

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

Approval of an amendment to

“TAP Network Code”

Proposed by TAP AG on 13 March 2023

20 March 2023

Whereas¹:

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.

The TAP Network Code (TNC) shall be published on the TAP AG website and shall be applicable to all Shippers on a non-discriminatory basis, both Shippers who hold Initial Capacity and possible future Shippers of the Expansion Capacity.

Following FJO obligations, after the public consultation, the Network Code was first approved by the Authorities in 2020 (ARERA Deliberation 218/2020/R/gas, ERE Decision N. 97 dated 15.06.2020) RAE (Decision 1036/2020 - Government Gazette B’ 2928/17.07.2020). The first amendment of TNC was approved by the Authorities in March 2022.

The TAP Network Code was approved with the provision of future developments based on the Transporter's operational experience gained since the Commercial Operations Date.

The developments foreseen from the beginning are listed in Appendix 5. Among them, TAP AG had to include in the Network Code either an oversubscription and buy-back mechanism or, alternatively, a day-ahead use-it-or-lose-it (hereinafter: FDA UIOLI) mechanism in compliance with paragraphs 2.2.2 or 2.2.3 of Annex I to Regulation (EC)

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

No 715/2009 (hereinafter: CMP Guidelines). Following the turmoil in the energy markets during 2022, the European Union passed emergency legislation – in the form of a Council Regulation 2022/2576 – with the purpose to enhance solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders. Article 14 of this Regulation seeks to implement another short-term mechanism for congestion management which is different from the ones comprised in the CMP Guidelines. Article 14 (paragraphs 1-6) sets out a default short-term congestion management procedure on a monthly basis and grants the relevant National Regulatory Authorities (“NRAs”) the right to decide the implementation by TSOs of any of the alternative mechanisms listed at Article 14(7), including FDA UIOLI from 1st April 2023 onwards. Before offering underutilised firm capacity in accordance with Article 14 (paragraphs 1-6), the transmission system operator shall analyse the potential effects at every interconnection point it operates and shall inform the competent national regulatory authority.

The Council Regulation 2022/2576 entered into force on 30 December 2022, has a temporary nature and applies for one year, until end of 2023. Article 14 applies from 31 March 2023 until the end of 2023.

With letter dated 13 March 2023, (TAP’s reference: LT-TAP-NRA-00049) TAP AG requested to the Authorities the approval of amendments to the TAP Network Code (TNC) as set out in the attached Transporter’s Final Decision and its annexes. The outcomes of the public consultation were also provided, including a TAP assessment of Public Consultation responses. An overview of intended revisions is summarised hereafter:

- a. *Implementation of firm day-ahead use-it-or-lose-it*: a mechanism that restricts the renomination rights of shippers with significant firm capacity holdings who have not made use of all their capacity. The restrictions allow additional firm capacity to be offered to the market. More in detail, the proposed mechanism foresees:
 - affected shippers: holders of 10% or more of maximum Forward Firm Capacity offered by the TSO during the *monitoring period*;
 - a *monitoring period* of one year to check if “congestion conditions” occurred;
 - *congestion conditions* defined as (alternatively):
 - an Auction Premium for Forward Firm Yearly Capacity;
 - an Auction Premium for at least two Capacity Products for Forward Firm Quarterly Capacity;
 - an Auction Premium for at least three Capacity Products for Forward Firm Monthly Capacity;
 - no Forward Firm Yearly Capacity, Forward Firm Quarterly Capacity or Forward Firm Monthly Capacity was available to be offered at auction at any time during that Gas Year;
 - *restriction of increasing or decreasing renomination*: in case a condition of congestion is identified, the renomination of the affected shipper is

restricted upwards and downwards by a certain amount depending on the amount of the nomination; the capacity subject to restriction can still be nominated by the affected shipper as interruptible;

- *withdrawal of the application of FDA UIOLI*: the mechanism can be interrupted if TAP AG it deems that the situation defined in Section 13.3(b) is unlikely to reoccur in the following three Gas Years, based on findings in the Transporter's annual monitoring report;
- b. *Update of the fuel gas procurement procedure*: the procedure set out in par. 14.1 is extended for a period of three years (instead of one);
- c. *Update of the unaccounted for gas procurement procedure*: the same procedure set out in par. 14.1 for fuel gas applies for buying and selling UFG;

With the same letter, TAP AG also sent to the NRAs the analysis required pursuant to Article 14(7) of Regulation 2022/2576 of the potential effects of the introduction of the mechanism set out in Article 14 (paragraphs 1-6).

The assessment has been undertaken for IP Melendugno, being the IP where auction premium has been registered in primary market auctions in 2022 (at the IP of Kipoi, Komotini and Nea Mesimvria the capacity contracts with duration longer than one month are the Long-Term contracts for which the utilisation rate is approx. 100%). This assessment demonstrates that there is no capacity hoarding, and that negligible additional capacity would be made available to the market. In short, Melendugno capacity is not underutilized and, had paragraphs 1-6 been in force during 2022, it would have released negligible amounts of additional capacity.

As far as the adjacent TSOs are concerned, TAP AG described how the implementation of the FDA UIOLI will work at its IPs.

Whereas:

The proposed TAP Network Code is compliant with the FJO, with general EU Regulation concerning Capacity Management Procedures (CMP) and with Article 14 of EU Council Regulation 2022/2576;

However, the Authorities are of the opinion that the monitoring period for the FDA UIOLI should be reduced to a month or shorter in order to be more effective in solving potential contractual congestions showing up on a short-term horizon.

As far as Regulation 2022/2576 is concerned, the implementation of Article 14 (paragraphs 1-6) in TAP's system could not be expected to have benefits.

In light of the above, the derogation pursuant to Article 14(7)(a) of Regulation 2022/2576 could be applied at TAP's IPs.

the Authorities jointly

1. approve, to the extent applicable, the “TAP Network Code” submitted document proposed by TAP AG with letter 13th March 2023 and attached as Annex B;

2. require TAP to start a revision process of the FDA UIOLI TNC to reduce to one month or shorter the monitoring period and the subsequent availability of withdrawn capacity;
3. decide to grant TAP AG a derogation from the provisions of paragraphs 1-6 of Article 14 of Council Regulation (EU) 2022/2576.