

# Gas Regulation

*Contributing editors*

**David Tennant and Torquil Law**



**2016**

**GETTING THE  
DEAL THROUGH** 

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# Gas Regulation 2016

*Contributing editors*

David Tennant and Torquil Law

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# Albania

Renata Leka and Besa Velaj (Tauzi)

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## 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 new law governing the gas sector in Albania was introduced in 2015. Law No. 102/2015, dated 23 September 2015, On the Natural Gas Sector in Albania (Gas Law) regulates in general terms activities related to the gas sector, including transmission, distribution, trade, storage, supply, intake, and the construction and operation of natural gas infrastructures, and is approximated with EU legislation. 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). Currently, there is no natural gas infrastructure effectively operating in Albania.

Albania is part of the corridor involved in the Trans Adriatic Pipeline project. To this end, the Albanian parliament ratified the host government agreement entered into with the project investor for the development of the project through Law No. 116/2013 'On the ratification of the Host Government Agreement between the Republic of Albania acting through the Council of Ministers (CM) and Trans Adriatic Pipeline AG in connection with the Trans Adriatic Pipeline project (TAP Project) and the agreement between the Republic of Albania, represented by the CM and Trans Adriatic Pipeline AG in connection with the Trans Adriatic Pipeline Project (TAP Project) (Law No. 116/2013).

To date, the Albanian Energy Regulatory Entity (ERE) has issued two licences concerning the natural gas sector, respectively on the transmission and distribution of natural gas.

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

There are no LNG or natural gas facilities currently operating in Albania.

## Government policy

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

The CM is responsible for the development of the general policies of the natural gas sector as well as for the definition of incentives that will be offered to operators in the natural gas sector, pursuant to the economic development policies.

In addition, the Ministry of Energy and Industry (MEI) drafts the policies applying to the development of the gas sector, as well as the National Energy Strategy, which is subject to the approval of the CM and gathers and processes data regarding the energy balance in national level, including natural gas.

To exercise one of the above duties, the MEI may seek advice from other public authorities competent for the gas sector, which in this case includes ERE, stakeholders of the gas sector and social partners.

The main purpose of the policies should be to ensure the 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 regarding customers' safeguards 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 the MEI.

Given that any hydrocarbons underlying Albanian territory are the exclusive property of the state, any entity engaged in the exploration and production of natural gas should pay royalties to the state subject to the applicable tax legislation. 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 established 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 the MEI, which exercises its powers through the National Agency of Natural Resources. The latter is vested with the power to monitor drilling and production activities in the hydrocarbon sector. It represents the MEI for the purposes of entering into hydrocarbon agreements with 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 the MEI 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 the MEI, 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 Albania adheres and the interconnection of such infrastructures with those of other countries.

In addition, the hydrocarbon agreement determines 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 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:

- define the tariffs applicable with regard to activities related to the natural gas sector;
- supervise supply safety;
- handle issues related to consumer protection;
- regulate cases of refusal from gas operators of third-party access to natural gas facilities;
- govern obligations related to public services;
- define the stages of market aperture; and
- define the requirements to be met to obtain the status of qualified customer and define the general terms of supply, including establishment of transparent general contractual terms.

In addition, ERE:

- authorises the granting, transfer or alteration of licence terms;
- approves the rules drafted by the transmission system operator (TSO) with regard to the balancing of the natural gas transmission system;
- approves investment plans submitted by licensees in the natural gas sector;
- defines the minimum requirements for the TSO with regard to maintenance, operation and development of the transmission system, including the interconnection capacities;
- handles confidentiality issues pertaining to natural gas companies and other actors operating in the natural gas sector;
- defines the rules and procedures for the settlement of disputes arising between natural gas companies; and
- defines 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 on licensed entities or with regard to the outcome of any dispute resolution between entities operating in the gas sector, or between these and customers, may be challenged in front of the Albanian courts pursuant to the Code of Administrative Procedures.

## **6 Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?**

As regards exploration activity, although not explicitly provided in the relevant legislation, submission of a financial guarantee is subject to negotiation with the competent authority, and is included in the terms and conditions of the hydrocarbon agreement as described above.

Subject to the Gas Law, the licence to conduct storage activities is issued by ERE. Considering the efficiency and economic balance, one or more storage system operators may be licensed by ERE.

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

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

The construction and utilisation of natural gas transmission and distribution pipelines, LNG facilities, natural gas storage facilities, direct lines, the interconnection of the Albanian natural gas system with the neighbouring systems, as well as any other facility, equipment or installation falling under natural gas sector, shall be made under an approval issued by the

CM. The permit shall be granted for a term of up to 30 years with the right to be renewed.

Any legal person wishing to operate in the natural gas sector has to obtain a licence issued by ERE for the following activities: transmission, distribution, supply, trade of natural gas, operation of natural gas storage facilities, operation of LNG facilities, and to be the natural gas market operator.

As already stated above, the only project of gasification with an interest in Albanian territory is the TAP Project owned by Trans Adriatic Pipeline AG, which is engaged in the development, construction, ownership and use of the TAP project. According to Trans Adriatic Pipeline AG's estimation, reflected in ERE Decision No. 135, dated 24 December 2014, On examination and approval of the Energy Regulators' Joint Opinion on TAP AG's request for a prolongation of the validity period of the exemption decision, the TAP Project is estimated to be in operation by 1 January 2020 or between then and 31 December 2022.

### **8 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 the 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. Environmental permits are approved by the Minister of the Environment and issued by the National Licensing Council, while development permits, construction permits and usage permits are issued by the National Territory Council.

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 a decision of the CM.

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

In addition to the special permit, construction permits applicable in the urban planning legislation must be obtained for the construction of natural gas pipelines.

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

For the purposes of carrying out their activities, companies operating in the natural gas sector are entitled to apply one of the following options: easement rights, temporary use of the land, expropriation and the right of placing gas system installations on the land.

### **10 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-party access are published by the TSO. Third-party access may be refused where there is lack of capacity, when the access could have negative effects on the fulfilment of the TSO's 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 and balancing rules are defined by the TSO and approved by ERE.

Subject to the economic conditions, the TSO should ensure adequate capacities 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 this to ensure an efficient supply system for customers. Access to the storage facilities by 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 storage facilities access based on non-discriminatory, objective and fair conditions.

**11 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 government and in fulfilment of the obligations deriving from the Energy Community Treaty.

**12 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.

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

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

### Regulation of natural gas distribution

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

As stated in question 7, so far, no gas pipeline infrastructure has been built in Albania. Accordingly, there is no established distribution network in Albania.

**15 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 shall be carried out by a distribution system operator (DSO) established as a legal persons and licensed by ERE. The latter determines the rules and procedures applicable for the licensing of companies aiming to operate in any natural gas sector activities, including the distribution of natural gas. The Gas Law classes the activities of natural gas distribution and transmission as activities of public interest.

The activities of transmission and distribution of natural gas, as well as the supply of small customers (including household customers) with natural gas, shall be carried out as public services.

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, energy from renewable sources and climate protection; and
- protection of citizens' health, life and property.

Public service obligations are clearly defined as non-discrimination, transparency and ease of access, and shall guarantee equal access for natural gas undertakings of EU member states and Energy Community Parties to national customers.

**16 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?**

The DSO shall provide unrestricted access to the distribution system within the limits of the distribution capacity and technical regulations, and in line with the terms and conditions laid down in the Distribution Grid Code proposed by the DSO, after consultation with other natural gas sector participants and social partners and being approved by ERE.

Third-party access should be ensured by the DSO unless there is a lack of capacity and as long as the technical requirements are met. Third-party access may be refused by the DSO for the same reasons indicated in question 10.

**17 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, restriction of the service to existing customers would not be in line with this principle.

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

As already mentioned, the DSO should operate in accordance with 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.

### Regulation of natural gas sales and trading

**19 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.

The natural gas market operator shall be responsible for the organisation of physical trade in natural gas in Albania, as well as for connecting with other organised natural gas markets.

Subject to the Gas Law, the supply of all tariff customers is carried out by the public supplier. Public supply of 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.

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

As already mentioned, the tariffs applicable to 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 for investment returns.

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

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

Currently, there are no agreements that would apply to the trade of natural gas. However, ERE is obliged to determine terms and conditions of such agreements.

**22 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 include 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: they are end customers annually spending a quantity of natural gas that exceeds the thresholds determined by ERE; they are plants using natural gas for power production; or they are 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, the 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 Albania in light of international agreements and treaties.

### Regulation of LNG

#### 23 What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?

The LNG system operation shall be performed by LNG operators that are established as legal persons, licensed by ERE and regulated by the Law Gas. Considering the efficiency and economic balance, one or more LNG system operators maybe designated. ERE determines the conditions that must be met to obtain a licence, taking into account, inter alia, the validity of the licence, which, for the activities of transmission, distribution, storage and LNG facilities, shall not exceed 30 years, and which for other activities shall not exceed 10 years, with the right of renewal.

#### 24 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 CM. Operation of the facilities is subject to receiving a licence from ERE. The operator of the LNG facilities should ensure that 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.

The LNG system operator shall:

- operate, maintain and develop a safe, reliable and efficient LNG facility to secure an open market, with due regard to environmental protection, and to ensure adequate means to meet service obligations;
- have the approval necessary for use of the existing LNG system facilities;
- connect the LNG facility to the transmission system in accordance with the system technical rules and facility use guidelines of the LNG facility;
- install a metering system for the gas circulating from the system, as well as fulfil the quality requirements of the gas;
- discharge and regasify the LNG in compliance with the executed agreements;
- provide 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 approved by ERE;
- refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;
- prepare a five-year programme on the development of the facility, which is published, updated annually and submitted for approval to ERE;
- provide any other system operator sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of interconnected systems;
- provide regulated information to gas market participants, sufficiently in advance, on the volume and the date of the cessation of the LNG facility operation and the expected reduction of the LNG facility capacities;
- secure the protection of confidential information of a commercial nature obtained in the course of carrying out his or her business;
- keep at the disposal of, inter alia, ERE, the Albanian Competition Authority (ACA) and any other responsible authority, all information for a period of five years. Such information shall also be provided to the Energy Community Secretariat;
- take reasonable steps to allow capacity rights to be freely tradable, and facilitate such trade in a transparent and non-discriminatory manner; and
- encourage the conclusion of contracts and harmonised proceedings for the LNG facility on the primary market to facilitate secondary trade of capacity, and recognise the transfer of primary capacity rights where notified by system users.

These harmonised contracts and procedures shall be notified to ERE.

#### 25 Describe any regulation of the prices and terms of service in the LNG sector.

The prices and terms of services for LNG facilities are calculated in accordance with a methodology expected to be approved by ERA.

### Mergers and competition

#### 26 Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

ERE is empowered to define the appropriate mechanisms necessary 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 anticompetitive behaviour pertains to the ACA.

#### 27 What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

Pursuant to Albanian antitrust legislation, there are requirements and thresholds that apply in defining whether certain behaviours or practices followed by a given operator are considered anticompetitive.

#### 28 What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

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

#### 29 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?

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 also be subject to prior approval by ERE and application of a new licence.

Mergers and acquisitions are otherwise subject to Albanian competition regulation.

#### 30 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.

#### 31 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 regarding 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:

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

**International****32 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 interests in any part of the natural gas sector.

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

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

In addition, Albania is involved in international activities in a number of different fora, including the European Energy Charter and the OECD. In relation to the TAP project, the Parliament has ratified the intergovernmental agreement entered into with Italy and Greece.

**34 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.

**Update and trends**

The Parliament has approved Law No. 102/2015, which is approximated with Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 On common rules for the internal market in natural gas, and which repeals Directive 2003/55/EC. In addition, several sublegal acts have been adopted, while others are under discussion.

**Transactions between affiliates****35 What restrictions exist on transactions between a natural gas utility and its affiliates?**

The Gas Law is silent on this issue.

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

Not applicable.

**BOGA & ASSOCIATES**

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