

# **REGULATION ON THE PROCEDURES OF GRANTING THE EXEMPTION FOR THE NEW INFRASTRUCTURE OF NATURAL GAS**

## **CHAPTER I – GENERAL PROVISIONS**

### **Article 1**

(Object)

- (1) The object of this Regulation is to ensure the promotion of the investments on the main infrastructure while ensuring the proper operation of natural gas market.
- (2) The object of this Regulation is to define the rules for a transparent, non-discriminatory and reasonable exemption procedure in conformity with the rules of the Third Energy Package that includes the role of Energy Regulator Authority (hereinbelow ERE).

### **Article 2**

(Scope)

- (3) This Regulation is applied for the exemption of the new general infrastructure below: the interconnectors between Albania and other Energy Community Parties, Liquidified Natural Gas and storage facilities described on Article 3 as follows.
- (4) The regulation defines the procedure requirements for the exemption of the new general Infrastructure, including the terms and conditions for the submission of the documents, the data and information on ERE.
- (5) On this regulation all the terms are used according to the meaning described on Law no. 102/2015 “On Natural Gas Sector” (herein below: “Legislation”) and shall be interpreted in conformity with the legal acts that regulate the internal procedures and ERE organization in consultation with Energy Community Secretariat (hereinbelow “Secretariat”).

## **CHAPTER II – Application for exemption**

### **Article 3**

(Application for Exemption)

- (1) The new, general natural gas infrastructure, such as the interconnector between Albania and other countries of Energy Community, LNG, and storage facilities, may according to the request by ERE be exempted from the provisions of paragraph 1 Article 16, paragraph 5 article 33, subparagraphs dh) and e) paragraph 1 article 17 and articles 36, 42, 63, 64 and 71 of the Law according to the following conditions:
  - a. the investment shall increase competition in natural gas supply and strengthen the security of supply;
  - b. the risk level attached to the investment is such that the investment is not carried out if the exemption is not granted;

- c. the infrastructure shall be on the ownership of a person that is separated regarding its legal structure from the system operators on which systems shall be constructed the infrastructure;
  - d. the tariffs are set to the users of that infrastructure;
  - e. the exemption shall not violate competition or effective operation of the internal gas market, or efficient operation of the regulated system with which the infrastructure is connected.
- (2) Paragraph 1 of this article is also implemented for the considerable increase of the capacity for the existing infrastructures and for the modification of such infrastructures that enable the development of the new gas supply sources.
- (2) ERE, according to the case may decide for the exemption referring to paragraphs 1 and 2 of this article according to the criteria set on this article

## **CHAPTER III – SUBMISSION OF THE DOCUMENTS, DATA AND INFORMATION**

### **Article 4**

(List of the documents, the data and information)

- (1) The applicant together with the written application for the exemption of the new general infrastructure, shall submit at ERE the documents as follows to justify the request for exemption. This information may include but is not limited:
  - a) The submission of the general new infrastructure submission for which it is issued the exemption.
  - b) Provisions from the Law from which it is required the exemption.
  - c) The report for the exempted part of the new, general infrastructure.
  - d) Duration of the required exemption for any provision from point b) of this paragraph
  - e) Technical – economic analysis of the project:
    - i. feasibility study for the new, general infrastructure,
    - ii. results of the market test that evidence the market interest in conformity with article 78 point 11 of the Law;
    - iii. analysis of the exemption criteria based on the project data for the infrastructure and the market test;
  - f) submission of a proposal for the price to use the infrastructure and its evolution during the exemption period, when required the exemption from the regulated third-party access (TPA).
  - g) data and information for the applicant from Article 5 of the Regulation.
- (2) All documents, data and information that is required according to this article shall be submitted at ERE on the Albanian and English language in the written form and electronically.

### **Article 5**

(Data and information on the applicant)

- (1) The applicant shall submit at ERE the data and information as follows:
  - a) Notarized copy of the documents regarding the inclusion and the registration.
  - b) List of the licensee, the permissions and/or authorizations received from the applicant for the activities on power sector issued from the authorities of the other countries and notarized copy of these licenses, permissions and/or authorizations;
  - c) List of the shareholders including the information regarding their shares and their rights;
  - d) List of the commercial undertakings which are under direct/indirect control of the company that is applying also clearly explaining the control approach and the respective rights of the applicant;
  - e) List of the commercial undertakings, which are under direct/indirect control on the applicant and clearly explain the control approach and the respective rights of these undertakings;

- f) List of other commercial related undertakings (that means group of related undertakings), which show the approach of the special agreements with the applicant;
- (2) If more than one undertaking applies for the exemption, all the undertakings shall be considered as applicant for the data and information and each of them shall submit them at ERE.
- (3) At any time during the exemption period ERE and according to the case the Secretariat may request to the applicant additional documents, respective data and/or information for the exemption.
- (4) The applicant shall immediately inform ERE for any change on the submitted documents, at the data and/or the information, but in any case not later than (5) five working days after the change and shall submit the documents, data and/or the changed information.
- (5) All the documents shall be original copies and/or notarized copies.
- (6) The applicant shall ensure the exemptions for the exemptions set on Article 4 and at this article which at the application time has not terminated.
- (7) Before deciding for the application, ERE at any time may require additional information from the applicant.

## **CHAPTER IV – EXEMPTION PROCEDURE**

### **Article 6**

(Applied procedures and exemption)

- (1) ERE shall decide on the exemption based on Article 78 of the Legislation and the procedures specified on this Regulation
- (2) When the infrastructure in question is located in one or more Energy Community Parties, the Energy Community Regulatory Board shall submit an advisory opinion for ERE and the Regulatory Authority of another EU member country or involved Contracting Party of Energy Community, that may be used as a basis for their decision regarding the exemption, within 2 (two) months from the date when the request for exemption is done by the regulatory authorities.
- (3) When the involved regulatory authorities agree on the exemption request within 6 (six) months, from the date it is undertaken from the last regulatory authority, they inform depending on the situation, the Energy Community Regulatory Board regarding their decision.
- (4) The Energy Community Regulatory Board shall exercise all the obligations charged to the regulatory authorities of EU member states and the Contracting Parties of Energy Community included on this article:
  - a) when all the involved regulatory authorities are not able to sign an agreement within a 6 (six) months period from the date when the request for exemption is undertaken from the last regulatory authority;
  - b) according to a joint request from the involved regulatory authorities.
- (5) All involved regulatory authorities may jointly require that the period referring to subparagraph a) paragraph 6 of this article may be extended to 3 (three) months.

- (5) Despite paragraph 3, Article 3 of the Regulation, the ERE may apply to the Energy Community Regulatory Board to submit its opinion on the request for exemption, for the official decision. This opinion shall be published together with the decision.
- (6) ERE shall submit to Energy Community Secretariat and depending on the situation to EU Commission, when a member state is included on time, a copy of any request for the exemption as the request is undertaken. The decision shall be notified on time to Energy Community Secretariat by ERE together with the respective information regarding the decision. This information shall be submitted completely to the Secretariat in order this last one mentioned to take a based decision.
- (7) Within (2) two months after the date when it is taken the decision, referring to paragraph (2) of this article, the Secretariat shall submit the opinion to ERE and shall invite this last one mentioned to amend or abrogate the decision for issuing the exemption. This two month period may be extended with an additional period of two months when it is required additional information from Energy Community Secretariat. This additional period starts on the day after receiving full information. The initial period of two months may be extended upon Energy Community Secretariat and ERE approval. In the absence of an opinion from the Secretariat, within the period specified in this document, it is considered that the Secretariat has no objections regarding ERE decision.
- (8) In case the required information, as defined on paragraph (3) of this article, is not submitted within the period defined on the request, shall be considered that the submitted notification is in conformity with paragraph (2) of this article, shall be withdrawn except of the case when ERE, before termination period of the term mentioned on paragraph (3), or the period is extended with Energy Community Secretariat and ERE approval, or ERE by a reasoned declaration notified the Secretariat that it considers the complete the notification.
- (9) Within two (2) months from the day of receiving the opinion from the Secretariat, ERE shall take the final decision, regarding the exemption of the Natural Gas Transmission System Operator, referring to this opinion. ERE Decision and the opinion of Energy Community Secretariat shall be published together.
- (11) When ERE final decision is different from the opinion of Energy Community Secretariat, ERE shall ensure and publish together with the decision the justification regarding the amended decision and shall inform the Secretariat.
- (12) ERE final decision on the exemption shall be published on the Official Gazette and on ERE official website.

## **Article 7**

### (Decision on the exemption)

- (1) ERE shall approve a draft decision on the exemption within 60 days from the application. Before taking the decision, ERE shall be consulted with the respective regulatory authorities and the applicant.
- (2) The exemption may include respectively a part or full, new infrastructure or the existing infrastructure with added capacity in a considerable way or modification of the existing infrastructure.
- (3) When decided for the issue of the exemption, shall be taken into consideration, case by case the need to set the conditions regarding the duration of the exemption and the non - discriminatory access at the interconnector. When deciding regarding the conditions on this paragraph, shall be taken into consideration, especially the duration of the contracts, the additional capacity that shall be constructed or the modification of the modification of the existing capacity, the time period of the project and the circumstances in the country.

- (4) When issuing the exemption, ERE shall decide for the rules and the mechanisms for the management and capacity allocation. The rules require that all the possible users of the infrastructure shall be invited to show their interest for the contracting capacity before allocating the capacity of the new infrastructure, including those for personal use. ERE shall require that the congestion management rules shall include the obligation to provide an unused capacity in the market and to require to the infrastructure users to have the right to trade their contracted capacities on the secondary market. In accessing the criteria mentioned on subparagraphs a), b) and d), paragraph 1 of this article, ERE shall take into consideration the results of this procedure for capacities allocation.
- (5) The draft decision of the exemption, including the conditions mentioned on paragraph 4 of this article, shall be justified and published on the Official Gazette. Without disclosing the commercial sensitive information, the decision shall include:
- a) a detailed justification on the basis of which ERE issued or refused the exemption together with the reference on paragraph 1 of this article, including even the respective provisions on which it is based such a decision, including the financial information that justifies the need for exemption;
  - b) analysis made for competition and for effective competition of the internal gas market as result of the exemption;
  - b) the reasons for the time period and the total capacity of the gas infrastructure in question for which it is issued the exemption
  - ç) if the exemption relates to an interconnector, the consultation result with the involved countries and regulatory authorities;
  - d) contribution of the infrastructure regarding the variety of gas supply.

## **CHAPTER V – FINAL PROVISIONS**

### **Article 8**

(Protection of confidential information)

- (1) When the documents, the data, and/or information, submitted by the applicant at ERE or at the Secretariat, contain confidential information or commercial sensitive information, the applicant shall clearly show which part of the documents, data and/or information shall be considered as confidential or commercial sensitive information and shall not be disclosed to third parties.
- (2) ERE or the Secretariat shall protect confidential information or commercial sensitive information, if required from the applicant and shall not have such an obligation if the applicant has not performed the request according to paragraph (1) of this article.

### **Article 9**

(Obligation)

The persons which breach this Regulation or respective decisions approved by ERE, shall be responsible according to the Law.

#### **Article 10**

(Settling the disputes)

- (1) ERE decision according to this Regulation shall be appealed at the competent court (Tirana Court / Administrative Court).
- (2) Without influencing on paragraph 1 of this Article, any dispute according to this Regulation may be handled in a friendly way through conciliation and negotiations between the parties. If there is not found a solution within 30 days, the parties in a dispute may apply for assistance at the Energy Community Dispute Resolution and Negotiation Center.

#### **Article 11**

(Final provisions)

- (1) This Regulation is subject of review and amendment with ERE Board Decision, in conformity with the Regulation on ERE Organization, Operation and Procedures.
- (2) This Regulation, after approved and published at the Albanian Official Gazette shall be published on ERE website.
- (3) Interpretation of this Regulation shall be ensured and published by ERE in conformity with the procedural regulations.
- (4) These Rules enter into force when they are approved by ERE.