ESIA Integrations
Annex 5 Observations on the Regional Landscape and Territorial Plan (PPTR) and Agreement with the Basin Authority and Forests Sector
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAP AG – Observations on the Regional Landscape and Territorial Plan (PPTR)</td>
<td>3</td>
</tr>
<tr>
<td>TAP project, geological constraints (ex RDL No. 3267/1923 e RR 1126/1926)</td>
<td>21</td>
</tr>
<tr>
<td>Letter of the Forests Sector of Apulia region with clarification requests about the Project</td>
<td>23</td>
</tr>
<tr>
<td>Subsequent reply from TAP to the requests from the Forests Sector above mentioned</td>
<td>24</td>
</tr>
</tbody>
</table>
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The Trans Adriatic Pipeline AG, with secondary Italian seat in Rome in via IV Novembre 149, represented by the pro tempore legal Representative, dott. Giampaolo Russo (c.f. RSSGPL61D20Z229H), in accordance with the art. 2, par. 4 L.R. n. 20/2009, submits the
following observations with regards to the regulation of the New Regional Landscape Plan.

**Introduction.**

1. Pursuant to the artt. 135 and 143 of the D.Lgs. 22.1.2004, nr. 42, entitled *Codice dei beni culturali e del paesaggio* – Cultural heritage and Landscape Code (hereinafter “Codice”), with DGR of 2.8.2013, nr. 1435, Regione Puglia has adopted the Territorial and Landscape Regional Plan (hereinafter, the PPTR). The adopted plan has been slightly modified with DGR of 29.10.2013, nr. 2022. The changes are basically referred to the Titolo VIII of the NTA of the PPTR and the related Guidelines contained in the document/text 4.4.1.

The PPTR pursues the goal of protecting and enhancing, *recovering the Apulian Landscape requalification*. In particular, the PPTR aims at promoting and realizing the sustainable and durable economic and social development as well as the use of territory with awareness (art. 1 NTA of the PPTR).

For this reasons, the PPTR affects a variety of Landscape objects (artt. 45 and 62 NTA of the), already included in the areas protected by the law (art. 142 Codice). Among these, for what here concerns, it has to be mentioned the coastal and forest territories (lett. a e g).

Furthermore, the PPTR, locates and protects other goods (if of any interest/ e.g.), linked to further contexts (art. 143 Codice), i.e. dunes and the wooden protected areas (artt. 56 and 63 NTA of the PPTR).

As per the coastal territories /coasts, the PPTR establishes to admit those plans, projects and interventions regarding the «realization of infrastructure works buried in the earth/landfilled and/or of public interest, providing that they are proven as absolutely necessary and that it is not possible to locate them elsewhere» (art. 45, comma 3, lett. b7, NTA of the PPTR).

As per the forests, the PPTR establishes not to admit plans, projects and interventions realizing «gas pipelines, electroduct pipelines, secondary telephone and electricity lines/cables except for domestic cable connections and all net installations if buried in already existing areas» (art. 62, comma 2, lett. A), NTA of the PPRT).

The same ban is foreseen for the dunes and the forest protected areas. In fact, according to the art. 56, comma 2, lett. a8 (dune cords), and the art. 63, comma 2, lett. a6 (wooden protected areas), the following is prescribed: «When an environmental impact assessment takes place pursuant to the art. 92, regarding the protection and correct use of the sites hereunder, all plans, projects and interventions conflicting with the quality targets and the usage by the law under the art. 37 (and in particular, with exemption for those referring to the comma 3 i.e. : “gas pipelines electricity pipelines, secondary telephone and electricity lines/cables except for domestic cable connections and all net installations if buried in
already existing areas»

Moreover, according to the art. 95, comma 1, of the NTA of the PPTR, indexed as Realization of public works or works of public utility «Public works or works of public utility can be realized by way of derogation from the prescriptions of the Titolo VI of the existing laws for landscape/environment objects/goods and further contexts, provided that evaluating the landscape authorization or when verifying the landscape compatibility it is established that those areas are in any case compatible with the quality targets set forth in the ‘art. 37 and that they have no alternatives in terms of location and projects. The release of the derogation measure is under the exclusive competence of the Régione».

The Release of the landscape authorization and the Landscape compatibility assessment are governed by the artt. 90 and 91 of the NTA of the PPTR. Whereas the quality targets and the usage regulation are set forth in the abovementioned art. 95 – in the art. 37 NTA of the PPTR.

2. TAP AG operates in natural gas transportation (activity declared of public interest under the D.Lgs. n. 164/2000).

On August 30, 2011 TAP has presented a formal Single Authorization application to the Ministero dello Sviluppo Economico (the Ministry of Economic Development) ex art. 52 quinquies, comma 2, DPR n. 327/2001, in order to build and exert the gas pipeline interconnecting Italy, Albania and Greece and ending in San Foca, Melendugno (LE), by supplying Italy and southern Europe with naural gas coming from Azerbaijan.

The TAP gas pipeline has been included in the National Gas pipeline net (Rete Nazionale dei Gasdotti) for the transportation of natural gas (later on, RNG) in accordance with the art. 9 of the D.lgs. n. 164/2000 (Measure application n. 98/30/CE introducing common rules for the internal market of natural gas, under the art. 41 of the Law 17.5.1999, n. 144) and art. 1, comma, 8 L.n. 239/2004, with D.M. of the Ministero dello Sviluppo Economico 21/10/2010 n. 48973 and with further D.M. 19/12/2011 n. 57544.

Due to this result (inclusion in the RNG), the TAP gas pipeline sets out to be a strategic infrastructure of preminent interest for the State.

The same TAP Gas pipeline is in fact expressively mentioned and included in the SEN (“Strategia Energetica Nazionale”- National Energy Strategy), approved by the document Decreto Interministeriale del Ministero dello Sviluppo Economico e del Ministero dell’Ambiente on March 8, 2013.

In this document, defined by the D.I. “Act of strategic matter”, it is particularly pointed out that among the fundamental aims to be achieved, there is the objective to facilitate the realization of infrastructures of importation and storage within the regime of exemptions from thirdparty access obligations, with financial investments sustained by the
proponents, without guarantee of revenues or financial contribution of public nature. In particular, it is meant to promote the realization of GNL projects recently authorized and of other projects in the process of being authorized as well as, according to the gas pipelines, promoting the opening of the Corridoio Sud (South Passageway) for the gas import from the Caspian area and from other Countries versus Italy, **in particular TAP project** (Trans Adriatic Pipeline)

Furthermore, with reference to the above mentioned exemption Regime, the Authority for Electricity and Gas (AEEG), has given positive response, and together with the greek and albanian Authorities for Energy – with resolution 78/2013/R/GAS of 28.2.2013 – has approved the document «Joint Opinion of the Energy Regulators on TAP AG’s Exemption Application», concerning the positive opinion to the «exemption request» ex art. 36 Directive 2009/73/CE presented by the TAP Company and on the basis of the above said, with further Decree of the Ministero dello Sviluppo economico – Dipartimento per l’Energia(Energy Department) – of the 13.3.2013, the Italian Government has released the «Exemption (art. 1) in «compliance to the content of the Joint Opinion of the Italian, Greek and Albanian Authorities» (the Decree has been notified also to the European Commission). This Decree has been then further supplemented by the subsequent D.M. of the 25.6.2013 and the 6.11.2013 and, in the latest it is particularly confirmed as follows:

- **“the realization of the gas pipeline at issue is of strategic relevance, taking into consideration the increase of european gas demand, both to diversify the sources, the supplying routes and to promote the development of the natural gas competition development of the Italian and the European market through the gas provision at competitive supply conditions;”**
- - The investment is so relevant that it reinforces the competition in gas supply and in provision security for the following reasons:
- - The project interconnects for the first time, through greece and Albany, Italy and the European Community to the Caspian area, with the possibility to import gas in its first phase from Azerbaijan;
- - The project enables the access of new operators in the Italian market and will also contribute to a more competitive distribution of the market shares held by the other importers”.

Last but not least, with regard to the “status” of the TAP project, the project is included as well in the “Union List of projects of common interest” (PCI) under the UE Regulation n. 347 of 17.4.2013 (see page 33, sect. Italy del Cluster, point 7.1.3., “Gas pipeline from Greece to Italy via Albania and the Adriatic Sea, currently known as the “Trans Adriatic Pipeline”).

As per the official update in the above mentioned RNG, the same update is actually contained in the D.M. of 28/01/2013 n. 66645, in G.U. of 19/2/2013 n. 42. The Decree includes the TAP pipeline within the «Interconnectors» of Annex 3, by classifying it in type f), i.e. among the «nets or part of nets of letters a) b) c) d) e) (i.e. gas pipelines ending in the sea or import and export pipelines, gaspipeline linked to storage etc.) being at the time in phase of project, authorized or under construction».
On the basis of this recognized status (gas pipeline included in the RNG), the TAP has presented the application for the Single authorization according to the art. 52 quinquies, comma 2, DPR n. 327/01, concerning the «special regulation regarding line energetic infrastructures as part of the national energetic system/net», in order to submit the project of the gas pipeline to the procedure of the Single Authorization.

The law provides as follows:

a) functions regarding authorization, realization, and plant activation are under the State competence responsibility;
b) The Single Authorization Unica includes the declaration of public utility of the work, the environmental impact assessment and the landscape authorization, as well as the evaluation of the environmental incidence and replaces any other permission (authorization, nulla osta, grantings etc.), also regarding urban planning and buildings aspects, being therefore the only permit entitled for carrying out the works of construction.

TAP AG has contemporaneously started a VIA (EIA) procedure before the Ministero dell'Ambiente (MATTM), (as required by the law) actually ongoing. On September 10, 2013 TAP AG has presented, at the same MATTM, the supplement regarding the project subjected to the environment evaluation also in consideration of the indications given by the Ministry Technical Committee.

3. TAP AG cooperatively proposes as follows:

**Observations regarding the PPTR Puglia**

*Observation n. 1. regarding the provisions of the artt. 52, 62 and 63 of the NTA, that totally preclude to locate the TAP pipeline in the areas there indicated.*

The just mentioned NTA regulation provides that within the wooden areas and related respect areas, as well as the ones that include “dunes” – is not allowed to “locate and realize gas pipelines electricity pipelines, secondary telephone and electricity lines/cables except for domestic cable connections and all net installations if buried in already existing areas”.

These provisions, forbidding the realization of gas pipelines in the above indicated areas, have to be considered unlawful because are out of the competence of the “Regione” and invade the field of the national laws. In other words, the matter at issue (Supply of Energy) indicates that the localization provisions and the decisions regarding the energy infrastructure have necessarily to be the output governed by the principles of the State/Region Agreement and of the loyal institutional cooperation.

According to this point it is appropriate to refer to the law frame as follows:
The art. 117 of the Italian “Constitution” (Costituzione):
- In the paragraph nr. 2, the "environment, ecosystem and cultural heritage safeguard" are directly under the exclusive legal competence of the State;
- In accordance with the par. 3 of the article at issue, the territory government and the transportation and the national distribution of energy have to be considered as matters under the legal competence of both Regione and the State with the consideration that when a Region has the legal power this should be exercised under the criteria and the fundamental principles established by the State.

With regard to these last principles, we hereby mention art. 29 of the D.lgs. n. 122/98, (1° comma) that recognizes to the State the legal power related to "all the functions and the tasks concerning the elaboration and definition of the targets of the national energy policies, as well as the adoption of the guidelines and coordination acts aiming at an energy articulated programming of each region, as well as those concerning (2° comma, lett. g) "the national nets for oil and gas pipelines".

By applying the constitutional rules above, the Italian law intended to regulate the above mentioned legal matters by specifying how the Regions and the State should collaborate.

- in particular, the artt. 135 and 143 of the D.Lgs. 42/2004 (Codex of cultural heritage and landscape) provide that the Regions, by exercising their legal power regarding the landscape matters, can stipulate agreements with the Ministry of the Environment (Ministero dell’Ambiente) and with the Ministry of cultural heritage for the definition of landscape’ plans (Beni culturali per la formazione dei piani paesaggistici);
- the art. 1 of the l. 239/2004 (Review of all the energy sector and delegation to the Government to adopt all the necessary provisions aiming at reordering all the applicable rules in the energy field) recognizes to the State the legal power on the national nets for energy transportation nets to be exercised in agreement with the interested Regions. In this case, the circumstance that the State’ interests and the regions’ interest coincide is the proof of the correct way chosen by the State legislator providing the agreement State- Regions as per the localization and realization of gas pipelines ex art. 1 comma 8, lett. b., n. 2 of the law .n. 239/04.

In particular, regarding the treated matter, it has to be clarified that art. 1 L.n. 239/2004, including expressed regulation foreseen by the legislator, “fundamental principles for energy matters under the art. 117, comma 3 of the Italian Constitution”, gives the State the power to define “the objectives and the national energy policy, as well as the general criteria for their implementation at territorial level”. For this scope the State also refers to “the mechanism of agreement and cooperation with the autonomy of each region”.

The same clause (par. 3) provides that the accomplishment of the “general objectives regarding the national energy policy is ensured according to the principles of subsidiarity, differentiation, adequacy and loyal collaboration by the State, the Authority for electric and gas Energy, by the regions and the local authorities”.

As per the localization aspects, par. 4 of the art. 1 jointly ensures the State and the Re-
regions the task to guarantee on one hand “the adequate balance in the localization of the energy infrastructures, by considering the geographical and physical limits of the single regions”, on the other hand to guarantee the “environment protection and of the ecosystem and the landcape, by following the national and EU law”.

Among the tasks expressively in charge of the State and, particularly to the Ministry of the Economic Development (Ministero dello Sviluppo Economico) under the D.lgs. n. 164/2000, there is also the power, to identify, in agreement with the unified conference, the national net of the gas pipelines, which the TAP gas pipelines belongs to.

The above mentioned principles about energy are executed through the special Single Authorization procedure for the gas pipelines of the RNG also mentioned in the art. 52 quinquies DPR n. 327/2001, assigning exclusively to the State the power to release the authorizations and the related general administrative competencies, with the clear intention to protect the unity of the system. Moreover, the law, includes a special procedural scheme based, exactly, on the Agreement between the State and the Region (par. 5 and 6). The Aim of this agreement is the localization and realization of energy infrastructures, ensuring an appropriate participation of the Region to the procedure.

All the rules, conditions and requirements, included those concerning localization, environmental and landscape nature, according to the legislator provisions in respect of the distribution of competencies decided by the Italian Constitution, have to be identified by the State and the Region, within the procedure required by the law, which is exactly the agreement State/Region, under the art. 52 quinquies DPR n. 327/01; this is in respect of the principle of loyal cooperation, providing that “eligible procedures” should “permit repeated negotiations in order to overcome the different perspectives ” between State and the interested Region eventually coming out.

In light of this, the above mentioned PPTR previsions, where they do not allow to realize gas pipelines in specific areas of the territory (included of course, in the absence of exceptions, also those referring to the RNG, as they are of strategic kind and of primary interest of the State), due to some landscape contraints in the interested areas, the Region has put on as an absolute ban to the localization of these infrastructures, not only refer to the landscape matter and the government of territory but also to the field of production, transport and national distribution of energy; and this is even more true if we consider that because of this absolute prohibition, the previsions would prevent the realization of gas pipelines on a large scale.

In such a context the Region should have been compliant to art. 1 of the L.n. 239/2004, that, we underline it again, sets forth fundamental principles in the matter of energy and, in particular, regarding the agreement and the loyal cooperation among the institutions.

With the above mentioned provisions this has not taken place. Through these clauses the Region has unilaterally put on strict and insurmountable restrictions to the localization of the gas pipelines of national interest (able to have a strong effect in the matter of energy) without previously involving the Ministry of the Economic Development in charge of
the main competence in the matter of energy and without, proceeding in agreement with the State itself.

Furthermore the Region has decided so beyond the boundaries of the only procedure where the law allows (not unilaterally to impose) such “solutions”, that is the agreement State – Region ex art. 52 quinquies, sections 5 e 6 mentioned above.

It’s clear, then, that the PPTR dispositions define in advance an absolute incompatibility of certain regional areas with the localization and realization of gas pipelines belonging to the RNG. They don’t comply with the above mentioned law frame and with the fundamental principles regarding energy matters and the artt. 117 and 118 of the Italian Constitution, if and when they avoid the agreement between the State and the Region regarding the localization – which is mandatory – because they compromise the unfailing principle of agreement and of “loyal collaboration”, being in contrast with the fundamental principles under the art. 1, comma 7, lett. g) and comma 8 lett. b) n. 2 of the l.n. 239/2004.

Moreover, there is another aspect of unlawfulness to be pointed out if we consider the plan regulation at issue. We are referring to the concrete and practical effects produced by the same regulation on the Single authorization release regarding the realization of gas pipelines as mentioned in the following paragraph.

The art. 29, par.2 lett.g) of the D.Lgs. 112/1998 – “Functions and power in charge of the State” – already mentioned, states: “the State is responsible for the administrative functions regarding: “… g) … the other oil and gas pipeline nets of national interest; ….”.

In the same direction the art. 1, sections 7 e 8, del D.Lgs. 239/2004 states that “the measures regarding energy import and export; b) the definition of the sector plan and Program; … g) the detection of fundamental lines in the national territory referred to the energy infrastructural nets that have been declared of national interest under the current law” are exclusive competences of the State.

After examining the above mentioned regulation we can declare that the legal power regarding the procedure of authorization release for energy matters is exclusively in charge of the State.

Viceversa, through the dispositions under observation, the Region unilaterally identifies measures that influence (and even more orientate in a certain direction) the outcome of the agreement with the State.

The burdening of the procedure sequence caused by The PPTR provisions entails an unreasonable and prejudicial rigid position of the Region “within” the agreement process with the State and causes the following paradox: the regional administration is (also) prevented from any negotiation power, also in case of converging interests between State and Region regarding the localization and realization of gas pipelines in the national net.

These measures lead to a cooperation procedure characterized by the dominant and strong will of one party only, different from the agreement, identified first by the state legislator as a mandatory step to reconcile the interests of the different territorial level of
government, within which it is required and recommended a full and free confrontation, in violation of the art. 117, par 3 Cost., and of the principle of loyal collaboration.

In conclusion, then, we apply for abrogation or modification of the PPTR provision examined so far if they would affect the pipelines included into the RNG, because these are of prior national interest. With regard to this, we assume that the introduction of a clause expressively excluding for these kind of infrastructures the applicability of the NTA of the PPTR above mentioned would definitively allow to get over all the above observations.

**Observation n. 2. On the art 95 of the NTA of the PPTR**

The art. 95 of the NTA of the PPTR, with the above mentioned text, takes into account the possibility that the Region authorizes public works or works of public interest by way of derogation from the legal constraints of the Chapter VI of the NTA, on the condition that, “these works are in any case compatible with the quality objectives under the art. 37 and do not have any alternatives in terms of localization and projects”.

I) First and prompt consideration about the above mentioned provision is that, in any case, the possible authorization “by way of derogation” from public works or works of public interest (including the TAP gas pipeline) is not sufficient to overcome the unlawful restrictions underlined in the previous paragraph, with regard to the territorial localization constraints.

The derogation, also concerning the RNG gas pipelines, is unlawful because it is our opinion that the Region has invaded the legal power of the State going further its own competence.

As previously clarified the State has exclusive power regarding the procedure for the authorization release when regarding energy infrastructures of national relevance and that the State legislator, with the art. 52 quinquies, comma 5, of the D.P.R. n. 327/2001, has defined the frame of the agreement State-Region regarding the localization and realization of the work as necessary procedure in order to ensure the adequate participation of the regions to the procedures regarding also matters and issues within their competencies.

It is now clear, considering the previous observations, that with the art. 95 of the NTA the Region has unilaterally decided for an autonomous regional procedure even as preliminary procedure in relation to the Single procedure regarding the gas pipelines of national interest by no means contemplated in the State regulation and that for this reason goes beyond the bounds of its own legal power invading the exclusive power of the State.

On the contrary, the National Single Procedure allocates the authorization competence exclusively to the Ministry of the Economic Development; therefore the Single Authorization includes and replaces any other authorization, included those regarding the environ-
ment and the landscape. This means that in the entire frame drawn by the legislator, there is by no mean the possibility of a further regional authorization regarding the landscape “by way of derogation”, the release of which is moreover subject to specific and autonomous requirements. This is even more true assuming that this derogation would be a sort of preliminary condition of eligibility of the regional intervention, mandatory and necessary to the start of the following procedure expressed by the agreement State-Region.

II) Other considerations should be taken into account with regard to the requirements for the authorization release “by way of derogation”.

In fact, on one hand the content of the provision is flawed by vagueness when it requires to prove the “compatibility with the quality targets indicated in the art. 37”. By analysing this last provision we observe that the targets as a whole are so broad and, at the same time so unspecific (please just consider the general objectives listed in the art. 27, comma 3, delle NTA), that it’s impossible to identify them. Submitting the landscape compatibility of a project to such “generic” and unspecific parameters doesn’t allow to verify its compliance with the law.

On the other hand, the second assumption – absence of other options of localization – points out again the same critical aspects drawn in the previous point sub I). Considering that the subject should be charged with the burden of proof, very difficult to demonstrate, regarding the need of a project being as the only possible and feasible solution; this proof is not required within the Single procedure. In this last case, infact, the applicant has to prove, as requested by law for any project regarding the EIA and the landscape, that the submitted project is the best possibile (not the only one), after evaluating all other solutions, included the so called “zero” option.

Not only the Region can neither identify autonomous procedures and authorizations overlapping with the National Single procedure and Authorization (in which the role of the Region is expressively ruled) nor can the Region - and this is even more true – identify further substantial requirements of eligibility, even more restrictive than those prescribed by the state legislator.

III) Last but not least, the provision ex art. 95 incurs in a logical defect when it affirms beforehand that because of the localization constraints, a project (like the gas pipeline in discussion) cannot be in line with the measures regarding the landscape constraints as indicated in the PPTR. According to the same logical defect the project can only be authorized by way of derogation to that provisions.

In this way, though, any possibility to examine a certain project through a proper iter (and specific requirements) evaluating the landscape compatibility is excluded.

Differently, the project could not be subject to any other structural adjustment with regard to the landscape compatibility exactly because it has been authorized “by way of derogation”.
Also in this case we apply for the abrogation and modification of the provision of the PPTR examined so far, by introducing a clause that expressively excludes for such infrastructures the applicability of the “by way of derogation” procedure. This modification would overcome all the critical points here pointed out.

**Observation n. 3. on the art. 45 concerning the “Coastal Territory” constraints.**

The art. 45 of the NTA of the PPTR states that, with regard to the coastal territories, and excluding the landscape authorization procedure “the following plans/projects/intervention can be admitted: … b7) realization of public (or of public interest) infrastructures buried in the ground as long as is proven that they are absolutely necessary and not to be located elsewhere”.

This provision apparently does not categorically forbids the localization as the ones examined before, but actually is also unlawful in the same way as the art. 95 of the NTA regarding the authorization “by way of derogation”, because it is easy to identify the TAP gas pipeline as an infrastructure buried in the ground and of public interest.

We can finally affirm that the above mentioned observations are valid also for this provision as well as the considerations regarding the art. 52, 62, 63 e 95 that are about to follow.

In particular, we would like to highlight that the above exposed objections with regard to the good protected by the constraint under the art. 45 of the NTA, are even more appropriate.

In this respect, it is worth reiterating as follows:

- the TAP gas pipeline has been allocated in the national net of gas pipelines thanks to specific ministerial decrees;
- these decrees determine/identify/allocate the outcome/docking of the TAP gas pipeline in Apulia;

With this premise it is evident that the provision is illogical/ because the only chance of access for the gas pipeline in Puglia is the landfall on its coast.

By way of the provisions contained in the art. 45 of the NTA the Region imposes a burden that – if charged to the proponent – would mean to show the need of choosing Puglia as landfall, that is to prove why it is impossible to avoid to choose Puglia instead of any other region (other coastal territories). In this way the Region violates all the principles and the provisions into consideration so far but also with the often mentioned ministerial decrees, which establish that the TAP gas pipeline with a landfall in Puglia is already part of the
This said, we can find out how the Region, in the recent statements to the press made by institutional representatives, has not considered this art. 45 in its restrictive and illogical meaning; Despite that, a clarification on the discussed provisions is more than welcome and we hereby expressly require it.

**Observation n. 4. Regarding the artt. 52, 62, 63 and 95.**

With regard to the majority of the protected territories the NTA of the PPTR states that the projects regarding the “realization of gas pipelines, electric pipelines, secondary telephone and electric”, are not admissible, except for the domestic cable connections and all net installations if buried in already existing areas.”

In particular, concerning this, please refer to the following articles:

- art. 56, safeguard measures for the “dunes”;
- art. 62, provisions for the forests;
- art. 63, safeguard measures for the “forests protected areas”.

The goods under the artt. 56 and 63 belong to those goods that the Plan defines as “further contexts”; the goods under the art. 62 belong instead to the goods protected pursuant to the art. 142, comma 1 lett. g). d.lgs. 42/2004.

If we examine the above mentioned provisions it is clear that the regional Planning authorities wanted to oppose an absolute constraint (obstacle) to the realization of the discussed infrastructures by considering them as not admissible.

It is our opinion that this constraint is illogical and irrational for the following reasons:

It is first necessary to briefly refer to the safeguard regulation regarding the same goods by the PUTT/P, in force until the final approval of the PPTR.

The art. 3.05 distinguishes the safeguard directives in terms of “ATE” (Ambiti Territoriali Estesi – extended territorial domains) and in particular:

with regard to the ATE of extraordinary value “A”, the Plan disposes that “any intervention that modifies the characters of the identified components cannot be allowed; extractive activities are forebidden and all natural factors that are typical of the site have to be maintained”;

- with regard to the ATE of extraordinary value “B”, the Plan takes into consideration “the possibility to allocate underground pipeworks or hanging (pensili) pipeworks” to
be verified through a specific test studying the landscape impact and the possible prevention/mitigation works;

- with regard to the ATE of value “C” (distinctive value) and “D” (relative value), the Plan only requires the compatibility of the intervention with the distinctive elements of the botanical-vegetational system.

- The artt. 3.07.4 e 3.10.3 identify the basic provisions both for the “coasts and coastlines” and the “forests and the Mediterranean woodland”.

The discipline is basically the same. The provisions identify a portion of territory which is occupied by the protected good – “coastal area” (in the coasts’ case), and “core” (in the forests’ case) – and an “annexed area”, adjacent to the first, which is structured either in different plans/levels or in general urban instruments. If the definition above is not possible, the portion of territory is intended 200 metres long (in the coast’s case) and 100 meters long (for the forests).

With regard to the area occupied by the good and considering all different scenarios in terms of nature of the protected good, the provisions on one side forbid any intervention that modify the territory asset and the protected good; on the other side authorize the intervention if they are specifically/clearly indicated.

The PUTT architecture, then, admits the landscape authorization under two conditions:

- The applicant proves that the intervention doesn’t affect the territory asset, doesn’t destroy and modify the protected good;
- In case of any modification, the intervention refers to the scenarios admitted by the article.

With regard to the annexed area, the provisions establish a relieved protection system with the same method: indication of the actions not allowed, if they negatively affect the protected good and subsequent list of interventions that are considered potentially allowed.

Having said this, it is true that the PPTR laws introduces “ex novo” the further topic “dunes” and, above all, an absolute and specific constraint regarding the impossibility to realize some type of works such as Gas pipelines. However, after the NTA analysis, the screening of the General Report and of the other reports of the PPTR, no valid reason arises (and to be honest no reason at all arises, let alone the invalid ones) that justifies the introduction of such constraint.

In this respect we consider that:

- the art. 5, comma 6, of the d.lgs. 42/2004, states that the administrative functions regarding the safeguard of the landscape goods are of exclusive competence of the State;
- the art. 142 of the same decree, where indicates the protection criteria for the for-
The Constitutional Court has established that the Region cannot derogate from the landscape protection as regulated in accordance with the d.lgs. 42/2004; Anyway, the Region can adopt a more severe discipline concerning landscape protection. This discipline of more effective protection, following the general principles regarding the P.A. action that, totally prevents from intervention in an extended area, has to be strictly motivated and linked with the need to protect and value the good protected; Being a discretionary measure, The motivation has also to deal with the comparison of all involved interests and the necessary proportionality with the sacrificed interests.

As there is no indication regarding the incompatibility specified in the Plan, it is not possible to rebuild the logical process and to understand if it depends from the objective incompatibility of the substance (gas) transported by the infrastructure with the protected good (forests, dunes), because - for example - of the danger of the material (no matter how the infrastructure is built), or if it depends from the incompatibility of the infrastructure itself (independently from the transported material) because of the impact with the territory.

The answer can be found if we examine the provisions of the d.lgs. 42/2004, of the PUTT and of the art. 62 PPTR, in the part regarding the interventions not allowed.

We here remind that the Landscape Code does not provide any absolute constraint but only a regulation of the interventions that are compatible with the protection of the landscape goods.

The above mentioned NTA of the PUTT introduce a constraint that is not regulating the work types but the human activities that can compromise the value of the landscape. Therefore after the introduction of the PUTT and until the adoption of the PPTR, the Regione Puglia has never faced the specific problem of the gas pipelines. These can be authorized if and when they don’t cause the distortion and transformation of the protected good.

The art. 62 of the PPTR, states that the gaspipelines realization is not admissible but it admits the possibility to realize transmission nets (also gas nets) under already existing roads. Doing this, the PPTR admits the possibility to realize infrastructures of gas transportation if they don’t damage the landscape.

In conclusion, It can be assumed that the constraints placed against the gas pipelines are not based on a objective incompatibility of the infrastructure with the protected goods but on other considerations that the Region has so far not properly explained or clarified. This lack of explanation (and of logic) is even more relevant if we take in consideration the fact (above exposed) that such a constraint is neither foreseen from the National regulation nor from the previous planning regulation (still in force).
Besides, the constraint is illogic and irrational.

When the art. 62, for example, identifies the other interventions as inadmissible, it also describes them by considering the type of activity (vegetation transformation and removal, new building, demolition and rebuilding of existing buildings etc.) or the intervention type (realization of purification plants, of energy production, realization of sinks or basins).

For this second type the incompatibility with the protected goods is immediately clear because of the polluting potential or also because of the transformation of the territory being permanent and relevant.

Viceversa, for the gas pipelines it is not possible to evaluate the incompatibility as an immediate and direct effect because the gas pipelines (until proven otherwise) have no danger potential and not necessary affect the environment and the landscape. In fact they can be realized, as in the case at issue, with a technology (microtunneling) that does not compromise the environmental and landscape values of the forests at all, making it invisible.

Another (and decisive) illogic aspect of the provision we are analysing is the identification of only some works realizing "dotti" (gas and oil pipelines, electroducts and so on).

More clearly, those provisions declare as inadmissible gas and electric pipelines but not, for instance, oil pipelines, that have an evident and major impact on the territory.

A final consideration regards the comparison of the safeguarded interests: landscape and energy supply and Environment also, considering the environmental value of the energy produced by natural gas compared to the energy produced by other fossil fuels.

The restriction imposed by the PPTR excludes the possibility to make this comparison and it is therefore not compatible with the safeguard to energy matters provided by the Constitution.

It is then clear that the only constraint which is consistent with the constitutional principles is the one that at the same time preserves the landscape and admits the realization of the infrastructure if this one does not represent a landscape danger to the protected good.

In this perspective the NTA article under exam has to be considered as unlawful.

Nor can this illegitimacy find a solution in the art. 95 that considers the possibility to authorize public works or works of public interest by way of derogation to the PPTR provisions on the condition that they:

- are in any case compatible with the quality targets under the art. 37;
- have no alternatives in terms of localization and/or projects.

The contents of this article – we underline it again – do not permit to clearly identify the conditions to obtain a derogation to the constraints provided by the Plan.

It is true infact that, even if with a large (exaggerated) space for discretion, the safeguard
objectives of the piano can be deduced by studying its reports. Viceversa, it is certain that from the plan we cannot deduce any criteria to determine and prove that the proposed localization has no other option.

The display of such criteria is demanded by wellknown principles of good administration and loyal collaboration with the proponent and fits the basic need to allow the individual/subject entering in contact with the PA to evaluate the requests on the basis of defined parameters. The respect of these parameters can grant the operation success and as a consequence the success of the project.

It is then immediately evident that the lack of these criteria makes, as a matter of fact, the provision inapplicable, because it gives the Region the absolute and incontestable power to decide about the derogation.

One more point.
The art 95, considers the possibility of derogation but does not provide anything about its procedure, apart from giving the Region the competence for the release of the derogation.

This lack makes the derogation procedure completely undefined and for this reason subject to the definition of the previous proceeding body; this violates the art. 146 of the d.lgs. 42/2004 (Constitutional Court leading case n. 235 of the 22.07.2011: “... the regional legislation cannot introduce a procedure concerning the landscape authorization which is different from the procedure provided by the State. The Regions are not allowed to introduce derogations to the regulation of environmental protection that draw an homogeneous discipline valid for all the national territory in which the landscape authorization has to be considered”).

In conclusion we apply for the complete abrogation of the provisions absolute and total restrictions and constraints and we ask for a modification of the same provisions which takes into consideration our observations.

**Observation n. 5. Regarding the microtunnel technique**

The so far analysed provisions are unlawful also for further reasons.

As already pointed out with regard to the forest constraints, the same technical provisions of the PUTT/p currently in force, give the applicant the chance to demonstrate that the project is designed in order to minimize the impact and in particular in order not to compromise the vegetation.

In the PPTR, on the contrary, it is a priori taken for granted that the gas pipelines are absolutely incompatible with the forest constraints and the related protected area, and also with the dunes and the coasts (as per the coasts please refer to the just mentioned consideration).
The automatic mechanism introduced by these provisions is illogical and irrational particularly because it doesn’t take into account the possibility that the project is able to reduce the landscape impact thanks to its characteristics and advanced technology, and able at the same time to combine the need to protect the territory and the need of energy supply.

This is exactly the case of the TAP project, that – as it has been fully explained and illustrated in the National EIA procedure, intends to implement a very advanced building technology to realize the gas pipeline that is the so called Microtunnel.

More in depth, the microtunnel building system consists in the progressive movement of a directional drilling placed in front of a series of coated segments. These segments are tubes made of reinforced concrete and they are prefabricated in the plant. They are 3 meters long and have a diameter of 3 meters. The contemporaneous drilling from the head and from the segments at the bottom/end is driven from the force/thrust of hydraulic rams positioned in the end and in the pressure position.

This systems enables:

- to realize tunnels (also curved tunnels) with the immediate positioning of the final coat;
- the direction control of the tunnel in any drilling phase;
- the remote control of the drilling head.

By using this technique it is then possible to avoid any open air soil excavation with the relative refilling at the end of the works and the realization of the underground net. The microtunnel length and the related building site have been projected with the specific scope to protect the coastal and inland forests. In fact, this technology reduces on one side the interferences with the coastal area reaching a depth of 10 meters from the surface; on the other side the building site has been positioned in an agricultural zone in order not to interfere with the forests and the Mediterranean woodland.

It is easy to understand that this building method permits to reduce to the absolute minimum the impact on the landscape also during the site building and the dockyard management. This is also in line with the recent and relevant law cases according to which the total or partial burial of the net is the most indicated measure that has no impact on the landscape and the environment values.

As you can see, The automatic mechanism of the above mentioned Plan, is then irrational because it neither takes into account nor it encourages the most advanced technologies (and for this reason more expensive) for the realization of important works, providing only a total restriction to the realization of any infrastructure as the one at issue. This attitude is against concurrent public interests that may exist or arise.
In consideration of the above mentioned facts we demand the abrogation or modification of the examined PPTR clauses, when and if they apply to the gas pipelines included in the RNG because they are strategic and of prior national relevance.

*The present Observations are composed of 18 pages, included the present one.*

Giampaolo Russo  
Country Manager Italia
Anticipated via fax

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General Directorate for Environmental Impact Assessments
Division II - Systems of Environmental Impact Assessments
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Ministry of Assets and Cultural Activities and Tourism
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Ministry of Economic Development
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Melendugno Municipality
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Procedure Responsible:
Geol. Luca Buzzanca
Tel. 080/9182212
e-mail: luca.buzzanca@adb.puglia.it
Subject: Documents transmission in relation to the procedure of environmental impact assessment in accordance with article 23 of Legislative Decree n. 152/2006 and subsequent amendments in reference to "Trans Adriatic Pipeline".

In reference to the note of the same object sent by this Company (reference LT-TAPIT-ITG-00044, acquired with the protocol of this Office dated 11.09.2013 with no. 11822), as well as the notes sent out by this Ministry with prot. nn. DVA - 2013-0021612 of 23/06/2013 and DVA - 2013-0022408 of 02/10/2013 (which were acquired with the protocol of this Authority on dates 24.09.2013 and 10.08.2013 with nn. 12379 e13108) it represents that the interventions of the project (international buried pipeline with landing and partial development in Municipality of Melendugno), as shown in the technical documentation provided, is located in areas not affected by the constraints of hydraulic and/or geomorphological hazard of the PAI in force, therefore this Authority considers that it does not have to express himself.

That being said, it is, however, that certain project areas (areas of the Pipeline Receiving Terminal) are near the border of the Municipality of Melendugno (in adjacency with Vernole Municipality), located in areas that studies of this Authority have classified with a medium and low hydraulic hazard. It is recalled that these studies have been submitted to the Municipality of Melendugno on the 10.01.2013 with prot. n. 400 so that it would proceed with the formal sharing activities and that these activities were, however, solicited with notes prott. nn.9170 13039 of 07/03/2013 and the 08/10/2013, this Authority, inviting the proponent to take all the adequate precautions, it considers itself foreign to any damage to persons and / or property resulting from an event of flooding in the aforementioned areas.

General Secretary
Prof. Ing. Antonio Rosario DI SANTO

Procedure Responsible:
Geol. Luca Buzzanca
Tel. 080/9182212
email: luca.buzzanca@adb.puglia.it
Subject: Hydrogeological restrictions (ex RDL n. 3267/1923, RR n.1126/1926)

Trans Adriatic Pipeline (TAP) Project with landing in Melendugno Municipality (LE), loc. San Foca.

Seen the final project, acquired with prot. AOO_036 00018999 on the 11/09/2013, it is communicated that the same is missing a series of essential documents:

- the receipt of the payment of € 100,00 on c/c 60225323 in the name of “Regione Puglia Tasse e Tributi e Proventi Regionali” (art. 20 quarter L.R. n. 18/2012);
- geological study:
  a) the risks of collapse of the area affected by the drilling, however, the project does not give adequate detail of the possible coating of the micro tunnel;
  b) the effects on groundwater flow, in particular the risk that the micro tunnel can become a way of runoff and destabilization of the dynamic flow of the fresh water and the salt water in the calcareous massif of Salento, with the risk of accelerating and enhancing the phenomenon of salinization of coastal land.

It should be noted that the landscape report submitted does not deal in an adequate way the question of the prohibition to carry out this work in the buffer zone around the forests (100 m), which is in force with the PUTT and now also with the PPTR.
Subject: TAP project, hydrogeological constraints (ex RDL No. 3267/1923 e RR 1126/1926)

TAP AG Italy, in relation to the note with prot. AOO_036-0021828 of 14.10.2013 (Annex 1) of the Puglia Region - Forest Service - Provincial Section of Lecce, which require additions to the final design for the evaluation of the same in the context of geological constraint (ex RDL No. 3267/1923 and RR No. 1126/1926), announces that the required documentation is being prepared.

The finalization of the geological study, in particular, requires the results of the geotechnical and geophysical campaigns whose beginning is expected during the coming winter.

With a full collaboration, TAP Italy sends a note-depth about the technical characteristics of the micro-tunnels (Annex 2), which construction method can preserve the landscape and the morphology of the area and an analysis of the compatibility of the work than to PUTT / p currently in force and to PPTR adopted by DGR 1435/2013 and as amended by DGR No. 2022/2013 (Annex 3).
It also attached to this, a copy (Annex 4) of the certificate of payment of EUR 100.00 in favor of “Puglia Region – Fees and Taxes Regional”.

It also emphasizes that TAP Italy will provide formally reply to the comments received by the Ministry of the Environment as part of the EIA process pursuant to art. 24, paragraph 4, of the Legislative Decree no. 152/2006 in the same proceeding EIA

Best Regards,

Giampaolo Russo       Salvatore Volpe
Country Manager Italia       Project Engineer Italia
Subject: Hydrogeological restrictions (ex RDL n. 3267/1923, RR n.1126/1926)  
Trans Adriatic Pipeline (TAP) Project with landing in Melendugno Municipality (LE), loc. San Foca.

Seen the final project, acquired with prot. AOO_036 00018999 on the 11/09/2013, it is communicated that the same is missing a series of essential documents:

- the receipt of the payment of € 100,00 on c/c 60225323 in the name of “Regione Puglia Tasse e Tributi e Proventi Regionali” (art. 20 quarter L.R. n. 18/2012);
- geological study:
  a) the risks of collapse of the area affected by the drilling, however, the project does not give adequate detail of the possible coating of the micro tunnel;
  b) the effects on groundwater flow, in particular the risk that the micro tunnel can become a way of runoff and destabilization of the dynamic flow of the fresh water and the salt water in the calcareous massif of salento, with the risk of accelerating and enhancing the phenomenon of salinization of coastal land.

It should be noted that the landscape report submitted does not deal in an adequate way the question of the prohibition to carry out this work in the buffer zone around the forests (100 m), which is in force with the PUTT and now also with the PPTR.
ANNEX 2

The construction method and characteristics of the "microtunnel" system

The microtunnel construction system involves the progressive drilling of a cylindrical tunnel boring machine (TBM) positioned in front of a train of lining segments. The tunnel lining is formed by prefabricated reinforced concrete tubular segments (Jacking pipes). Each segment has a diameter of 3 m and a length of 3 m.

The simultaneous advancement of the drilling head (fig. 1 and 2) and the lining segments is enabled through the thrust of hydraulic jacks positioned inside the starting shaft.

Fig.1: Schematic drawing of the drilling system.
The system allows:

- The construction of tunnels (including curved tunnels) with the immediate placement of the definitive lining;
- Continuous control over the direction of the tunneling at any stage;
- Remote control of the drilling parameters.

In the case of water saturated soil, the tunnel is drilled in such a way as to ensure a hydraulic seal during each of the construction phases, adopting: a hydraulic sealing of the starting shaft (made by reinforced concrete wall), a "pressure balance shield" for controlling external hydrostatic pressures, and joints that are also fitted with a sealing devices between the jacking pipes (lining) (see Fig.3).
The reinforced concrete segments will be suitably dimensioned and verified to withstand the high axial forces applied by the thrusting system and the load of the surrounding soil, both during the drilling stage and in permanent condition, thus ensuring the stability of the structure and the surrounding soil.

Given the high quality standards required, the reinforced concrete will be prefabricated using proper materials whose quality and properties are controlled and certified. They will therefore provide guaranteed resistance for the maximum expected load conditions.

The coating segment must also have a hydraulic seal, which means that it must be supplied with watertight joints that are capable of withstanding the hydrostatic pressures of the project. The joints between the jacking pipes will be designed to allow the designed angular deviation in the tunnel maintaining the hydraulic seal, the fit and alignment between two successive jacking pipes will be assured by shaping the edges or using steel cast collars, the hydraulic seal of the joint will be made of rubber rings (Fig. 3). The hydraulic seal between the segments will be certified to enable the tunnel to be inspected during each of the construction phases.

Annex 3

The present annex has the following structure:

- TAP Project and wooded areas in the Thematic Territorial Urban Plan for Landscape (PUTT/p);
- TAP Project and wooded areas in the Regional Landscape and Territorial Plan (PPTR)

As a reference, the paragraphs of the Environmental Impact Assessment (EIA) and the Landscape Assessment Report are listed, together with the related issues:

Section 3 – EIA Legislative Framework:

- 3.3.4.4 Landscape and Territorial Planning
- 3.3.4.5 Region Landscape and Territorial Plan (PPTR).

Annex 8 Landscape Impact Assessment:

- 3.1 Thematic Territorial Urban Planning (PUTT/p)
- 3.2 Regional Landscape and Territorial Plan (PPTR)
1. **TAP project and Wooded Areas - (PUTT/p)**

The Thematic Territorial Urban Planning (PUTT/p) – drawn up in accordance with the Law 431/85 - entered into force in 2000. However, it should be noted that the implementation of this plan will expire with the publication of the new Regional Landscape and Territorial Plan (PPTR) in the Official Bulletin of Apulia Region, currently under approval (at the moment it is in the process of public comments) and analysed in the following section.

Figure 1-1 shows the different zones identified in the study area. The information contained in the figure was gathered from the Geographic Information System of the PUTT/p.

**Figure 0-1**  PUTT/p (distinct geographical areas, components and assemblies)

Source: PUTT/p (2006), edited by ERM

**Adjacent Area – Wooded Area.**

In the zone identified as Wooded Area (art. 3.10.4 of NTA in PUTT) the protection guidelines (Art. 2.02 point 1.1) and protection directives (Art. 3.05, point 3.1) are applied.
In compliance with Art. 2.02 “...for the concession of authorizations, with subordinate planning tools, objectives of Landscape/Environment protection and valorisation shall be pursued in compliance with the following protection guidelines: ...[Omissis] ... 1.1 – in areas of Exceptional Value “A”: preservation and valorisation of the current situation and the recovery of compromised situations through detractors removal;”

In compliance with Art. 3.05 “for the agricultural, botanical – vegetation land cover, the protection shall be pursued for botanical – vegetation components in the Regional area having: a recognized scientific value, an ecologic and economic importance, a role in soil erosion protection, a recognized historical and aesthetical importance, by requiring for all the areas (Art. 2.01) both the protection and conservation of every environment of particular biological – vegetation interest and rare or threatened flora species, and the autochthonous botanical – vegetation heritage development. Moreover, ...[Omissis] ..., in the Broad Areas of exceptional value, in the application of the protection guidelines, for all the different areas under Art. 3.03, the following shall be avoided: damage of autochthonous vegetation species; introduction of alien vegetation species and removal of ecosystem components; opening of new roads or tracks and enlargement of existing ones; mining; placement of landfill or dumping areas, and every residential or industrial areas; modification of the hydrogeological setting”.

Art. 3.10.3 identifies further protection guidelines by distinguishing: “Adjacent Area” and “Annexed Area”:

- “Adjacent Area” (that is wooded area) is the area occupied by the woodland or the maquis;
- The “Annexed Area” is the area connected to the woodland; it is defined by the sub-plans or by the urban planning. When not defined, the annexed area shall be represented by a corridor of 100 meters from the asset under protection.

In the Adjacent area (area occupied by woodland and Mediterranean maquis, point 3.10.4) “projects and interventions only involving the following transformations are allowed: [omissis] 3. Above ground network infrastructure and, for those below ground, if location and route layout do not affect the vegetation”.

Annexed Area – Wooded Area

Concerning the annexed area (corridor with a constant width of 100 meters from the adjacent area, as defined by Art. 3.10.4 of NTA in PUTT) the protection guidelines (Art. 2.02, point 1.1) and protection directives (Art. 3.05, point 3.1) are applied.

In compliance with Art. 2.02 “...for the concession of authorizations, with subordinate planning tools, objectives of Landscape/Environment protection and valorisation shall be pursued in compliance with the following protection guidelines: ...[Omissis] ... 1.3 – in areas of Noticeable Value “C”: preservation and valorisation of the current setting, if qualified; transformation of the current setting if compromised, in compliance with the landscape characterisation;”

In compliance with Art. 3.05 “for the agricultural, botanical – vegetation land cover, the protection shall be pursued for botanical – vegetation components in the Regional area having: a recognized scientific value, an ecologic, economic importance, a role in soil erosion protection, a recognized historical and aesthetical importance, by requiring for all the areas (Art. 2.01) both the protection and conservation of every environment of particular biological – vegetation interest and rare or threatened flora species, and the Trans Adriatic Pipeline AG Italy, Branch
**Trans Adriatic Pipeline**

**autochthonous botanical – vegetation heritage development. Moreover, ...[Omissis] ..., in Broad Areas of Noticeable Value (“C” Art. 2.01) and the ones of Low Value (“D”), in the application of the protection guidelines, all the interventions of the landscape physical transformation and/or placement of new settlements shall be compatible with: the conservation of the elements characterizing the botanical/vegetation system, its reconstruction, and agricultural activities consistent with soil conservation.”

Moreover, as integration to what stated above, the following fundamental requirements are reported (Art. 3.10.3 of NTA):

(...b. Plans and/or projects and interventions are not allowed when they imply transformations compromising the morphology, the agricultural and land use characteristics with reference to the landscape and environmental relationship existing between the woodland/maquis and the adjacent areas. In particular the followings are not allowed (a list of projects, plans interventions follows, not including the present Project).

Still in the annexed areas (100 meters around the woodland area), “projects and interventions [omissis] involving the construction of [omissis] roads and technological infrastructures without important changes to site topography, are allowed”.

Therefore, in general, in light of what stated above, it is the proponent envisage that it is not sharable what asserted in the Note of the Servizio Forestale of Apulia Region concerning the existence of the “prohibition of realization of the Project in the wooded area respect zone (100 meters) already in force with PUTT (...)”:

such prohibition should be explicitly considered; while the intervention under discussion has been assessed not to be within the ones specifically forbidden. Moreover, such prohibition cannot be even gathered from a systematic review of the recalled prescriptions. Indeed, if we consider the fact that such restriction is not mentioned when referring to the Adjacent Area, that is the landscape asset specifically object to principal protection; it seems not understandable how, on the other hand, such constraint could exist with reference to the annexed area.

**Conclusion**

The following figures show at a large scale the landfall detail, where the wooded areas and the annexed areas are mapped. As shown in Figure 1-2, the Pipeline Base Case Route and the Work Strip (corridor of 30 meters), do not intersect either the wooded area or its adjacent area.

Figure 1-3 shows that the length of the micro-tunnel and the related Work Site were designed to protect the coastal wooded area. Such technology will allow to minimize the interference with the coastal strip, by reaching a depth of about 10 meters below the ground level.

It should be noted that the micro-tunnel Work Site was specifically located in an agricultural area in order not to interfere with the wooded area/Mediterranean Maquis.

Through a careful planning of the route in the design phase, and through the use of the micro-tunneling technology, the TAP Project will avoid any impact on wooded areas and their adjacent areas, thus resulting in compliance with the technical standards of PUTT/p.
Figure 0-2 PUTT/p (distinct geographical areas, components and assemblies).

Source: PUTT/p (2006), edited by ERM
Figure 0-3  PUTT/p (distinct geographical areas, components and assemblies)

Source: PUTT/p (2006), edited by ERM
Introduction

In April 2013, TAP AG analyzed the proposal of PPTR (examined at the offices of the Apulia Region), including the maps regarding the Protections System and, in particular, map n. 6.2.1 "Environmental ecosystem structure – vegetation components" in order to check the compliance of the project to the provided constraints, including the Wooded Areas (Article 142, paragraph 1, let. g, of the Code of Cultural Heritage and Landscape) and any related respect areas.

A careful analysis allowed to confirm that no restricted wooded area, mapped in the cartography of the Plan, was intersected by the pipeline route. In addition, the proposal of PPTR approved by DGR n. 1, October 11th 2010, and still available on the website of Apulia Puglia, does not include constraint for Woodland Respect Zones.

Such constraint (Article 143, paragraph 1, letter. e, of the Code of Cultural Heritage and Landscape) was included in the new PPTR (adopted in August 2013 with the resolution n. 1435/2013) with the publication of the new cartography, the definitive Technical Implementation Rules, and the related vectors files.

Compliance of the Project with the new adopted PPTR

The present section is related to what already analysed in the Landscape Impact Assessment (Annex 8 of the ESIA, Section 3.2), and in the Legislative Framework (Section 3.3.4.5 Regional Landscape and Territorial Plan - PPTR) with regard to the Economic and Environmental Structure.

Figure 2-1 and Figure 2-2 show the Botanical –Vegetation components mapped in the adopted PPTR. Both the figures highlight that the pipeline route is the result of continuous micro-optimizations aimed at preserving environmental, social and cultural heritage elements.

The figures show that the pipeline route, the microtunnel Work Site and the Working Strip intersect the Woodland Respect zone. In such areas, based on Article 63, it is not allowed "a1) transformation and removal of trees or shrubs...[omissis]... a6) construction of gas pipelines, power lines, telephone lines or electrical secondary lines, except for household connections and mesh plants if buried under an existing road."

Figure 2-4 Botanical and Vegetation components – PPTR
Figure 0-1 Botanical and Vegetation components – PPTR

Source: PPTR (August 2013), edited by ERM
Figure 0-2 Botanical and Vegetation components – PPTR

Source: PPTR (August 2013), edited by ERM
The figures show that the pipeline route, the microtunnel Work Site and the Working Strip intersect the Woodland Respect zone. In such areas, based on Article 63, it is not allowed "a1) transformation and removal of trees or shrubs...[omission]... a6) construction of gas pipelines, power lines, telephone lines or electrical secondary lines, except for household connections and mesh plants if buried under an existing road."

In addition, it should be noted that the wooded area at northwest of San Foca, although apparently intersected by the project route, it is crossed through the use of the microtunneling technology. In this area, in accordance with art. 62, it is not allowed to "build gas pipelines, power lines, telephone lines or electrical secondary lines, except for household connections and mesh plants if buried under the existing road."

In this regard, in relation to the aforementioned regulations, the writing company is delivering detailed observations aimed at explaining the reasons of the juridical, formal, and substantial unlawfulness of such prescriptions, with the resulting need of their modification.

Furthermore, as a consequence of the modification to Art. 105 of PPTR NTA with the introduction of the DGR n. 2022/2013, the resulting protection measures shall be applied uniquely "to buildings or areas falling under the Art. 134 of the Code" and no more also to the other “territorial constraints” defined by the PPTR. Therefore, with reference to this landscape constraints category (including the Woodland respect zones), the provisions of the adopted PPTR are not effective and they do not represent an evaluation parameter of the Project of interest in terms of the landscape profile.

In accordance with Art. 95 of the Technical Implementation Rules of the PPTR, public works and public utilities can be realized in derogation from the requirements of Title VI of the Rules for landscape and further contexts, as long as, during the landscape authorization or during the assessment of the landscape compatibility, such works:

a) are compatible with the quality objectives; and

b) do not exist location and/or design alternatives (art. 37).

With regard to point, a), Table 2-1 provides the Landscape and Territorial Quality Objectives, as defined by the PPTR and related sub-objectives (as defined in the Environmental Profile 10/Tavoliere Salentino - Document n.5 of the PPTR), together with the relative compatibility analysis of the Project.
**Table 1-1** Landscape and Territorial Quality Objectives of the Area - Ecosystem and Environmental Structure (Constraints: wooded areas, woodland respect zone)

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Project Compatibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>To improve the environmental quality of the territory</td>
<td>The microtunnel construction will avoid any interference with the wooded areas. The woodland respect zones will be restored at the end of the construction phase.</td>
</tr>
<tr>
<td>To increase the connectivity and biodiversity of the regional environmental system</td>
<td>As described in Chapter 8 of the ESIA, in its operation phase, the project does not envisage any natural habitat fragmentation.</td>
</tr>
<tr>
<td>To limit the consumption of agricultural and natural soil for infrastructure and building construction</td>
<td>During the operational phase, agricultural activity will be allowed along the gas pipeline route.</td>
</tr>
<tr>
<td>To ensure the geomorphological balance of drainage basins</td>
<td>The project has been optimized in order to not interfere with the Cassano marshland (Palude di Cassano), thus ensuring its geomorphological balance.</td>
</tr>
<tr>
<td>To value the watercourses as multifunctional ecological corridors</td>
<td>The project does not affect watercourses.</td>
</tr>
<tr>
<td>To value and requalify coastal landscapes</td>
<td>The microtunnel construction will ensure that there will be no interference with the coastal landscape.</td>
</tr>
<tr>
<td>To raise the ecological gradient of the rural ecosystems</td>
<td>During the operational phase, agricultural activity will be allowed along the gas pipeline route.</td>
</tr>
</tbody>
</table>

With regard to point b), it should be noted that the project represents the best solution in terms of environmental impact and, as such, does not have alternatives in terms of location and project design (as pointed out in *Appendix 2 – Alternative Assessment of the ESIA*).