

In Focus

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- **New Law “On the Natural Gas Sector”**

On 23.09.2015, the Albanian Parliament enacted law no. 102/2015 “On the Natural Gas Sector”, (“the Law”) superseding law no. 9946, dated 30.06.2008.

This law is fully aligned with Directive 2009/73/EC of the European Parliament and of the Council, dated 13.07.2009, “Concerning Common Rules for the Internal Market in Natural Gas” and repealing Directive 2003/55/EC. It also fulfills the obligations of Albania as contracting party of the Treaty of the Energy Community to implement the Third Energy Package of EU, and regulates the development of large projects concerning gas infrastructure.

Scope of the law

The purpose of this law is to guarantee to customers a sustainable and secure supply of natural gas, by creating a competitive market integrated with regional and European markets.

The Law covers all aspects related to organization and functioning of the natural gas market, including transmission, distribution, trade, storage, supply and construction and operating of natural gas infrastructure, except for the exploration and production. The provisions of the Law concerning the natural gas, including liquefied natural gas (“LNG”), will be applied to biogas, gas obtained from biomass, and other types of gas, provided that the injection and transmission of such gases through the natural gas system is technically possible and safe.

Key points and novelties

- Security

The Law extensively elaborates the issue of security of supply and protective measures by reflecting Directive 2004/67/EC and Regulation no. 994/2010 of the EU Parliament and of the Council. It stipulates *inter-alia* that the Council of Ministers, by proposal of the Minister of Energy, approves the emergency plan, which provides for the minimum security standards for the supply of natural gas.

- Establishment and usage of natural gas infrastructure

The construction and operation of pipelines for the transmission of natural gas, LNG installations, natural gas deposits, direct lines, connection of

the Albanian natural gas system to neighbor countries’ systems and every other structure is subject to approval from the Council of Ministers, which is granted for a 30 years period with renewal rights.

- Property Rights

Property Rights have been extended and the licensed subject can exercise one or more of the following rights:

- Using right;
- Easement right;
- Expropriation;
- The right to establish gas system installations.

- Licenses

Every legal entity that operates in the natural gas sector shall be licensed by the Albanian Energy Regulatory Entity (“ERE”) for any of the following activities:

- Transmission of natural gas;
- Distribution of natural gas;
- Supply of natural gas;
- Trade of natural gas;
- Operating in the storage spaces of the natural gas;
- Operating in the facilities of LNG;
- Functioning of the market operator.

The aforementioned licenses are granted by ERE taking into consideration *inter-alia*:

- The validity period of the license;
- Location in which the activity will be performed;
- Operating security and stability of the objects, equipments or network;
- Requirements for the nature of primary sources of the energy;
- Requirements related to national security, life protection, property, health and public order;
- Financial requirements;
- Environment protection;
- Increasing of the efficiency of the energy;
- Public service obligation;
- Stimulation of a competitive market;

- Compliance with the principles of the separation of activity and structural separation;
- Elements of the efficacy of the economic activity that will be performed.

Such licenses (including assets), used for conducting the activity, can be transferred only after the approval of ERE pursuant to the regulations it has approved.

- *Transmission System Operator (TSO)*

The TSO is a specialized and independent company in the field of natural gas, established pursuant to the Law and shall not be part of a vertically integrated company. The Law stipulates that in order to ensure the independence of the TSO the same person(s) do not have the right to simultaneously:

- a) control the decision-making process of any licensee, who produces or supplies natural gas or electricity, and control the decision-making process or any other right over the TSO or over the transmission network;
- b) control the decision-making process of TSO, or of the transmission network, and control the decision-making process, or exercise any rights, on a licensed subject that operates in any of the supplying or transmission of the natural gas activities and electricity activity;
- c) appoint members of the supervising council, board of directors, or other bodies that legally represent the TSO or the transmission network and control the decision-making of a licensed subject that operates in one of the supplying or transmission of the natural gas and electricity activity;
- d) be members of the supervising council, board of directors, or any other bodies that represent the licensee in front of other entities licensed to produce or supply electricity and natural gas and who conduct the activity as TSO or transmission network.

Further, a new concept concerning the compatibility programs and a compatibility officer has been introduced.

The TSO shall establish a compatibility program, in which the necessary measures for the non-discriminatory practices shall be provided. The compatibility is subject to the approval of ERE. TSO in cooperation with ERE, shall promote and facilitate the regional cooperation with the aim of creating a competitive regional market of the natural gas.

- *Distribution System Operator (DSO)*

The Law provides that the activity of the DSO shall be independent from the other activities that are not connected with the distribution. The persons that are in charge of DSO's management shall not be part of the structures of the integrated gas company. However, the DSO that offers services to less than 10,000 clients is not bound to the aforementioned obligation.

- *Natural Gas Market*

Special attention is paid to the regulation of the market by stipulating that the gas market is opened if the clients are free to choose their supplier. The law provides that a client has the right to be supplied from an operator that operates in an EU member state, or contracting party of the Energy Community, provided that there will be no imbalance in the system.

- *Confidentiality*

ERE, the Ministry of Energy, and all the other public authorities shall preserve the confidentiality of the information gathered from the companies and process it only for the purposes for which the information was provided.

- *Existing licenses*

The licenses that have been granted pursuant to the former law remain valid until the expiration of their term. The renewal (if applicable) shall be carried out in compliance with the new provisions.

- **Amendments to law no. 10273, dated 29.04.2010 “On the Electronic Document”**

The Parliament of Albania has passed Law no. 101/2015, dated 23.09.2015 “On Some Amendments to Law no. 10273, dated 29.04.2010 “On the Electronic Document”, published in the Official Gazette no. 178, dated 15.10.2015.

The Law aims to improve the quality of public sector services and introduces the concept of "two-dimensional code" as an innovative technology of the hard copy. A two-dimensional code is a graphic logo that contains data and/or encrypted information, in numeric, alphanumeric and binary forms, readable by electronic systems.

Electronic document is any information created with documentary qualities, sent, received or stored electronically by a computer system or a similar mechanism. It includes all forms of data, reflected in letters, numbers, symbols, voice and image. Each electronic document is unique.

Electronic document and its hard copy are equivalent in performance of transactions or legal actions, which requires the submission of an electronic document or its certified hard copy.

Currently, according to the law, the hard copy is certified by persons authorized by the institution that issued it or by a public notary according to instruction of the Minister of Justice.

The new amendments establish that the hard copy of an electronic document can be done by placing in it one or more two-dimensional codes, certifying this way the matching between hard copy and the original electronic document. This is to add an alternative to the recognition of the hard copy of electronic documents in order to facilitate electronic services and to promote the application of innovative technology.

Using hard copies of electronic documents through the introduction of one or more two-dimensional codes, will enable citizens to obtain documents (in which is placed the two-dimensional code) without appearing in the respective desks, and filing hard copies of these documents to state institutions or private entities, which by reading the contents of the two-dimensional code can access the original electronic document.

- **New Law no. 107/2015 “On Electronic Identification and Trust Services”**

The Parliament of Albania has passed law no. 107/2015, dated 01.10.2015 “On Electronic Identification and Trust Services”, published in the Official Gazette no. 182, dated 21.10.2015.

The scope of this Law is to create the legal framework for electronic identification, electronic seals, electronic delivery service and authentication of websites in the Republic Albania.

The legislator aims to enhance trust in electronic transactions in the internal market by providing a common ground for secure electronic interaction between citizens, businesses and public authorities, thereby increasing the effectiveness of public and private online services and of electronic commerce in Albania.

The use of secure electronic means will enable public and private sector electronic identification and authentication in the portals of public services.

Providers of such services should apply the most advanced standards of safety, appropriate for the

risks associated with their activities in order to promote user confidence.

This law is drafted in reference to the Regulation of the European Parliament and of the Council, no. 910/2014, dated 23.07.2014 “On Electronic Identification and Trust Services for Electronic Transactions in the Internal Market” and Finnish Law no. 617/2009 “On Secure Electronic Identification and Electronic Signatures”.

Article 4 of the law provides that a secure electronic identification is possible by means of electronic identification issued by an electronic identification scheme from the qualified trust service providers, in order to benefit the electronic services.

Personal data created through a secure electronic identification shall be taken for granted and true and will have the same legal value as the data obtained from the identification of a physical person through the official identification document.

Further, under article 5, the electronic identification scheme provides a higher degree of confidence in the claimed or asserted identity of a person and is characterized by technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to prevent misuse or alteration of the identity.

The procedures for secure identification meet the following requirements:

- Initial identification must comply with the conditions of article 7 of the law, whereby the data related with it shall be verifiable at any time;
- Guarantee the identity of the holder of the identification means;
- Guarantee the use only from the holder of the identification means.

Initial identification is made with the presence of the applicant for the electronic identification mean. The provider of the qualified trust service checks the identity of the applicant through the electronic identity card.

In cases when the provider of the trust service is not able to verify the identity of the applicant, the verification of the identity and the verification of the electronic identity card are made by the competent body which issued this document.

The *electronic certificate* necessary for securing electronic identification shall at least include:

- a) information on the provider of the trust services;
- b) information on the holder of the certificate;
- c) identification data of the certificate;
- d) possible limitations on use of the certificate;
- e) public key of the holder of the certificate;
- f) Electronic qualified signature of the provider of the qualified trust service.

In order to obtain electronic identification means, the applicant enters into a written agreement with the trust service provider.

The period of validity of the identification means can be shorter than the validity period of the agreement.

Electronic identification means is always issued to a natural person and is uniquely attributed to that person.

The trust service provider shall be liable for the damage caused intentionally or negligently to any natural or legal person due to a failure to comply with the obligations under this law.

The burden of proving intention or negligence of a non-qualified trust service provider shall lie with the natural or legal person claiming the damage.

Where feasible, trust services provided and end-user products used in the provision of those services shall be made accessible for persons with disabilities.

Supervisory body

The National Authority for Electronic Certification is the responsible entity for the implementation of this law.

The Authority registers the names of the qualified trust service providers. This register is updated and published electronically.

Initiation of qualified trust service

The trust service provider, within 30 days from the date of commencement of the activity, submits to the Authority the request for registration of this activity.

The trust service provider must prove that it possesses:

- a) the necessary reliability and specialized knowledge, needed for conducting the activity of trust service provider;
- b) the necessary financial guarantee for possible damage relief.

The Authority verifies whether the trust service provider and the services provided by it are in compliance with the requirements of this law, and if that is the case issues the status "qualified".

The qualified trust service providers begin to offer their qualified trust services after receiving the status "qualified".

Transfer of duties of trust services

The qualified trust service providers that are unable to conduct such activity can transfer to third parties the duties under this law and its sub-legal acts, provided that these third parties meet the requirements set forth under this law. Such transfer does not discharge the service provider from his liability for obligations derived from the law.

Reporting to the Authority

The qualified trust service provider submits an annual detailed report on its activity not later than March 31st of the subsequent year. Moreover, the qualified service provider reports to the Authority any time the latter requests information.

Electronic seals

A qualified electronic seal shall be considered valid in any legal proceedings regardless of its electronic form.

A qualified electronic seal shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked.

A qualified electronic seal, based on a qualified certificate issued by a qualified trust service provider, has the same legal validity as the ink stamp.

Requirements for the qualified electronic seals:

1. It is uniquely linked to the creator of the seal;
2. It is capable of identifying the creator of the seal;
3. It is created using electronic seal creation data, which can be used only by the creator of the seal;
4. It is linked to the data to which it relates in such a way that any subsequent change in the data is detectable;

• **National Accounting Standard for Non-Profit Organizations**

The Minister of Finance issued Order no. 62, dated 17.09.2015 to promulgate the “National Accounting Standard for Non-Profit Organizations”, which were approved by Decision no. 2, dated 27.09.2015 of the National Accounting Council (NAC). Both, the Order of the Minister of Finance and the Decision of the NAC, were published in the Official Gazette no. 171, dated 01.10.2015.

All entities that have the status of non-profit economic units (domestic and foreign) and carry out their activity in Albania shall apply the National Accounting Standard for Non-Profit Organizations (hereinafter referred to as “NAS for NPOs”) as basis for financial reporting. The NAS is applicable by organizations which:

- Are established to carry out charitable or altruistic activities;
- are not subject to tax (as long as their activity

5. It is based on a qualified electronic certificate.

The equipments for the creation of the qualified electronic seal should fulfill the requirements and the technical specifications for the trust equipments of creation of qualified electronic signatures, as defined by law no.9880, dated 25.02.2008 “On Electronic Signature”.

Electronic registered delivery services

Data sent and received using an electronic registered delivery service shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form.

Data sent and received using a qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.

Acceptance and application of foreign products

Trust services provided by trust service providers established outside the territory of the Republic of Albania shall be considered as legally valid only based on the relevant agreement entered into by the Republic of Albania and the respective other countries.

- is not profitable);
- are forbidden to distribute the surplus from activities to their founder and/or members; and
- are not controlled or managed by the Government.

When the NAS of NPOs does not specify a certain accounting policy, it is advisable to use the general standards applicable by commercial entities (NAS/IAS/IFRS). However, it is forbidden the optional application of NAS/IAS/IFRS of commercial entities.

The financial statements of NPOs consist of:

- The Statement of Financial Position;
- The Statement of Activities;
- The Statement of Cash-Flow.

NPOs which have a total value of assets of more than ALL 5 million shall use the accrual basis of accounting

and prepare all the above mentioned statements.

NPOs that do not reach this threshold shall apply the cash basis of accounting and shall only prepare the Statement of Cash Flow, accompanied by explanatory notes regarding the services/activities rendered.

The purpose of the Statement of Financial Position is to provide the stakeholders with proper information on assets, liability and net assets (the latter is similar to the equity statements of commercial entities).

The information presented in such statement, including information provided in explanatory notes, or in other financial statements, helps donors, members, creditors and other stakeholders to assess: a) the ability of the NPO to keep providing services; and b) the NPO's liquidity, financial flexibility, ability to meet obligations and needs for external financing.

Specifically, the NPOs should present on the face of the statement of financial position the net assets divided as restricted and unrestricted, based on the existence or not of donor restrictions.

Similarly to the Statement of Comprehensive Income, NPOs should prepare the Statement of Activities. The aim of such statement is to inform its users about the effects of transactions, events and other situations on net assets; the relationship of such transactions,

events and situations with each other; and how the resources of the organization are used to offer programs or services.

The standard suggests for income to be stated separately in the face of financial statements such as: contributions, membership dues, program fees, fundraising events, grants, investment income and profit from sale of investments. It also suggests NPOs to present the information classified by the function i.e. different categories of programs (recourses and cost related to the specific programs) and other auxiliary activities.

The Statement of Cash-Flow is divided in three activities and may be prepared using direct or indirect method (similar to the NAS1).

The restricted contributions from donors used for programs are included in 'net cash from investing activities', but interests and dividends, which are restricted from donors for long term purposes, are not included as income from operating activities.

The application of the standard will be mandatory starting from 01.01.2016. Its application is prospectively.

Click [here](#) to download the templates of Financial Statements for NPOs.

• **New Draft-Law “On Copyright and Related Rights”**

The Parliament of Albania is discussing a new Draft-Law “On Copyright and Related Rights”, which transposes EU directives in the field of copyright and related rights, and fulfills obligations deriving from other international Conventions such as Bern Convention, Rome Convention, TRIPS Agreement etc.

The new Draft-Law ensures the protection of copyrights and related rights for literature, artistic and scientific works, the rights of creators, performers and/or executors and users of literary creations, phonogram producers for their phonograms artistic and scientific institutions in the field of art, rights arising from the publication/recognition of creations. It dedicates a special treatment to vulnerable groups of authors or holders of copyright who cannot exercise their right personally.

Collective Administration Agencies (CAAs)

The new Draft-Law affects the work and activities of Collective Administration Agencies (CAAs), which are defined as legal entities established as non-profit organizations solely for the administration of copyrights of authors upon entering into contracts with the authors. They shall be licensed by the Copyright Directory, provided that they fulfill some requirements such as having its legal seat in Albania; having the necessary logistics and mechanisms to collect, distribute the appropriate reward etc.

Reward

CAAs shall distribute the reward to the authors at least once per year and can only use a maximum of 30% from the collected rewards for its operational

expenses. Further, in order to increase its financial transparency, the CAAs shall submit to the Copyright Directory its declaration concerning the distribution.

Public authorities

The Copyright Directory (repealing Albanian Copyright Office), serves as a technical secretariat near the National Copyright Council (NCC), under the authority of the Ministry of Culture.

NCC is composed of the president and four other members having the following duties:

- approval of the methodology and the fees regarding the rewarding;
- decides upon the claims of the parties regarding their agreement and verifies the accordance of the agreement with the provisions of the law;
- determines the criteria and the procedures of selecting the works that represent national value;
- determines arbitration procedures.

The Copyright Directory is *inter-alia* responsible for drafting and implementing the strategy for the copyright and related rights protection, pursuant to the law. Further, it examines the applications of CAAs to be licensed and proposes at least two

• **Safe Harbour Program**

The regulatory framework of EU Personal Data Protection is Directive 95/46/EC dated 24.10.1995, “On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data”, (hereinafter referred to as the “*EU Directive*”).

Under EU Directive, the transfer of personal data to third countries (i.e. non EU countries), is allowed only if the third country in question satisfies an adequate level of protection to be assessed based on all the circumstances of the data transfer operation. In this view, the Commission may find whether a country, due to its domestic laws or international commitments it has agreed to enter, satisfies an adequate level of protection (article 25).

Thus, in compliance with the EU Directive, the European Commission adopted as of 26.07.2000, the Decision 2000/520/EC (hereinafter referred to as the “*EC Decision*”). The EC Decision would

candidatures, if possible to the Minister of Culture.

After the licensing, the Copyright Directory will monitor the activity of the CAAs.

Mediation

Pursuant to the mediation procedures, the CAAs and the representative unions of the users can propose the mediation of a dispute on inclusive rebroadcasting agreements. The mediation of the applicable fees is obligatory to be exhausted prior to addressing the court.

Arbitration

In cases related to exclusions and limitations of technologic measures (pursuant to the provisions of the law) the parties can choose to solve the dispute via arbitration. The competent body for such procedure shall be the Board of Arbitration, near the Copyright Directory.

Sanctions

Fines can be applied by the responsible authorities (i.e. the Copyright Directory) varying from ALL 100,000 to ALL 500,000 depending on the violation. The Draft Law provides specific details on how the fines can be applied.

recognize the adequate level of protection for the personal data transfer from EU member countries to the United States if organizations complied with the *safe harbour program* (paragraph 5).

The Safe Harbour Program stands for an agreement entered into between the EU and the United States for the protection of EU citizens’ personal data, when being transferred from an EU Member State to organizations in the United States in order to help the implementation of the EU privacy principles by such organizations.

Decision of the Court of Justice of the European Union ruling invalid the Decision 2000/520/EC on the Safe Harbour

On 06.10.2015, the Court of Justice of the European Union (hereinafter referred to as “*ECJ*”) has ruled invalid the EC Decision on the US Safe Harbour.

The decision of the ECJ was triggered by a complaint submitted near the Irish supervisory authority regarding the personal data transfer, by a citizen claiming that the law and practice of the United States do not offer sufficient protection of the data transferred therein. The Irish authority rejected such complaint through the reasoning that the United States, subject to the EC Decision, provide for an adequate level of protection of the personal data transfer.

The case was brought before the High Court of Ireland which presented it in front of the ECJ in order to decide whether the EC Commission may prevent a national supervisory authority from conducting investigations regarding complaints that a third country does not ensure the adequate level of protection in connection to personal data transfer.

In this view, the ECJ declared as invalid the EC Decision by reasoning that “the existence of a Commission decision finding that a third country ensures an adequate level of protection of the personal data transferred cannot eliminate or even reduce the powers available to the national supervisory authorities under the Charter of Fundamental Rights of the European Union and the directive”. Thus, even if the Commission has adopted a decision, the national supervisory authorities, when dealing with a claim, must be able to examine, with complete independence, whether the transfer of a person’s data to a third country complies with the requirements laid down by the directive.”¹

Safe Harbour application in Albania

Law no. 9887, dated 10.03.2008 “On Protection of Personal Data” (“Personal Data Law”), as amended, regulates the processing and transfer of personal data.

The Personal Data Law essentially allows the transfer of personal data outside the country by recipients from countries that have the adequate standards for privacy protection.

Decision of Council of Ministers no. 934, dated 02.09.2009 “On Countries with Adequate Standards for Protection of Personal Data” (“*Decision 934*”), pursuant to Personal Data Law, defines the countries with adequate standards for the protection of personal data, which among others are “Countries, where personal data can be transferred, in conformity with a decision of the European Union Commission”.

The authority responsible for issuing of decisions in implementation of the Personal Data Law and Decision 934, regarding the countries with adequate standards for protection of personal data, is the Data Protection Commissioner.

The Decision of the Data Protection Commissioner no. 3, dated 20.11.2012, “On Countries with Adequate Standards of Protection of Personal Data” (“*Commissioner’s Decision no. 3*”), in implementation of the Personal Data Law allows transferring of personal data to a receiver in the territory of the United States, which is member of the Safe Harbour Program.

Now that the Safe Harbour is ruled invalid by the ECJ, the Commissioner’s Decision no. 3 should be amended.

However, there is not any official interpretation yet from the Data Protection Commissioner regarding the case of the Safe Harbour Program and how the data transferring to a receiver in the territory of the United States will continue.

¹ Press Release No. 117/15, Court of Justice of the European Union, Luxembourg, 6 October 2015; Judgment in Case C 362/14 “Maximilian Schrems vs Data Protection Commissioner.

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