Annex A1

Autorità di regolazione per Energia, Reti e Ambiente (ARERA, Italy)
Enti Rregullator i Energjise (ERE, Albania)
Ρυθμιστική Αρχή Ενέργειας (RAE, Greece)

Approval of "*TAP Network Code*"

15 June 2020

Whereas[1]:

On August 29th 2011, TAP AG submitted to the Italian Ministry of Economic Development and on August 31st 2011 to the Regulatory Authority for Energy of Greece (RAE) an "Exemption Application for Trans Adriatic Pipeline", as foreseen by Article 36 of the Gas Directive 2009/73/EC. On September 1st 2011, TAP AG submitted to the Energy Regulatory Entity (ERE) of Albania an "Exemption Application for Trans Adriatic Pipeline", in accordance with Article 22 of the Gas Directive 2003/55/EC.

In June 2013 the Italian Ministry, RAE and ERE took the decision on the exemption, adopting the *Final Joint Opinion* (hereafter: "the FJO"), a document jointly written by ARERA, ERE and RAE (hereafter: "the Authorities") and amended to comply with the Commission Decision [C(2013)2949 final] dated 16th of May 2013 and to take note of the Opinion 1/2013 of the Energy Community Secretariat dated 14th of May 2013.

In the aforementioned document an exemption from the provisions of Articles 9 (Unbundling), 32 (TPA) for the Initial Capacity of 10bcm/y, and 41.6, 41.8, 41.10 (Regulated Tariffs) of the Gas Directive has been granted to TAP AG for a period of 25 years starting from the beginning of the Commercial Operation Date, under several conditions. Among others, according to Article 4.7.1 of the FJO, TAP AG is obliged to submit for approval to the Authorities the *TAP Network Code* no later than 12 months prior to its Commercial Operation Date.

Following Article 4.7.1, the Network Code shall be compatible with all provisions of Regulation 715/2009 and of the European Network Codes that are not in conflict with the terms of the FJO.

According to the FJO the TAP Network Code (hereafter: TNC) should at least, include the following:

- Detailed procedures for normal operations, including nomination of capacity at all entry and exit points of TAP, for forward and reverse flow;
- All procedures necessary for the secondary trading, including a so-called "electronic-bulletin board", which will be available to all shippers;
- Congestion Management Procedures;
- Procedures for the publication of data regarding the operation and the availability of capacity to all users of the pipeline;
- A declaration by TAP AG that sanctioned gas will not be imported or transported through any part of the TAP project.

The TAP Network Code should be published on the TAP AG website.

Following FJO obligations, on August the 7th 2018 TAP AG has opened on its website a public consultation of the TAP Network Code. As a result, TAP received comments from

[1] Hereafter the definitions of the *Final Joint Opinion* and of EU Regulation 2017/459 apply.

nine entities inside the consultation process. These included six companies active on the gas market, two industry associations, and the Energy Community Secretariat.

TAP AG officially submitted the Network Code to the Authorities for approval on December 21st 2018, along with the comments received and a "*Public Consultation Report*". Following further consultation with the Authorities, TAP AG (hereinafter also "The Transporter") amended the TAP Network Code and, on December 20th 2019, submitted to the Authorities for approval a new draft.

TAP Network Code applies to all Shippers on a non-discriminatory basis (Shippers who hold Initial Capacity and possible future Shippers of the Expansion Capacity).

Whereas:

The proposed Network Code (*Annex A2*) is a comprehensive document that includes the following features[2]:

Access to the network (TAP pipeline)

1. Precondition to access the pipeline (i.e. to become a Shipper) is to become a Registered Party (Article 3), i.e. to provide a signed copy of a registration form aimed at identifying:
    a. the identity of the company;
    b. the identity of its legal representatives;
    c. authorized references for contacts and for business operations;
    d. invoicing address;
    e. declaration of compliance with relevant license conditions;
    f. information to allow TAP the performance of an initial creditworthiness assessment and assignment of a Credit Limit;
    g. a declaration to give warranties relating to Sanctions;
    h. a declaration not to hold a dominant position in the relevant markets.
2. A Registered Party that has purchased one or more Capacity Products (and therefore entering into a Gas Transportation Agreement with TAP) becomes a Shipper. A Registered Party can also trade Capacity Products with other Registered Parties and access the TAP Electronic Data Platform and the Capacity Booking Platform.

Credit limits

3. The Transporter will set a Credit Limit of a Registered Party if it has a credit rating, or it has procured a Rated Entity Guarantee or he has paid at least the Minimum Credit Limit into a Cash Collateral Account;
4. The Credit Limit of a Registered Party may be revised, either upwards or downwards at any time, at the request of that Registered Party or may be retested by the Transporter;

[2] The present document uses definitions included in the FJO and in the TNC

5. The Code defines criteria (Article 4.3 and following) to calculate on a daily basis the indebtedness and the maximum left allowance;

Capacity products

6. Forward Firm Capacity is offered, when available, in the form of yearly, quarterly, monthly and daily products; it is offered independently at each Interconnection Point and therefore Registered Parties must separately book Forward Firm Capacity at the required Entry Point(s) and/or Exit Point(s);
7. Forward Firm Capacity products at a particular Interconnection Point may be constrained by the overall availability of a Westward (Physical) Flow and the booking of Forward Firm Capacity products at other Interconnection Points along the route of the TAP Transportation System. As a result of these constraints, Capacity Products at Exit Points might "compete" with the same Capacity Product for other Exit Points. The capacity constraints will be agreed with Adjacent TSOs.
8. Forward Firm Capacity, when available at both sides of an Interconnection Point (other than Kipoi), is offered as Bundled Capacity.
9. Forward Interruptible Capacity is offered only on a *day-ahead* basis;
10. Commercial Reverse Capacity is offered in the form of yearly, quarterly, monthly and daily products; it is offered as a combination of equal amounts of Reserved Capacity at one Entry Point and one Exit Point. Permitted combinations of Entry Points and Exit Points are set out in Table B in Appendix 2. Each such combination is referred to as a Commercial Reverse Route. Commercial Reverse Capacity is an interruptible product.
11. Physical Reverse Flow is provided for emergency operations only and it is not offered as a commercial product.

Capacity bookings

12. Except in respect of the Initial Capacity Allocation Mechanism and Capacity Products booked pursuant to a Market Test, if a Registered Party wants to book Reserved Capacity it must do so through auctions performed by a Capacity Booking Platform and therefore it is its responsibility to accept and comply with the access requirements of the Capacity Booking Platform.
13. The platform that has been selected by the Transporter to be used at each Interconnection Point is provided by PRISMA European Capacity Platform GmbH.
14. "Competing Capacity" is notified by the Transporter to the Capacity Booking Platform, which will take into account these constraints as part of the competing auctions for Forward Firm Capacity at Exit Points. Criteria of competing auctions have to be developed by the Transporter, approved by the NRAs and published on the Transporter's website.
15. Auctions for Forward Firm Capacity and Commercial Reverse Capacity (other than Daily Capacity) will apply an ascending clock auction algorithm, starting at the Reserve Price in accordance with the procedures and algorithm set out in the Commission Regulation (EU) 2017/459 (i.e. CAM Network Code).

16. The Reserve Price of any Forward Firm Capacity offered as Bundled Capacity is the aggregate of the TAP Reserve Price and the reserve price for the relevant capacity product offered by the Adjacent TSO in accordance with the tariff rules of the relevant Adjacent TSO.
17. Auctions for Forward Firm Daily Capacity, Commercial Reverse Daily Capacity and Forward Day-Ahead Interruptible Capacity will apply a uniform price auction algorithm, under which there is a single bidding round, in accordance with the procedures and algorithm set out in the CAM Network Code.
18. The Transporter will only accept bids that are, in accordance with Section 4.4, within the Available Credit of a Registered Party.
19. The Transporter will not offer intra-day products from Commercial Operation Date.

Secondary market

20. The Transporter will allow and facilitate the trading of Reserved Capacity on the secondary market to Registered Parties both in case of Transfers and Assignments. Transfers are performed through the booking platform, whereas Assignments through a written request to be submitted not later than 33 Business Days before the proposed date of such Assignment.

Nominations

21. Nominations and renominations can be submitted hourly, according to the best practices in place in EU. Nominations must be balanced (intakes=offtakes) and matched with the nomination submitted on the other side of the border; in case of mismatch the lesser rule applies.
22. Intraday renominations are possible until three hours before the end of the Gas Day and take effect two hours after the end of the renomination cycle.
23. The Shipper has also the option to indicate a “priority level”. In case the Transporter is required to reduce a Shipper's Nominated Quantities, Traded Quantities or Confirmed Quantities, to the extent possible, he will endeavor to take into account the priority levels when determining which counterparties in a Pair of Shippers at which Interconnection Points or the Virtual Trading Point will be reduced first.

Virtual Trading Point

24. The Transporter makes available to Shippers a VTP to allow trades (gas title transfer) among shippers within TAP Network. VTP is accessible to Shippers that hold Forward Flow Capacity.

Balancing

25. Shippers’ nominations must be balanced (i.e. intakes = offtakes). In case for any reason a Shipper is not balanced, it is charged for the imbalance at the weighted average price of any sales (or purchase) of Natural Gas by the Transporter on Gas Day d. If no such price is available, at a Reference Price transparently calculated and published on the Transporter’s website.

26. The Transporter will also setup a neutrality arrangement by defining a notional account (the Neutrality Account) through which it will ensure that it remains financially neutral in respect of balancing activities. The balance on the Neutrality Account will be credited to or charged to Registered Parties who were Shippers in the relevant Gas Month at the end of each Gas Month and reset to zero at the start of each Gas Month.

Planned maintenance

27. Planned maintenances are announced within the 30th of September of each gas year or in any event, not less than 42 days before the first Gas Day on which Planned Maintenance takes place. The Transporter may amend the period of Planned Maintenance at any time 30 days in advance, provided that the Transporter gives not less than 30 days' notice of the start of any revised Planned Maintenance.
28. Promptly after giving or amending a Maintenance Notification, the Transporter informs separately each Shipper of the amount that the Transporter is not able to make available to it at each Interconnection Point.
29. In case a maintenance is not planned, any reduction takes into account prioritization criterion of Forward Firm Capacity above Commercial Reverse Capacity and Forward Interruptible Capacity and of Commercial Reverse Capacity above Forward Interruptible Capacity;

Congestion management

30. Congestion management foresees a Surrender procedure and a Long-Term Use-It-Or-Lose-It procedure:
    a. *Surrender* is the process by which a Shipper may release all or part of its Forward Firm Capacity or Commercial Reverse Capacity at an Interconnection Point, so that the Transporter can offer to the market the released capacity. Surrender processer is managed within the booking platform. Bundled Capacity remains bundled when Surrendered, however in some circumstances listed in the TNC this might not be possible.
    b. With *Long-Term Use-It-Or-Lose-It* (LT UIOLI) procedures, Long-Term capacity is withdrawn from a Shipper in case it is systematically underutilised during the observation period. Capacity is withdrawn for the remaining part of the year following the observation period and for the next gas year. Capacity that is Bundled Capacity remains bundled, except in some circumstances where this is not possible.
    c. The Shippers retain its rights and obligations under the Gas Transportation Agreement until that Surrendered Capacity or withdrawn capacity under the LT UIOLI is reallocated to new Shippers.
31. Neither overbooking and buy-back nor day-ahead Use-It-Or-Lose-It are currently foreseen.

Fuel Gas, Electric Power, UFG

32. Fuel Gas is purchased by the Transporter through a transparent and market-based procedure. Fuel Gas is then allocated to Shippers based on the real consumption, calculated at the end of each month. However, a maximum percentage of fuel gas is defined.
33. Electric power costs are allocated pro-quota of the Allocated quantities to shippers. Cost is published on the website.
34. UFG is also sold or purchased by the Transporter and allocated pro-quota of the Allocated quantities to shippers, subject to a cap (maximum quantity allocable to Shipper).
35. Fuel Gas and UFG and Transmission Imbalances are purchased or sold together by the Transporter under a single transparent procedure.
36. Upgraded procedures for calculating Fuel Gas, Electric Power, UFG costs are foreseen in Appendix 5 to TAP Network Code as future development to ensure a greater certainty on costs to shippers.

Redistribution

Auction premium from the Market Test or Commercial Reverse Capacity auctions are credited to the NRA's special fund, in accordance to section 4.7.10 of the FJO.

Whereas:

The main issues raised during the consultation process were addressed in the final draft of the Network Code. However, several respondents also questioned the *Commercial Reverse Capacity* concept of booking and nomination being made on a point-to-point basis rather than at each individual entry or exit point. The arrangement leads to an "*hybrid system*": a full *entry-exit* system as far as forward capacity is concerned and a *point-to-point* system (with pre-defined gas routes) as far as the reverse capacity is concerned. As another important consequence, reverse capacity holders cannot exchange gas among them and with forward capacity holders at the TAP VTP. These arrangements are seen therefore by respondents as not fully compliant with the general entry-exit principle stated by EU Directive and Network Codes.

Whereas:

1. The proposed TAP Network Code is compliant with the FJO and with EU Regulation concerning access and shared usage of gas networks and it is aligned with common best practices within EU markets;
2. As far as *Reverse Flow Capacity* is concerned, the solution presented by TAP AG is a direct consequence of the special regulation foreseen by the FJO. Exemption has been issued under some conditions and, among the others, the provision that for virtual reverse flow, as there are no additional costs, market procedures should

start at a very low reserve price, for example 5% of the TAP Tariff. Moreover, a full entry-exit system (with independent capacity booking between entry and exit points) requires, as a prerequisite, an uncongested network.

The introduction of point-to-point reverse capacity products at discounted price is in fact equivalent to the implementation of conditionalities in capacity bookings (exit capacity at point A can be booked only if a correspondent entry capacity is booked at point B) and they can be seen as a simplified alternative (compared with auctions) to solve congestions.

As specified by ACER Report,[3] conditionalities exist when a network user faces restrictions on freely flowing gas from any entry to any exit point of a market area. Conditionalities also exist when network users can choose not to use the freely allocable firm capacity and commit to a more restrictive contract in exchange for discounts. In this case, network users are incentivised by discounts to limit the use of freely allocable products in a given entry-exit system.

In TAP case, both conditions are met, since Initial Capacity is fully booked and the physical capacity is not the same along the route. Therefore, an independent capacity booking between entry and exit points, on the top of existing booking of exempted capacity, is simply not possible due to physical constraints, unless by putting in place an arrangement to solve internal congestions (i.e an auction to allocate transportation rights between Greece and Albania or, alternatively a system of conditional capacity).

In such context, conditional capacities allow new capacity bookings, on the top of the existing ones, hence enhancing the flexibility in trading and use of the pipeline. Current arrangements however do not prevent TAP AG to improve the flexibility of capacity booking especially in the case of expansion, if major constraints (such as internal congestions) are removed.

3. The *TAP Network Code* also makes reference to the *GTC* (General Terms and Conditions) which are pre-existing to TAP Network Code and are already part of the Gas Transportation Agreement with users that have booked the Initial Capacity. GTC have been published by TAP AG during the consultation process and, limited to the Authorities' competence, they are considered and included within the present overall assessment of the TAP Network Code;
4. Upon the Authorities request, TAP AG has sent to the Authorities a revised proposal of the Network Code, including an "Appendix 5" to the TAP Network Code, with indications of future amendments of the TAP Network Code that can be improved or that are currently here lacking or missing. The reasons of this postponement are related to the need to gain some experience and acquire some data, once the pipeline is in operation. Topics that are covered in the Annex are: (i) introduction of Short-term Congestion Management Procedures (Oversubscription and buy-back or firm day-ahead use-it-or-lose-it), in compliance with Article 2.2.2 and 2.2.3 of Commission Decision (24 August 2012) on amending Annex I to Regulation (EC) No 715/2009 (CMP procedures),

[3] Report dated 5th April 2019, https://www.acer.europa.eu/Media/News/Pages/ACER-reports-on-gas-conditional-capacity-products-in-the-EU.aspx

(ii) Reverse Flow concept, (iii) Fuel Gas, Electric Power, UFG, and (iv) offer of intra-day capacity products

the Authorities jointly

1. approve, to the extent applicable, the "*TAP Network Code*" submitted document proposed by TAP AG and attached as *Annex A2*.