a consistently harmonised and investment-friendly legal and regulatory framework with the final scope to provide the maximum benefits to the final customers.

Strengthening of the natural gas sector All institutions and entities which deal with the policy, regulation and operation of the natural gas sector in Albania need to be significantly strengthened with human resource capacity, since it is assessed being currently at a level inadequate for making a significant step forward in terms of development of new infrastructure (however, due to practical lack of significant operational gas infrastructure in the country nowadays). The strengthening of institutional capacity is of immediate concern. The objective is to develop knowledge and skills within the MoEI (which has only recently established a gas sector), the ERE (which does not have a gas sector established and has only one expert directly relevant for natural gas) and the gas TSO (Albpetrol SH.A, which is just about now to start establishing a gas unit despite the fact that it has licences for gas transmission and distribution since 2012, that are subject to obligations related to accounting, legal and functional unbundling since 2008) relating to the two main frameworks – the legal and regulatory and the institutional and organisational ones.

Competences of the MoEI and ERE Albania has the corresponding ministry responsible for energy (the MoEI) and the independent NRA (the ERE). The two derived their competences firstly from the Law on Natural Gas Sector of 2008 transposing the SEP, and secondly from the Law on Natural Gas Sector of 2015 transposing the TEP. As Directive 2009/73/EC from the TEP has become mandatory in Albania from 1 January 2015, the Law on

Natural Gas Sector of 2015 transposed the new provisions with respect to the full scope of the ERE's authorities.

Duties of the gas TSO and DSO(s)

Duties of the gas TSO and the gas DSO were firstly defined in the Law on Natural Gas Sector of 2008 and secondly expanded in the Law on Natural Gas Sector of 2015 to include provisions of the TEP. However, since 22 August 2012 when the two licences were granted by the ERE to Albpetrol SH.A no further regulations have been adopted in that direction. The gas TSO (Albpetrol SH.A) has been licenced by the GoA's decision, but it awaits further development along the requirements of the TEP. It needs to be properly unbundled, and then certified and licensed by the ERE before the GoA/MoEI can designate it as the gas TSO. Similar is valid for the gas DSO.

Further development of competences

The competence of the MoEI, the ERE and the gas TSO (Albpetrol SH.A) shall be built by further training to this purpose. The Energy Development Strategy will need to define concrete duties to be realised by specific institutions in the country. Development of knowledge and skills within these institutions, authorities and operators with respect to development of the gas system is a major aspect of the technical assistance being provided.

11.3.1 MoEI Assessment

Significance of the MoEI

The new gas related law has defined the MoEI as the highest institution for making of development policies in the natural gas sector. It is put in charge of drafting and updating the Energy Development Strategy, as approved by the GoA. The MoEI is also accountable for collecting and analysing data for and information on the balance of energy at the national level, including the natural gas sector. Moreover, it is the leading institution when it comes to the plans in the natural gas sector too. The MoEI is established as the competent body for proposing the Emergency (Security of Natural Gas Supply) Plan to the GoA for adoption and for the potential investments in the country.

Competences of the MoEI

Pursuant to the Regulation on the organization and functioning of the MoEI, the MoEI's main tasks in the natural gas sector are the following:

- › To cooperate with the relevant state agencies towards an efficient monitoring of the production of oil and gas aiming to increase the state revenues;
- › To cooperate with the State Inspection Authority towards the development of the oil and liquid gas market to assure quality standards similar to those applied in European countries;
- › To prepare the incentive measures promoting efficient use of the gas for the industry, services and household purposes;
- › To provide support for the construction of the TAP gas pipeline and the likely construction of the gas distribution network;

- › To organise and coordinate the work on the preparation and implementation of the privatization policies of the state owned companies operating in strategic sectors i.e. power, oil and gas, mining and non-food light industry;
- › To establish the ad hoc commission to review and assess the applications for the construction of new generation facilities, etc.

Organisational autonomy of the MoEI

The scope and the mission of the MoEI, as well as the governmental agencies which are subordinated to the MoEI, are established under the Decision of the Council of Ministers N. 833, dated 18.9.2013, entitled as “Defining the competences and the state responsibilities of the MoEI as amended by the DCM N. 840, dated 27.9.2013, “On an amendment to the Decision of Council of Ministers N. 833, dated 18.9.2013 “Defining the competences and the state responsibilities of the MoEI”. The internal procedures, as well as the allocation of responsibilities and tasks, are defined in the Internal Regulation of the MoEI which is approved by the Minister. The rights and the obligation of the civil servants are governed by the Law N. 152/2013 entitled as “On Civil Servant“. Recruitment is a prerogative of the Minister based on the needs that the MoEI might have. The level of the salaries in Albania is established by the law. The Council of Ministers is entitled to approve the structure and the level of salaries for all subordinated government agencies (Law N. 10 405, dated 24.3.2011, entitled as “On the powers for defining the salaries and remunerations“).

Organisational structure of the MoEI

The organisational chart of the MoEI (Figure below) shows that there is a unit under a Department (Directorate) of Policies and Development of Hydrocarbons solely dedicated to the natural gas sector where the gas issues are dealt with by the Head of Sector (who is an engineer for oil and gas) and two more specialists (one is a lawyer and another one has an economics background). The MoEI has already developed a detailed Rulebook on organisation and systematisation of jobs. The scope of work (job description) for each of the employee individually and at the department level is well described in the Rulebook.

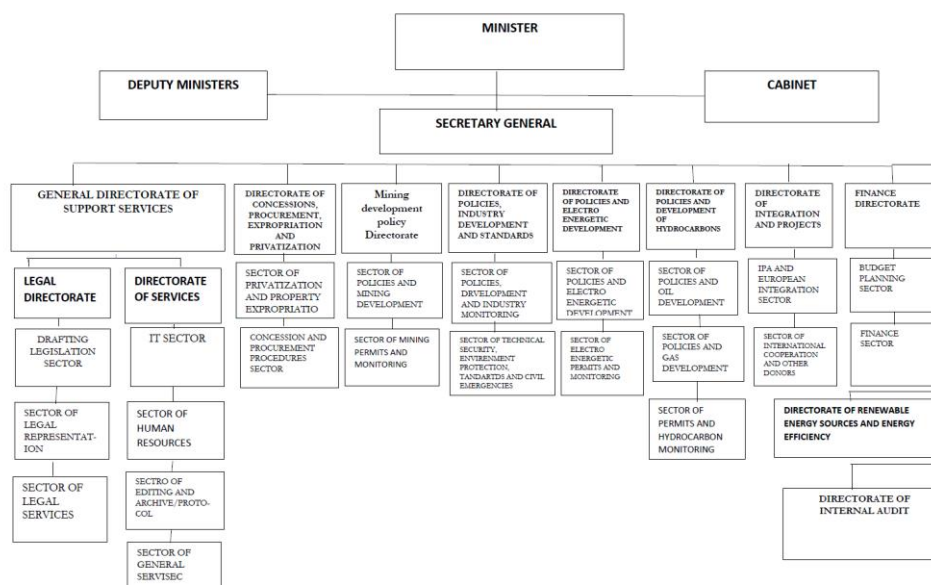


Figure 1 The MoEI's organisational chart

The MoEI's unit for the natural gas sector

The MoEI's unit for the natural gas sector needs to support achieving the Energy Development Strategy objectives and priorities in the natural gas sector together with the development plan. Generally, the unit should minimise the State's exposure to risks, negotiate with the private sector, analyse the gas demand and supply needs, and adopt proper incentive mechanism to promote investments.

Having adequate number of staff within the unit is a prerequisite for development and adoption of the policies, plans, balances, rules, reports, etc. This will help the implementation process and reconciliation of various priorities and commitments. Number of staff of the unit will need to grow up along with and in proportion to the tasks undertaken in the natural gas sector.

In addition, there is also an ad hoc structure which deals with the TAP project. This structure is established through the Decision of the Council of Ministers N.1081, dated 18.12.2013, amended and it is denominated "the Inter-institutional commission on the coordination of works for the implementation of Trans Adriatic Pipeline". This commission is chaired by the Minister of Energy and Industry. The structure is assisted by the Technical Secretariat as established by the Order of Minister N. 158, dated 03.04.2014. Also, the MoEI has established an ad hoc structure outside itself, assisting the Hydrocarbons & Expropriation Directorates in permits and expropriation applications of the TAP. There are 6 people employed with this structure, which are not civil servants but have a temporary contract.

Indicative tasks

The MoEI's unit for the natural gas sector should carry out the following indicative tasks:

- › Define the mission of the MoEI in the natural gas sector (the development plan) presenting its operational responsibilities, structures and subordinated institutions; and
- › Identify, reconcile and prioritise in terms of implementation the commitments of the MoEI and its subordinated institutions in line with the Energy Development Strategy and other related GoA's policies.

Considering the MoEI's duties, these indicative tasks should be divided in the following:

Capacity assessment

- › To assess management and human resources, decision making, process and communication, and budgetary planning;

Analysis of the external environment and its impact

- › To analyse the institutions at national and local level, which have a direct or indirect influence in the implementation of the Energy Development Strategy in the natural gas sector;

Strategic objectives, mid-term priorities and priority measures

- › To fulfil the most important medium- and long-term tasks of the MoEI, concrete projects and initiatives, which the MoEI will implement in order to proceed to the implementation of the priorities and objectives in the natural gas sector;

<i>Directions of activity</i>	<ul style="list-style-type: none"> › To define the overall and specific objectives for each area of the gas policy which is led by the MoEI; and
<i>Monitoring and evaluation</i>	<ul style="list-style-type: none"> › To evaluate and report on the implementation of the natural gas sector related tasks defined in the Energy Development Strategy, including any of its implementation plans. To recognise achievements and failures in the assessment of the implementation.
<i>Duties of the PG and PIU</i>	<p>The most important step is linked with the establishment of the Planning Group and the Project Implementation Unit that will be in charge for the elaboration of the development plan and have the following duties:</p> <ul style="list-style-type: none"> › Analyse and describe overall and specific areas that will be covered by the development plan; › Identify the priorities and commitments that will be implemented by the MoEI and other institutions; › Take the necessary measures for the addressing the identified gaps; and › Draft, consult and finalise the development plan.
<i>Composition of the PG</i>	<p>Considering the importance of the duties to be performed by the Planning Group, it shall be attended by:</p> <ul style="list-style-type: none"> › Minister/Deputy Minister/General Director, responsible for the energy sector; › Heads of general divisions/Heads of divisions and/or sections; › Civil servants in charge of the budget elaboration of the MoEI; and › Heads of enterprises, institutions and organisations involved in the energy sector.
<i>The PG's administrative resources</i>	<p>For the organisation of the Planning Group's meetings and elaboration of the agenda, it is necessary that one of the MoEI's sections is tasked with providing administrative resources to the Planning Group.</p>
<i>Importance of coordination</i>	<p>Finalisation of the development plan will require a coordinated effort of all included parties according to their specific tasks. The development plan should be elaborated having in mind the introduction of the gas market as defined by the EnC Treaty and EU Directives and Regulations in the natural gas sector.</p>
<i>Significance of the ERE</i>	<h3>11.3.2 ERE Assessment</h3> <p>The ERE regulates the activities performed in the natural gas sector (except for the activity of natural gas exploration and production), in compliance with the principles of transparency, efficiency, non-discrimination and relevant international standards</p>

(arising from the EnC Treaty). It has the most direct impact on the development of the natural gas sector in Albania. According to the Law on Natural Gas Sector of 2015, the activities in the natural gas sector shall be performed under its monitoring and control. The main gas players shall perform the activities in line with the primary legislation, the terms and conditions of their licences, and the rules and criteria as set by the ERE.

Authority of the ERE

The ERE has already been given the authority for issuing licences, setting tariffs, resolving disputes, and adopting rules. Its independence is assured by the Law on Natural Gas Sector of 2015 which establishes it as an agency, its board members are appointed by the NAOA, its own budget is independent of the State's one and the regulatory decisions are appealed only to the competent court. Licences are required to perform the activities in the natural gas sector. Tariffs shall be set on principles of transparency and non-discrimination.

Powers of the ERE

The ERE has been empowered to:

- › Issue licences to perform the activities in the natural gas sector, and connect facilities, networks and equipment for the production, transmission, distribution, supply and sale of gas;
- › Set tariffs and prices pursuant to the terms of the primary legislation and secondary regulations;
- › Monitor, control and enforce compliance with licences issued pursuant to the primary legislation and secondary regulations;
- › Define the gas market's structure; and
- › Resolve disputes and/or hear complaints from final customers and gas undertakings.

The secondary regulations

Not only that the ERE issues licences, sets tariffs and monitors licensees, but it shall also adopt secondary regulations for the gas market and third party access. Moreover, it shall define the gas market structure as it has the authority to establish, approve or amend secondary regulations for the gas market operation and for the unbundling of gas system operators (the gas TSO and the gas DSO).

Price setting methodologies and other tasks

The ERE shall define the methodologies for setting of price with terms and conditions for the use of gas transmission and distribution systems, and the provision of ancillary and system services and balancing services for gas transmission system. It shall also set minimum standards regarding the quality of gas supply, including the quality of service, specifically regarding the time taken by the gas TSO and the gas DSO to make connections and repairs as well. Annual investment plans and 10-year network development plans are subject to the ERE's approval too.

Organisation of the ERE

The ERE's mission and responsibilities were firstly defined by the Law on Natural Gas Sector of 2008, and secondly aligned with Directive 2009/73/EC in the new gas related law (due to the fact that its powers shall be fully aligned with the

provisions from the TEP from 1 January 2015 onwards). The structure of the ERE's organisation has been approved by its Board (Figure below).

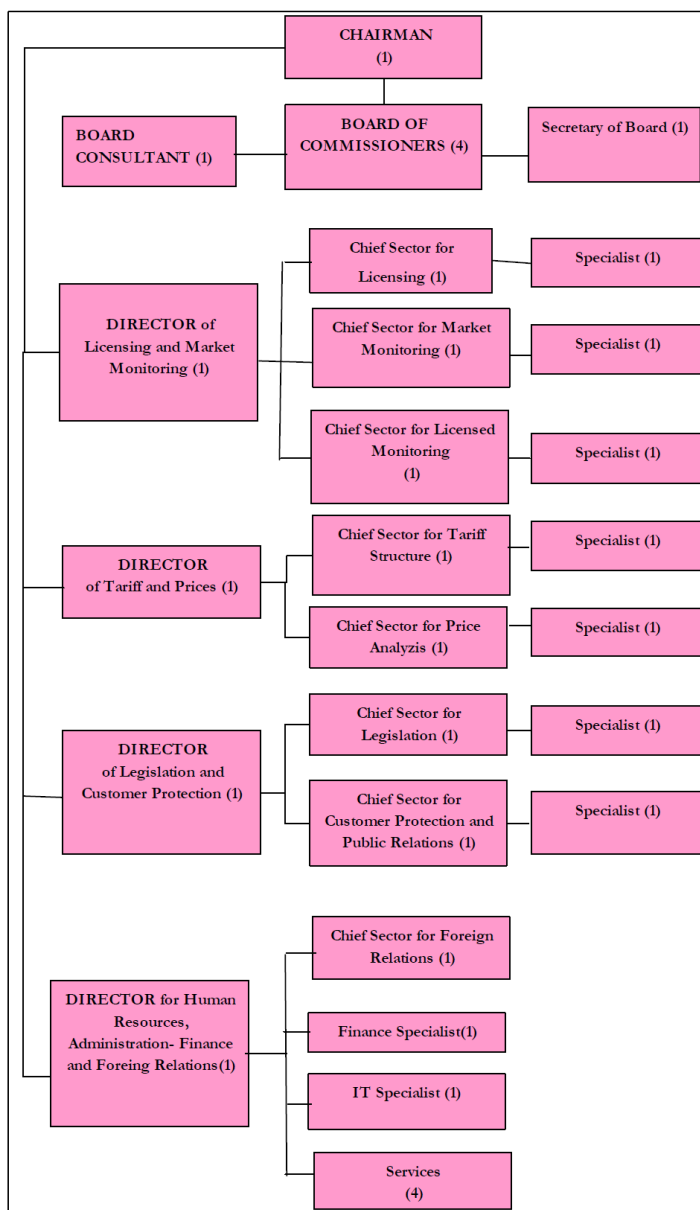


Figure 2 The ERE's organisational chart

Organisational basis

The ERE's organisational structure is based around:

- › The Board of Commissioners, composed of 5 members (Chairman and 4 Commissioners) appointed in this position from the NAOA based on Law No. 9072, date 22.05.2003 On Power Sector as amended and Law No.9946 date 30.06.2008 On Natural Gas as well as the new gas related law of 2015;
- › Chairman;
- › Department for Licensing and Market Monitoring;

- › Department for Tariffs and Prices;
- › Department for Legislation and Customer Protection; and
- › Department for Human Resources, Administration, Finance and Foreign Relations.

Future reflection

Further on, the ERE's organisational structure shall reflect:

- › Commitments to regulatory work assumed in the framework of the implementation of Directive 2009/73/EC;
- › New gas system and gas market development, which will request additional expertise of the ERE
 - at the national level, including as a consequence of the results of exploration and production of gas in Albania; and
 - at the international level, relating to the TAP and IAP projects; and
- › International cooperation activities (ERRA, MEDREG, ECRB etc.).

Despite the competences in the natural gas sector which had been given to the ERE already by the Law on Natural Gas Sector of 2008, these have still not directly reflected in its organisational structure. The GoA has taken concrete steps for the realization of the TAP and IAP projects (though these two projects are at different stages of development, obviously) as well as for the gasification project. The ERE has already granted an exemption to the TAP, actually setting a detailed regulatory framework for this pipeline, together with the NRAs of Greece and Italy. Further to this, the ERE continuously works on the TAP's regulation, i.e. certification, network code, etc. The adoption of all required rules would require further strengthening of expertise of the ERE's staff of technical, legal and economics profiles.

Necessity for the ERE's gas staff or unit

With the intention that the ERE will practically exercise responsibilities as defined in the new gas related law (such as licensing, tariff setting, access conditions, eligibility status, market monitoring etc.), it is important either to hire a specialised staff and deploy them into the existing departments or to establish and operate specialised directories for gas issues as part of its organisational structure. Experience from other gas markets and other NRAs shows that when gas market issues are introduced to the regulatory framework, then it is better to establish a separate Gas Department in the NRA. Gas market issues, which the ERE will have to face, especially in the initial period of the development of the gas market, will be different from the much more mature electricity market issues. Of course, there would be many synergies, as, for example, in tariff setting and tariff regulation. The current ERE's organisational chart does not have any specialised structures for handling gas issues. Such specialised structures have to be responsible for giving the appropriate expertise on issues of the gas market development. It would help to increase the efficiency of the ERE, as a practice widely applied in EU Member States with developed gas markets proves it.

*Regulatory duties in
the natural gas
sector*

The ERE should comprise either specialised gas staff or specialised gas directories tasked with the following regulatory duties relating to the natural gas sector:

- › Lead and participate in the development of secondary regulations in the area of gas;
- › Present and discuss priorities for the regulatory work in the natural gas sector;
- › Monitor the operation of the gas transmission system as a matter of national security;
- › Cooperate with the national competition authority in the cases linked with the competition in the gas market;
- › Support other ERE's departments in the processing of requests for exemption from TPA to gas transmission infrastructure (and gas storage/operation of LNG);
- › Cooperate with other ERE's departments in the processing of approvals of the operators' investment plans;
- › Support the ERE's Department for Licensing and Market Monitoring in the running of activities related to handling of the applications for licences and monitoring of the performance of licensed gas undertakings;
- › Cooperate with the ERE's Department for Tariffs and Prices in the developing tariff methodologies and/or setting of tariffs;
- › Assist the ERE's Department for Legislation and Customer Protection in the settling of disputes related to the performance of regulated gas activities, rejection of the requests for connection to the transmission network, and determination of the compensation for connection to and usage of the transmission network;
- › Define appropriate information to be provided by the gas TSO and/or the gas DSO to stakeholders as regards connections, transmission and distribution networks, and the allocation of the cross-border transmission capacity, taking into account confidentiality of certain information;
- › Monitor the extent to which the gas TSO and/or the gas DSO realise their tasks pursuant to the Law on Natural Gas Sector of 2015 governing licensed activities in the natural gas sector;
- › Participate in the planning, approval and development of infrastructure, following the TSOs/DSOs Ten Year Network Development Plans;
- › Involve in the international activities related to gas infrastructure, such as the PECL process, the GWG of the ECRB, the CESEC initiatives, etc.;

- › Conduct the process of certification of the gas TSO according to the unbundling requirements from the TEP; and
- › Prepare data for the reporting to the EnC institutions on annual basis.

Regulation of prices

The ERE will have to regulate prices for use of natural gas transmission and distribution systems by encouraging quality of supply and efficiency, reducing costs and physical losses. Moreover, the ERE will have to regulate end-user gas prices for the regulated final gas customers or suppliers, if any. It will have to determine reasonable costs of appropriate natural gas activities to protect the economy and citizens from monopolistic position of individual entities and enable natural gas undertakings to conduct their business operations.

Regulatory monitoring

Moreover, the ERE will have to balance returns on required investments with opportunities and affordable prices, and in its decisions encourage investment needed for reliability of supply. It will have to protect the position of buyers in the natural gas market by using prescribed measures and enabling influence on official acts in the public consultations. Finally, the ERE will have to supervise, control and monitor implementation of both the natural gas network investment plans and the operation of the natural gas market.

Gas regulatory experts

For this purpose, and subject to reasoned expectations of the development of the gas sector, the ERE shall hire experts (suggested number: 3, in the initial phase) with knowledge of gas networks, as well as system and market operations, including EU Directives and Regulations in the natural gas sector. Further on, these experts should be enabled to participate in the training programs on various specific regulatory issues. This would lead to better performance in carrying out the regulatory tasks as it will be necessary to assume the duties and responsibilities given by the primary legislation having in mind the ultimate goal of developing the well-functioning gas market in Albania.

11.3.3 Gas TSO Assessment

Significance of the gas TSO

According to the Law on Natural Gas Sector of 2015, the gas TSO shall in particular:

- › Maintain, modernise, upgrade and develop the gas transmission system and ensure under economic conditions sufficient capacities to meet reasonable demand for gas transmission, complying with the environmental protection requirements;
- › Carry out the balancing of the system in accordance with the balancing rules of the gas transmission system;
- › Operate the gas transmission system capacities;
- › Develop the technical operation agreements when the gas supplier/trader is an exporter or a beneficiary of transit of gas within the territory of Albania;

- › Provide neighbouring gas TSOs, domestic gas DSO(s) and/or other gas undertakings with required information to ensure an inter-operability of the gas systems, as well as secure and efficient operation of the interconnected gas system;
- › Provide gas transmission system users with detailed information regarding services offered, conditions for services, and technical information necessary for gas transmission system users, with exception of confidential information, in a manner as approved by the ERE; and
- › Publish on its web-site approved connection charges for gas transmission system and gas transmission itself.

The gas TSO's ownership unbundling

Considering the requirements of the TEP (Directive 2009/73/EC and Regulation (EC) No. 715/2009), the very first step in making the gas TSO fully operational is to implement the requirements of the OU model from the very start. More specifically, this means that Articles 9-11 of Directive 2009/73/EC shall be fully implemented when it comes to the unbundling and certification (including from third countries) of the gas TSO. The gas TSO's activity shall be performed on the basis of the licence issued by the ERE, a precondition for validity of which is the unbundling certificate issued by the ERE too. The transmission of natural gas (and the operation of gas market) shall be performed as a public service by the gas TSO (and the gas MO, which shall be a legal person established by the gas TSO) which shall ensure transparent, non-discriminatory and efficient operations.

Certification of the gas TSO

The gas TSO shall be established in such way that it complies with the requirements of the OU model, as confirmed by the ERE in its draft and final certification decisions. Compliance with the requirements of the OU model means that the undertaking which is the owner of the gas transmission system also acts as the gas TSO. According to the mission, rights, duties, and responsibilities given to the gas TSO, the gas TSO's main functions are: 1) the planning, constructing, maintaining, and financing of gas transmission network; and 2) the operation of gas transmission system. The operation of the gas market shall be the gas MO's function.

Responsibilities of the gas TSO

This assumes that the gas TSO shall be responsible among other for granting and managing third party access on a non-discriminatory basis to gas transmission system users, collecting access charges, congestion charges, and payments under the inter-TSO compensation mechanism, and maintaining and developing the gas transmission network. As regards investments, the owner of the gas transmission system shall be responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning. Upon licensing, the gas TSO as the licensee shall submit to the ERE the annual and long-term investment plans, to assure proper and efficient gas transmission system operation. The investment plans shall give both general and specific overview of the expected gas transmission infrastructure construction or expansion.

Rules for the gas TSO's procurement

The rules to be applied for the gas TSO's procurement should be based on the principles of openness, transparency and equality in tendering. Contracts should be awarded on the basis of open competitive tenders, applying prequalification

criteria. In all cases, tender documents shall be the basis for informing potential bidders of the requirements to supply specific goods and services, giving all necessary information to qualified bidders to submit their bids.

Tender documents

Tender documents shall, for the purpose of efficiency and proper use of funds of the gas TSO:

- › Define clearly the scope of works, goods or services to be supplied, the rights and obligations of the purchaser, suppliers and contractors, and the conditions to be met in order for a tender to be declared responsive; and
- › Set out fair and non-discriminatory criteria for selecting the winner.

Contract

The contract shall clearly define goods, works or services to be supplied, the rights and obligations of each party in the contract, acceptance, payment terms and procedures, price adjustment, liquidated damages and bonuses, force majeure, termination, settlement of disputes, modification and governing law.

Current status

Due to a very limited existence of gas infrastructure and consequently gas market, the gas TSO is currently not fully operational (despite the fact that it has been licensed by the ERE's decision since 22 August 2012), the forecasting and planning procedures are not put in place, the Transmission Grid Code and the Market Code are not elaborated, nor the quality indicators developed by the gas TSO. So far, Albania is failing to meet the requirements for having in place the secondary regulations in terms of the gas TSO's (including the gas MO's) functions.

Secondary regulations

The general principles of the gas TSO's functioning are defined by the Law on Natural Gas Sector of 2015, but these have to be complemented by the secondary regulations where the most important ones are the following:

- › Transmission Grid Code (the transmission network rules), covering the gas TSO's duties and responsibilities in relation to operation and development of gas transmission system;
- › Rules on conditions for access to gas transmission system (the connection conditions), providing clear criteria and procedures for connection to the gas transmission network;
- › Regulation on the security of natural gas supply (the emergency intervention plan), setting clear rules to secure reliable and efficient natural gas supply; and
- › Methodology for setting tariff fees and prices (the transmission tariff methodology and prices), focusing on the tariff development procedure, estimation of the annual revenue requirement and analysis of the costs.

In reference to the duties and responsibilities of the gas TSO, it is necessary to structure its business organisation in such way that it enables and supports fluid internal communication and integration of different working teams, values and

<i>Structure of the gas TSO's business organisation</i>	strategy. These are important tools for establishing an efficient organisation of the gas TSO, which should include the following:
<i>Management Board</i>	<ul style="list-style-type: none"> › Provides support to the CEO and the Board of Directors when taking strategic decisions that cannot be delegated to specific organisation units. Acts as a first level coordination body for all matters. Defines the gas TSO's purpose, visions and values;
<i>Transmission Department</i>	<ul style="list-style-type: none"> › Manages and supervises engineering design, construction and maintenance functions of the gas TSO, allowing the supply of gas to be guaranteed according to the security and efficiency conditions;
<i>Engineering Design and Construction Function</i>	<ul style="list-style-type: none"> ○ Designing and building/modifying the gas TSO's transmission system facilities in accordance with the established investment and improvement plans. Further adjusting the facilities to the demands of the approved gas transmission system planning;
<i>Maintenance Function</i>	<ul style="list-style-type: none"> ○ Carrying out the maintenance tasks of the gas TSO's transmission facilities. Ensuring the required conditions of availability and reliability, at the lowest possible expense. Implementing the most appropriate criteria for the upgrade, operation and control of the facilities and equipment;
<i>System Operation Department</i>	<ul style="list-style-type: none"> › Ensures the continuity and reliability of the gas supply and the correct coordination of the production and transmission systems. Cares for capacity sale/contracts, capacity allocation, balancing, and secondary market;
<i>Market Operation Department</i>	<ul style="list-style-type: none"> › <i>(only in the beginning it is located inside the gas TSO for starting up purposes after which it will be extracted into a separate legal person owned by the gas TSO)</i> Organises the gas market into the balancing group model. Ensures the operational scheduling of the balance responsible parties. Conducts the clearing of transactions and the settlement of deviations (in quantity and financially);
<i>Shared Services Department</i>	<ul style="list-style-type: none"> › Manages economic and finance services, and human resources;
<i>Economic and Finance Services</i>	<ul style="list-style-type: none"> ○ Caring for supply and management of required financial resources and materials. Enabling the gas TSO's operations to reach their targets, while meeting the budget and strategic policies. Ensuring correct internal and external information on the financial status. Evaluating the feasibility and effects of the gas TSO's actions;
<i>Human Resources</i>	<ul style="list-style-type: none"> ○ Defining and promoting the introduction of policies, plans and procedures for the gas TSO's personnel management. Supporting the management team to perform their duties in the personnel management.

Identification of specific duties and responsibilities

In order to identify specific duties and responsibilities belonging to each area included in the structural organisation above, it is recommended to do the following:

- › Make a list of all business functions, identify those that are strategic or vital for the company, and estimate the consequences of not performing these functions;
- › Identify the essential units for performing these strategic/vital functions and analyse their relevance (if any) for the gas TSO's mission; and
- › Identify the recipients and clients (system users).

Current organisation of Albpetrol SH.A

Currently, Albpetrol SH.A and Albpetrol SH.A Patos function in accordance with the organisational charts that have been approved by their governing bodies (Figures below).

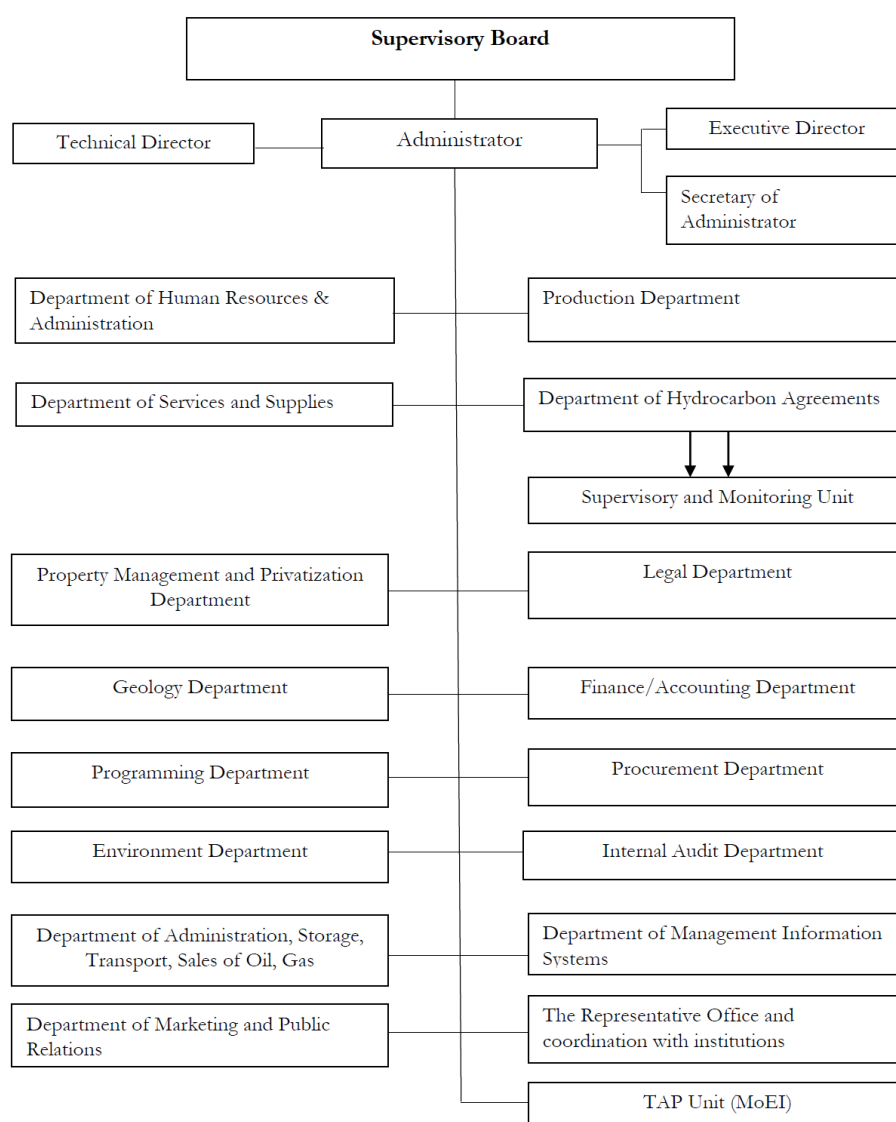


Figure 3 The Albpetrol SH.A's organisational chart

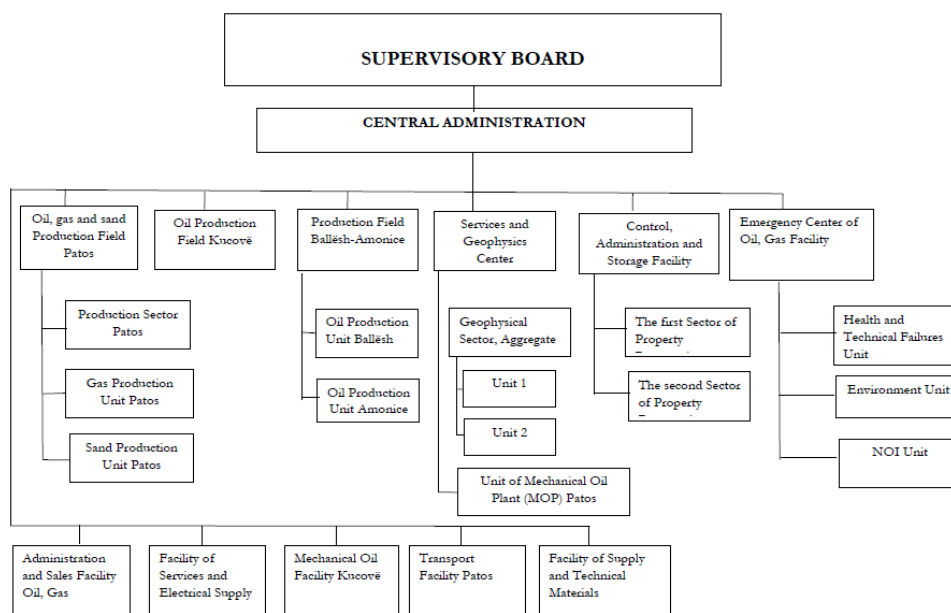


Figure 4 The Albpetrol SH.A' Patos' organisational chart

Albpetrol SH.A has developed positions and background for each assignment of Gas Sale Centre Fier (Table below).

Table 4 Positions and background for each assignment of Gas Sale Centre Fier

N	Nomination	Education	Background	N	
	Administration			12	
1	Director	University Degree	Economic engineer, etc	1	Employee
2	Head Engineer	University Degree	Engineer,	1	Employee
3	Head of Finance	University Degree	Accountant	1	Employee
4	Head of Legal	University Degree	Lawyer	1	Employee
5	First Bookkeeper	University Degree	Economist	1	Employee
6	Specialist for the implementation gas transport regulation	University Degree	Petroleum engineer, etc	4	Employee
7	Specilist on Foreign Affairs	University Degree	Petroleum engineer, etc	1	Employee
8	Responsible of Gas transport	University Degree	Petroleum engineer,economist	1	Employee
9	Warehouseman	University/High school Degree	Economist, Engineer	1	Employee
10	Sanitary	High school Degree		1	Worker
	Fier Gas Unit			10	
	Station manager	University/High school Degree	Petroleum engineer, Technican	1	Employee
	Operator	Vocational education	Petroleum technician	4	Worker
	Assistant/Operator	Vocational education	petroleum technician	4	Worker
	Kipist	Vocational education	technician	1	Worker
	Balsh Gas Unit			10	
	Station Manager	University/High school Degree	Petroleum engineer, Technican	1	Employee
	Operator	Vocational education	petroleum technician	4	Worker

	Assistant/Operator	Vocational education	petroleum technician	4	Worker
	Kipist	Vocational education	technician	1	Worker
	Gas Station Vlore			8	
	Facility Guard	Vocational education	technician	8	Worker
	Drenova Compressors			13	
	Station Manger	University/High school Degree	Petroleum engineer, Technician	1	Employee
	Compreson Technician	Vocational education	technician	4	Worker
	Compressor electrician	Vocational education	technician	3	Worker
	Water pump operator	Vocational education	technician	4	Worker
	General Technician	Vocational education	technician	1	Worker
	Pipeline Guard			10	
	Pipeline Divjake	High school Degree	technician	3	
	Pipeline Povelce	High school Degree	technician	4	
	Pipeline Panaja	High school Degree	technician	3	
	Pipeline controller			19	
	<u>In total</u>	<u>Employees 15</u>	<u>Employees 68</u>	<u>83</u>	
	<u>In total</u>	<u>15+68=83</u>			

By now, in accordance with licences for transmission and distribution of natural gas from 2012, Albpetrol SH.A should have already implemented accounting, legal and functional unbundling. However, this has not been realised so far, and meanwhile even further requirements from the TEP have been introduced and put in front of it.

Chapter 12.7 below contains remarks on the further requirements that will need to be fulfilled in the context of re-organisation of Albpetrol SH.A due to unbundling according to the OU model as per the ERE's certification rules. These will be applicable even in case of opting for a combined (transmission and distribution system) operator provided that such operator complies with the requirements of the OU model with respect to the gas TSO.

However, there are several prerequisites for Albpetrol SH.A's subsequent proceeding to implementing the OU model, i.e. several significant and time-consuming activities need to be performed before Albpetrol SH.A is brought into a position to start unbundling according to the requirements of the OU model. These activities are briefly noted below (though, the order of certain steps in the given sequence can be somewhat altered if it is found that other sequence would correspond more conveniently to circumstances in Albania):

- › To begin with, Albpetrol SH.A needs firstly to establish an overall assets inventory at the company level, and secondly to separate assets which belong to oil and gas lines of business operations;

- › Next, in view of non-production and non-commercial³¹ gas-related assets (the oil-related ones and those related to gas production and gas sale/trade are not of a concern hereafter), Albpetrol SH.A needs thirdly to identify and verify existence of non-production and non-commercial gas-related assets and fourthly to establish their values based on the most appropriate method and in accordance to the International Valuation Standards (IVS) and International Financial Reporting Standards (IFRS);
- › Afterwards, in view of non-production and non-commercial gas-related lines of business operation (the oil-related ones and those related to gas production and gas sale/trade are not of a concern hereafter), Albpetrol SH.A needs fifthly to establish a department for natural gas transmission and distribution and sixthly to task it with performing activities of transmission and distribution of natural gas;
- › Moreover, in view of both non-production and non-commercial gas-related assets and lines of business operation, Albpetrol SH.A needs seventhly to assign these assets (which are previously valuated) to a department for natural gas transmission and distribution (which is previously established) and eighthly to enforce unbundling of accounts and ring-fencing of the management of that department (which is now in charge for transmission and distribution of natural gas);
- › Furthermore, in view of legal unbundling in the context of subsequent ownership unbundling (which is to follow later on), Albpetrol SH.A needs ninthly to spin off the department for natural gas transmission and distribution (which is now established and functional) into another separate legal person and tenthly to transfer to its ownership non-production and non-commercial gas-related assets;
- › Finally, this new separate legal person which now owns non-production and non-commercial gas-related assets needs to engage into relationship with the ERE and follow its requests linked with composition of a regulatory asset registry, re-valuation of assets and establishment of a regulatory asset base, which all serve the purpose of determining tariffs for transmission and distribution of natural gas by the ERE.

11.4 Conclusions

Priorities

The Law on Natural Gas Sector of 2015 regulates the natural gas market, but for the further process of the (re)gasification of Albania it would be necessary either to develop further or to establish new legal entities to be the bearers of the gasification project. Since the main potential for bringing gas is the connection to the TAP, by 2020 as the most optimistic view, the first priority is on the further development of the gas TSO (Albpetrol SH.A) which is already licensed by the

³¹ Commercial gas-related assets (i.e. those related to gas sale/trade) can optionally be treated as allowed for inclusion into consideration here, but only in case that a combined (transmission and distribution system) operator is chosen for implementation and as long as such operator fulfils the 10.000 final customers rule in view of distribution unbundling (this is the 100.000 final customers rule in the EU). Production gas-related assets should be left out of such operator's books.

ERE's decision and the second one on the establishment of the gas DSO(s) (one if not the only – Albpetrol SH.A – is also already licensed by the same ERE's decision).

The gas TSO and DSO(s)

Albpetrol SH.A shall be developed further on as the gas TSO, in line with the new gas related law. It is advisable, though only initially, that Albpetrol SH.A functions as a company 100% owned by the State, which can afterwards consider a decrease of its ownership stake held in it to a level corresponding to the Energy Development Strategy. Albpetrol SH.A will play an important role in planning and development of the connection of Albania to the TAP and other eventually realised regional gas pipelines and also provide further support to the State in the gasification in Albania. Further on, as the gasification will be carried out by the gas DSO(s), which would develop natural gas distribution network(s), the gas DSO(s) shall be established next. Further development of the gas TSO (Albpetrol SH.A) and the establishment of the gas DSO(s) shall be performed in close supervision, control and monitoring by the ERE.

The ERE

As one of the most significant roles in the Law on Natural Gas Sector of 2015 is given to the ERE, it will have to undertake all regulatory related actions in the gasification of the country. Despite the fact that it foresees powers of the ERE in the gas sector (to supervise and regulate operation of gas undertakings), apart from licensing Albpetrol SH.A for performing transmission and distribution activities on 22 August 2012, there is no practicing of this competence yet in reality due to absence of any significant gas infrastructure and supply. As the gas related regulatory framework is at the early stages of development, it needs to be strengthened further on.

12 DESCRIPTION OF EXAMPLES OF AND METHODOLOGIES FOR CERTIFICATION AND DESIGNATION OF THE GAS TRANSMISSION SYSTEM OPERATORS

12.1 Introduction

Upon the entry into force of the new gas related law, the requirements from the TEP are transposed into Albanian law and consequently needs to be implemented in practice. In the course of its implementation, it will be necessary to conduct a certification of the gas TSO (and the electricity one too, but in a separate procedure)³².

The certification shall be governed by the ERE. The subject of the certification is a post-proof of compliance with the unbundling requirements relating to the organisation of the gas TSO. The ERE shall conduct a TSO certification procedure in accordance with only the OU model. The other two models, ITO and the ISO, are not applicable in Albania.

In the context of certification, the ERE adopted the Regulation on Certification of the Transmission System Operator for Gas, providing a set of related interpretation notes, according to the perceived OU model, to ensure uniform decisions taking and a smooth procedure flow. The Regulation gives in advance the undertakings concerned an opportunity for the best possible preparation of the application for certification.

The interpretation notes provided in this Chapter are of a regulatory nature and related directly to recommendations with regard to the application for certification of the gas TSO in Albania. As such, they relate solely to the OU model, because this model is the only one allowed for the implementation in Albania.

Primary, the recommendations contain the right regulatory understanding of this unbundling model. Secondary, they serve to form a (non-exhaustive) physical requirements list of the items to be submitted by the gas TSO to the ERE within the application. Tertiary, they are presented within a framework of the EC's opinions on the certification of TSOs in the EU Member States (in the absence of the ECS's ones for the Contracting Parties), providing more practical views of their meaning.

The Regulation on Certification of the Transmission System Operator for Gas, that the ERE adopted recently, already includes criteria that it will be using to assess fulfilment of specified requirements once the applicant for the gas TSO implements

³² Whatever is included in this Chapter are not applicable to the TAP, since it has a specific regulatory regime, imposed on it by its exemption decision. Its certification procedure has been concluded as the NRAs of Albania, Greece and Italy have issued their decisions on the preliminary positive certification of the TAP. The Opinions of the European Commission and the ECS have also been issued.

all unbundling provisions from the new gas related law and submits its application for certification. The first part of this Chapter is directly usable to the purpose of implementing the Regulation.

In its second part, the Chapter focuses on the experience acquired so far in the framework of the EC's opinions on the certification of TSOs in the EU Member States. One set of lessons learned is elaborated (for the OU model) based on the EC's comments; these may be used by the ERE to establish its own criteria for assessment purposes.

By using this Chapter the ERE and Albpetrol SH.A (as the applicant for the gas TSO, presumably) can advance their understanding of the new and complex topic of the certification, which is described hereafter.

12.2 Procedure of Certification

*Gas transmission
system operator*

- › The operation of gas transmission system shall be subject to certification by the ERE.

The gas TSO shall be certified by the ERE. The operation of gas transmission system without a certificate shall be treated as an offense pursuant to the applicable national law and may induce a fine. Gas transmission system (network) shall be defined by the applicable national law. Consequently, the gas TSO shall be the operator of the defined gas transmission system.

*Initiation of the
procedure and
submission of the
application to the
ERE*

- › The certification procedure shall be started at the request (submission of the application) filed by the applicant for the gas TSO.

Although the initiation of certification procedure may in principle be to the request of the gas transmission system owner, the ECS (as long as Albania is an EnC Contracting Party) or the ERE on its own motion, it is advisable from economic considerations that the applicant for the gas TSO initiates it because it is a subject to the certification after all. Moreover, the applicant for the gas TSO shall bear the burden of the certification procedure. In cases where the applicant is not the gas TSO, as it would have been affected by the decision, it is nevertheless mandatory for the gas TSO to participate in the procedure. Besides the applicant for the gas TSO, any of the related VIUs shall participate in the procedure too.

Application deadline

- › The gas TSO shall file the application for certification no later than 1 June 2016 (this date is set in accordance with the Decision of the EnC Ministerial Council adopting Directive 2009/73/EC in natural gas as the new *acquis communautaire*; this date shall be adjusted to circumstances in Albania primary having in mind the outcomes of communications with the ECS).

The applicable national law shall state that legal date of the application for certification is no later than certain date. The consequence of the lack (or delay) of such deadline of the application for certification shall not be specifically regulated in the legislation. This is not an issue because the ERE, in such situation, may initiate

the certification procedure on its own in order to ensure compliance with the unbundling requirements.

Overview of the official certification procedure

- › The certification procedure can be overviewed as it follows in the Table below.

Table 5 Time sequence of the official certification procedure

1 June 2016	The latest time for the ERE to receive the application from the applicant for the gas TSO.
4 months	Deadline for the ERE to issue the draft certification decision (beginning with complete application).
Without delay	Sending by the ERE of the draft certification decision to the ECS and the applicant for the gas TSO.
4 months	Deadline for the ECS to send a response (the opinion) to the ERE. When preparing the opinion, the ECS shall request the ECRB to provide its opinion on the ERE's decision.
2 months	Deadline for the ERE to issue the final certification decision (beginning with reception of the ECS's opinion) or the fiction of inaction, taking the utmost account of that opinion.
X	Publication of the decision in the Official Gazette/web-site of the EnC → naming at the same time.

Decision of the ERE

- › The ERE shall make the final certification decision within two months from receipt of the ECS's opinion or by the expiry of the period prescribed in Article 3(1) of Regulation (EC) No 714/2009 in electricity or Article 3(1) of Regulation (EC) No 715/2009 in natural gas (the fiction of inaction). Once the ECS has sent the opinion, the ERE shall take it, to the maximum extent possible, into consideration related to the final certification decision.

The ERE shall adopt the final certification decision within two months of receipt of the ECS's opinion or by the end of the commenting period without its receipt. The ERE shall take into account the ECS's opinion, relying as much as possible on it in its final certification decision. For the draft certification decision, the appropriate application and documentation shall be submitted including any necessary approvals and consents, if granted to, and presented in sufficiently clear way. This concerns, for example, the review of the contractual arrangements for the provision of services to the gas TSO by any of the VIUs or any of their subsidiaries and vice versa.

Additional provisions

- › The certification can be linked with conditions or issued under conditions, to the extent necessary to ensure that the requirements will be fulfilled.

The final certification decision may be: 1) limited, within the meaning of the Administrative Procedure Law, 2) conditionally adopted, or 3) under revocation. It can also be adopted subject to subsequent recording, amending or supplementing.

The legislative intent in this regard (that the gas TSO could be rejected as part of the collateral clause to achieve certain goals such as financial ratios or adequate funds), ensures the sustainable economic performance and ability to invest. Current considerations are that the ERE shall make use of this option only if the gas TSO raises doubts as to the adequacy of necessary financial resources. The ERE shall reserve the right to issue additional regulations in order to ensure future compliance with the unbundling requirements. This is of a particular concern as regards the design of the compliance program and its implementation.

Designation of the gas TSO

- › The final certification decision shall be published, together with the ECS's opinion, in the Official Gazette of Albania and web-site of the EnC, in appropriate form. With the announcement of the certification in the Official Gazette of Albania and web-site of the EnC, the applicant is designated as the gas TSO. The ERE shall notify the ECS of the designation of the gas TSO according to the OU model. The appointment of the gas TSO according to other two models is not possible.

The certification procedure ends with the appointment of the gas TSO by formal notification in the Official Gazette of Albania and web-site of the EnC. The ERE shall notify the ECS accordingly about its designation.

The fiction of inaction

- › If the ERE does not issue a decision within the prescribed period, then the relevant gas TSO applies in that regard as being certified.

The fiction of inaction shall be regulated in the event when the ERE does not issue the final certification decision within two months from receipt of the ECS's opinion or expiry of the commenting period – in such case, the relevant gas TSO applies as being certified. The gas TSO is considered certified until the date on which the ERE usually makes such decision. Such ending of the fiction of inaction would not require a formal clarification. The scheme ensures that the gas TSO may continue to operate the gas transmission system and shall accept any legal uncertainty in the event of a delay in the certification. The fiction of inaction applies here only after the ECS has been involved.

Differences in the procedure when third countries are involved

- › In the case of the gas TSO or a gas transmission system owner composed of one or more persons from one or more third countries, alone or jointly controlled, the certification shall be granted only if the gas TSO or the gas transmission system owner meets the requirements stated by the applicable national law and if the MoEI has established that the granting of certification does not jeopardize the security of electricity or natural gas supply in Albania and the EnC. The applicant shall submit all required documentation for the impact assessment related to the security of natural gas supply in addition to the MoEI, at the request.

In the case of involvement from third countries, a different method shall be applied that purports in particular the participation of the MoEI, besides the participation of the ECS. A catalogue of unbundling cases shall be expanded with every next third country to assess the impact of certification on the national and EnC security of natural gas supply. The certification shall be achieved in cooperation with the

MoEI. Otherwise, the procedure is the same as the basic one, so the part below is only intended to address the new details.

*Control by persons
from third countries*

- › Where the gas TSO's or a gas transmission system owner's shares are held by one or more persons from one or more third countries (countries which are not Contracting Parties of the EnC), alone or jointly owned, the ERE shall forthwith inform the ECS in the certification procedure. The gas TSO or a gas transmission system owner has to submit the application for certification to the ERE no later than 1 January 2017.

These provisions shall be applied when the gas TSO or a gas transmission system owner is controlled by one or several persons from third countries. The controlling person shall be located outside of the EnC Contracting Parties. Moreover, the control must be sole, i.e fully engaged in by a person or persons from one or more third countries. The EU Merger Regulation is relevant for determination of the control. The joint parent company or person from a third country is also treated as the third country person who maintains sole control of the gas TSO. If several third country persons and one EnC Contracting Party person together control the gas TSO, then it always applies that the gas TSO is at least jointly controlled as there is a person from the EnC Contracting Party.

*Notification to the
ECS and the
deadline*

- › Once the application for certification of the gas TSO from a third country is submitted, the ERE shall inform the ECS of.

Although the gas TSO shall make the application at the latest by 1 January 2017, this does not mean that the certification is unnecessary before that date. For affected procedural economy, the gas TSO shall thus be recommended to make the application already by 1 June 2016.

*Participation of the
MoEI*

- › The MoEI shall inform the ERE within three months from the receipt of complete documentation on its assessment of whether the granting certification threatens the security of electricity or natural gas supply in Albania and the EnC. In its assessment of the impact on the security of natural gas supply, the MoEI shall include:
 - the rights and obligations of the EnC with respect to this third country, under international law, including any agreement concluded with one or more third countries where the EnC is a contracting party and which addresses the issues of energy security,
 - the rights and obligations of Albania to that third country arising from an agreement concluded with the third country, as relating to the EnC *acquis communautaire*, and
 - other special circumstances of the case and of the third country.

Whereas the ERE shall examine compliance with the rules, the MoEI shall assess the impact of the certification on the security of national and EnC energy supply on the basis of several designated criteria. Parallel to the application submitted to the ERE, the gas TSO shall extend the required documents for consideration at the

MoEI. The audit by the MoEI shall be performed as an independent assessment of the impact to the security of energy supply to which the ERE is bound within its final certification decision.

Participation of the ECS

- › Prior to the final certification decision of the ERE, the ERE and the MoEI shall request the ECS for an opinion on whether the gas TSO or a gas transmission system owner meets the requirements and whether a threat to the energy security of the EnC is excluded on the basis of certification.

The ECS shall have an opportunity to comment before the final certification decision is issued by the ERE. The ERE shall analyse the application for certification within four months beginning with the initiation of the procedure and forward the draft certification decision together with all relevant information to the ECS to obtain its opinion. The ECS may, firstly, extend the compliance with the unbundling requirements, but also capture the impact of the certification on the security of energy supply. The commenting period is four-month long and may be extended should the ECS ask for the views of the ECRB, the EnC Contracting Party concerned or any other interested parties.

Decision

- › The ERE shall decide on the application for certification within two months after the ECS presented its views, or after the period referred to in Article 11(6) of the Directives is expired without the ECS has issued an opinion to. The ERE shall take into consideration the opinion of the ECS in the final certification decision to the maximum extent possible. The review of the MoEI shall be part of the final certification decision by the ERE.

The deadlines for the final certification decision are similar to those from the basic procedure. The ERE shall notify its draft certification decision to the ECS without delay together with all the important information concerning it.

Publication

- › The ERE shall publish its final certification decision together with the ECS's opinion in the Official Gazette of Albania and web-site of the EnC, in appropriate form. The ERE shall communicate any deviations from the ECS's opinion, including the rationale for any eventual deviation and publish it.

12.3 The Ownership Unbundled Transmission System Operator (OU-TSO)

OU model

The certification of a gas TSO according to the OU model requires that the ownership of gas transmission network is resolved, the control and rights in areas of production/generation or supply are limited, the appointment of members of the Supervisory Body is regulated and the sufficient funds are available. The unbundling procedure shall ensure that the sensitive information is not misused in areas of production/generation or supply.

- › The gas OU-TSO shall, directly or mediated by equity investments, be the owner of the gas transmission network.

*Ownership of the
gas transmission
network*

The following two basic patterns are possible:

- › either the gas OU-TSO directly holds ownership, in the sense of the property law, of the gas transmission network,
- › or the right of disposal of the gas transmission network is mediated to the gas OU-TSO through its participation in another company (the so-called "*ownership company*"), which holds ownership of the gas transmission network in the sense of the property law.

Generally, the formation of a joint venture is also allowed. The gas OU-TSO's ownership, which is formed in this way, shall be extended over the entire gas transmission network.

In the first option, the gas OU-TSO directly holds ownership of the gas transmission network in the sense of the property law. The proprietary gas network operation may also be evaluated according to standards which allow a fractional ownership of the gas transmission network, as long as the network is fully ownership unbundled. Particularly in gas networks, different constellations may occur where a pipeline might be used by several gas TSOs, which share ownership of such pipeline or capacity in one form or another. However, the technical management/operation of the system may in fact be done only uniformly. The proprietary gas network operation and technical management/operation of the system may be separated.

In the second option, the gas OU-TSO may also be mediated by equity investments, i.e. it may appear as one of the equity investors/owners of the gas transmission network. Here, the ownership of the gas network or a part thereof is given to the ownership company in which the gas OU-TSO holds equity investments. This assumes that the gas OU-TSO's share in the ownership company conveys a right to dispose of the gas transmission network which corresponds to a right of an owner. However, there is no need for a sole right of disposal of the network to be connected with this. Rather, the rights which are comparable to those of a joint owner should be satisfied. The rights shall be agreed in the partnership agreement of the ownership company, for example, to arrange for appropriate approval requirements.

Ownership rights

There are different constellations relating to the ownership rights mediated by equity investments. For example, there are cases where lines/pipelines are subjects to respective proportions reflecting individual shares. In gas networks, the shares held by shareholders regularly relate also to capacities, besides relating physically to pipelines themselves. The undertakings which are active in competitive areas are not allowed to hold shares in the ownership company. In the context of unbundling, this is only allowed if those shareholders are properly unbundled gas TSOs. A joint control over the ownership company, which is a direct owner of the gas transmission network, shall be required where none of the parties has a sole control of the ownership company through contractual arrangements. In this case, the controlling undertakings may not hold "*indirect ownership*" of the gas transmission network. The EU Merger Regulation shall be applied in this case.

Joint Venture(s)

- › Two or more undertakings, which are the owners of the gas transmission network, may create a joint venture, which shall act as the gas TSO for the respective network in two or more EnC Contracting Parties or EU Member States. Another undertaking may become a part of such joint venture, only if it is properly unbundled and certified according to the applicable national law.

The third option to structure the gas OU-TSO is to create a joint venture which operates the gas transmission networks in at least two EnC Contracting Parties or EU Member States. In this case, the proprietary gas network operation and technical management/operation of the system shall be separated completely (see next Figure).

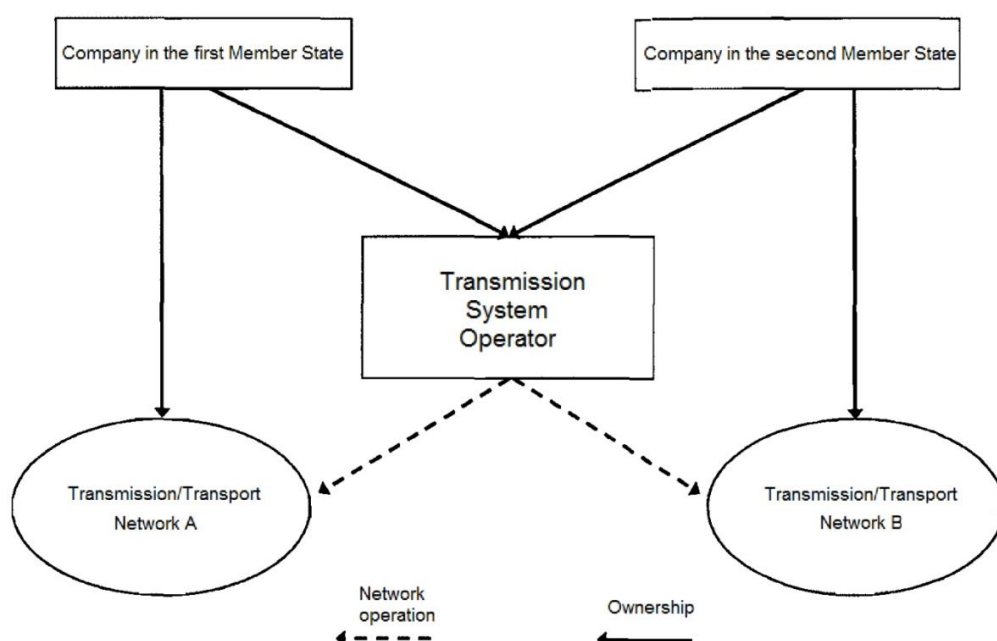


Figure 5 Structure of the joint venture

Required resources

The gas OU-TSO's ownership shall be extended to the gas transmission network, differentiating in principle between directly and indirectly required resources for the operation of the gas transmission network. Directly required resources for the operation of the gas transmission network are all those resources which are directly necessary for the operation of the gas transmission network. This requires here all resources which the gas OU-TSO shall have in order to fulfil its tasks, including the control room and those resources necessary to make connection to the network and to guarantee access to the system. The gas OU-TSO shall have all gas transmission network resources so that it does not depend on a third party, for example in areas such as the granting of access to the system. Indirectly required resources for the operation of the gas transmission network are all those facilities and equipment which are only indirectly needed for the operation of the gas transmission network (such as office premises, IT infrastructure, etc.). It does not include non-technical (e.g. facilities necessary for the accounting) and non-material assets (e.g. ownership of the brand of the gas OU-TSO).

Leasing model

In the previous cases, the gas OU-TSO is established as an owner of the gas transmission network, either directly or mediated by equity investments, or a joint venture. Related comments have been made under the assumption that other rights (such as lease or other) would not be sufficient. However, solutions based on the usage rights (the so-called "*leasing model*") may commonly be found in practice, and allowed in an individual case as an exception to the rule of property acquisition, if:

- › the gas OU-TSO exerts such a strong influence on the leased object which is comparable to an ownership position, i.e. transfer agreements are designed so that in the legal and factual sense the gas OU-TSO can act as a comparable owner,
- › the object of another gas TSO (or the gas transmission network owner in the context of the ISO) is leased for use, and
- › the leased object does not have much weight relative to the overall gas transmission network, i.e. only those lines or facilities which play a minor role may be leased for use.

Meaning and purpose of the unbundling rules will not be compromised if the leasing model is exceptionally authorised to a limited extent and under the stated conditions. An effective unbundling shall allow effective separation of networks from production/generation and/or supply. The risk of discrimination shall be eliminated in relation to both, operation of and investments in the network. The unbundling rules shall effectively solve the conflicts of interest between producers/generators and suppliers on the one hand and the gas OU-TSO on the other, provide incentives for necessary investments and ensure access of new entrants.

It will not materially impair the unbundling rules, if parts of the gas transmission network belonging to another gas TSO are leased for use. The lease for use occurs among cooperating operators, which individually shall meet the legal requirements of unbundling. The lease for use of the whole network or parts of the network belonging to the VIU or its dependent undertakings, however, is not allowed any longer because the VIU may not exercise control over the gas transmission network. The ECS may possibly take a different attitude and demand stricter ownership position of the gas OU-TSO for all relevant parts of the network.

Control and rights in the gas OU-TSO – control of an undertaking

- › Persons engaged, directly or indirectly, in control of an undertaking which performs any of the activities of production/generation or supply to customers are not entitled to, directly or indirectly, exercise control of the OU-TSO or the transmission network or exert rights in the OU-TSO or the transmission network.

Control and rights in the gas OU-TSO – control of the OU-TSO

- › Persons engaged, directly or indirectly, in control of the OU-TSO or the transmission network are not entitled to, directly or indirectly, exercise control over an undertaking performing any of the activities of production/generation or supply to customers, or exert rights in such an undertaking.

The requirements for the OU-TSO explicitly prohibit two basic corporate structures (see below); due to either exercise of control or exertion of rights. Control and rights shall always be referenced to the EnC and looked across both, the electricity and the natural gas sector. This means that the relevant investments are often limited spatially to the EnC and rewarded to the electricity and natural gas sectors. The ownership unbundling rules distinguish and prohibit two basic corporate structures. In the first case, a person who controls an undertaking which performs any of the activities of production/generation or supply to customers, may not exercise control of nor exert rights in the OU-TSO (see next Figure). In the second case, a person who controls the OU-TSO shall neither exercise control of nor exert rights in an undertaking which performs any of the activities of production/generation or supply to customers (see next Figure). Having previous two models excluded, the other investment opportunities are certifiable (see next Figure), as long as noted thresholds do not convey any substantial minority rights or control. It is also conceivable that an undertaking may be certified, if the 25% threshold is exceeded; however, the interest may not provide determining influence by control or rights.

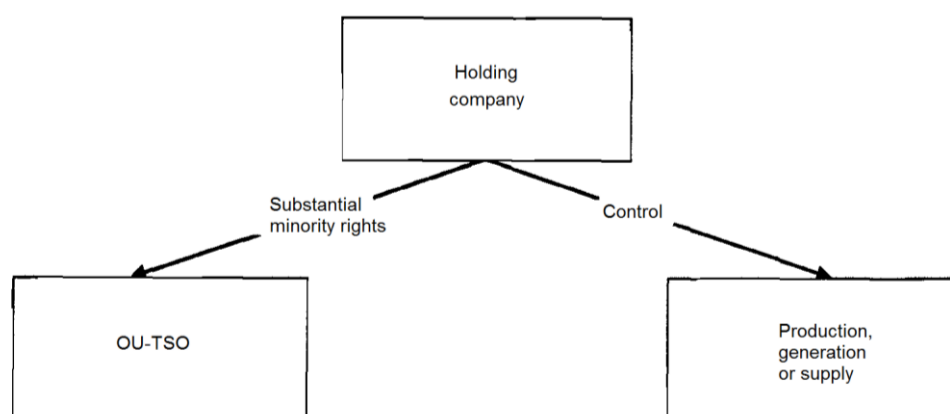


Figure 6 The first impermissible basic corporate structure of the OU-TSO

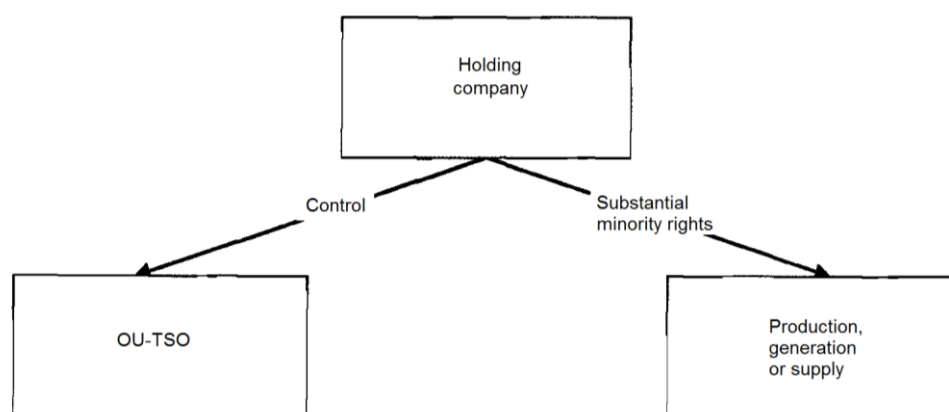


Figure 7 The second impermissible basic corporate structure of the OU-TSO

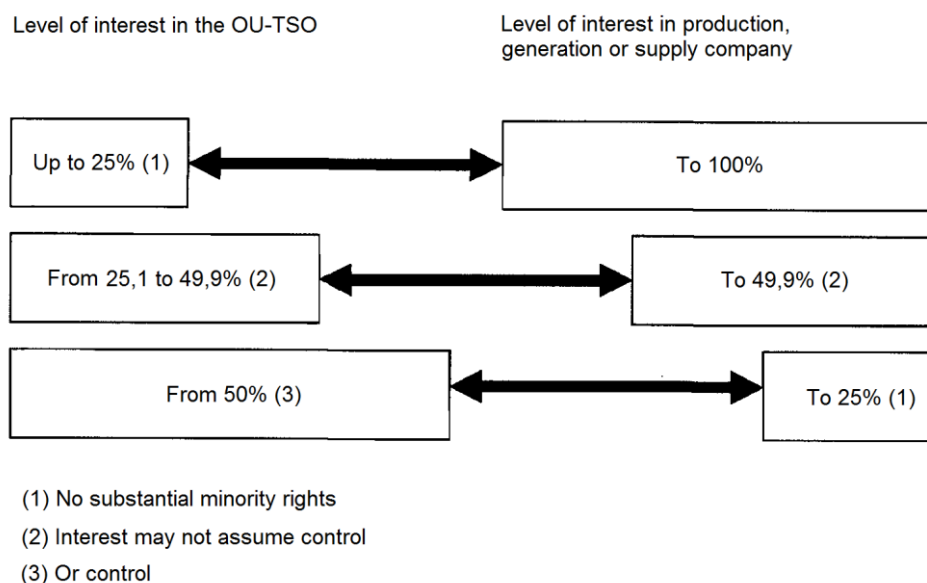


Figure 8 Permissible basic corporate structure of the OU-TSO

Control in the undertaking

- › Control means rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
 - ownership or the right to use all or part of the assets of the undertaking, and
 - rights or contracts which confer decisive influence on the composition, voting or decisions of the bodies of an undertaking.

Within the meaning of the EU Merger Regulation, if there is a decisive influence by a utility undertaking over another utility undertaking, such group of the undertakings shall be treated as a composite unit. The concept of the decisive influence means that the entrepreneurial decision-making power is transferred to another entity, and therefore the decision-making process in the first undertaking is no longer independent. Dependent undertakings are legal entities to which another entity (the controlling undertaking), directly or indirectly, may exercise a controlling influence. The actual exercise of control is not relevant. Decisive influence shall affect the competitive range of the controlled undertaking, indicating its competitive performance, in such way that the controlling undertaking has the opportunity to realise its own competitive interest. Control may be obtained through the acquisition of shares, the acquisition of assets, the group's legal organization contracts or any other means, in particular through the integration of personnel.

Rights in the undertaking

- › Rights referred to above are in particular:
 - the power to exercise voting rights, provided such substantial minority rights are conveyed,
 - the power to appoint members of the Supervisory Body or other bodies legally representing the undertaking, and

- the holding of a majority stake.

If a person controls an undertaking from the competitive energy areas, it may not exert any rights in the OU-TSO and vice versa. However, the holding of minority stakes with voting rights is generally permitted. This is valid only if no significant minority rights (such as a veto right) may be exerted. A partnership participation of more than 25% is basically allowed. The threshold of 25.1% is not absolute.

Appointment of members of the Supervisory Body (1)

- › Persons engaged, directly or indirectly, in control of an undertaking which performs any of the activities of production/generation or supply to customers, or in exertion of their rights in such an undertaking, shall not be eligible to become members of the Supervisory Body or other bodies legally representing the OU-TSO.

Appointment of members of the Supervisory Body (2)

- › Persons who are members of the Supervisory Body or other bodies legally representing an undertaking which performs any of the activities of production/generation or supply to customers shall not be eligible to become members of the Supervisory Body or other bodies legally representing the OU-TSO.

These requirements reflect two types of personal links, which are explicitly prohibited. On the one hand, this concerns the appointment of members of the Supervisory Body or other bodies legally representing the OU-TSO. On the other hand, it also affects the members of the Supervisory Body or other bodies legally representing an undertaking which performs any of the activities of production/generation or supply to customers.

Ensuring resources

- › The OU-TSO shall ensure that it has all financial, material, technical and human resources which are required to perform all of its tasks.

The applicant shall convincingly describe in a suitable manner that it is able to meet its obligations arising from the applicable national law (relating to tasks of the OU-TSO, connection to the transmission network and access to the system). The financial framework shall also allow funding of new investments, particularly those arising from legal obligations or connection to the transmission network or elaboration of the network development plan.

Transferring sensitive information

- › In direct relation with the unbundling procedure, neither commercially sensitive information on the OU-TSO, which was previously a part of the VIU, to undertakings which perform one of the activities of production/generation or supply to customers nor a staff from the OU-TSO to those undertakings may be transferred.

If the OU-TSO decides to unbundle according to the OU-TSO model, then it shall prove that in the unbundling procedure neither commercially sensitive information is submitted to the VIU nor staff of the OU-TSO is transferred to it. For the transfer of a staff of the OU-TSO, the date shall be the effective date of the applicable national law.

12.4 Documents and Statements Relating to the Application for Certification

The application for certification

- › The TSO shall file the application for certification according to one of possible models (in the case of Albania only the OU model; the ITO or the ISO models are not applicable). The TSO shall attach all required documents and statements to the application for certification enabling the ERE to evaluate the application. The documents and statements, on request by the ERE, shall also be made available in electronic form.

Together with the application for certification, the applicant shall submit for review all of the statutory requirements and treat them as necessary documents. Throughout the documents, compliance with the statutory requirements shall be documented in a plausible and understandable way.

In order to meet the statutory requirements relating to these documents, the applicant shall:

- › submit all documents and data in 3 copies in fair copy, as well as in 2 copies where all documents and data which contain commercial and business secrets shall be blackened, in Albanian language,
- › submit all documents and data on CD in 2 copies, where again all documents and data which contain commercial and business secrets shall be blackened, in Albanian language, and
- › attach to the application 1) a written explanatory statement by which all individuals, whose data and commercial and business secrets can be found in the documents, explain the terms of disclosure of documents, and 2) a verification of the unbundling model provided by the consultants who were eventually appointed in the certification procedure.

Given the timescales and process set out above, the applicant shall consider its position and make formal application for certification as soon as it is reasonably practicable. Any delay in applying or providing complete or further information may result in a delay to the ERE's preliminary and/or final certification decision. These decisions (with reasons) will be notified to the applicant, the MoEI and to the ECS.

If the ERE requests further information from the applicant or from a relevant producer/generator or supplier, the deadline is extended to four months beginning on the day on which the ERE receives the last of the requested information.

The application for certification shall be in writing and contained in a single document. The application shall contain sufficient information and analysis to enable the ERE to understand the issues and reach informed decisions without reference to additional documents.

The applicant shall ensure that any information relevant to the matters that the ERE must consider shall be provided in the application even if that information is not strictly required in response to the questions set out in the list below.

This list is designed to request information necessary to enable the ERE to discharge its duties under the applicable national law, including information the ERE is required to provide to the ECS as part of the certification procedure.

Where any answers rely on contractual provisions, the relevant underlying contractual provisions shall be included with the application (but not entire contracts). The ERE shall invite the applicant to discuss the application for certification before it is submitted.

It is in the interest of both, the applicant and the ERE, to ensure that, on the one hand, the application contains sufficient information for it to be considered complete, and on the other that the scope of information provided can be suitably focussed on any issues.

The applicant shall clearly identify in its application any information which it considers to be confidential. For each piece of information identified, the applicant shall provide an explanation as to why that information is confidential.

Where the same information is required in response to more than one question, it is acceptable to answer questions by cross reference to the answers to previous questions.

Specific documents and data which are required for the certification shall be listed by the ERE in detail and given in the so-called "*physical requirements list*". The ERE shall establish such list for the certification of the TSO according to the OU model.

The OU-TSO related physical requirements list shall contain items which are subjects to a preliminary regulatory assessment by the ERE, again of the required minimum level.

The application for certification shall contain explanation of every item from the list, in a way that the numbering in the application corresponds to the numbering in the list. The ERE shall reserve the right to call up additional documents and data, and ask for further explanations at any time in the certification procedure.

Should there be listed the statements of a partnership or a legal person within the documents, these statements shall be made by the respective bodies authorised to represent and sign, i.e. the managing partner in a general or limited partnership, the managing director of a limited company or the directors of a corporation, all in number authorized to represent. As far as the statements do not relate directly to the applicant, but to any of the VIUs or any of their subsidiaries, the statements by the VIUs and any of their subsidiaries concerned shall be handled by their duly authorised bodies, and not by the applicant.

The following physical requirements list contains documents and statements which shall be referenced by the applicant to the ERE when submitting the application for certification according to the OU model. It is based on the guidelines which various NRAs provided to the TSOs in relation to the certification according to the OU model.

0. General information about the applicant

- 0.1. The applicant's full name (registered name if applicable)
- 0.2. The applicant's registered number (if applicable)
- 0.3. The applicant's trading name (if applicable)
- 0.4. The applicant's legal status and country of registration
- 0.5. The applicant's registered office (or if not registered, principal office)
- 0.6. If the applicant is a partnership, please list the full name(s), registered numbers (if applicable) and registered offices (or if not registered, principal offices) of each partner
- 0.7. Whom should the ERE contact about the application?
Title / First name(s) / Surname / Job title / Company name /
Business address / Postcode / Phone number / Mobile number / Fax
number / E-mail address / Company web-site address
If this contact changes the applicant will need to provide the ERE
with alternative details
- 0.8. List of licences held by the applicant, and any licence applications
made by the applicant, under the applicable national law

1. Ownership of the OU-TSO

- 1.1. The transmission network map/diagram and a list of all systems and
equipment necessary for the operation of the transmission network
- 1.2. Declaration and statement by the OU-TSO of ownership of the
transmission network
- 1.3. Structure of ownership of the transmission network (in case of
indirect ownership)
- 1.4. The OU-TSO's proofs on the control of the ownership company (in
case of indirect ownership)
- 1.5. Structure of the ownership distribution (in case of fractional
ownership)
- 1.6. Detailed balance sheet showing the transmission system assets
owned by the OU-TSO
- 1.7. Detailed profit and loss statement showing that the OU-TSO does
not lease or rent any transmission system asset
- 1.8. Systems and equipment which are made available for usage by/to
third parties (list of any transmission systems which the applicant
leases or rents from or to any other party)
- 1.9. Detailed balance sheet showing the transmission system assets
owned by the mother companies (in case of a joint venture)
- 1.10. Detailed profit and loss statement showing that the mother
companies do not rent any transmission system asset (in case of a
joint venture)
- 1.11. List of countries the OU-TSO is operating in (in case of a joint
venture)
- 1.12. List of the joint venture shareholders which are OU-TSOs and, if
any, their certification decisions

2. Control of the OU-TSO

- 2.1. Overview of all shareholders of the OU-TSO and their rights in the OU-TSO, including a corporate structure diagram (showing all members of the group of companies which the applicant forms part of up to and including each ultimate controller)
- 2.2. List of all equity interests or voting rights held by any company shown in the diagram in any electricity or gas undertaking where the undertaking is a relevant producer or supplier and a brief explanation of why such equity interests or voting rights do, or do not, create or confer control
- 2.3. In each case where control arises, specification of the nature and means of control (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or other legally representing bodies of the undertaking, de facto and de jure control, sole control or joint control)
- 2.4. Overview of respective shareholders of the OU-TSO, including declaration and statement of eventually granted minority rights to shareholders (in case of sole or joint control through a shareholder)
- 2.5. Overview of respective shareholders of the OU-TSO, including declaration and statement of eventually granted minority rights to shareholders (in case of joint control through several shareholders)
- 2.6. Partnership agreement between the OU-TSO and the ownership company (in case of indirect ownership)
- 2.7. Excerpts from the registry relating to the OU-TSO and the ownership company (in case of indirect ownership)
- 2.8. Control and profit transfer agreements between the OU-TSO and the ownership company (in case of indirect ownership)
- 2.9. Shareholders voting agreements or other contracts which grant an influence on the behaviour of the partners (for example, joint venture agreements, contractual provisions requiring approval and/or veto rights) for each of the shareholders of the OU-TSO and the ownership company (in case of indirect ownership)
- 2.10. Outcome of the OU-TSO's registration procedure within the national competition authorities

The Supervisory Body (if available) or the bodies appointed to represent the OU-TSO

- 3.1. Consortium agreements relating to the Supervisory Body (for example, a right to appoint representatives of a shareholder)
- 3.2. The Rules of Procedure of the Supervisory Body
- 3.3. The minutes of the last Supervisory Body meetings
- 3.4. The minutes of the last General Shareholders Assembly meeting which has led to the election of the Supervisory Body
- 3.5. Declaration and statement by the OU-TSO on the exclusion of prohibited functions of members of the Supervisory Body
- 3.6. List of members of the Supervisory Body
- 3.7. Overview of all the other bodies of the OU-TSO
- 3.8. Overview of functions of members of the Supervisory Body in bodies of other companies

- 3.9. Presentation of other participating interests of a legal person which is determined as a member of the Supervisory Body, if applicable

4. *The Management Board of the OU-TSO*

- 4.1. Consortium agreements relating to the Management Board (for example, a right to appoint representatives of a shareholder)
- 4.2. The Rules of Procedure of the Management Board
- 4.3. The minutes of the last General Shareholders Assembly meeting and/or the Supervisory Body meeting which led to the election of the Management Board
- 4.4. Declaration and statement by the OU-TSO on the exclusion of prohibited functions of members of the Management Board
- 4.5. List of members of the Management Board
- 4.6. Overview of functions of members of the Management Board in bodies of other companies, setting out the full name, registered number (if applicable) and the nature of the business of the companies in which they hold the appointments
- 4.7. Presentation of other participating interests of a legal person which is determined as a member of the Management Board, if applicable

5. *Separation within the State*

- 5.1. Are any of the bodies which, directly or indirectly, exercise control or exert any shareholder rights over the applicant a public body (the State)? If so, provide responses below
- 5.2. How, and which part of, the public body exercises control or exerts any rights over the applicant?
- 5.3. Does the public body also directly or indirectly exercise control or exert any rights over the undertaking performing any of the functions of production/generation and supply?
- 5.4. Brief description of the statutory (legal and financial) interdependencies between the public body and the applicant
- 5.5. How independence between the public body and the applicant is ensured?

6. *Ensuring funds of the OU-TSO*

- 6.1. Projected planning for the next years
- 6.2. Financial plans
- 6.3. Financing agreements (loans, collaterals)
- 6.4. Cooperation agreements, liability and guarantee commitments
- 6.5. Annual Accounts (copy) 2012
- 6.6. Annual Accounts (copy) 2011
- 6.7. Annual Accounts (copy) 2010
- 6.8. Organigramm of the OU-TSO, including number of its employees
- 6.9. Explanation by the OU-TSO of activities of its top responsible employees, including explanation of purchased services
- 6.10. Declaration and statement by the OU-TSO on availability of appropriate means

7. *Transferring sensitive information*

- 7.1. Presentation of measures taken by the OU-TSO to prevent the transfer of commercially sensitive information to the former vertically integrated utility
- 7.2. Declaration and statement by the OU-TSO that no transfer of personnel has taken place at the former vertically integrated utility

8. The Questionnaire of the European Commission

- 8.1 Filled in QUESTIONNAIRE of the Commission SEC(2011) 1095 final: COMMISSION STAFF WORKING PAPER on certification of Transmission System Operators of networks for electricity and natural gas in the EU; 21 September 2011

9. Filing documents with the ERE

- 9.1. Three written copies of the documents without blackening of business and trade secrets in the paginated form
- 9.2. Two written copies of the documents (blackened version) in the paginated form
- 9.3. Documents in electronic form, without blackening of operating and business secrets (scanned version with pagination)
- 9.4. Documents in electronic form, blackened version (scanned version with pagination)

12.5 The List of the EC's Opinions Related to the Certification According to the OU Model

The list of EC's opinions

This part contains the list of the EC's Opinions pursuant to:

- › Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC in electricity, as well as
- › Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC in natural gas,

which the EC provided in response to the EU Member States NRAs' draft certification decisions relating to the certification of TSO according to the OU model. These are taken here as an example of work which is in front of the ECS towards the EnC Contracting Parties NRAs, including the ERE.

The following EC's Opinions³³ (24 in electricity and 17 in natural gas), which have been publicly available by 31 December 2014, are analysed in the course of this work:

³³ All Opinions can be found at the following address:

<https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation>

under

Opinions and decisions on operator certifications.

In electricity

In electricity

- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Italy - Certification of Terna S.p.A. by AEEG, C(2013)810; 052-2012-IT,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Germany - Certification of 50 Hertz Transmission GmbH by BNetzA, C(2012)6260; 027-2012-DE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive 2009/72/EC - Germany - Certification of TenneT TSO GmbH by BNetzA, C(2012)6258; 029-2012-DE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive 2009/72/EC - Germany - Certification of TenneT Offshore by BNetzA, C(2013)5631; 077-2013-DE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Spain - Certification of Red Eléctrica de España, S.A.U. by CNE, C(2012)3526; 021-2012-ES,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Belgium - Certification of Elia System Operator N.V. by CREG, C(2012)7142; 038-2012-BE,
- › COMMISSION OPINION of 9.1.2012 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Denmark - Certification of Energinet.dk by DERA, C(2012) 87; 007-2011-DK,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Austria - Certification of Vorarlberger Übertragungsnetze GmbH by E-Control, C(2012)2244; 009-2012-AT,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive 2009/72/EC - Finland - Certification of Fingrid Oyj by EMA, C(2014)329; 090-2013-FI,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Sweden - Certification of Affärsverket svenska kraftnät by EMI, C(2012) 3011; 017-2012-SE,

- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Estonia - Certification of Elering AS by ERE, C(2013)7188; 086-2013-EE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Portugal - Certification of REN-E by ERSE, C(2014)3255; 094-2014-PT,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Czech Republic - Certification of ČEPS by ERU, C(2012)7059; 036-2012-CZ,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Lithuania - Certification of LITGRID by NCCPE, C(2013)4247; 071-2013-LT,
- › COMMISSION OPINION of 8.7.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - United Kingdom - Certification of Moyle Interconnector by NIAUR and Ofgem, C(2013)4398; 070-2013-UK(NI),
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - The Netherlands - Certification of TenneT by NMa, C(2013)4206; 068-2013-NL,
- › COMMISSION OPINION of 10.6.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - United Kingdom - Certification of Blue Transmission OFTOs by Ofgem, C(2014)679; 092-2013-UK,
- › COMMISSION OPINION of 10.6.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - United Kingdom - Certification of GG OFTO by Ofgem, C(2013)3705; 067-2013-UK,
- › COMMISSION OPINION of 19.4.2012 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - United Kingdom - Certification of National Grid Electricity Transmission plc by Ofgem, C(2012)2735; 010-2012-UK,
- › COMMISSION OPINION of 26.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - United Kingdom - Certification of Thanet by Ofgem, C(2013)2566; 061-2013-UK,
- › COMMISSION OPINION of 19.4.2012 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of

Directive 2009/73/EC - United Kingdom - Certification of Blue Transmission Walney 1 Ltd by Ofgem, C(2013)979; 054-2013-UK,

- › COMMISSION OPINION of 5.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - United Kingdom - Certification of Blue Transmission Walney 2 Ltd by Ofgem, C(2013)2030; 058-2013-UK,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive 2009/72/EC - Poland - Certification of PSE by URE, C(2014)2471; 093-2014-PL,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Slovak Republic - Certification of SEPS by URSO, C(2013)5376; 074-2013-SK,

In natural gas

In natural gas

- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Italy - Certification of Societa Gasdotti Italia S.p.A. by AEEG, C(2013)380; 047-2012-IT,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Italy - Certification of Snam Rete Gas II S.p.A. by AEEG, C(2013)5961; 078-2013-IT,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Germany - Certification of Fluxys TENP GmbH by BNetzA, C(2012)6253; 031-2012-DE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Germany - Certification of Gasunie DTS GmbH by BNetzA, C(2012)9102; 043-2012-DE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Spain - Certification of ENAGAS, S.A. by CNE, C(2012)4171; 024-2012-ES,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Spain - Certification of Reganosa, S.A. by CNE, C(2013)809; 051-2012-ES,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Spain - Certification of Reganosa (2), S.A. by CNMC, C(2013)9689; 089-2013-ES,

- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - France - Certification of TIGF by CRE, C(2014)3837; 097-2014-FR,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Belgium - Certification of S.A. Fluxys Belgium by CREG, C(2012)5751; 026-2012-BE,
- › COMMISSION OPINION of 9.1.2012 pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Denmark - Certification of Energinet.dk by DERA, C(2012) 88; 006-2011-DK,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Sweden - Certification of Swedegas AB by EMI, C(2012) 3009; 018-2012-SE,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Portugal - Certification of REN-G by ERSE, C(2014)3255; 095-2014-PT,
- › COMMISSION OPINION of 23.5.2013 pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - United Kingdom - Certification of Premier Transmission Limited by NIAUR, C(2013)4657; 065-2013-UK,
- › COMMISSION OPINION of XXX pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - The Netherlands - Certification of GTS by NMa, C(2013)4205; 069-2013-NL,
- › COMMISSION OPINION of 26.3.2013 pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - United Kingdom - Certification of Interconnector UK Limited by Ofgem, C(2013)1872; 057-2013-UK,
- › COMMISSION OPINION of 19.4.2012 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - United Kingdom - Certification of National Grid Gas plc by Ofgem, C(2012)2735; 011-2012-UK,
- › COMMISSION OPINION of 16.7.2013 pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - United Kingdom - Certification of Premier Transmission Limited by Ofgem, C(2013)4657; 073-2013-UK,

The analysis

The EC's Opinions are analysed in both, electricity and natural gas, due to the fact that the Directives are almost symmetrically written with regard to the certification of TSOs. Further on, this means that experiences which have been acquired until

now in both, electricity and natural gas, are relevant for the certification of the gas TSO in Albania.

The overview

The overview closely follows the structure established by the EC's Opinions. The EC's remarks, notes, comments and requests which are found in all of its individual Opinions are spread under particular items of the structure. In this way, the analysis results with one overall and generic version of the Opinion, which comprises all of the individual Opinions in one.

The structure

The structure is divided into four main parts:

- 1) Procedure;
- 2) Description of the Draft Certification Decision;
- 3) Comments; and
- 4) Conclusions.

The third part - 3. Comments - is the most extensive one as the EC provides its remarks dominantly under this part. The EC has organised its comments under individual items, i.e. everywhere it has found so far a space for practically possible non-compliance with the certification requirements from the Directives. It should be kept in mind that these items do not form an exhaustive list, but make only for those recognised by the EC as highly problematic ones in the draft certification decisions so far. These are singled out for further attention to the NRAs before issuing the final certification decisions. Every next certification case may add up more items to this list. The organisation of the EC's comments, together with identified items, may be understood as pointing out to a structure of the application for certification as well.

12.6 The EC's Opinions of 2011/2012/2013/2014 - EU Member States - Certification of the OU-TSOs

12.6.1 Procedure

This part enlists items of the EC's responses received upon a notification from the NRAs, in accordance with Article 10(6) of Directive 2009/72/EC in electricity or Directive 2009/73/EC in natural gas (commonly the Directives), of a draft certification decision on the certification of the TSO for electricity and natural gas according to the OU model.

Pursuant to Article 3(1) Regulation (EC) No 714/2009 in electricity or Article 3(1) Regulation (EC) No 715/2009 in natural gas (commonly the Regulations), the EC is required to examine the notified draft certification decision and deliver an opinion to the relevant NRA as to its compatibility with Article 10(2) and Article 9 of the Directives.

12.6.2 Description of the Draft Certification Decision

Article 9 of the Directives sets out the unbundling rules of transmission systems and TSOs. Article 9(1-7) provides details related to unbundling according to the OU model. The NRA shall analyse whether and to what extent a TSO complies with the unbundling rules of the OU model as laid down in the national legislation transposing the Directives.

In its draft certification decision, if appropriate, the NRA shall also identify a number of measures which still remain to be taken in order to ensure full compliance with the unbundling rules. The measures concerned have to be summarised in a sole point of the NRA's draft certification decision.

The draft certification decision may also be treated as a positive certification decision which is subject to the compliance with certain measures to be met by specific deadlines. Compliance with these measures must be formulated as a condition of the positive certification decision. Therefore, the non-compliance with the conditions set in the draft certification decision would lead to the annulment of the positive certification decision. The compliance of the OU-TSO with the conditions laid down in the draft certification decision has to be checked by the NRA before issuing its final certification decision.

12.6.3 Comments/Lessons Learned

On the basis of the notifications from the NRAs, the EC has given a number of comments on the draft certification decisions wherefrom the following lessons are learned.

Choice of the OU model

1. [Article 9(1) of the Directives] The OU model shall be made available to a TSO under the applicable national legislation transposing the Directives.
2. [Article 9(6) of the Directives] In the OU model, the activity of transmission shall be legally unbundled from the activities of production/generation and supply/trade in electricity or natural gas exercised by the State.
3. The following lessons are learned from different situations which with regard to the choice of the OU model are recognised in the draft certification decisions as applicable in Albania:
 - a. The choice of the OU model is legitimate, if it has been transposed correctly in the applicable national law.
 - b. The activities of transmission from one side and on the other production/generation and supply/trade shall be under the responsibility and control of separate public bodies within the State.

Ownership of the transmission network

1. [Article 9(1)(a) of the Directives] The OU-TSO shall own the transmission system it operates.
2. The following lessons are learned from different situations which with regard to the ownership of the transmission network are recognised in the draft certification decisions as applicable in Albania:
 - a. If the OU-TSO does not own directly a part of the network, but that part is owned by a 100% daughter company of the OU-TSO, then there is no obstacle to the certification given the fact that the OU-TSO fully controls this daughter company and apart from ownership of that part of the network there are no other activities in the daughter company concerned.
 - b. If the OU-TSO has a daughter company, which legally owns the transmission assets, then a prerequisite for the certification according to the OU-TSO model is complete clarity with regard to the degree of control the OU-TSO has over its daughter company (the legal owner of the transmission assets).
 - c. A structure, in which the transmission network is not owned directly by the OU-TSO, but by its subsidiary, is not in itself an obstacle to the certification if it can be demonstrated that the OU-TSO has full control over its subsidiary.
 - d. The certification of a TSO should in principle not be withheld where the ownership of the transmission system assets is shared between two TSOs, where these TSOs have joint control over the transmission assets and where they have rights of use and disposal over a part of the transmission system that are equivalent to those of an owner and which allow them to operate their part and develop it independently and without being hindered.
 - e. The joint control of the asset company shall follow from the contracts for the right of use concluded between the asset company and its two OU-TSO shareholders, and from a consortium agreement between the two OU-TSO shareholders governing their relationship. At the same time, neither the OU-TSO nor another OU-TSO, as shareholders, can take decisions on their own whereby rights of the other would be infringed.
 - f. The joint control which the OU-TSOs have over the asset company (the direct owner of the system), together with the rights of use and disposal equivalent to those of an owner, shall be made equal to that of a property right.
 - g. The co-owner of the assets of the transmission system, another OU-TSO, shall be certified too. In the absence of certification, the

independent operation of the transmission system is not guaranteed. The certification of the OU-TSO shall be conditional upon the positive certification of another OU-TSO.

- h. If the undertaking from a third country participates in the capital of the OU-TSO and is entitled to exercise voting rights in the OU-TSO, then the NRA shall assess whether the undertaking from a third country, which is owned by that third country, exercises control over the OU-TSO.
- i. The specific certification rules laid down in Article 11 of the Directives, for situations where a TSO is controlled by a third country person, do not apply unless a control is identified. Nevertheless the participation in question has to be assessed for compliance with the OU-TSO model in Article 9 of the Directives. The NRA shall verify whether:
 - i. companies from third country are run independently as separate economic entities, or
 - ii. there is no incentive for the undertaking to influence the decision-making in the OU-TSO by favouring the production/generation and supply/trade interests to the detriment of other network users.
- j. The ownership of the network may include the "*co-ownership*", a legal construction in which several persons own the infrastructure and each has the right to operate and commercially exploit its own part according to its share. An agreement between the owners shall determine how decisions concerning the entire infrastructure are made.
- k. Where the proportion of the capacities owned differs substantially from the share in the ownership of the infrastructure, an additional contract for the transfer of use shall be signed. It provides for the TSO to operate and exploit also the part of the infrastructure it does not own. It is also possible to indirectly own the infrastructure through participations.
- l. The co-ownership can be sufficient to fulfil the condition of Article 9(1)(a) of the Directives, in particular in cases where the ownership of the transmission system assets is shared between two or more TSOs, where these TSOs have joint control over the transmission assets and where they have rights of use and disposal over a part of the transmission system that are equivalent to those of an owner and which allow them to operate their part and develop it independently and without being hindered.
- m. If there are several parts of the OU-TSO's transmission network that are not directly or wholly owned by the OU-TSO, the NRA shall

assess these cases with a view to impose a condition that prescribes a change in the ownership structure of the infrastructures concerned.

- n. If a small part of the transmission network is owned by different electricity undertakings, then these undertakings shall leave the operation of their assets to the OU-TSO. The legal owners of the network parts shall not have any management power over their transmission assets and they shall be required to follow the instructions by the OU-TSO and to finance the investments the OU-TSO decides upon.
- o. If the intention of the legislator is that the OU-TSO becomes the sole owner of the transmission network, then the NRA shall use the opportunity to ensure that unification of the transmission network under the ownership of the OU-TSO is indeed taken forward.
- p. In such circumstances, the NRA shall establish measures to favour the unification of the national transmission network. The NRA shall investigate whether a condition to the certification of the OU-TSO can be set that, if needed with the application of a transitional period, would require a process to be initiated leading to acquisition of the relevant parts of the transmission network by the OU-TSO.
- q. If the number of employees at the OU-TSO is unlikely to be able to carry out the full range of TSO activities, notwithstanding the small size of the transmission system, then consequently the operation of the transmission system is to a large extent made dependent of the use of sub-contracting.
- r. The sub-contracting of core OU-TSO functions can only be acceptable either if the transmission system is operated jointly as part of a wider transmission system or if a fully resourced OU-TSO makes an independent commercial decision to sub-contract services on efficiency grounds.
- s. The OU-TSO should itself have sufficient resources to oversee, control and provide instructions to the sub-contractor. Only entities which meet the unbundling requirements should be eligible to provide such services.
- t. Even when outsourcing the control room, the OU-TSO should have sufficient resources to oversee, control and provide instructions to the sub-contractor.
- u. The OU-TSO shall have sufficient resources to oversee the actions of the sub-contractor in operating its transmission system as part of the wider system. In addition, the OU-TSO shall have the resources available to manage the financing, maintenance and development of the interconnections.

- v. Each tender for provision of services to the OU-TSO shall be fully evaluated against the potential of carrying out those functions in house. The OU-TSO shall have all necessary resources to effectively oversee, control and provide instructions to the sub-contractor.
- w. If the interconnector is owned by one or more companies active in the generation and supply of/trade in electricity/gas who lease it to the OU-TSOs from both sides for operation, then such ownership of the interconnector is incompatible with the unbundling rules of the OU-TSO model.
- x. The incompatibility exists despite the fact that the conditions of the lease agreement are made subject to the NRA's approval and that the two neighbouring TSOs market its capacity in a non-discriminatory manner.
- y. The two OU-TSOs shall obtain ownership or give up its operation of the interconnector by a certain date in order for the certification to remain valid. Both TSOs shall be certified as unbundled TSOs. Otherwise, in the absence of their certification, the independent operation of the interconnector is not guaranteed.
- z. If the OU-TSO is the owner of the entire national transmission grid with the exception of some limited assets, which are not its property but are under its administration (through contracts whereby the legal owners of the assets authorize the OU-TSO to use the facilities), then these assets shall be merely used to supply the owners of the assets or perform a function that would require third party access to be applied in a non-discriminatory manner.
- aa. In order to ensure that operatorship and ownership remain in the same hands in such case, the OU-TSO shall indeed carry out the functions of the TSO in relation to the transmission assets. The OU-TSO shall have the rights of use and disposal of the transmission assets equivalent to those of an owner in relation to these assets.
- bb. If the OU-TSO operates the transmission network on the basis of concession, then his rights and obligations under the concession shall be assessed in depth in order to establish whether the OU-TSO can be considered to be the owner of the network he operates. The rights of use and disposal of the concessionaire with regard to the transmission network assets shall be regarded as equivalent to those of an owner.
- cc. If the rights of the concessionaire with regard to the network assets can be considered as equivalent to those of an owner, then the operation of the network on the basis of a concession is not an obstacle for the certification under the OU-TSO model. The conditions are the following:

- i. the network assets shall feature on the balance sheet of the OU-TSO and can be used by the OU-TSO as a guarantee in acquiring financing on the capital market,
- ii. the concessionaire is responsible for exercising all of the OU-TSO tasks, which include the planning, construction, operation, and maintenance of the entire infrastructure and the financing thereof, and
- iii. upon the expiry of the concession, the State has to compensate the concessionaire with an amount equivalent to the corresponding book value of the concession assets.

Tasks of the transmission system operator

1. [Article 9(1)(a) of the Directives] Each undertaking which owns a transmission system is required to act as a TSO, including performing all tasks of a TSO under Article 12 Directive 2009/72/EC in electricity and Article 13 Directive 2009/73/EC in natural gas.
2. The following lessons are learned from different situations which with regard to the tasks of the transmission system operator are recognised in the draft certification decisions as applicable in Albania:
 - a. Compliance with the unbundling rules of the OU model means that the undertaking which is the transmission system owner shall also act as the OU-TSO, and shall be as a consequence responsible, among other things for:
 - i. granting and managing third party access on a non-discriminatory basis to system users, and
 - ii. collecting access charges, congestion charges, and payments under the inter-TSO compensation mechanism.
 - b. As regards investments, the owner of the transmission system shall be responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning.
 - c. Decisions related to the operation, maintenance and development of the network shall be made by the OU-TSO which shall have enough resources at its disposal to carry out its tasks independently.
 - d. The OU-TSO shall have enough resources at its disposal to carry out its tasks as the OU-TSO independently. The OU-TSO may not hire only a few employees to carry out the most important tasks.
 - e. For the performance of its tasks, the OU-TSO may not rely to a significant extent on services provided by parts of the VIU active in

electricity and natural gas production/generation, distribution and supply/trade.

- f. If core tasks of transmission system operation are outsourced to the VIU, then such arrangement is not compatible with the OU-TSO model. To be accepted as the OU-TSO, it should at least carry out the administration of the transmission system and the control room services itself.

Exercise of control over and rights in the transmission system operator

1. [Article 9(1)(b)(i) of the Directives] The same person or persons may not, directly or indirectly, exercise control over an undertaking performing any of the functions of production/generation or supply/trade, and directly or indirectly exercise control or exercise any right over a TSO or over a transmission system.
2. [Article 9(1)(b)(ii) of the Directives] The same person or persons may not, directly or indirectly, exercise control over a TSO or over a transmission system, and directly or indirectly exercise control or exercise any right over an undertaking performing any of the functions of production/generation or supply/trade.
3. [Article 9(3) of the Directives] In order to avoid undue influence arising from vertical relations between electricity and natural gas markets, the OU-TSO model shall apply across both markets. It prohibits influence over both, electricity generator or supplier and natural gas TSO, or gas producer or supplier and electricity TSO.
4. Article 9(3) Directive 2009/72/EC in electricity includes a cross reference to TSOs and undertakings performing any of the functions of production and supply/trade within the meaning of Directive 2009/73/EC in natural gas. Directive 2009/73/EC in natural gas defines what shall be understood by the terms "*supply*". "*Supply*" is defined as sale or resale of natural gas, including LNG, to customers.
5. Article 9(3) Directive 2009/73/EC in natural gas contains a similar provision regarding a cross reference to TSOs and undertakings performing any of the functions of generation and supply/trade within the meaning of Directive 2009/72/EC in electricity. Directive 2009/72/EC in electricity defines what shall be understood by the terms "*supply*" and "*generation*". "*Supply*" is defined as sale or resale of electricity to customers, whereas "*generation*" means the production of electricity.
6. The following lessons are learned from different situations which with regard to the control over and rights in the TSO are recognised in the draft certification decisions as applicable in Albania:

- a. No person who controls or may exercise rights in relation to the OU-TSO can control an undertaking performing any of the activities of production/generation or supply/trade of electricity or natural gas.
- b. No person may exercise shareholder rights in relation to the OU-TSO, in case the same person also controls a relevant producer, generator or supplier/trader of electricity or natural gas. The same prohibition also applies to the exercise of rights to appoint a senior officer of the OU-TSO.
- c. The exercise of such rights or the appointment of senior officers in such cases is voidable on an application to the court. Similar provisions also apply to persons controlling the OU-TSO in relation to the exercise of rights in, or the appointment of directors to, producers, generators or suppliers/traders.
- d. If any infrastructure investor, which is one of the controlling shareholders of the OU-TSO, also has certain participations in production/generation activities, outside and inside of the EU, then it is necessary to examine whether and to what extent these participations form an obstacle to the certification.
- e. When assessing participations of the infrastructure investor in production/generation and supply/trade activities inside and outside of the EU, it is necessary to examine:
 - i. whether an incentive for the infrastructure investor can be identified to favour the participations it has in production/generation or supply/trade activities, i.e. to use its participation in the OU-TSO to discriminate against actual or potential users of the OU-TSO's network, and
 - ii. to what extent these participations in production/generation or supply/trade activities form an obstacle to the certification of the OU-TSO as complying with the OU model.
- f. In absence of any interface between the systems of the countries outside the EU, on the one hand, and of the EU, on the other hand, the participations of the infrastructure investor outside of the EU do not give rise to any conflicts of interest and are therefore not of such nature as to prevent the certification of the OU-TSO.
- g. The infrastructure investor may not influence the decision-making in the OU-TSO as a TSO in one EU Member State in order to favour the production/generation interest it has in the undertaking in another EU Member State to discriminate against actual or potential competitors.
- h. If the OU-TSO is owned by an infrastructure investor, whose ultimate ownership lies with a financial house, it is necessary to assess:

- i. whether other undertakings owned and controlled by the infrastructure investor perform any of the activities of production/generation or supply/trade, and
 - ii. the individual shareholders of the financial house who are also advisers to the infrastructure investor and who are involved in the activities of production/generation and/or supply/trade of electricity or natural gas and simultaneously might indirectly control or exercise rights in the OU-TSO.
- i. For the needs of assessment, it is possible to take into account the following:
 - i. limited size or non-existence of the interface between the markets in the EU Member States, or an EU Member State and any third country,
 - ii. performance of the generation activities concerned under the regulated framework (i.e. the electricity is sold at a regulated price) or considered important from a social and regional perspective but not performed under normal commercial terms,
 - iii. benefit of the generation activities concerned from priority dispatching, and
 - iv. small size and restricted geographic scope of the generation activities concerned, for example small in comparison to the total national electricity generation (on an individual and collective basis).
- j. If the two neighbouring electricity markets are well-integrated, then there is a potential for control or rights over a transmission grid in one EU Member State being exercised to favour generation interests in another one. Therefore, the participation must be subject to an appropriate analysis.
- k. The certification of a TSO should not be refused in cases where it can be clearly demonstrated that there is no incentive for a shareholder in a TSO to influence the TSO's decision making in order to favour its generation/production and/or supply/trade interest to the detriment of other network users.
- l. The persons indirectly exercising rights in the OU-TSO, notably through the shareholders of that OU-TSO, fall within the scope of Article 9(1)(b)(i) of the Directives. Any other interpretation would allow for circumvention of the unbundling rules, notably by the setting up of dependent companies.
- m. If the OU-TSO's holding company is listed in the stock exchange (having the main shareholder and the rest in free float), then an *ex post*

mechanism of control shall be clearly defined to guarantee the compliance with the unbundling rules.

- n. If the OU-TSO operates a number of activities in subsidiaries and associated companies, then none of them may be electricity or natural gas production/generation and supply/trade activities.
- o. The ownership and operation of a gas storage facility falls outside of the scope of relevant activities listed in Article 9(1)(b)(ii) *juncto* Article 9(3) of the Directives. However, the rules on legal and functional unbundling shall be applied.
- p. If the OU-TSO holds shares in companies which facilitate trade of electricity and natural gas on exchanges, then it is not an obstacle to the certification of the OU-TSO because the activities of these exchanges cannot be qualified as "supply" of electricity or natural gas within the meaning of the Directives.
- q. If the OU-TSO holds shares in the market coupling company, then similarly the activities of the market coupling company cannot be qualified as supply of electricity as defined in Directive 2009/72/EC in electricity.
- r. Although the market coupling company is placing bids on the exchanges, their purpose is not to buy and subsequently sell electricity to customers but rather to establish a price signal on congestion of interconnectors of the coupled markets.
- s. The holding of shares by the OU-TSO in the exchanges and the market coupling company is not an obstacle for certification according to the OU-TSO model.
- t. The OU-TSO's corporate governance arrangements shall be such that shareholders with interests in production/generation or supply/trade of electricity or natural gas are not able to exercise rights, with the aim to:
 - i. remove voting rights from the conflicted shareholders, and
 - ii. prevent sharing of information between the OU-TSO and its shareholders.
- u. If the OU-TSO is wholly owned and controlled by the company which is listed on the stock exchange and has interests in a production/generation company, then any rights that the listed company and other associated entities have over the production/generation company shall be effectively removed, for instance:
 - i. by the existence of the independently managed body, and
 - ii. by putting in place the measures to help ensure independence.

- v. If the OU-TSO's owner has a share in a renewable energy fund, then:
 - i. the fund shall be managed on an arm's length basis by a third party (fund manager),
 - ii. the fund manager's activities shall be governed by financial legislation,
 - iii. the fund must act in the interests of the investors in the fund,
 - iv. the fund must apply appropriate ring-fencing of different businesses,
 - v. the financial services authority shall oversee compliance and impose or propose to a court a range of disciplinary, criminal and civil sanctions,
 - vi. the OU-TSO owner's share of the fund shall amount to small percentage,
 - vii. the interest of the OU-TSO's owner shall be essentially confined to a financial interest, and
 - viii. the OU-TSO's owner may not exercise, directly or indirectly, either rights or control in any of the renewable energy undertakings.
- w. If a state investment bank has a significant stake and sole control over the OU-TSO, then the bank may not have the incentive or the ability to use its influence over the OU-TSO to the benefit of its energy-related participations, in particular with regard to its day-to-day operation and investments. It is relevant to assess the rights, including the financial ones, which remain with the bank.
- x. A conflicting company's decision-making powers and rights connected to its minority participation in the OU-TSO shall not go beyond the holding of a purely passive financial right related to a minority shareholding. For instance, the right to receive dividends, without any voting or appointment rights attached to them.
- y. The voting and board membership rights that a conflicting company has as a shareholder in the OU-TSO shall be decreased to an appropriate level of influence for an investor to maintain a sufficient degree of oversight over its investment without having the ability to unduly influence the OU-TSO and thereby jeopardizing the independent operation and development of the network.

Appointment of members of the Board, composition of the Board and independence of members of the Board

1. [Article 9(1)(c) of the Directives] The same person may not appoint members of the supervisory board, the administrative board, or bodies legally representing the undertaking, of a TSO or a transmission system, and directly or indirectly exercise control over or any right in an undertaking performing any of the activities of production/generation or supply/trade.
2. [Article 9(1)(d) of the Directives] The same person is not allowed to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the activities of production/generation or supply/trade and a TSO or a transmission system.
3. [Article 9(1)(c) and (d) of the Directives] Members of the top management of the OU-TSO and persons that have the right to appoint them, must fulfil certain requirements of independence.
4. In particular, the same person or persons are not entitled to control or exercise any right in an undertaking performing any of the activities of production/generation or supply/trade and at the same time be or appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking.
5. The following lessons are learned from different situations which with regard to the Board (appointment, composition and independence) of the TSO are recognised in the draft certification decisions as applicable in Albania:
 - a. The members of the board of the OU-TSO or the OU-TSO's holding company who are also members of the board of another electricity or natural gas production/generation and supply/trade undertakings are not in compliance with Article 9(1)(d) of the Directives.
 - b. In cases where a board member in the OU-TSO is also a board member, or a delegated board member, in certain holding companies that have participations in the undertakings active in production/generation and/or supply/trade, a close examination of the relevant facts is necessary to establish whether the unbundling rules are complied with.
 - c. Such examination is also necessary in situations where the holding company does not perform production/generation or supply/trade activities itself, but have control over daughter companies that do carry out such activities.
 - d. If the OU-TSO is ultimately controlled by the holding company, then it is necessary not only to assess the compliance with the independence requirements of members of the direct management of the OU-TSO, but also of members of the management of the holding company.

- e. Article 9(1)(c) and (d) of the Directives is not restricted to the activities of producers, generators and/or suppliers operating in the EU solely.
- f. The OU-TSO can ensure observance of the unbundling rules relating to independence of members of the board by requiring the persons concerned to sign a declaration on honour and renew it annually if its breach will lead to effective and dissuasive sanctions, including fines or imprisonment.
- g. It is unacceptable that the shareholders and the board members appointed by them are prohibited to exercise their voting rights in the shareholders meeting and in the administrative board of the OU-TSO whenever decisions related to transmission activities are taken, if it is allowed to them to exercise their voting rights whenever other decisions, not related to transmission activities, are taken.
- h. Article 9(1)(b), (c) and (d) of the Directives does not provide for a distinction between different types of decisions in shareholders meetings or board meetings. The rights of a conflicting shareholder shall be turned into purely passive financial rights compatible with Article 9(1) of the Directives.
- i. It is not allowed to the minority shareholder to appoint members in the OU-TSO's Board and to exercise rights over an undertaking active in the supply/trade and/or production/generation of electricity or gas.

Separation within the State

1. [Article 9(6) of the Directives] The control by the State over the activity of transmission as well as over the activities of production/generation and supply/trade is enabled; however, subject to the condition that separate public bodies are in charge of those activities.
2. Two separate bodies are treated as two separate persons which shall be in a position to control the activities of generation and supply/trade from one side, and from the other the activity of transmission, subject to the condition that they are not under the common influence of another public body which breaches the rules for unbundling of the OU-TSO. Those public bodies shall be truly separate.
3. In such cases, the requirements of the OU model from Article 9 of the Directives shall be valid parts of relevant national legislation and fulfilled. This shall be assessed on a case-by-case basis.
4. The following lessons are learned from different situations which with regard to the separation within the State are recognised in the draft certification decisions as applicable in Albania:
 - a. The ownership in the OU-TSO shall be managed by the Minister (or a public body) responsible for the OU-TSO who adopts decisions on

topics related to the OU-TSO and has a control over the OU-TSO. The ownership in the VIU shall be managed by another Minister (or public body).

- b. Two separate Ministries which control the activity of transmission from one side and from the other the activities of generation and supply/trade can under certain circumstances represent bodies with sufficient degree of separation according to Article 9(6) of the Directives.
- c. Compliance with the requirements of the OU model relating to the separation within the State does not assume only the compliance with Article 9(6) of the Directives, but also with Article 9(1)(b), (c) and (d).
- d. Powers of the Ministry, that relate to powers of that Ministry over electricity and gas undertakings with respect to control, in view of the OU-TSO may not result in any right within the meaning of Article 9(1) and (2) of the Directives.
- e. If a person besides interests in generation and supply/trade also has a decisive influence on significant investments in transmission infrastructure, then the control over investments within the TSO may be abused in such way that the generation and supply/trade interests are favoured.
- f. The possibility of influence on decision making in the TSO which would favour specific generation and supply/trade interests to a detriment of other network users shall be carefully assessed.
- g. It is obligatory to elaborate and submit a full list of all undertakings owned by the State which are controlled by the Ministries (or public bodies), and which perform any of the activities of generation and supply/trade.
- h. From the full list of energy undertakings wherein the State has its ownership shares, including from any written notes, it shall be clear which Ministry (or public body) has the responsibility over those undertakings.
- i. The NRA shall carry out a detailed assessment of compliance with Article 9(6) of the Directives, i.e. a detailed evaluation of the degree of separation between two responsible Ministers emphasizing any ministerial hierarchy, in line with national legal tradition and constitutional theory.
- j. The NRA may not limit itself only to analysing if the undertakings, which are under the same Minister as the OU-TSO, act as producers or suppliers/traders.

- k. The NRA shall assess whether a sufficient degree of separation is guaranteed, according to Article 9(6) of the Directives, between responsible Ministers.
- l. The NRA shall note any existing safety mechanisms which prevent different Ministers coming under a common influence of the Prime Minister or any other public body which may require a coordination of their decisions. The NRA shall assess the manner which is used for monitoring and implementing the compliance with Article 9(6) of the Directives in this regard.
- m. Individual Ministers shall have the powers for independent decision making in areas of their responsibilities and enjoy a high level of independence. The Prime Minister can be responsible only for areas not covered by the Ministries.
- n. If all Ministers would be subordinated to the Prime Minister, it would not be clear to which extent it would mean that the Prime Minister has the authority to influence, for instance by giving direct instructions, a decision making of the Ministers relating to the OU-TSO and the VIU in such way that the interests of the VIU would be favoured to a detriment of other network users.
- o. Independence of individual Ministers in the areas of their responsibility shall prevent the Prime Minister or the Government to give instructions in view of the ministerial responsibility for transmission.
- p. The NRA shall in that context clearly note the body within the State which has a financial interest in the OU-TSO, i.e. how dividends are paid out and to whom.
- q. Only a limited number of decisions which in relation to the State assets are taken at a high level, i.e. mergers and acquisitions of undertakings, are under the responsibility of the Government, including the Prime Minister and the Ministers. They are taken on the proposal of the responsible Ministry.
- r. The NRA shall clearly assess to which extent the Ministry responsible for the OU-TSO can independently take decisions related to the activity of transmission which is performed by the OU-TSO, without being under the influence or control of another overarching public body, having in view interests of the State as a shareholder in undertakings performing the activities of generation and supply/trade.
- s. The Minister who controls the activities of generation and supply/trade of the VIU may not have legal means enabling him to give instructions to the Minister who controls the activity of transmission of the OU-TSO and vice versa.

- t. The Ministers shall be in the end legally and politically responsible for their own Ministries, and consequentially have powers for independent decision taking in their areas of responsibilities.
- u. Independence of individual Ministers in their areas of responsibilities shall prevent the Prime Minister to give instructions, orders or guidelines relating to the responsibility of the Minister in the area of transmission.
- v. The OU-TSO shall be a separate legal person and related daily activities of managing that undertaking shall be carried out by the Managing Board and the top management personnel of the OU-TSO. The OU-TSO shall be, in legal and organisational sense, fully separate from other undertakings.
- w. The Managing Board and the top management personnel of the OU-TSO shall be forbidden to possess any commercial interests or participate in the role of director in the activities of generation or supply/trade.
- x. Independence of the OU-TSO shall be strengthened furthermore by implementing an internal monitoring programme which must be applied to all its employees with the aim to prevent biased behaviour. That programme shall include detailed guidelines for handling of confidential information.
- y. The Minister (responsible one) may control the OU-TSO only by way of giving general directions for business activity, and not by interfering with decision taking with respect to concrete day-to-day operations.
- z. If the Minister (responsible one) has powers to take decisions with respect to day-to-day operations and investment planning (in case that the powers of the Ministry are comparable to the ones of the General Shareholders Assembly of a private undertaking), another Minister (non-responsible one), the Prime Minister or another overarching relevant public body may not influence decisions taken by the responsible Minister nor it can control them.
- aa. With regard to taking decisions which relate to daily operations of the OU-TSO, the NRA shall assess to which extent the responsible Minister can independently take decisions in the activity of transmission which is performed by the OU-TSO, without being influenced or controlled by another Minister (non-responsible one), the Prime Minister or another overarching public body, taking into account interests of the State as a shareholder in the undertaking.
- bb. The Minister responsible for the OU-TSO, particularly with regard to taking decisions related to daily operations of the OU-TSO and linked with the activity of transmission as performed by the OU-TSO, shall act truly independently and without being influenced or controlled by

another Minister (non-responsible one), the Prime Minister or another overarching relevant public body, taking into account interests of the State as a shareholder in the undertaking.

- cc. Financial resources of the OU-TSO shall be kept separately from the State's ones. The NRA shall confirm that financial resources of the OU-TSO are kept separately from the State's ones.
- dd. The OU-TSO shall not be allowed to pay out dividends to the State and it shall contract on his own all needed insurances in case when it is not covered by the State. *(although this is found in one of the draft certification decisions, its correctness is rather questionable and shall be additionally checked)*
- ee. The fact that within the State responsible Ministers cannot mutually give instructions, orders or guidelines in their own areas of responsibilities with regard to the activities of generation and supply/trade or transmission, shall be clearly determined as a rule.
- ff. The powers to take decisions that individual responsible Ministers have in their own areas of responsibilities may not be limited by a condition for collegiate decision taking in specific situations.
- gg. As long as the decision taking on a certain issue is subject to a collegiate approach, the powers for independent decision taking of the responsible Minister in implementing his own obligations are limited.
- hh. Separation of managing the activity of transmission from managing the activities of generation and supply/trade shall be implemented at the level of the State's administration, i.e. not only at the level of the members of the Government but also at the lower levels of personnel and administration.
- ii. The Government shall establish efficient measures for preventing improper coordination, discriminatory behaviour and improper handling of confidential information, including at the level of personnel.
- jj. The NRA shall confirm that none of the persons from those Ministries is a member of the Managing Board or the Supervisory Board of the OU-TSO or relevant energy undertaking.

Refusal of the certification due to reasons of lack of financial resources

1. Contrary to the unbundling provisions in Article 17 of the Directives concerning the ITO model, Article 9 of the Directives does not require the OU-TSO to dispose of all financial resources necessary to fulfil its obligations as part of the unbundling requirements. Related concerns are

not present in case of the OU-TSO, where there is no VIU undermining the TSO's independence.

2. The rules on unbundling and certification according to the OU model do not provide a justification for the conclusion that the OU-TSO cannot be certified according to the OU model because of the fact that it would not have demonstrated to have sufficient financial resources to carry out the tasks laid down in the applicable national law.

Requirement to certify another transmission system operator

1. For the OU-TSO to be certified according to the OU model in the first EU Member State, also another TSO from another EU Member State, which has joint control over the OU-TSO, shall be certified by the NRA from another EU Member State.
2. The OU-TSO shall submit to the NRA the final certification decision issued by the NRA from another EU Member State concerning certification of another TSO from another EU Member State which has joint control over the OU-TSO.

Requirement relating to participation of companies from third countries

1. [Article 11 of the Directives] NRA may refuse certification in relation to third countries if it is not demonstrated, on the basis of an assessment, that granting certification does not put at risk the security of natural gas supply of the EU Member State or the EU.
2. The following lessons are learned from different situations which with regard to the participation of companies from third countries are recognised in the draft certification decisions as applicable in Albania:
 - a. If the mother company of the company which together with another company jointly controls the OU-TSO is situated in third country, then the competent authority in the EU Member State in this regard shall make its analysis.
 - b. If the third country produces no energy, or does so but it can be excluded with reasonable certainty that energy will be supplied to the EU, it is less likely that the OU-TSO controlled by the person from a third country is operated in a manner contrary to security of natural gas supply interests of the EU Member State or the EU.
 - c. Since third country does not produce natural gas and that no interconnections to the EU exist, it therefore means that security of natural gas supply concerns within the meaning of Article 11 of Directive 2009/73/EC are unlikely to exist.

- d. If none of the companies exercises control over the company that fully owns the OU-TSO, then, consequently given the shareholder structure, the provisions laid down in Article 11 of the Directives do not apply.

12.6.4 Conclusion

Pursuant to Article 3(2) Regulation (EC) No 714/2009 in electricity or Regulation (EC) No 715/2009 in natural gas, the NRA shall take utmost account of the above comments of the EC when taking its final certification decision regarding the certification of the OU-TSO, and when it does so, shall communicate this decision to the EC.

The EC's position on a particular notification is without prejudice to any position it may take *vis-à-vis* NRAs on any other notified draft measures concerning certification, or *vis-à-vis* national authorities responsible for the transposition of EU legislation, on the compatibility of any national implementing measure with EU law.

The EC publishes its documents on its web-site. It does not consider the information contained in its Opinion to be confidential. The NRA is invited to inform the EC within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, the Opinion contains confidential information which it wishes to have deleted prior to such publication. Reasons for such a request should be given.

12.7 Conclusions

12.7.1 Background

In the EU, the rules on legal and functional unbundling of TSOs as provided for in the SEP (the Directives 2003/54/EC and 2003/55/EC) have not led to effective unbundling of network operators from related competitive undertakings.

A structural separation of network operation from production/generation and supply/trade activities has been expected, but not effectively and equally materialised.

Therefore, the TEP (Directives 2009/72/EC and 2009/73/EC) has been adopted in the EU providing, among other elements, for a new TSOs unbundling regime in accordance with three narrowly specified models.

The following three main models are provided for:

1. the ownership unbundling model (OU),
2. the independent transmission operator (ITO), and
3. the independent system operator (ISO).

All three models are subject to a certification procedure, to be conducted by the NRA, in close cooperation with the EC and the ACER.

The certification shall guarantee effectiveness in removing any conflict of interests between producers and suppliers/traders from one side and TSOs from the other.

Unbundling of DSOs has been strengthened in the TEP too, but not as strictly as in the case of TSOs and without asking for a regulatory certification.

A general guidance for the interpretation of these new TSO unbundling rules in Albania is provided hereafter, based on the considerations presented above and the information acquired on the spot.

For sure, this guidance shall be significantly deepened and widened further on in order to reflect all elements specified by the Directives, once the ERE starts its related activities.

Until then, it may serve not only the ERE and Albpetrol SH.A (as the gas TSO) but also energy policy makers in Albania for taking informed decisions relating to the implementation of the OU model for the gas TSO.

12.7.2 General

The main objective of new TSO unbundling rules is to prevent any VIU to discriminate against competitors as regards:

1. access to the network,
2. access to commercially relevant information, and
3. investments in the network.

Albania, as an EnC Contracting Party where the new Directives already entered into force and need to be transposed in applicable national legislation, may choose only the OU model of the gas TSO unbundling and implement it (by 1 June 2016).

The ITO and ISO models may not be chosen for the gas TSO because every new gas transmission system shall be unbundled according to the OU model.

It is not possible to go from a situation of the OU-TSO to an ITO or an ISO.

Only in situations where the existing gas transmission system was part of a VIU on entry into force of the Directives can an ITO or ISO model be chosen.

New gas transmission systems, in particular systems which did not yet exist on entry into force of the Directives, have to implement the OU model.

Albania cannot prevent a VIU from complying with the requirements of the OU model.

As Albania will have to implement the OU model for the gas TSO, any VIU does not have the right to set up an ITO or ISO.

If there would be several gas TSOs in Albania, all of them shall be unbundled according to the OU-TSO model (as the new gas transmission systems).

In the Albania's case, the gas TSO shall comply with all the elements of the OU model in full.

Elements of different models cannot be mixed in order to create a new unbundling model for the gas TSO which has not been provided for by the Directives.

Since Albania is not in a position to designate a gas ISO or ITO on its territory, it should transpose only the provisions on the OU model into its applicable national legislation.

If the compliance with TSO unbundling rules would impose restructuring of any VIU, Albania may benefit from additional one year to unbundle the gas TSO (by 1 June 2017).

12.7.3 The OU-TSO

Compliance with the OU model means that the gas undertaking which is the owner of the gas transmission system shall also act as the gas TSO.

The concept of 'person' from the TEP covers private individuals, companies or any other public or private entities.

Typically, the 'person' referred to in the Directives will be either the company having the supply/trade or transmission system operation activity or a parent company having subsidiaries acting as suppliers/traders or TSOs.

A supplier/trader can keep a shareholding in a TSO or in a transmission system, provided several cumulative conditions are met:

1. non-majority share,
2. no voting rights,
3. no power to appoint members of supervisory/management/administrative board, and
4. no control over the TSO or the transmission system.

Reciprocally, the OU-TSO may keep a shareholding in a supplier/trader, provided cumulative conditions similar to the previous ones (above) are met.

Similar rules apply in case of the presence of a parent company (such as a holding company):

1. no control over a producer or supplier/trader and simultaneous control or exercise any right over a TSO or over a transmission system; and
2. no control over a TSO or a transmission system and simultaneous control or exercise any right over a producer or supplier/trader.

The unbundling rules of the OU model apply equally to private and public entities.

For the purpose of implementation of the OU model, two separate public bodies should be seen as two distinct persons and should be able to control producer and supplier/trader on the one hand and TSO on the other, provided that they are not under the common influence of another public entity in violation of the unbundling rules of the OU model.

The public bodies above must be truly separate. Albania will need to demonstrate that the requirements of the OU model are enshrined in national law and are duly complied with. This will be assessed on a case-by-case basis.

To avoid undue influence arising from vertical relations between gas and electricity markets, the OU model shall apply across the gas and electricity markets. It means that joint influence over an electricity producer or supplier/trader and a gas TSO or a gas producer or supplier/trader and an electricity TSO shall be prohibited.

12.7.4 Certification

A TSO can only be approved and designated as a TSO following the certification procedure laid down in the Directives and the Regulations and transposed in the applicable national legislation.

These rules must be applied to all TSOs for their initial certification, and subsequently at any time if a reassessment of a TSO's compliance with the TSOs unbundling rules is required.

The ERE is obliged to open a certification procedure upon the application for certification by a potential TSO, or upon its own request in case of such missing application, or upon a reasoned request from the ECS.

The ERE must continuously monitor compliance of TSOs with the TSO unbundling rules, and must open a new certification procedure on its own initiative.

12.7.5 Situation in the EU and Albania

For the unbundling according to the OU model, the EC has issued 24 opinions for electricity and 17 for natural gas, in total 41.

For the unbundling according to the ITO model, the EC has issued 6 opinions for electricity and 24 for natural gas, in total 30.

For the unbundling according to the ISO model, the EC has issued 2 opinions for electricity and 4 for natural gas, in total 6.

For the unbundling according to all three models, the EC has issued 32 opinions for electricity and 45 for natural gas, in total 77.

In Albania, the two TSOs (OST SH.A and Albpetrol SH.A) have not started yet the certification procedure before the ERE; both in electricity and gas according to the OU model only.

A large number of lessons learned from the EU (shown previously) should be used in the implementation of both certification procedures in Albania. For the reasons of conciseness, only main and general ones that are important for the situation in the gas sector in Albania are referred to hereafter.

12.7.6 Situation in Albania – procedural aspects

Albania shall transpose in the new gas related law only the OU model. A decision on the choice of the unbundling model is a given fact and all included parties shall become aware of all significant details of that model.

Upon transposition, both TSOs and all other involved parties, separately in electricity and gas, shall implement the OU model in line with the unbundling provisions from the new gas and electricity laws.

Upon implementation, both TSOs (in the OU model) shall submit the applications for certification to the ERE in order to prove fulfilment of conditions.

Upon submitting the application for certification, the ERE shall assess a compliance of both TSOs with requirements of the OU model and adopt the two draft certification decisions.

Upon adopting the two draft certification decisions, the ERE shall inform the ECS on its draft certification decisions and all details that are important for the certification.

Upon receiving the two draft certification decisions and all important details, the ECS shall react in case of noting any misalignment relating to the certification, issue its opinions, and transfer them to the ERE.

Upon receiving the opinions of the ECS, the ERE shall adopt the two final certification decisions taking into account the ECS's opinions.

In case of a positive outcome of the certification procedure, Albania can designate TSOs and publish the corresponding decisions on their designation.

12.7.7 Situation in Albania – natural gas

The situation is in its important elements the following:

1. The gas transmission system was (practically) inexistent and thereby not owned by any VIU on the date of entry into force of Directive 2009/73/EC (6 October 2011);
2. Albpetrol SH.A is currently the only licensed gas TSO as determined by the ERE's decision to be responsible for gas transmission;
3. Albpetrol SH.A also has the licence for gas distribution granted by the ERE;
4. Albpetrol SH.A is fully owned by Albania (the GoA manages all shares of Albania on its behalf by way of a nominated single member of the Company General Shareholders Assembly);
5. Albania is also the 100% co-owner of KESH SH.A (major electricity company in the country, which is active in electricity production, distribution, supply and trade);
6. There are no gas PSs in Albania yet, which would act on the basis of regulated tariffs; and
7. There are no wholesale gas suppliers in Albania yet, which would act as a gas wholesale trader/supplier of public suppliers under the regulated terms and conditions.

In such relations, the only unbundling model allowed per preconditions from the Directives is the OU one for Albpetrol SH.A.

Albpetrol SH.A, which is licensed as the gas TSO by the ERE's decision, will have to own the gas transmission system and function as the OU-TSO.

In other words, at least:

1. Albpetrol SH.A will have to be the owner of the gas transmission assets that will be written in his own business/ownership books;
2. Delineation between the gas transmission assets of Albpetrol SH.A and the assets that will belong to the gas DSOs and the gas producers will have to be very well known and not contested;
3. Employees of Albpetrol SH.A will have to conduct their tasks in an objective, transparent and non-discriminatory manner; and
4. Albpetrol SH.A shall be a subject to regulation by the ERE.

The OU model is the simplest one to implement, having minimum time and costs required for the implementation of the unbundling by Albpetrol SH.A as well as minimum time for and costs of later regulation by the ERE.

None of the two other models is applicable, because (practically) no gas transmission system existed on the entry into force of the Directive 2009/73/EC (6 October 2011).

Albpetrol SH.A is supposed to take up a role of the gas TSO which further on shall establish a separate legal person to perform a role of the gas MO, unless Albania opts (later on) to establish a common market operator for the electricity and natural gas markets (and renewable energy sources and bio-fuels and possibly certificates).

Apart from not being possible, it is also not reasonable to reverse Albpetrol SH.A from once reached OU-TSO making him the gas ITO or the gas ISO. Such a reversion would go contrary to a spirit and intentions of the Directives.

12.7.8 Positioning on the TSO unbundling in the natural gas sector

For Albpetrol SH.A the OU model is the only possible one for the implementation. That is also the simplest model to implement, with minimum time for and cost of the implementation of unbundling by Albpetrol SH.A as well as with minimum time for and cost of the later regulation by the ERE.

Only one significant additional requirement is to be set in that regard, being related to the separation within the State. It means that two separate ministries (or any other two separate public bodies that are not mutually subordinated) shall be nominated as the managers of shares in Albpetrol SH.A from one side and KESH SH.A or similar from the other (at the General Shareholders Assembly level).

Situation in the electricity sector should be taken into account, as well as limitations which are thereby transferred into the natural gas sector – for instance:

1. The ministry which is the manager of shares in Albpetrol SH.A cannot be the manager of shares in KESH SH.A or any similar VIU, but it can be the manager of shares in OST SH.A;
2. The ministry which is the manager of shares in OST SH.A cannot be the manager of shares in KESH SH.A or any similar VIU, but it can be the manager of shares in Albpetrol SH.A;
3. The ministry which is the manager of shares in KESH SH.A can be the manager of shares in any similar VIU, but it cannot be the manager of shares in either Albpetrol SH.A or OST SH.A; and
4. The ministry which is the manager of shares in any VIU similar to KESH SH.A cannot be the manager of shares in either Albpetrol SH.A or OST SH.A, but it can be the manager of shares in KESH SH.A.

12.7.9 Significance of the management of shares

The management of shares by the ministry assumes that the Minister from the relevant ministry represents Albania in the General Shareholders Assembly of the company.

Powers of the General Shareholders Assembly of the company are determined by the law which regulates business companies, where the most important one is that the General Shareholders Assembly decides on the use of realised profit and the covering of loss, as well as on the increase or decrease of capital.

Besides, the General Shareholders Assembly has a decisive influence on the nomination of the Supervisory Board and the Managing Board/Management.

In the case of Albpetrol SH.A as the gas OU-TSO, there is a single member General Shareholders Assembly, meaning that the Minister is the only member of the General Shareholders Assembly and has to take decisions fully independent from other Ministers and the Prime Minister of the GoA.

In the case of OST SH.A, the situation is fully the same since it is also to be unbundled according to the OU model and Albania is the sole owner of OST SH.A (under the assumption that no other company participates in the share capital). However, in principle, here too the Minister who sits in the General Shareholders Assembly of OST SH.A shall take decisions independently from other Ministers and the Prime Minister of the GoA.

13 DESCRIPTION OF EXAMPLES OF AND METHODOLOGIES FOR UNBUNDLING OF THE GAS DISTRIBUTION SYSTEM OPERATORS

13.1 Introduction

Context (1)

The traditional role of the gas DSOs has been linked with: 1) developing the gas distribution network; 2) operating and maintaining the gas network; 3) connecting the residential and commercial customers; 4) metering and data management; 5) security of natural gas supply at local level; and 6) safety and continuity of gas supply. Currently, the gas DSOs play a role in the efficient functioning of the gas market acting as 'gateways' to retail gas markets. The gas DSOs also influence the level of competition due to their role as neutral providers of third party access services for gas suppliers. In the future, the gas DSOs might be seen as more active players whose role could expand to gas market facilitation services.

Context (2)

The gas DSO shall be responsible for ensuring the long-term ability of the gas distribution system to meet reasonable demands for the distribution of gas, for operating, maintaining and developing under economic conditions a secure, reliable and efficient gas distribution system in its area. Third party access services for gas suppliers (TPA contracts and relations with gas suppliers; allocation of gas consumption; gas supplier switching process) are added to the role after Directive 2009/73/EC. In the future, the gas DSO may become the gas market facilitator for service providers (dealing with data management and new technologies, smart gas meters, smart gas grids, gas demand side response, and distributed injection).

Unbundling regime

In that context, this Chapter explains how the gas DSO unbundling regime shall be transposed and implemented in order to become a neutral gas market facilitator of energy services. The unbundling regime of the gas DSOs is laid down in Article 26 of Directive 2009/73/EC. In essence, the gas DSO must be independent at least in terms of its legal form, organisation and decision making from other activities not relating to gas distribution. The regime remains in substance unchanged as compared to the preceding one from Directive 2003/55/EC, i.e. as defined by the following:

- 1) Legal, functional, and accounting unbundling, as well as operational (staff) separation, is required (legal unbundling of the gas DSO from other activities of the VIU not related to distribution, functional unbundling of the gas DSO in order to ensure its independence from other activities of the VIU, and accounting unbundling as a requirement to keep accounts for the gas DSO's activities separately from the VIU's ones to prevent cross-subsidisation);
- 2) Exemption of gas undertakings with less than 100,000 customers is possible (possibility of exemptions from the requirement of legal and

functional unbundling for certain gas DSOs in order to avoid imposing a disproportionate financial and administrative burden on small gas DSOs);

- 3) The gas DSO must have the necessary human, technical, financial, and physical resources to act independently from the VIU (to meet unbundling requirements so that the gas DSO can fulfil its role effectively);
- 4) The gas DSO (all employees) must meet the requirements set out in the compliance programme of non-discriminatory conduct as ascertained in the annual report by the compliance officer (independent observation and monitoring of the gas DSO to ensure no discriminatory conduct occurs); and
- 5) The gas DSO is required to change its communication and branding to be clearly distinguished from the gas supply branch of the VIU (to separate identity/rebranding between the gas DSO and other energy actors).

While full ownership unbundling (ownership separation where the gas DSO is a separate company to any interests in generation or supply) is considered to be the strongest model for the independence of the gas DSO, the other models can also ensure transparent and independent decision making and equal treatment of all gas DSO stakeholders, as long as sufficient ring-fencing and regulatory monitoring and oversight are in place. These requirements from the new gas DSO unbundling regime are presented hereafter.

13.2 Legal unbundling

[Article 26 of
Directive
2009/73/EC]

- › Gas distribution shall be performed by a separate gas network company.

The obligation to create a separate company only concerns the gas network activities. Other activities such as gas supply/trade and gas production can be carried on within a single company. The VIU is in principle free to choose the legal form of the gas DSO, provided that this legal form ensures a sufficient level of independence of the management of the gas DSO from other parts of the VIU in order to fulfil the requirements of functional unbundling. As a consequence, if the supervision regime provided for by national applicable law for the type of company selected does not match the requirements of functional unbundling, for example because the regime permits instructions from other parts of the VIU concerning day-to-day activities of the gas DSO, it is necessary to require its modification. Likewise, any contractual arrangements introducing further supervision rights, in addition to those provided for by national applicable law and limiting the independence of the gas DSO, have to be compatible with the requirements of functional unbundling.

13.3 Functional unbundling

13.3.1 Management separation

*[Article 26 of
Directive
2009/73/EC]*

- › The persons responsible for the management of the gas DSO must not participate in company structures of the VIU responsible, directly or indirectly, for the day-to-day operation of production, transmission or supply/trade activities.

Article 26 does not restrict the group of persons responsible for the management of the gas DSO to the top management, such as members of the executive management and/or members of a board having decision-making powers. Article 26 addresses a wider group of persons, including the operational (middle) management of the gas DSO. As a consequence, a manager of the gas DSO cannot at the same time be a director of the related transmission, supply/trade or production company, or vice versa. Whether and to what extent a manager of the gas DSO can work at the same time for the holding company of the VIU if the holding company is not at the same time directly involved in production or supply/trade, because legally separate entities exist for these activities, must be decided on a case-by-case basis. In any event, such a combination of functions can only be permissible if the holding company does not take any day-to-day management decisions concerning the supply/trade, production or network activity.

*[Article 26 of
Directive
2009/73/EC]*

- › Appropriate measures shall be taken to ensure that the professional interests of the persons responsible for the management of the gas DSO are taken into account in a manner that ensures that they are capable of acting independently.

It is for the EnC Contracting Parties and the EU Member States further to determine these measures, in the light of national circumstances; in determining these measures situations such as the following need to be addressed.

Independence of the persons responsible for the gas network management may be put into jeopardy by their salary structure, notably if their salary is based on the performance of the holding company or of the production or supply/trade company, as this may create conflicts of interest. Also the transfer of managers from the gas DSO to other parts of the company and vice versa may entail a risk of conflicts of interest and requires rules and measures safeguarding independence. Conflicts of interest for the gas network management may also arise if the gas DSO directly or indirectly holds shares in the related supply/trade or production company and obtains a financial interest in its performance. Likewise, the issue of shareholding on a personal basis of the managers of the gas DSO can give rise to concerns as far as independence of management is concerned. Decisions of the parent company to replace one or more members of the management of the gas DSO may also undermine the independence of the gas DSO in certain circumstances, notably if the reasons for replacement of members of the management have not been established beforehand in the charter of the gas DSO.

Situations referred to above need to be addressed by the EnC Contracting Parties and the EU Member States in a way that ensures the independence of the gas DSO and its management. When shaping the rules on independence of the staff and the management of the gas DSO, the detailed provisions on independence of the staff and the management of the ITO as laid down in Article 19 of Directive 2009/73/EC may serve as a point of reference, where appropriate.

An important question in the context of management separation is the extent to which it is permissible to have common services, i.e. services that are shared between transmission/distribution, supply/trade and possibly other businesses within the VIU. Such services could relate to personnel and finance, IT services, accommodation and transport. It is appropriate to look at this issue on a case-by-case basis.

13.3.2 Effective decision-making rights

*[Article 26(2)(c) of
Directive
2009/73/EC]*

- › The gas DSO must have effective decision-making rights, independent from other parts of the VIU, with respect to assets necessary to operate, maintain or develop the gas network.

In order to fulfil those tasks, the gas DSO must have at its disposal the necessary resources, including human, technical, physical and financial resources. This does not necessarily imply that the gas DSO must own the assets. Where another part of the VIU remains the owner of the assets and puts these at the disposal of the gas DSO, the basic decisions concerning the assets must remain with the gas DSO, while the other part of the VIU may be involved in the implementation of these decisions, provided that safeguards are put in place ensuring that the other part of the VIU only executes the decisions taken by the gas DSO.

*[Article 26(2)(c) of
Directive
2009/73/EC]*

- › Two items expressly refer to the scope of the supervision rights: (1) the annual financial plan of the gas DSO or any equivalent instrument, and (2) its overall level of indebtedness.

The requirement of effective decision-making rights is without prejudice to the supervision rights of the VIU in respect of the return on assets in a subsidiary. Regarding the limits of the supervision rights, Directive 2009/73/EC is equally clear: any detailed day-to-day oversight of the gas network function by parts of the VIU other than the gas DSO is not permitted. Also instructions regarding decisions on the construction or upgrading of the gas network, if these decisions stay within the terms of the approved financial plan, are not permitted. Within the scope of the approved financial plan, the gas DSO must have complete independence. Furthermore, the financial plan, whilst it can be adopted by the VIU, must be compatible with the requirement to ensure that the gas DSO has sufficient financial resources to maintain and extend the existing infrastructure. Directive 2009/73/EC refers to the financial plan or 'any equivalent instrument'. The latter term must be interpreted restrictively in the sense that only instruments that are functionally equivalent to a financial plan, but which according to the applicable national terminology are not denominated a 'financial plan', may be subject to approval of the VIU.

13.3.3 Preservation of confidentiality

*[Article 27 of
Directive
2009/73/EC]*

- › The rules on functional unbundling shall be supplemented with: 1) the obligation of the gas DSO to preserve the confidentiality of commercially sensitive information obtained in the course of carrying out their business, and 2) the obligation of the gas DSO to prevent information about its own

activities which may be commercially advantageous being disclosed in a discriminatory manner.

This means, for example, that personnel working for the supply business must not have privileged access to databases containing information that could be commercially advantageous, such as details on actual or potential network users.

13.4 Accounting unbundling

The provisions on accounting unbundling in Directive 2009/73/EC remain largely unchanged as compared to the preceding legislation.

*[Article 31(3) of
Directive
2009/73/EC]*

- › Companies have to keep separate accounts for each of their transmission and distribution activities related to electricity and gas. Consolidated accounts are possible for all other activities, including their remaining electricity and gas activities.

Unlike legal and functional unbundling, no derogation is possible from the rules on accounting unbundling in the case of smaller gas DSOs. Accounting unbundling is thus the minimum separation requirement to be respected by every gas network operator, without exception. For accounting unbundling, an accurate application of accounting principles is of fundamental importance. It is vital that cost items are allocated in a transparent and accurate manner to the activities concerned. Notably, any overstatement of the costs of the gas network business must be excluded. Such inaccurate cost allocation is likely to lead to cross-subsidisation favouring the supply business and thus distorting competition in the gas supply market. It should be noted that the ERE plays a key role in this respect, in view of its duty to ensure, through monitoring effective accounting unbundling, that there are no cross-subsidies between, on the one hand, gas transmission and/or distribution and, on the other hand, gas production and/or supply/trade. Since Article 31(4) of Directive 2009/73/EC underlines that the audit provided for in Article 31(2) looks at the issue of possible cross-subsidisation, it is clear that the audit will examine the way costs have been allocated.

13.5 Exemptions for the gas DSOs serving less than 100,000 connected customers

*[Article 26(4) of
Directive
2009/73/EC]*

- › Smaller gas DSOs serving less than 100,000 connected customers can be exempted from the requirements of both legal and functional unbundling. This possibility of an exemption is not limited in time.

Directive 2009/73/EC does not provide a definition of the term ‘connected customers’. ‘Connected customers’ could reasonably be interpreted as meaning ‘connections’. According to such an interpretation a household is considered to constitute one connection within the meaning of Directive 2009/73/EC, irrespective of the number of people forming part of the household. In contrast, a building composed of, for example, eight apartments, is considered to have eight connections within the meaning of Directive 2009/73/EC.

13.5.1 Application in practice — two basic scenarios

Where gas distribution, supply/trade and/or production are performed in a single legal entity, the application of the 100,000 rule is straightforward. If the gas undertaking has less than 100,000 connected customers, i.e. if the gas distribution network in question has less than 100,000 connections, an exemption is possible, in which case the company can continue to operate the gas network and its gas supply/trade and/or gas production activities within the same legal entity. In contrast, if the number of connections is above 100,000, a separate gas network company has to be created.

When creating such a separate gas network company, the gas undertaking has two basic choices:

1. It can keep the shares in the gas network company, allowing it to control the gas network company within the meaning of Article 3(3) EC Merger Regulation. In this case the gas network company remains part of the VIU and, consequently, needs to be independent in functional terms within the meaning of Article 26 of Directive 2009/73/EC; or
2. It can give up control over the gas network company, for example by selling shares in the company to third parties. As a consequence, the gas network company does not form part of the VIU anymore and in particular Article 26 of Directive 2009/73/EC no longer applies.

If the gas undertaking involved in gas supply/trade and/or production controls one or more legally separate gas DSOs and the group of companies as a whole forms one single VIU, all connected customers of all the gas DSOs served by the gas undertaking have to be aggregated.

Where applicable, the customers connected to the gas distribution network which is operated in the same company structure as the supply/trade and/or production business in question have to be added as well.

If the aggregated figure of connected customers is above 100,000, all controlled gas DSOs controlled by the same company or person have to be unbundled in compliance with Article 26 of Directive 2009/73/EC even if the companies in question, when looked at individually, serve less than 100,000 connected customers.

Hereunder, three practical examples illustrate the application of the 100,000 connected customers rule:

1. A company involved in gas supply buys three gas DSOs, each serving 40,000 connected customers: all three companies have to be functionally unbundled (or be merged into one or two unbundled companies).
2. A company involved in gas supply buys five gas DSOs, one serving 120,000, the remaining four each serving 1000 connected customers: all five

companies have to be unbundled (or be merged into one or more several unbundled companies).

3. A company involved in gas supply and operating a gas distribution network of 80,000 connected customers in the same company structure (i.e. not unbundled) buys a gas DSO serving 30,000 connected customers: the whole gas network business, including the gas network serving the 80,000 connected customers, has to be unbundled.

13.5.2 Discretion of the EnC Contracting Parties and the EU Member States in applying the exemption

The threshold of 100,000 connected customers was chosen since it was considered an appropriate figure in view of the situation in the EU as a whole. However, when deciding on a possible derogation, the EnC Contracting Parties and the EU Member States may consider national circumstances as well and, as a consequence, lower the threshold where this is appropriate. In particular, the EnC Contracting Parties and the EU Member States may choose not to systematically exempt the gas DSOs with less than 100,000 connected customers from both legal and functional unbundling. A more gradual approach is possible. In such an approach only the smallest sized gas DSOs would be exempted from both legal and functional unbundling requirements. The relatively bigger sized gas DSOs — with still less than 100,000 connected customers — would only obtain an exemption from legal unbundling, while maintaining the requirement of functional unbundling, or at least certain elements of functional unbundling.

13.6 Resources

*[Article 26(2)(c) of
Directive
2009/73/EC]*

- › The gas DSO must have at its disposal the necessary resources, including human, technical, physical and financial resources, in order to fulfil its tasks of operating, maintaining and developing the network.

This means that the gas DSO shall have sufficient financial resources under its immediate control as well as sufficient personnel resources directly employed to ensure real decision-making power and independence in their work. The ERE cannot rely only to national law as proof or that the gas DSO's licence conditions require it to demonstrate sufficient financial resources, but in addition it should take annual spot tests on different subjects or ensure the sufficiency of resources through tariff settings. Moreover, the ERE can require from the DSOs to submit its long-term investment plan. The gas DSO should employ its staff directly and offer training in non-discriminatory behaviour. Its management has to be independent in both its decision-making regarding day-to-day business and strategic control. The ERE should monitor actual decisions taken by the gas DSO to reveal whether it acts independently or not. Moreover, the ERE should analyse the annual compliance officer's report on sufficient workforce to guarantee independent execution of services.

The gas DSO cannot unduly rely on the services of other parts of the VIU, as the gas DSO itself must have the necessary resources at its disposal to operate,

maintain and develop the gas network. Provision of services by other parts of the VIU to the gas DSO will therefore be limited. Where such services are provided, conditions should be fulfilled to reduce competition concerns and to exclude conflicts of interest. In particular, any cross-subsidies being given by the gas DSO to other parts of the VIU cannot be accepted. To ensure this, the service must be provided at market conditions and laid down in a contractual arrangement. It is recalled that the gas DSO is not entitled to provide any services to the related ITO (Article 17(1)(c) of Directive 2009/73/EC). However, such criteria should not result in preventing the parent company from approving the annual financial plan, or any equivalent instrument, of the gas DSO or the setting of global limits on the levels of indebtedness of its subsidiary. Moreover, it should not prevent the necessary and appropriate restructuring of management and personnel.

13.7 Compliance

*[Article 26(2)(d) of
Directive
2009/73/EC]*

- › The gas DSO shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded and to ensure that observance of this prohibition is adequately monitored.

*[Article 26(2)(d) of
Directive
2009/73/EC]*

- › The gas DSO shall appoint a compliance officer. The compliance officer must be fully independent and must have access to all the necessary information of the gas DSO and any affiliated undertaking to fulfil his or her task. The compliance officer must on a yearly basis submit a report to the ERE, setting out all the measures taken. This report must be published.

*[Article 27 of
Directive
2009/73/EC]*

- › The compliance programme shall contain rules of conduct which have to be respected by staff in order to exclude discrimination. Such rules may relate, for example, to the obligation to preserve the confidentiality of commercially sensitive and commercially advantageous information.

Generally, the question of compliance is not applicable to jurisdictions that do not have VIUs, or where the DSO is fully ownership unbundled. The main purpose of a compliance programme is to provide a formal framework for ensuring that the gas network activities as a whole, as well as individual employees and the management of the gas DSO, comply with the principle of non-discrimination. The compliance programme may lay down in detail the kind of information that is to be considered confidential in this sense and how the information should be treated. It may also refer to the sanctions imposed under national applicable legislation in case of non-respect of confidentiality rules. Another set of rules which, for example, can form part of a compliance programme relates to the behaviour of staff vis-à-vis gas network customers. Employees of the gas DSO must refrain from any reference to the related supply/trade business in their contacts with customers of the gas DSO. The compliance programme must be actively implemented and promoted through specific policies and procedures. Such policies may consist, inter alia, of the following:

1. active, regular and visible support of the management for the programme, for example through a personal message to the staff from the management stating its commitment to the programme;
2. written commitment of staff to the programme by signing up to the compliance programme;
3. clear statements that disciplinary action will be taken against staff violating the compliance rules; and
4. training on compliance on a regular basis and notably as part of the induction programme for new staff.

When shaping the specific rules and guarantees for independence of the compliance officer of the gas DSO, the rules on the compliance officer of the ITO as laid down in Article 21(2) of Directive 2009/73/EC may serve as a point of reference, where appropriate. If the compliance programme is to be successful, its effectiveness needs to be regularly monitored. This is essential not only as a means of ensuring that the compliance programme is working properly but also to enable the identification of those areas that present the highest risks of non-compliance. The evaluation process must be carried out in a transparent manner, and may indicate to employees that their conduct is being reviewed against the terms of the compliance programme on a continuous basis. The ERE's main source for assessing whether the compliance programme is successful, is the annual compliance report provided by the compliance officer. The number of complaints surrounding the gas DSO's behaviour in relation to unbundling – towards customers, customers of other parts of the VIU and third companies – should be kept generally low and not critical. Such complaints are another method the ERE can use to rate the effectiveness of the compliance programme.

13.8 Rebranding

*[Article 26(3) of
Directive
2009/73/EC]*

- › Where the gas DSO is part of a VIU, the activities of the gas DSO shall be monitored by the ERE or other competent body so that the gas DSO cannot take advantage of its vertical integration to distort competition. The vertically integrated gas DSO in its communication and branding cannot create confusion in respect of the separate identity of the supply company of the VIU.

This implies a general obligation to avoid any confusion for consumers between the gas DSO and the supply company. In this regard, the gas DSO should strive to create a clearly separate image to that of the other branches under the parent company. In order to identify whether or not there is confusion in a particular case, the EU trade mark law may serve as a point of reference. It should be noted that the rules on unbundling contained in Directive 2009/73/EC are minimum rules. The minimum set of rules may be therefore supplemented with further measures, with a view to ensuring effectiveness of unbundling. For instance, if the gas DSO initially refused to rebrand its corporate identity, the ERE should take measures and inform about the legal consequences it might face if the appropriate follow up action is not

undertaken. If the gas DSO's corporate identity is still very similar to its parent company's and/or gas supply branch's ones, this might lead to confusion and in such case the ERE can ask the gas DSO to submit an action plan detailing how it intends to remove any remaining blurred lines. Apart from only monitoring the process, the ERE may also get involved deeper in the rebranding process – by providing guidance, having bilateral talks, or simply helping the gas DSO through the licensing process. This intervening in the rebranding process should not be seen as interfering with a commercial decision of the gas DSO. The costs incurred as a result of the rebranding activities should not be financed through gas distribution network charges. Moreover, the ERE may elaborate an annual report on the progress made by the gas DSO.

13.9 Consumer perspective

The basic principle behind the requirements to unbundle the gas supply chain is to promote and maintain competition in the gas market, ensuring a greater choice for consumers and thus applying pressure on gas companies to offer the best possible value and services. The gas DSO is encouraged to act as neutral gas market facilitator, fostering fair competition between gas suppliers in the retail gas market. Affiliations between any gas DSO and any gas market participants (where the gas DSO may share a significant common shareholding with gas producers, gas shippers, gas suppliers/traders or even large consumers) could raise concerns that the gas DSO may act in favour of its own affiliated interests. Therefore, it is essential for the gas DSOs to be independent from the commercial supply chain (production/supply/trade) in order to avoid conflicts of interest and/or discriminatory or monopolising conduct. Consumers should fully benefit from gas market opening, and vertically integrated gas suppliers should be prevented from the possibility to transfer their market power in gas distribution to gas retail market. If this is not the case, general competition law should be applied to prevent gas market foreclosure. The DSO unbundling arrangements seek exactly to ensure the proper functioning of the gas market and security of natural gas supply for consumers.

13.10 Price control

The gas DSO(s) are companies who own and/or operate gas distribution networks as natural monopolies. The ERE shall regulate them in order to protect the interests of gas consumers. More specifically, the ERE shall approve or define the overall revenues which the gas DSO(s) can earn from final distribution system users in order to cover the costs of gas distribution network development, gas distribution network operation and maintenance and internal gas DSO(s) operation costs. The ERE shall also approve the gas distribution network tariff structures and the gas distribution network tariffs to recover these allowed revenues.

When setting price or revenue control allowances, the ERE may develop a wide range of incentive mechanisms. These have generally focussed on reducing costs of the gas DSO(s), promoting efficiency or delivering key objectives (e.g. improvements in performance against quality of gas supply metrics). The extent to which the risk is borne by the gas DSO(s) and/or the end gas customer will depend

on the specific regulatory decisions in Albania (cost overruns, time overruns, stranded assets, identification of efficiently incurred costs, liquidity).

The gas DSO(s) usually prefer to invest in gas distribution assets that add to their RAB. This preference might be heightened in regulatory approaches where most CAPEX are passed through, while only some OPEX are. This financial preference is backed by cultural preferences in the gas DSO(s) to tend to favour more traditional investments. The ERE can move towards approaches based on TOTEX, which does not treat cost categories (OPEX and CAPEX) differently. This choice has the advantage of a gas DSO being incentivised to reduce total costs in the way a gas DSO considers it most efficient to do so, rather than strongly focussing on one of the two, based on the regulation by the ERE.

Under a traditional, CAPEX/OPEX approach, the ERE can define CAPEX, based on accounting procedures or on a specific regulatory approach. The gas DSO(s) are allowed to add any expenditure on these items to their RAB. The gas DSO(s) earn a rate of return (to reflect the cost of borrowing) on that expenditure over a number of years (for instance, 20 years). Any expenditure not falling into the CAPEX definition is treated as OPEX on which no rate of return is paid (mostly, an efficiency regime is applied to OPEX via productivity targets such as X-factor in price-cap formula). The gas DSO(s) are allowed to recover OPEX from gas customers over a shorter time period.

There are a number of ways in which the ERE can implement a TOTEX approach. For example:

- 1) The ERE simply defines a TOTEX approach as a system which does not treat cost categories (OPEX and CAPEX) differently. The system usually accounts for an adequate rate of return on a RAB and depreciation (the sum of both accounting for CAPEX and OPEX). A regulatory formula is then applied on the total sum of the components (and not just on one of the sub-items). Such a system avoids costs that can be shifted between the CAPEX and OPEX blocks.
- 2) The ERE defines a split of TOTEX between OPEX and CAPEX. All expenditure is then treated as TOTEX, with a fixed percentage being added to the RAB to earn a return and a fixed percentage being treated as OPEX. This removes any incentive on the gas DSO(s) to have a bias towards capital investments, since they are guaranteed to earn a rate of return on a proportion of all expenditure.

13.11 Gas closed distribution systems

*[Article 28 of
Directive
2009/73/EC]*

- › Those gas systems which distribute energy in a confined industrial or commercial setting and not to household customers can be classified as closed distribution systems by the ERE (or other national authority).

It is an optional provision in the national applicable legislation, i.e. it is not obligatory to transpose it and provide for a specific regime for the gas closed

distribution systems. Therefore, the definition of the gas closed distribution systems varies widely from country to country, as can the authority that is responsible for such classification. The classification of the gas closed distribution systems varies widely, as does the level of transposition of the provision, rendering a general conclusion quite difficult.

Specific national rules usually regulate access conditions and unbundling requirements or stipulate that there is no obligation to provide public service. Some features that distinguish the gas closed distribution systems from other gas distribution systems result from the fact that they are only used by industrial customers. Such industrial gas distribution systems may be exempt from the obligation of third party access and others. There may be specific rules for the gas closed distribution systems put in place by the ERE (or other national authority).

The ERE (or other national authority) may grant to the gas closed distribution systems particular exemptions from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the gas DSO and the users of the system. For instance, the exemption can be granted from the requirement of ex-ante approval by the ERE of tariffs/calculation methodology and the requirements to procure the energy it uses to cover losses and reserve capacity.

In special cases of industrial estates, the gas DSO (and/or the gas TSO) may sign an energy supply contract with the gas CDSO as an intermediary. The intermediary must meet the same conditions as the gas DSO and ensure that gas is supplied to final customers under conditions that may not be less favourable than the conditions of a direct gas supply from the network.

Whether a gas distribution system is classified as closed can depend on the number of connected customers or sometimes on whether it existed prior to the transposition of Article 28 of Directive 2009/73/EC. The gas closed distribution systems vary widely from country to country as there is no deadline for registration, data acquisition is not centralised at the country level, or the definition in national applicable legislation is very broad.

13.12 Conclusions

Despite a necessity to fully implement the TEP, it still might happen that for a variety of reasons some EnC Contracting Parties, including Albania, have not yet transposed Directive 2009/73/EC. Thereby, they have neither fulfilled yet the main requirements for the gas DSO unbundling, as previously explained.

Currently, apart from Albpetrol SH.A, there are no other specific gas undertakings determined to become the gas DSO(s) and develop natural gas distribution network(s) in a number of cities and municipalities in Albania. However, it is necessary to ensure all legal and regulatory, as well as institutional and organisational, prerequisites in order to have the gas DSO(s) determined, unbundled and licensed before the ERE too. The gas DSO(s) will enable the gasification (via distribution gas pipelines to end users) in accordance with the

Energy Development Strategy, following the principles of the development of a competitive gas market.

The role and potential of the gas DSO(s) in Albania should be recognised and considered into details, particularly as new technologies and market models come into play through renewables, energy efficiency, smart networks, distributed injection, and demand side management measures. The efficient and independent functioning of those operating the gas distribution networks will become increasingly important as the gas distribution networks take on a bigger role in facilitating these new market elements (and services).

In the work, the gas DSO(s) in Albania shall follow the next principles:

1. The gas DSO(s) must run their businesses in a way which reflects the reasonable expectations of gas network users and other stakeholders.
2. The gas DSO(s) must act as neutral market facilitators in undertaking their core functions, implying that: (a) the gas DSO(s) must act in a non-discriminatory manner; (b) the gas DSO(s) must not cross-subsidise; and (c) the gas DSO(s)'s brand and communication policy should be clearly distinguished from the rest of the VIU to avoid confusing consumers.
3. The gas DSO(s) must act in the public interest, taking account of costs and benefits.

The ERE should recognise that the gas DSO(s) structures can be widely varying, meaning that: 1) there is not one single model for a gas DSO; and 2) some of them will have enhanced roles in the gas sector compared to others. However, these three principles should apply regardless of the exact specification of each gas DSO, which can differ in both structure and specific metrics such as: 1) size (number of customers); 2) pressure levels for the gas DSO(s) (voltage levels for the electricity DSO(s)); 3) direct or indirect connection to the transmission network (or off-grid for small islands and remote valleys); 4) network automation and smart metering; and 5) level of RES and distributed injection penetration.

The gas DSO(s) should perform the following core activities: 1) Activities related to the (efficient) energy network infrastructure (planning, developing, operating, and maintaining the gas distribution network, ensuring sufficient capacity is available, connecting users to the gas distribution network); 2) System security activities (operating traditional load shedding); 3) Activities on the gas quality checks (according to gas interoperability specifications, at the entry-gate to ensure safety in gas usage); 4) Technical data management activities (managing all data associated with the operation and safety of the gas distribution system, including TSO-DSO communication and also DSO-DSO information exchange); and 5) Activities on managing network losses (improving network efficiency by reducing actual losses, including by buying/selling energy).

The TEP contains unbundling rules for the gas DSO(s) designed to ensure that there is no conflict of interest for the gas DSO(s) in the delivery of their functions and no incentive for them to carry out their activities in a manner which might

favour certain parties over other parties in the competitive gas market. Unbundling is a core pillar of European energy policy with strict rules around the areas of activity that the gas DSO(s) can become involved in. Although there are different degrees of unbundling, on a practical basis, these rules ensure that the gas DSO(s) are not allowed to operate or have an interest in the businesses of gas production and gas supply/trade.

However, there may be some exceptional circumstances in which these activities might be carried out or facilitated by the gas DSO(s), at least on a temporary basis. For instance, in case of gas emergencies, the gas DSO(s) might be allowed to have beyond-the-meter activities such as verification of gas appliances before reconnecting. These exceptional cases should not be confused with different, structural activities which should be prohibited for the gas DSO(s) such as the last resort supply activity. The only exception to this is where public service obligations, related to vulnerable consumers, may require a role for the gas DSO(s) in supply, but only where the required gas supply has not been offered by or is not available from a gas supplier.

Relating to the retail gas market liberalisation, the gas DSO(s) must have a relationship with gas suppliers in order to recover gas distribution network revenues. Retail liberalisation implies that the gas DSO(s) should not normally have competitive commercial relationships with small end-consumers (households and small enterprises). Where the gas DSO(s) are responsible for managing metering data, they may be requested to carry out certain activities to facilitate retail gas market functioning and competition. However, before doing so, the ERE will need to ensure that the gas DSO(s) are appropriately unbundled, that the appropriate controls and regulations are in place and that no gas market distortion occurs.

Unbundled gas DSO(s) may be requested/required by gas suppliers to carry out certain actions in respect of a consumer for revenue protection reasons, for instance disconnection in the case of non-payment and prompt reconnection after payment. The activities performed by the gas DSO(s), at a gas supplier's request, may also include switching a consumer to a new gas supplier. This activity is related to commercial data handling. The gas DSO(s) must carry out these activities providing the relevant data in a non-discriminatory way to all market players. They should ensure personal data protection according to national legislation on privacy.

The gas DSO(s) are usually responsible for data management activities. This includes management of data needed for gas market functioning and refers not only to final customers but also to distributed injection and storage units. Data management must be carried out in such a manner that data provided to gas market actors is delivered in a timely and reliable manner, in a standardised form and is up to date. Moreover, activities such as owning and managing gas metering equipment, are usually carried out by the gas DSO(s) but this is not the sole model. Alternatively, a market driven approach is possible, where metering activities are carried out by separate, independent meter operators. Market processes differ depending on the ownership of the meter.

Although not a must, the ownership unbundling of the gas DSO(s) ensures that the neutrality of the gas DSO(s) is an underlying feature in the delivery of all gas DSO activities and a core feature of the gas DSO(s) in the delivery of their functions. However, there are further unbundling rules that govern instances when the gas DSO(s) are not ownership unbundled and part of a VIU. In particular, adequate business separation shall be in place, and the activities of the gas DSO(s) shall be monitored by the ERE, so that they cannot take advantage of their vertical integration to distort competition. Going forward, the ERE will have to monitor actively the gas DSO(s) unbundling.

As part of the business separation requirement (including management and information separation), according to the rules on unbundling, vertically integrated gas DSO(s) must not create confusion among consumers by using similar branding or identity as the supply branch of the same company. It will be necessary in particular to work on improving the rebranding approach. The gas DSOs will have to rebrand their corporate identity – rebranding is understood as the complete change of name, logo etc. of the gas DSO(s) compared to its VIU. The ERE shall ascertain that there is a clear enough differentiation between the production/supply branches within the VIU.

In the cases where the gas DSO(s) refuse to comply with the DSO unbundling requirements set out by the TEP, the new gas related law in Albania gives the ERE tools to enforce compliance. In that view, the ERE is typically allowed to: 1) provide guidance on how to implement the DSO unbundling provisions in practice; 2) inform the gas DSO(s) via letters over the consequences; 3) provide citations to the Board of the ERE; and 4) use legal steps as enforcement measures.

Besides the DSO unbundling related tasks, the ERE should also be empowered to analyse gas DSO(s) services for consumers, acknowledging that energy efficiency and customer activity are two key areas in which the gas DSO(s) play an essential role. In addition, reliability and quality of service, and the manner in which these services are defined and carried out by the gas DSO(s) is an important part of the gas market design. Given the ERE's responsibility in regulating the gas DSO(s) natural monopolies, the future roles and responsibilities of the gas DSO(s) in Albania should be prioritised.

In that respect, the key challenge for the ERE will be to provide a regulatory framework which encourages access to the benefits that gas distribution network(s) and gas meters can provide for capabilities, including gas demand response. The ERE's task is to ensure that the gas DSO(s) do not operate in ways which foreclose or distort the potentially competitive gas market in flexibility services, including from the gas demand side.

14 Appendix I: The Gas Market Secondary Legislation Action Plan

6 November 2015

GAS MARKET SECONDARY LEGISLATION

The table herein below presents secondary legislation acts necessary for the regulation and development of the natural gas market in Albania based on a recently adopted Law No 102/2015 on the Natural Gas Sector (the Gas Law). It was initially prepared by the Energy Community Secretariat (ECS) and submitted to the Ministry of Energy and Industry of the Republic of Albania (MEI) on 3 November 2015, and reviewed following the meeting of representatives of ECS, MEI and the Energy Regulatory Authority (ERE) which took place on 5 November 2015 in Tirana.

	Name of the legal act	Legal basis from the Gas Law	Responsible institution for adoption	Deadline from the Gas Law	Deadline for the draft	Responsible for drafting	Comments
1.	Criteria and procedures established for issuance of professional certificates for specialists performing studying -designing and implementing activities in the fields defined in this law, and in the activities of exploration, production, processing, transportation, storing and trading of hydrocarbons in general	Article 5(5)	Council of Ministers	30.10.2016	N/A	N/A	MEI: The existing acts is considered as fully in compliance with the Gas Law (Decision No 551, as of 18.6.2015, of the Council of Ministers). No further legislative actions are needed.
2.	Emergency Plan	Article 6(1)	Council of Ministers	30.10.2016	31.01.2016	ECS	
3.	Conditions and procedures for granting the permits for construction of natural gas transmission and distribution pipelines, LNG facilities, storage facilities of natural gas, direct lines	Article 11(2)	Council of Ministers	30.10.2016	30.04.2016	MEI/SECO [to be assessed by ECS]	The existing act (ref. to article 11(5) Decision no. 713, dated 25.08.2010 of the Council of Ministers "On establishing the rules for the terms and procedures upon issuing permits for the construction and use of pipelines and infrastructure of natural gas systems" to be amended by the Ministry.

6 November 2015

4.	Procedure and criteria for the appointment of an administrator responsible for interim management of the undertaking which license was revoked	Article 27 (5)	Council of Ministers	30.10.2016.	30.04.2016	MEI/ERE	Similar act is adopted in the electricity sector. MEI and ERE will coordinate its adaptation for the natural gas sector.
5.	Gas market model	Article 88(1)	Council of Ministers	30.10.2016.	31.01.2016	ECS	
6.	Conditions and procedure for designation of the supplier of last resort	Article 89(2) Article 90(1)	Council of Ministers	30.10.2016.	23.12.2015	ECS	Coordination with similar legislative developments for the electricity sector will be ensured by MEI.
7.	Procedure for establishing the status of socially vulnerable customers	Article 97 (1)	Council of Ministers	30.10.2016.	30.04.2016	ECS	Ministry of Social Affairs shall be involved. MEI will coordinate the process.
8.	Rules and procedures for supervisory functions of the ministry	Article 100(1)	Council of Ministers	30.10.2016.	30.04.2016	MEI	MEI: Amendments are needed to the existing legislation. MEI will evaluate and coordinate.
9.	Technical rules	Article 10(1)	Council of Ministers	30.10.2017	30.10.2016	MEI/SECO	Two existing acts (ref. to art 115) - Decision no. 1030, as of 27.11.2013 of the Council of Ministers "On the approval of technical rules and safety criteria, first part, the minimal requirements for the technical design, construction and operation of the transmission and distribution systems of natural gas, installation of LNG storage facilities and direct lines" and Decision No. 104, as of 04.02.2015, of the Council of Ministers "On approval of technical and safety criteria, the second part, the minimum requirements for the technical design, construction and operation of transmission systems"

6 November 2015

									and distribution of natural gas, installation of LNG and storage facilities and direct lines", to be amended. MEI will evaluate and coordinate, also including consultancy assistance.
10.	Interim technical rules and safety criteria	Article 10(2)	MEI	30.10.2016	30.04.2016	MEI/SECO			The existing Order Nr.666 as of 03.08.2009 issued by the Minister of Economy, Trade and Energy, "On the approval of technical and safety requirements, temporary, the minimal requirements for the technical design, construction and operation of transmission and distribution systems of natural gas, the LNG and storage facilities and direct lines " to be amended. MEI will evaluate and coordinate, also including consultancy assistance.
11.	Instruction of designation of transmission and distribution zones	Article 23(4)	MEI	30.10.2016	30.04.2016	MEI/WBIF (?)			MEI will evaluate and coordinate, also possibly including consultancy assistance.
12.	General terms and conditions for the access to upstream pipeline activities	Article 58(2)	MEI	30.10.2016	30.04.2016	ECS			
13.	Regulation on State Inspectorate in charge of the natural gas sector surveillance	Article 101(1)	MEI	30.10.2016	30.04.2016	MEI			
14.	Conditions and procedures for levying fines	Article 106(3)	MEI	30.10.2016	30.04.2016	MEI			
15.	Report on security of gas supply	Article 7	MEI	31.07.2016	30.05.2016	MEI			Document to be prepared and submitted on annual basis.
16.	Policies/programmes for natural gas sector development	Article 5	MEI	N/A	N/A	MEI			Similar acts most likely already in place

6 November 2015

17.	License application fees and regulatory fees methodology	Article 14	ERE	30.04.2017	30.10.2016	ERE	ECS to provide with practices in other Contracting Parties, particularly in Serbia.
18.	Fees for connection and tariffs for access to the natural gas networks and to LNG facilities; for supply of natural gas to household customers and small non-household customer, as well as tariffs for the supply of last resort tariffs for access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.	Article 16(1) Article 32(1)	ERE	30.04.2017	30.10.2016	ERE/USAID (?) [to be assessed by ECS]	
19.	Establishing prices according to tariff methodologies	Article 16(2)	ERE	30.04.2017	30.04.2017	ERE	
20.	General conditions of supply, including transparent general contractual terms and conditions	Article 16(10)	ERE	30.04.2017	30.10.2016	ECS	
21.	Requirements for the TSO for maintenance and development of transmission grid	Article 16(13)	ERE	30.04.2017	30.10.2016	ERE/ECS [to be decided]	ECS: Proposal to make as a part of the Transmission Code. ERE: Will evaluate from the perspective of legal technique and will inform ECS.
22.	Accounting unbundling guidelines	Article 16(14)	ERE	30.04.2017	30.10.2016	ERE	ERE: Similar act is already adopted for the electricity sector.
23.	Dispute resolution mechanisms for natural gas undertakings	Article 16(16)	ERE	30.04.2017	30.10.2016	ECS	
24.	Exemptions for new infrastructure procedure	Article 16(17)	ERE	30.04.2017	30.10.2016	ECS	
25.	Quality of service and supply minimum standards	Article 16(18)	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance	ECS: Proposal to make as a part of the Metering Code.

6 November 2015

26.	Reporting requirements for natural gas undertakings	Article 16(24)	ERE	30.04.2017	30.10.2016	ECS	
27.	Methodology for calculating the price for ancillary and balancing services	Article 16(27)	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance	ERE will evaluate and coordinate.
28.	Rules and regulations for public consultations	Article 18(2)	ERE	30.04.2017	30.10.2016	ERE	
29.	Rules of proceedings	Article 20	ERE	30.04.2017	30.10.2016	ERE	
30.	Licensing conditions	Article 23(1) Article 24(1)	ERE	30.04.2017	30.10.2016	ERE	
31.	Regulation on procedures for transferring the assets	Article 29(2)	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance	
32.	Certification rules including the rules for exempted TSO	Article 37 Article 38(2)	ERE	30.04.2017	N/A	N/A	Already in place, as drafted by ECS (amended act adopted on 31 October 2015).
33.	Transmission Code	Article 44(1)	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance [to be reviewed by ECS]	ERE will coordinate in cooperation with TAP and Greek regulator. ECS will participate in the process.
34.	Regulation on the procedures for the submission and approval of TSO investment plans	Article 46(12)	ERE	30.04.2017	30.10.2016	ECS	
35.	TSO compliance programme	Article 47(1)	ERE	30.04.2017	30.10.2016	ECS	
36.	Compliance officer contract	Article 47(3)	ERE	30.04.2017	30.10.2016	ECS	
37.	Transparency requirements	Article 48(2)	ERE	30.04.2017	30.10.2016	ERE/(?)	Part of the Transmission Code. See item 33.
38.	Distribution Grid Code	Article 54(1)	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance	ERE will coordinate. To be developed later on as an operational document. ECS will participate in the process.

6 November 2015

39.	Criteria for access to storages	Article 63(2)	ERE	30.04.2017	30.10.2016	ECS	
40.	Storage Code	Article 67	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance [to be decided]	
41.	LNG Code	Article 74	ERE	30.04.2017	30.10.2016	ECS	
42.	Supplier switching rules	Article 76(2)	ERE	30.04.2017	30.10.2016	ECS	Part of the Gas Supply Rules. See item 22.
43.	Market rules	Article 85	ERE	30.04.2017	30.10.2016	ECS	Following the Gas Market Model. See item 5.
44.	Imposition of PSO act	Article 88(11)	ERE	30.04.2017	30.10.2016	ECS	
45.	Operational rules for the supplier of last resort	Article 90(10)	ERE	30.04.2017	30.10.2016	ECS	
46.	Operational rules for suppliers with public service obligations	Article 92(3)	ERE	30.04.2017	30.10.2016	ECS	
47.	Standard supply contract	Article 93(1)	ERE	30.04.2017	30.10.2016	ECS	
48.	Procedure for suppliers and final customers to have access to the measurement data	Article 94(3)	ERE	30.04.2017	30.10.2016	ECS	Part of the Gas Supply Rules. See item 22.
49.	Regulation on the procedures on the dispute resolution	Article 98	ERE	30.04.2017	30.10.2016	ECS	
50.	Metering Code and Standard contract	Article 102	ERE	30.04.2017	30.10.2016	ERE/(?) consultancy assistance	
51.	Levying fines procedure	Article 106(2)	ERE	30.04.2017	30.10.2016	ERE	

* * *