DISSESSATION

The Rooting of Trans Adriatic Pipeline under the Energy Charter Treaty and the European Union Law

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I hereby declare that the work submitted is mine and that where I made use of another’s work, I have attributed the source(s) according to the Regulations set in the Student’s Handbook.

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Abstract

Nowadays, the issue of energy security is a vital one due to the compelling needs of our society and due to what cannot be overseen: the energy resources are going to run out sometime. Thus, it’s a fact that energy from fossil fuels will some time “extinct” and will effectively be substituted with RES. In the meantime, there is a persistent effort to secure energy supply. Because without energy, we do nothing. And this is something that is surely taken into account by the European Union.

The last years it has taken place a great discussion in Europe regarding all the possible ways to guarantee the energy supply for its countries and to safeguard the supply and transit of natural gas. And even more due to its members’ engagement to reduce their greenhouse gas emissions, introduced with the Res Directive. Natural gas is the cleanest of all the fossil fuels, so it’s the best alternative to oil, in order to help reduce the atmosphere’s pollution. Being a continent with a little natural gas production, Europe is mainly a downstreamer, relying on other countries and mainly on Russia. The recent developments have urged the need of diversification of its energy sources, as it’s going to be analyzed in the present thesis, having as a result the discussion of many pipelines-projects. Among them, lays the Southern Gas Corridor, whose essential part is the TAP pipeline.

The fact that the above pipeline, at its major part transcends the Greek territory, and specifically the North part of Greece, motivated me to examine the whole regime to which is subject, “exploring” also, the roots of the pipeline, i.e. the two pipelines that connect this to the Shah Deniz field, constituting the inevitable link of the TAP pipeline to the natural gas. However, my analysis on that part of the project is concentrating mainly on the ECT regime applicable there and not in the internal legislation, while regarding the TAP there is a connection to European but Greek as well, law. Thus, I provide an analysis of the specific conditions regulated under both the ECT and the European and more specifically the Greek law as far as it concerns the purely “Greek” part of the pipeline, regarding the issues arising from the rooting of this pipeline, which let’s hope that will be the beginning of a greater energy interconnection between the States securing a safe energy flow and guarantying energy security for all the countries involved.
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Introduction

In recent years, due to the overgrowing human population, new needs have made their appearance and new necessities are emerging. The energy security is one of the most crucial issues universally. While the human kind is expanding its activities constantly and is strengthening its supremacy, there is always the risk of coming towards the nature itself. The lack of supplies and inter alia, the volatility of energy supply. This is why the security of the supply of energy was always one of the main objectives of States’ policies. Besides, it’s one of the main objectives of the European Union, especially the last years. Through the last years, Europe has made a remarkable progress in regulating the energy sector. The energy policy was for the first time included as an area of EU competence just with the Treaty of Lisbon. Until then only the internal market was the legal basis for the energy field. However, this has changed and the legal basis for the energy sector’s legislation is contained in the TFEU and more specifically, in the article 194, which provides for a specific legal basis regarding the energy field, including electricity and natural gas.

However, except for this provision in the TFEU, secondary legislation has been launched during all these years in order to complete the internal energy market; Directives and regulations adjusting the energy market in general or each energy market specifically, such as oil, electricity and natural gas. The Regulation 994/2010 concerning measures to safeguard security of gas supply, constitutes one initiative of high importance, taken into account the great risk involved in the case of supply disruptions. But what really constitutes the cornerstone of the European energy legislation in energy sector, is the two Directives of 2009, which introduce inter alia the liberalization of the electricity and gas sector through regulating the unbundling, the TPA and strengthening NRA. Directives 2009/72/EC and 2009/73/EC are the ones setting the main rules in Europe regarding the two energy markets: the electricity and the natural gas market. The above introduce the common rules for the internal energy market, approximating the national legislation of all the Member States. What is to be noted is the fact that the differences between the two directives are minor and the reason for their existence is mainly the different nature of the two energy products. The natural gas is mainly produced in States outside the European Union, whereas electricity is generated inside each State. Furthermore, what cannot be overseen is the fact that natural gas will be exhausted sometime. The exemption granted by article 36 of 73/2009
Directive to the new infrastructure, points out the great need for the Europe to attract different sources of natural gas and preserve at the same time the competition in the sector. Even article 102 TFEU has been mainly applied to natural gas cases, a fact that signalizes once again the absence of competition in the sector.¹

For many years, Europe’s main supplier of gas has been Russia. And it still remains so. However, mainly due to the political developments of the last year, the need of diversifying our supplies is emerging in a more persistent way than before and a great need for independence which would secure Europe’s energy security is defining Europe’s energy policy. Energy security as very precisely has been defined by the Commission in its study document about European Energy Security, is: “the uninterrupted availability of energy sources at an affordable price”.² Thus, due to the fact that the European energy policy’s objectives are crucially limiting the possibility of indoor production, taken into account the Directive 20x20x20, and the fact that Europe has minor exploitable natural gas resources (at least, at this moment), the only recourse of our “vulnerability to external energy shocks” as very precisely Anjli Raval and Henry Foy write about the situation³, is to diversify our sources. Except for Russia, there exist also other possible sources of gas, such as North Africa, the eastern Mediterranean, and among them, Caspian Sea. In particular, Shah Deniz gas field was discovered in 1999 and is the largest natural gas field in Azerbaijan. The South Caucasus Pipeline is the one transferring gas from the above field to Turkey, through Georgia and has begun its operation on the end of 2006. And it was the year 2008 when conversations were started about the second phase of Shah Deniz or Full Field Development (FFD).⁴⁵

However, it was on 13 January 2011 when it was signed a strategic gas deal between Commission and Azerbaijan, whose importance is crucial in enabling the creation of the Southern Corridor, due to the great importance of Shah Deniz gas for Europe’s energy security. The Southern Gas Corridor it’s a giant energy project which entails the construction of many pipelines, which will bring gas from the Caspian Sea

to Europe and among them it’s planned also the TAP pipeline. The TAP pipeline, organized by the TAP AG, is a special project, which encompasses huge infrastructures, which definitely necessitate a great amount of capital and some years to be realized. This capital intensive investment confirms what is so clearly stated in the preamble of No 994/2010 Regulation, paragraph 7: “The diversification of gas routes and of sources of supply for the Union is essential for improving the security of supply of the Union as a whole and its Member States individually. Security of supply will depend in the future on the evolution of the fuel mix, the development of production in the Union and in third countries supplying the Union, investments in storage facilities and in the diversification of gas routes and of sources of supply within and outside the Union including Liquefied Natural Gas (LNG) facilities. In this context particular attention should be given to priority infrastructure actions as identified in the Commission communication of 13 November 2008 entitled ‘Second Strategic Energy Review — An EU energy security and solidarity action plan’, e.g. the southern gas corridor (Nabucco and Interconnector Turkey Greece Italy), a diversified and adequate LNG supply for Europe, effective interconnection of the Baltic region, the Mediterranean Energy Ring and adequate north-south gas interconnections within central and south-east Europe.” This so ambitious project confirms what has been so far the basic reasoning for the energy gas strategy: the importance of natural gas for the energy supply of the European Union due to its importance to the energy mix of the European Union. Therefore, as it’s mentioned once again in the preamble of the above regulation, in paragraph 2, the consumption of natural gas in Europe has increased rapidly during the last ten years, raising the alarm about security of gas supply. We can conclude that definitely it’s all about security of supply.

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CHAPTER 1

Europe’s Southern Gas Corridor

1.1 One sole project; three different giant projects to make it feasible

The Southern Gas Corridor constitutes an ambitious European initiative in order to secure Europe’s energy supply through natural gas brought to Europe from Caspian region. Consisted of three different pipeline projects, it’s being organized within the frameworks of securing the Europe’s energy needs, guarantying diversity of supply and overcoming through this way, Europe’s overdependence on Russian gas. Needless to say that this project is far more than just necessary, due to the recent developments in the relations between Europe and Russia.

Europe’s energy insecurity turned out to be more intense because of the last developments regarding the South Stream project, which while on the beginning was just on the verge of being abandoned after a declaration of Russia’s President, in the end the cancellation was actually confirmed, on the 9th of December 2014. The withdrawal of the above project, presses for remarkable changes in European Energy market, dividing the specialists about it positive influence or negative impact. This withdrawal is crucially “reshuffling the political energy map of Eastern Europe in a dramatic way”, according to Thomas de Waal7. The new developments involve inter alia the exclusion of Bulgaria mainly, but Serbia and Hungary as well, of the South Stream pipeline project which would turn the first one particularly, in a strategic energy hub and would endow it with millions of euro coming from the transit fees.8 Also, it is a development, which it could be said to have relieved Ukraine, because the gas will continue flowing through it, bringing at the same moment Turkey to the fore as it is turning into a significant energy hub. Besides, after all that pressure of EU law on State-owned Gazprom, Russia seems to consider Turkey as a more promising long-term customer that the EU.9 In any case, is should be noted again the great importance of the

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Southern gas corridor, especially now that as very accurately Alexander Mercouris writes on Vineyardsaker blog, “Whilst Europe talks about diversifying its supplies, it is Russia which is actually cutting the deals.”

This is why, especially after these developments, Azerbaijan’s natural gas is turning out to be a valuable refugee for Europe’s energy needs.

As pre-mentioned, the Southern Gas Corridor it’s consisted of three different pipeline projects: South Caucasus Pipeline (SCPX), passing through Azerbaijan and Georgia, Trans Anatolian Pipeline (TANAP), passing through Turkey and Trans Adriatic Pipeline (TAP), passing through Greece, Albania and Italy. The whole project is of vital importance for the energy supply of European Union and the TAP pipeline is the one which will transport Caspian gas to Europe.

After years of negotiations, Shah Deniz gas field will finally for the first time, provide gas to Europe for, supplying the pipelines, which form the Southern Gas Corridor project.

1.2 What about the Energy Charter Treaty?

Energy investments are among the most capital-intensive in the world. Besides, they are typically financed over extremely long periods and for this reason they do require a high level of protection against political risk, even higher than in the regular investments. This protection intends to offer the Energy Charter Treaty, a special instrument for international cooperation in this sensitive area. The Treaty was signed in December 1994 and has been ratified by fifty-two States and by European Community and Euratom as well. As it’s mentioned in the introduction of the Treaty, the real incentive behind the establishment of the ECT was the development of the energy potential of the Eastern European countries after the collapse of the Soviet Union, which made their energy resources available for exploitation. However, it has to be noted that in the end, its application was extended far more than just in the East-West cooperation and it ended up to be the first international treaty which settles the energy sector, with members from all over the world.


The three Eastern countries participating in the Southern Gas Corridor project, as well as Greece, Albania and Italy, have all ratified the Energy Charter and thus they are engaged by its rules. Article 1(5) of the Energy Charter Treaty defines economic activity in the energy sector as: “an economic activity concerning the exploration, extraction, refining, production, land storage, transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI, or concerning the distribution of heat to multiple premises.” Furthermore, the understandings included in the ECT, referring to the article 1(5) enumerate among others activities illustrative of Economic Activity in the Energy Sector, the following: “prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;”, as well as the: “land transportation, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines.” Moreover, according to article 1(7), “Investor means: (a) with respect to a Contracting Party: (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law; (ii) a company or other organization organized in accordance with the law applicable in that Contracting Party; (b) with respect to a “third state”, a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in subparagraph (a) for a Contracting Party.” In both the two pipelines transcending Azerbaijan, Georgia and Turkey, the investor-companies, are registered in countries parties to the Energy Charter Treaty.14 The TANAP is a pipeline company registered in Netherlands and the South Caucasus Pipeline is also a joint venture company, registered in Azerbaijan.

Thus, the Energy Charter Treaty is being applied on the two pipelines passing through Azerbaijan, Georgia and Turkey. As a result, the law that transcends the energy investments in the three States it that of the Energy Charter Treaty, as the last one is an international treaty, legally binding to its signatories. Besides, this binding nature of the international treaties, is enshrined in the article 26 of the Vienna Convention on the law of treaties which is clearly an expression of the principle “pacta sunt servanda”. As it’s stated in the preamble of this Treaty, the pacta sunt servanda rule is universally applicable.

recognized as there are the principles of free consent and of good faith. Furthermore, in the following article of the VCLT, is noted that: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Exceptions are permitted only according to article 46. However, only Georgia has ratified the Vienna Convention, but is to be noted that the pacta sunt servanda rule is a general principle of international law binding to all the States worldwide.\textsuperscript{15} Furthermore, it has to be highlighted that all the above States have not only signed but \textbf{ratified} also the Energy Charter Treaty, i.e. they have agreed not only to refrain from acts against the aim of the Treaty but also to apply the obligations introduced by the ECT and probably to transpose them into their national legislation.

As a result, the investors are secured. They are protected though, not from the commercial risks which are strongly and rationally connected to their business activity, but from a possible political risk; the host State has the responsibility of compensating them not only in the case of an expropriation but also in the case of losses due to a war, armed conflicts, civil disturbances or state of national emergency, as it’s enshrined in the article 12 of the Treaty. Fair treatment is guaranteed through this Treaty and they may even turn to arbitration against the Host State, choosing between three possible fora, according to article 26 of the ECT. The Treaty is offering an investment protection which is more stable that the one offering the BITs and its basic principles are that of open, competitive markets and sustainable development. As a result, instead of having several BIT’s to secure energy investments, the States parties to the Treaty are engaged by all the principles introduced by the Energy Charter Treaty. These are the typical investment principles as the most-favored nation principle or that of fair and equitable treatment. \textsuperscript{16 17}

Furthermore, article 6 of the ECT is “devoted” to the competition issue highlighting in its first paragraph that: \textit{“Each Contracting Party shall work to alleviate market distortions and barriers to competition in Economic Activity in the Energy Sector.”}, securing the unprotected otherwise investor from the risks arising from

\textsuperscript{15} Andrew Solomon, “Pacta sunt servanda”, Published by the American Society of International Law and the International Judicial Academy, September 2008, International Judicial Monitor, \url{http://www.judicialmonitor.org}, (accessed on 15.01.2014)
competition distortions and enhancing in this way the fair energy market. As a result, even countries without a law on protection of competition, such as Albania, had to adapt their national legislation after ratifying the Energy Charter Treaty. Therefore, the signatories-countries had in general to adjust their national legislation to the Treaty’s guidelines without of course losing any sovereignty over their energy resources (and this is one of the friendliest for the host State, parts of the Treaty). Moreover, in the concluding document of the Hague Conference on the European Energy Charter, in title II, it’s highlighted that, regarding the liberalization of trade in energy, the signatories: “...stress the importance of the development of commercial international energy transmission networks and their interconnection, with particular reference to electricity and natural gas and with recognition of the relevance of long-term commercial commitments. To this end, they will ensure the compatibility of technical specifications governing the installation and operation of such networks, notably as regards the stability of electricity systems. “Such a transmission network is the scheduled pipeline project which will transcend the three countries (and even the small part of the last pipeline named TAP, though there are different legal regimes applied in its case, due to the law of the European Union). Thus, what is to be noted is the engagements realized by these countries signatories to the ECT and their importance for the sustainability of the whole Southern Gas Corridor project.

Different is though the case of the TAP pipeline, the last part of the Southern Gas Corridor project, due to the fact that it transcends European Union. Even the last part of it traversing Albania, a country which is not yet member to the European Union, is subject to the European energy law. Albania is supposed to have fully transposed the Third Energy Package before the start of operation of TAP and it is also a member of the Energy Community Treaty. Therefore, any State candidate to enter the Union has firstly to accept the Community acquis (or EU acquis), a body of common rights and obligations binding for all the Member States, transposing it in its national legislation and definitely implementing it from the time of its accession. What really happens is that the Candidate State has really the obligation to accept all of EU law as well as its main political principles and values. Only in very specific cases there are permitted derogations or exemptions for the candidate States.\(^{18}\) Furthermore, the European Court of Justice has many times ruled that this EU acquis supersedes national law of the

Member States in case of a conflict between them and it has also a direct effect in the Member States, confirming the supremacy of EU law over domestic law. As far as it concerns this issue, fairly crucial has been the contribution of the following ECJ rulings to the enhancement of the idea of an autonomous European legal order which prevails over each national law: Van Gend en Loos, Costa v. Enel, and Francovich and Others v. Italy

In addition, as far as it concerns the Energy Community Treaty, it has to be noted that it is a unique international Treaty which brings together the European Union and countries from the South East Europe; mainly countries which are not yet members to the European Union. The members to this Treaty are subject to seminal engagements for the enhancement of the energy sector due to the fact that inter alia, its article 10 declares that: “Each Contracting Party shall implement the acquis communautaire on energy in compliance with the timetable for the implementation of those measures set out in Annex I.” Moreover, in Annex I is clearly defined what exactly constitutes this acquis communautaire on energy and it has to be highlighted that inter alia, there are included the cornerstones of the internal energy market, i.e. the two Directives 2009/72EC, 2009/73EC regarding the electricity and the natural gas, as well as the Regulation No 714/2009 and No 715/2009 regarding the conditions for access to the network for cross-border exchanges in electricity and the conditions for access to the natural gas transmission networks. What is really the result of this initiative of European Union, is the extension of the European energy acquis communautaire to all the contracting parties of the Energy Community Treaty resulting in the application of pure EU law in States which don’t constitute yet European Union’s members or even in States with no prospect at all of getting the EU membership. Moreover, except for the “energy acquis”, also some elements of the EU “competition acquis” as well as “environment acquis” are included in the Treaty, a rational fact though, due to the strong link between these two sectors and the sector of energy.¹⁹ ²⁰

In any case, the truth is that all the States through which the pipeline actualizing the Southern Gas Corridor will pass, are signatories to the ECT and have also ratified the Treaty, as well as they are the States where the investors-companies are registered,

¹⁹ Energy Community, www.energy-community.org
²⁰ Roman Petrov, Energy Community as a promoter of the European Union’s “energy acquis” to its Neighborhood”, https://www.academia.edu, (accessed on 07.01.15)
such as Switzerland, where is registered the TAP AG and what is noteworthy is the fact that the European Union itself is one of the members of Energy Charter Treaty. As a result, what has to be under discussion is whether lays any contradiction between the provisions of ECT and those of EU law. And we should think about whether a regional law, such as EU law, introduced though through an international treaty, can really supersede another international Treaty, which is also binding for its members. However, as it will be analyzed below, no problems arises from the coexistence of these Treaties, and the only risk that could possibly arise for EU, it would be the case that intra-EU disputes are being solved under the ECT Treaty, (which may result in the filing of amicus briefs by the Commission) or the bizarre situation of the EU being itself a respondent in the procedure of the article 26.21

CHAPTER 2

The Trans Adriatic pipeline project

2.1 The vital importance of TAP for Europe

The Tap is the pipeline which will transport Caspian natural gas from the Shah Deniz II field in Azerbaijan, to Europe connecting the East with the West. It was selected by the Shah Deniz consortium (BP, SOCAR and Total), as the best option for the continuation of the TANAP, just in June 2013. Thus, this choice confirms that it has been considered the most advanced technically and economically pipeline project to transfer natural gas from Shah Deniz field to Europe. It is the pipeline which will be connected with the TANAP pipeline at the Greek-Turkish borders, will transport the Caspian natural gas through Northern Greece and will pass through Albania ending up in the Italian peninsula through the Adriatic Sea. These three States which will be crossed by the pipeline had already, on 13 February of 2013, concluded an IGA, i.e. an intergovernmental agreement, confirming in this way, their support to the whole project and their commitment to cooperate in order to make the TAP project come true. Furthermore, after signing the above agreement, they had also established the Trilateral Cooperation Committee (TCC) on 19 April of the same year, in order to better coordinate their efforts and to safeguard their effective communication on the issues relative to the project. These two practices, i.e. the IGA and the TCC, they could be considered to have as their main target the final selection of the TAP as the pipeline to connect the Shah Deniz field to Europe. For this reason they set all the necessary framework within the European legislation framework to secure the proper function of the project until its completion.

In any case, the TAP constitutes the most important part of the Southern Gas Corridor for the European Union. It will even facilitate the supply of other countries in Europe connecting with further European pipelines and supplying in this way the whole

European energy market. It is being developed by TAP AG, a company created only for that purpose: the construction, development, ownership, operation and maintenance of this pipeline. Its shareholders were firstly EGL, company of Switzerland, now named AXPO, and Statoil, a Norwegian company, which was the beginner of the project. Today, except for them, other investors are the German E.ON., BP, SOCAR, Fluxys and Total S.A.²⁶

(Source: http://en.wikipedia.org )

The TAP is designed to transfer 10bcm of natural gas coming from Shah Deniz field to Europe through Turkey and it is turning Greece into the main entrance of Azeri gas to Europe. The quantity of 10bcm may be a small one, but as the analysts confirm, it can surely cover the import needs of the transit countries, such as Greece and Albania, due to the fact that the total gas imported by Greece, Albania, Bulgaria and Croatia, is estimated to be less than 12bcm. Besides, there is the prospective of extending the potential of the pipeline to 20bcm and as pre-mentioned there is the intention of

²⁶ See footnote 10
connecting this pipeline with others through the construction of the IGB pipeline which it’s going to connect Greece with Bulgaria and is under the auspices of DEPA and its associates. Furthermore, a more expanded pipeline network is under discussion, facilitating the flowing of Azeri gas in the Balkans, securing in this way their energy supply, rendering the same time Greece into an important gas hub.27

2.2 Which is the applied law?

The TAP is a pipeline which transcends three States: Greece, Albania and Italy. Thus, the applied law is a crucial issue, which has to be solved. Both the three countries have ratified the Energy Charter Treaty, but Greece and Italy are also members to the European Union and they are engaged by its law. Furthermore, as mentioned above, Albania has also transposed the European Union’s energy acquis in its national law due to its engagement by the Energy Community Treaty. The interesting part of the whole issue, is that among the States-members to the ECT, there lays also the European Union. And what has many times constituted a matter of concern is whether the Energy Charter Treaty and the Lisbon Treaty are complementary or conflicting.

Regarding the provision of article 16 of the ECT, which refers to the relation to other agreements made by the Contracting States, it cannot be applied as far as it concerns the Lisbon Treaty, because the provisions of the latter, concern neither the protection of the investors nor the dispute settlement between an investor and a Contracting Part. In any case, the ECT would recede to a prior or subsequent agreement, only if the last one was more favorable to the investment or the investor. Thus, there is an inherent positive attitude towards the investors. In addition, article 53VCLT clearly states that a Treaty is void only when: “at the time of its conclusion, it conflicts with a peremptory norm of general international law”, i.e. a Treaty recedes only to the jus cogens of international law, which isn’t the case regarding EU law. Furthermore, under any circumstances, a possible conflict between these two Treaties would really seem bizarre taken into account that the ECT was the result of the E.U.’s initiative.

Thus, as far as it concerns the above Treaties, there have to be taken into account the following facts: on the one hand, with the article 207 of the EU Treaty, the foreign direct investment (FDI) was decided to constitute a clear EU’s competence, including

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it under the Common Commercial Policy. On the other hand, a cross-border investment between Member States doesn’t constitute a FDI but it’s included in the framework of the internal market. Nevertheless, it has to be pointed out that the European internal market may indeed be characterized by the four essential freedoms, i.e. freedom of movement, freedom of establishment, and free movement of capital and services, but none of them can fully guarantee the cross-border investor just like the ECT can do. What all the above freedoms can surely secure is: “a liberalization of intra-EU investment” as very accurately states Christer Soderlund, but not a specific investment protection, which is left to the national legislation of each State. 28 Furthermore, there is no disconnection clause in the ECT, as it’s used in similar mixed agreements, having as a result not to exclude the Treaty’s application in the intra-EU relations when it is in conflict with the EU law. As a result, the ECT protects the intra-EU cross border investments exactly in the same way that it protects investments from a third State. And according to Pier Eeckhout’s opinion having as benchmark the ICSID Case No ARB/07/22: “This effect must be taken to have been intended by the EC and its Member States, when one considers that disconnection clauses are a long used instrument of the EC and yet none was used here.” 29

However, what it has to be pointed out is the fact that we may have an application of the ECT investor-protection regarding the cross border investments even in the case of EU member states, but there should be excluded the Transit Protocol, if ever comes into force, which introduces a cross-border transit regime, due to reasons of “updating”. With the Directives of 2003, it had already been regulated the transit regime in Europe and the rules of the Transit Protocol have been set aside. In particular, with the introduction of the Internal Market, conditions that had been set in contracts, like the “destination clauses”, were turned out to be illegitimate, violating basic freedoms like the free movement of goods. Russia’s Gazprom was the first to be “hurt” from this overturn, as the EU rejected even the “right of first refusal” regulated in the Transit Protocol. The EU law and specifically the Directives of 2003 (which developed to those of 2009 later), superseded the ECT regarding its Transit Protocol and taken into account the fact that Russia was the main natural gas supplier to EU, its State-

owned Gazprom, was undertaking a lot of transit obligations, and it can be considered far more than just expected its decision to withdraw from the ECT instead of ratifying it, as in any case it would have to compromise with the more competitive EU legislation.\(^{30}\)

Finally, as far as it concerns article 26 of the ECT, which introduces the possibility of the investor to start arbitration proceedings against the Host State, it has to be taken into account that such a provision doesn’t exist in the EU law. Furthermore, in the paragraph 6 of the above article, it’s stated that the Tribunal shall decide the issued in dispute in accordance with the ECT and the applicable rules and principles of international law, i.e. no EU law is included. And in this case, as pre-mentioned, lays the only risk that may arise from the coexistence of these two Treaties, but as the past has proved in cases like this, the Commission asks and gets permission to file amicus briefs.\(^{31}\)

To conclude, we could consider the EU law and the Energy Charter Treaty as supplementary to each other; the Lisbon Treaty supersedes the ECT in the matters which have clearly been “updated” by it and the ECT applies in specific matters which haven’t been regulated by the EU law, offering a further protection to the Investor. Furthermore, it shouldn’t be overseen the fact that the ECT was indeed a way to introduce the EU energy acquis to States who were candidates for accession to European Union, so it lost somehow its importance, when via the European Directives, the EU energy acquis extended much further than the one introduced by the ECT.\(^{32}\)

In general, except for the specific investor protection granted under the Energy Charter Treaty, the European Law is the one that applies in all the three pipelines and as a result it defines the whole TAP pipeline project. Mainly considering the fact that the pipeline has as its object the transit of energy through European countries in order to supply other European countries, i.e. being subjected to the freedom of movement of goods. But what really constitutes the European Energy Law?

\(^{30}\) Andrei V. Belyi, “The EU’s external policy”, Chapter 4, paragraph C(2) of the: Energy Law in Europe, 2007


2.3 European Energy Law-chronicles.

As mentioned above, the energy market was clearly regulated through European law, just in March 2007, through the Lisbon Treaty and the Third Energy Package that followed. Till then, the integration of the internal energy market was far away from being realized and the main reason was the member States themselves would hardly give away their autonomy in the energy field, as it was always closely linked to national sovereignty. As a result Union’s institutions’ competence on the energy field was really limited those years. The first Directives on electricity and natural gas were based just on the internal market and on environmental regulations. It was only with the Lisbon Treaty that the energy field was clearly inserted in the European legislation. In particular, article 194TFEU may refer firstly, at the functioning of the internal market, but it’s a really crucial innovation introduced by the Lisbon Treaty, as among its provisions lays that of the promotion of energy security and energy efficiency, matters which usually used to be under States’ responsibility. Specifically, article 194 provides for: “In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States to: a) ensure the functioning of the energy market; b) ensure security of energy supply in the Union; c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and d) promote the interconnection of energy networks.” Thus, for the first time there is a reference to energy matters in the TFEU.

As a result, all the previous years, a clear application of the EU energy law on the member States’ energy industries was not feasible, even though there were attempts for a completion of the internal market through the first directives for electricity and natural gas. The basic aim of the European Union’s energy policy in the early 90s, was to put an end to the granting of exclusive rights to the energy undertakings by the national authorities and to adjust the national competition laws in order to enhance Europe’s competitiveness in energy markets and to offer better prices to the consumer. However, even the directives of the years 1996 and 1998 on the energy area didn’t bring any substantial harmonization at all. Nevertheless, the member States had a lot of time to adapt to the new developments in the area. In any case, the real liberalization of the

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33 Susanne Langsdorf, “EU Energy Policy: From the ECSC to the Energy Roadmap 2050”, Green European Foundation, December 2011, [http://gef.eu](http://gef.eu) (accessed on 05.01.15)
energy market it did began with the directives of 2003 and was completed with these of 2009, bringing more rights to the consumer and more power to the national energy regulators.34

2.3.1 Liberalization of the European gas markets

Until the liberalization of the energy markets, which after being underway for more than twenty years, was finally completed with the third package directives, the energy markets were not liberalized: monopolies were a regularity and the only way to protect the consumer from the abusive control of the energy market was indeed giving birth to the competition. Liberalization of the energy markets would secure the freedom of choice for the consumer and inter alia, his unlimited access to the market as a consumer or as a producer, without undergoing any discrimination. Critical to this liberalization, were the “unbundling”, and especially the Transmission System Operator ownership unbundling, introduced just with the last gas Directive of 2009, as well as the third party access (TPA) to the grid. Only under these perquisites, a healthy competition is really turned into a realistic target.

As far as it concerns the third party access, it constitutes one of the most important principles of the energy markets’ liberalization (named also as essential facilities; this was the first term used by the United States’ courts). The TPA derives from basic competition principles: how are we supposed to develop a competitive energy market if a dominant player can deter new parties from entering the market? The truth is that the doctrine of essential facilities coincides a lot with the European law’s competition rules. In any case, what this principle entails is the prohibition for any dominant player of the market to deny the use of infrastructures to new players coming in the market, except for specific occasions. In particular, what is to be prohibited, is the abusive denial of the access. Besides, the free access to infrastructures constitutes a prerequisite for an efficient competition when the players are activating in markets whose existence is based on the use and functioning of grids, such as the energy markets.35 The conditions under which a TSO may refuse access to the system are only the lack of technical capacity, a public service obligation or in the case of a sudden crisis like that provided by article 46 of the gas Directive: “In the event of a sudden

34 Kim Talus, “EU Energy Law and Policy”, 2013, Chapter 2
35 Θεόδωρος Κ. Πανάγος, «Το θεσμικό πλαίσιο της αγοράς ενέργειας», 2012, Μέρος 6, Κεφάλαιο 3
crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures." However, we have to highlight the fact that even in these cases, there are stringent limitations: in the case of the technical incapacity, it is TSO’s obligation to immediately upgrade the system in order to have the capacity asked. Furthermore, in the case of the crisis described by the article 46, the measures taken “shall cause the least possible disturbance to the functioning of the internal market and shall be no wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.” In addition, in paragraph three of the above article is stated that these measures have to be notified to other Member States and to the Commission as well. Furthermore, the last one can amend them or even abolish them in case of competition’s distortion.

The importance of the TPA was recognized even by the first liberalization directive for gas, in 1998, regulated though in a different way, i.e. offering three options to the State. It could choose between negotiated TPA, regulated TPA and the Single Buyer. In any case, what prevailed and remained in the following two directives, was the regulated TPA. Under this, access to the network has to be granted at published tariffs, which at the end, is the fairest solution.

Furthermore, as far as it concerns the second basic principle of the liberalization firstly introduced by the first package directives to the essence of gas market, i.e. the unbundling, a great reference has to be made to its significant importance. In particular, the transmission and distribution networks of gas, constitute natural monopolies, as practically, only one entity can carry them out, due to the enormous cost of their infrastructure and the impossibility of having at the same time parallel pipelines transcending the same region. The transmission system entails the high pressure pipelines, which carry natural gas across long distances and usually, they transcend many states transporting natural gas from the production field to distribution centers or storage facilities. The distribution network entails the medium and low pressure pipelines, which are the ones transferring natural gas to individuals, connecting them with the transmission system.

As a result, having the same entities running at the same time the network (distribution activity) or the system (transmission activity) and the supply or
the production, can be a disaster for the competition and an obstacle for the liberalization of the energy market. An undertaking running at the same time monopolistic and competitive activities of the energy sector, otherwise called vertical integrated undertaking (VIU), can really lead to competition’s distortions, due to its inherent interest to prevent others from entering the market. These two incompatible roles lead to a conflict of interest which may have as a result the VIU abusing its dominance and its control over the system or the network, trying to maintain a favoritism towards its own business’ branches.36

For this reason, already in 1996 and 1998 with the first generation directives, it was inserted the principle of the unbundling in the European energy sector. However, it was a really lenient kind of unbundling requiring just an accounting separation between the monopolistic and the competitive activities of the VIU which was running both of them. In fact the Directive 98/30/EC for gas, necessitated in its article 13§3, for the integrated natural gas undertakings: “to keep, in their internal accounting, separate accounts for their natural gas transmission, distribution and storage activities...with a view to avoiding discrimination, cross-subsidization and distortion of competition.” It was just with the gas Directive of 2003 when it was introduced the necessity of having a full separation between the two activities, having the DSO and TSO activities carried out by legally separated companies, when vertically integrated companies existed. (Now articles 15, 26 of Gas Directive/2009) Thus, in this way, the unbundling requirements were strengthened, setting as prerequisite except for the unbundling of accounts (article 31 of Directive 98/30/EC), already existing in the previous directive, a legal and also a functional unbundling, i.e. an independent decision making from the other activities which weren’t relating to transmission or distribution.

To sum up, a legal, functional and accounting unbundling, is completely necessary in the case of vertical integrated undertakings. Specifically, the legal unbundling refers to the fact that the one of the two activities carried out by the undertaking, has in fact to be carried out by a different legal entity. The functional unbundling refers to the obligation of the system and the network administrator to take decisions autonomously and to decide indeed only in favor of its own activities. Last but not least, the accounting unbundling refers to the fact that these administrators have

to keep different accounts from the vertical integrated undertaking, just what they would be required to do in the case when this activities would be carried out by different undertakings. These three elements are obligatory for every VIU in the energy sector and they are securing the competition in the relative market.

Furthermore, regarding the Transmission System Operator (TSO), additional requirements are provided by the European legislation. The reason is that the legal, functional and accounting unbundling has been considered insufficient for the case of the Operator of the Transmission System, because when this operator constitutes part of the vertical integrated company, its control by the last one is inevitable. The conflict of interest inside the vertical integrated companies in the case of the TSO isn’t solved by just the legal and functional unbundling due to the fact that the operator may still be discriminative to the “newcomers” and not provide full access to third parties, as it’s supposed to be done, endangering the society’s energy needs. As it is stated in paragraph 7 of the preamble of the Directive 73/30/EC: “The rules on legal and functional unbundling as provided for in Directive 2003/55/EC have not, however, led to effective unbundling of the transmission system operators.” clearly pointing out the insufficient changes in the anticompetitive practices of the transmission system operators. For this reason only the removal of the incentive of the VIU to discriminate against its competitors regarding the network access can really guarantee an effective unbundling. Thus, in paragraph 8 of the preamble of Directive 73/30/EC it’s highlighted that: “Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply.” Besides, this is a fact what already had been referred to by the European Parliament in its resolution of 10 July 2007 regarding the prospects for the internal gas and electricity market, in which it characterized the ownership unbundling of the transmission system as the most effective tool to promote investments in the sector of energy infrastructure without having to deal with discriminative practices, fair access to the system for everyone and transparency in the energy market.

37 Θεόδωρος Πανάγος, «Ο διαχωρισμός των επιχειρήσεων που δραστηριοποιούνται στον τομέα ενέργειας», Κεφάλαιο έκτο, «Ο διαχωρισμός του συστήματος μεταφοράς και του οικείου διαχωριστή», 2011
However in paragraph 14 of the Directive’s preamble is enshrined that: “Where, on 3 September 2009, an undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and production interests.” As a result, three TSO models were established through the third package directives: the ownership unbundling, the ISO (Independent System operator) model and the ITO (Independent Transmission Operator) model. The ownership unbundling is the one under which the TSO must possess the ownership of the system and it’s the “cleanest” model. The ISO model, being the second best solution, foresees an independent system operator, where another entity owns the system. Last but not least, the ITO, i.e. independent transmission operator is the model where the energy entities may retain ownership of their transmission networks but they must guarantee their independence through compliance with obligations, such as holding an independent management for each one of the two entities.39

2.4 The other side of the coin

Nevertheless, even at all the above prerequisites introduced by the crucial third package in the European energy systems, there are some derogations and exemptions. What is notable is that the Gas Directive itself introduces a notable exemption to the ownership unbundling and even to the principle of third party access! In particular, article 36 of the Directive 73/2009/EC, introduces a highly important provision regarding the new gas infrastructure for the grace of energy security. Under certain conditions, this article removes the two main principles of the energy liberalization only for the gas sector. However, this exemption of articles 9, 32, 33, 34 and 41(6), (8) and (10), it is granted only for a defined period of time and only under the clearly mentioned prerequisites: enhancement of competition in gas supply, such a great risk for the investor that without the exemption he wouldn’t activate, at least legal unbundling of the infrastructure’s owner and the system operator of the system where the infrastructure will be developed, and last but not least, it must not have a detrimental impact to the functioning of the internal market of natural gas or to the system in which the infrastructure will be built. As stated in the paragraph 3 of the article 36, the

39 See footnote 37
regulatory authority is the one to decide on the exemption and as it’s highlighted in the paragraph 8: “The regulatory authority shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt.” Thus, the Commission is the one taking the final decision on the issue granting a “well-founded decision” after examining all the information submitted by the competent authority, enumerated in paragraph 8. The Commission may “take a decision requiring the regulatory authority to amend or withdraw the decision to grant an exemption” and “the regulatory authority shall comply with the Commission decision to amend or withdraw the exemption decision within a period of one month and shall inform the Commission accordingly.” Regarding this so well-regulated practice of derogation from the Directive itself, as very precisely notes Kim Talus: “This exemption represents a compromise between two interrelated aims: the promotion of the internal energy market and network investments, and the need to ensure free competition and TPA to the necessary infrastructure.” 40 Thus, is given priority to long-term projects, which will secure the much desired energy security over short-term advantages, as far as the anti-competitive impact doesn’t outweigh the positive effects for the energy security.

40 See footnote 23, Chapter 3.4.4
CHAPTER 3

3. Regulatory and legal issues arising from the rooting of TAP

3.1. Exemption granted under the article 36 of the Gas Directive 2009

The TAP pipeline, as pre-mentioned, is a great project; a huge infrastructure of great importance for Europe’s natural gas supply. Thus, the exemption of article 36, which was described above, turns out to be of high importance in the case of the TAP pipeline, because it is a key element of its functioning. In particular, the Commission after estimating the request of the three regulatory authorities, i.e. these of Greece, Albania and Italy, responded to the Joint Opinion of the three regulators on TAP AG’s exemption application and in its decision of 16.05.2013 granted an exemption of the TAP from the requirements on third party access, tariff regulation and ownership unbundling.41

As it is enshrined in article 36 of the Gas Directive, in paragraph 4, when the infrastructure in question is located in the territory of more than one Member States, the regulatory authorities have to make an agreement on the request for exemption, before transmitting it to the Commission, a prerequisite fulfilled in the above case. The three States indeed, transmitted a joint opinion on the exemption to the Commission and after its decision, they made also the necessary modifications. In the end, there were granted to the TAP AG by the Commission, the following: a) Exemption from the article 32 of Gas Directive, i.e. the third party access, b) Exemption from the paragraphs 6,8 and 10 of article 41of Gas Directive, i.e. the provisions for tariffs, both for the initial and for the expansion capacity. c) Exemption from the provisions of article 9 regarding the ownership unbundling rules, granted for the whole project. All these exemptions were granted by the Commission to the TAP AG for 25 years and under the conditions clearly defined in the decision itself.42

As it is highlighted by the Commission in its crucial decision, the TAP is subject to the provisions of article 36 paragraph 1, because it’s considered to be an interconnector, confirming in this way what was suggested by the three energy

41 "Joint opinion of the Energy Regulators on TAP AG’s exemption application", consolidated version, http://www.rae.gr
42 Commission Decision of 16.05.2013, European Commission https://ec.europa.eu (accessed on 10.01.15)
regulators in their joint opinion. In article 2(17) of the Gas Directive, interconnector is defined as the: “transmission line which crosses or spans a border between Member States for the sole purpose of connecting the national transmission systems of those Member States.” However, Commission justifies its decision to place TAP in the category of interconnectors, even though it’s transcending a third, non-EU, country and highlights the fact that is irrelevant whether the entry point of the pipeline will be at Komotini or at the Greek-Turkish border (which was indeed the final entry point chosen for the pipeline), invoking recital 35 of the Directive’s preamble: "the possibility of temporary derogation should apply, for security of supply reasons, in particular to new pipelines within the Community transporting gas from the third countries into the Community". As a result, according to the Commission, the article 2(17), should be interpreted broadly having as a result, the consideration of TAP as an interconnector and the granting of the exemption.43 Besides, in its opinion, numbered 1/2013, which was taken into account by the Commission, the Energy Community Secretariat expressed the opinion that the TAP pipeline does indeed constitutes a “major” infrastructure due to the capital-intensive investments that they are needed for the whole project, subsuming it to the category of the article 36.44 Furthermore, what cannot be overseen, is the fact that TAP has been characterized as a project of common interest (PCI) by the European Commission due to its importance for the safeguarding of the energy security in Europe and the diversification of the energy resources, resulting to the granting of the highest support by the EU to the above project. Moreover, even the Energy Community has defined TAP as a project of Energy Community Interest (PECI), classifying it to the projects which: “have the highest positive impact in the largest possible number of Contracting Parties”.45

In addition, the Commission is going through an assiduous analysis for each one of the three States, in order to secure that there are met the three conditions of paragraph one of article 36; the guarantees for the preservation of the balanced functioning of the internal market, despite the derogation from the EU legislation. The Commission imposed on the regulatory authorities some prerequisites to be fulfilled, some of them already entailed in their joint opinion, some of them not, and some of them needing

amendments. Regarding the pre-mentioned exemptions granted to TAP, it has to be highlighted firstly, the exemption from TPA, for the whole Initial Capacity of 10bcm per year, which was considered by the Commission as the guarantee for the security of transportation capacity of the gas produced in Shah Deniz field. It was chosen a 25-year exemption corresponding to the duration of the supply contracts; the gas produced in Shah Deniz it is has been arranged to be sold under 25-year gas supply contracts. The beginning time will be the day on which the TAP will start its operation. In addition, what it’s underlined in the Commission’s decision is that, even though the TAP has been granted a TPA exception for the whole Initial Capacity, a volume of 5% will not be subject to the exception, regarding only the short-term products, i.e. these with a duration of one year or shorter.  

As far as it concerns the exemption from regulated tariffs, the Commission may granted this one but only for forward flows and not for the reverse ones. However, a wide margin of discretion is left to the national regulators regarding the expansion capacity. Commission even though considers the building of the expansion capacity much less costly and less risky, decided to accept the decision of the national regulators to grant an exemption from regulated tariffs for both the initial and expansion capacity as far as the TAP tariff methodology is firstly approved by them. Besides, in the Commission’s decision, in paragraph 196, is clearly stated that: “The Commission recognizes ultimately the role of regulatory authorities in deciding on the final tariff structure, however the Commission encourages the Regulatory authorities, when approving the Tariff code for TAP pipeline, to properly take into account where relevant different risk levels attached to TAP’s investments in the Initial and Expansion Capacity and to reflect them in the accepted tariff.” As far as it concerns the reverse flows, as pre-mentioned, the Commission didn’t grant an exemption for these ones. Its justification is quite rational as it is invoked the fact that the related risks are substantially lower than in the case of the forward capacity as well as the fact that these revenues weren’t even included in the TAP’s financial model.

Moreover, regarding Commission’s granted exemption from the cornerstone of the third package Directives, the ownership unbundling, it has been chosen a compromise for the TAP, i.e. the ITO (Independent Transmission Operator) instead of

46 See footnote 43
47 See footnote 43
the ownership unbundling. The duration of this exemption is foreseen to be 25 years, just as is foreseen for all the others. However, this exemption doesn’t exclude the TAP from the clearly enshrined in the paragraph 1c of article 36 condition of legal unbundling, a requirement which is taken into account by the Commission in its decision. Thus, when the Commissions examines whether the prerequisites of article 36§1 are met, it highlights the fact that this requirement is fulfilled noting it its decision that: “Legal unbundling from existing TSOs is fulfilled as TAP AG is a separate and independent legal entity from the relevant and existing system operators SNAM Rete Gas S.p.A (Italy), DESFA SA (Greece) and Albpetrol sh.a. (New gas TSO in Albania). It follows that TAP is separate in it legal form from existing TSOs within the meaning of Article 36(1) of the Gas Directive.”

3.2 A Greek particularity

Despite all these exemptions granted to the TAP AG, even other provisions were introduced regarding especially the part of the project transcending Greece. These provisions are enshrined in the Greek law and were granted for the TAP pipeline by the Greek national regulatory authority, named RAE. In particular, the Greek national regulator has just on 5th September 2014 granted the TAP AG a license for Independent Natural Gas System (INGS). A license granted for 50 years.

Under Greek law 4001/2001, in general, the Independent Natural Gas Systems constitute an alternative for these areas which cannot be provided by the National Natural Gas System (NNGS) guarantying in this way the security of supply for the country or even for the other European countries. For this reason, their existence is indeed very important for reasons of public interest and even for the protection of the environment. The conditions for the granting of the license regarding the operation of INGS are provided in the article 74 of the Greek law 4001/2011. Only through this license is feasible the construction and possession or use of the independent natural gas system. For this reason, the TAP AG had already in 2011 submitted a request to RAE asking for the above in order to go on with the construction of the pipeline. However, even though in the article 76 of the law of 2011, is provided an exemption to TPA as well as an exemption of the ownership unbundling, which can be granted by the

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48 See footnote 42
regulatory authority along with the license for an INGS, in the paragraph 3 of the same article there is a provision which respects the EU law highlighting the consistency of the Greek law with the Directive 73/2009 and the decision of the Commission. Thus, in 76§3 it is stated that as far as the license refers to an INCS which is part of an interconnector, which has already been granted the exemption enshrined in the article 36 of the Directive 73/2009 (or even if it has been exempted under the previous gas Directive of 2003), RAE has no longer responsibility on granting any exemption and lays on the interested parties to submit along with their application any element responding to the granted exemption. Nevertheless, the national regulatory authority has the obligation to include in the license the conditions under which there was granted the previous exemption.

As a result, the Greek energy regulatory authority named RAE, taking into account all the above provisions enshrined into the Greek law, and considering that all the criteria of paragraph two of the article 74 are met, granted the above license to TAP AG, (opinion RAE no. 431/2014) highlighting the fact that it has been set as an obligation to the joint venture, to set in function at least one connection point of the pipeline with the NGS, apart from its entry point in the Greek territory, at the time that the natural gas will start flowing through the pipeline. Furthermore, among the obligations of the project which has been granted the license, lays its respect to the previous joint opinion of the three countries through which will pass the TAP pipeline, as it has been updated after the Commission’s decision. Thus it’s confirmed once again the close link between this particularity of the Greek system granted in this case by the RAE, as it concerns the internal part of the transmission system and as a consequence the part of TAP transcending the Greek territory, and the energy framework introduced through the exemption which has been accepted by the Commission. As a result, no derogation is introduced and RAE is totally respecting the European provisions, securing at the same time the internal security of supply through the means introduced by the Greek law.

3.3 Respecting the environment

However, except for the above particularity of the Greek system, our attention is drawn also by the fact that what the consortium of TAP AG has given great

importance to, it is the respect to the environment. What began as a scoping report and PEIA (Preliminary Environmental Impact Assessment) for the Western part of the pipeline, which was submitted to the Greek Ministry of Environment on the 28th of September 2011, ended up to the final ESIA (Environment and Social Impact Assessment) report, after taking place a scoping report also for the Eastern part of the pipeline. The ESIA was realized by Greek and International experts for both the TAP East and the TAP West and intends to guarantee that the chosen route for the pipeline is the most environmentally friendly and the least disturbing to the local communities. Furthermore, it safeguards the preservation of the cultural heritage as well as the avoidance of any intervention in regions of scientific or archaeologic interest. Its review and approval has taken part in July 2013 by the Ministry of Environment, Energy and Climate Change and only after this moment did the procedure of the official public disclosure started. The ESIA includes an extensive description of the TAP’s route in Greece as well as a detailed description of all the infrastructures that are to be constructed for the realization of the project; permanent or not.

The legal framework of this assessment is both the European and the Greek one; i.e. the Environmental Impact Assessment (EIA) Directive and the Greek Law 4014/2011. Furthermore, even the international recognized frameworks are being respected through the Environmental and Social Policy of the EBRD, which is aiming to a sustainable development and which has been adopted by the TAP through the Performance Requirements that it has undertaken. The objective of this assessment is to secure the project’s friendliness to the environment and to the land which it will transcend, conditions which constitute a crucial issue, especially as far as it concerns the Greek part of the project due to the fact that it traverses a great part of the Greek territory. What is of high importance is to secure that the impacts on the environment

55 See footnote 49
as a result of the pipeline’s construction, are not of a great scale and that they aren’t irreversible.\textsuperscript{56}

As far as it concerns the other two countries which will be transcended by the TAP pipeline, regarding Albania, the TAP ESIA for it, was approved in April 2013. As about Italy, the last planned destination of the pipeline, the situation is more complex, due to the fact that the pipeline still waits for authorization from the Italian authorities; the documents regarding ESIA were submitted at the Italian Ministry, just on April 2014, so the issue is still being considered.\textsuperscript{57}

\textsuperscript{56} “The YPEKA approves the environmental issues of TAP”, (In Greek) Energyin, \url{http://energyin.gr}, 08.05.13 (accessed 28.01.15)
\textsuperscript{57} Davide Tabarelli, “Environmental effects of the TAP pipeline”, Natural Gas Europe \url{http://www.naturalgaseurope.com} June 13\textsuperscript{th} 2014 (accessed 28.01.15)
CONCLUSION

To conclude, what is notable regarding the whole project of the TAP, is that it will secure the Europe with energy supply, opening new “energy sources” and inaugurating the whole Southern Corridor project. Especially for our country, it is remarkable the crucial contribution of TAP in turning it into a real energy hub. In this framework of high importance, the granting of the third party access and the ownership unbundling exceptions, as well as the exception from the regulated tariffs, is the least that can be done to secure its unhindered construction and to guarantee its protection from possible technical or economic issues, which would possible arise otherwise. Besides, all these exceptions are provided with a 25-years-duration, which may seem long in abstracto, but considering the specific case and taken in account that investments are long-term projects and that is the case also for TAP pipeline, as it constitutes a huge project, we can consider the 25 years a rational time. “Time is an illusion” claimed Albert Einstein. The pipeline isn’t supposed to deliver gas flows from Caspian earlier than the 2019, so there is surely a relativity of time.

However, what we shouldn’t omit when making a critical evaluation of the whole project, is the fact that TANAP, i.e. the link of TAP to the Azeri natural gas, transcends Turkey, which has many times in the past demonstrated no conformity to rules of international law. Especially regarding the fact that in the future possibly a great part of the European energy will be supplied through Turkey, which is turning out to be a future energy hub (not only due to the TAP but further due to the developments in the Russia-Turkey relations and the replacement of the South Stream project with a pipeline passing through Turkey), we could always keep some reservations concerning the reliability of the neighborhood country, even more if we think about the recent past. The late history may be a sign of the close future… For this reason, though TAP AG is a huge project planned to safeguard Europe’s energy supply, the latter should try to diversify indeed its sources realizing even the other energy projects that are still just plans.
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