



Energy

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Albania

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Overview of the current energy mix, and the place in the market of different energy sources

Power

The generation of power in Albania is performed by entities (either private or public) that have been licensed by the Energy Regulatory Authority (ERE). KESH Sh.a. (state-owned) is the main producing entity, with an installed capacity of 1,448 MW. Currently, KESH Sh.a. operates three hydro power plants (HPPs), Fierza HPP, Komani HPP and Vau i Dejës HPP, together with the Vlora thermal power plant (the latter has an installed power capacity of 98 MW but has never been put into operation).

A considerable number of private entities have been licensed by ERE upon stipulation of concession agreements for the construction and operation of HPPs with the Albanian government. According to the Albanian government, currently there are 540 HPPs under concession agreements, out of which 147 (with installed capacity of 833 MW) have started their production, whereas 109 HPPs (with an installed capacity of 557 MW) are in the construction phase, and 284 have not yet commenced construction.

According to ERE, for the year 2017, the power production for public consumption was fully generated by HPPs, in a net production which reached the amount of 4,525,173 MWh, despite one of the main objectives of the National Action Plan for Renewable Energy Sources 2015–2020 being diversification into renewables, to ensure security of production (and supply).

Oil and gas

Similar to the power sector, operations in the oil and gas sector are subject to government agreements, by means of which the contractor is entitled to prospect and produce petroleum in the relevant contract area.

According to the National Agency of Natural Resources (AKBN), oil production in 2016 was 1,055,725.5 tons, a slight decrease on the year 2015, mainly due to the reduction in oil prices. Albpetrol Sh.a. is the state-owned company which is entitled to produce and trade oil and/or gas. Private companies also operate in the sector, with Bankers Petroleum Albania being the largest (having approx. 87.38% of the total annual production of crude oil for the year 2016).

Gas production, on the other hand, is entirely produced as associated gas and used for technological processes in the oil industry. Albania does not possess any natural gas production capacity yet. However, it is part of the corridor involved in the Trans-Adriatic-Pipeline TAP project and will benefit from the TAP project.

To this end, the Albanian parliament ratified the host government agreement entered into with the project investor for the development of the TAP project in 2013. TAP is a large-

scale project in the sector, which is expected to contribute to the establishment of the required gas infrastructure.

Changes in the energy situation in the last 12 months which are likely to have an impact on future direction or policy

As noted above, Albania secures its power exclusively from HPPs (in addition to the net imported power, which varies between 30% to 60% of the total consumption needs). Thus, the country is exposed to a considerable degree to the risk of supply insecurity, due to changes of the hydrological conditions. The Albanian government has acknowledged that regardless of the record year of 2016 (in which Albania was a net exporter of energy), the need for diversification of energy sources is urgent. By way of example, in the year 2017 the production of energy was lower than the multi-annual average amount (4,682 GWh).

Therefore, as also outlined in the National Action Plan on Renewable Energy 2018–2020, Albania will continue to support the development of renewable energy sources, including diversification, with a particular focus on solar and wind capacities.

In this context and with the aim of securing the production of power from renewable energy (38% by 2020), for the period 2018–2020, there are three main pillars upon which the governmental policy will be based: (i) effective measures for the adoption of sub-legal acts foreseen by Law no. 7/2017 “On Promotion of Renewable Energy Sources”; (ii) wider technical and economic analysis in consideration of the interests of operators of the renewables market, in the application of ‘supporting measures’; and (iii) improvement of the legislation governing biofuels in the transport sector, in consideration of the sustainability and transparency criteria, and applying measures for their trading/usage by end consumers.

As for the gas sector, natural gas is seen as an important source for the diversification of energy sources, but its usage has not seen any significant growth, mainly due to the minimal production level as well as the lack of investment in research and development of new fields. According to ERE, Albania does have considerable gas reserves both on land and sea, which have generated investors’ interest to commence research for new gas areas. However, as noted above, no significant developments have been achieved.

Nonetheless, in relation to relevant infrastructure, from the development of the TAP Project, Albania is working on certain new projects, among which we could mention the ALKOGAP project, which consists of a gas pipeline linking Albania and Kosovo. Also, in cooperation with Montenegro, the pre-design phase for an International Advisory Panel (IAP) on Energy project is foreseen.

Developments in government policy/strategy/approach

On 09.05.2018, the Council of Ministers adopted the National European Integration Plan 2018–2020, which provides certain main pillars which the Albanian government will be working on for the energy field:

- (i) supply security – the adoption of a new Law, “On the Establishment, Maintenance and Management of Minimal Security Reserves of Crude oil and/or its By-products” is foreseen, which aims to be partially approximated with Directive 2009/119/EC;
- (ii) strengthening of the energy market in pursuance with the newly adopted National Energy Strategy 2018–2030;
- (iii) energy efficiency and renewable energy; and
- (iv) nuclear safety and radiation protection.

In brief, there are three main challenges regarding the energy sector, which Albania is currently facing:

- (i) meeting the energy demand/need according to the economic development in different sectors and the citizens' energy consumption;
- (ii) improvement of the energy intensity indicator; and
- (iii) strengthening of supply security, by improving energy efficiency, usage of renewable sources together with conventional production means, as well as regional cooperation and integration.

The above served as the cornerstone for the design of the new Energy Strategy 2018–2030, which was approved on 31.07.2018 by the Albanian government.

Developments in legislation or regulation

On 02.02.2017, the new Law no. 7/2017 “On Promotion of Renewable Energy Sources” was adopted as a result of the undertakings of the Albanian government to comply with the Energy Community Treaty and the Directive no. 2009/28/EC “On Renewable Energy Sources” (although not fully harmonised), which directive sets compulsory national objectives for the utilisation of renewable sources in order to promote especially the production of electricity, heating and cooling, as well as biofuel for the transport sector. The new law repealed Law no. 138/2013 “On Renewable Energy Sources” which, according to the authorities, failed to be completely implemented due to the lack of sublegal acts and non-compliance with the new Law no. 43/2015 “On Power Sector”.

Law no. 7/2017 provides for “incentive schemes” as a direct engagement of the government in order to reach the target on the use of power produced from renewable sources. These schemes, similar to countries in the region, are those instruments, schemes or mechanisms encouraging the utilisation of energy from renewable sources by reducing the costs of such power, raising the price at which it may be sold, or by increasing the volume of purchased power through obligations for the use of renewable energy or other means. This includes, but is not limited to, support for investment, operation, tax exemptions or lower taxes, tax reimbursement, etc.

Moreover, Law 7/2017 also reiterates the principles set out in the new Power Sector Law regarding access to the electricity network. The transmission and distribution of electrical energy on a transparent, non-discriminatory basis and based on tariffs approved by ERE, is guaranteed. Producers of power from renewable sources have a priority on access to the electricity networks. Any new producer of power from renewable sources, which requests to be connected to the network, must be provided with the necessary and comprehensive required information on such connection by the transmission and distribution system operators. Upon request of the producer, they propose a connection point that best suits the interest of the producer from renewable sources in respect to costs and distance aspects. The expenses necessary for the connection of the plants at the connection point, and the measurement devices, are borne by the power producers. The costs for the optimisation, strengthening and expansion of the system network are borne by the system operator.

A vast range of sublegal acts were enacted in compliance with Law no. 7/2017 but many others are foreseen to be enacted, such as those that will regulate the auctions for the granting of supporting measures (i.e. Contracts for Difference). A Memorandum of Understanding was also signed between the Ministry of Infrastructure and Energy (MIE)

and European Bank for Reconstruction and Development (EBRD), regarding technical assistance for the organisation of the said auctions.

In February 2018, the Parliament adopted a set of amendments to Law no. 43/2015 “On Power Sector”. Such amendments were necessary for the establishment and operation of an organised day-ahead electricity market, and removing the remaining obstacles to the establishment of the Albanian power exchange (APEX) in line with the market model, which was approved by the Council of Ministers in 2016. Under the 2018 amendments, it was defined that the market operator shall be the responsible structure for the administration of the day-ahead (and same day) market as well as all other associated activities, including the financial clearing among the market operators, in pursuance with market rules. APEX shall be the market operator and shall be established by OST (in cooperation with other entities).

In the gas sector, on 23.09.2015 the Albanian Parliament adopted the new Law no. 102/2015 “On Natural Gas Sector”, transposing the main provisions of the Third Package on gas. Many sublegal acts have been enacted, and also the adoption of the Gas Master Plan is foreseen.

In 2017, Albgaz Sha. was established in pursuance of Law no. 102/2015 “On Natural Gas Sector”. Albgaz Sha. functions as combined gas operator by undertaking transmission and distribution activities. Following the establishment of Albgaz Sha., ERE proceeded with the adoption of sublegal acts pertaining to licensing, certification and price methodology.

Judicial decisions, court judgments, results of public enquiries

On 26.12.2014, ERE adopted decision no. 143 “On the revision of the purchase price of electricity for the producers of electricity from existing HPPs, with installed capacity up to 15 MW for years 2013 and 2014”, and decision no. 144 “On the revision of the purchase price of electricity for the producers of electricity from new HPPs, with installed capacity up to 15 MW for years 2013 and 2014”. The effect of these decisions was to reduce the sale price of energy that KESH Sha. has paid to the said operators, by obliging them to pay back a part of the price to KESH Sha. These decisions put the operators in difficult financial conditions.

Licensed operators (i.e. small producers) brought a claim with the court against the above-indicated decisions of ERE. Following the decision of the Administrative Court of Appeal, which dismissed the claim of the operators and upheld the decisions of ERE, the case was brought to the Supreme Court. On 13.06.2017, the Supreme Court ruled in favour of the operators and thus revoked Decisions no. 143 and 144 adopted by ERE, based on the fact that the unilateral changes with retroactive effect had materially affected the position of the power producers, and such acts of the regulator were in breach of the legal certainty principle. Apart from the immediate financial benefits to the operators, who will get back the amount from KESH ShA., the court decision is important for the development of the market and setting up a precedent in the application of regulated tariffs.

Major events or developments

With the aim of achieving a complete energy market opening, there have been certain steps undertaken.

The Power Sector Law provides for the deregulation of prices of production and supply

for customers which are connected to the high voltage grid (+110 kV) and others with annual consumption which exceeds 50 million kWh. According to the law, such customers have entered the deregulated market, upon the entry into force of the Power Sector Law. Customers connected in the 35 kV grid should have entered the deregulated market not later than 30.06.2016; those connected in 20 kV no later than 31.12.2016, and customers connected in 10 kV and 0.6 kV, no later than 31.12.2016. On the other hand, customers connected in 0.4 kV voltage, have the right to freely choose their supplier.

Nonetheless, the majority of 35 kV customers have not switched supplier since the amendments adopted in February 2018, granted the possibility to continue the supply by a last-resort supplier for two years, following the date on which the said customers were informed by the distribution system operator that a change of supplier could be effected from a technical perspective. As a result, the market-opening process did experience a drawback.

Furthermore, under the unbundling obligation, within the meaning of European energy law and the Albanian Power Sector Law, Albanian transmission system operator OST Sha. was unbundled and certified by ERE, and also became a member of ENTSO-E in April 2017.

On the other hand, in March 2018, OSHEE established three new companies: the Universal Service Supplier; the Free Market Supplier; and the Distribution System Operator. However, to date, none of such newly established companies has undertaken any activity, thus the results of the unbundling initiative, and compliance with the law, are yet to be seen. Unbundling provisions under European energy law were designed to secure the separation, in vertically integrated undertakings, of control over transmission, distribution or supply on the one hand, and other activities (i.e. production) on the other, with the final aim to eliminate potential conflicts of interest.

The Council of Ministers adopted Decision no. 519, dated 13.07.2016, On the approval of the electricity market model (“Decision no. 519”), drafted in accordance with the requirements of the Energy Community Treaty which was ratified by the Albanian Parliament in 2006. The power market model (Albanian Market Model) aims at ensuring a sustainable structure and creating the necessary conditions for further regional integration. The Albanian Market Model is designed as a wholesale market, based on bilateral transactions and contracts entered into by two market participants Over the Counter (OTC), or as a regulated pre-day or intra-day market, organised through the Albanian Power Exchange (“APEX”). APEX is not yet functional, notwithstanding the changes in the Power Sector Law which removed the obstacles to the establishment of the APEX.

Also, in March 2018, the transmission system operator OST invited the transmission system operators of Kosovo, former Yugoslav Republic of Macedonia and Montenegro to join APEX as shareholders. The Kosovo transmission system operator has confirmed its interest and APEX is expected to be launched in 2019.

In the renewables field, until 31.12.2017 the Ministry of Infrastructure and Energy has obtained approximately 30 applications for the construction of PV plants with a capacity up to 2 MW, out of which six also obtained final authorisation, and three signed contracts with the Ministry of Infrastructure and Energy.

Recently, the Ministry of Infrastructure and Energy invited interested investors to submit their bids for a new PV project with a capacity of 50 MW (the largest so far), located in Vlora.

Proposals for changes in laws or regulations

Apart from the enactment of certain sublegal acts that we have already referred to above, the following laws and decisions are expected to be adopted during year 2018:

- Law “On Production, Transportation and Trade of Biofuels and Other Renewable Fuels, for Transport”.
- Law “On the Establishment, Maintenance and Management of Minimal Security Reserves of Crude Oil and/or By-products”.
- Decision of the Council of Ministers “On the adoption of the instruction for the energy infrastructure in the hydrocarbons sector, which will be part of the Trans-European energy infrastructure”.

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Genc Boga is the founder and Managing Partner of Boga & Associates which operates in both jurisdictions of Albania and Kosovo. Mr. Boga's fields of expertise include business and company law, concession law, energy law, corporate law, banking and finance, taxation, litigation, competition law, real estate, environment protection law, etc.

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In addition, Alketa has assisted clients in their acquisitions of Albanian targets, including tax and legal due diligences, structuring of the acquisition transaction, assisting in the preparation of the transaction documents and the respective closing.

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