



# Gas Regulation

in 32 jurisdictions worldwide

Contributing editors: Florence Ninane, Alexandre Ancel  
and Liliana Eskenazi

# 2012



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# Albania

## Renata Leka and Besa Velaj (Tauzi)

Boga & Associates

### Description of domestic sector

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

The law governing the gas sector in Albania was introduced in 2008 and the applicable legal framework is not yet completed. Law No. 9946, dated 30 June 2008, On the Natural Gas Sector in Albania (Gas Law) regulates in general terms the activities related to the gas sector, including transmission, distribution, trade, deposit, supply and intake, as well as the construction and operation of natural gas infrastructures. Exploration and production of natural gas is not subject to the Gas Law, but is governed by Law No. 7746, dated 28 July 1993, On Hydrocarbons, as amended (Law on Hydrocarbons). There is no natural gas infrastructure system in Albania.

- 2 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentages of the country's natural gas needs are met through domestic production and imported production?

There are no LNG facilities in Albania.

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

The ministry covering the energy sector, namely the Ministry of Economy, Trade and Energy (METE), is vested with powers to define the policies applying to the development of the gas sector.

To define the policies in the gas sector METE may seek advice from other public authorities competent for the gas sector, which in this case is the Energy Regulatory Entity (ERE), from stakeholders of the gas sector, social partners, etc.

The main purpose of the policies should be to ensure a safe and consistent development of the gas sector. In particular they should address at least one of the following issues: implementation of the energy goals and policies in the gas sector in conformity with the requirements set forth in the Energy Community Treaty; promotion of investments in the gas sector, including any exemptions from taxes; precautionary measures with regard to environmental protection; ensuring the safe and consistent development of gas infrastructure networks and facilities; harmonisation with the EU standards and regulations applicable to the gas sector and ensuring the interaction of the Albanian gas system with neighbouring and European systems; and implementation of programmes on customers' safeguard in cooperation with other public authorities.

### Regulation of natural gas production

- 4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

The Law on Hydrocarbons entitles any entity to conduct activities related to the exploration and production of natural gas, subject to the terms and conditions of the hydrocarbon agreement entered into with METE.

Given that any hydrocarbons underlying Albanian territory are exclusive property of the Albanian state, any entity engaged in the exploration and production of natural gas should pay royalties to the Albanian state subject to the applicable tax legislation in force. Hydrocarbon agreements establish the product-sharing principle, which means that, after covering the costs by means of the natural gas produced subject to the agreement, the outstanding part will be divided between the state and the investor based on a formula determined in the hydrocarbon agreement.

- 5 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Natural gas exploration and production is governed by the Law on Hydrocarbons. The entity authorised in a hydrocarbon agreement may operate within the borders of the area (namely, contract area) indicated in the agreement. The authority empowered to authorise the drilling and production activities is METE, which exercises its powers through the National Agency of Natural Resources. The latter is vested with the power to monitor the drilling and production activities in the hydrocarbon sector. It represents METE for purposes of entering into hydrocarbon agreements with the entities aiming to operate in the natural gas exploration and production sector.

Subject to the terms and conditions of the hydrocarbon agreement the contractor may be granted:

- exclusive rights to undertake explorations within the contract area for a period not exceeding five years. If the contractor provides evidence to METE that there are specific circumstances requiring an extension of the term, the contractor may be granted an extension not exceeding an overall term of seven years;
- exclusive rights to develop and produce the hydrocarbon resources underlying the contract area for a period not exceeding 25 years in accordance with the development plan approved by METE as well as the right to renew such right to the extent provided under the hydrocarbon agreement; and
- the right to construct, place and operate relevant infrastructures subject to the requirements regarding third party access, observation of the terms applicable under any treaty to which the Republic of Albania adheres, and interconnection of such infrastructures with those of other countries.

In addition, the hydrocarbon agreement outlines the property rights pertaining to the contractor over part of the hydrocarbons produced in a given part of the contract area; and the right of the contractor to trade or export hydrocarbons produced pursuant to the terms of the hydrocarbon agreement, subject to commitments contained under the hydrocarbon agreement regarding supply of the local market or when there are supply necessities due to any emergency situation. Further the hydrocarbon agreement governs and regulates other areas such as the fiscal regime applicable to the contractor and recognises the right of the contractor (if a foreign investor) to transfer funds abroad, etc.

ERE is an independent public legal entity with a registered office in Tirana, and is vested by the law with the power to determine regulatory policies governing activity related to natural gas, such as transmission, distribution, supply, trade of natural gas, operation of natural gas storage facilities and operation of LNG facilities.

ERE is empowered but not limited to defining the tariffs applicable with regard to activities related to the natural gas area, to supervise supply safety, to handle issues related to consumer protection, to regulate cases of refusal from gas operators of third party access into natural gas facilities, govern obligations related to public services, define the stages of market aperture, define requirements to be met in order to obtain the status of qualified customer and define the general terms of supply, including establishment of transparent general contractual terms, etc.

In addition, ERE authorises the granting, transfer or alteration of licence terms; approval of the rules drafted by the transmission system operator (TSO) with regard to the balancing of the natural gas transmission system; approval of investment plans submitted by licensees in the natural gas sector; defining the minimum requirements for the TSO with regard to maintenance, operation and development of the transmission system, including the interconnection capacities; to handle with confidentiality issues pertaining to natural gas companies and other actors operating in the natural gas sector; defining the rules and procedures for the settlement of disputes arising between natural gas companies; and defining the minimum standards with regard to service quality, especially with regard to the time available for transmission and distribution operators to carry out connections with the network and relevant repairs.

ERE's decisions on any sanction imposed to licensed entities or with regard to the outcome of any dispute resolution between entities operating in the gas sector or between the latter and customers may be challenged in front of the Albanian court pursuant to the Code of Administrative Procedures.

#### **Regulation of natural gas pipeline transportation and storage**

**6** Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

So far there is no gas pipeline infrastructure in Albania. The Gas Law is relatively new and in a continuous process of completion and development aiming to create a favourable climate for investment in this area.

**7** Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

The current legal framework applicable to the construction and operation of natural gas pipeline facilities in Albania consists of the Gas Law and Decision of the Council of Ministers No. 713, dated 25 August 2010, On Defining the Rules on the Terms and Conditions for the Granting of Permits to Construct and Operate the Pipeline and Infrastructure of Natural Gas Systems.

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 is subject to a special permit approved upon decision of the Council of Ministers.

The special permit is granted for a period of 30 years renewable upon agreement of the parties.

**8** How does a company obtain the land rights to construct a natural gas transportation or storage facility?

Companies operating in the natural gas sector, for purposes of carrying out their activity, are entitled to address one of the following options: easement rights, temporary use of the land and expropriation.

**9** How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

The TSO is obliged to ensure non-discriminatory access to the transmission system to any third party. Terms and conditions as well as applicable tariffs for third parties access are published by the TSO. Third party access may be refused where there is lack of capacity, when the access might have negative effects on the fulfilment of the public service obligation, or when such access would cause serious financial difficulties for take or pay contracts that were valid prior to submission of the request for access by the third party.

The balancing tariffs as well as balancing rules are defined by the TSO and approved by ERE.

Subject to the economic conditions, the TSO should ensure adequate capacities in order to satisfy the natural gas transmission needs within a given geographical area. The natural gas transmission service should be offered by the TSO in accordance with the terms set forth in the licence granted by ERE for such purpose. In addition the TSO should ensure the balancing of the natural gas system subject to the balancing rules approved by ERE.

As far as storage facilities are concerned, third party access is permitted when technical and economic needs so require, in order to ensure an efficient supply system for customers. Access to the storage facilities for natural gas companies and qualified customers is subject to payment of tariffs published by the TSO and satisfaction of the terms and conditions for their use.

ERE determines the requirements and priorities for the storage facilities access, based on non-discriminatory, objective and fair conditions.

**10** Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Expansion of interconnection capacities may be undertaken by the TSO subject to policies and instructions of the Albanian government and in fulfilment of the obligations deriving from the Energy Community Treaty.

**11** Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

The law is silent in this regard.

**12** Describe the contractual regime for transportation and storage.

The framework for the contractual regime for transportation and storage is still under development.

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**Regulation of natural gas distribution**


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- 13** Describe in general the ownership of natural gas distribution networks.

See question 6.

- 14** Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

The operation of a distribution network is regulated by the Gas Law and is subject to licensing by ERE. The latter determines the rules and procedures applicable for the licensing of the companies aiming to operate in any natural gas sector activities, which include inter alia distribution of natural gas. The Gas Law qualifies the activities of natural gas distribution and transmission as an activity of public interest.

Activities related to transmission, distribution and supply of natural gas to all tariff customers are classified by the Gas Law as public service obligations. Licensed companies operating in the natural gas sector, have inter alia public service obligations related to:

- safety supply;
- quality and supply fees;
- use of domestic resources of natural gas;
- energy efficiency;
- environmental protection and climate changes; and
- health and life safety and property protection.

Public service obligations are clearly defined, non discriminatory, transparent and easily accessible.

- 15** How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Third party access should be ensured by the distribution system operator (DSO) unless there is lack of capacity and technical requirements are met. Third party access may be refused by the DSO for the same reasons indicated under question 9.

- 16** May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

It is a general principle that the operation of the distribution system should be based on non-discriminatory treatment of customers. Accordingly the restriction of the service to existing customers would not mirror the above principle.

- 17** Describe the contractual regime in relation to natural gas distribution.

As already mentioned above, the DSO should operate based on objective, transparent and non-discriminatory conditions. Contractual terms established by the DSO should be approved by ERE. So far, given the lack of a gas infrastructure, no such contracts have been concluded.

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**Regulation of natural gas sales and trading**


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- 18** What is the ownership and organisational structure for the supply and trading of natural gas?

Natural gas supply and trade is regulated by the Gas Law and is subject to licensing by ERE.

Subject to the Gas Law, the supply of all tariff customers is carried out by the public supplier. Public supply with natural gas is an obligation imposed by the Gas Law on the DSO for all customers in the geographical area covered by the licence issued to the DSO by ERE. Qualified customers subject to the Gas Law have the right to choose their qualified supplier licensed for such purpose by ERE.

- 19** To what extent are natural gas supply and trading activities subject to government oversight?

As already mentioned, the tariffs applicable by the operators in natural gas system infrastructures shall be determined upon prior approval of ERE. The calculation modalities regarding tariffs applicable in the natural gas sector must be performed on a non-discriminatory and transparent basis and should also take into consideration the costs incurred as well as the need of investment returns.

In addition, the Council of Ministers exercises its control in order to ensure the supply of natural gas to protected customers. For such purpose it approves the rules for the safety of the supply system, defining the requirements and modalities of calculation of the quantities of natural gas needed in order to ensure a safe and continuous supply with natural gas, the decrease programme regarding quantities supplied to certain categories of customers when facing crisis and the contents of the report of the supplier on natural gas supply security.

- 20** How are physical and financial trades of natural gas typically completed?

Currently there are no agreements that would apply to trade of natural gas. However, it is the obligation of the supervising authority (ERE) to determine terms and conditions of such agreements.

- 21** Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Qualified customers (namely, not tariff customers) are entitled to choose their service provider. Subject to the Gas Law, competing activities includes the wholesale and retail sale of natural gas between suppliers and qualified customers, with tariffs based on demand and offering proportion.

Subject to the Gas Law, customers are granted the status of 'qualified customer' if they satisfy one of the following requirements:

- end customers annually spending a quantity of natural gas, which exceeds the thresholds determined by ERE;
- plants using natural gas for power production; or
- plants using natural gas for the production of combined electric and thermo power.

In any case, customers meeting the requirements set forth above may opt to hold the status of tariff customers and continue to be supplied with natural gas by the public supplier (namely, DSO).

In defining the natural gas quantities for the purpose of classification as a qualified customer, ERE takes into consideration the technology and capacities of the natural gas system and obligations undertaken by the Republic of Albania in light of international agreements and treaties.

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**Regulation of LNG**


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- 22** What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

At present, no LNG facilities are established in Albania.



- 23** Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

The establishment of LNG facilities is subject to obtaining a special permit from the Council of Ministers. Operation of the facilities is subject to receiving a licence from ERE. The operator of the LNG facilities should ensure:

- the operation, maintenance and safe, efficient and continuous development of the LNG facilities;
- the approval of the use of the facilities for third parties;
- the connection of the LNG facility with the transmission system in accordance with the system technical rules and facility use guidelines;
- the installation of a metering system for the gas circulating from the system, as well as for the quality requirements of the gas;
- the discharge and re-gasification of the LNG is carried out in compliance with the executed agreements;
- non-discriminatory and equal access to the LNG facilities in compliance with the provisions of the law and the general terms of natural gas supply;
- the preparation of the five-year programme on the development of the facility, which is submitted for approval to ERE;
- the TSO has the necessary information to ensure the efficient development and functioning of the interconnected systems;
- the market participants have the necessary information with regard to the volume, the closing date of the operation and the expected capacity decrease of the facilities; and
- the protection of confidential information gathered during the carrying out of its business activities.

- 24** Describe any regulation of the prices and terms of service in the LNG sector.

There are no special rules concerning prices and terms of service in the LNG sector.

#### Mergers and competition

- 25** Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

ERE is empowered to define the appropriate mechanisms in order to avoid any abuse of dominant position, as well as to define the mechanisms aiming to avoid any other manipulative practice in the gas market. Punishment of anti-competitive behaviour pertains to the Albanian Competition Authority (ACA).

#### Update and trends

A draft of the Regulation Pertaining to Refusals of Third Party Access to Natural Gas Systems and Derogations in Relation to Take or Pay Commitments was subject to public consultation from last year and, according to verbal information, is expected to be approved by ERE's Board of Commissioners.

- 26** What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

Pursuant to Albanian antitrust legislation, there are requirements and thresholds applying in order to define whether certain behaviours or practices followed by a given operator are considered anti-competitive.

- 27** What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

The ACA is empowered to undertake investigations and perform the appropriate examinations in order to establish whether there is an anti-competitive behaviour adopted by an entity operating in the natural gas sector. Where the ACA observes that anti-competitive behaviour is adopted by any operator, it is empowered to invite the operator to cease such behaviour and apply the relevant sanctions as provided under the applicable legislation.

- 28** Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

ERE's board of commissioners, upon its Decision No. 9 of 11 February 2011, approved the regulation 'On rules and procedures on licensing, modification and transfer, revocation and renewal of the licenses in the natural gas sector' (Regulation).

Subject to the Regulation, licences granted pursuant to the Gas Law and the Regulation can be neither partially nor totally transferred to any third party without the prior approval of ERE.

Further, any partial or total transfer of assets related to the activities subject to licence shall be subject to prior approval by ERE and application of a new licence.

Mergers and acquisitions are otherwise subject to Albanian competition regulation.

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**29** In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

There are no specific provisions in this regard.

**30** Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

The current gas legislation does not contain any provisions on restrictions on the acquisition of shares in gas utilities.

As far as the transfer of assets is concerned, the Regulation explicitly provides that any transfer of assets by any company operating in the gas sector should obtain the prior approval of ERE. In addition the transferee should file with ERE a new licence application in the form required under the Regulation, as well as any proposal for changes or replacements of the technical documentation and a declaration containing all facts and figures regarding the reasons leading to such transfer. The Regulation provides that the transfer shall be governed by the Regulation on Procedures for Transfer of Assets by Licensees.

The transferee should meet the following requirements:

- have adequate technical and financial capacity to fulfil the obligations pertaining to the transferor subject to the licence;
- acknowledge and undertake all terms and conditions of the licence subject to transfer, including financial and performance guarantees; and
- be a registered entity in order to conduct business activity in Albania.

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### International

**31** Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

There are no restrictions on foreign companies acquiring interest in part of the natural gas sector.

**32** To what extent is regulatory policy affected by treaties or other multinational agreements?

In the framework of harmonisation of the internal legislation with the *acquis communautaire* in light of the Association and Stabilisation Agreement, the Republic of Albania is strongly committed to ensuring the domestic legislation mirrors the EU directives and regulations.

In addition, Albania is involved in international activities in a number of different forums, including the European Energy Charter and the OECD.

**33** What rules apply to cross-border sales or deliveries of natural gas?

There are no specific rules applying to cross-border sales or deliveries of natural gas.

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### Transactions between affiliates

**34** What restrictions exist on transactions between a natural gas utility and its affiliates?

The Gas Law is silent on this issue.

**35** Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

Not applicable.

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