

# International Energy Agreements

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## *TurkStream Gas Pipeline Project*



Last updated: 27 January 2017

## ***AN OVERVIEW OF THE TURKSTREAM GAS PIPELINE PROJECT AGREEMENT***

The TurkStream Gas Pipeline Project (**'the TurkStream Pipeline'**) is a replacement for the South Stream Project.<sup>1</sup> The TurkStream Pipeline is 900 Km long. It will start at the Russian Black Sea coast near Anapa and ends at the Turkish town of Ipsala (see map below). It is envisaged that the TurkStream Pipeline will be supplemented by another gas pipeline to Europe, which would deliver up to 31.5 billion cubic meter of natural gas annually.

Turkey and Russia are facilitating and implementing the TurkStream Project through their national companies BOTAŞ and Gazprom respectively. South Stream Transport B.V., a Gazprom subsidiary, has entered into a contract with Allseas, a Swiss-based offshore pipe-lay construction company, for the construction of the first line of the TurkStream Pipeline's offshore section. The works are scheduled to commence in 2017 and set for completion in late 2019.

The Intergovernmental Agreement between Turkey and Russian concerning the TurkStream Gas Pipeline Project (**'the Agreement'**) was signed by Turkey and Russia on 10 October 2016 in Istanbul. The Turkish President signed the law ratifying the Agreement on 06 December 2016. The Russian government approved the draft law on ratification of the Agreement and passed it for consideration by the State Duma on 12 December 2016. At the time of publication, the TurkStream Agreement remains unratified by the Russian Federation.

The Agreement contains several unique provisions, a few of which are highlighted below:

- **Article 8.10** provides that the offshore section company and onshore section 2 company shall not be subject to the Turkish laws on the natural gas market, thus excluding the tariff regulation requirements, third party access and unbundling regulations.
- **Article 12** provides for an amicable dispute settlement procedure between the Parties concerning the application and (or) interpretation of the Agreement by means of negotiations or consultations, failing which the dispute shall be referred to an *ad hoc* arbitration court. After a written and detailed notification of the dispute and failing an amicable dispute resolution, disputes relating to tax matters under Article 10 shall be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the ICC Rules.

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<sup>1</sup> For an overview of the South Stream Project and copies of all the governmental agreements, please visit the South Stream Agreement Compendium here: <http://mc-academy.org/2016/wp-content/uploads/2017/01/South-Stream-IGAs.pdf> ; see also, Newsletter of the International Bar Association Legal Practice Division, Oil and Gas Law, Vol. 3 No. 1 September 2014, <http://mc-academy.org/2016/wp-content/uploads/2017/01/Oil-and-Gas-Law-Sept-2014.pdf>

- **Article 13** stipulates that the Russian participant in the offshore section company and the Russian participant in onshore section 2 company are considered as investors, and their investments are considered as investments within the context of the Agreement.

### **MAP OF THE TURKSTREAM GAS PIPELINE PROJECT**



(Source: <http://turkstream.info/project/>)

For more information on the TurkStream agreement, please visit: <http://mc-academy.org/turkstream-gas-pipeline-project-a-compedium/>

***AGREEMENT***

**between the Government of the Republic of Turkey and the Government of the  
Russian Federation concerning TurkStream Gas Pipeline Project  
(English Translation)**

**AGREEMENT**

**between the Government of the Republic of Turkey and the Government of the Russian Federation concerning the TurkStream Gas Pipeline Project**

The Government of the Republic of Turkey and the Government of the Russian Federation, hereinafter referred to as the Parties,

in conformity with the principles of equitable and mutually beneficial cooperation aimed at expanding trade and economic relations between the two countries,

on the basis of the Treaty on the Principles of Relations between the Republic of Turkey and the Russian Federation dated May 25, 1992,

taking into account the Agreement between the Government of the Republic of Turkey and the Government of the Russian Federation for the avoidance of double taxation with respect to taxes on income dated December 15, 1997, and the Agreement between the Government of the Republic of Turkey and the Government of the Russian Federation on the promotion and reciprocal protection of investments dated December 15, 1997,

taking into account the Joint Declaration between the Republic of Turkey and the Russian Federation on deepening friendship and multidimensional partnership dated December 6, 2004, and the Joint Declaration between the Republic of Turkey and the Russian Federation on progress towards a new stage in relations and further deepening of friendship and multidimensional partnership dated February 13, 2009,

seeking to further enhance comprehensive economic partnership and strategic cooperation between the Republic of Turkey and the Russian Federation, as well as to strengthen cooperation in the energy sector between the Parties and provide for energy security by diversifying the routes of supply of Russian natural gas,

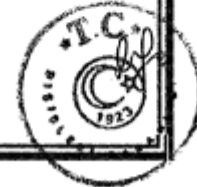
confirming that the supply of gas from the Russian Federation to the Republic of Turkey works towards energy security,

supporting the construction of a new gas pipeline system running from the Russian Federation across the Black Sea and further across the territory of the Republic of Turkey, in order to supply natural gas from the Russian Federation to the Republic of Turkey and other countries,

seeking to create favorable conditions for the design, construction and operation of the said gas pipeline system in the Black Sea area and in the onshore territories of the Republic of Turkey and the Russian Federation, and to transport natural gas using the same,

recognizing the successful cooperation between the Parties in the construction and operation of the Blue Stream gas pipeline running from the Russian Federation across the Black Sea to the Republic of Turkey,

hereby agree as follows:





#### Article 1

For the purposes of this Agreement, the terms below shall have the following meanings:

"TurkStream gas pipeline" means a new gas pipeline system with a maximum (technical) design capacity of 31,5 billion cubic meters per annum for two lines with technical design capacity of 15,75 billion cubic meters per annum per each line, running from the Russian Federation (from the Russkaya compressor station in the Krasnodar Region of the Russian Federation) across the Black Sea to the receiving terminal on the coast of the Republic of Turkey and further across the territory of the Republic of Turkey up to the border of the Republic of Turkey with its neighboring countries, constructed in order to supply natural gas from the Russian Federation to the Republic of Turkey, as well as to ensure transit of Russian gas across the Republic of Turkey into the countries bordering the Republic of Turkey, with the offshore section 1, the offshore section 2, the onshore section 1 and the onshore section 2;

"offshore section 1" means a section of the TurkStream gas pipeline constructed for the purpose of delivering natural gas from the Russian Federation to the Republic of Turkey with a route running across the Black Sea from the coast of the Russian Federation up to the first weld after the exit side fencing downstream of the receiving terminal;

"offshore section 2" means a section of the TurkStream gas pipeline constructed to ensure transit of natural gas via the onshore section 2 located in the territory of the Republic of Turkey to the neighboring countries of the Republic of Turkey with a route running across the Black Sea from the coast of the Russian Federation up to the first weld after the exit side fencing downstream of the receiving terminal;

"offshore section" means, jointly, the offshore section 1 and the offshore section 2 including the respective parts of the receiving terminal;

"receiving terminal" means facility on the Black Sea coast of the Republic of Turkey for the offshore section operation and isolation, gas conditioning, which comprises of the following sections:

the offshore pipeline section consisting of the offshore pipeline control, isolation and emergency shutdown functionality, the offshore pipeline pigging/cleaning system and the offshore pipeline operational metering;

the gas conditioning section consisting of manifolding, gas filtering, gas conditioning (temperature control, pressure control) and downstream pressure protection system;

"onshore section 1" means a section of the TurkStream gas pipeline constructed for the purpose of delivering natural gas from the offshore section 1 from the Russian Federation to the Republic of Turkey with a route running from the first weld after the exit side fencing downstream of the receiving terminal and further across the Republic of Turkey up to the connection thereof with the existing gas transmission system of the Republic of Turkey;

"onshore section 2" means a section of the TurkStream gas pipeline

constructed to ensure transit of natural gas from the offshore section 2 across the Republic of Turkey to the neighboring countries of the Republic of Turkey with a route running from the first weld after the exit side fencing downstream of the receiving terminal and further across the Republic of Turkey up to the border of the Republic of Turkey with its neighboring countries:

"onshore section" means, jointly, the onshore section 1 and the onshore section 2 including the gas metering station;

"offshore section company" means a legal entity established or to be established by PJSC Gazprom and/or its affiliate(s) in order to design, construct, operate and own the offshore section, registered at a place determined by the Russian participant, mentioned in paragraph 1 of Article 4 of this Agreement, upon incorporation thereof;

"onshore section 1 company" means a legal entity which will design, construct, operate and own the onshore section 1, to be authorized by the Republic of Turkey;

"onshore section 2 company" means a legal entity to be established in order to design, construct, operate and own the onshore section 2, to be registered at a place agreed by and between its participants, appointed in accordance with paragraph 5 of Article 4 of this Agreement, upon incorporation thereof;

"companies" means, jointly, the offshore section company, the onshore section 2 company and the onshore section 1 company;

"participant of the onshore section 2 company" means a legal entity owning a share in the charter capital of the onshore section 2 company;

"participant of the offshore section company" means a legal entity owning a share in the charter capital of the offshore section company;

"companies' participants" means, jointly, participant(s) of the offshore section company and participants of the onshore section 2 company;

"pre-investment studies" means studies with a view to determine the technical, environmental, economic and financial, legal and operational feasibility of the construction of the TurkStream gas pipeline;

"project" means the activities with respect to the TurkStream gas pipeline carried out by the companies, companies' participants and contractors of the companies, including engineering surveys, technical studies, assessments, pre-construction works, design, construction, obtaining of titles to land plots, commissioning, equipment installation, funding, insurance, ownership, operation, provision of natural gas transmission services, commercial activities, repair, diagnostic inspection and survey, maintenance, replacement, modernization, protection, capacity increase or decrease, construction of pipeline branches, safety assurance, decommissioning, staffing, servicing, procurement of equipment, plants, facilities and materials, support thereof, implementation of contracts related to the preservation, maintenance, repair, operation and modernization, and other actions with respect to the TurkStream gas pipeline;

"best endeavors" means taking by the relevant Party of all lawful steps in such Party's power which a prudent and determined party would have taken.

under the circumstances.

#### Article 2

1. The Parties approve the implementation of the project in accordance with this Agreement and shall cooperate to provide necessary favorable and non-discriminatory conditions for the implementation of the project, in particular refrain from imposing project specific discriminatory measures, and shall take any other necessary steps conducive thereto and provided by this Agreement.

2. The Parties shall assist the companies and the companies' participants in implementing the project in accordance with this Agreement.

#### Article 3

1. Any infrastructure related to the project, production and other facilities, and property created and/or acquired by the companies or the companies' participants in the normal course of business within the framework of the project shall be owned by the corresponding companies and/or the companies' participants.

2. The property specified in paragraph 1 of this Article 3 shall not be expropriated, nationalized or subjected to any measures entailing consequences equivalent to expropriation or nationalization.

#### Article 4

1. The Turkish participant of the onshore section 1 company (Boru Hatları ile Petrol Taşınma A.Ş. and/or its affiliate(s)) shall have one hundred (100) per cent share in its charter capital.

The participants of the onshore section 2 company shall, upon the establishment thereof, have the following shares in its charter capital:

the Turkish participant - fifty (50) per cent;

the Russian participant - fifty (50) per cent.

The Russian participant of the offshore section company (PJSC Gazprom and/or its affiliate(s)) shall, upon the establishment thereof, have one hundred (100) per cent in its charter capital.

2. Prior to the establishment of the companies, all expenditures related to the project agreed by the companies' participants, including those associated with the establishment of the companies, shall be borne by the companies' participants pro rata to their shares in the charter capital of the companies.

3. Following the establishment of the companies, each of the companies' participants shall independently secure funding for the relevant company's activities, pro rata to its share in the charter capital of the companies. If so decided jointly by its participants, the onshore section 2 company and, if so decided by its Russian participant, the offshore section company may raise third-party funding.

4. If so decided jointly by its participants, the onshore section 2



company and, if so decided by its Russian participant, the offshore section company may attract new participants, which shall entail the redistribution of shares in the charter capital of the companies mentioned in this paragraph 4 of this Article.

5. The Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, appoints the Russian participant of the onshore section 2 company. The Turkish designated authority, mentioned in paragraph 1 of Article 14 of this Agreement, appoints the Turkish participant of the onshore section 2 company.

6. If the Russian participant of the onshore section 2 company at the establishment of the onshore section 2 company is different than PJSC Gazprom and/or its affiliate(s), such Russian participant shall be subject to a written approval of the Turkish designated authority, mentioned in paragraph 1 of Article 14 of this Agreement.

7. If the Turkish participant of the onshore section 2 company at the establishment of the onshore section 2 company is different than Boru Hatları ile Petrol Tasıma A.Ş. and/or its affiliate(s), such Turkish participant shall be subject to a written approval of the Russian designated authority, mentioned in paragraph 1 of Article 14 of this Agreement.

#### Article 5

1. The onshore section 1 shall be constructed with the sole purpose of receiving gas from the offshore section 1 and transmission of gas across the Republic of Turkey up to the connection point with the existing gas transmission system of the Republic of Turkey and shall have the technical design capacity of 15,75 billion cubic meters of gas per annum. If transmission capacity of the onshore section 1 exceeds its stated technical design capacity, then the offshore section company, the onshore section 1 company and their participants shall jointly agree on whether to use such excess capacity and principles of utilization of such excess capacity.

2. In case the decision to use the excess capacity mentioned in paragraph 1 of this Article 5 is made, the offshore section company shall, on a timely basis, make necessary investments related to the offshore section 1 and the onshore section 1 company shall, on a timely basis, make necessary investments related to the onshore section 1.

3. The onshore section 2 shall be constructed with the sole purpose of receiving gas from the offshore section 2 and transmission of gas from the offshore section 2 to the border of the Republic of Turkey with its neighboring countries and shall have the technical design capacity of 15,75 billion cubic meters per annum. If transmission capacity of the onshore section 2 exceeds its stated technical design capacity, then the offshore section company, the onshore section 2 company and their participants shall jointly agree on whether to use such excess capacity and principles of utilization of such excess capacity.

4. In case the decision to use the excess capacity mentioned in



paragraph 3 of this Article 5 is made, the offshore section company shall, on a timely basis, make necessary investments related to the offshore section 2 and the onshore section 2 company shall, on a timely basis, make necessary investments related to the onshore section 2.

5. The specific parameters of the offshore section, including the geographic position of its exit point on the coast of the Republic of Turkey, shall be determined on the basis of the results of the pre-investment studies.

6. The specific parameters of the onshore section 2, including the geographic position of its exit point at the border of the Republic of Turkey with its neighboring countries, shall be determined on the basis of the results of the pre-investment studies.

7. The Russian Party through the Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, shall ensure the timely construction of the offshore section 1 and the Turkish Party through the Turkish authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, shall ensure timely construction of the onshore section 1 in order to achieve timely connection of the offshore section 1 with the existing gas transmission system of the Republic of Turkey.

8. The designated authorities, mentioned in paragraph 1 of Article 14 of this Agreement, and the authorized organizations, mentioned in paragraph 2 of Article 14 of this Agreement, shall ensure proper coordination between the companies in order to achieve timely connection between and commissioning of the respective offshore and onshore sections as set out in paragraph 3 of Article 6 of this Agreement.

9. In order to ensure proper and safe operation of the TurkStream gas pipeline and for the uninterrupted flow of natural gas through the TurkStream gas pipeline, the companies shall take all necessary actions, including maintenance, for the respective part(s) of the TurkStream gas pipeline.

#### **Article 6**

1. The Parties shall provide all necessary conditions for unhindered implementation of the project and shall render assistance in obtaining all permits, approvals and licenses to implement the project separately for the offshore section, the onshore section 1 and the onshore section 2.

2. The Parties shall use their best endeavors to streamline the procedure of and shorten the time for obtaining permits and licenses required for the implementation of the project.

3. The Parties shall, on a timely basis, provide the companies with all permits, approvals and licenses, provided that the companies make relevant applications duly and timely, required for the following:

- a) commissioning of all capacities of the offshore section 1 and the onshore section 1 before December 30, 2019, and further operation thereof;
- b) unless otherwise agreed in the protocol referred to in paragraph 2 of Article 11 of this Agreement, commissioning of all capacities of the offshore



section 2 and the onshore section 2 before December 30, 2019, and further operation thereof.

4. The Parties shall ensure the use of simplified procedures, as permitted by their national laws, to obtain cross-border access within their countries, including flag dispensation permits and permits to work in the exclusive economic zone and territorial sea of the Republic of Turkey, for personnel, materials, know-how, vehicles, vessels, devices, tools, spare parts, articles of supply, hydrocarbons (including fuel), and construction and installation machinery and equipment required for implementing the project.

5. The Parties shall, acting through their designated authorities, mentioned in paragraph 1 of Article 14 of this Agreement, ensure regular exchange of information with respect to implementation of the project and cooperation in the event of *force majeure* that may jeopardize such implementation.

6. The Parties confirm that the project, except for the onshore section 1, shall comply only with the internationally recognized standards for project design (Det Norske Veritas GL, International Organization for Standardization, European Committee for Standardization).

7. The Turkish Party shall ensure issuance, within the shortest possible period, of permits by the competent Turkish authorities required to conduct surveys within the coastal section of the Republic of Turkey (including the receiving terminal).

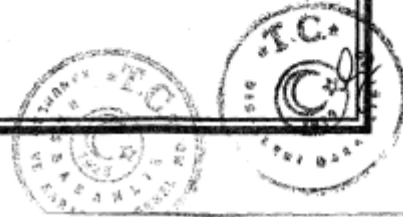
#### Article 7

1. The Parties shall use their best endeavors to ensure safe and unrestricted transmission of gas via the TurkStream gas pipeline across the territories of their respective countries, on terms and conditions provided for by the relevant gas transportation contracts.

2. Organization mentioned in paragraphs 1 and 3 of Article 8 of this Agreement shall be free of any fees, charges or requirement for payment of any kind, save as expressly set out in the relevant gas transportation contract, in respect of the passage of gas via the offshore section and the onshore section 2 across the territory of the Republic of Turkey. For the avoidance of doubt, this paragraph shall not apply to the onshore section 2 company's payments set out in this Agreement and/or the protocol referred to in paragraph 2 of Article 11 of this Agreement.

3. The Turkish Party shall facilitate grant to or acquisition by the companies of rights to use land plots required for the implementation of the project, on fair, transparent and legally enforceable conditions. Such facilitation shall in particular include appointment of a state entity empowered to manage the process of acquisition of rights to use land plots in an accelerated manner, as well as issuance of a public interest decision for acquisition of such land rights.

#### Article 8



1. The right to use one hundred (100) per cent of the offshore section capacity is vested in the Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s).

2. The right to use one hundred (100) per cent of the onshore section 1 capacity is vested in the Turkish authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s).

3. The right to use one hundred (100) per cent of the onshore section 2 capacity is vested in Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s).

4. The terms of operation for the offshore section, including tariff setting, shall fall within the exclusive competence of the offshore section company.

5. Representatives of the onshore company 1 and the onshore company 2 shall be granted, without any restriction, right of access to and monitor of the receiving terminal in order to ensure its safe and proper operation and facilitate interaction between the offshore section company, the onshore section 1 company and the onshore section 2 company.

6. The terms of operation for the onshore section 2, including tariff setting, shall fall within the exclusive competence of the onshore section 2 company.

7. The onshore section 2 company shall act as the onshore section 2 operator.

8. The Parties proceed on the basis that the Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s) and the onshore section 2 company shall enter into a long-term gas transportation contract containing a ship-or-pay condition.

9. The Parties proceed on the basis that the tariff for gas transmission services within the onshore section 2 shall ensure a reasonable rate of return and an opportunity to raise third-party funding for the onshore section 2 if the participants of the onshore section 2 company so decide.

10. The offshore section company and the onshore section 2 company shall not be subject to the laws of the Republic of Turkey governing the natural gas market, including the requirements to tariff regulation, third party access and unbundling.

#### Article 9

For the purpose of legal and economic assistance to operations connected with the implementation of the project, excluding the onshore section 1:

a) The Parties confirm that for the purpose of implementing this Agreement, activity of the offshore section company performed within the exclusive economic zones and on the continental shelves of the Republic of Turkey and the Russian Federation in the Black Sea shall not be taxable;

b) The Turkish Party shall exempt from the value-added tax the consultancy, legal, accounting and engineering services, including engineering



consultancy services, pre-construction services and construction facility operation services, preliminary design services and design services (pre-investment studies, design and engineering, and any other similar services), rendered to the offshore section company;

c) The Turkish Party shall exempt the offshore section company from income taxation;

d) Transportation vehicles and technical facilities (including vessels), pipes, any other material and technical resources (including equipment, components, and spare parts) enter the territories of the countries of the Parties based on the lists of facilities and materials required for the implementation of the project, excluding the onshore section 1, and prepared by the authorized organizations, mentioned in paragraph 2 of Article 14 of this Agreement, in the Turkish and Russian languages;

The above mentioned goods shall be exempt from taxes and customs fees in the country of the Russian Party and shall be exempt from taxes and customs duties in the country of the Turkish Party. The exemption from customs duties shall be granted in accordance with the legislation applicable by the country of the Russian Party;

The Parties do not apply taxes, customs duties and levies, as well as other such payments, to transportation vehicles and technical facilities (including vessels), pipes and any other material and technical resources (including equipment, components, and spare parts) transferred (utilized), imported or exported for the implementation of the project, excluding the onshore section 1, within the exclusive economic zones and on the continental shelves of the Republic of Turkey and the Russian Federation in the Black Sea;

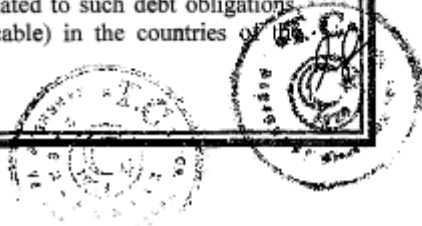
Each of the Parties in accordance with the legislation of its country and the applicable international agreements shall ensure the fulfillment of approval procedures for the aforementioned exemption, should there be a requirement for such approval, as well as for the procedure of granting customs exemptions;

The required equipment and materials entering the countries of the Parties pursuant to the lists and specified in paragraph d) of this Article 9 shall be given priority for customs clearance in the countries of the Parties;

e) The offshore section company and the onshore section 2 company shall be exempt from payment of property (real estate) tax and any other similar taxes in the countries of the Parties with respect to the property created and/or acquired for the implementation of the project, excluding the onshore section 1;

f) If debt obligations are directly related to the implementation of the project, excluding the onshore section 1, interest on such debt obligations, as well as other income related to such debt obligations, arising in the country of any Party, shall be exempt from taxation in the country of the respective Party in which such interest (other income) arises, provided that the beneficial owner of such interest (other income) is not a tax resident in the country of such Party;

Such interest, as well as other income related to such debt obligations shall be exempt from value-added tax (if applicable) in the countries of





**Parties;**

g) Natural gas transportation services rendered within the offshore section shall be taxed in the Russian Federation at a null (0) value-added tax rate. For the purposes of application of the said tax rate, the territory of the Russian Federation is considered the place of supply of such services. The procedure for the application of a null (0) tax rate to the aforementioned services shall be established in the national legislation of the Russian Federation;

h) The Turkish Party shall exempt gas transportation services from the value-added tax (by setting a null (0) tax rate for such services) and grant the offshore section company and the onshore section 2 company the right to refund/reimburse/set off the value-added tax paid on the goods/works/services acquired in connection with the implementation of the project, excluding the onshore section 1, in which case the period of refund shall be three (3) months;

i) The Turkish Party shall grant income or corporate withholding tax exemption to payments for the construction and repair works performed in connection with the implementation of the project, excluding the onshore section 1;

j) The Turkish party shall exempt from taxes the profit remitted to the offshore section company participant(s) and the onshore section 2 company participant(s) by the offshore section company and by the onshore section 2 company respectively, as well as profit remitted to the offshore section company and the onshore section 2 company head offices by any Turkish branch of the offshore section company and the onshore section 2 company respectively;

k) The Turkish Party shall grant the offshore section company the right to carry forward losses for a period of ten (10) years;

l) The Turkish Party shall exempt the offshore section company and the onshore section 2 company from the stamp tax with respect to contracts to be made by the offshore section company and the onshore section 2 company in connection with the implementation of the project, excluding the onshore section 1;

m) Without prejudice to the provisions of paragraph 5 of Article 11 of this Agreement, if the Russian participant of the onshore section 2 company terminates its participation in the charter capital of the onshore section 2 company (pursuant to paragraph 4 of Article 11 of this Agreement), the Parties shall exempt the Russian participant of the onshore section 2 company from any taxes payable in such cases in accordance with the legislation applicable in the countries of the Parties;

n) The onshore section 2 company shall keep and maintain its books and records, calculate its corporate income tax liability and prepare its corporate income tax returns exclusively in US Dollars. The onshore section 2 company's books and records with respect to its activity shall be maintained in accordance with the International Financial Reporting Standards;

o) The Turkish Party confirms that goods acquired by the offshore section company and the onshore section 2 company exclusively from the special

consumption tax payers regarding construction and modification of the offshore section and the onshore section 2 shall be exempt from the special consumption tax, if applicable.

#### Article 10

1. Any change of law of the countries of the Parties, that establish new taxes, customs duties and/or other charges, or otherwise worsen the economic standing of payers of taxes, customs duties and/or other charges, shall not apply to the offshore section company, the onshore section 2 company and their participants, for which the tax regime is established by this Agreement, in respect of their activities that relate to the offshore section and the onshore section 2 of the project.

2. In respect of the onshore section 2, the Turkish Party shall compensate the onshore section 2 company and its participants any new or increased cost or expense and any reduction of revenue resulting from an event of change of law (other than change of law referred to in paragraph 1 of this Article 10) which:

is discriminatory towards the onshore section 2 or the onshore section 2 company or its participants,

whether or not of general application, infringes provisions of this Agreement, and

renders material obligations under this Agreement void or unenforceable or has material adverse effect on implementation of the onshore section 2 or has the material effect of worsening the economic standing of the onshore section 2 company and/or its participants.

3. Any dispute between the offshore section company, the onshore section 2 company or their participants, on the one side, and the respective Party, on the other side, arising out of this Article 10 shall be subject to written notification with detailed comments, which shall be sent by the said company(ies) or its(their) participant(s) to the respective Party. In case the dispute cannot be resolved in an amicable manner within the period of six (6) months from the date of written notification, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Parties hereby irrevocably consent to the submission of such disputes to the above mentioned international arbitration.

#### Article 11

1. The Parties proceed on the basis that natural gas from the Russian Federation delivered to the Republic of Turkey at the border of the Republic of Turkey with the Republic of Bulgaria shall be delivered via the offshore section 1 upon the commissioning of the offshore section 1. By the date of the commissioning of the offshore section 1, the contracts for the supply of natural gas from the Russian Federation to the Republic of Turkey at the border of the Republic of Turkey with the Republic of Bulgaria shall be amended with regard

to the delivery point and respective technical terms in order to take into account the parameters of the offshore section 1 and onshore section 1. For the avoidance of doubt, the above change of the delivery point and usage of the offshore section 1 for such supplies shall not affect the commercial conditions of the contracts for the supply of natural gas mentioned in this paragraph 1 of Article 11.

2. The Parties agree to facilitate good faith negotiations and conclusion of a separate protocol, in furtherance of this Agreement, between the Turkish Party and the Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, which shall assign its rights and obligations under the protocol to the onshore section 2 company upon its establishment. Such protocol shall set out additional terms and conditions in respect of the onshore section 2. The Parties agree that such protocol together with this Agreement shall form a legal basis for the onshore section 2. Construction of the onshore section 2 is subject to the execution of such protocol.

3. The Russian participant of the offshore section company may decide to reduce the capacity of the offshore section by canceling the offshore section 2 of the project, whereof the Russian Party shall notify the Turkish Party.

4. Upon the notification by the Russian Party addressed to the Turkish Party in accordance with paragraph 3 of Article 11 of this Agreement, the onshore section 2 of the project shall be cancelled. The Russian participant of the onshore section 2 company has the right to terminate its participation in the charter capital of the onshore section 2 company.

5. In case the Russian participant of the offshore section company decides to cancel the offshore section 2 of the project, the Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and the Russian participant of the onshore section 2 company, if established, shall jointly and severally compensate costs and damages of the Turkish authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, under an agreement to be concluded between the Russian participant of the onshore section 2 company, if established, the Russian authorized organization and the Turkish authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement.

6. The Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s) will not be required to obtain any permits, approvals or licenses to transit natural gas from the Russian Federation to third countries through the onshore section 2 and the offshore section 2. No permits, approvals or licenses shall be required for the Russian authorized organization, mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s) for the delivery of natural gas through the offshore section 1 from the Russian Federation to the Republic of Turkey. For the avoidance of doubt, this paragraph 6 of Article 11 shall not cover the permits, approvals or licenses required for the activities in relation to the project (other than mentioned above in this paragraph 6 of Article 11), for the import of natural gas to the Republic of Turkey and for the Russian authorized organization.

mentioned in paragraph 2 of Article 14 of this Agreement, and/or its affiliate(s) to export gas from the Russian Federation.

7. The title and possession of the gas that will be transported through the offshore section 1 shall pass to the Turkish authorized organization mentioned in paragraph 2 of Article 14 of this Agreement, and importer(s) at the connection point of the offshore section 1 with the onshore section 1. The delivered natural gas through the offshore section 1 shall be deemed as imported to the Republic of Turkey at such point for the purpose of customs clearance.

#### Article 12

1. Any disputes arising between the Parties with respect to the application and/or the interpretation of this Agreement shall be resolved by consultations or negotiations between the Parties.

2. As proposed by either Party to resolve disputes, the Parties may hold meetings to work out recommendations as to the implementation of this Agreement and to the settlement of disputes.

3. If any dispute cannot be resolved within six (6) months from the date of commencement of any such consultations and negotiations, it shall, at the request of either Party, be referred to an *ad hoc* arbitration court.

4. Such arbitration court shall be set up for each particular case in accordance with the following procedure. Each Party shall appoint one arbitrator within two (2) months from the date of receipt of the notice of arbitration. Within two (2) months from the date of appointment, the so appointed arbitrators shall elect a citizen of a third country who, if approved by both Parties, shall act as the chairman of the arbitration court.

5. If any arbitrators to be appointed under paragraph 4 of this Article 12 have not been appointed in due course, either Party may, unless any other actions have been taken, request the President of the United Nations International Court of Justice to make the relevant appointments. If the President of the United Nations International Court of Justice is a citizen of the country of one of the Parties or cannot perform the requested function for any other reason, the Vice-President of the United Nations International Court of Justice shall be requested to make the relevant appointments. If the Vice-President of the United Nations International Court of Justice is a citizen of the country of one of the Parties or cannot perform the requested function for any other reason, the member of the United Nations International Court of Justice that is next in seniority and is not a citizen of the country of any of the Parties shall be requested to make the relevant appointments.

6. The arbitration court shall make an award by a majority of votes. Any such award shall be final and binding upon the both Parties. Each Party shall bear the costs related to the activities of the member of the arbitration court it has appointed and to the representation of its interests in the arbitration proceedings, and the costs related to the activities of the chairman of the arbitration court and the remaining costs shall be borne by the Parties equally. The arbitration court

however, may state in its award that one of the Parties shall bear a higher share of costs, and such award shall be binding upon both Parties. The arbitration court shall establish the procedure of the arbitration proceedings independently.

7. The seat of the arbitration court shall be in Geneva, Switzerland, unless the Parties agree otherwise.

8. The arbitration court shall resolve disputes in accordance with this Agreement and the applicable provisions and principles of the international law.

9. The Parties agree that the arbitration proceedings shall be held in English.

10. This Article 12 shall not apply to disputes on taxation matters governed by the Agreement between the Government of the Republic of Turkey and the Government of the Russian Federation for the avoidance of double taxation with respect to taxes on income dated December 15, 1997.

#### **Article 13**

The Russian participant of the offshore section company and the Russian participant of the onshore section 2 company are considered as investors and their investments are considered as investments within the context of the Agreement between the Government of the Republic of Turkey and the Government of the Russian Federation on the promotion and reciprocal protection of investments dated December 15, 1997.

#### **Article 14**

1. The designated authorities for the implementation of this Agreement shall be as follows:

for the Turkish Party - Ministry of Energy and Natural Resources of the Republic of Turkey;

for the Russian Party - Ministry of Energy of the Russian Federation.

2. The authorized organizations for the implementation of this Agreement shall be as follows:

for the Turkish Party - Boru Hatları ile Petrol Taahhüt A.Ş. (the Turkish authorized organization);

for the Russian Party - PJSC Gazprom (the Russian authorized organization).

3. In the event of alteration of their designated authorities and/or authorized organizations, the Parties shall immediately notify each other thereof in writing through the diplomatic channels.

#### **Article 15**

1. This Agreement shall enter into force following the receipt of the last written notification by the Parties through the diplomatic channels of the completion by the Parties of their respective internal legal procedures required for entry into force of this Agreement and shall remain in force for the initial



period of thirty (30) years. The Parties shall make efforts to complete the above mentioned internal legal procedures within the shortest possible period. Upon the entry into force of this Agreement, the provisions of Articles 6, 9 and 10 of this Agreement shall apply as of the date of its signing.

2. Upon the expiration of this initial period, this Agreement shall be automatically extended for subsequent five (5) year periods, unless one of the Parties notifies the other Party of its intention to terminate this Agreement not later than nine (9) months prior to the expiration of the relevant period. Such written notification shall be forwarded through the diplomatic channels.

3. Where this Agreement establishes the rules other than those provided for by the national legislation of the countries of the Parties, the rules established by this Agreement shall apply.

4. Each of the Parties undertakes to abide without delay by any award made as a result of arbitration proceedings held in accordance with Articles 10, 12 and 13 of this Agreement with respect to the project. Each of the Parties guarantees abidance in its territory by such arbitration awards and any related interim measures.

5. The provisions of this Agreement may be amended by written consent of the Parties.

6. Termination of this Agreement shall not affect the performance of the obligations under the contracts signed within the framework of this Agreement in its duration period unless otherwise agreed in those contracts.

Done on October 10, 2016 in Istanbul in two original counterparts, each in the Turkish, Russian and English languages, all texts being equally authentic. In case of any divergence in interpretation of the provisions of this Agreement, the English text shall prevail.

**For the Government of  
the Republic of Turkey**



**Berat ALBAYRAK**  
Minister of Energy and  
Natural Resources

**For the Government of  
the Russian Federation**



**Alexander Valentinovich NOVAK**  
Minister of Energy

**LAW OF THE REPUBLIC OF TURKEY No. 6765 ON APPROVAL OF THE AGREEMENT**

6 Aralık 2016 SALI

**Resmî Gazete**

Sayı : 29910

**KANUN**

**TÜRKİYE CUMHURİYETİ HÜKÜMETİ VE RUSYA FEDERASYONU HÜKÜMETİ ARASINDA  
TÜRKAKIM GAZ BORU HATTI PROJESİNE İLİŞKİN ANLAŞMANIN  
ONAYLANMASININ UYGUN BULUNDUĞUNA DAİR KANUN**

**Kanun No. 6765**

**Kabul Tarihi: 02/12/2016**

**MADDE 1 –** (1) 10 Ekim 2016 tarihinde İstanbul’da imzalanan “Türkiye Cumhuriyeti Hükümeti ve Rusya Federasyonu Hükümeti Arasında TürkAkım Gaz Boru Hattı Projesi’ne İlişkin Anlaşma”nın onaylanması uygun bulunmuştur.

**MADDE 2 –** (1) Bu Kanun yayımı tarihinde yürürlüğe girer.

**MADDE 3 –** (1) Bu Kanun hükümlerini Bakanlar Kurulu yürütür.

05/12/2016