

Gas Regulation

in 29 jurisdictions worldwide

2014

Contributing editors: David Tennant and Jennifer Davis



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Dentons UKMEA LLP

Getting the Deal Through is delighted to publish the fully revised and updated 2014 edition of *Gas Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 29 jurisdictions featured. New jurisdictions this year include Colombia, the European Union, Ghana, Myanmar, Norway and Turkey. The publication also benefits from a new Global Overview authored by David Tennant and Jennifer Davis at Dentons UKMEA LLP.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editors David Tennant and Jennifer Davis of Dentons UKMEA LLP for his assistance with this volume.

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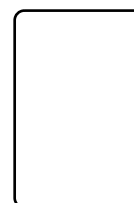
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Albania

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 law governing the gas sector in Albania was introduced in 2008. Law No. 9946, dated 30 June 2008, On the Natural Gas Sector in Albania as amended (the Gas Law) regulates in general terms activities related to the gas sector, including transmission, distribution, trade, storage, supply and intake, as well as the construction and operation of natural gas infrastructures. Exploration and production of natural gas is not subject to the Gas Law, but is governed by Law No. 7746, dated 28 July 1993, on Hydrocarbons, as amended (the Law on Hydrocarbons). Few licences have been issued in the natural gas sector to date, and 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 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 Council of Ministers and Trans Adriatic Pipeline AG in connection with the Trans Adriatic Pipeline Project (TAP Project)' (Law No. 116/2013).

In addition, 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 Ministry of Energy and Industry (MEI) supervises the energy sector and is vested with powers to define the policies applying to the development of the gas sector.

To define the policies in the gas sector, MEI may seek advice from other public authorities competent for the gas sector, which in this case include ERE, stakeholders of the gas sector, social partners.

The main purpose of the policies should be to ensure 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.

There is no specific regulation in Albania with regard to conventional or unconventional sectors.

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 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 in force. Hydrocarbon agreements establish the product-sharing principle, which means that after covering the costs by means of the natural gas produced subject to the agreement, the outstanding part will be divided between the state and the investor based on a formula determined in the hydrocarbon agreement.

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

Natural gas exploration and production is governed by the Law on Hydrocarbons. The entity authorised in a hydrocarbon agreement may operate within the borders of the area (namely, contract area) indicated in the agreement. The authority empowered to authorise the drilling and production activities is 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 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 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 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 interconnection of such infrastructures with those of other countries.

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

ERE is an independent public legal entity with a registered office in Tirana, and is vested by 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) to define the tariffs applicable with regard to activities related to the natural gas area, to supervise supply safety, to handle issues related to consumer protection, to regulate cases of refusal from gas operators of third-party access to natural gas facilities, govern obligations related to public services, define the stages of market aperture, define 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, etc.

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 the latter and customers, may be challenged in front of the Albanian courts pursuant to the Code of Administrative Procedures.

There is no specific regulation in Albania with regard to conventional or unconventional sectors.

Regulation of natural gas pipeline transportation and storage

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

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

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

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

The construction and operation of natural gas pipeline infrastructure for the transmission and distribution of natural gas, natural gas storage facilities, direct lines and interconnection lines with neighbouring systems is subject to a special permit approved upon a decision of the Council of Ministers.

The special permit is granted for a period of 30 years and 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.

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

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

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

The TSO is obliged to ensure non-discriminatory access to the transmission system to any third party. Terms and conditions as well as applicable tariffs for third-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 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 to ensure an efficient supply system for customers. Access to the storage facilities for natural gas companies and qualified customers is subject to payment of tariffs published by the TSO and satisfaction of the terms and conditions for their use.

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

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

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

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

The law is silent in this regard.

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

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

Regulation of natural gas distribution

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

See question 6.

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

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

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

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

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

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

Third-party access should be ensured by the distribution system operator (DSO) unless there is a lack of capacity and technical

requirements are met. Third-party access may be refused by the DSO for the same reasons indicated in question 9.

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

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

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

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

Regulation of natural gas sales and trading

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

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

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

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

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

In addition, the Council of Ministers exercises its 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, defining the requirements and modalities of calculation of the quantities of natural gas needed to ensure a safe and continuous supply with 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.

- 20** 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, it is the obligation of ERE to determine terms and conditions of such agreements.

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

Qualified customers (namely, not tariff customers) are entitled to choose their service provider. Subject to the Gas Law, competing activities include the wholesale and retail sale of natural gas between

Update and trends

The selection of the Trans Adriatic Pipeline project by the Shah Deniz Consortium as European export pipeline implies a significant development for the Albanian natural gas sector, given that the Albanian territory is part of the corridor of interest for the Pipeline route. Within this framework, the Albanian parliament ratified the host government agreement with the project investor through Law No. 116/2013, outlining all the terms and conditions as well as the mutual covenants of the parties applicable on the Albanian part of the Pipeline project (see also question 1).

In addition, the Albanian parliament approved Law No. 06/2013 on Certain Changes to the Gas Law on 14 February 2013. The changes mainly affected article 14 of the existing Law, which formerly provided that the licence for transmission, distribution and supply of tariff customers with natural gas is granted by ERE for a certain territory on an exclusive basis. The changes introduced an exemption to this rule in the event that the territory covered by the relevant permit constitutes the selected route for gas transmission, distribution or natural gas supply of tariff customers' infrastructures, which are granted the status of national and strategic interest projects by the Council of Ministers.

In addition, the provision outlines the requirements to be satisfied by the candidate operators for the purposes of obtaining said permits. The requirements mainly consist of efficiency and financial balance that the aspirant operator should ensure, as well as warranties that the entailed activity shall be conducted in compliance with the rights and liabilities arising in virtue thereof.

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

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

At present, no LNG facilities are established in Albania.

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

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

- the operation, maintenance and safe, efficient and continuous development of the LNG facilities;
- the approval of the use of the facilities for third parties;
- the connection of the LNG facility with the transmission system in accordance with the system technical rules and facility use guidelines;
-

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

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

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

Mergers and competition

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

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

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

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

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

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

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

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

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

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

Mergers and acquisitions are otherwise subject to Albanian competition regulation.

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

There are no specific provisions in this regard.

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

The current gas legislation does not contain any provisions 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

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

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

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

In the framework of harmonisation of the internal legislation with the *acquis communautaire* in light of the Association and Stabilisation Agreement, 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 forums, including the European Energy Charter and the OECD.

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

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

Transactions between affiliates

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

The Gas Law is silent on this issue.

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

Not applicable.

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