CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2021

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FOREWORD: CEE OIL & GAS LAWS AND REGULATIONS AT A GLANCE

By Kostadin Sirleshtov – CMS CEE Head of Energy and Managing Partner of CMS Sofia

Across CEE, Oil & Gas Laws and Regulations are of utmost importance for both the legal sector and societies overall. Oil & Gas exploration and production have started over a century ago in countries like Poland and Romania, but the current dependence on a single source and the corresponding issues lead to the importance of the matter in the context of interconnectivity and security of supply. Over the last decades, my colleagues and I were devoted to providing legal assistance to the upstream, midstream, and downstream Oil & Gas sectors across CEE and we are delighted to share our knowledge within this CEELM Comparative Guide. The structure of the Guide is such that it provides the most important legal information structured in a practical way, which allows both focus on a single jurisdiction and cross-referencing and comparisons between the legal approaches in the various jurisdictions.

The CEELM Comparative Guide on Oil & Gas Laws and Regulations is prepared for both investors and legal experts, interested in this field. This is the very first issue of the Guide, but I hope that it will become a tradition for an updated Guide to be issued on an annual or bi-annual basis, as the sector really needs a dynamic platform that will allow the changes to the CEE Oil & Gas Laws and Regulations to the dully reflected and refreshed.

Naturally, the CEELM Comparative Guide on Oil & Gas Laws and Regulations provides just a snapshot of the most important and relevant matters, but I would like to encourage the readers to reach out to the authors in case of any additional questions or need for information.

I would like to use this opportunity to appreciate CEELM's assistance in taking the lead with the initiative of preparing of the CEELM Comparative Guide on Oil & Gas Laws and Regulations and I am very much looking forward to our further collaborations.

Enjoy the very first issue of the CEELM Comparative Guide on Oil & Gas Laws and Regulations in CEE! ■

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If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:
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1. SUMMARY

In 2017, electricity and natural gas markets regulator E-Control initiated a process for the further development of the gas balancing model with the aim of increasing market liquidity. Together with industry representatives, E-Control developed a concept for the updated gas balancing model. The final concept will be implemented within the framework of the new *Gas Market Model Ordinance 2020 (Gas-Marktmodell-Verordnung 2020*, Federal Law Gazette II 2019/425, as amended) which is to replace the previous *Gas Market Model Ordinance 2012* as of October 1, 2021. Due to the COVID-19 pandemic, the deadline was postponed to April 1, 2022. In addition to the introduction of integrated market area balancing (the balancing area covers transmission as well as distribution), this new decree also fundamentally restructures and streamlines the other contents of the ordinance with regard to network access, registration in the market area, and congestion management, etc.

The latest amendments on the gas market included the stipulation of new gas system usage charges, set out in the *Gas System Charges Ordinance 2013* (*Gas-Systemnutzungsentgelte-Verordnung 2013*, Federal Law Gazette II 2012/309, as amended).

The *Clean Energy for All Europeans* legislative package provides the legal framework for the *Austrian Renewable Energy Expansion Act* (*Erneuerbaren-Ausbau-Gesetz – EAG*, Federal Law Gazette I 2021/150, as amended). The measures defined therein serve to comply with the national reference values for renewable energy. Austria aims to cover 100% of its total electricity consumption from renewable energy sources from 2030 onwards. To achieve this target, it is planned to increase annual electricity generation from renewable sources. In addition, the share of nationally produced renewable gas is to be increased. Therefore, the EAG regulates the conditions for promoting the production of electricity as well as gas (including hydrogen) from renewable energy sources. The EAG introduced an important innovation for renewable gas as well as hydrogen/synthetic gas production plants. Installations for the production of hydrogen/synthetic gas are now eligible to receive an investment grant if the plant has a capacity of at least 1 megawatts, only utilizes renewable electricity, and if the hydrogen/synthetic gas is not admixed into the natural gas grid. Renewable gas production plants that do not classify as plants for the conversion of electricity into hydrogen/synthetic gas are eligible to receive an investment grant if the renewable gas is fed into the gas grid or used directly for end consumption.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

The regulatory framework for the natural gas market is governed by the *Austrian Gas Act (Gaswirtschaftsgesetz 2011 – GWG*, Federal Law Gazette I 2011/107, as amended), while the search, exploration, and production of natural gas is regulated by the *Mineral Resource Act* (*Mineralrohstoffgesetz – MinroG*, Federal Law Gazette I 1999/38, as amended). Additionally, the MinroG applies to the exploration and production of oil within the whole of Austria. This act also regulates the search and exploration of geological structures which can be used as storage facilities, as well as the underground storage of natural gas without tanks and the purification of stored natural gas. The storage of natural gas in (non-)hydrocarbon-bearing geological structures is carried out by RAG Energy Storage GmbH and OMV Gas Storage GmbH.

According to Sec. 1 no. 10 in conjunction with Sec. 4 of the MinroG, oil is considered a federal state-owned mineral resource that is in the possession of the Austrian Federal State. Therefore, the Federal State has the right to search, explore, and produce oil and natural gas. The Federal State is authorized to transfer the exercise of these rights to individuals or legal entities, and to groups of persons, based on commercial law, who have the necessary technical and financial means to establish and operate such mining activities (MinroG – Sec. 69 para.1). Such contracts are concluded by the Federal Minister for Economic Affairs in consultation with the Federal Minister of Finance.

The construction and operation of oil pipelines and associated infrastructure are regulated in the *Pipeline Act* (*Rohrleitungsgesetz*, Federal Law Gazette I 1975/411, as amended). Austria is considered as a transit country for crude oil with two main oil pipelines crossing Austrian territory: **(i)** the Trans-Alpine Pipeline (*Transalpine Oelleitung* – TAL) transports oil from the Port of Trieste, Italy, to Austria; **(ii)** the Adriatic Sea-Vienna pipeline (*Adria-Wien Pipeline* – AWP) branches off from the Trans-Alpine Pipeline close to the Italian-Austrian border and pumps the imported crude oil intended for the domestic market from Trieste directly to the refinery in Schwechat.

The Austrian natural gas market has been fully liberalized since October 1, 2002. By January 2013, a new gas market model was introduced through which the national and transit pipeline systems were merged into three market areas, i.e. East, Tyrol, and Vorarlberg. The market areas are managed by the market area manager (*Marktgebietmanager*), who is designated by the TSOs active in the respective market area and whose responsibilities include non-discriminatory access, coordination, admin-

istration, and balancing of accounts of the respective market area. Furthermore, the GWG stipulates that a VTP must be set up to be used, *inter alia*, for cross-border trading (GWG – Sec. 68 para.1). The Central European Gas Hub (CEGH) in Baumgarten serves as the virtual trading point (VTP) for Austria and has evolved into one of the most important settlement centers for natural gas in Europe. The most important transmission pipelines for natural gas are the Trans-Austria Gasleitung (TAG) and West-Austria-Gasleitung (WAG). The Austrian gas market does not possess an LNG terminal due to obvious reasons. Currently, only one plant for the liquefaction of bio-gas is operated in Austria. It is considered a pilot project of RAG. The produced Bio-LNG is supplied to lorries.

In May 2018, the Federal Ministry of Sustainability and Tourism together with the Federal Ministry of Transportation, Innovation and Technology announced their energy transition policy called *Climate and Energy Strategy #mission2030*. The goal was set to a "decarbonized energy supply by 2050." However, in December 2019, the Austrian Federal Government committed to achieving carbon neutrality already by 2040. Therefore, the Austrian Federal Government is committed to phasing out fossil energy to enhance decarbonization. In the future, a significant share of natural gas will be replaced by renewable gas (Greening the Gas). The Austrian Federal Government aims to inject 5 terawatts of renewable gas into the Austrian gas grid by 2030. Furthermore, research is being done regarding the technical possibilities of carbon separation and storage during the production of natural gas, resulting in "blue" hydrogen, which is not CO2-free, but low in carbon.

In March 2021, the BMK published a draft version of the EAG. By now, the EAG is fully in force and provides the organizational framework for investments to support Austria's energy transition by 2030. Investments in existing and future renewable gas production plants will contribute to an increase in domestically produced renewable gas. To assist market participants with the production of renewable gas, a service agency for renewable gases will be implemented.

Most recently, the EU Commission finalized the draft of a *Taxonomy Complementary Delegated Act* (EU Taxonomy), which will classify the treatment of natural gas as well as nuclear activities as climate neutral. Austria's Ministries are criticizing the EU Commission's proposal to label investments in natural gas as "climate-friendly." Therefore, Austria is considering filing a lawsuit against the EU Commission to prevent such investments from being included in the EU Taxonomy.

Furthermore, E-Control aims to establish an integrated balancing scheme for the entire natural gas market area without systematic separation between transmission level and distribution area. This should lead to a decrease in contractual and operational complexity. The final concept will be implemented within the framework of the new *Gas Market Model Ordinance 2020*.

2.2. Domestic oil & gas production and imports/exports

As stated above, the relevant regulations regarding oil and gas production are set out in the MinroG.

The Austrian natural gas market is highly dependent on imports from other countries, such as Russia, Norway, and Germany. The domestic production of natural gas dropped by 17.7% or approximately 1.8 terawatts to a total of only 8,310 terawatts in 2020. In the same year, the net import of gas amounted to 484.2 terawatts, while the net export amounted to 414.8 terawatts.

In 2020 the percentage of oil imports amounted to 92%. Therefore only 8% of the crude oil processed came from domestic sources. Total domestic oil consumption in 2020 amounted to around 9.8 megatonnes of oil equivalent. This means a dramatic decrease of 14.8% compared to the previous year.

The Austrian energy supply is based on a balanced mix of energy sources. In the long run, the importance of fossil energy sources has been declining in favor of renewable energy sources. This trend is also true for gas consumption but is slightly less distinct. While the share of gas (mixed gas and natural gas) in 2016 accounted for 20.9% of the gross inland energy consumption, it rose slightly to 22.4% in 2017 and then fell again to 21.8% in 2018. In 2020, the decline of natural gas in the gross domestic energy consumption continued, ending up at approximately 18.4%. Natural gas and oil are imported via pipelines. The Austrian gas market does not possess an LNG terminal for obvious reasons. Currently, only one bio-gas liquefication plant is operated in Austria. It is considered a pilot project of RAG. The produced Bio-LNG is supplied to trucks.

2.3. Foreign investment and participation

According to the *Foreign Trade Act* (FTA, *Aussenwirtschaftsgesetz – AussWG*, Federal Law Gazette I 2011/26, as amended), acquisitions of (at least) 25%, or of controlling interests in companies in specific industries, including in energy, by foreign investors (i.e. non-EEA and non-Swiss persons) require approval (FTA approval) by Austria's Federal Ministry for Digitization and Economic Affairs. The FTA approval is a so-called *ex ante* approval and applies in the case of the acquisition of energy supply and network companies. It requires the foreign investor to file for approval prior to entering into a legally binding agreement regarding such acquisition. Any acquisition entered into without required approval is invalid and, if imple-

mented, can be unwound. FTA approval is only required for direct investments by foreign investors. Therefore, as a rule, indirect investments by foreign investors via EU/EEA or Swiss entities are not captured by the approval regime, since EU law would not allow such investment restrictions. Accordingly, if the acquiring entity is domiciled within the EEA/EU or Switzerland, no FTA approval is required even if the acquiring entity's (indirect) shareholder is a foreign Investor (so-called indirect investment) unless such a structure was implemented and used to circumvent the approval requirement. Indirect investments might trigger an *ex officio* review procedure aimed at suspicious circumvention structures. The ministry can initiate the review procedure in exceptional cases only. It requires **(i)** a reasonable suspicion that the investment structure was chosen in order to circumvent the FTA approval requirement, **(ii)** a reasonable suspicion that the circumvention results in a threat to certain public interests, such as public order and public security, and **(iii)** the absence of EU provisions conflicting with the application of the FTA approval requirement.

2.4. Protection of investment

The regulatory policy in respect to the oil and natural gas sector is especially influenced and affected by European law (*Treaty on the Functioning of the European Union* [TFEU] and secondary law adopted on the basis of the TFEU). Furthermore, Austria ratified the *Energy Charter Treaty*.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

The exploration and production of oil and natural gas are regulated by the federal legislator in the MinroG. This act applies to the whole of Austria and not only regulates the exploration and production of oil and natural gas but also the search and exploration of geological structures that can be used as storage facilities. Additionally, this act contains provisions concerning the underground storage of natural gas without tanks and the purification of stored natural gas.

An Environmental Impact Assessment (EIA) has to be conducted if the exploration of oil or natural gas exceeds 500,000 cubic meters per day (reduced thresholds of 250,000 cubic meters per day apply to exploration fields located in a special protected area). The EIA approval, issued under the *EIA Act*, replaces the approval under the MinroG (one-stop shop).

On an administrative level, the competent authorities are the Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology (*Bundesministerium fur Klimaschutz, Umwelt, Energie, Mobilitat, Innovation und Technologie* – BMK). In case an EIA is required, the respective provincial government of the province where the project is located is the competent authority (*Landesregierung*). Applicants are entitled to appeal against decisions of the BMK at the Constitutional and/or the Administrative Court. The EIA decision, issued by the State Government, can be appealed at the Federal Administrative Court (*Bundesverwaltungsgericht*) and thereafter at the Constitutional and Supreme Administrative Court.

3.2. Foreign exploration

The Austrian Federal State has the right to search, explore, and produce oil and natural gas (MinroG – Sec. 68 para. 1) since oil and natural gas are considered "federally owned mineral resources" according to Sec. 1 No. 10 in conjunction with Sec. 4 of the MinroG. The same applies to the search of hydrocarbon-bearing geological structures that are to be used as storage facilities for oil or natural gas.

However, the Federal State is authorized to transfer the exercise of rights under Sec. 68 para. 1 of the MinroG to individuals or legal entities and to groups of persons based on commercial law who dispose of necessary technical and financial means to establish and operate such mining activities (MinroG – Sec. 69 para. 1). The transfer of these rights is governed by a civil law contract. The latter determines the general rights and obligations as well as the consideration for the transfer of such rights, e.g. appropriate remuneration or interest payments for the used area. These contracts are concluded by the BMK in coordination with the Federal Ministry of Finance. Civil courts are competent to adjust any arising legal differences.

The authorization to search and explore non-hydrocarbon-bearing geological structures that will be used as storage, as well as the storage therein, can be transferred by contract. This transfer must be notified to and verified by the authority. The authority will authorize the transfer of storage rights if the acquirer disposes of necessary technical and financial means for storage in such structures.

3.3. Stages of the exploration process

The search, exploration, and production of oil and natural gas and the search for geological structures to be used as storage facilities depend on work plans. Work plans will provide, e.g. information concerning the purpose, scope, mode, and time of work as well as safety measures and the names of the responsible persons. The mining beneficiary must notify the set-up of a mining establishment or an independent section of a mining establishment to the authority. According to Sec. 119 para. 1 of the MinroG, a permit must be obtained from the authorities for the construction (erection) of surface mining facilities and of tunnels, shafts, bores with boreholes of a 300 meters depth, and probes of a 300 meters depth originating from the surface that serve the purposes of mining. A mining facility is defined as an artificial independent local object that is used for the

search, production, purification in operational connection with the search and production of natural gas, and the search and exploration of geological structures used for the underground storage of natural gas without tanks and operational purification in connection with storage. An authorization for a mining facility can only be granted if **(i)** it is constructed (set up) on the property of the applicant, or on the property of another person with the owner's consent, or on the basis of a legally binding decision of the authority (MinroG – Sec. 148 et seq.), **(ii)** according to the "best available technology," the planned mining facility does not emit any avoidable emissions, **(iii)** on the basis of medical or other scientific evidence which may be considered, the life or health of persons is not endangered and there is no unreasonable impairment of persons, **(iv)** no danger for items not provided for use to the applicant and no impairment of the environment and water bodies beyond reasonable limits are to be expected, and **(v)** either the operation of the mining installation will not give rise to waste that is avoidable or non-recoverable according to the best available techniques or, where prevention or recovery of the waste is not economically justifiable, if it is ensured that the waste produced is properly disposed of. Additionally, public interests must be taken into consideration. The authority has the power to impose obligations, terms and conditions, and limitations when granting authorization. Generally, an operating approval is not required (MinroG – Sec. 119 para. 8).

3.4. Obligatory state participation

Austria's crude oil and natural gas reserves are legally owned by the Austrian Federal State (MinroG – Sec. 1 sub-para. 10 and Sec. 4 para.1 sub-para. 2). However, the Federal State may, in exchange for appropriate remuneration according to Sec. 69 of the MinroG, transfer its rights to extract and store oil and natural gas to individuals or legal entities. In Austria, the companies OMV, RAG, and ADX VIE (since 2020) carry out oil and natural gas development activities. Currently, the Austrian Federal State, via the *Oesterreichische Beteiligungs AG* – OEBAG has a 31.5% stake in OMV. In addition, various Austrian federal provinces are indirectly involved in RAG, whereby the majority share in RAG is held by EVN AG.

Geological data is consolidated in the "mining information system" (MinroG – Sec. 185). The right of inspection exists insofar as this is necessary to protect a legitimate interest in the information that outweighs the interests of the person concerned in maintaining confidentiality.

3.5. Risks to be considered

Worthy of note are the provisions regarding the transfer of rights according to Sec. 69 of the MinroG. The transfer of rights is subject to the availability of the necessary technical and financial resources.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Like exploration, the production of oil and gas is regulated by the MinroG.

According to Sec. 119 para. 1 of the MinroG, a permit must be obtained from the authorities for the construction (erection) of surface mining facilities. Parties in the approval process are **(i)** the applicant for the permit, **(ii)** the owners of the land on whose surface or in whose near-surface area the mining installation is to be erected and operated, and **(iii)** neighbors. For the purposes of this provision, these are all persons who could be endangered or harassed by the production (construction) or operation (use) of the mining facility, or whose property or other rights could be endangered. Other mining permittees are parties of the approval process, insofar as they may be hindered by the (new) mining facility in the exercise of their existing mining permissions. Prior to the granting of a permit, the administrative authorities appointed to safeguard public interests will be heard.

Furthermore, changes in a licensed mining facility require a permit.

Within the framework of the transfer of production rights by the state (MinroG – see Sec. 69 para.1), facility operators are obliged to dispose of necessary technical and financial means for the establishment and management of a mining company. Consequently, civil law contracts with the applicants provide for securities or guarantees related to oil and natural gas development. Existing contracts are not disclosed to the public. If the development activities are linked to the operation of landfills, applicants must provide securities or guarantees for potential restorations of the landfills to the competent authority. In addition, rightsholders must present a waste disposal plan two weeks prior to the commencement of operations to the ministry (MinroG – Sec. 117a).

Apart from authorizations based on the MinroG, several other authorizations (of different authorities) may be required, depending on the specific project. The obligation to obtain such authorizations may arise, e.g. from one of the provincial *Nature Conservation Acts* or the *Water Rights Act* (*Wasserrechtsgesetz 1959*, Federal Law Gazette I 1959/215, as amended). If a specific project is subject to an EIA, the competent authority issues a single decision under the *EIA Act* (*Umweltverträglichkeitsprüfungsgesetz 2000*, Federal Law Gazette I 1993/697, as amended), covering all necessary licenses (one-stop shop).

The EAG introduced an important innovation for renewable gas as well as hydrogen/synthetic gas production plants. Installations for the production of hydrogen/synthetic gas are now eligible to receive an investment grant if the plant has a capaci-

ty of at least 1 megawatt, only utilizes renewable electricity and if the hydrogen/synthetic gas is not admixed into the natural gas grid (EAG – Sec. 62). Renewable gas production plants, which do not classify as plants for the conversion of electricity into hydrogen/synthetic gas are eligible to receive an investment grant if the renewable gas is fed into the gas grid or used directly for end consumption (EAG – Sec. 61).

4.2. Foreign production

As stated above, the Austrian Federal State has the right to search, explore, and produce oil and natural gas (MinroG – Sec. 68 para. 1). However, this exclusive right of the Federal State can be transferred to individuals or legal entities as well as to groups of persons based on commercial law who dispose of necessary technical and financial means to establish and operate such mining activities (MinroG – Sec. 69 para. 1). According to Sec. 114 of the MinroG, the change in the person of the mining licensee will not affect the validity of permits, approvals, and authorizations.

4.3. Stages of the production process

According to Sec. 119 para. 1 of the MinroG, a permit must be obtained from the authorities for the construction of surface mining facilities. A mining facility is defined as an artificial independent local object used for the search, production, purification in operational connection with the search and production of natural gas, and also the search and exploration of geological structures used for the underground storage of natural gas without tanks and the operational purification in connection with storage. An authorization for a mining facility can only be granted if the requirements of Sec. 119 of the MinroG are met. For more details see Section 3.3.

4.4. Obligatory state participation

The two companies carrying out oil and natural gas development activities in Austria are OMV, a partly federal state-owned company, and Rohoel-Aufsuchungs AG (RAG). The only oil refinery in Austria is in Schwechat and is operated by OMV.

As stated above, the exercise of specific rights regarding oil and natural gas development (production) is transferred by contract (MinroG – Sec. 69 para. 1). This is done against the payment of an appropriate consideration.

Austrian law does not stipulate special restrictions on the export of oil or natural gas production. In the event of a crisis, however, certain measures (including export restrictions) may be taken based on the *Energy Steering Act 2012* (*Energielenkungsgesetz*, Federal Law Gazette I 2013/41).

4.5. Risks to be considered

Austria implemented the *Stocks of Crude Oil and Petroleum Products Directive* into a number of national acts and regulations, to mitigate an energy supply crisis in the European Union by maintaining a minimum stock level, maintaining information on these stock levels, and ensuring the accessibility and availability of the stocks. To ensure this, oil producers must submit monthly oil production data to the ministry (*Oil Statistics Regulation* – Sec. 3). Similar obligations are stipulated to gas producers in Sec. 5 para. 2 of the *Gas Statistics Regulation*.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

According to Sec. 119 para. 14 of the MinroG, the abandonment of a mining facility must be notified to the competent authority by the owner of a mining facility. This notification requirement does not apply if the abandonment of a mining facility has been indicated to the authority in connection with a closure plan. This plan needs to be approved by the authority. The latter is finally empowered to prescribe safety measures in this regard.

5.2. Environmental and HSE consideration

Apart from authorizations based on the MinroG, several other authorizations (of different authorities) may be required, depending on the specific project. The obligation to obtain such authorizations may arise, e.g. from one of the provincial *Nature Conservation Acts* or the *Water Rights Act*. If a specific project is subject to an EIA, the competent authority issues a single decision under the *EIA Act*, covering all necessary licenses (one-stop shop).

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

The regulatory policy in respect to the oil and natural gas sector is especially influenced and affected by European law (*Treaty on the Functioning of the European Union* [TFEU] and secondary law adopted based on the TFEU).

6.2. Offshore Safety Directive

No, there is no OSD implemented in the Austrian regulatory framework.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Austrian law does not provide for special restrictions on the export of oil or natural gas production. In the event of a crisis, however, certain measures (including export restrictions) may be taken based on the *Energy Steering Act 2012* (*Energielenkungsgesetz*, Federal Law Gazette I 2013/41).

Import activities of oil for commercial purposes from other EU Member States must be reported to Austrian customs (*Oil Provisionment Act 2012* – Sec. 11 para. 1) ("*Erdoelbevorratungsgesetz – EBG*", Federal Law Gazette I 2012/78, as amended). The competent Federal Ministry (i.e. the BMK) is then notified by the Austrian customs and is in charge of verifying the completeness and accuracy of the imported quantities of oil and oil products, as registered by the importer.

According to Sec. 5 para.1 of the *Oil Provisionment Act 2012*, importers of oil and oil products must hold 25% of the net import amount of the preceding year in domestic stock as an emergency reserve from July 1 to June 30 of the subsequent year. This percentage may be amended by the competent Federal Minister to meet international obligations.

However, transporting fuel oils in main or reserve tanks of vehicles is not subject to regulation under the *Oil Provisionment Act 2012*.

7.2. Transportation

Natural gas is transported via the TAG (Trans-Austria Gasleitung) and WAG (West-Austria-Gasleitung) pipeline systems (the major transmission lines in Austria), the South East Gas Pipeline (SOL), the Hungarian-Austrian Gas Pipeline (HAG), the March-Baumgarten Pipeline (MAB), the Kittsee- Pipeline (KIP), the Austria-Bavaria-gasline (ABG) and the PENTAWest pipeline (PW). WAG runs from Baumgarten an der March on the Austrian-Slovak border through Lower Austria and Upper Austria to Oberkappel on the border with Germany. WAG is operated by GCA (the shareholders are Verbund with 51% and AS Gasinfrastruktur with 49%). The TAG pipeline comprises three parallel pipelines and the auxiliary equipment for each, including compressor stations and entry/exit points. TAG runs from Baumgarten an der March on the Austrian-Slovak border, through Lower Austria, Burgenland, Styria, and to Arnoldstein in Carinthia on the border between Austria and Italy. TAG is owned and operated by Trans Austria Gasleitung GmbH (GCA and Italian TSO Snam are shareholders). Both GCA and Trans Austria Gasleitung GmbH have been certified by E-Control as TSOs under the ITO model. Distribution lines are operated by several regional and municipal Distribution System Operators (DSOs).

The two main oil pipelines crossing the Austrian territory are the TAL, transporting oil from Italy to Germany and the Czech Republic via Austria, and the AWP, which branches off from the TAL and transports oil from the Austrian-Italian border to the refinery in Schwechat. The TAL pipeline is owned by a consortium of 10 oil companies, including OMV and Royal Dutch Shell. The Austrian part of the TAL is operated by Transalpine Oelleitung in Oesterreich GmbH. The AWP pipeline is owned and operated by OMV Refining & Marketing GmbH.

The regulatory framework for the construction and operation of transportation pipelines and storage facilities of natural gas is set out in the GWG . In general, the construction, expansion, fundamental changes, and operation of natural gas pipelines are subject to approval of the authority (see GWG – Sec. 148). Within the framework of such an approval procedure, the authority examines the potential impacts of planned natural gas pipeline systems on life, health, rights *in rem*, neighbors, and the environment. The authority further considers compliance with safety regulations and relevant technical rules and ensures that the waste heat from the compression of natural gas is supplied to a utilization concept to the extent that is technically possible and economically reasonable (GWG – Sec. 135). The competent authority must be notified of any completion or permanent shutdown of pipelines. Generally, the operator of natural gas pipelines may start operations with the notification of completion. Depending on the specific project, several other authorizations and approvals may be required (e.g. resulting from one of the provincial Nature Conservation Acts). If a specific project is subject to an EIA, the competent authority issues a single decision under the *EIA Act*, covering all necessary authorizations (one-stop shop).

The operation of a natural gas pipeline is subject to a license issued by the regulatory authority – E-Control (GWG – Sec. 119). The license must be granted if certain license conditions are fulfilled (e.g. third-party liability insurance). The authority may impose obligations and terms or grant the authorization temporarily (GWG – Sec. 43). In general, the TSO must comply with one of the unbundling models set out in the *Gas Directive 2009/73/EC* (OU, ISO, ITO, or ITO+). Gas storage pipes and spherical gas storage tanks also require a license under the GWG. Gas storage facilities are subject to the approval requirements under the MinroG.

The construction and operation of oil pipelines and associated infrastructure are regulated in the *Pipeline Act* (*Rohrleitungsgesetz*, Federal Law Gazette I 1975/411, as amended). According to Sec. 3 of the *Pipeline Act*, as a rule, the transportation of goods via a pipeline, as well as the construction and operation of a pipeline, is subject to a concession issued by the provincial governor. If the pipeline crosses more than one federal

province or the national border, the Federal Minister is the competent authority. In addition, a permit for the construction and operation of the pipeline must be obtained (*Pipeline Act* – Sec. 17). This permit is granted on the basis of a technical construction plan submitted by the project developer. Besides the permit under the *Pipeline Act*, further regulatory permits (e.g. in accordance with the *Water Act or Waste Management Act*, etc.) may have to be obtained from the respective competent authorities.

Access to the natural gas transportation grid is subject to regulated third-party access (TPA). Therefore, GTC for access to the grid must be approved *ex ante* by the regulatory authority, which also sets the tariffs for access to the domestic transport system. Tariffs are paid by the end-consumers (postage stamp tariff). The tariffs for transmission system operators will be calculated by applying a methodology that is subject to approval by the regulatory authority – E-Control – by official decision and must comply with the requisites of Article 13 of *Regulation (EC) No. 715/2009* (Gas Directive) as well as *Regulation 2017/460* (*Tariff Network Code*). Upon request of E-Control, the methodology will be adjusted or redesigned. The tariffs resulting from the application of the approved methodology are enacted by means of a regulation of the regulatory authority and are published on the internet as well as in the Federal Law Gazette (*Bundesgesetzblatt*).

Unlike in the gas sector, the terms to access the oil pipeline network are not regulated. The parties are free to agree on such terms in contractual agreements. Competition law may constitute a limitation to the margin of discretion of oil pipeline network operators.

7.3. Land rights

Under Sec. 144 para. 1 of the GWG, the authority will authorize the temporary use of third-party land on application with regard to preparatory work in connection with the construction, expansion, or conversion of a natural gas pipeline system. The application will state the nature and duration of the intended preliminary works and provide a work plan. The applicant is legally entitled to obtain such a decision (only) if the preliminary works begin within one year of the application being filed. The party authorized to carry out preliminary works must duly compensate the owners of the properties concerned, any parties who have a right *in rem* on these properties (except mortgage creditors), and any parties who hold mining licenses for any restrictions they had at the time when the permit was granted (GWG – see Sec. 144 para. 9). Property owners and any other parties who have a right *in rem* on a property may be expropriated or restricted in these property rights, provided this is required with a view to construct a pipeline (transmission or distribution line) and the expropriation or restriction is in the public interest. A public interest will be deemed to exist if a provision for such a natural gas pipeline facility has been laid down in the long-term plan or the network development plan. In such a case, the regulatory authority – E-Control – will confirm the existence of a public interest by official decision. Where a natural gas pipeline facility is not included in the long-term plan or network development plan, a public interest will be deemed to exist if the construction of such a facility is necessary to achieve the objectives of the GWG. For natural gas line facilities with a pressure range up to and including 0.6 megapascals, private property may only be expropriated if no public land is available in the area concerned or if the natural gas undertaking cannot, for economic reasons, be reasonably expected to use public land.

For the construction of oil pipelines, the *Pipeline Act* provides for the right of the project developer to access foreign land in order to conduct preliminary studies for the preparation of the project (*Pipeline Act* – Sec. 7 para. 1). Furthermore, the authority will, upon application by the project developer, order the expropriation of a property, if the permanent positioning of the pipeline at a certain location is required either for technical reasons or because the cost of rerouting the pipeline would be disproportionate. Expropriation may include easement rights or the transfer of the property to the project developer. However, the transfer of the property must be a measure of last resort (*Pipeline Act* – Sec. 27).

7.4. Access and integration

The Austrian natural gas transportation network is disconnected and consists of three market areas. The transportation pipelines of these market areas are not connected within Austria. Therefore, transportation of natural gas between different control areas, e.g. from the Eastern part of Austria to Tyrol, is only possible by using foreign networks (e.g. via Germany). A market area manager is established for each of the market areas. The TSOs are obliged to cooperate with other system operators. For instance, they must exchange information and data in order to set up a long-term network development plan. Moreover, system operators are obliged to conclude uniform interconnection point agreements with each other for all interconnection points between their systems. Such interconnection point agreements at interconnection points will be concluded in consultation with, and following, the specifications of the market area manager and the distribution area manager, as applicable. The same will apply for interconnection point agreements with system operators in other countries and the operators of storage or production facilities.

Access to natural gas transportation pipelines will be granted by the DSO under non-discriminatory terms and approved GTC and regulated tariffs. DSOs are obliged to enter into civil

law contracts with consumers on the connection to the natural gas distribution system and system utilization under approved GTC within their distribution area (compare GWG – Sec. 27 and 58). Network access may be denied by the system operator in writing for the reasons stipulated in Sec. 33 para. 1 of the GWG.

There are two main oil pipelines crossing the Austrian territory: the TAL, transporting oil from Italy to Germany and the Czech Republic via Austria, and the AWP, which branches off from the TAL and transports oil from the Austrian-Italian border to the refinery in Schwechat. Unlike in the gas sector, access to oil pipelines is not regulated. However, the central stockholding entity Erdoel-Lagergesellschaft GmbH (ELG) is required to conclude agreements on the assumption of stockholding obligations by regulation (Oil Provisionment Act – Sec. 8 para. 5).

7.5. Gas transmission and distribution

The Austrian gas transmission grid spans over approximately 1,700 kilometers. The two major natural gas pipeline transmission systems are the Trans-Austria Gasleitung (TAG) and the West-Austria-Gasleitung (WAG). The TAG is operated by Trans Austria Gasleitung GmbH, which is held by the Italian TSO Snam S.p.A. (Snam) (84.47%) and GCA from Austria (15.53%). The WAG gas pipeline system is owned by GCA. The shareholders of GCA are AS Gasinfrastruktur GmbH with 49% (a joint venture between Allianz Capital Partners of Germany [51%] and Snam [49%]) and Verbund with 51%. The total length of the Austrian distribution network reaches approximately 44,000 kilometers and is operated by various regional and municipal DSOs.

Domestic transmission and distribution networks are subject to regulated third-party access (TPA), which means that access is granted based on GTC, which are approved *ex ante*, and that tariffs are regulated.

The natural gas grid is divided into three market areas (East, Tyrol, and Vorarlberg), within which a market area manager, a distribution area manager, and a clearing and settlement agent are entrusted with providing system services. The market area manager will be designated by the transmission system operators. The market area manager will have, *inter alia*, the following responsibilities: **(i)** to ensure the establishment of non-discriminatory access to the virtual trading point; **(ii)** to manage the balance groups active in the market area; **(iii)** to coordinate system operations and the use of line pack, as well as the use of physical balancing energy together with the market area's distribution area manager, mainly via the virtual trading point; **(iv)** to establish a uniform methodology for the calculation and announcement of capacity at the entry/exit points of the market area's transmission network; **(v)** to organize the establishment and operation of the online platform for offering capacity; **(vi)** on the basis of a variety of load-flow scenarios and together with the transmission system operators and the distribution area manager, to draw up a common forecast of the capacity need and utilization in the market area's transmission network over the next 10 years; **(vii)** to draw up a coordinated network development plan; **(viii)** to coordinate measures to overcome physical congestions with the distribution area manager, the system operators and storage system operators in the market area; and **(ix)** to coordinate the nomination procedure for the transmission system, including the exchange of nominations with the operator of the virtual trading point.

Network users must be a member of a balance group or establish their own balance group. A balance group representative bears the responsibility for the balance group. He is obliged to develop schedules and transmit them to the clearing and settlement agent and the control area manager.

A license from the regulatory authority – E-Control – is required to operate a distribution network and must be granted if certain license conditions are fulfilled (e.g. third-party liability insurance). The authority may impose obligations and terms or grant the authorization temporarily (GWG – Sec. 43). DSOs are required to appoint an individual as technical director in charge of managing and supervising the operation of the system before the initial operation. Additionally, the system operator may appoint a managing director to carry out its function, who will be responsible to the authority for compliance with the provisions of the GWG (see GWG – Sec. 46). A DSO has to notify the appointment of these two persons to the authority.

DSOs are obliged to enter into civil law contracts with consumers on the connection to the natural gas distribution system and system utilization under approved GTC within their distribution area (i.e. a system usage charge set out by regulation (*Systemnutzungsentgelte-Verordnung*, see in detail GWG –Sec. 27 et seq. and Sec. 58 et seq.). However, access to the distribution system may be denied by the DSO under certain conditions, as provided by law. The refusal must be notified in writing (GWG – Sec. 33). The regulatory authority – E-Control – decides upon appeals regarding the denial of access. Access may be denied by the system operator under certain conditions, e.g. extraordinary system conditions, insufficient system capacity, or insufficient interconnection of systems. If network access is refused due to lack of network capacity or lack of network integration for transports in the distribution network, the party entitled to network access may apply for capacity expansion. The distribution area manager will take due account of the capacity need indicated in the application when drawing up the long-term plan. Capacity expansion applications will be approved under certain conditions. The costs

arising from the capacity expansion are allocated to the grid users via the regulated transport tariffs. The regulated tariffs are based on the allowed costs of the system operators (to be calculated in accordance with the GWG).

According to Sec. 72 of the GWG, the following tariffs for the usage of the distribution networks are charged:

(i) a system utilization charge;

(ii) a system admission charge;

(iii) a system provision charge;

(iv) a metering charge; and

(v) supplementary service charges.

The regulatory authority (E-Control) will set the distribution system charges listed above under **(i), (iii)**, **(iv),** and **(v)**, with the charges under **(i)**, **(iii)**, and **(v)** being fixed rates, by regulation. The charge under **(iv)** will be capped. The tariffs for the transmission system charges listed under **(i)** to **(iii)** at the entry and exit points concerned will be determined by applying a methodology to be approved by E-Control upon a proposal by the transmission system operators and will be enacted by regulation.

8. TRADING

8.1. Trading license

Natural gas is traded through the Virtual Trading Point (VTP). The VTP is a notional point in a market area at which market participants may trade natural gas within the market area after feed-in and before feed-out even without having the right to system access for the market area. Access to the VTP is subject to the operational rules of the market area manager and the transmission system operators, in line with the market rules. The VTP is not a physical entry or exit point but enables natural gas buyers and sellers to purchase and sell natural gas without the need to book capacity. The operator of the virtual trading point, who is designated to the regulatory authority by the market area manager, is independent in terms of legal form, organization, and decision-making, in particular from the vertically integrated natural gas undertaking. The VTP is operated by one of the most important gas trading platforms currently: the Central European Gas Hub AG, which is a 65% subsidiary of OMV Gas & Power GmbH. CEGH provides hub services as well as gas auctions. Therefore, natural gas in Austria is mainly traded at the CEGH. Trading can either be done OTC or on the gas exchange platform. In both cases, the gas trader must register with CEGH and conclude a CEGH Membership Agreement.

CEGH Gas Exchange is offered through the pan-European PEGAS platform and operated under the Powernext rulebook. The European Commodity and Clearing AG is the clearing agent and clearing house.

According to the GWG, natural gas traders are natural or legal persons buying or selling natural gas without carrying out the function of transmission or distribution within or outside the system in which such a natural gas trader is established. Natural gas traders buying or selling natural gas in the federal territory of Austria must notify their activities to the regulatory authority – E-Control. REMIT prohibits insider trading and attempted or actual market manipulation in wholesale energy markets. Furthermore, REMIT imposes reporting requirements for trades. According to Sec. 10a of the GWG, market participants who are obliged to publish inside information pursuant to Article 4 of *EU Regulation No. 1227/2011* are additionally obliged to inform E-Control simultaneously.

The *European Market Infrastructure Regulation* (*EU Regulation No. 648/2012* of the European Parliament and of the Council of July 4, 2012, on OTC derivatives, central counterparties (CCPs), and trade repositories (TRs) – EMIR) entered into force on August 16, 2012. If the energy trader exceeds the clearing threshold hereunder, the clearing obligation, the risk mitigation techniques, and the reporting obligations must be fulfilled. Below the clearing threshold, only the reporting obligation and certain risk mitigation techniques are applicable.

According to the *Data Storage Regulation* (*Energiegrosshandels-Transaktionsdaten-Aufbewahrungsverordnung*, Federal Law Gazette II 2012/337), a regulation on wholesale energy transaction data storage, energy traders are obliged to keep data of their transactions for five years. This data includes the identity of the buyer/seller, the energy exchange or other trading venue on which the transaction was effected, trading day and time of the transaction, contract specifications, etc. This obligation applies for OTC trading as well as for exchange trading. The data will be made available to E-Control, the Austrian Federal Competition Authority, and the European Commission at any time as required.

8.2. Products

The GWG provides for the establishment of a virtual trading point system. The VTP is a notional point in a market area at which market participants can trade natural gas even without having the right to system access for the market area. The VTP is not a physical entry or exit point but enables natural gas buyers and sellers to purchase and sell natural gas without the need to book capacity; therefore, trading of unbundled products is possible.

The VTP is operated by the Central European Gas Hub.

9. COMPETITION

9.1. Authorities

On an administrative level, E-Control is competent for market regulation. The competence of other authorities being responsible for competition aspects such as the Federal Competition Authority (FCA), the Federal Cartel Attorney, and the Cartel Court remains unaffected.

Primary legal sources for the determination of whether the conduct was anti-completive are **(i)** the *Austrian Anti-Trust Act* (*Kartellgesetz*, Federal Law Gazette I 2005/61, as amended), the GWG, and the *Energy Regulatory Authority Act* (*Energie-Control-Gesetz - E-Control-G*, Federal Law Gazette I 2010/110, as amended), as well as **(ii)** Articles 101 and 102 of the *Treaty on the Functioning of the European Union* (TFEU), containing the EU rules on competition.

9.2. Anti-competitive actions

The regulator must observe the criteria of the *Austrian Anti-Trust Act*, Arts 101 and 102 of the TFEU, as well as the GWG and the *Energy Regulatory Authority Act*.

One of the regulator's key tasks is to exercise market oversight. If the regulator identifies any competition violations, it has the power to instruct the respective market participant by way of official decision to act in compliance with the legal obligations. In carrying out these tasks, the regulator must seek agreement between the parties involved (E-Control-G – Sec. 24 para. 2).

According to the Austrian Merger Control Regime, set out in the *Austrian Anti-Trust Act*, a transaction must be notified to the FCA if it meets the requirements stipulated in Sec. 7 of the *Austrian Anti-Trust Act*, as well as Sec. 9 para. 1 of the *Austrian Anti-Trust Act*. Concentrations that do not meet the turnover thresholds of Sec. 9 para. 1 of the *Austrian Anti-Trust Act* nevertheless must be notified, provided Sec. 9 para. 4 of the A*ustrian Anti-Trust Act* is applicable.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

There is no stability clause for oil and gas companies in Austrian law.

10.2. Compulsory dispute resolution procedure

No compulsory dispute resolution procedures apply between the regulator and corporations in the oil or natural gas sector.

10.3. International treaty protection

The *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* was ratified in 1961, and the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* was ratified in 1971.

Generally, there is no special difficulty in litigating or seeking to enforce judgments or awards, against Government authorities or State organs.

We are not aware of any instances in the oil and natural gas sector when foreign corporations have successfully obtained commercial judgments or awards against Austrian Government authorities or State organs pursuant to litigation before domestic courts. However, Austria's legal system is globally recognized as being independent and impartial. Thus, generally, there is no reason why foreign corporations should not be able to obtain judgments or awards against the Austrian Government or State organs.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

In the autumn of 2020, significant changes to the *Underground Resources Act* (URA) were adopted. The URA is the main Bulgarian piece of legislation, regulating the prospecting and exploration of oil and gas, exploration, and production. The changes to the legislation were largely commented on by the business and current draft legislation seems to accommodate most of the concerns of different stakeholders.

The *Energy Act* is the other piece of legislation regulating the sale and purchase of natural gas; setting up the licensing procedures for trading with natural gas; holding gas storage facilities, etc.

Currently, the liberalization of the natural gas market in Bulgaria is booming.

Bulgartransgaz EAD, a state-owned company, is the sole entitled natural gas transmission network operator in Bulgaria.

Another company holds a license of a public supplier of natural gas – Bulgargaz EAD – which is also wholly state-owned.

There are two operators of gas exchange stocks in Bulgaria. These are the Balkan Gas Hub and Bulgarian Energy Trade Platform. Balkan Gas Hub is wholly owned by Bulgartransgaz EAD; while the second one is privately owned.

Due to the growing demand for natural gas on the market, we see that there are more and more international players stepping on the Bulgarian market. The number of registered participants on the Balkan Gas Hub is now 50. The second gas exchange has 14 registered members.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

As mentioned above, it is the URA the main legislative act which regulates and governs the prospecting and exploration, development, and production of oil and gas in Bulgaria. Prospecting and exploration of oil and gas may be done only based on a license issued by the Council of Ministers at the suggestion of the Minister of Energy.

During the prospecting and exploration phase, the license holder pays an annual fee based on the area of the block where the prospecting and exploration rights are granted. In addition to the annual fee, the license holder is obliged to hold a guarantee covering the performance of the approved overall and annual work program; and covering its environmental obligations. Rarely, the permit holder may need to pay for extracted natural resources should the quantities meet the requirements set in the respective agreement for prospecting and exploration.

Once a production license is issued, the company pays the state royalty fees based on the production. The ordinance for setting up the mechanism for payment of the royalty fees is under discussion by authorities and businesses for quite some time now and we are expecting further development in its amendment and supplement.

The import and export of oil and gas are regulated by general legislation, including the URA and the *Energy Act*. A license is needed for trading with natural gas, including import and export if they are regarded as trading pf natural gas.

There is only one license for a public gas supplier which is held by the 100 % state-owned company Bulgargaz EAD.

The other state-owned company is Bulgartransgaz EAD which is a combined operator performing licensed activities of natural gas transmission and storage. The Company is an owner and operator of gas transmission infrastructure for natural gas transmission to natural gas distribution companies and industrial consumers on the territory of Bulgaria and to the neighboring countries Romania, Turkey, Greece, North Macedonia, and Serbia; underground gas storage in Chiren (Chiren UGS) with major function – natural gas storage for covering the seasonal fluctuations in consumption and delivery of natural gas.

Bulgaria's energy sector is still dominated by electricity, produced mainly from nuclear, coal, and renewables. However, coal-fueled plants are regarded as something that either needs big investments to be clean or replaced by gas-fueled generators. The country's gas market has a huge room potential for development and investments though we see significant growth in it due to the liberalization of the gas market and construction of a new pipeline system.

Bulgaria is still very much dependent on imported gas. The mix of imported gas is getting more and more variable. Domestic production has been in decline in the past years.

In the past years, we have seen a detailed exploration of the oil and gas potential offshore Bulgaria. Prospecting and exploration works in the largest Bulgarian block offshore continue.

2.2. Domestic oil & gas production and imports/exports

At present, Bulgaria has proven insignificant quantities of natural gas and oil reserves. 18 concessions have been granted from the group of mineral resources – oil and natural gas, 14 of which are in onshore territories, and in limited quantities oil and condensate are extracted. In 2019, 22 million tons of oil

were extracted, which is insufficient to cover the needs of the domestic market. Given the low yield, the country's oil needs are met by imports.

So far, no significant natural gas deposits have been discovered on the territory of the Republic of Bulgaria. The actions that have been taken are to explore and search for new natural gas fields, both onshore and in the Black Sea – Khan Asparuh Block and the Khan Kubrat Block. Currently, production in the country is limited, covering just over 1% of annual consumption. The production of natural gas in the country in 2019 amounts to 29 million cubic meters, and the trend is for the rapid depletion of existing fields. To meet the needs of Bulgarian consumers for natural gas relies mainly on imports. Recently, in 2019, Bulgaria realized alternative supplies of liquified natural gas from six different sources. The delivered quantities reached 0.5 billion cubic meters of gas at competitive prices.

An important element related to the security of natural gas supply is the underground gas storage facility in Chiren. Its capacity is 550 million cubic meters of natural gas.

Following the information shared by the National Statistics Institute for 2021 is: 21 million cubic meters produced gas; 3015 million cubic meters imported natural gas.

2.3. Foreign investment and participation

Bulgarian legislation does not provide restrictions on foreign stakeholders to enter the domestic market. We witness a continuous strategy to develop the Bulgarian energy sector environment in an investor-friendly direction.

The URA imposes certain requirements to companies to meet to be granted a permit for exploration and production such as: the company needs to be registered under the *Bulgarian Commerce Act* or a similar act of another country; the company may not be registered under the legislation of a country with preferential tax treatment; the company needs to meet the financial, technical and management requirements to qualify for bidding round, etc.

Bulgaria is a member of the *Energy Charter Treaty*. The country also takes all necessary steps in time due manner to implement relevant to the energy sector EU Directives. Bulgaria has been represented in court and arbitration cases, derived from the energy sector legislation in the past and by no means make an exception in comparison with other member states of the European Union when it comes to bearing its liability before domestic and foreign investors.

It is very important to mention that the URA does incorporate a stability clause, meaning that investment is given stability when the transaction is entered. The clause provides that:

In case of changes to the Bulgarian legislation which limit the rights or cause material damages to the permit holder, on the request of the permit holder the terms and conditions of the executed contract shall be amended to restore its rights and interests corresponding to the initially concluded contract.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

In Bulgaria, the exploration and production of underground resources are regulated activities. As mentioned above this is regulated by the *Underground Resources Act* and the secondary legislation on the implementation of the URA.

A permit for prospecting and exploration may be granted following a competitive procedure or on the initiation of an interested party where it is also announced the possibility for other participants to bid.

As mentioned above, the candidates shall meet a set of requirements to qualify for bidding for a license for prospecting and exploration of oil and gas.

The permits for prospecting and exploration of natural resources like oil and gas are granted on the consent of the Council of Ministers based on the suggestion of the Minister of Energy. This means that the Ministry of Energy is leading the whole procedure and running the coordination with other ministries prior to having the permit approved by the Council of Ministers. In practice, this is a rather very formalistic and thorough procedure that consumes at least four months to have completed.

When the bidding round is started by the initiation of the Council of Ministers on the suggestion of the Minister of Energy the public call is promulgated in the Bulgarian State Gazette and all interested parties are given the main terms and conditions under which the license shall be awarded. The invitation includes the area it will be bid for, its coordinates, the land use fee payable, any requirements for having to drill a prospecting well, any specifics of the area, information where interested parties will be given access to available information on the study of the concerned area, etc.

A permit is an administrative act. Its issuance is promulgated in the State Gazette and it is subject to appeal within 14 days following the publication by any party that has legal standing to do so. The permit does not enter into force, and the exploration contract cannot be signed before the expiry of the appeal period or before the completion of the appeal procedure. The grantor may decide to allow preliminary implementation of the permit, in which case the contract can be signed before

the expiry of the period for appeals.

As prospecting and exploration of natural underground resources is rather a hot topic for the government, the plans for its development are usually included in the program for each mandate.

Currently, the focus of the governing party is turned to the gas market liberalization and stronger regulation was adopted in this regard like a licensing regime for all traders with natural gas.

Further, when a commercial discovery is made, it has to be reported to the Ministry of Energy so the latter can conclude a separate agreement for the concession of the area where the deposit is. Despite the lack of significant discoveries on the territory of the Republic of Bulgaria, the Government still shows support for the activities of exploration and prospecting both on and offshore Bulgaria.

3.2. Foreign exploration

Under Bulgarian legislation, underground resources are the exclusive property of the state. Their prospecting and exploration may be done through a permit for prospecting and exploration issued following the procedure detailed in Section 3.1. The only formal limitation to a permit holder is that it may not be a company incorporated under the legislation of a country with preferential tax treatment or its associated companies be registered in jurisdictions with preferential tax treatment; it is in insolvency or liquidation procedure. The other requirements a permit holder needs to meet are set out in art. 23 of the URA.

Once granted the permit for prospecting and exploration of natural resources, the permit holder may transfer it to another company following the provisions of the URA with the consent of the issuing authority, in the case of oil and gas prospecting and exploration this is the Council of Ministers.

The new permit holder must meet the same requirements and criteria the permit holder did upon granting the permit for prospecting and exploration.

3.3. Stages of the exploration process

Usually, the contract for prospecting and exploration of natural gas and oil sets out the steps and works the permit holder needs to do during the license. A list of the works is included in the overall work plan and the annual work plan is an inseparable part of the permit. The overall work plan covers the whole period of the license, and it is approved upfront upon starting of the works under the prospecting and exploration contract, while the annual work plans are approved based on the provided for in the overall work plan and in advance to the start of works.

Certain changes may be done in the overall work plan and the annual work plan on the initiation of the permit holder like a suggestion to drill optional exploration wells. If such works are to be done the approval of all concerned authorities is sought. Additional guarantees may be requested to secure and cover the works to be done, like having the environmental works bank guarantee extended to cover the new scope of works.

3.4. Obligatory state participation

Under the URA the state does not get ownership or interest in the permit while the prospecting and exploration are going on. The data collected is co-owned by the state and the permit holder following the requirements of the URA and sub legislative legislation.

Once the permit for prospecting and exploration is over the state becomes the exclusive owner of all the data and information collected during the prospecting and exploration phase.

What the state most benefit from during the prospecting and exploration of underground resources like oil and gas is having been paid the area fee and collecting updated data from the study of the area.

3.5. Risks to be considered

As Bulgarian legislation is compliant with EU legislation and the Bulgarian government is open to foreign investment and collaboration the main risk, we may identify was the short terms for doing prospecting and exploration works on and offshore Bulgaria as regards oil and natural gas. This was tackled by the recent amendments and supplements in the URA giving additional periods for doing such works.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

The holder of an exploration permit, who has applied for registration of a commercial discovery and has received a certificate for commercial discovery, can obtain a concession to produce the respective underground resource. The concession is not being granted automatically. The grounds for granting a concession are being checked and the concession can be rejected if these are not met. The concession can also be rejected upon compensation of the applicant if there is a threat to the national security and defense, the environment, or cultural objects.

Concession rights may be granted also following a tender procedure for a specific area and type of underground resource.

The Government grants production concessions upon a mo-

tion of the Minister of Energy. There is no limitation on the number of concessions that one individual or company may have. The decision for granting a concession is an administrative act. Similar to the exploration permit, it is subject to publication, appeal, and entry into force, and might be subject to preliminary implementation. The concession is granted for a particular territory, which shall include the territory of the discovery and territories, necessary for the performance of the concession activities. Similarly, to the prospecting and exploration permit, the concession rights are granted following the provisions of the URA. The supervision of concession activities is with the Ministry of Energy which reports to the Council of Ministers in case of need.

Currently, the government is focused on ensuring the gas independence of the Bulgarian market. Therefore, for quite some time now one of the top priorities of the government is the prospecting and exploration of the oil and gas potential of the country, including offshore Bulgaria. We expect to see the tender of unexplored blocks offshore Bulgaria in the coming years.

4.2. Foreign production

Production by foreign entities is not subject to special regulation by the law. The procedure for granting production rights under a concession follows the same general rules as stipulated in Section 4.1. Therefore, similar restrictions exist like the one for granting a permit for prospecting and exploration. For more, details please see Section 3.2. Moreover, the concession rights come only after the successful prospecting and exploration of a given area. Our experience shows that the Bulgarian government does not differentiate local and foreign investors and it is willing to cooperate with either of them in order to succeed in insuring its gas independence.

4.3. Stages of the production process

Domestic legislation provides for a concession agreement that oversees the legal relations between the state and the entity, which made the commercial discovery as a result of an exploration permit. The concession in this sector is with a maximum term of 35 years which may be extended in specific cases. The concessions agreement sets forth all the applicable procedures, responsibilities, and obligations between the parties. Where the concession agreement is silent the URA shall apply.

The concession agreement mainly includes the parties, subject of concession, coordinates and area of the concession rights, term and when it starts to run, rights and obligations of the parties, adjacent area to the concession rights, financial terms and conditions, concession payments, security for the performance of the obligations, possibility for the transfer of rights and obligations, terms and conditions for the termination of the concession agreement, terms and conditions for the works performance, environmental responsibilities, dispute resolution clauses; etc.

4.4. Obligatory state participation

There is no regulation currently in force in Bulgaria, stipulating obligatory state participation nor does the state actively seek participation in the process.

The concessionaire pays a concession payment, the amount of which shall be determined considering the type, group, and value of underground resources, as well as the specific terms of extraction and primary processing. The amount, terms, and conditions for the concession payment shall be determined by the concession contract based on the sub legislative acts. A portion of the concession payment amounting to 50% shall be transferred to the budgets of the municipalities, where the areas are located. As mentioned above, for quite some years the concession payment mechanism is being the 'hot topic' for the industry. Therefore we expect to see developments in the legislation dealing with the concession payments in the coming years.

4.5. Risks to be considered

At this point, we believe that the applicable legislation is quite balanced, and industry is favored to stimulate investors on the market. We may not identify high risks related to the production of oil and gas in Bulgaria.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

The rights acquired on the grounds of concession for extraction shall be terminated upon termination of the relevant contract.

The contract may be terminated upon the occurrence of any of the below:

- expiry of the initial term of the concession and after acceptance by the competent authorities of the activities for liquidation of the extraction site and/or reclaiming of the affected land and forests;
- in the event of objective impossibility to pursue the activities under the granted concession;
- in cases where a decision for declaration of bankruptcy of the holder of a license or the concessionaire has come into force; by mutual agreement;
- by virtue of ruling of a court of justice or a court of arbitration;

- in cases where within three years from entry into force of the concession contract no extraction of subsurface resources has started for reasons attributable to the concessionaire; or
- for other reasons provided for in the contract.

The Minister of Energy is entitled to suspend the validity of the concession if the concessionaire pursues activities that conflict with the legislation in force or violate the provisions of the concluded contract.

Shall the concessionaire not be able to decommission the infrastructure then the state enters into such obligation. The funds for the works to be done come out of the guarantee provided upon commencing the works. If they are not enough funds to cover the expense, the state has a claim against the concessionaire.

5.2. Environmental and HSE consideration

This is dealt with the secondary legislation, i.e. the ordinance on requirements and the scope and contents of the work programs for prospecting and exploration, production and initial processing of underground resources, for the liquidation and/or conservation of geologically studied and mining and production objects and recultivation of the affected lands and for the term and conditions of their coordination.

The plans for the abandonment and decommissioning of the oil and gas facilities represent an inseparable part of the overall and annual work plans for the prospecting and exploration, production, and initial processing of the underground resources. They are approved and coordinated at once. The bodies involved in the approval and coordination process are the Ministry of Energy, the Ministry of Environment and Waters, and their local administrative bodies.

The procedure is led by the permit holder/ the concessionaire.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

The main international treaty, that the Republic of Bulgaria is a party to, is the *Energy Charter Treaty*. The treaty provides for a global legal framework in the investment, trade, transit, dispute resolution, national sovereignty, energy efficiency, etc. in the field of energy including the oil and gas sector.

6.2. Offshore Safety Directive

The *Offshore Safety Directive* was transposed in the domestic legislation and its provisions are embedded in the URA and within *Ordinance on the Requirements for Prevention of Accidents in Prospecting and Exploration or Exploration or Extraction of Mineral Resources - Oil and Natural Gas in the Territorial Sea, the Continental Shelf and in the Exclusive Economic Zone of the Republic of Bulgaria in the Black Sea.*

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

The *Energy Act* does not provide any specific regime for the origin of gas to be transmitted and sold on the wholesale market.

The transactions are entered into on freely negotiated prices.

The selling entity shall have entered the respective Access and Transmission contract with Bulgartransgaz EAD (BTG), as well as into a Balancing contract.

The production companies and natural gas clients inside and outside of the country may connect themselves with direct gas pipelines and enter into gas transmission agreements using these pipelines.

All the transactions on freely negotiated prices are administered by BTG if the capacity is run through the transmission network of BTG or on the gas exchange market. BTG has absolutely no involvement in the conclusion of the agreement but is obliged to assist in its performance.

At the entry/exit points with the neighboring TSOs within EU, the gas capacity allocation procedure is done based on the agreed in the Interconnection Agreement, entered into between the two TSOs in compliance with the requirements of *Regulation (EU) 2015/703* of the Commission dated April 30, 2015, for the establishment of the *Network Code of the Rules for the Operational Compatibility and the Transfer of Data.*

The catalog of the entry/exit points, their names, and codes within the TSO's network may be found on the website of BTG.

7.2. Transportation

The transit of natural gas and gas network operation is done by the Bulgarian transportation system operator, BTG.

BTG as the gas transmission network operator shall ensure, among others:

- integrated management of the natural gas transmission network with a view to its reliable, safe and efficient operation;
- the transmission of natural gas through the natural gas transmission network and metering of the natural gas;

- the expansion of the gas transmission network in accordance with long-term forecasts and plans for the development of gas supply and outside the framework of such plans, where economically justified;

- maintenance and expansion of the auxiliary networks;

- provision and control of third-party access on a non-discriminatory basis between network users or groups of network users in compliance with the quality requirements, and provision to network users of information that they need for efficient access to the network;

- the coordinated development and operating compatibility of the natural gas transmission network with interconnected natural gas transport systems;

- sufficient information to ensure that transportation and storage are done in a manner consistent with the secure and efficient operation of interconnected networks and facilities to operators of other gas transport systems, operators of natural gas storage facilities, and/or operators of liquefied natural gas facilities and/or operators of gas distribution networks; and

- enough cross-border capacity with a view to integration of the European gas transmission infrastructure while meeting all economically reasonable and technically feasible requests for capacity and with a view to meeting the requirements for the security of gas deliveries.

The operation of gas transmission networks is done in accordance with the rules of management of gas transmission networks adopted by the Bulgarian Energy Regulator based on a proposal of BTG.

The gas transmission system operation is regulated by secondary legislation approved by the Energy Regulator.

The procedure for access to the gas transmission system is initiated by the filing of an application with the TSO in a template form. The form may be filled in Bulgarian or English language. It is accompanied by original documents certifying the lack of obstacles to joining the network (that the company is not insolvent, in insolvency and/or liquidation procedure) and a good standing certificate of the company. If trading on the Balkan Gas Hub one needs to register there, as well. Once the verification is passed, and the company is registered on the platform, the company has a period of six months to file requests for booking of capacity on the RBP or to participate in the procedures for capacity allocation.

The draft Access and Transmission contract and the GTC applicable to it is available on the website of BTG.

The gas transmission on the territory of Bulgaria may be done based on an entry-exit tariff model and based on agreements for monthly, quarterly, or annual products, and additionally daily products.

The other associated infrastructure is the Chiren underground gas storage. The gas storage facility is also run by BTG.

7.3. Land rights

If there is a need for access to the gas transportation pipeline system, the secondary legislation shall apply, namely the *Ordinance for the gas transportation and gas distribution systems*. The application for joining the gas transportation and gas distribution systems is thoroughly examined and decided on by authorities. Should there be a need and benefit to joining the systems, a contract is entered into based on the approved documents and the available town planning documents. The facilities to be joining the gas transmission and gas distribution system shall comply with the requirements set in the *Energy Act* and the related legislation.

The obligation for the construction of the infrastructure for gas transportation/gas distribution is split between the party willing to be connected and the system operator. The connectivity point is the borderline of parties' obligations.

The company may be granted rights to construct and hold such servicing facility based on the provisions of the URA and the EA unless it owns the land where the facility will be passing.

Usually, such rights are in-rem rights like superficies or servitudes. Should the company fail to reach an agreement with the landowner for having the infrastructure go through his lands, assistance may be sought by competent authorities.

The construction of direct pipelines is ensured by the production companies, the gas infrastructure facility operators. The construction may be done only based on an executed contract for joining the gas transmission/gas distribution network.

7.4. Access and integration

Please refer to Section 7.2. on access to oil and gas transportation pipelines and associated infrastructure.

In the context of European goals for building an interconnected and single pan-European gas market, Bulgaria's policy and legislation for gas infrastructure development are directly linked to the country's position as one of the main gas distribution centers in Southeast and Central Europe. Key to market integration by 2030 is the interconnections with the Republic of Greece and the Republic of Serbia, the participation in the liquefied natural gas terminal near Alexandroupolis, Greece, as well as the expansion of the gas transmission infrastructure

on the territory of Bulgaria from the Bulgarian-Turkish to the Bulgarian-Serbian border. To implement this policy, a number of projects of common interest to the European Union are being implemented under *Regulation (EU) No. 347/2013* on guidelines for trans-European energy infrastructure, as well as projects of common interest to the energy community and priority gas projects under the gas interconnection in Central and South-Eastern Europe.

The Bulgaria-Greece gas interconnection

The gas connection has a total length of 182 kilometers and a capacity for natural gas transportation from 3 to 5 billion cubic meters/year. If there is interest, the capacity can be increased to 10 billion cubic meters/year. The route of the gas pipeline will be between the town of Komotini, Greece, and the town of Stara Zagora, Bulgaria. After a delay in the execution, the gas connection will be put into commercial operation in the second half of 2022. Numerous high-profile international companies participated as contractors to the project company in various public procurement procedures held by the project company for services related to the interconnector.

The Bulgaria-Serbia gas interconnection

The Bulgaria-Serbia Gas Interconnection is envisaged as a reverse connection that will connect the national gas transmission networks of the Republic of Bulgaria and the Republic of Serbia. It has a total length of 170 kilometers from the town of Novi Iskar, Bulgaria, to the town of Nis, Serbia, of which 62.2 kilometers are on Bulgarian territory. The pipeline will create an opportunity to transport natural gas in both directions.

The project for the LNG terminal near Alexandroupolis

The terminal has a projected annual capacity of 6.1 billion cubic meters and a storage capacity of 170,000 cubic meters. It is a state-of-the-art technological project that includes an offshore floating device for receiving, storing, and regasifying liquefied natural gas and a system of underwater and onshore gas pipelines through which natural gas is delivered to the Greek National Natural Gas System and beyond to end-users. The LNG terminal is strategically located close to the gas transmission network of the Greek national gas operator DESFA S.A. Bulgaria participates in this project through Bulgartransgaz EAD. The company is a shareholder with a 20% share of the capital of the project company that will implement the project, and Bulgargaz EAD participates in the legally binding phase of a market test and reserves a capacity of 500 million cubic meters of gas per year for the next 10 years. According to public information, the terminal would become operational by the end of 2023.

The expansion of UGS Chiren's capacity

The project is to expand the capacity of the underground gas storage Chiren, including a gradual increase in the capacity of the only gas storage facility in Bulgaria, in order to achieve larger volumes of stored gas, increased pressures in the gas tank and higher average daily production and injection flows. The project envisages an increase in the volume of working gas to 1 billion cubic meters and an increase in the production and injection flow to 8-10 million cubic meters/day. The Chiren UGS capacity expansion project is a project of common interest for the European Union, according to *Regulation (EU) No 347/2013*. The commissioning deadline is expected to be 2025.

7.5. Gas transmission and distribution

The activities of "transmission of natural gas" and "storage of natural gas" are carried out by BTG. The transmission of natural gas is carried out on the national gas transmission network and on the gas transmission network for transit transmission. As mentioned above, BTG is the holder of licenses for the activity "transmission of natural gas," as well as a license for the activity "natural gas storage." Bulgartransgaz EAD is an operator of the National Gas Transmission Network for transmission of natural gas on the territory of Bulgaria to gas distribution networks and non-domestic customers of natural gas; gas transmission network for transit of natural gas through the territory of Bulgaria to the neighboring countries Romania, Turkey, Greece, and Macedonia and the underground gas storage Chiren for storage of natural gas for primary purposes to cover seasonal inequalities in consumption and ensure the security of natural gas supply.

The individual access and transmission contract are signed annually between the user and BTG.

The access and transmission fees are available on the internet site of the Bulgarian TSO.

8. TRADING

8.1. Trading license

Natural gas transactions are regulated by the provisions of the EA (article 173 to article 184) and the *Natural Gas Trading Rules*. The transactions could be based on written agreement and/or organized gas exchange market.

The categories transactions with natural gas are: **(i)** delivery; **(ii)** transmission through the natural gas transmission and the natural gas distribution system; **(iii)** gas storage; **(iv)** transactions for the balancing of the market; and **(v)** transactions on spot or VTP of the gas delivery systems.

Parties to the transactions with natural gas in Bulgaria are:

(i) BTG (TSO); **(ii)** production companies; **(iii)** gas storage facilities operators (currently only BTG); **(iv)** LNG facilities operators; **(v)** the gas system operators; **(vi)** combined operator; **(vii)** gas distribution system operators; **(viii)** gas traders; clients and parties, forming the market; **(ix)** end supplier of natural gas; and **(x)** liquidity suppliers.

According to the adopted amendments to the *Energy Act*, as of October 1, 2021, the activity of "trading with natural gas" may be carried out based on a license issued by the Energy and Water Regulation Commission. The latter also issued the *Rules on Trading with Natural Gas*. The licensing procedure requires the candidates to provide extensive information and proof of their technical and financial suitability to exercise the above-mentioned activity.

Domestic legislation stands out with cheap and time-efficient license procedures, which resulted in a high (for the country's scale) number of licensees of both foreign and domestic stakeholders. Also, an advantage is the option to file for a license online.

8.2. Products

As mentioned above, currently there are two gas exchanges operating in Bulgaria. One is the Balkan Gas Hub and the other one is the Bulgarian Energy Trading Platform.

Both gas exchanges provide long- and short-term segments.

The long-term segment of the Balkan Gas Hub trading platform offers products traded on a medium and long-term basis – weekly, monthly, quarterly, and calendar year(s).

The short-term (spot) segment of the Balkan Gas Hub trading platform offers short-term standardized products intraday and day-ahead as well as temporal and locational products for the TSO network balancing purposes. Trading is done on an anonymous basis, in accordance with the provisions of *Regulation (EU) No. 312/2014*.

9. COMPETITION

9.1. Authorities

The Commission for Protection of Competition (CPC) is responsible for overseeing the fair and compliant competition environment. The CPC has the authority to trigger an investigation for competition breaches at its own will. Moreover, the CPC has full authority over the competition field and its decision can be only appealed before the Supreme Administrative Court.

A competition-related investigation can be also triggered by a third party, again before the CPC.

9.2. Anti-competitive actions

With *Resolution No. 80* of January 27, 2022, the CPC set as one of its goals for 2022 to initiate priority proceedings to investigate the existence of prohibited agreements or abuses of a dominant position, including in the energy and fuels sectors. The CPC considers these sectors to be a priority in its law enforcement activities, as they are structurally important for the country's economy, significantly affect the competition process in other economic sectors and directly affect the well-being of citizens as consumers.

The CPC has the authority to resolve mergers and acquisitions above certain financial thresholds. As the financial thresholds, regulating whether a transaction will undergo a merger clearance before CPC, are in practice negligible for the energy sector, basically all envisioned deals should undergo such examination. The outcome is either giving clearance or prohibiting the said transaction. The Bulgarian domestic legislation provides for an obligation for the involved parties to provide information that is considered more extensive than in other European jurisdictions. The process usually takes two months for the CPC to resolve but can be prolonged based on the complexity of the case.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

According to the *Underground Resources Act*, the permit holder/concessionaire, mentioned in Sections 3.1. and 3.2., is entitled to request amendments to the respective contract, if the law changes in a way that limits the rights or causes damages to the permit holder/concessionaire in contrast to the moment when the contract was entered into due to the separation of the exploration from the production activities under separate contracts, the stability does not cover the entire duration of the exploration and production activities. Instead, there is: **(i)** one stability clause that covers the exploration activities and does not extend to the production activities; and **(ii)** another stability clause that covers the period of the production concession.

10.2. Compulsory dispute resolution procedure

Under the URA the parties to a contract for prospecting and exploration/ production license may choose between having a dispute resolved by the competent Bulgarian court or arbitration. The arbitration may be Bulgarian or international. In any case, the contract shall choose the forum as well as the language and procedure a dispute will be reviewed.

URA also allows for certain matters to be regarded by an expert. This shall be explicitly set in the prospecting and exploration agreement and/or the concession agreement.

10.3. International treaty protection

Bulgaria is a party to both the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and *the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID). So far there has not been a major dispute involving Bulgaria and foreign companies on prospecting and exploration/production of oil and gas.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

The Czech Republic is important as a transit country for supplies of natural gas from Russia to Europe. Its own deposits of oil and gas are very limited and domestic production is only able to cover a fraction of domestic demand. i.e. no more than a few percent of national consumption. Moreover, the crude oil reserves are expected to be depleted in the next two decades. As such the Czech Republic is an import-dependent country as oil & gas are concerned, while the majority of the imports come primarily from the Russian Federation, certain attempts to diversify the resources are observable. As a landlocked country, the Czech Republic does not have any LNG terminals, however, gas from these sources is also considered as a backup given the political situation in Russia in recent years.

In order to maintain its relevance, the Czech Republic has no other option but to promote its status as a transit country and reap the benefits accordingly. The position might be advantageous while building a hydrogen corridor, as hydrogen holds considerable potential for the future as one of the means leading to transfer to a carbon-free economy. In addition, once fully operational, it is difficult to foresee what the impact of the Nord Stream 2 pipeline would be on the transit of natural gas through the Czech Republic. In any case, natural gas itself is expected to remain an important fuel as it is an important fossil fuel in the transformation of the Czech energy sector given the gradual and promoted decrease in coal use and the use of oil products in transport.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

In terms of mining, the exploitation of natural gas is guided by *Act No. 44/1988 Coll.* on the protection and utilization of mineral resources (the *Mining Act*). The same act applies to the extraction and exploitation of oil. The Czech Mining Authority is in charge of the enforcement of the law.

The key legislative framework regarding the trade is laid down in *Act No. 458/2000 Coll.* (the *Energy Act*) on business conditions and state administration in the energy sector. Under the *Energy Act* and other regulations, the Ministry of Industry and Trade is the public authority responsible for ensuring the fulfillment of obligations arising from international agreements and treaties. The Energy Regulatory Office (ERO), the market regulator, is responsible for the oversight and economic regulation of the energy sector. ERO sets regulations under the Energy Act. The market operator, OTE, carries out its activities under a license awarded by the ERO, operates the Czech gas and electricity markets. NET4GAS, a limited liability company, holds the exclusive gas transmission system operator license and operates pipelines for international transit and national transmission of natural gas. At the distribution level, tens of companies hold a distribution system operator license. As to the trade with oil/petroleum products the specific conditions under the *Act. No. 455/1991 Coll.* (the *Trade Licensing Act*), apply.

There were some attempts regarding shale gas exploration and production but they were definitely abandoned in 2015 for the risks for the environment have been evaluated as excessively high. Given the fact that the Czech Republic is very much dependent on Russian natural gas, diversification of the resources is being developed, however, owing to the existing pipelines it is a very long-term objective. The completion of the missing gas pipeline interconnections with Poland and Austria would help, yet, these are not in the spotlight and the latest 10-year transmission system development plan prepared by the backbone network operator NET4GAS foresees the construction of the Czech-Austrian interconnection only in 2026. Since the Czech Republic does not have any LNG terminals, NET4GAS, the Czech gas transmission system operator, has planned two cross-border infrastructure projects – BACI and STORK II – by which the Czech Republic would gain access to a number of LNG terminals in the Baltic and Adriatic regions. In July 2020, it decided to postpone both projects, as they were excluded from the EU's 2019 list of projects of common interest and their future is uncertain.

2.2. Domestic oil & gas production and imports/exports

The share of natural gas in total energy consumption is consistently around 20%. Domestic natural gas production in the Czech Republic is negligible and accounts for approximately 1-2% of the domestic demand. The rest of the gas supply is imported via transit system and pipeline interconnections, located in particular in Germany. Natural gas is mainly imported from the Russian Federation and Norway (in the past, a larger percentage of the gas demand was satisfied with Norwegian gas). Exports of natural gas are negligible. However, the country is an important transit corridor for Russian natural gas into CEE and Western European markets. As a landlocked country, the Czech Republic does not have any LNG terminals.

The Czech Republic does not have substantial crude oil resources. Domestic production covers only approximately 3% of domestic consumption and is on a decrease since the identified domestic crude oil reserves are expected to be depleted in the next two decades. The Czech Republic exports marginal amounts of crude oil to neighboring countries. The share of oil in total final consumption is around 30%. The

Czech Republic has two major crude oil pipelines – the Druzhba pipeline and the IKL (Ingolstadt – Kralupy – Litvinov) pipeline – both of which are owned, operated, and managed by the state-owned company MERO. The country´s goal is to reduce oil consumption in accordance with the country´s (and EU´s) policy to reduce greenhouse gas emissions, by promoting the development of low-emission mobility. The country is expected to gradually reduce import dependency on petroleum products and on the other hand to increase the product exports, particularly to Central and Eastern Europe. In order to enhance the country's oil security, the diversification of crude oil import routes and cross-border coordination with the neighboring countries is being encouraged.

2.3. Foreign investment and participation

Recently in the Czech Republic, *Act No. 34/2021 Coll., Foreign Investments Screening Act*, came into force. The act´s goal is to enable assessment of whether foreign investments might have a negative effect on the security of the Czech Republic or its internal or public order, including impact on critical infrastructure, key technologies, and other important entries, which are key from the security perspective (oil & gas sector not excluded). It establishes rights and duties of foreign investors, whose ultimate beneficial owner is from non-EU countries. As a consequence, it may hinder the implementation of foreign investments in the Czech Republic if these are evaluated by the relevant authorities as high-risk.

2.4. Protection of investment

As an EU member, the Czech Republic implements and fulfills EU legislation in oil & gas. Furthermore, several international treaties on environmental protection apply. Crucial regarding the protection of investments is that the Czech Republic, as an EU member state, must comply with the commitments under the treaties together known as the *Energy Charter*. The charter is currently subject to a strict interpretation of the Court of Justice of the European Union and is considered to be modified to reflect the recent developments in the energy sector.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

Reserved mineral mining, including oil & gas, is allowed only upon a government authorization in the form of a license for mining activities, granted by the relevant local mining authority, and only on the mining areas approved by the relevant local mining authority. An application for mining area approval is processed by the relevant local mining authority only with the consent of the Ministry of the Environment and the Ministry of Industry and Trade. Administrative proceedings concerning the establishment of mining areas and issuing licenses for mining activities follow rules stipulated by the *Mining Act, the Act No. 61/1988 Coll., on Mining Activities* (*Mining Activities Act*) and *Act. No. 500/2004 Coll., the Administrative Code*; any party to such proceedings can file an appeal against the issued administrative decisions to the Czech Mining Authority, which is the supreme body of the Czech state mining administration.

3.2. Foreign exploration

Foreign companies enjoy the same treatment as Czech companies, see Section 3.1.

3.3. Stages of the exploration process

As to the stages of the exploration process, these are rather complex. To simplify, an entity is authorized to mine the reserved minerals, provided it has obtained **(i)** a decision on the determination of the exploration area according to the *Act No. 62/1988 Coll., Geological Works Act*; **(ii)** obtained a certificate of exclusive deposit according to the provisions of Section 6 of the *Mining Act*; **(iii)** meets the conditions stipulated under the *Mining Act* and obtained authorization to mine the exclusive deposit of a particular mineral under Section 24 et seq. of the *Mining Act*; **(iv)** as well as a permit for opening, preparation, and mining within the meaning of Section 10 of the *Mining Act*. Further details and specific conditions are stipulated in the *Mining Act*, *Mining Activities Act*, *Geological Works Act*, and implementing legislation.

3.4. Obligatory state participation

According to the *Mining Act*, the deposits of reserved minerals are referred to as mineral wealth, the owner of which is the state. The principle of state ownership of exclusive deposits is broken at the time of extraction of the minerals when ownership of the minerals passes to the relevant mining organization as a result of their extraction. Thus, the state grants the opportunity to extract its own minerals. To benefit from this arrangement, each licensed mining organization is obliged to pay an annual fee on the minerals extracted to the account of the relevant local mining authority under the conditions stipulated in the *Mining Act*.

3.5. Risks to be considered

The entities seeking to explore and mine the oil & gas reserves must be aware that there is no legal claim for the respective license. The respective state authorities must take into account all the environmental and other risks, therefore no license might be granted even after years of preparations.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Gas production is subject to a license granted under the *Energy Act*. The applicant for the production license must submit the following documents to ERO: an extract from the commercial or other registers, statement of criminal records of members of the statutory body and of the representative (who must be appointed), declaration of the representative's consent to be appointed as representative and his/her declaration that he/she is not appointed as a representative for the licensed activity by another license holder, and documents evidencing the financial and technical requirements (e.g. bank account statements and last annual balance sheet report). Members of the statutory body of the applicant must meet the following conditions: **(i)** minimum age of 18 years; **(ii)** full legal capacity; **(iii)** no criminal record; and **(iv)** the professional competence of the applicant for the license or the appointed responsible representative. The applicant is also obliged to hold the title to use the premises where its seat is located and needs to demonstrate its ability to provide sufficient funding to financially secure the activities for which the license is required as well as its ability to cover current and future liabilities for all the time the license is granted. The license shall be granted for a time period of up to 25 years.

An entity active in the oil/petroleum business must obtain a trade license if its activities in the territory of the Czech Republic are to be carried out on a permanent, continuous, and systematic basis, as well as independently, in one's name, on one's account and in order to make a profit. Such an entity is obliged to apply for a tied trade license – "to manufacture and processing of fuels and lubricants and fuel distribution" – the granting of which is subject to the fulfillment of certain professional competence requirements. Recognition of professional qualifications obtained in another EU member state for licensed trades in the Czech Republic comes into consideration as well. The detailed conditions are stipulated in *Act. No. 455/1991 Coll., Trade Licensing Act*.

4.2. Foreign production

A license for gas production cannot be obtained by a foreign company directly. Such entities must establish at least a local branch in the Czech Republic. Under Czech law, the branch itself does not have legal capacity, though, and carries out its business only as a part of the foreign company. The applicants for a trade license required from another EU member state may have the professional qualification recognized under the conditions of the *Trade Licensing Act*. A foreign investor may of course purchase a stake in a Czech company (or the entire company) that holds the necessary licenses.

4.3. Stages of the production process

No separate stages apply, see the general information above.

4.4. Obligatory state participation

There is no obligatory state participation in the production of oil & gas. Generally, the benefits for the state arising are such that the foreign company that has a permanent establishment in the Czech Republic must create a taxable presence in the Czech Republic. A permanent establishment is defined by a tax treaty or by *Act No. 586/1992 Coll., on Income Taxes*, as amended; consequently, a local branch creates a taxable presence. In addition to the general tax liabilities, there is a special tax pursuant to *Act No. 261/2007 Coll., on Stabilization of Public Budgets*. Gas producers are subject to this tax if they sell gas to the end-customer at the same time. The listed petroleum products are subject to the excise tax. Also, see Section 3.4.

4.5. Risks to be considered

In this context, we should note that the procedure to obtain the respective production license is rather complex and time-consuming, and there is no claim for granting the necessary license. Otherwise, no particular risks arise.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

The *Mining Act* obliges the organizations holding the mining rights to ensure remediation, which includes the reclamation of all land affected by the mining and the monitoring of the site after its closure. The mining companies are primarily obliged to generate a financial reserve for remediation and reclamation of areas affected by mining. Its amount must correspond to the rehabilitation and reclamation needs of all the land disturbed during mining activities. Financing of the reclamation activities is then provided in two ways: **(i)** from the mandatory financial reserves, and **(ii)** from levies on mining companies. According to the *Mining Act*, each licensed mining organization is obliged to pay an annual fee on the minerals extracted to the account of the relevant district mining authority. The particular conditions and amounts are provided in the *Mining Act* and implementing legislation.

5.2. Environmental and HSE consideration

The Czech Mining Authority stipulates the conditions and enforces the compliance with occupational health and safety standards in the mining industry and when utilizing explosives based on the regulatory framework given in the *Decree of the Czech Mining Authority No. 26/1989 Coll., on occupational health and safety and operational safety in mining and surface mining activities*.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

The Czech Republic's safety of oil & gas exploration and production regulation reflects the commitments established under the membership in the EU and in the International Energy Agency. Both contractual regimes stipulate, for instance, the obligation to maintain permanent stocks of crude oil and petroleum products. Further, the natural gas emergency response policies are in line with *EU Regulation 2017/1938* concerning measures to safeguard the security of gas supply. According to the regulation, every four years the Czech Republic must prepare risk assessments, a preventive action plan, and emergency plans as part of the emergency planning at national, regional, and EU levels.

6.2. Offshore Safety Directive

The provisions of the *Offshore Safety Directive* are not in principle relevant for the Czech Republic as a landlocked country and it is as such not obliged to implement them (with some infrequent exceptions).

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

As to the import and export of natural gas, pipelines for international transit are operated by NET4GAS which holds the exclusive gas transmission system operator license. There are seven high-pressure pipeline interconnection points between the gas transmission networks of the Czech Republic and its neighboring countries. The Czech gas transmission system plays a key role in supplying gas to Central and Eastern Europe as well as to Germany and Western Europe. There is no special legislation pertaining to cross-border natural gas transactions. In general, the cross-border market for natural gas is regulated by the *European Community Regulation No. 715/2009, on conditions for access to the gas transmission networks*. Cross-border sales and deliveries of natural gas are transacted pursuant to bilateral agreements between the parties and the availability of cross-border capacity.

The Czech Republic does not have any oil ports, but crude oil is supplied to the local refineries through two major crude oil pipelines connected with neighboring countries. The Czech Republic has been a net oil products importer but occasionally has exported to Austria, Hungary, and Poland.

7.2. Transportation

The seven high-pressure pipeline interconnection points between the gas transmission networks of the Czech Republic and its neighboring countries are four with Germany, two with the Slovak Republic, and one with Poland. Please also see Section 7.1.

The Czech Republic has two major refineries (Kralupy and Litvinov). The oil security of the country is also backed by major oil storage facilities managed by two Czech state-owned enterprises The transportation of crude oil for refining is provided by the state-owned MERO, which is the owner and operator of crude oil pipelines, including the Czech sections of the Druzhba and Ingolstadt-Kralupy-Litvínov (IKL) pipelines, and crude oil storage capacities. The network of product pipelines in the Czech Republic is exclusively owned and managed by CEPRO, which connects the main consumer regions, the oil storage and distribution centers of CEPRO, and the refineries in Litvinov, Kralupy, as well as in Bratislava, Slovak Republic. The Ministry of Finance has been the sole shareholder in the company since 2006. The 1,100-kilometer network enables direct pumping and supply between its individual nodes and is fully reversible.

7.3. Land rights

Construction of any natural gas or oil transportation pipeline requires authorization from the Ministry of Industry and Trade. Compliance with the general rules stipulated in A*ct No. 183/2006 on land planning and the building code* (the *Building Code*) is also required; the relevant administrative proceedings are held in the respective building offices. A license is required from the ERO in order to operate a natural gas transportation pipeline and storage facilities. The license for the transportation of natural gas is exclusive for the whole territory of the Czech Republic and the current license holder is NET4GAS. Transportation of oil is being operated by a few companies as well.

Under the *Energy Act*, a transportation (or storage) facility on third-party land may be constructed pursuant to a valid zoning and construction permit. However, the *Energy Act* also requires that a valid easement be concluded with the owner of the land in order to establish, reconstruct, repair, and operate the facilities in question. If such owner is unknown or an agreement is impossible to reach, the relevant construction authority can establish the easement under the conditions stipulated in *Act No. 416/2009 Coll., on Accelerating the Construction of Transport, Water and Energy Infrastructure*, and *Act. No. 184/2006 Coll., on expropriation*, in general, regulate the procedure in connection with facilitating and accelerating the construction of listed buildings that are of fundamental importance for the functioning of society, including the conditions for land expropriation,

which is, however, considered to constitute a measure of last resort.

7.4. Access and integration

Under Czech law, the operator of the natural gas transportation system is obliged to connect to the transportation system any party upon its request, which complies with the conditions stipulated by the *Operation Rules of the Natural Gas Transportation System* (the *Operational Rules*) and at the same time ensure non-discriminatory conditions for such access to the transportation system. Details are set forth in the *Operational Rules*, the *Gas Market Rules*, and the *Operational Code of the Operator of the Transportation System*. Similarly, the operator of the underground storage facilities has a duty to grant access to the relevant storage facility if the relevant conditions are met. As a result of this principle, a customer has the right to connection to the transportation (or distribution) system under certain conditions, and also any entity trading with natural gas is entitled to access to transportation (or distribution) system, provided such entity is a party to a relevant written agreement. Any participant to the Czech gas market is entitled to use underground storage facilities as well, provided that there is a free storage capacity in the respective underground gas storage facility and such entity is a party to a relevant written storage agreement. The price for the transportation of natural gas is regulated by the ERO in its price decisions, which ERO issues separately for individual years. The price for the storage of natural gas is not regulated.

The network of oil product pipelines in the Czech Republic is exclusively owned and managed by CEPRO, which connects the main consumer regions, the oil storage and distribution centers of CEPRO, and the refineries in Litvinov, Kralupy, as well as in Bratislava, Slovak Republic. As the Czech product oil pipeline system is one of the most important European pipeline networks in terms of location and connections to the Slovak pipeline systems, the government aims to support more efficient use of the existing domestic product pipelines. It has also promoted active cooperation between CEPRO and the Association of Oil Pipeline Operators, Druzhba, particularly to gain early warning of any business or technical issues which could result in the temporary interruption of oil supplies to the country.

7.5. Gas transmission and distribution

The Czech natural gas transmission network is divided into four branches: the Northern and Southern branches, which run from Lanzhot to the Czech-German borders; the Western branch, which connects the Northern and Southern branches; and the Moravian branch, which supplies the Moravian region (southeastern part of the country) and connects with Poland. These branches are well interconnected, except for North Moravia, which is only connected to the national transmission system via a single pipeline. Company NET4GAS holds the exclusive gas transmission system operator license and operates pipelines for international transit and national transmission of natural gas.

The Czech distribution network is mostly operated by three privately-owned distribution system operators, which geographical area is clearly defined: Prazska Plynarenska Distribuce serves mostly the region of Prague; EG.D. (from the E.ON group) serves mostly the South Bohemia region; GasNet covers the rest of the Czech Republic. Most of the gas enters the distribution systems through transfer stations connected to the transmission system. A small part of the gas supply comes from domestic extraction and directly feeds into the distribution system. In order to ensure supply reliability, individual regional distribution systems are connected with other distribution systems. trading

8. TRADING

8.1. Trading license

Wholesale activities carried out in the territory of the Czech Republic are subject to licensing in the Czech Republic, if carried out: **(i)** on a permanent, continuous, and systematic basis; and **(ii)** independently, in one's name, on one's account and in order to make a profit.

The relevant licensing authority is ERO. The license cannot be obtained by a foreign company directly, such entities must establish at least a local branch in the Czech Republic. Under Czech law, the branch itself does not have legal capacity and carries out its business only as a part of the foreign company. As to the trading license, a foreign company may also apply to ERO for recognition of its license issued in another EU member state.

The applicant for the trading license must submit the listed documents to ERU in order to be granted by the license for natural gas trading, such as an extract from the commercial or other registers, statement of criminal records of members of the statutory body and of the representative (who must be appointed), declaration of the representative's consent to be appointed as representative and his/her declaration that he/she is not appointed as a representative for the licensed activity by another license holder, and documents evidencing the financial and technical requirements (e.g. bank account statements and last annual balance sheet report). Members of the statutory body of the applicant must meet the following conditions: **(i)** minimum age of 18 years; **(ii)** full legal capacity; **(iii)** no criminal record; and **(iv)** the professional competence of the applicant for the license or the appointed responsible repre-

sentative. The applicant is also obliged to hold the title to use the premises where its seat is located and needs to demonstrate its ability to provide sufficient funding to financially secure the activities for which the license is required as well as its ability to cover current and future liabilities for a period of at least five years. The license shall be granted for a time period of 5 years. The time period can be extended for another five years upon applying for an extension.

8.2. Products

Trading requirements are set forth primarily by the *Energy Act* and the *Gas Market Rules* (*public notice of ERO no. 349/2015 Coll.*) and are being organized via so-called virtual purchase points. Traders operating in the wholesale gas market can buy gas at commodity exchanges such as in particular Power Exchange Central Group or Czech Moravian Commodity Exchange Kladno, under short-term and long-term contracts, or market participants can also enter into bilateral contracts.

9. COMPETITION

9.1. Authorities

The Office for the Protection of Competition (the Antitrust Office) is the independent central authority of the state administration with competencies to protect the completion and oversight of public procurement and to ensure that the markets function in accordance with the competition rules and to the benefit of consumers. Since there are no sector-specific provisions governing anti-competitive practices in the oil & gas sector, on the national level, the only administrative body responsible for anti-competitive practices is the Antitrust Office. If trade between member states could be affected, the European Commission may act in parallel with or instead of the Antitrust Office.

9.2. Anti-competitive actions

Competitive concerns are common also in the oil & gas sector. The Antitrust Office can initiate an investigation upon receipt of a complaint or at its own instigation. It can request information necessary for conducting the investigation from any entity operating on the market or from state authorities such as the ERO. Upon completion of proceedings, the Antitrust Office may issue a decision prohibiting further performance of an anti-competitive agreement or practice or a decision prohibiting the continuance of abusive behavior. The Antitrust Office is further empowered to impose fines or remedial measures. Fines against competition infringements can be much larger than the sanctions for violating sectoral regulations. However, the Antitrust Office has also the power to accept commitments proposed by the parties and to terminate an investigation without making a finding of liability.

To ensure the functioning of the market, the Antitrust Office has all the standard competencies as the competition authorities in the EU. The Office in particular guides the competitors to behave in compliance with the principles of competition law interferes with practices distorting competition, e.g. cartel agreements, abuse of dominant position, etc., and authorizes certain concentration between competing undertakings. A concentration between competitors is a merger of two or more competitors previously operating independently on a market. However, a merger of competitors is also considered to be a situation where a person controlling one of the competitors acquires a new ability to control another competitor or part of it – in practice, this is, in particular, the acquisition of shares in companies that enable the competitor to control and influence the competitor.

The clearance procedure is initiated on the joint proposal of the merging competitors. If the Antitrust Office concludes that a particular concentration fulfills the conditions and is subject to clearance, it officially initiates the clearance procedure itself and assesses whether the concentration will not result in a significant distortion of competition. If it concludes that the concentration will not result in a significant distortion to competition, it will issue consent to the concentration within 30 days of the initiation of the proceedings. Otherwise, it shall continue the proceedings. In this case, the Antitrust Office is required to issue the decision itself within five months of the initiation of the proceedings. If the concentration is implemented without authorization, the Antitrust Office has the power to take measures to restore "effective competition." It can therefore impose an obligation on the undertakings concerned to sell their shares, transfer the undertaking or part of it, or cancel the contract on the basis of which the merger took place. In addition to the above, the Antitrust Office also has the power to impose a fine of up to CZK 10 million or 10% of the competitor's net turnover in the last financial year. The notified concentration cannot be implemented before the date on which the approval decision becomes final.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

Czech law does not deal with the stability clause explicitly. The contractual arrangements depend in principle on the parties´ will with the exception of prohibition of conduct contrary to good morals and public order or binding to impossible performance.

10.2. Compulsory dispute resolution procedure

No compulsory dispute resolution procedures apply in the Czech Republic. In case a dispute in the oil and gas agreement

arises, an arbitration clause is usually included in the agreement stating that if the dispute cannot be settled by the parties themselves, they would submit it to arbitration.

10.3. International treaty protection

The Czech Republic (or Czechoslovakia as a legal predecessor) has signed and duly ratified both the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Award* and the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Besides, the commitments established under the *Energy Charter*, the trade agreements negotiated by the EU on behalf of the member states to regulate trade relations with third countries, and also the bilateral agreements negotiated by the Czech Republic apply.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. Summary

In Hungary, the extraction of hydrocarbons, including unconventional hydrocarbons, is subject to authorization by the Mining Supervisory Authority.

In 2017, the Hungarian Mining and Geological Office and the Hungarian Geological and Geophysical Institute merged to form the Hungarian Mining and Geological Survey (MBFSZ), a central office whose task was to carry out the state's mining and geological tasks. Since January 1, 2022, the general and universal successor to the MBFSZ, the Regulated Activities Supervisory Authority (SZTFH), has been carrying out these tasks, as well as the mining supervision and state geological tasks previously the responsibility of government offices.

In Hungary, mineral resources and geothermal energy are state-owned in their natural places of occurrence.

According to Art. 3 (1) of the *Mining Act*, the mineral raw material extracted by the mining company becomes the property of the mining company upon extraction, and the geothermal energy extracted for energy purposes becomes the property of the mining company upon utilization.

According to Art. 20 (1) of the *Mining Act*, the state is entitled to a mining fee, based on the extracted mineral raw material and geothermal energy.

The most notable market player in Hungary both in the production and trading of oil is the state monopoly, Magyar Olaj- es Gazipari Nyrt. (MOL). MOL is a company established in Budapest, Hungary, which has as its core activities the exploration for, and production of oil and gas, the transportation, storage, and distribution of oil products at both retail and wholesale levels, the transmission of gas, and the production and sale of alkenes and polyolefins. The transport business within MOL operates 4,550 kilometers of 300-800 millimeters diameter gas pipelines and 900 kilometers of 200-600 millimeters diameter oil pipelines, including 900 gas transfer and hub stations and three compressor stations. FGSZ Zrt., a 100 percent subsidiary of MOL, is the only TSO in Hungary. FGSZ Zrt., as TSO, controls the Hungarian transmission pipelines.

The number of shares held by the Hungarian state in MOL decreased from 25.24% to 5.24% in recent years due to donations to some domestic funds. However, these donations do not appreciably affect the voting rights of the state.

In 2021, Hungary has signed a new 15-year natural-gas supply deal with Russia's state-controlled energy firm, Gazprom. Given the dependence of Hungary on Russian gas (see later), this contract is crucial for the domestic energy sector.

The energy mix of Hungary is based on gas and oil; however, Hungary is poor in both of these resources. In 2020, Hungary adopted a net-zero emission target by 2050. This is part of a wider change in the country's energy and climate policies. Consequently, and also relying on similar EU targets, the energy mix of Hungary is expected to move towards renewable energy, and energy policy and law are expected to rather focus on sustainability and renewables in the forthcoming years.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

The primary legal basis of mineral extraction activity is *Act No. XLVIII of 1993 on Mining* (Mining Act). Important pieces of law for permitting procedures are *Governmental Decree No. 203/1998. (XII.19.)* (detailed permitting rules), *Act XXXII of 2021 on the Surveillance Authority for Regulated Activities*, *Government Regulation No. 53/2012 on mining construction permitting*, *Government Regulation No. 314/2005 on EIA and IPPC*, *Act No. LIII of 1996 on nature conservation*, *Government Regulation No. 275/2004 on Natura 2000 sites*, *Government Regulation No. 312/2012 on construction permitting*, *SZTFH Decree 13/2022 (I. 28.) on mining waste management*, *Ministerial Decree No. 8/2014 (II. 18.) on the mining concession tender procedure*, *Act XVI of 1991 on Concessions and Act CXCVI of 2011 on National Property*. For permitting procedures, *Act No. CL of 2016 on the General Public Administration Procedures* is also highly important.

In Hungary, mining operators holding a hydrocarbon exploration license or an exploration right under a concession contract may only carry out their exploration activities based on an approved exploration technical operating plan.

A mining operator entitled to mine oil and gas may initiate the extension of the mining rights to underground storage of hydrocarbons based on the provisions of Article 5(2) of the Mining Act. The ownership of the state-owned hydrocarbons in the underground gas storage as a natural occurrence may, upon request, be acquired by the mining operator holding a gas storage operating license as defined in a separate act, prior to extraction, as provided for in Section 3(1) of the Mining Act.

In 2020, a significant share of domestic consumption was provided by imports of oil and oil derivatives and gas, totaling 549,974 terajoules net of imports. Dependence on imports decreased by 12.9 percentage points to 56.2%.

Gas imports rely almost entirely on Russian gas, which comes to Hungary in pipelines. Regarding oil imports, the Friendship and the Adria pipelines play a heavy role. The Friendship – Druzhba – pipeline, which supplies Hungary from Russia, is the longest oil pipeline in the world. The pipeline starts in

Samara in south-east Russia. Oil import – since oil is generally not that much reliant on pipeline infrastructure – is also heavy on roads, waterways, and rail.

In 2021, the Croatian interconnector has appreciated significantly, following the start of deliveries from the Krk (Croatia) LNG terminal since the beginning of the year. From the current 2.6 billion cubic meters of transport and regasification capacity, up to one billion cubic meters of LNG per year could arrive in Hungary.

Hungary is a key market for natural gas trading since it is a hub between North and South, as well as, West and East.

2.2. Domestic oil & gas production and imports/exports

The domestic conventional oil production in 2019 was 1.37 million cubic meters, the non-conventional was 0. The amount of conventional oil as a geological asset in Hungary in 2020 was 273.43 million cubic meters, and out of that 23.14 million cubic meters was a recoverable asset. The amount of non-conventional oil as a geological asset in Hungary in 2020 was 537.11 million cubic meters, and out of that 58.52 million cubic meters was a recoverable asset.

The domestic conventional gas production in 2019 was 1,849.74 million cubic meters, the non-conventional was 2.5 million cubic meters. The amount of conventional gas as a geological asset in Hungary in 2020 was 185,336.8 million cubic meters, and out of that 75,691.53 million cubic meters was a recoverable asset. The amount of non-conventional gas as a geological asset in Hungary in 2020 was 3,923,315.59 million cubic meters, and out of that 1,565,326.03 million cubic meters were a recoverable asset.

Distribution of energy produced from basic energy sources in Hungary (2017): Gas takes 11% and oil takes 9% of the energy produced from basic energy sources.

Hungary's dependence on energy imports was increasing in the last decade before 2017. 32% of the country's energy needs in that year came from domestic production and 68% from external markets. The import rate of 2017 was the highest in the past almost 30 years. It changed in the last years, and the import decreased to 56.2% in 2020. Hungary is one of the moderately energy import-dependent countries in the EU.

Imports rely almost entirely on Russian gas, which comes to Hungary in pipelines, but there is a new agreement (2021) with Croatia about a bigger amount of LNG import to Hungary.

2.3. Foreign investment and participation

No special requirements or limitations are prevailing in Hungary to this end. However, merger clearance rules are applicable to acquisitions and also a ministry notification might be applicable for the acquisition of strategic infrastructure or companies (please see Section 9.3.).

2.4. Protection of investment

The *Energy Charter Treaty* provides a multilateral framework for energy cooperation that is unique under international law. It is designed to promote energy security through the operation of more open and competitive energy markets while respecting the principles of sustainable development and sovereignty over energy resources.

The *Energy Charter Treaty* was signed in December 1994 and entered into legal force in April 1998. Currently, there are 53 signatories and contracting parties to the treaty. This includes both the European Union and Euratom.

Furthermore, Hungary, as an EU member state, is subject to all secondary EU energy laws. These laws however dominantly regulate the gas and electricity sector and not the oil sector.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

In Hungary, mining operators holding a hydrocarbon exploration license or an exploration right under a concession contract may only carry out their exploration activities on the basis of an approved exploration technical operating plan.

Once a concession contract has been concluded, the concession company established by the concessionaire, as the mining contractor, will have the exclusive right and obligation to carry out mining activities, the licenses for which will be issued by the Mining Supervisory Authority. The concession contract may be concluded for a maximum period of 35 years, which is renewable once for a maximum period of half the duration of the original concession contract. The extension of the concession contract must be initiated at least six months before its expiry.

3.2. Foreign exploration

The rules are predominantly the same for domestic or foreign companies. The authorization of hydrocarbon prospection, exploration and production, and hydrocarbon storage is subject to the following specific rules, in addition to the general rules set out in the Mining Act.

- According to Art. 22/A (8)-(9) of the Mining Act, in the case of hydrocarbons, the conclusion of the concession contract is conditional on the provision of a financial guarantee in the form of a bank guarantee of HUF 200 million per

exploration block.

■ According to Art. 14 (1) of the Mining Act, the exploration period for conventional hydrocarbons shall be a maximum of six years (the initial exploration period shall be a maximum of four years, which may be extended by up to half of the initial exploration period once); for unconventional hydrocarbons, the exploration period shall be a maximum of eight years, subject to the possibility of extending the initial period twice (4+2+2 years).

■ According to Art. 22 (13) of the Mining Act, the mining operator must submit the final exploration report within five months of the end of the exploration period (previously 6 months).

■ According to Art. 22/C of the Mining Act, following the establishment of a mining claim, the hydrocarbon fields must be re-explored within two years of the expiry of the tenth year after the mining claim was established, failure to do so will result in the penalty of a reduction in the area of the mining claim, and the areas thus released will be made available for concession again.

■ According to Art. 22/A (13) of the Mining Act, In the case of hydrocarbons, the total area of exploration by mining operators may not exceed 15,000 square kilometers.

3.3. Stages of the exploration process

Through a concession contract, a concession is granted for a limited period of time for the prospecting, exploration, and extraction also. The license covers all stages.

3.4. Obligatory state participation

Article 20 (1) of the Mining Act provides that the state is entitled to a mining fee for the extracted mineral resources and geothermal energy. The amount of the mining fee payment obligation is set out in Article 20 of the Mining Act, and the frequency of self-declaration and payment of the mining fee is set out in *Government Decree 203/1998 (XII. 19.*) on the implementation of the Mining Act (Vhr).

The mining fee shall be determined as self-declaration in accordance with the provisions of *Government Decree No. 54/2008 (III. 20.)* on the determination of the unit value of mineral raw materials and geothermal energy and the method of value calculation (Decree). Pursuant to Article 4(5) of the Vhr, the obligations for oil and gas must be fulfilled on a monthly basis. A mining fee self-declaration shall be submitted even if no mining fee payment obligation has arisen during the relevant period.

In the case of hydrocarbon mining, the amount of the mining fee is determined primarily by the date of production of the hydrocarbon field concerned and the amount of hydrocarbons extracted from the field. On this basis, the following categories are distinguished, in accordance with Article 20 (3) of the Mining Act:

■ for oil and gas extracted from hydrocarbon fields put into operation before January 1, 2008, the mining fee is 16%,

■ in the case of fields put into operation before January 1, 1998, the mining fee rate shall be calculated using the formula in accordance with Article 20 (3) b) of the Mining Act. If the fee rate calculated in this way is less than 12%, the mining fee rate shall be 12% on the basis of paragraph (3) b) bb),

■ in the case of oil and gas extracted from hydrocarbon fields put into operation after January 1, 2008, the rate of the mining fee:

■ 12%, if the volume of gas extracted from the hydrocarbon field does not exceed 300 million cubic meters per year or 50 kilotons per year in the case of oil,

■ 20%, if the annual volume of gas extracted from the hydrocarbon field is more than 300 million cubic meters but not more than 500 million cubic meters or more than 50 kilotons but not more than 200 kilotons in the case of oil,

■ 30%, if the annual production of gas from the hydrocarbon field is more than 500 million cubic meters or 200 kilotons in the case of oil,

■ 12% for gas obtained from the involuntary replacement of gas from underground gas storage put into operation before July 1, 2007, and 12% for carbon dioxide gas,

■ 2% for hydrocarbons of non-conventional origin and hydrocarbons that can be extracted by a special process, and 2% for the recovery of hydrocarbons from associated gas extracted with thermal water,

■ a mining margin of 0% on the quantity of hydrocarbons extracted by means of increased-efficiency processes.

The level of the mining fee for hydrocarbons is influenced by the world market price of oil and gas. Pursuant to Article 20 (4) of the Mining Act, if the monthly average of the Brent oil price on the stock exchange reaches or exceeds USD 80/barrel, the mining fee for oil pursuant to Article 20 (3) a) and c) of the Mining Act is increased by 3-3 percentage points. If the monthly average of the quoted Brent oil price reaches or exceeds USD 90/barrel, the mining fee shall be increased by a further 3-3 percentage points. There are also special provisions for the gas fields put into operation before January 1, 1998, and for the gas fields put into operation after January 1, 1998.

3.5. Risks to be considered

If the mining operator carries out the mining activity in an irregular way, the Mining Supervisory Authority may impose a fine on the mining operator, suspend the continuation of the activity, revoke the permit and order the restoration of the original condition or, if this is not possible, the reclamation of the landscape, or cancel the mining right of the mining operator, in which case paragraphs (6) to (7) of Article 26/A of the Mining Act shall also apply.

Pursuant to Article 41 (2) of the Mining Act, a mining operator who fails to comply with the statutory obligation to notify, self-declare, or pay the mining fee, or fails to do so, is deemed to be carrying out mining activities in an irregular way.

According to Article 41 (6) of the Mining Act, the fine may be imposed repeatedly. The maximum amount of the fine is HUF 10 million. If the defendant fails to remedy the unlawful situation on the basis of which the fine was imposed within the time limit set or if the violation is repeated, the fine may be imposed repeatedly. The maximum amount of the repeated fine is HUF 30 million.

In order to recover the unpaid mining fee, the value of the unauthorizedly extracted mineral raw material, the fee, fine, and supervision fee imposed to make up for the loss of mining fee in the event of a cessation of extraction, as well as the interest on late payment, the Mining Supervisory Authority will contact the tax authority.

A mining contractor or a geological prospector shall compensate for damage caused by mining and geological prospecting activities to property, buildings, other parts of the property and appurtenances of property, and damages caused by water drainage, including expenses incurred for the prevention, mitigation, and remediation of damage.

Mining and exploration activities are deemed to be "hazardous activities" under private law and as such escaping liability for any damages caused to third persons in connection with mining and exploration is extremely limited and challenging.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

According to Art. 3 (1) of the Mining Act, the mineral raw material extracted by the mining company becomes the property of the mining company upon extraction, and the geothermal energy extracted for energy purposes becomes the property of the mining company upon utilization.

The Regulated Activities Supervisory Authority (SZTFH) is responsible for carrying out the state's mining and geological tasks.

4.2. Foreign production

The rights to produce oil & gas are granted by concession (see in Section 3.2.). Concession agreements are governed by the provisions of *Act XVI of 1991 on Concessions and the Mining Act*. Based on the Mining Act, in principle, the areas subject to concession are publicly tendered by the ministry. The winning bidder(s) shall create a Hungarian entity for the activity subject to the concession agreement and shall maintain majority ownership and voting rights in this entity during the whole term of the concession agreement. Rights and obligations under the concession agreement shall be practiced/performed by the concession company. The winner(s) of concession, as members of the concession company, shall undertake to perform all actions – including corporate actions – which are required to duly perform all obligations under the concession agreement.

Exploration and production rights under the concession agreement might exclusively be transferred or assigned based on the prior consent of the competent ministry. The consent might only be granted by the ministry if the transferee/assignee undertook to perform each obligation under the concession agreement and meets all former tendering criteria, itself. If transfer or assignment is not possible in this way, a call for a new tender shall be published.

Concession agreements are subject to private law in issues not regulated by, or otherwise permitted by mandatory law.

The Concession Directive (Directive 2014/23/EU of the European Parliament and of the Council of February 26, 2014, on the award of concession contracts) is implemented in Hungary, the rules laid down therein are therefore applicable.

4.3. Stages of the production process

Through a concession contract, the government grants a concession for a limited period of time for the prospecting, exploration, and extraction also. The license covers all the stages. Since the concession holder has ownership over the mined product, export is usually not subject to special licensing.

4.4. Obligatory state participation

Please see Section 3.4.

4.5. Risks to be considered

Please see in Section 3.5.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

Abandonment or decommissioning of infrastructure used in oil & gas production shall be notified to the mining authority together with the technical plan of closing the infrastructure and recultivating the area (where and to the degree it is possible). Pursuant to Section 42(2) of the Mining Act, the production area shall be abandoned in a condition that is not dangerous to either nature or the surface. Based on the Mining Act and its implementation decree, the technical plan – amongst others – should be supported with geological surveys prepared for the surface and the underground area, an environmental impact study, security measures for the protection of waters, a plan for the recultivation of land, a plan for the deconstruction of facilities, a plan for the prevention, remediation and compensation of potential mine damages, a proposal for the utilization of the area for other purposes and required investments.

Based on Section12(4) of the Mining Act, the infrastructure created for production is owned by the concessionaire and shall be deconstructed at the termination of the concession agreement, as well we, the area shall be reinstated to its original condition (to the degree it is possible). The concession agreement might deviate from this rule.

5.2. Environmental and HSE consideration

Pursuant to the *Government Decree no. 314/2005 (XII.25.)* both the starting and abandoning and/or decommissioning oil & gas facilities require an environmental protection authorization from the competent authority of environmental protection. The detailed rules of the proceedings are defined by this government decree, also.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

Hungary as a landlocked country is usually not a party to offshore safety treaties.

6.2. Offshore Safety Directive

Hungary as a landlocked country has not implemented the OSD, however, it is a directly applicable secondary EU legislation.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Export and import of gas products are usually carried out via pipelines. Bidding auctions are organized by the TSO for entry and exit capacities. The TSO shall grant access to entry and exit capacities in an indiscriminatory manner. However, the participation at bidding auctions is subject to holding a license issued by the Hungarian Energy and Public Utility Regulatory Authority – in principle, a limited gas trading license – joining the clearing system, provision of financial security, and other conditions laid down in relevant laws and the general terms and conditions of the TSO and the clearing system operator. Subject to several other conditions laid down in *Act XL of 2008 on Natural Gas* (Natural Gas Act), transit of natural gas via Hungary might be carried out without holding a Hungarian gas trading license.

Oil is an excisable product, therefore cross-border sales or deliveries of oil might be subject to export and import licenses and a customs warehouse license.

The Hungarian Hydrocarbon Stockpiling Association was set out by *Act No. XLIX of 1993 on the strategic stockpiling of imported crude oil and petroleum products* (currently in effect as *Act No. XXIII of 2013 on the strategic stockpiling of imported crude oil and petroleum products*) in order to ensure the availability of sufficient volume of strategic crude oil stocks in Hungary in the event of a supply disruption. The association is responsible for the creation and maintenance of the level of strategic stocks laid down by the aforementioned act as well as providing for the necessary conditions.

7.2. Transportation

There is only one gas TSO in Hungary, FGSZ Zrt., which is a 100% subsidiary of the national oil company, MOL Nyrt. Pursuant to the Natural Gas Act – and except for several exceptions – the TSO must be the owner of the transmission pipeline it operates. The construction and operation of transmission pipelines are subject to a licensing obligation with the Hungarian Energy and Public Utility Regulatory Authority, a building permit, and a usage permit issued by the mining supervisory authority. Permits are subject to many special authority consents (environment protection, catastrophe prevention, etc.).

Access to the transmission pipeline is granted in a non-discriminatory manner, however, access is usually subject to holding a license and the conclusion of a network use agreement with FGSZ Zrt., which establishes further criteria laid down in ancillary documents (the *Business and Trading Code*, the internal policy of the capacity booking platform, standard ser-

vice agreement, as approved by Hungarian Energy and Public Utility Regulatory Authority from time to time).

7.3. Land rights

Usage rights and/or ownership rights over the track of the pipeline and the mandatory protection area shall be acquired. The state of Hungary has compulsory acquisition rights to land if the public interest is manifestly substantiated.

7.4. Access and integration

There is only one gas TSO in Hungary, FGSZ Zrt. Access to the transmission pipeline is granted in a non-discriminatory manner, however, access is subject to holding a license and the conclusion of a network use agreement with FGSZ Zrt., which establishes further criteria laid down in ancillary documents (the *Business and Trading Code*, the internal policy of the capacity booking platform, standard service agreement, as approved by Hungarian Energy and Public Utility Regulatory Authority from time to time).

7.5. Gas transmission and distribution

There is only one TSO in Hungary, FGSZ Zrt. The operation of a transmission network requires a license from the Hungarian Energy and Public Utility Regulatory Authority (subject to other authority consents). The TSO must have the ownership of the transmission pipe(s) it operates pursuant to the Natural Gas Act.

The operation of a distribution network is also subject to a license issued by the Hungarian Energy and Public Utility Regulatory Authority. The operator must be the majority owner of the distribution pipeline it operates pursuant to the Natural Gas Act. The ratio of ownership shall be determined based on the book value of all assets operated by the distributor of natural gas.

A distribution line may be installed subject to the prescribed technical safety, financial and economic conditions, in possession of the Hungarian Energy and Public Utility Regulatory Authority's operating license, in accordance with the legislation on proceedings of building authorities relating to special structures falling within the competence of the mining authority.

In addition, a DSO must also have the necessary metering equipment and means of data transmission, data processing, and IT systems in place with facilities to link up with the IT systems of system operators for the purpose of data communications, as well as bodies within its organization, or of the outsourcing contractor employed upon the consent of the Hungarian Energy and Public Utility Regulatory Authority, for the ongoing operation and supervision, and - within its organization - for the maintenance of these assets and an emergency response unit to eliminate any supply disruption, as well as a non-stop technical control unit within its organizational structure to communicate with the authorized operators of connected networks and with the network users. The in-depth technical and organizational requirements of DSOs are defined in specific legislation adjoining the Natural Gas Act.

The activities of DSOs for selling and buying natural gas for the purpose of corrective accounting and system balancing, and also for own consumption are not trading activities within the application of the Natural Gas Act.

Where a customer is supplied directly from the transmission line DSO functions shall be carried out by the TSO, including the operation of the supply line.

A distribution fee is payable for using the distribution pipeline and joining pipelines. It is either a flat fee or a base fee plus a usage fee depending on the nature and volume of usage. A joining fee is also payable. A joining fee might also be payable in case of capacity improvements. The principles of calculating the fees are determined in the decrees of the President of the Hungarian Energy and Public Utility Regulatory Authority (most recently *decree no. 8/2020 (VIII.14.*) of the President of the Hungarian Energy and Public Utility Regulatory Authority) and the individual fees applied by DSOs – calculated based on the decree of the Hungarian Energy and Public Utility Regulatory Authority – are approved by the Hungarian Energy and Public Utility Regulatory Authority in authority orders.

8. TRADING

8.1. Trading license

Gas trading In Hungary is subject to holding a trading license issued by the Hungarian Energy and Public Utility Regulatory Authority.

The most important pieces of Hungarian legislation to be considered for gas trade licensing are:

- the Natural Gas Act; and
- its implementing decree (*Governmental decree no. 19/2009. (I. 30.) re. the implementation of the Natural Gas Act*).

According to (Sections 28 and 114(1) points a) and e) and 114(3) of) the Natural Gas Act, trading in natural gas can only be carried out by authorized natural gas traders (i.e. in possession of in compliance with the appropriate license issued by the Hungarian Energy and Public Utility Regulatory Authority). (Section 28(3)-(6) of the) Natural Gas Act describes the "full scope" and the "restricted scope" licenses whereby the main difference is that restricted license holders are not authorized to supply natural gas to end-users, with the exceptions

of certain transactions on the regulated natural gas market.

The provisions on natural gas suppliers shall also apply to restricted license holders, except Sections 28/A-31/C, Paragraph a) of Subsection (2) of Section 62, Subsection (1) of Section 63, and Section 113 of the Natural Gas Act. The restricted license holders shall be exempt from the provisions set out in Sections 122-123, too. These provisions relate to communication with users, customer service center, special rules on costumers, switching between supplier rules, universal services, on standard business rules, and special licensing provisions re. corporate events (e.g. events like a merger, demerger, capital decrease, etc.), special reporting/licensing obligation re. acquisition of control, etc.

Restricted gas trading might be performed in Hungary via:

(i) a passported license (for an entity legally registered in any Member State of the EU or any State that is a party to the Agreement on the EEA, and engaged in the supply of natural gas in the country where established); or

(ii) a domestic license (for an entity legally registered in Hungary).

Both the application and holding of a license are subject to other conditions (transparent ownership structure, other organizational rules, financial and technical capabilities) detailed in the Natural Gas Act and its implementing decree.

8.2. Products

Exchanges in Hungary mainly deal with MGP and spot products. Certain derivative products are also available. The most preferred exchanges are CEEGEX and HUDEX.

9. COMPETITION

9.1. Authorities

The Hungarian Competition Authority (in Hungarian the 'Gazdasagi Versenyhivatal') has competence over anti-competitive practices in the oil and gas sector. The principal criteria of establishing anticompetitive conducts (anticompetitive agreements or abuses of dominant position) are the same as for other sectors.

The Hungarian Energy and Public Utility Regulatory Authority also has special competence in the so-called 'significant market power proceedings' as regulated by (Sections 56-57) of the Natural Gas Act.

The Hungarian Energy and Public Utility Regulatory Authority and Competition Authority entered into a co-operation agreement in conducting their respective proceedings and to boost effective detection of anticompetitive restraints.

9.2. Anti-competitive actions

Both the Competition Authority and the Hungarian Energy and Public Utility Regulatory Authority in their own proceedings have the traditional powers upon establishing a breach of competition rules (establishment of a breach of law, ordering the undertakings to stop the conduct, imposing fines). Also, anticompetitive agreements are null and void from a private law perspective and private actions for damages are also available to third parties under the same rules, which are applicable to other sectors.

Merger clearance rules are also the same for the energy sector as for other sectors from a competition law aspect. The substantive test is established by *Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices* (Competition Act) and uses a mixture of the earlier SLC text with the SIEC text of the EUMR, of which both the legislator and the Competition Authority expects a more economic assessment: "*The Competition Authority shall prohibit the concentration if, having regard to Subsection (2)* [note by the author: to efficiency considerations] *the concentration constitutes a significant impediment to competition in the relevant market, particularly in consequence of the creation or strengthening of a dominant position*."

The time frame of merger clearance proceedings, based on type, is outline below:

- Merger clearance (certificate to implement the merger) – deadline of eight days with no possibility of extension.
- Merger clearance (Phase I) – deadline of 30 days with no possibility of extension.
- Merger clearance (Phase II) – deadline of four months that might be extended by 20 days in case of initial Phase II proceedings or by two months if originally Phase I proceedings turn into Phase II proceedings.
- Competition supervision proceedings for non-filing (in case of mixed thresholds) – four months that might be extended by two months.

Pursuant to Sections 122 to 124 of the Natural Gas Act, mergers in the gas sector might also be subject to notification to or approval of the Hungarian Energy and Public Utility Regulatory Authority in certain cases. Such applications shall be made independently from the merger clearance application to the HCA. Also, the application/notification shall be decided based on different criteria than a competition law assessment (e.g. transparency of ownership, security of service provision, etc.).

The State of Hungary has pre-emption rights in some strategic gas facilities, as well as, special substantive rules regarding the acquisition or change of control in the liquidation proceedings

of so-called undertakings of strategic importance are also applicable.

The Government of Hungary might grant immunity from antitrust merger clearance obligation in governmental decrees in case of so-called mergers of strategic importance. This immunity is of course not applicable to mergers of community dimension under the EUMR.

Act LVIII of 2020 prescribes additional notification obligation to the ministry liable for the internal economy in case of certain investments by a foreign investor made into strategic companies as defined by the act and its enforcement decree. Several oil and gas companies, mainly those which control critical infrastructure, qualify as strategic companies under the act. Consequently, certain acquisition in these companies by a foreign investor requires the notification to and subsequent acknowledgment by the ministry. Any company registered in Hungary, the EU, the EEA if their controlling owner is a citizen of or is incorporated in a country other than these areas; or any private individual being a citizen of, or an entity incorporated in a country other than Hungary, the EU, or the EEA shall amount to a foreign investor under the act. Missing the notification or completing the transaction despite the ban by the ministry, might trigger heavy administrative fines. Also, agreements, unilateral declarations, or corporate resolutions not complying with the provisions of the act shall be void.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

No express stabilization clause is included in domestic oil and gas laws. It is underlined in this respect that Hungary is an OECD, WTO, and EU member state. Additionally, we note that the *Act on Concessions* discloses the possibility of the state to amend the terms of the concession agreement to the detriment of the concessionaire.

10.2. Compulsory dispute resolution procedure

In general, no compulsory dispute resolution procedures are applicable to the oil & gas sector.

10.3. International treaty protection

Hungary is a signatory to, and it has duly ratified both the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the ICSID. No special difficulties exist in Hungary in litigating or seeking to enforce judgments or awards, against government authorities or state organs. However – in a very limited scope – disputes are reserved for the exclusive jurisdiction of Hungarian courts or Hungarian arbitration courts in Section 17(3) of *Act CXCVI on National Assets*. (Pursuant to Section 17(3) of *Act CXCVI on National Assets* – in the lack of any provision of international treaties to the contrary – the entity holding the right of disposal over national assets located within the borders of Hungary shall exclusively stipulate the application of Hungarian law and the jurisdiction of Hungarian courts or Hungarian arbitration courts in a civil law contract.)

There have been many instances when domestic corporations under foreign ownership successfully obtained judgments against the Hungarian Energy and Public Utility Regulatory Authority, most notably in connection with setting prices by the Hungarian Energy and Public Utility Regulatory Authority and the Hungarian Energy and Public Utility Regulatory Authority decrees influencing access to critical infrastructure.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

Kosovo does not have gas market access, infrastructure, or any supplies of natural gas thus far. However, the current legislation provides significant benefits for companies that invest in Kosovo, as long as those investments are related to the renewable energy sector.

The lack of the above mentioned is also reflected in the lack of legislative developments in the area of oil and gas, as it does not constitute a need in the market. There was an initiative presented in October 2021, however, the Kosovo Government rejected the US-backed initiative to connect Kosovo to the Trans-Adriatic Pipeline which was supposed to come from Greece and North Macedonia. This rejection raised many issues in terms of Kosovo's future in energy, as the energy supply currently comes from coal power and import.

In terms of feasibility, the *Strategy for the Heating System* (Strategy) conducted by the Ministry of Economy for the years 2011-2018 states that Kosovo has no functional natural gas distribution and transmission infrastructure. However, there is an underground pipeline, which supplied gas to smelters in Skopje, Ferronikel, Trepca, Llamkos, and Termokos from the lignite gasification facilities of former the Kosovo Electro-Economy Enterprise's Working Unit *Energy and Chemistry*. The designed operative pressure of this gas pipeline was 25 bar, with annual capacities of 480 million normal cubic meters. The gas pipeline is severely damaged in certain sections however and its general state was never assessed in more detail.

Through this Strategy, the Ministry of Economy and the Government have recognized the need for the development of a legal and regulatory framework aiming at the development of the gas sector through private investments. However, this has been in deadlock for the past years.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

The Ministry for Economic Development is responsible for the development of policies in the natural gas sector, in consultation with the Energy Regulatory Office and other governmental bodies. The policies drafted for the natural gas sector are planned to be a part of the *Energy Strategy* and *Implementation Program for the Energy Strategy*.

As Kosovo does not have natural oil or gas reserves, the legal infrastructure in this line is very limited and it is focused mainly on the legal framework for the transmission, distribution, supply, usage, and storage of natural gas in terms of when it comes applicable. Currently, as Kosovo is not part of any oil or gas pipeline, a broader regulation of the sector in terms of legislation was not encouraged.

The *Law on Natural Gas* to some extent regulates the distribution and transmission network obliging the Transmission System Operator and Distribution System Operator, respectively, on the regulation of the issue at hand.

The *Administrative Instruction No. 08/2017 On Security Of Supply Of Natural Gas* is the only applicable legislation adopted in line with the *Law on Natural Gas* and it set out the measures to safeguard the security of supply of natural gas and rules related to such adequate safeguards for security of supply, thereby ensuring proper and consistent operations of the internal natural gas market.

2.2. Domestic oil & gas production and imports/exports

There are no percentages applicable in regards to the oil and gas production as there is no connectivity to such pipelines to be used. However, when it comes to energy import and export, in 2020, there was a 13.61% (839,209 megawatt-hours) import participation on the overall energy demand in Kosovo, which showed a reduction in imports compared to the preceding years. On the other hand, 443,997 megawatt-hours of energy were exported during 2020. The export/import was done via interconnectors with the neighboring countries.

2.3. Foreign investment and participation

In addition to the preferential conditions offered to foreign investors in general, as set forth by the *Law on Foreign Investments*, the Government of Kosovo recognizes a special status for the projects of the energy sector. The Government allocates the highest national significance to such projects, especially in terms of permit-granting processes and related issues. Additionally, in cases where investments include higher risk than the usual projects, the Energy Regulator ensures that the system operator and system users enjoy relevant incentives both, in the long term, and the short term.

A one-stop-shop for renewable energy sources has been established within the Ministry of Economy. Its competencies mainly include following the development of investments in the field of renewable energy projects, regular communication with interested potential investors, tracing the progress of investments, and facilitating this whole process. However, this one-stop shop is not yet in function but it is meant to be finalized in the short term.

2.4. Protection of investment

Kosovo is a contracting party of *The Energy Community Treaty*, As a result, it has received many international donors' funding when it comes to regulating the infrastructure and ensuring the independence of the energy. In line with this, the below agreements were ratified by Kosovo;

- *Financing and Project Agreement - Improvement of Transmission Network*, concluded between KfW and the Republic of Kosovo and KOSTT, dated December 31, 2013, ratified in 2016;
- *Financing Agreement - for the programme Energy Efficiency Measures in Public Buildings at the Municipality Level, Kosovo*, concluded between KfW and the Republic of Kosovo, dated January 22, 2015, ratified in 2016; and
- *Financing Agreement - for consulting services on the programme Energy Efficiency Measures in Public Buildings at the Municipality Level, Kosovo*, concluded between KfW and the Republic of Kosovo, dated January 22, 2015, ratified in 2016.

As a result, the *Cooperation Agreement* between the Government of the Republic of Kosovo and Council of Ministers of Albania on the exchange and/or allocation of regulatory reserve between the transmission system operator (OST j.s.c) and Transmission System and Market Operator (KOSTT j.s.c.), entered into force in 2020, for Kosovo to become part of the European part.

The regulatory policy on oil & gas is only slightly affected by the international agreements stated above. Internal laws, administrative instructions, and regulations are the main bodies of law that regulate this policy in Kosovo.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

Government authorities that are responsible for the regulation of oil & gas exploration in Kosovo include: The Ministry of Economic Development, The Ministry of Industry, Entrepreneurship and Trade, the Energy Regulatory Office (ERO), and the Secretariat of the Energy Community.

On the other hand, the Ministry of Trade and Industry in Kosovo has proposed the draft *Law on Compulsory Oil Stocks*, aiming to regulate the necessary procedures for interventions in case of a severe shortage of petroleum products in the market of Kosovo. This law was designated to be approved by the Assembly of the Republic of Kosovo in 2021, but its approval is still pending.

However, the exploration of oil and gas is not regulated due to a lack of natural resources.

3.2. Foreign exploration

N/A

3.3. Stages of the exploration process

N/A

3.4. Obligatory state participation

N/A

3.5. Risks to be considered

N/A

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Kosovo has adopted the *Law on Natural Gas*, but as it does not have the natural resources or the infrastructure until now to produce, the law regulates only the transmission, distribution, supply, usage, and storage of natural gas.

4.2. Foreign production

N/A

4.3. Stages of the production process

N/A

4.4. Obligatory state participation

N/A

4.5. Risks to be considered

N/A

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

N/A

5.2. Environmental and HSE consideration

N/A

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

N/A

6.2. Offshore Safety Directive

N/A

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

The *Administrative Instruction (Mti) Nr. 06/2019 on Technical Requirements for Import, Storage, Wholesale and Retail Sale Of Petroleum Fuels and Cleaning Of Tanks* states that entities dealing with import or wholesale of the petroleum fuels, besides the general requirements for licensing, are obliged to fulfill the following requirements:

- For diesel, petrol, gas oil, and LPG for vehicles a license is needed for storing the relevant fuel or at least a license for a retail sale fuel station for the relevant fuel issued by the Ministry of Trade and Industry through the Department for Petroleum Market Regulation;
- For LPG for heating (excluding cylinders), jet fuel, and fuel for airplanes, a license is needed for storing the relevant fuel, issued by the Ministry of Trade and Industry through the Department for Petroleum Market Regulation.

For export, there are no regulations in place. Both parties in this case will need to take into account regulations in the place of export.

7.2. Transportation

N/A

7.3. Land rights

N/A

7.4. Access and integration

N/A

7.5. Gas transmission and distribution

The *Law on Natural Gas* establishes the framework of the gas transmission and distribution network. According to this law, the Government of the Republic of Kosovo selects legal persons as candidates for transmission and storage system operators. These operators are, then, required to apply for a license to the regulator within 60 days from the selection day. If the operator is certified by the regulator, it is then approved and designated by the Government of Kosovo. The same procedure applies to the distribution of natural gas as well.

8. TRADING

8.1. Trading license

All companies interested in dealing with oil and gas trading need to apply for a license for operation. Such a procedure is regulated with the *Administrative Instruction (Mti) No. 06/2019 On Technical Requirements For Import, Storage, Wholesale, And Retail Sale Of Petroleum Fuels And Cleaning Of Tanks*. All licensed companies, need to comply with the regulation especially when it comes to quality and safety.

One of the biggest initiatives which are currently in the process and will make significant changes in the sector is the new draft law on *Trade with Petroleum Products and Renewable Fuels In Kosovo* which aims to regulate in a more detailed manner the oil sector. Furthermore, it will establish the Department for Petroleum Market Regulation which will be responsible for oil market regulation, petroleum products, and renewable fuels, including import, storage, wholesale, and retail trade, production, processing, through administration of permits for these activities in Kosovo. Lastly, it will treat the production part which before in the current law has not been included.

8.2. Products

N/A

9. COMPETITION

9.1. Authorities

For all issues related to competition, the Kosovo Competition Authority (KCA), established by the *Law on Protection of Competition*, ensures the protection of free and effective competition on the market.

All agreements between two or more independent enterprises are prohibited, decisions made by business associations and concerted practices that aim or may significantly influence on disturbance of market competition in the relevant market, and in particular, the ones that:

a) directly or indirectly impose purchase or sale price or any other condition in trade;

b) limit or control production, market, technological development, and investments;

c) share markets or supply sources;

d) implement unequal conditions for similar transactions with other enterprises, consequently placing them in an unfavorable competitive position;

e) apply conditions for agreements on contracts to rely on other contracting subjects, through other supplementing conditions that do not have any natural or common trade practice

connection to the object of such contract.

9.2. Anti-competitive actions

The *Law on the Protection of the Competition* covers in Article 4 prohibited agreements which include but are not limited to directly or indirectly imposing a purchase or sale price or any other condition in trade; limiting or controlling production, market, technological development, and investments; sharing markets or supply sources; implementing unequal conditions for similar transactions with other enterprises, consequently; placing them in an unfavorable competitive position, etc.

As a result, the KCA can disapprove and not allow such a merger to occur in case it falls under prohibited agreements as set forth in Article 4. However, there are exemptions and allowances under Chapter III of the law, which the company should request approval from the KCA.

Obtaining a decision for the request sent to the KCA is within 30 days of the submission of the request. While appealing the decision of the KCA, the procedure takes place within the competent court.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

The *Law on Natural Gas* does not include provisions applicable to a stability clause. However, if the company is a foreign one the *Law on Foreign Investments* in its Article 11 - *Armed Conflict and Civil Disturbance* stipulates that, in cases where a foreign investor suffers loss as a result of violence that is related to the political or economic situation, can request for compensation as set forth in Article 8 of the same law. The amount of such compensation shall be equal to the fair market value of the concerned losses and expenses, determined as of the date they were incurred

10.2. Compulsory dispute resolution procedure

In Kosovo, all disputes are treated by the basic courts unless arbitration is chosen by the parties as a mechanism for dispute resolution. Furthermore, there is no specific procedure or a department within the court which applies to the issues raised by the oil and gas sector.

However, depending on the nature of the dispute the case is treated by the respective department within the court which includes the economic, fiscal, administrative, or general departments.

Just recently the Kosovo Assembly passed the *Law on the Commercial Court* based on which the Commercial Court will have jurisdiction over several issues when it comes to commercial and administrative disputes. As a result, the Commercial Court aims to treat the cases coming from businesses in a more effective and professional manner.

10.3. International treaty protection

Kosovo is not a member of the United Nations, therefore it is not a signatory nor has ratified the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. However, Kosovo unilaterally adopts the New York Convention, when it comes to recognizing and enforcing the decisions which are recognized by it. Furthermore, a provision of recognition and enforcement are included in the *Law on Arbitration*, which is applicable to the case at hand.

There are no difficulties in enforcing such a decision, however, difficulties can occur in case the decision is disputed by the other party in the proceeding. However, there are numerous cases against government authorities that were awarded to companies.

To date, there are no cases of foreign companies when it comes to the oil and gas sector awards against state authorities. As stated above the oil & gas sector is not developed to the desired stand therefore also the cases in front of domestic courts remain low.

The main cases in front of domestic courts, when it comes to companies dealing with oil trading are in regards to licensing, quality, and tax/customs.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

MOLDOVA

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1. SUMMARY

The legislation of the Republic of Moldova on natural gas and petroleum products is quite stable, as it is a relatively new one, which transposes the European legislation in this regard.

However, Moldova is in an energy crisis from the end of 2021 until now. The crisis is caused by the fact that the Russian company Gazprom, which is the main source of natural gas that supplies Moldova, has reduced its natural gas supplies. This situation arose as a result of the expiration of the contract concluded between Gazprom and S.A. Moldovagaz, in September 2021, and, on the other hand, as a result of the energy crisis at a European level and, respectively, of the increase in gas prices on international stock exchanges. Moldova also has debts for natural gas supplied by Gazprom, and the offer to negotiate a new contract with Gazprom involves a significantly higher gas price than in previous contractual relations and the payment of debts.

This situation has led the authorities to declare a state of emergency in the energy sector. The report on the need to declare a state of emergency states that "natural gas shortages directly and immediately affect the security of the state and its citizens."

One of the effects felt was that the National Energy Regulatory Agency (ANRE) as the regulatory authority in the field of natural gas and petroleum products increased the tariffs for natural gas. Likewise, the price of petroleum products has increased significantly and this trend continues.

As a result of this situation, the Moldovan authorities are intensely looking for alternative ways of supplying gas. Alternative gas supply means, in the short term, a greater number of alternative suppliers, and in the long term includes the improvement of transport interconnections to provide alternative supply routes and a better assessment/exploitation of existing reserves in Moldova.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

The legislation of the Republic of Moldova regarding oil and natural gas largely transposes the legislation of the European Union. This is due to Moldova's commitment to harmonize its legislation with the *acquis communautaire* in the context of the Association Agreement between the Republic of Moldova, of the one part, and the European Union and the European Atomic Energy Community, and their member states, of the other part.

The most important principles enshrined in the legislation in this sector are the principle of equality, which presupposes that all participants in the market for natural gas and petroleum products enjoy equal rights, regardless of the type of ownership and legal form of organization and the principle of free access to the natural gas market.

As a result of the gas crisis, one of the country's main objectives is to ensure the security of natural gas supply to the Republic of Moldova, especially through the diversification of supply sources and routes.

This issue is of increasing importance especially in the context of the announced cease of gas by the Russian Federation, Moldova's debts to Russia, and the increase in gas prices. This all happened at the beginning of the cold season.

The total dependence on natural gas imports from only one source, as well as the lack of natural gas storage capacities and supply from other sources (e.g. with liquefied natural gas), create a higher risk of gas supply to the country.

2.2. Domestic oil & gas production and imports/exports

Natural gas production is regulated by *Law no. 108 of May 27, 2016*, regarding natural gas (the Natural Gas Law). The activity of natural gas production is carried out by the producers on the basis of the license for the production of natural gas. The number of licenses issued for the natural gas production activity is not limited. The license is issued by the National Agency for Energy Regulation (ANRE or Agency). There are currently no valid gas production licenses.

The resources of the Republic of Moldova are very low in natural gas, they are not explored and they are not even produced. Moldova is supplied with imported natural gas. Moldova's main natural gas supplier is the Russian company Gazprom.

Moldova does not export natural gas.

The import of natural gas takes place exclusively through pipelines. The natural gas supplied by Russia is delivered through the pipeline network with Ukraine. At the end of 2020, the construction of the Iasi-Ungheni-Chisinau gas pipeline was completed. This pipeline is able to cover a large part of Moldova's natural gas consumption and is thus an alternative to Russian gas. The pipeline is not yet in use, but the government has announced that certain quantities of gas have been delivered to maintain the necessary pressure in the system.

The petroleum products market is regulated by *Law no. 461 of July 30, 2001*, on the petroleum products market. The activity

of producing petroleum products is not regulated by law, but only the activities of:

- import and wholesale and/or retail sale of petrol and diesel at refueling stations;
- import and wholesale and/or retail sale of liquefied gas at refueling stations.

The Republic of Moldova supplies only imported petroleum products. Romania is the main supplier of petroleum products with a total of 99.89% of gasoline and 75.28% of diesel. Other oil-supplying countries are Russia with 17.04%, Bulgaria with 4.92%, Serbia with 1.64%, and Belarus with 1.11% on diesel.

In general, Moldova manages to meet its own energy needs through imported natural gas and petroleum products. However, 2021 was a year of crisis in the energy sector, both in the gas sector and in the oil products sector.

2.3. Foreign investment and participation

There are not any special requirements or limitations on the acquisition of interests in the oil & gas sector by foreign companies. All investors are granted fair and equal conditions of activity. Moldovan legislation grants free access to the natural gas market to all investors irrespectively of citizenship, domicile, residence, place of registration or activity, origin state of the investor, or the investment (Article 6 *Law no. 81 of March 18, 2004*, on investments in entrepreneurial activities).

2.4. Protection of investment

The Republic of Moldova ratified the *Energy Charter Treaty* of December 17, 1994, on May 3, 1996, and acceded to the *Treaty Establishing the Energy Community* of October 25, 2005, (the EC Treaty) through the *Law no. 117 of December 23, 2009*.

The regulatory policy in respect of the oil and natural gas of the Republic of Moldova is especially influenced by the provisions of the *Treaty Establishing the Energy Community*. By adopting the EC Treaty, the Republic of Moldova made legally binding commitments to implement the *acquis communautaire*. In this sense, were adopted *Laws no. 108 of May 27, 2016*, on natural gas and *Law no. 174 of September 21, 2017*, on energy, which transpose the commitments of our country in accordance with the provisions of the energy package III.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

The main Moldovan normative acts in the domain of exploration and extraction of oil & gas reserves are:

- *The Subsoil Code no. 3 of February 2, 2009*;
- *Law no. 108 of May 27, 2016*, regarding natural gas.

According to the Subsoil Code, the riches of any kind of subsoil of the Republic of Moldova, including the useful mineral substances it contains, as well as its underground spaces are the exclusive object of the public property of the state, are inalienable, imperceptible, and imprescriptible. Subsoil sectors cannot be alienated, they can only be transferred for use.

The grounds for the emergence of the right of use over the subsoil sectors are the Government decision adopted as a result of the competition for the right to explore or extract useful mineral substances of national importance on the basis of concession and, respectively, the concession contract.

The concession agreement is concluded between the user (investor) and the Ministry of Agriculture, Regional Development and Environment and contains the conditions of use of the conceded subsoil sectors.

It is the competence of the Government to adopt the decisions regarding the transmission for industrial capitalization of the deposits of useful mineral substances of national importance.

In order to carry out the activity of natural gas production, the producer is obliged to obtain from the Agency a license for natural gas production. The construction and operation of the production facilities are carried out only on the condition that the Government assigns the right to use the subsoil sectors for the extraction of natural gas. Subsequently, the beneficiary is obliged to obtain from the local public administration authorities the building permit in accordance with the law on the authorization of the execution of construction works.

There are not any current major initiatives or policies of the Government in relation to oil & gas development.

3.2. Foreign exploration

Foreign legal and natural persons have the same rights and carry the same obligations for the use of the subsoil as legal and natural persons from the Republic of Moldova, according to the legislation. See Section 3.1.

3.3. Stages of the exploration process

The grounds for the emergence of the right of use over the subsoil sectors are the Government decision adopted as a result of the competition for the right to explore or extract useful mineral substances of national importance on the basis of concession and, respectively, the concession contract.

For the conclusion of the concession agreement, the potential

investor has to obtain a list of permits, issuable by Moldovan authorities. A general (non-exhaustive) list:

a) license for natural gas production (issued by the ANRE; validity term: 25 years; state fee: MDL 3,250 Moldovan lei (approximately EUR 165);

b) act on confirmation of geological limits (issued by Agency for Geology and Natural Resources; validity term: five years; free of charge);

c) state ecology expertise (issued by the Environmental Agency; validity term: the period of project implementation; free of charge);

d) environment permit, under certain conditions (resulting from the environmental impact assessment, issued by the Environmental Agency; validity term: four years; free of charge);

e) gas emissions authorization (issued by the Environmental Agency; validity term: one to five years; state fee: from MDL 500 to MDL 4,000 (approximately EUR 25 to EUR 200);

f) positive confirmation of expertise in the domain of industrial security (issued by an authorized expertise entity; validity term: five years; state fee: depends on the complexity of the activity, the equipment, etc.);

g) construction authorizations for works of public utility of national interest (issued by the Ministry of Economy and Infrastructure of the Republic of Moldova; validity term: for the period of construction works; free of charge);

h) certificate on the protection of works of public utility and national interests (issued by the Ministry of Economy and Infrastructure of the Republic of Moldova; validity term: the period of construction works withholding; state fee: based on the activity and equipment complexity); and

i) sanitary authorization for the functioning of the facility (issued by the National Public Health Agency; validity term: five years; free of charge).

3.4. Obligatory state participation

The general principle is that the use of the subsoil is paid, in the form of money.

Payment for the use of the subsoil is made in the form of:

a) regular payments;

b) compensation of the expenses for the geological exploration works carried out from the means of the state budget.

In particular, the following types of fees/charges can be distinguished:

Subsoil fee for the use of the subsoil in the amount of:

a) 3% of the contractual value (of estimate) of the construction works of the underground objectives;

b) 0.2% of the book value of underground constructions.

Fees for the extraction of useful minerals:

Natural gas (free, dissolved in oil) – MDL 50/cubic meter;

Oil (geological and extractable reserves) – MDL 50/ton.

Government Decision no. 895 dated July 20, 2016, on the concession of works of geological exploration of hydrocarbons on the territory of the Republic of Moldova, with subsequent exploitation by which it was accepted the concession of the geological exploration works of hydrocarbons (natural gas and oil) on the territory of the Republic of Moldova, with their subsequent exploitation, provides that the royalty of the concession of the right to carry out the works of prospecting and evaluation of the deposits of useful mineral substances of national importance, in order to detect the accumulations of hydrocarbons (natural gas and oil) is established in the form of the results obtained by the concessionaire as a result of the accomplishment of these works, namely all true geological information, including the respective annexes (maps, diagrams, profiles, etc.) and the results of laboratory tests obtained in the process of hydrocarbon research works. Reimbursement of investments will be made at the expense of the income obtained from the activity of the concessionaire, without the right to claim them from the grantor.

The concessionaire, obligatorily and free of charge, must present to the State Fund for Information on the Subsoil within the Agency for Geology and Mineral Resources all true geological information, with the respective annexes (maps, diagrams, profiles, etc.) and the results of laboratory tests obtained in the process of hydrocarbon research works.

3.5. Risks to be considered

N/A

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Natural gas production is a licensed activity, the procedure is provided by the Natural Gas Law. The competent authority is the National Agency for Energy Regulation of the Republic of Moldova.

Companies applying for a natural gas production license must be technically equipped to carry out the activity, have a production facility, and present documents confirming the technical endowment and that the production facility complies with the technical requirements established by law.

The construction, operation, maintenance, increase of the capacity of the production installations and their connection

to the natural gas transmission or distribution networks are carried out in accordance with the Natural Gas Law, with *Law no. 116 of May 18, 2012*, on the industrial safety of dangerous industrial objects and the regulation on connection.

The construction and operation of the production facilities are carried out only on the condition that the Government assigns the right to use the subsoil sectors for the extraction of natural gas. Subsequently, the beneficiary is obliged to obtain from the local public administration authorities the building permit in accordance with *Law no. 163 of July 9, 2010*, on the authorization of the execution of construction works.

The producer participates in the natural gas market if it complies with the technical requirements for connection to the natural gas network, and the quality of the delivered natural gas corresponds to the established quality parameters. The producer is entitled to sell natural gas on the wholesale natural gas market under the license for natural gas production, and on the retail market for natural gas – provided that he also obtains a license for the supply of natural gas.

The manufacturer must be legally independent of any natural gas transmission, distribution, or storage company. He may not hold a license for the transportation, distribution, or storage of natural gas.

The production of petroleum products is not regulated, such activities are not carried out in the Republic of Moldova.

There are no major current initiatives/policies in this regard.

4.2. Foreign production

The same rules shall apply – see Sections 4.1. and 5.

4.3. Stages of the production process

See Section 3.3.

4.4. Obligatory state participation

N/A in the part of obligatory state participation in the production of oil & gas.

The Moldovan legislation does not provide any restrictions upon the export of gas and oil, except for crisis periods or emergency situations.

4.5. Risks to be considered

N/A

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

Mining works, objectives, and underground constructions not related to the extraction of useful mineral substances are subject to liquidation or conservation at the expiration of the validity of the contract, at the end of the exploitation of the reserves of useful mineral substances, or at the premature termination of the use of the subsoil.

In the event of liquidation, mining excavations and wells will be brought to a state that will ensure the safety of human life and health, the environment, buildings and constructions, the possibility of using the exploited sector of the basement for other purposes, and in case of conservation, and the preservation of deposits. useful mineral substances, mining excavations, and drilling wells throughout the conservation period.

When the total or partial liquidation or conservation of mining excavations, objectives, and underground constructions not related to the extraction of useful mineral substances, the beneficiary of the subsoil is obliged to ensure, in an established way, the recultivation of lands degraded by mining works.

Liquidation and conservation are carried out in accordance with the technical projects coordinated with the Agency for Geology and Mineral Resources.

The geological, mining and technical topography documentation is completed at the time of completion of the works and is submitted for storage, in an established manner, in the State Fund for information on the subsoil.

The liquidation or conservation of mining excavations, objectives, and underground constructions not related to the extraction of useful mineral substances are considered completed after the signing of the act on liquidation or conservation by the Ministry of Agriculture, Regional Development and Environment.

In order to fulfill the liquidation or conservation works of the mining excavations, objectives and underground constructions not related to the extraction of useful mineral substances, as well as for the recultivation of lands degraded by mining works, the beneficiaries of the subsoil, after putting into operation the objectives. The manner of creation and use of the means of the liquidation and recultivation fund is established by the Government.

5.2. Environmental and HSE consideration

N/A

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

The *Energy Charter Treaty* of December 12, 1994, as of May 3, 1996;

The *Treaty Establishing the Energy Community* of October 25, 2005.

6.2. Offshore Safety Directive

N/A

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Special requirements in the context of cross-border exchanges of natural gas are the res-possibility of transmission system operators.

They shall submit to the Agency, at least once every three months or on request, a report on the volume of natural gas delivered in the context of cross-border exchanges of natural gas during the previous months.

The transmission system operator is obliged to build sufficient cross-border capacity to connect the natural gas transmission system of the Republic of Moldova with the natural gas transmission systems of other countries part of the Energy Community and/or to integrate it in the regional market, to respond to all justified requests technically and economically and considering the need to ensure the security of gas supply.

In the context of the development of natural gas transmission networks and investment plans, the transmission system operator must make reasonable assumptions about the evolution of cross-border trade, in particular imports, production, supply, and consumption of natural gas, considering investments for adjacent networks. For this purpose, the transmission system operator shall cooperate with the distribution system operators as well as with the transmission system operators in the neighboring countries.

In order to carry out its functions related to the transboundary transmission of natural gas, the transmission system operator must cooperate with the transmission system operators of the neighboring countries in accordance with the agreements concluded with them.

7.2. Transportation

The pipelines for the transport of natural gas and petroleum products are regulated by *Law no. 592 of September 26, 1995*, regarding the transport through main pipelines. According to this law, pipelines for the transport of natural gas and petroleum products are built on state-owned land. The structure of the pipeline transport is established by the central public administration bodies. The land is allocated with the right of use free of charge to companies and organizations of transport through pipelines.

The right to use the land free of charge during the operation of natural gas networks is constituted by the effect of the law (Natural Gas Law) without the need to obtain the consent of the state or administrative-territorial units, the conclusion of any legal acts or other formalities.

Transmission system operators must be certified as transmission system operators by the Energy Regulatory Agency and obtain a natural gas transmission license. The license for the transmission of natural gas indicates the boundaries of the territory where the activity takes place. Certification requires companies to meet, in particular, the requirements for the unbundling and independence of the transmission system operator.

For the construction of the objects of transport through pipelines, qualified lands are distributed based on the land cadaster as being unsuitable for agriculture, or lands with low creditworthiness and not afforested. In exceptional cases, by decision of the Government, for the purposes shown, high-quality agricultural land may be allocated. The construction of the pipelines is carried out by the specialized construction-assembly organizations according to the project in compliance with the norms, standards, and rules in construction, approved in an established manner, which regulate the execution and reception of works, as well as commissioning of finished pipelines.

7.3. Land rights

The publicly owned lands of the state or of the administrative-territorial units, necessary for the construction, operation, maintenance, rehabilitation, or modernization of the natural gas transmission and distribution networks, are handed over for use to the system operators free of charge.

On land and other privately-owned property, system operators, under the conditions of this law, during the construction, operation, maintenance, rehabilitation, modernization, including refurbishment, of natural gas networks, enjoy the following rights:

a) for use on the land for the execution of works necessary for the construction, rehabilitation, or modernization of natural gas networks;

b) land use to ensure the normal operation of natural gas networks by carrying out revisions, repairs, and other interventions necessary for the operation and maintenance of natural gas networks;

c) the easement of underground, surface, or aerial passage of the land for the construction of natural gas networks and/or for the execution of works at the location of natural gas networks during the intervention for the purpose of rehabilitation and modernization or for the development of repair works, overhaul or other operation and maintenance work, to remove the consequences of damage, as well as for access to their network location;

d) to request the restriction or cessation of activities that would endanger the life and health of persons, property, or certain activities;

e) access to the land where the natural gas networks are located.

The rights of use and easement over land and other privately owned property are constituted by virtue of public utility, by the effect of law, without the need to obtain the consent of the owners of the land or real estate, the conclusion of any legal act or other formalities, except the situation where the construction works of the natural gas networks involve obtaining a building permit or an equivalent permissive act, when the prior consent of the owner is required.

7.4. Access and integration

The system operator is obliged to grant access to the natural gas transmission networks to all existing or potential system users in a transparent, objective, and non-discriminatory manner. Access to natural gas transmission networks is granted on the basis of tariffs established in accordance with the methodologies for calculating regulated tariffs for natural gas transmission service and natural gas distribution service, approved by the Agency, published in the Official Gazette of the Republic of Moldova and applied to all system users in an objective and non-discriminatory manner.

The transmission system operator shall cooperate with the transmission system operators in neighboring countries in accordance with the agreements concluded with them.

In order to manage the access to the natural gas transmission and distribution networks, the system operator is obliged to keep an electronic register in which it will indicate, for each access point, identified by a specific number, all the data necessary to manage the access to a network. The system operator is obliged to publish on its website the information necessary to ensure efficient access to and use of the natural gas transmission networks.

Also, on November 22, 2019, the Energy Regulatory Agency approved the *Code of Natural Gas Networks*, which establishes rules that ensure the management of efficient and transparent access to natural gas networks.

7.5. Gas transmission and distribution

Natural gas companies that own or operate natural gas distribution networks operate as operators of the distribution system under the natural gas distribution license issued by the Agency. The license is issued for 25 years and costs MDL 3,250, the equivalent of about EUR 165.

Licensees must be technically equipped to carry out the activity, have natural gas distribution networks, and present documents confirming the technical endowment and that the natural gas networks comply with the technical requirements established by law.

The distribution system operator shall be independent of any undertaking engaged in the production, transmission, storage, or supply of natural gas and may not hold a license for the production, transmission, storage, or supply of natural gas except the combined operator.

The system operator is obliged to grant access to the natural gas distribution networks to all existing or potential system users in a transparent, objective, and non-discriminatory manner.

Access to the natural gas distribution networks is granted on the basis of the tariffs established in accordance with the methodologies for calculating the regulated tariffs for the natural gas distribution service, approved by the Agency, published in the Official Gazette of the Republic of Moldova.

The law does not preclude the conclusion of interruptible, short-term contracts and long-term gas supply contracts.

In order to manage access to the gas distribution networks, the system operator is required to keep an electronic register in which it will indicate, for each access point, identified by a specific number, all the data necessary to manage the access to the network, including data on the identity of the person with whom the contract for the provision of gas distribution service is concluded, on the existing supplier, address of the place of consumption, contracted flow, connection point, delimitation point, pressure at the delimitation point, equipment characteristics as well as the statement as to whether that place of consumption is connected or disconnected.

8. TRADING

8.1. Trading license

In Moldova, there are no requirements to have a trading license for natural gas trading.

According to the Natural Gas Law, the right to participate in the natural gas market belongs to all producers, suppliers, and consumers operating in the Republic of Moldova.

Transmission system operators, distribution system operators, and storage depot operators are specific participants in the natural gas market and have the right to operate on the natural gas market only under the conditions established by law.

Natural gas sales and purchase transactions, including import or export transactions, interconnection capacity sales-purchase transactions, other related products, involving producers, transmission system operators, distribution system operators, storage depot operators, and suppliers are engaged in the wholesale natural gas market. On the wholesale natural gas market, sale-purchase transactions are carried out on the basis of bilateral contracts, which are formed considering supply and demand, as a result of competitive mechanisms or negotiations. Natural gas market participants are entitled to engage in bilateral transactions, including bilateral gas export or import transactions.

The natural gas sale-purchase transactions in which the final suppliers and consumers participate in order to satisfy the own consumption of the latter are carried out on the natural gas retail market. The sale-purchase transactions are carried out in accordance with the natural gas supply contracts concluded between the suppliers and the final consumers. Suppliers sell natural gas to eligible consumers at negotiated prices, based on bilateral contracts with them.

In the context of public service obligations, the suppliers to whom these obligations have been imposed and the suppliers of last resort supply natural gas to final consumers at regulated prices.

8.2. Products

There are not any restrictions on the types of natural gas commodities that can be traded. In the law of natural gas, they are generically called "related products."

9. COMPETITION

9.1. Authorities

The National Agency for Energy Regulation is the authority responsible for promoting and monitoring competition in the market for natural gas and petroleum products.

The Agency shall ensure that the conditions necessary for effective competition in the market in natural gas and petroleum products are created and developed, including by promoting the principles of fairness, transparency, and non-discrimination in its regulatory acts. The Agency monitors the market in natural gas and petroleum products and checks for the timely detection of abuses. To achieve these objectives, the Agency collaborates with the Competition Council.

Also, if it finds cases of distortion or restriction of competition, the Agency shall notify the Competition Council. The Competition Council is the national competition authority, competent for the implementation of the provisions of the *Competition Law no. 183 of July 11, 2012*.

Represents anti-competitive agreements, in particular, behaviors aimed at:

a) the direct or indirect establishment of the purchase or sale prices or of any other trading conditions;

b) limiting or controlling the production, marketing, technical development, or investment;

c) division of markets or sources of supply;

d) participation with rigged tenders in tenders or in any other form of tender;

e) restricting or impeding access to the market and the freedom to exercise competition by other undertakings, as well as agreements not to buy or sell to certain undertakings without reasonable justification;

f) the application, in the relations with the commercial partners, of the unequal conditions to equivalent services, thus creating to them a competitive disadvantage; or

g) the conditioning of the conclusion of the contracts for the acceptance by the partners of some additional services which, by their nature or in accordance with the commercial customs, are not related to the object of these contracts.

These accords are prohibited by law and are null and void.

Other anti-competitive behavior may be permitted under certain conditions, for example, if it contributes to improving the production or distribution of products or to promoting technical or economic progress.

9.2. Anti-competitive actions

The Competition Council has the following main attributions:

a) promotes the competitive culture;

b) elaborates the normative acts necessary for the implementation of the legislation in the field of competition, state aid, and publicity;

c) approves the draft legislative and normative acts that may have an anti-competitive impact;

d) notifies the competent bodies regarding the incompatibility of legislative and normative acts with the legislation in the field of competition, state aid, and publicity;

e) investigates anti-competitive practices, unfair competition, and other infringements of competition, state aid, and advertising legislation;

f) finds violations of the legislation in the field of competition, state aid, and publicity, imposes interim measures in order to stop the reported violations, imposes corrective measures, and apply sanctions for committing violations;

g) adopts decisions provided by law for cases of economic concentrations;

h) authorizes, monitors and reports state aid;

i) brings before the court actions regarding the cases related to its competence; and

j) performs other duties in accordance with the legislation in the field of competition, state aid, and advertising, within the limits of its competence.

Economic concentration operations are subject to evaluation and have to be notified to the Competition Council before implementation depending on the size of the turnover.

Economic concentrations which are achieved by the merger of two or more companies must be notified jointly by the merging parties, and those which are achieved by the acquisition of joint control must be notified jointly by the persons or companies acquiring joint control. In other cases, the notification must be made by the person or company taking control of one or more companies or of a part of one or more companies.

The Competition Council investigates and assesses economic concentrations. Within 30 working days from the receipt of the complete notification of an economic concentration operation, the Competition Council:

a) informs the notifying parties, by letter, that the notified economic concentration does not fall within the scope of the law;

b) adopts a decision declaring the notified economic operation to be compatible with the competitive environment; or

c) decides to initiate an investigation if it finds that the notified concentration has serious doubts as to its compatibility with the competitive environment and they cannot be removed.

Within 90 working days of initiating the investigation, the Competition Council:

- issues a decision declaring the economic concentration operation to be incompatible with the competitive environment, if the concentration raises significant obstacles to effective competition in the market or to a substantial part of it, in particular as a result of the creation or consolidation of a dominant position; or
- issues a decision declaring the economic concentration operation compatible with the competitive environment.

The terms provided may be extended at the request of the involved parties. At the same time, if the Competition Council does not make a decision within the indicated terms, the economic concentration operation shall be deemed to be tacitly authorized.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

N/A

10.2. Compulsory dispute resolution procedure

The Agency shall examine (and mediate) the following disputes at the preliminary stage:

- Disagreements between natural gas companies regarding the provisions of the relevant legislation;
- Disputes, including cross-border disputes, over the refusal of the transmission system operator to grant access to natural gas transmission networks;
- Disagreements between consumers, system users, and natural gas companies that arise in connection with the relevant legislation, as well as between users and the closed distribution system operator, and issue decisions if necessary; and
- Disputes between system operators and owners of land and other property, public or private, regarding the use of third-party ownership.

The examination of the disputes mentioned in the Agency is not a mandatory procedure, the participants in the natural gas market can go directly to the courts in the general procedure.

Disputes between the participants in the natural gas market and the regulatory authority (National Agency for Energy Regulation) are resolved in the general administrative procedure.

The administrative procedure is a relatively new one, regulated by the *Administrative Code of the Republic of Moldova no. 116 from July 19, 2018*.

Disputes between participants in the petroleum products market shall be examined in the competent courts, in general, or administrative proceedings, as the case may be.

10.3. International treaty protection

Moldova ratified the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, on July 10, 1998, and the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, on May 5, 2011.

In order to be enforced, foreign arbitral awards must be recognized in the Republic of Moldova, with the consent of the enforcement. The competent authorities for such cases are the Courts of Appeal.

An arbitral award is considered foreign if:

a) is pronounced on the territory of a foreign state; or

b) is issued on the territory of the Republic of Moldova, but the law applied to the arbitration procedure belongs to a foreign state.

No special difficulty exists in litigating or enforcing judgments/awards against Moldovan public authorities.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

Following the shale gas rush in the early 2010s and the subsequent withdrawal of all the major players and of a number of independent players (a result of disappointing results of development efforts and a deteriorated legislative environment), Poland has experienced stabilization in the upstream sector over the last few years. A major part of hydrocarbon exploration (or combined exploration and production licenses) is held by the Polish state-controlled champions PGNiG and Orlen, and the inflow of new players has been limited over the last few years. The existing licenses are located predominantly in the south-eastern and north-western parts of the country, both of which have the longest continuous history of hydrocarbon discoveries, most of which are gas discoveries. The Government offers a relatively small number of exploration areas in annual bidding rounds, and the interest among potential bidders is limited.

Another important trend has been the consistent development of gas facilities enabling imports from directions alternative to Russian sources, involving the construction and extension of the first Polish LNG terminal in Swinoujscie, and of the Baltic Pipe, a submarine connector from Poland to Denmark (with onshore connections to the grid) and then to Norwegian fields (to be commissioned in 2022/23). This trend is to continue, as the Government has announced its plans to install an FSRU near Gdansk. These construction projects are facilitated by tailored legislation, aiming at faster and easier permitting and access rights procedures.

With regard to legislation, there is a clear trend over the last few years towards gradual relaxation of certain stringent licensing rules in the upstream, which were originally enacted in 2014/15. Another visible development is the facilitation and financial support addressed to biogas and to electricity generated therefrom. While at present biogas is typically burnt to produce electricity and heat on the location of the biogas plant, some significant market players, such as Orlen and PGNiG, have announced plans to produce significant quantities of grid-quality biogas and inject it into the national grid within the next few years.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

Poland does not have a set of legislative acts related specifically to hydrocarbons. Upstream activity and the construction of underground storage facilities are regulated primarily by the *Geological and Mining Law* dated June 9, 2011, (as amended), while transportation, surface storage, and trading of hydrocarbons are covered by the *Energy Law* of April 10, 1997, (as amended). In addition to that, each of the activities related to hydrocarbons is subject to numerous laws and regulations regarding HSE, employment, immigration, surface rights, taxes, social security, corporate governance, etc.

Hydrocarbon production licensing is based on the royalty system; however, any exploration and/or production concession is composed of two elements: **(i)** the license, which is a permit issued pursuant to an administrative procedure; and **(ii)** the mining usufruct agreement, which is a contract between the operator and the Polish state (represented by the licensing authority), as the owner of mineral deposits and other parts of the subsurface. Both instruments are, in practice, executed concurrently. The existence of mining usufruct is dependent on the validity and existence of the license.

Upstream licensing, including licensing of underground storage of gas and liquids, is entrusted to the Minister in charge of environmental matters. There is legislation in the pipeline to shift this responsibility to the Chief Geologist of Poland, reporting directly to the Prime Minister (currently, the Chief Geologist reports to the Minister of the Climate and Environment).

Licensing of gas transmission, distribution, import and trading, production, import and trading in liquid fuels (including LPG), storage of gas and liquid fuels (other than with respect to the aspects governed by the *Geological and Mining Law*), production, trading, and regasification of LNG, are handled by the energy regulator called the President of the Energy Regulatory Authority.

Gas traders are obliged to sell, through a gas exchange (currently, there is only one licensed gas exchange in Poland), at least 55% of the annual quantity of gas that each of them enters into the Polish gas system (both produced domestically, imported or originating from LNG regasification). In practice, due to the market share threshold, this requirement is only applicable to the PGNiG group.

Gas importers and traders are required to keep reserves corresponding to their sales over a 30-day period. This requirement is perceived as a major obstacle to the development of the gas market in Poland.

The production of fuels and gas, as well as gas trading, distribution, and storage, are heavily dominated by state-controlled champions: PKN Orlen, Grupa Lotos (which are expected to merge in 2022), and PGNiG (which also has plans to merge with PKN Orlen).

2.2. Domestic oil & gas production and imports/exports

Poland consumes about 20bcm (billion cubic meters) of natural gas annually, of which approximately 4bcm (expressed in high-methane equivalent) is produced domestically. Gas imports arrive primarily (about 60%) from Russia under the Yamal pipeline long-term contract (to expire by the end of 2022 and unlikely to be extended or replaced) and via smaller pipeline connections between Poland and Germany, the Czech Republic, and Ukraine. Less than the equivalent of 4 billion cubic meters is imported as LNG, from Qatar, the USA, and other countries. This picture may change significantly following the completion of the Baltic Pipe connector to Denmark, capable of transporting 10 billion cubic meters a year, at the turn of 2022/23, and the increase of the LNG terminal's capacity to 8 billion cubic meters a year, scheduled for completion in 2023.

More than 70% of the natural gas produced in Poland represents so-called nitrified (low-methane) gas, which is in part de-nitrified in two cryogenic plants operated by PGNiG, in part blended with imported high-methane gas, and in part transported by a separate gas grid located in western Poland and sold to local end-users, including cogeneration and heat plants, as well as households.

Out of approximately 27 million tonnes of crude oil a year processed in Poland, less than 4% is produced domestically – the balance being imported from Russia (about 70%), Saudi Arabia, Nigeria, and other countries. Imports arrive in Poland via the Druzhba pipeline and by sea terminals.

Gas storage facilities, with a total capacity of about 3 billion cubic meters (only 15% of annual gas consumption), are operated by PGNiG and are considered insufficient, especially in view of the forecasted 50% or higher growth of gas consumption over the next 10 years.

2.3. Foreign investment and participation

There are no restrictions on foreign participation in the exploration and production of hydrocarbons. However, a holder of an exploration and/or production license must be pre-qualified based on national security considerations. The pre-qualification process is conducted by the licensing authority in cooperation with the Internal Security Agency (*Agencja Bezpieczenstwa Wewnetrznego*) and the Intelligence Agency (*Agencja Wywiadu*), and it involves submitting documentation and information regarding the corporate status and structure, including direct and top-tier shareholders, directors and managers, as well as a key business and financing relations. The review is aimed at determining whether the proposed license holder is controlled (in a broad sense) by parties originating from outside the EU, EFTA, or NATO countries (third countries). If such a corporate control is identified, this does not necessarily preclude pre-qualification, but the authority must be convinced that such control does not pose any threat to national security.

Companies that have passed the pre-qualification phase are entered into a public register. Pre-qualification is valid for five years; however, a pre-qualified party is obliged to notify the authority of any change of the key data that was contained in the original submission for pre-qualification, and the authority may require the pre-qualification process to be repeated, as a result of such change.

The only exception to the generally free access of foreign investors to the Polish oil and gas sector is gas transmission (transportation by a high-pressure system). The national operator of the transmission system must be a company wholly owned by the Polish state.

2.4. Protection of investment

Poland belongs to the European Union and is subject to the relevant European regulations regarding freedom of business and protection of investment. Poland is a party to the *Energy Charter Treaty* of 1994. In addition, Poland has entered into numerous bilateral investment treaties (BIT) governing the promotion and protection of foreign investment. Recently, these treaties have been invoked in a few disputes, resolved by arbitration, between the Government and foreign investors.

Undoubtedly, the existence of those international treaties affects both legislation and regulatory practice. Any new legislation that is proposed is subject to a compulsory review for conformity with EU regulations. As a rule, the state administration avoids decisions and measures that may be regarded as discriminatory against foreign investors or as affecting their earned rights.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

Exploration rights (concessions) are granted in the form of licenses for the exploration and production of oil and gas deposits, for periods no shorter than 10 years and no longer than 30 years, where the exploration phase should be no longer than five years (however, both the exploration and production periods are extendable, subject to certain conditions). As mentioned in Section 2.1., the license is always combined with a mining usufruct agreement, which is in practice a standard and non-negotiable document. The substance of a mining usufruct is effectively limited to: **(i)** the establishment of mining usufruct as a title (similar to a lease) to the mineral deposits and

the underground space, as required to access the deposits; and **(ii)** a specification of the mining usufruct fees.

Hydrocarbon licenses are issued pursuant to two alternative procedures: **(i)** an open tender initiated by the licensing authority; or **(ii)** a competitive procedure initiated at the company's request, called "open door." In the first case, the licensing authority publishes on its web site, by June 30, a list and a map of the areas that it intends to put up to tender in the following calendar year, and then announces the dates and other detailed rules of the tender, in the EU Official Journal with respect to one or more of such areas. There is no minimum number of offers required for proceeding with the tender.

In the "open door" procedure, the interested party files an application for a specified area (other than an area already listed among the areas intended to be subject to tender), following which the licensing authority publishes a notice of receipt of the application, in the EU Official Journal, and invites the submission of competing applications with a specified period, no shorter than 90 days. If there are competing applications, the authority conducts its review and assessment and grants the license to the highest scoring applicant. If no competing applications are filed, the authority proceeds with the first application.

In the case of both procedures, competing offers are evaluated based on the following objective and non-discriminatory criteria: **(i)** experience in hydrocarbon exploration or production, with a good track record of safe and environmentally responsible conduct; **(ii)** technical capability; **(iii)** financial capability sufficient to complete the declared work program; **(iv)** the proposed technologies for geological and mining work; **(v)** the scope and timing of the proposed geological or mining work; **(vi)** the scope and timing of the proposed sampling (including coring) operations.

The licensing authority for hydrocarbons is the minister in charge of environmental matters (currently, the Minister of the Climate and Environment). The other authorities involved in the licensing process include: **(i)** for onshore areas: the mayors of the municipalities located within the concession area; **(ii)** for offshore areas: the President of the Higher Mining Authority; the Minister of Defence and the minister in charge of fisheries (currently, the Minister of Agriculture). Each of the said authorities is asked for its opinion within the scope of its competencies. The opinion should be issued within 14 days (silence is deemed to be a favorable opinion), which is non-binding on the licensing authority.

3.2. Foreign exploration

As mentioned in Section 2.3., foreign investors can obtain rights in relation to minerals, in principle on an equal basis with domestic investors, subject to passing the pre-qualification process. In particular, companies owned by foreign investors may participate in tenders for licenses or in "open door" proceedings. Shares in companies holding licenses can be purchased by a foreign investor, with the condition that if the acquisition is to result in a change of control, a new pre-qualification of the company is required, and the continued possession of the license is contingent on passing the pre-qualification.

Licenses are transferable upon the holder's request. The transferee must be a pre-qualified party, though the authority may nevertheless refuse to transfer the license if the transfer were to be contrary to the public interest, in particular with respect to energy security, transparency of energy markets, protection of mineral deposits, or environmental protection.

It is also possible for a license holder (or a prospective holder) to invite a partner or partners acquiring an interest in the license and mining usufruct. Such a transaction is subject to the same approval process as a license transfer, provided that both, or a bigger number of, partners must sign a "cooperation agreement" (a contract similar to a joint operating agreement) described in the *Geological and Mining Law*. There is no model cooperation agreement to which the parties would be required to adhere to.

3.3. Stages of the exploration process

Exploration is conducted in such stages and according to such work program as proposed by the license holder and approved by the licensing authority. In case of successful exploration, the company should prepare geological and investment documentation for the discovery, which is subject to approval by the Minister of Climate and Environment. Such approval allows applying for an investment decision, i.e., for entering into the production phase.

3.4. Obligatory state participation

No state participation in the form of interest ownership or PSA is required in hydrocarbon exploration or production.

The Polish state benefits financially from foreign participation in the upstream sector in various forms, including:

(i) license fees applicable to the exploration stage (based on the acreage);

(ii) mining usufruct fees that apply as follows: based on the acreage – for exploration, or on the deposits identified – for production;

(iii) royalties (called the "exploitation fees"), based on the quantity of minerals produced;

(iv) special tax on hydrocarbons, based on the value of the minerals produced;

(v) generally applicable taxes, such as CIT, VAT, property tax, etc.;

(vi) generally applicable health and social security contributions charged on the wages and salaries.

All newly obtained geological information is owned by the state and is made available to commercial parties for a fee, based on a contract with the geological authority. However, the party which has paid the cost of obtaining geological information has the right to use such information free of charge, for an unlimited time. Moreover, such a party has an exclusive right, limited in time, to use the information for the purpose of applying for a production license or underground storage license. These rights are transferable to third parties, without governmental consent.

Old geological information may be owned by the state, or by the company which has paid the cost of the exploratory work (usually by PGNiG or Grupa Lotos), depending on when it was produced.

3.5. Risks to be considered

The main risks to be considered with respect to hydrocarbon exploration are related to permitting.

Drilling and other exploration or field development operations require multiple permits and consents, issued by central or local authorities of multiple tiers. The highest risk of delay and of an unfavorable outcome is typically connected with obtaining an environmental conditions decision. Such decisions are required for certain exploratory operations (e.g. for offshore drilling), and for entering into production. The process involves compiling a significant amount of information on the local environmental ramifications (as part of the preparation of the environmental impact assessment – EIA), is lengthy (typically between six and 18 months, depending on whether a full EIA is required), and allows the participation of environmental NGOs and other potential opponents, whose activity may lead to further significant delays. It is also worth mentioning that the licensing authority itself – which is responsible for issuing numerous key permits and decisions, such as the approval of geological work programs, approval of the field development documentation, or amendments to the license – often acts slower than expected by the license holders.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Hydrocarbon production rights may take the following forms: **(i)** an investment decision, i.e. a decision of the licensing authority authorizing a holder of a combined exploration and production license to pass to the development & production phase; or **(ii)** a production license.

Production licenses are normally issued for deposits discovered and documented under an exploration-only license (exploration-only licenses were issued based on applications filed up to September 30, 2014. Such a license may be issued both to a current or former holder of an exploration-only license, or to a party that has acquired the rights to the geological documentation of the deposit, from the State or from a commercial party that holds such rights.

Both types of hydrocarbon production rights are issued by the Minister of the Climate and Environment, subject to consent from the mayor(s) of the municipality or municipalities on whose territory the proposed production area (called the mining area) is to be located – for onshore licenses. For offshore licenses, opinions are required from the President of the Higher Mining Authority; the Minister of Defence, and the minister in charge of fisheries. Importantly, the issuing of a production license or investment decision requires an environmental conditions decision, issued by the Regional Director of Environmental Protection. As mentioned in Section 3.5., this process involves the risk of delay or rejection.

4.2. Foreign production

Similarly, as with exploration (see Section 3.2.), foreign investors are treated on an equal basis with domestic investors, with respect to production rights.

A transfer of production rights may take place by way of a transfer of shares in the company holding the license or by a transfer of the license and mining usufruct, as described in Section 3.2., and the same rules as above apply regarding pre-qualification and license transfer.

4.3. Stages of the production process

Field development and production should follow the detailed plan included in the geological & investment documentation (which specifies, among others, the number and location of wells and pipelines, methods of flow stimulation, waste management, etc.), as proposed by the license holder at the end of the exploration phase and approved by the Minister of the Climate and Environment acting as the geological authority. Production should begin by the date specified in the investment decision (or production license) and can be conducted

for as long as the license holder decides to discontinue the production. If production is to continue beyond the originally granted production period, extensions of the license and mining usufruct are granted routinely by the authority; however, it may be required to obtain a new environmental conditions decision, depending on the scope of the original environmental conditions decision.

The construction of facilities is subject to effectively the same rules and permitting requirements as with any other industrial installation, except that construction permits in relation to any facilities being part of the mining plant are issued by the relevant Regional Mining Authority, rather than by the county authority (*starosta*). Depending on the local conditions, field development may require dozens of various permits, such as water permits, road use permits, permits for change of use of the land, tree removal permits, etc. These permits are issued by various local authorities, typically without any significant delay or difficulty.

If the company needs to be hooked up to the gas grid, it should request connection conditions from the applicable grid operator and should enter into a connection agreement based on those conditions. The connection may be rejected if it would be non-viable technically and economically.

4.4. Obligatory state participation

As mentioned in Section 3.4., there is no mandatory state or state-controlled utility participation in the production. Instead, the state benefits from the production by charging the various fees and taxes listed in Section 3.4.

The company is free to sell produced hydrocarbons to customers of its choice. No special permits for the export of crude oil or gas are required.

4.5. Risks to be considered

In addition to the permit-related risks described in Section 3.5., two additional risks are characteristic for the production stage – with regard to local planning and surface rights.

The local planning risk is related to the fact that the exploration or production activity cannot conflict with the relevant local zoning and development plans, which are enacted by the municipal authorities. In practice, this means that in order to obtain a production license (or to pass to the production phase under a combined E&P license), the company may have to convince the local authorities to amend the local plan. This involves a lengthy procedure (often longer than 12 months) with public participation, and the outcome is often uncertain. On the one hand, local authorities can be convinced to support the project in expectation of related economic benefits (for example, the municipality is entitled to receive 60% of the royalties paid on the hydrocarbons produced), while on the other hand, there are usually concerns regarding deterioration of the environment and living conditions.

With respect to the surface rights, while the applicable regulations generally allow the obtaining of forced access to the land required for the operations and construction of certain facilities (primarily pipelines), as a measure of last resort, land ownership is often highly dispersed, which often creates the need to negotiate access rights and to otherwise deal with a large number of landlords, which are sometimes difficult to identify and locate (as land records are not always up to date). Moreover, the forced access instruments available to the company do not always protect against significant delays if the landlord takes advantage of all opportunities to appeal and otherwise obstruct the process.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

In principle, when production is discontinued, all wells must be safely plugged and abandoned, the remaining installations removed, and the land reclaimed. Details of the decommissioning process should be specified by the company in the operation plan (*plan ruchu*) for decommissioning of the mining plant and approved by the Regional Mining Authority. There are no statutory rules as to whether all structures (e.g. see platform foundations or underground pipelines) must be entirely removed or can be left in a secure condition.

A company conducting production must establish a decommissioning fund (deposited in a separate bank account and intact until decommissioning) by setting aside funds at least equal to 3% of the depreciation allowances on the assets of the mining plans, as calculated in line with the income tax rules.

5.2. Environmental and HSE consideration

HSE and environmental matters, including land reclamation, are covered in the operation plan for decommissioning, signed by the mining operations manager (*kierownik ruchu*), and approved by the Regional Mining Authority. A detailed land reclamation program is subject to approval by the county authority (*starosta*). Decommissioning may also require a waste management program, approved by the voivodship (provincial) authority (*marszałek wojewodztwa*).

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

N/a

6.2. Offshore Safety Directive

Poland implemented *Offshore Safety Directive no. 2013/30/EU* in 2017.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

The general rules regarding the export and import of oil and gas are described in Section 8.1.

Reservation of cross-border transmission capacity is typically conducted according to the open season procedure.

7.2. Transportation

Poland has a developed system of an integrated gas network, owned and operated by OGP Gaz-System (a 100% state-owned company appointed as the transmission system operator by the Polish energy regulator), by the Polish Gas Company (directly controlled by PGNiG, and indirectly by the state), responsible for a major part of the gas distribution network, and by operators of local distribution networks. The Yamal pipeline is operated by a separate company, jointly owned by PGNiG and Gazprom.

Operation of gas networks or of direct pipelines (connecting a gas field directly with an end-user) requires a license or a permit from the energy regulator. Pipelines connecting production wells and the field processing plant are typically considered parts of the mining plant; and their construction and operations do not require any separate governmental authorizations, other than the standard building and usage permits.

Gas transportation tariffs should be based on the "justified cost" principle and are subject to approval by the energy regulator.

Crude oil transportation pipelines, including the Drushba pipeline connecting Adamowo on the Polish/Belarussian border to the PKN Orlen refinery in Plock and the German refinery in Schwedt, as well as the connections between Plock and the sea terminal (and the Grupa Lotos refinery in Gdansk), are owned by PERN, a company 100% owned by the Polish state. Oil transportation tariffs are not regulated.

7.3. Land rights

Access to land is, in principle, negotiated between the company and the landlords. The company may obtain forced access based on decisions of the county authority with respect to land required for the construction of gas pipelines. This tool is relatively effective and easy to use; if the company can prove that its attempts to obtain negotiated access have failed.

In addition, a holder of a hydrocarbon production license (or of an investment decision) may request a court decision on compulsory purchase of land if the particular plot can be proven to be necessary for its production activity. This tool seems to be rarely used, if at all.

7.4. Access and integration

See Section 7.2.

7.5. Gas transmission and distribution

See Section 7.2.

8. TRADING

8.1. Trading license

Gas trading licenses are issued either as licenses for domestic trading in gaseous fuels or licenses for trading in natural gas with foreign countries; both types are issued by the energy regulator. An interested party is required to submit standard corporate and financial information and documents, confirmations of sufficient financial resources and qualified personnel, certificates confirming a non-criminal past regarding members of its management and supervisory bodies, as well as regarding its controlling parties, information on its business conducted thus far and a business plan covering the activity for which the license is sought. Preparation of the necessary documentation and the review process typically takes at least three months but can be much longer than that.

As mentioned earlier, any company trading in imported gas or importing gas for its own needs must keep reserves of gas equal to at least 30-day imports. This requirement is considered an important obstacle to the development of the gas market in Poland.

No special authorizations are required for trading in crude oil.

8.2. Products

The majority of gas commodity trading in Poland occurs through bilateral commodity trading. The only exchange on which gas products are traded is the Energy Commodity Exchange in Warsaw, where trading occurs daily on two spot markets: the current-day market and the next-day market.

9. COMPETITION

9.1. Authorities

Polish competition law is based on the EU competition rules. Similar to EU law, it regulates, in particular: control of concentrations, anti-competitive agreements, and behavior, abuse of a dominant position, and imposition of onerous contract terms.

The President of the Competition and Consumers Protection Office (UOKiK) is the key competition authority in Poland; however, decisions on concentrations have a community dimension (e.g. the recent merger between PKN Orlen and Grupa Lotos) are made by the European Commission. Decisions of the UOKiK are appealable to the Competition and Consumers Protection Court in Warsaw.

9.2. Anti-competitive actions

Any proposed merger or another type of concentration (including joint ventures) that meets specific criteria regarding annual turnover of the participants and their affiliates (EUR 1 billion of turnover worldwide, or EUR 50 million in Poland), as well as the acquisition of assets generating turnover in Poland in excess of EUR 10 million, is subject to prior notification to, and approval from, the UOKiK, or the European Commission, as mentioned in Section 9.1. Decisions are normally made within a month after filing all required information. However, compiling the necessary information and responding to queries from the competition authority may take much longer than that. Approval of a concentration may include specific conditions, such as divestiture of a part of the business operated by the participants.

Failure to report the concentration where required may trigger severe fines; a recent example is the PLN 30 billion fines imposed on the participants of the Nord Stream joint venture.

As regards anti-competitive agreements and conduct, the law contains non-exclusive lists of examples of anti-competitive agreements or other types of market conduct. Such examples include price-fixing, market division, unequal treatment, bid-rigging, excessive or dumping pricing, imposing onerous contract terms, tying, boycott, refusal to deal, etc. Agreements or contract clauses that are anti-competitive are invalid and may trigger substantial fines imposed by the UOKiK on the delinquent company (up to 10% of annual turnover) and its managing personnel (up to PLN 2 million). Examples related to the oil and gas sector include PGNiG being penalized for onerous terms in contracts with its gas customers (such as a prohibition on resale, or unilateral rights of the seller to reduce the contracted volume).

In principle, UOKiK follows the lines adopted by the EU Commission with respect to the assessment of certain conduct as anti-competitive, and regarding group exclusions. UOKiK keeps an updated register of anti-competitive contract terms (as per decisions of the Competition and Consumers Protection Court) which are strictly prohibited in contracts between businesses and consumers.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

Polish law does not contain a stability clause in favor of oil and gas companies. No such clauses are used in mining usufruct agreements.

10.2. Compulsory dispute resolution procedure

There is no dispute resolution procedure specifically designed for the oil and gas sector. Disputes with the licensing, regulatory, or other authorities may be resolved in various ways, depending on the scope and type of the dispute.

Disputes based on contracts (including mining usufruct agreements) or on torts are resolved by common courts unless the parties agree for dispute resolution by arbitration or by other out-of-court methods. State authorities and utilities rarely, if ever, agree to any dispute resolution other than by common courts. As a rule, decisions made by common courts of the first instance are appealable to a court of the second instance. Decisions of the courts of the second instance are final and enforceable; however, they may be referred to the Supreme Court by certain institutions, such as the Ombudsman or the Attorney General, for special review and potentially for cassation.

With respect to administrative decisions (including the licenses

and other decisions of the licensing authority), any decision is either appealable to an administrative body of the higher tier, or, if the decision is issued by a minister or by another authority of the highest tier, the party may request a re-examination of the matter by the issuing authority. Decisions issued as a result of an appeal or re-examination may be referred to administrative courts for review. The review is confined to legality issues, i.e. conformity with applicable laws and regulations. Judgments issued by administrative courts of the first instance may be referred to the Supreme Administrative Court for a final review.

Certain types of disputes with energy utilities, including disputes regarding access to the gas grid, gas transportation services, or gas storage services, are resolved by the energy regulator. Decisions of the energy regulator are appealable to the Competition and Consumers Protection Court.

10.3. International treaty protection

Poland is a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* but has not signed the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID). As mentioned earlier, disputes against Poland can be initiated based on EU legislation, the *Energy Charter Treaty* of the relevant *Bilateral Investment Treaty*, as well as national legislation.

In general, there is no special difficulty in seeking protection against the State or its organs before Polish courts; however, dispute resolution is generally slow, therefore it may take years to obtain a final judgment. There are examples of companies in the mineral sector (including oil and gas) successfully obtaining awards from administrative courts in disputes with the licensing authority, e.g. a recently reported judgment in favor of a Canadian investor regarding a refusal to grant an exploration license covering copper ores.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

The last decade did not bring major opportunities for new country entrants, since 2010 when the last bid round for petroleum exploration rights was organized by the state. The market is dominated by the largest producers, Romgaz and OMV Petrom, followed by a number of small-medium independents. Some of the notable exits from the market are Chevron, Repsol, and more recently announced, Exxon Mobil. In terms of significant legislative changes relevant for the oil and gas industry, we note the enactment of *Law no. 256/2018* (the Offshore Law), implementing the *EU Offshore Safety Directive* aimed at providing minimum requirements for preventing major offshore petroleum operations related accidents. The law regulates offshore oil & gas projects in the Romanian waters of the Black Sea and makes significant changes to existing laws on protective provisions for archaeological sites, historically protected areas, and coastal areas. The law sets royalties at levels roughly equal to onshore production (up to 13.5%) and introduces a special windfall tax regime applicable to supplementary revenues generated from the production and sale of natural gas.

Important initiatives are conducted for the European gas transmission and interconnectivity.

Transgaz's project from 2019 for a 100-kilometer pipeline, aims to ensure the interconnection of the transmission system in Romania and Serbia and is designed to take over the natural gas from the BRUA pipeline (the Bulgaria–Romania–Hungary–Austria Corridor). Romania also finalized in November 2020 the first phase of the BRUA project, a pipeline from Podisor to Recas of approximately 479 kilometers and several compression stations, aimed to diversify the routes of transport for natural gas from the Caspian Sea region to CEE, to facilitate the marketing of natural gas discovered in the Black Sea on the European market, and to enable bi-directional physical flows and interconnection between Bulgaria and Hungary. BRUA, phase two, consists of a 50-kilometer pipeline from Recas to Horia to extend the natural gas transmission capacity from Romania to Hungary up to 4.4 billion cubic meters/year. The initial deadline for completing this structure was 2022, the costs being estimated at EUR 68.8 million. This came very close to a standstill due to the global economy caused by restrictive measures taken by governments in relation to the COVID-19 pandemic.

In February 2021, the contract for the execution of the Black Sea - Podisor natural gas transmission pipeline has been awarded to the Turkish company Kalyon Insaat Sanayi ve Ticaret Anonim Sirketi, the pipeline through which Romania intends to transport in the national and European network the natural gas extracted from the Black Sea. According to Transgaz, the pipeline will have 308 kilometers. This project has been included since 2015 in a list of projects of common interest adopted by the European Commission. These are projects that "significantly contribute to the integration of the energy market" necessary for energy infrastructure corridors with a cross-border impact.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

The legal framework of the petroleum industry from Romania is comprehensive and is based on the concession type petroleum rights, whereas the market uses standard type agreements for transactional and commercial purposes, customary to the international practice. However, *Law No. 238/2004* (Petroleum Law) main framework dates to 2004 and needs to be modernized and updated to meet the industry's commercial and legal requirements. The mineral and the oil and gas resources located on the territory, in the subsoil as well as on the continental shelf on the Romanian Black Sea economic zone, constitute public property of the Romanian state.

Petroleum operations, exploration, and production, including the public property goods necessary to conduct these operations are subject to concession agreements, respectively through petroleum agreements by the competent authority (the National Agency for Mineral Resources – NAMR), to Romanian or foreign legal entities, following public tendering procedures. The petroleum agreement is concluded between the NAMR, as a representative of the state, and the private legal entity or group of companies who have the required know-how, technical capabilities, and financial means for performing the tendered petroleum operations and that are awarded the public tender. The agreements enter into force after they are approved through governmental decisions.

The petroleum agreement is a royalty-based contract. The Petroleum Law provides for scaled royalties based on gross production. For crude oil, the royalty ranges from 3.5% to 13.5%. For natural gas, the royalty ranges from 3.5% to 13%. The royalty is payable for each commercial field. The commerciality of the field is approved by the NAMR. Production is allowed based on priorly approved reserves by the NAMR.

Furthermore, the Romanian Government enacted in 2020 the *Government Emergency Ordinance 27/2020* (GEO), which amends the Petroleum Law and transposes art. 2 para. (2) of the *94/22/EC Directive* on the conditions for granting and using authorizations for the prospecting, exploration, and production of hydrocarbons. Specifically, the GEO empowers the National Agency for Mineral Resources to refuse – on grounds

of national security – the awarding of a petroleum concession agreement to any non-EU entity or to a company controlled by such an entity. Compared to past regulations that made farm-out deals conditional to the NAMR's approval only, the GEO allows for any transfers of rights and obligations related to a petroleum concession agreement to be deemed null and void without government approval.

With regard to transportation, oil and gas transport pipelines (from the point of upstream collectors) are public property. The transport of oil and gas is considered a service of public interest and strategic importance. Its regulation follows the provisions of *Regulation (EC) 715/2009* on conditions for access to the natural gas transmission networks. Operation of transport infrastructure is permitted under concessions granted by the state, based on petroleum agreements. In 2020, the Government published a new strategy document for 2020-2030, with a strategic environmental analysis done by the Ministry of Environment. This came on top of the National Energy-Climate Plan (NECP) 2021-2030, approved by the government in 2020, as required by the new *Energy Governance Directive* of the EU. Currently, the Parliament's agenda includes legislative changes to unblock investments in the Black Sea area which could help Romania to have "energy security" from 2026.

2.2. Domestic oil & gas production and imports/exports

The main pieces of legislation governing oil and gas exploration and production are the *Electricity and Natural Gas Law No. 123/2012* and the Petroleum Law which implements the *Directive 94/22/EC* on the conditions for granting and using authorizations for the prospection, exploration, and production of hydrocarbons. Another important legislation adopted is the Offshore Law on certain measures necessary for the implementation of petroleum operations by offshore block license holders.

Romania is considered a mature oil and gas producer, ranked 59th as the largest supplier of oil and gas in the world, the fifth-largest oil supplier in the EU, and the second-largest gas supplier in the EU. According to a study provided by PwC, Romania has the potential to rise to the top due to the development of the Black Sea reserves.

The country is home to well-established oil service companies and has large oil fields with a refining capacity of 321,920 barrels/day, which is higher than needed for its domestic market. Recent developments in the Black Sea offer positive growth potential for gas and possibly oil. In Romania, the oil reserves are about 600 million barrels, and in 2020 the national production was 72,000 barrels per day.

In the first ten months of 2021, Romania's oil production was over 2.67 million tons, down by 116,300 tons (-4.2%) compared to the same period in 2020. At the same time, the production of usable natural gas, in the case of Romania, amounted to 7.42 billion cubic meters (+25.9 million cubic meters, respectively +0.3%), according to data provided by the National Institute of Statistics.

Romania imported oil and natural gas in the first 10 months of 2021, amounting to 2.83 billion EUR, up to 52.6% compared to the same period last year, according to data centralized by the National Institute of Statistics. On the other hand, exports in the mentioned period amounted to EUR 168 million, increasing by 741.7%. However, Romania registered a deficit of EUR 2.66 billion for this category of products.

The internal transport of natural gas is ensured through 13,430 kilometers of pipelines and connections of gas supply. The international transport of natural gas is carried out through two pipelines in the direction of Ukraine-Romania-Bulgaria-Turkey-Greece.

2.3. Foreign investment and participation

There are no specific legal limitations as regards the acquisition of an interest in a gas utility of private nature. However, the assets which are part of the distribution network may not be subject to a transfer, considering that the distribution network is of public interest.

A foreign company that is awarded a petroleum concession has an obligation to set up a branch or a subsidiary in Romania within 90 days from the effective date of the petroleum agreement. Operators under petroleum agreements for exploration and production, importers, and, under certain conditions, companies that process or transport crude oil, gasoline, diesel, or liquid ethane are authorized to sell and trade (including export) such products.

The performance of petroleum operations rests with the operator, a legal entity appointed by the NAMR as such, following the existence of an operatorship certificate The operator may be appointed either the titleholder itself or a third legal entity certified as an operator by the NAMR. The operatorship certificate states the technical, manpower, and financial capabilities of the respective entity which is required to have at least one employee individually certified by the NAMR.

2.4. Protection of investment

Romania signed the *European Energy Charter* on December 17, 1991, the *Energy Charter Treaty* in 1994, and the *International Energy Charter* in 2015. Moreover, Romania is one of the signatories of the *Paris Protocol to the United Nations Framework*

Convention on Climate Change 2015 (Paris Agreement) and has ratified the Paris Agreement by *Law No 57/2017*.

The introduction of the *European Green Deal* and the policy around *Taxonomy* clearly impacted the activity of important actors in the energy arena and the need to reshape their investment strategy in the following decades has been acknowledged by multiple companies. Several multinational energy companies have assimilated the wave of changes and implemented the sustainability agenda in their business strategy. At the same time, they announced their intention to invest in clean energy projects at the local level.

The oil and gas companies have been slow in shifting focus from traditional activities, but we see more their plans including investments in new technologies which are synergic with their core business, such as geothermal, hydrogen, CCS, but also most of them have done some steps towards integrating into their portfolio electricity generation capacities, both CCGT as well as renewables.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

The relevant Romanian oil and gas laws and regulations are:

i. The Petroleum Law, as further amended and supplemented. Under the Petroleum Law the definition of "petroleum" covers both oil and gas;

ii. Methodological Norms for the Application of Petroleum Law ("Norms");

iii. Technical instructions, and other regulations issued by the National Agency for Mineral Resources;

iv. The Electricity and Natural Gas Law;

v. Natural Gas Permitting and Licensing Regulations;

vi. *Natural Gas Network Code*, and other regulations issued by the Romanian Energy Regulatory Authority.

The NAMR acts not only as a regulatory authority but is also a party to the concession agreements. It manages the petroleum resources, it has the power to issue mandatory norms, rules, and technical instructions for the application of the Petroleum Law, it approves the work programs, drilling of exploration wells, well conservation and abandonment, re-entry, field commerciality, development plans, annual production plans, and assignments, it certifies the technical competence of individuals or legal entities conducting petroleum operations, including operators under concession agreements.

Complementary to the responsibilities of the ANRM, there is a second regulatory authority, the Romanian Energy Regulatory Authority (ANRE), with the role of enforcing secondary legislation applicable in the natural gas sector (such as the issuance of licenses and authorizations, including those required for the production of natural gas), drafting of technical requirements related to natural gas production and supply activities or the organization, coordination, and supervision of the natural gas market.

According to the Ministry of Foreign Affairs, Romania's initiatives in the field of energy security are:

i. The use of domestic production and the diversification of imports and transport routes for hydrocarbons on Romania's territory;

ii. The promotion of cross-border interconnection projects in the natural gas and electricity sectors, such as those between Romania and Hungary (Arad-Szeged), Romania and Bulgaria (Giurgiu-Ruse and Kardam-Negru Voda), Romania and Serbia (Resita-Pancevo), Romania and Moldova (Iasi-Ungheni-Chisinau), and finally, Romania and Ukraine (Isaccea-Orlovka);

iii. Support for the implementation of major energy infrastructure projects in the region related to the Southern Gas Corridor (Trans-Anatolian/TANAP and Trans-Adriatic Pipelines/TAP);

iv.Support for the European Union initiatives on energy policy reform;

v. Further continue the dialogue with the external partners in order to facilitate, promote, and identify new opportunities, with a special accent on the consolidation of the transatlantic energy partnership with the United States and the extension of the national nuclear program.

vi. In terms of concrete initiatives deemed to offer investment opportunities in the exploration of oil and gas, in July 2019, the state initiated the eleventh bid round, which included 28 blocks, both onshore and offshore. However, the process has been since stalled and the bidding was not initiated so far.

Given the most recent development related to the natural gas crisis in terms of dependency on imports as well as high prices impact on the economy and the affordability for the end consumers, as well as the latest indications of EU announcing a shift in policy envisaging a set of strategic measures deemed to accelerate the energy independence for the EU block, the production of natural gas within EU countries becomes of strategic importance. Due to this aspect coming at the forefront of the energy strategy, it is expected that Romania will come up with measures to foster investments in natural gas exploration and production.

3.2. Foreign exploration

Investors gain access to petroleum resources by petroleum concession. The initial term of the concession may be of up to 30 years, and it may be extended for a period of up to 15

years. The concessions for the exploration and production of petroleum resources are awarded through competitive tenders organized by the NAMR. The Petroleum Law explicitly provides the categories of petroleum agreements that may be concluded for the exploration, development, and production of petroleum, respectively:

i. petroleum agreements for exploration/development/production;

ii. petroleum agreements for development/production;

iii. petroleum agreements for production.

The regulator can also grant, on request, non-exclusive exploration permits for up to three years.

According to Petroleum Law, the transfer of the rights and obligations to an area of a block covered by a concession agreement is possible. Thus, the titleholder can transfer:

i. a quota of its rights and obligations under the concession agreement with regard to the entire block;

ii. a quota of its rights and obligations under the concession agreement with regard to a petroleum area;

iii. all rights and obligations under the concession agreement with regard to a petroleum area.

Petroleum operations cannot be performed on land where historical, cultural, religious monuments or archaeological sites, natural reservations, sanitary security areas are located, or next to areas of hydro-geological protection of water sources. Petroleum operations can only be performed for reservoirs that are authorized for exploitation by the regulator.

In terms of the transfer of petroleum rights, some important legal developments have been introduced February 2020, via the GEO, which amends the Petroleum Law and transposes art. 2 para. (2) of *94/22/EC Directive* on the conditions for granting and using authorizations for the prospecting, exploration, and production of hydrocarbons.

Specifically, the GEO empowers the NAMR to refuse – on grounds of national security - the awarding of a petroleum concession agreement to any non-EU entity or to a company controlled by such an entity. The GEO goes beyond awarding circumstances by enabling NAMR to use national security considerations to unilaterally terminate ongoing concession agreements. Compared to past regulations that made farm-out deals conditional to the NAMR's approval only, the GEO allows for any transfers of rights and obligations related to a petroleum concession agreement to be deemed null and void without government approval. Furthermore, any change of control by a petroleum concession holder must be reported to the NAMR and may lead to a concession agreement amendment, termination, or approval by the government based on the NAMR's recommendation.

3.3. Stages of the exploration process

The commencement of petroleum operations is conditional to the NAMR's approval in writing, subject to the titleholder being able to evidence himself as holder of various additional permits, authorizations, and approvals required by other legislation (e.g. approvals issued by the Environmental Agency).

Similarly, the drilling is pre-approved by the NAMR following submission of the well technical project by the titleholder/operator. The NAMR approves the drilling by referencing the drilling period and any other obligations which may be incumbent to the titleholder.

The right to perform (preliminary) exploration operations only may be granted through a separate prospecting permit. This permit is issued directly by the NAMR, following a 30 days term during which the NAMR evaluates the request made by any local or foreign entity. The permit is not granted following a competitive bidding round, it has a maximum term of three years (no extension allowed), and is nonexclusive. The prospecting permit holder may request the NAMR to initiate the public bid for granting the exploration rights in the respective block, either during the validity period of the permit or 60 days upon submission of the final work report to the NAMR.

3.4. Obligatory state participation

The Petroleum Law provides that the underground petroleum resources are the public property of the state. The concession owners have the right to dispose of the oil and gas produced in the perimeters under concession. However, the law is silent whit regard to the transfer of petroleum resources to the titleholders but in practice, this issue is solved by including in the agreement's clauses which provide that the transfer of the petroleum resources to the titleholders takes place at the wellhead.

See Section 2.1. for how the state benefits from foreign participation in the oil & gas sector.

All data and information regarding petroleum resources are considered as the property of the State. The companies carrying out petroleum operations may use the relevant data and information for the duration of their operations. The transfer to third parties of data and information regarding petroleum resources must be approved by the NAMR.

3.5. Risks to be considered

As a rule, the petroleum operations are performed by the titleholder at its own cost and risk. According to Romanian legislation, the titleholder is held liable for damages caused to

third parties, hence customary insurances are used for third party damages, for health and safety, and for technical failures related to operations. The liability under the concession agreement follows the principles of Romanian contract law, while under environmental laws the principle of "polluter pays" applies. From the operational perspective, other practical risks to be considered are potential opposition from landowners to enter into contracts granting access or superficies rights to the titleholder, for carrying out petroleum operations. Although not very common, this can be a risk factor causing delays in execution of the petroleum operations.

Other notable risks include the legislation on climate change and more restrictive rules on gashouse emissions, shortage of rigs, especially for certain types of wells, limited local insurance providers, or inadequate insurance policies. At the same time, for smaller producers, there may be a risk related to reliance on third parties' transportation networks and processing facilities.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Similar to what was described in Section 3.1., production can be carried out based on petroleum rights under a petroleum agreement, concluded by a titleholder with the NAMR, approved by the Government. As a specificity of the local industry, the last twenty years have been dominated by small operators which acquired petroleum rights for production from mature fields, which have been relinquished beforehand and the state has put them back on the market. The production can be carried out with the observance of the secondary legislation issued by the NAMR, based on certified reserves, for the duration of the economic life of such reserves. The production period can be extended if additional reserves are found and the NAMR has approved an amended study for newly found certified reserves,

4.2. Foreign production

All legal rights pertaining to petroleum exploration and production are granted in the same unique manner, as described in Section 3.2., based on a concession contract, equally for exploration and production rights. The legal status of the rights and the transfer conditions are identical to the exploration rights.

4.3. Stages of the production process

The stages are prospecting permit, exploration, experimental production, development (includes appraisal), and production (exploitation).

The appraisal prospecting permits can be obtained by any interested party for a period of time of up to three years. Such prospecting permits are non-exclusive, meaning that the same block can be appraised by more than one company during the same period of time.

Generally, the Petroleum Law explicitly provides the categories of petroleum agreements which may be concluded for the exploration, development, and production of petroleum (definition comprising both oil and gas resources), respectively: **(i)** petroleum agreements for exploration/ development/production; **(ii)** petroleum agreements for development/production.

As an exploration well can be drilled within both types of blocks (development/production or exploration/development/production blocks), the first step after drilling such a well is to apply for and obtain an experimental production approval from the NAMR.

Depending on the results of the tests, the titleholder may choose to enter experimental production in accordance with *NAMR Order 1/2006* for the approval of the technical instructions regarding the change of the regime of the wells and the approval of the execution of experimental production petroleum operations. The experimental approval shall be approved by the NAMR upon submitting the technical documentation for a period of one year, with the possibility of extension for another six months.

According to *NAMR Order 101/1997* for the approval of the technical instructions on the evaluation, classification, confirmation of the geological resources and petroleum reserves and the framework content of the studies of evaluation of the geological resources and petroleum reserves, at the end of the experimental production, the titleholder may decide to produce the well (definitive exploitation of the well) or to drill one more additional – technical documentation is required in every case. A technical study shall be prepared by the titleholder and a NAMR technical committee shall decide on the way forward for commercial deposits evaluation and on the classification, confirmation of the geological resources, and petroleum reserves.

In the case of a newly discovered structure, not declared as a commercial deposit, with a single deposit (exploitation objective) identified, on which the experimental exploitation was carried out and whose result does not justify development operations, the well may be put into definitive exploitation, with the recorded production and payment of the petroleum royalty.

According to *NAMR Order 43/1998* for the approval of the technical instructions regarding the content of the technical documentation for setting up the petroleum development – exploitation blocks, at the end of the experimental production, the titleholder may decide, together with the NAMR, to establish and delineate a development – exploitation production

block. Such a block shall be carved out the exploration block.

After the experimental production period of time, the titleholder shall put together resources and reserves study to be submitted to the NAMR for confirmation. The resources and reserves study shall comprise also the production of the respective deposit. The newly discovered deposit can be produced through one well, or, if technically needed, the titleholder may propose to the NAMR the drilling of other wells for the proper production of the deposit.

The deposit shall be carved out of the block and a production period of time shall be approved by the NAMR, in accordance with the production solution proposed by the titleholder.

Usually, the petroleum exploration/ development/ production concession agreements are concluded between the titleholder – the "successful bidder of the bid round that has proven the technical and financial capacity to perform the petroleum operations" – and the NAMR. The afore-mentioned concession agreement is usually concluded for a period of up to 30 years with the possibility of extension with another 15 years and enters into force upon Government ratification. However, the exploration period of time cannot exceed 10 years.

In terms of expenditure obligations, the budget is linked to the mandatory work program for the bid round winner, to the proposed work program subject to the NAMR's approval for prospecting permits, and to the proposed annual work program for the development/production concession agreements.

4.4. Obligatory state participation

Under the current set up for concession petroleum rights, the state does not take direct ownership in the production of oil and gas, which, by virtue of the law, becomes the property of the concessionaire, once produced, subject to the applicable royalty and taxation regime.

Hence, the states benefits, indirectly, from collecting the applicable levies, such as :

i. Overall government take

Overall government the take for onshore oil-producing companies amounts to:

16% corporate tax rate + up to 13.5% of oil royalties + 5% of withholding tax applicable to dividends + 0.5% of additional tax + up to RON 15 (approximately EUR 3) multiplied by the surface area affected by drilling and excavation activities

ii. Direct taxes and duties

a) Corporate income tax:

16% on the difference between income realized from any source and expenses incurred for business purposes (i.e. profit and loss account elements), decreased by non-taxable income and increased by non-deductible expenses.

b) Royalties

Oil extraction – from 3.5% to 13.5% on revenues derived from this activity, depending on the quantity of gross oil produced quarterly;

Gas extraction – from 3.5% to 13% on revenues derived from this activity, depending on the quantity of gross natural gas produced quarterly;

Transportation/transit of oil – 10 % on revenues derived from this activity;

Underground storage of natural gas – 3% on revenues derived from this activity.

c) Withholding tax:

5% on dividends;

16% for other types of income;

50% tax rate applicable for the amounts paid to a resident of a state with which Romania does not have a binding legal instrument securing an exchange of information, to the extent that such payments result from artificial transactions.

d) Other taxes:

A 60% or 80% tax shall be charged on the supplementary revenues derived by natural gas producers and distributors (including their subsidiaries and/or companies that are part of the same economic interest group), from the deregulation of natural gas prices in case of supplies to final consumers (60% of the additional income for prices up to and equal to 85 lei/ megawatt hour and for the prices that exceed 85 lei/megawatt hour, a percentage of 80% shall be applied to the additional income obtained from the difference between 85 lei/megawatt hour and the charged price);

Onshore oil-producing companies are taxed an 0.5% additional tax on their revenues;

Offshore gas production are taxed between 15% to 70% applying to the additional income obtained from the sale of natural gas extracted from offshore perimeters, after deducting the investments in the upstream segment;

Duty for issuing the drilling and excavation authorizations needed for research and prospecting of land for oil and gas wells is up to RON 15 (approximately EUR 3) multiplied by the surface area affected by drilling and excavation activities.

There are no legal restrictions as regards the export of crude

oil and natural gas. However, in the last years, Romania exported very limited quantities of crude oil (being a net crude oil importer). As regards natural gas, until recently, the lack of physical infrastructure prevented Romania from exporting any natural gas, however, that is no longer the case

4.5.Risks to be considered

See Section 3.5.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

The abandonment and decommissioning obligations are enshrined in the Petroleum Law, as well as provided for in more detail under each perimeter Concession Agreement. In technical terms, the abandonment of wells is regulated under the secondary framework and it is defined by *NAMR Order 8/2011* as all activities executed within the well in order to protect all impacted geological strata as well as the surface works carried out for the recovery and rehabilitation of the environment.

A well may be abandoned in one of the following cases:

i. relinquishment of the concession by the titleholder;

ii. drilling works can no longer be performed because of technical, geological, or economic reasons;

iii. the well can't be reconditioned because of technical reasons;

iv. the well flows are lower than the economic exploitation limit established for that particular field;

public utility reasons;

v.the well depleted the reserves of all strata known as being productive;

vi. the titleholder cannot use the well for other purposes.

The abandonment of wells is requested by the titleholders of the petroleum concession rights on the basis of a technical project for each well. The abandonment of wells is subject to the NAMR's approval and obtaining required authorizations and permits for the abandonment works. The works are made in accordance with technical projects submitted to the NAMR and are monitored by independent specialists or experts certified by the NAMR for such technical competencies.

5.2. Environmental and HSE consideration

The right to perform any type of petroleum operations is allowed under the petroleum agreement concluded with the NAMR, whilst the performance of petroleum operations without holding a valid permit or outside a petroleum agreement represents a criminal offense.

The commencement of petroleum operations is conditional to the NAMR's approval, subject to the titleholder being able to prove that it holds the required permits, authorizations, and approvals required by other legislation (e.g. approvals issued by the Environmental Agency).

Similarly, the drilling is pre-approved by the NAMR following submission of the well technical project by the titleholder/operator. The NAMR approves the drilling by referencing the drilling period and any other obligations which may be incumbent to the titleholder.

After obtaining the NAMR approval for drilling the well, the titleholder has the obligation to drill it during the drilling period approved by the NAMR.

After the completion of the drilling works, the titleholder, depending on the results of the well may decide to:

i. Conserve the well – means all the works performed in the well that have the purpose of making it safe until the technical, technological, and economic conditions necessary for the exploitation of the oil fields or the underground deposits of natural gas are realized;

ii. Abandon the well – means the works executed in the well for the protection of all the geological formations crossed, as well as the surface works executed for the purpose of environmental restoration and rehabilitation;

iii. Lifting the abandonment regime/conservation – means the decision to change the status of the well from the abandonment/conservation towards re-entering the well with the aim to perform works/operations deemed to reactivate/activate the well production.

Abandonment of wells, according to *NAMR Order no. 8/2011*, is required when: the drilling works can no longer be continued for technical, geological, or economic reasons; the well has depleted reserves from all layers known to be productive and/or has all possible collectors saturated; the well can no longer be put back into production for technical reasons; the flows of the wells have fallen below the limit of economic exploitation established for the deposit; the public utility requires such a decision; the titleholder can no longer use the well for other purposes; the titleholder renounces the concession. The abandonment of the well shall be done in two steps and requires proof regarding the execution of the environmental restoration works, approved by the environmental authority. *NAMR Order no. 8/2011* provides technical instructions on the specific format and content of the underlying documentation for the abandonment request.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

See Section 2.4.

6.2. Offshore Safety Directive

The OSD was implemented in Romania by *Law no. 165/2016* regarding the safety of offshore petroleum operations. Its provisions are also comprised and enforced via *Law no 256/2018* regarding the implementations of certain measures for offshore petroleum operations (the Offshore Law).

The Offshore Law transposing *Directive 2013/30/EU* of the European Parliament and of the Council of June 12, 2013, on the safety of offshore oil and gas operations and amending *Directive 2004/35/EC*, contains provisions aiming to establish the minimum requirements necessary to prevent major accidents and to limit the consequences of such accidents involving oil operations in the Black Sea areas under Romanian jurisdiction, determined according to the principles of international law and international conventions to which Romania has acceded, in accordance with *Law 17/1990 on the legal regime of the inland maritime waters, the territorial sea, the contiguous zone, and the exclusive economic zone of Romania*, republished.

Moreover, Romania has set up a governmental body called Regulatory Competent Authority for Offshore Petroleum Operations in the Black Sea (ACROPO), in charge of the implementation of the OSD provisions.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Offshore producers are required by the Offshore Law to trade at least 50% of Black Sea gas production on the Romanian commodity markets (OPCOM and BRM). *Law no. 123/2012* on electricity and natural gas contains an obligation that requires all onshore or offshore producers and suppliers of natural gas to offer minimum quantities of natural gas on the Romanian centralized wholesale exchanges, as follows:

i. between July 1, 2020, and December 31, 2022, all participants to the natural gas market (except producers whose annual production realized in the previous year exceeds 3 million megawatt hours), which contract the sale of natural gas on the wholesale market during a calendar year, are obliged to sell on an annual basis a certain quantity of natural gas (currently 40% pursuant to ANRE regulations) on the Romanian centralized wholesale exchanges;

ii. between July 1, 2020, and December 31, 2022, natural gas producers whose annual production realized in the previous year exceeds 3 million megawatt hours, are obliged to sell on an annual basis 40% of the natural gas they produced in the previous year, on the Romanian centralized wholesale exchanges, in accordance with the provisions of secondary legislation;

iii. correlative to the above gas offering obligations, between July 1, 2020, and December 31, 2022, all participants to the natural gas market contracting the purchase of natural gas on the wholesale market during a calendar year are obliged to purchase on annual basis minimum quantities of natural gas on the centralized wholesale exchanges, in accordance with the provisions of secondary legislation.

7.2. Transportation

The National Petroleum Transportation System is the public property of the state. The systems for the transportation of oil and gas are operated by two state-owned companies, Conpet for crude oil, and Transgaz for natural gas. The National Petroleum Transportation System has approximately 13,000 kilometers of pipelines and it includes five interconnections. Transgaz initiated in 2019 a project for a 100-kilometer pipeline ensuring the interconnection of the transmission system in Romania and Serbia, being designed to take over the natural gas from the BRUA pipeline (Bulgaria–Romania–Hungary–Austria Corridor). The above operators have the obligation to provide equal access to the interested parties. The Petroleum Law, and the Electricity and Natural Gas Law specify the cases in which the operators may deny access to the transportation systems.

A Building Permit (BP) is required for any kind of construction including for temporary construction works. Necessary documents for securing a BP:

i. Title over the land (ownership right, right to use the land, superficies rights, etc);

ii. Urbanisation Certificate (UC);

iii. The approvals indicated by the UC; and

iv. Technical project for the construction work.

The UC is the administrative act establishing the legal, economic, and technical regime of the construction and detailing which approvals are required to be obtained before applying for the BP. The UC typically provides for specific approvals to be obtained on a case by case basis, from various authorities, such as the local city hall, the water authority, the forest authority, etc.

Typically, after having submitted all required documents, the BP should be issued within 30 days. The BP is valid for an initial period of 24 months, which can be extended for one time only with another 12 months.

Regarding the construction of natural gas transportation pipelines or associated infrastructure, the following rights and limitations are imposed in regards to the lands and other assets in the public or private property:

i. the right of use for the execution of works required for the development of transportation pipelines or associated infrastructure, as well as for the normal operation of the infrastructure by conducting repair, maintenance works, and necessary interventions;

ii. underground, aboveground, or aerial right of way for the installation of grids, pipelines, lines, or other equipment and for access to their location;

iii. the right to obtain the restraint or cessation of several activities that might endanger individuals and assets;

iv. the right of access to public utilities.

7.3. Land rights

The right to use the land necessary for the performance of the petroleum operations may be acquired by the following means :

i. purchasing the land and, if applicable, the buildings located on such land;

ii. swap of land, accompanied by the reconstruction of the buildings on the newly granted land, if any, at the expense of the holder benefitting from the released land;

iii. land lease;

iv. concession of land from the state;

v. concluding a partnership agreement between the owner of the land and the titleholder of the petroleum agreement.

Similar means are available for the construction of natural gas transportation pipelines or associated infrastructure.

The Romanian Law on Gas Pipelines refers to some measures necessary for the implementation of projects of national importance in the field of natural gas and has been developed, in part, to facilitate the construction of the BRUA pipeline. The law was adopted by the Chamber of Deputies (the decision-making chamber of the Parliament Romania) on September 20, 2016, and was promulgated by the President of Romania on October 19, 2016.

Law no. 185/2016 (the BRUA Law) was published in the Official Gazette and entered into force on October 25, 2016. In the law, "pipeline" is defined as "upstream supply pipeline, transport pipeline natural gas located in Romania, which is the subject of the project of national importance, including surface installations and all related facilities consisting of power supplies with overhead and/or underground installation, access roads, water supply, sewerage, and fibre optics."

The general provisions of the law include the following:

Articles 3 and 4 contain several derogations from a number of existing laws to address the issue of access to land:

i. any forest land that is public property of the state can be occupied, free of charge;

ii. for the execution of construction works, without paying the value of the growth as determined by the exploitation of the wood mass before the age of technical exploitability;

iii. the owner's agreement for privately owned forest land is obtained by signing a document certifying the approval of temporary employment for execution construction works. Upon completion of the works, compensation equal to "rent and the value of the loss of growth caused by the exploitation of the wood mass before age of technical exploitability" shall be paid;

iv. if the owner's consent is not obtained because the latter is unknown or does not present a valid title, the land can be occupied without agreement;

v. at distances less than 50 meters from the forest edge, it is not necessary to obtain the approval of the structure territorial public authority responsible for forestry;

vi. taking out of the agricultural circuit of the respective land shall be done by the effect of the BRUA law, on the basis of a Government decision approving the list of relevant agricultural lands, without being conditioned by obtaining the approval/approvals from the agricultural bodies or from the landowner, etc.

Article 5 of the BRUA Law sets out the procedure applicable to the construction works and regulates the issuance of other permits, permits, and authorizations, such as: In the case of construction works related to projects of national importance in the field of natural gas, for the exercise of the rights of use and easement over the buildings, the initiator of the project will pay:

i. compensation for the landowners in exchange for the limitations brought to the right of use as a result of the performance of the works;

ii. compensations for the damages caused to the landowners or to the owners of activities affected by the exercise of the right of servitude;

In the case of surface facilities, for the exercise of the right of use, the initiator of the project pays to the landowners, starting with the date of completion of the works, an annual indemnity/royalty, etc.

7.4. Access and integration

See Section 7.2.

For natural gas, the access of the producers to the natural national transport system (NTS) is done through upstream pipelines that are connected to NTS, based on a setting-up authorization and an operating license granted by the ANRE.

The access to NTS is made on a regulated basis, through standard contracts for capacity reservation and for transport services and, respectively, connection to the system. Access is organized via virtual trading points or physical trading points assigned to each user.

Categories of network users. According to the information provided by Transgaz, the following applicants may connect to the NTS:

i. the holders of the gas distribution public service concession arrangement for performing their contractual obligations incurred as such;

ii. the LNG terminal operators;

iii. the underground gas storage operators;

iv. the new industrial clients (the client which connects for the first time to a system);

v. economic operators, holders of the distribution license;

vi. gas producers;

vii. other clients who may not be provided the requested flow from the natural gas distribution system in the conceded zone delimited where the connection will be achieved.

The Crude Oil National Transport System (CONTS) is the ensemble of interconnected major pipelines, providing the collection of the crude oil from the extraction sites or import crude and their routing from the sites they have been delivered by the producers/importers towards the processing units.

The concessionaire of the CONTS, CONPET S.A., is legally bound to provide to all applicants – authorized legal persons, free access to the system's available throughput, under equal conditions, in a non-discriminatory and transparent manner.

CONTS is currently 3,800 kilometers in length and is being divided into four major sub-systems. The system's transport throughput is approximately 27.5 million tons/year.

The transport of crude are standard transport contracts approved by the NAMR.

The activity is regulated and is carried out on the basis of gas transport tariffs approved by the ANRE and crude oil transport tariffs approved by the NAMR. The Electricity and Natural Gas Law gives the right to the concessionaire to demand the reduction or cease of activities of third parties in the vicinity of the gas installation, which could endanger the operation of the gas installations and equipment.

There are legal provisions in place issued by the NAMR with respect to the safety and security zones marginal to the oil and gas infrastructure/pipeline route, as well as governmental regulations pertaining to the conditions by which certain constructions can be located in the vicinity of such infrastructure.

7.5. Gas transmission and distribution

The National Gas Transmission Company, TRANSGAZ S.A., established based on *Governmental Decision no. 334/28 April 2000*, is the Romanian legal person operating as a trading joint-stock company, under the Romanian legislation and its by-laws. Therefore, Transgaz is a state-controlled natural gas transport operator, and it operates the NTS.

For gas distribution, the legal regime of concession contracts of the public utility service applies, based on the procedures for granting concessions, provided by the *Government Decision no. 209/03.04.2019* published in the Official Gazette, Part I, no. 284 of April 15, 2019. The concession contract for the public utility service for natural gas distribution is awarded through open public tender procedures, which can be organized by the local public administration authorities from the administrative-territorial units or an association of multiple units, through a representative.

Both natural gas distribution and transport activities are regulated by the ANRE and are performed on the basis of individually regulated tariffs for each operator.

8. TRADING

8.1. Trading license

In Romania, the gas trader notion per se was first introduced in the Energy Law on July 19, 2018. According to the Energy Law, the natural gas trader is a licensed natural or legal person who buys and sells natural gas exclusively on the wholesale natural gas market.

However, gas trading was allowed under the supply license prior to the enactment of the aforementioned amendments to the Energy Law. These amendments also provide that entities holding gas supply licenses can trade gas on the wholesale market without the need to obtain a separate trading license.

The competent authority for issuing gas trading licenses is the ANRE, therefore any interested party may apply for a trading license.

The obligations specific for the gas trader, under a license/decision issued by the ANRE confirming the right to undertake gas trading activities in Romania, is the one provided by the Energy Law as main obligations of the gas trader, as follows:

i. to conduct sale/purchase activities exclusively on the whole-

sale natural gas market according to the legal provisions in force, based on commercial contracts concluded in a transparent, non-discriminatory manner, and under competitive conditions, import/export contracts, in full compliance with the rules of the applicable to natural gas trading activities according to ANRE regulations;

ii. Not to use unfair or misleading business practices;

iii. To ensure the reporting of the data regarding the activity performed regarding the sale/purchase of natural gas in accordance with the legal provisions in force;

iv. To ensure the natural gas deliveries are in compliance with the conditions imposed by the licenses, contractual clauses, and regulations in force;

v. To send the ANRE reports according to the regulations in force;

vi. If the respective company carries out other activities on the natural gas market, the latter is obliged to ensure the accounting separation according to regulations of the ANRE;

vii. To comply with the regulations and conditions established by the license granted by the ANRE;

viii. To trade the natural gas according to the provisions of the Energy Law.

8.2. Products

There are various types of natural gas sales, such as Bilateral gas sales agreements, import/export agreements, as well as trading on the dedicated commodity platforms, such as the Romanian Commodities Exchange (BRM), Romanian gas and electricity market operator (OPCOM), Humintrade SRL, and Tradex Platform SRL, which offer standardized products for various periods, on various markets, such as the ones below:

The BRM offers the following Wholesale Natural Gas Markets:

- GasForward Market. On this market medium and long term contracts that fall under the Centralized Market Regulation can be traded;

Approved products that can be traded within this market through an RCE standard, pre-agreed, EFET, or other proposed contract are:

- Week
- Month
- Quarter
- Semester
- Warm season
- Cold season
- Calendar year
- Gas year

- GasForward under Central Counterparty regime. On this market medium and long term contracts that fall under the Centralized Market Regulation can be traded;

The following products are approved and available for trading on this market:

- Week
- Month
- Quarter
- Semester
- Warm season
- Cold season
- Calendar year
- Gas year

- SPOT market. On the SPOT market, you can trade short-term contracts, which fall under the Regulation for Centralized Natural Gas markets.

Products that can be traded within this market are the following:

- Day Ahead (D+1)
- Intra-Day (D)

- Balancing Market. The Romanian commodities exchange operates as a third party that organizes and administers the Natural Gas Balancing Market in partnership with S.N.T.G.N. Transgaz S.A.

Within this market, you can trade a quantity of Natural Gas within the daily limit communicated by TSO for Gas day D-1.

Products that can be traded within this market are:

- Imbalance D-1

The BRM also offers The Retail Natural Gas Market

Within the Retail Natural Gas Market, tenders take place. Such tenders are initiated by final customers.

The traded product on the Retail Natural Gas Market is exclusively natural gas consumed by initiating customers for

non-commercial purposes (self-consumption).

Customers that hold a valid natural gas supply license issued by the ANRE and who wish to initiate buying and selling orders through the Romanian Commodities Exchange have the wholesale markets available.

Given the above, we can conclude that the BRM offers short-term standardized products, medium and long term standardized products (standard products that will be traded based on standard sale-purchase contracts, standard products to be traded under standard EFET contracts/pre-agreed contracts, etc.), long-term flexible products.

Another important trading platform is OPCOM, which offers several short-term standardized products markets, such as the Day Ahead Market for Natural Gas (DAM-NG, on which daily natural gas transactions are performed, with delivery on the day following the trading day and the Intra-day Natural Gas Market.

OPCOM also offers standard products to be traded on the basis of standard sales contracts, standard products to be traded on the basis of standard EFET contracts/pre-approved contracts, standard products to be traded on the basis of the sale-purchase contracts proposed by the initiating participant of the trading order and long-term flexible products (for delivery periods of at least 12 months).

9. COMPETITION

9.1. Authorities

The Romanian Competition Council (RCC) is the authority responsible in Romania for the regulation of competition aspects. Since 2011, the RCC has had an internal guidance paper with prioritization criteria for *ex officio* investigations. It uses a range of criteria including impact on consumers, strategic significance, as well as risks and resources involved, to decide whether an investigation should be started.

9.2. Anti-competitive actions

Article 16 of Law no. 21/1996 (the Competition Law) establishes the RCC as an independent government authority with legal personality. The infringements for which fines may be inflicted under article 55 of the Competition Law comprise:

i. agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade on the Romanian market, as well as between member states and which have as their object or effect the prevention, restriction, or distortion of competition within the Romanian and/or the European market;

ii. the failure to notify a merger or implementing a merger against the specific conditions imposed by the Competition Law or one that was declared incompatible with competition rules by the RCC;

iii. the failure to comply with a certain obligation, condition, or measure imposed through a decision taken in accordance with the Competition Law.

The amount of the fine is set between 0.5% (or, in certain cases, 0.2%) and 10% of the total turnover of the undertaking concerned in the previous financial year. The fining policy is thus based on the principle that some infringements cause more harm than others, which is why individualization is required for each case.

The duration of investigations has repeatedly been a cause for concern. While it does not use formal deadlines in antitrust cases, the RCC has set the goal to conclude new antitrust investigations within two years and to expeditiously finalize investigations that are already older than three years.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

According to the principle of stability established by the Petroleum Law, the terms of the petroleum agreement remain in effect for the duration of the agreement, save for the enactment of legal provisions that are more favorable to the titleholder.

However, the law provides that the parties can amend the petroleum agreement by mutual agreement in case of occurrence of unforeseen circumstances. The petroleum agreements usually include stabilization clauses in line with the provisions of the Petroleum Law.

10.2. Compulsory dispute resolution procedure

As a general principle, any dispute arising in relation to petroleum agreements, concerning the exploration, development, and production of oil and natural gas resources should be settled amicably between the parties within 30 days. In case a settlement may not be reached, then the parties are entitled to commence proceedings in front of the domestic courts. However, in case there is a foreign element involved in the dispute, the parties may choose to settle their dispute in front of an international court of arbitration.

The disputes regarding the transportation, processing, or storage of natural gas, downstream oil infrastructure, development, or distribution of natural gas or oil, should also be settled amicably. In case the parties do not reach an agreement, the disputes shall be settled either by arbitration, as agreed by the parties, or by the Romanian courts of law.

10.3. International treaty protection

Romania ratified the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* on September 13, 1961, and made a commercial reservation and a reciprocity reservation. In addition, with regard to awards made in the territory of non-contracting states, Romania applies the convention only to the extent to which those states grant reciprocal treatment.

As a rule, no special difficulty occurs in the litigation or enforcement of judgments or awards, against governmental authorities or state organs because the state authorities do not enjoy any immunity in this respect.

Romanian law provides for the protection of investments realised by direct investment (setting up a Romanian company) or a portfolio investment (aquisition on capital markets). The protection is granted to both Romanian and foreign individuals or companies. The guarantees are: equitable treatment, protection against direct or indirect expropriation, right to convert earnings in other currencies, etc. However, the Romanian law does not provide for a separate, effective recourse if any of these guarantees are not observed. The law simply refers to disputes being resolved by national courts or according to International Center for Settlement of Investor Disputes (ICSID) or UNCITRAL arbitration.

International protection of investments

ICSID convention

Romania is a party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (also referred to as the Washington Convention). Under this convention Romania concluded Bilateral Investment Treaties with more than 100 countries. Each bilateral investment treaty provides for a larger or smaller degree of protection, but most of these include protection of both direct and indirect investments by foreign investors, a guarantee of equitable treatment and protection against both direct or indirect expropriation of the investment. A list of the countries that have entered BITs with Romania cand be found at the following link:Database of Bilateral Investment Treaties | ICSID (worldbank.org) .

Recently, the European Court of Justice found an arbitration clause in an international investment agreement between two European Union member states incompatible with EU law. This landmark ruling has serious consequences for investment arbitration clauses in investment treaties concluded by EU member states.

Moreover, Romanian parliament has decided in 2017 to terminate all its Bilateral investment treaties with EU countries. The termination process is a long term process but puts at jeopardy all the existing intra-EU treaties. Since 2017 Romania has effectively terminated its BITs with Denmark, Sweden, Poland, Finland and UK (5 out of the 22 to be terminated in the future).

Energy Charter Treaty

Foreign investments in the field of Energy in Romania are also protected by the Energy Charter Treaty, to which there are currently 53 signatories. The ECT also provides for fair and equitable treatment to investors and warrants protection of their investments. However, on 2 September 2021, the Court of Justice of the European Union ruled that intra-EU arbitrations based on the Energy Charter Treaty violate EU law.

The most significant claims were competition law disputes between foreign companies and the state regarding privatization agreements and procedures in the oil sector.

One of the most renowned cases in the oil and gas is the Chevron versus the Romanian State case, at ICC, from 2018, whereby Chevrom Petroleum Company was oblidged to pay damages of USD 73, 450,000 to the National Agency for Mineral Resources (ANRM) following the annulment of three oil concession agreements without complying with the financial obligations under the Petroleum Law.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

The Republic of Serbia became a member of the Energy Community by signing the *Treaty Establishing Energy Community* in 2006. As a member, the Republic of Serbia undertook the obligation and is devoted to legally complying its *energy sector with the Energy Community acquis*. Therefore, while drafting the *Energy Law* (*Official gazette of the RS no. 145/2014, 95/2018* – other law and *40/2021*), Directive 2009/73/EC of July 13, 2009, concerning common rules for the internal market in natural gas and repealing *Directive 2003/55/EC* as well as *Regulation 715/2009/EC* of July 13, 2009, on conditions for access to the natural gas transmission networks and repealing *Regulation 1775/2005/EC* were adopted. Furthermore, in the field of oil, *Directive 2009/119/EC* of September 14, 2009, imposes an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products is implemented.

Additionally, the Ministry of Mining and Energy is currently in the process of implementation of several natural gas rules, namely: **i)** *Regulation 703/2015/EU* of April 30, 2015, establishing a network code on interoperability and data exchange rules, **ii)** *Regulation 2017/459/EU* of March 16, 2017, establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing *Regulation 984/20131/EU*, **iii)** *Regulation 2017/460/EU* of March 16, 2017, establishing a network code on harmonized transmission tariff structures for gas, **iv)** *Regulation 312/2014/EU* of March 26, 2014, establishing a network code on gas balancing of transmission networks and **v)** Annex 1 to the *Regulation 715/2009/EC* governing transparency and congestion management mechanisms. Adoption is expected to occur in 2022. With these regulations, it is expected that the Serbian natural gas market becomes more connected and harmonized with the EU natural gas market, having in mind that the Republic of Serbia has implemented almost all Energy Community *acquis* in its legislation.

Additionally, the Serbian energy sector, including the oil & gas sector as well as renewable energy sources, is in expansion and open to investments. One of the major recent investments in this regard was the completion of the Turkish Stream and the commencement of its operation. The Turkish Stream stretches from the Serbian border with Bulgaria to the Serbian border with Hungary, and the pipeline is approximately 400 kilometers long, with an annual capacity of approximately 13 million cubic meters. Taking into account the dimensions of the pipeline, as well as the strategic interest of Serbia in this project, the Turkish Stream represents the biggest investment in the Republic of Serbia in the last 50 years. Furthermore, with this investment, it is strived to achieve a more secure supply of natural gas, as well as to create diversification of supply routes. Additionally, one more gas interconnector between the Republic of Serbia and Bulgaria is currently under construction, aiming to connect the domestic natural gas market with gas from the Shah Deniz (Azerbaijan) gas field with the same aim of diversification of supply routes.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

The Law on Mining and Geological Exploration

The *Law on Mining and Geological Exploration ("Official gazette of the RS" no. 101/2015, 95/2018* – other law and *40/2021*) recognizes oil and natural gas as mineral resources of strategic importance to the Republic of Serbia and their exploration and exploitation are considered to be in the public interest. The said law sets out conditions for oil and natural gas exploration, in which exploration may be undertaken by a domestic company, other legal entity, or an entrepreneur.

Additionally, foreign investors may have participation in the exploration as well as in its exploitation, but not directly. Namely, in order for foreign investors to perform exploration/exploitation of oil and natural gas, they must incorporate a branch office and register it before the Business Register Agency of the Republic of Serbia. When conditions for exploration are met (see Section 3.1.), the competent body of the Republic of Serbia shall issue an exploration permit to the eligible entity.

When the exploration phase is conducted, the entity may submit a request for obtaining an exploitation permit. The exploitation of mineral resources is considered the performance of works in the exploitation of oil and natural gas and works in the separation of oil and natural gas, the preparation of oil and natural gas for transport and storage, as well as the extraction of LNG in appropriate facilities.

Energy Law

1) Production and import

From the point of view of the *Energy Law*, the production of natural gas is not considered as an energy activity for which an energy license is required. However, for the production of oil derivates, it is necessary that the entity, before the commencement of production, obtains a license. Otherwise, such an entity commits a commercial offense.

As for the import of oil and natural gas, the *Energy Law* stipulates that an entity must have a license for conducting of energy activity oil trade i.e., energy activity natural gas supply. The energy license is issued upon the request of the interested party by the Energy Agency of the Republic of Serbia (Energy Agency). However, in case oil i.e., natural gas is imported for

the own needs, such a license is not legally required. On the other hand, it is required to have the said license for oil trade in case of oil exports. Contrary, when exporting natural gas, an energy license is not legally required. Other approvals are not needed for export/import.

2) Transmission/distribution

Regarding the energy activities natural gas transmission i.e., distribution, the *Energy Law* sets out as a mandatory condition to have a license for the respective energy activity.

Furthermore, in line with the *EU Third Energy Package*, it is mandatory that energy activity natural gas transmission is unbundled from the activities of natural gas production and natural gas supply, meaning that the energy entity transporting natural gas is not allowed to be involved in the natural gas production or to conduct energy activity natural gas supply.

As for oil transport, this activity is also recognized as energy activity and thus a license is required.

Currently, in the Republic of Serbia, three natural gas transmission system operators conduct energy activity being Gastrans doo Novi Sad, Transportgas doo Novi Sad and Yugorosgaz-transport doo Nis. Each of the operators has its own transmission system network. As per distribution, thirty distribution system operators are licensed. On the other hand, only one operator for oil transport is licensed being Transnafta ad Pancevo and it transports oil via pipeline from Pancevo to the border with Croatia (for more detail please see Section 2.1.2).

Furthermore, the transmission of natural gas/oil and distribution of natural gas are recognized as activities of public interest.

3) Storage

Natural gas storage and oil storage are also energy activities for which conduction is required to have a license pursuant to the *Energy Law*. Same as for operator of a natural gas transmission system, operator of natural gas storage must be unbundled from the energy activities of natural gas transmission, production, and supply.

However, a license is not legally required when oil is stored for its own purposes in a storage facility with a capacity of over 5 tons. In such a case, approval of the Ministry of Mining and Energy must be obtained.

4) Energy permit

For the construction of natural gas transmission system, natural gas distribution system, natural gas storage, oil transportation system, and oil storage, it is mandatory to obtain an energy permit. The Ministry of Mining and Energy is authorized to issue energy permits upon request of the interested party.

In the oil sector, only one producer of crude oil is operating – Naftna Industrija Srbije. Simultaneously, Naftna Industrija Srbije is also the dominant player in oil trade, trade on gas stations as well as importer of oil, which is mainly imported from the Russian Federation.

Same as in the oil sector, in the natural gas sector the only producer is Naftna Industrija Srbije. On the other hand, the main supplier of natural gas is JP Srbijagas which is 100% state-owned.

Regarding other market participants in the Republic of Serbia, please note that currently license for energy activity of natural gas transmission currently hold two companies, for natural gas distribution thirty companies, energy activity natural gas storage performs only one company and for supplies thirty-two companies are licensed.

In the field of oil, only one company is licensed for oil transportation, 24 companies perform oil storage, 56 are licensed for wholesale oil trade, and 462 for oil trade on gas stations.

As already stated, that *Energy Law* was drafted in line with the *EU Third Energy Package*, and unbundling of certain energy activities is required as a consequence. JP Srbijagas, being one of the major players in the Republic of Serbia's natural gas market, commenced a long and complicated process of unbundling. As JP Srbijagas is the biggest supplier of natural gas, and thus cannot conduct energy activity of natural gas transmission, the company Transportgas doo Novi Sad was incorporated for conduction of natural gas transmission. Transportgas doo Novi Sad is in 100% state ownership.

Major recent investment in the gas sector was the construction of the Turkish Stream, an interconnector approximately 400 kilometers long, entering the Republic of Serbia at the border with Bulgaria, and exiting at the border with Hungary. Before the construction of this interconnector, the Republic of Serbia imported natural gas only from one point, at the border with Hungary. Now, when an alternative supply route is constructed, the security of supply is on a much higher level.

With the same purpose Republic of Serbia commenced construction of a new interconnector which shall connect the Serbian gas network with the Bulgarian gas network, and thus will ensure new sources of natural gas.

Furthermore, as the north of the country is mainly gasified, the south still lacks a developed gas network. JP Srbijagas announced further investments in gasification estimating five to seven years to achieve complete gasification of the Republic

of Serbia.

2.2. Domestic oil & gas production and imports/exports

Natural gas

A major characteristic of reserves of natural gas is that the Republic of Serbia from its own reserves can cover only a small part of domestic needs for natural gas. The production of natural gas is conducted only in the area of Vojvodina (north part of the Republic of Serbia) with Naftna Industrija Srbije as the only producer of natural gas.

Having in mind that during 2020 the Republic of Serbia were consumed approximately 2.500 million cubic meters and at the same time were produced 265 million cubic meters of natural gas, it may be concluded that its own production of natural gas can satisfy about 10% of domestic needs for natural gas. For that reason, the Republic of Serbia is mainly oriented to import of natural gas and in 2020 were imported 2.144 million cubic meters of natural gas, out of which 1.384 million cubic meters were imported from Russian Federation, and 760 million cubic meters from other sources. Import of natural gas is conducted via gas pipeline.

On the other hand, natural gas is not exported from the Republic of Serbia. However, the Republic of Serbia is a transit country through which natural gas is transported to Bosnia and Herzegovina as well as to Hungary.

Oil

Same as for natural gas, in the Republic of Serbia production of crude oil, conducts only one company being Naftna Industrija Srbije. The total consumption of crude oil and semi-finished products from domestic production, imports, and stocks in 2020 was about 3.299 million tons. In 2020, Serbia produced about 0.861 million tons of crude oil (26.10% of total consumption), and 2.438 million tons (73.90%) was provided from imports, out of which 2/3 of crude oil originates from Iraq, and the rest from Russian Federation and Kazakhstan.

As per export, in 2020 approximately 0.92 million tons of oil derivates were exported.

2.3. Foreign investment and participation

The Republic of Serbia does not impose restrictions on foreign companies in relation to acquisitions of interest in the Serbian energy sector.

2.4. Protection of investment

The most important international treaties in the energy sector are **i)** the *Stabilization and Association Agreement*, entered into force on September 1, 2013, granting the Republic of Serbia the status of an associated country to the European Union, by which agreement the Republic of Serbia, *inter alia*, undertook the obligation to be as much as possible harmonized with EU energy sector. At the end of the 2021 Republic of Serbia has fulfilled initial requirements in the energy sector (restructuring of the gas sector and creating an action plan on mandatory oil reserves) and therefore has opened an energy chapter in negotiation with the EU, and **ii)** the *Treaty establishing Energy Community*, which the Republic of Serbia become party to during 2006. Pursuant to this Treaty and decisions of the Energy Community bodies, the Republic of Serbia has concrete obligations to undertake certain legislative steps in order to be in compliance with EU energy regulations, including in the field of oil and natural gas. Thus, when adopting laws and regulations, the Republic of Serbia takes into account EU regulations (see Section 1) to the most extent possible.

A major bilateral treaty in this sector is the *Agreement between the Government of the Republic of Serbia and the Government of the Russian Federation on Cooperation in Fields of Oil and Natural Gas*, which was executed during 2008. This Agreement envisages several energy projects: **i)** the construction of the South Stream, which was stopped, **ii)** the construction of the natural gas Underground Storage Banatski Dvor, which was constructed and put into operation as of 2012, and **iii)** the acquisition of Naftna Industrija Srbije by Gazprom. Stability clause and protection from expropriation and similar acts are stipulated.

With regard to bilateral agreements, the Republic of Serbia executed numerous agreements on mutual incentives and investment protection, with over twenty such agreements with EU countries (*inter alia* United Kingdom, Germany, France, the Netherlands, etc.). The majority of the agreements are executed for a period of ten years with the automatic extension for the same period or indefinite period.

Apart from the said, *Law on Investments of the Republic of Serbia ("Official gazette of the RS" no. 89/2015 i 95/2018*) lists benefits to foreign investors, such as the right to transfer profit, protection from expropriation, or similar acts, stability clause, national treatment, etc.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

The main law governing the exploration of oil and natural gas is the *Law on Mining and Geological Explorations*. As already said, exploration of oil and natural gas is not an energy activity for which license is needed, and such activity is in the public interest of the Republic of Serbia. In order for any entity to commence works on exploration, it is mandatory to obtain an exploration permit.

The process of issuing exploration permits is initiated by the Ministry of Mining and Energy by publishing public tender for exploration of oil i.e., natural gas. Announcement of the public tender is published in the Official gazette of the RS as well as in the Official gazette of the EU. In the announcement is stated, *inter alia*, mineral resources are subject to exploration and exploration field.

Within the exploration phase, it is allowed to take oil i.e., natural gas when testing exploration well, for a duration of up to one year to test the production and technical characteristics of discovered oil i.e., natural gas deposits, and define the parameters of their possible exploitation. For such obtained oil i.e., natural gas, it is necessary to pay royalties as determined by the law governing royalties for usage of public goods.

Additionally, the holder of the exploration permit may submit a request to retain the right to the exploration area in order to prepare documentation for the exploitation permit, i.e., the exploitation field and exploitation area permit, no later than 30 days before the expiration of the exploration period. The exploration area for oil and natural gas cannot exceed 5,000 square meters.

Holder of an exploration permit is obliged to prepare a yearly report on results of geological exploration, which report shall cover all findings in the last 12 months. When the exploration phase is over, the holder of an exploration permit must prepare a final report on the results of geological exploration as well as elaborate on resources and reserves of oil/natural gas. Both yearly and final reports must be delivered to the Ministry of Mining and Energy.

The main characteristics of reserves of oil and natural gas in the Republic of Serbia are the small volume of conventional resources and balance reserves, a relatively high level of performed exploration, and a limited exploration area. Most oil and natural gas deposits have a relatively high utilization rate, which has caused a natural decline in production. Consequently, when drafting action plans and energy strategies, not much space is dedicated to the exploration and exploitation of oil and natural gas. However, the main strategic documents in this regard are **i)** the *Energy Development Strategy of the Republic of Serbia until 2025 with Projections until 2030*; **ii)** the *Regulation on Determining the Program for the Implementation of the Energy Development Strategy of the Republic of Serbia until 2025 with Projections until 2030 for the period from 2017 to 2023* and **iii)** the *Strategy on Management of Mineral Resources of the Republic of Serbia until 2030*.

Additionally, the Ministry of Mining and Energy is currently drafting two new energy significant documents: **i)** the *National Energy and Climate Plan for a period until 2030, with Projections until 2050*, and **ii)** the *Energy Development Strategy for a period until 2040, with Projections until 2050*.

3.2. Foreign exploration

In the Republic of Serbia, foreign companies are entitled to conduct exploration of oil and natural gas. However, they cannot directly be the holder of an exploration permit, but first, they must incorporate and be duly registered in the Republic of Serbia branch office, through which all necessary legal and factual actions may be done.

Foreign investors may obtain exploration permits in two ways: **i)** by filing a request for an exploration permit to the Ministry of Mining and Energy (see Section 3.1), and **ii)** by transfer. Namely, a domestic public or private company may transfer an exploration permit to another entity, including a foreign branch office. Such transfer is initiated by the holder of exploration permit filing request for transfer to the Ministry of Mining and Energy, and if all conditions set out by the *Law on Mining and Geological Exploration* are met, the transfer shall occur. The foreign investor shall have the same scope of rights and obligations, regardless of the manner of obtaining an exploration permit.

Additionally, from the law perspective, there are no differences in legal treatment between domestic companies and foreign investors, as well as no difference in the manner of obtaining exploration.

Investment protection by law

Last but not least, by the latest amendments of the *Law on Mining and Energy* is introduced the possibility of the Republic of Serbia and investor who is the holder of exploration permit may execute investment agreement. This agreement shall govern the construction of missing infrastructure, environmental protection, financial benefits as well as other important issues for the realization of the project. However, up to now, no such agreement has been executed between the Republic of Serbia and any investor.

3.3. Stages of the exploration process

Please see Section 3.1.

3.4. Obligatory state participation

All findings of the exploration phase must be documented in the relevant reports and elaborate on resources and reserves of oil/natural gas (see Section 3.1.), and these reports and elaborate must be submitted to the Ministry of Mining and Energy. Additionally, the ministry is authorized to forward certain data from the reports and elaborate to the Serbian Geological Institute and Republic Geodetic Institute, who must treat such data as a business secret.

Furthermore, if the holder of the elaborate reserves and resources does not submit a request for an exploitation permit

within six years, the Republic of Serbia shall become the holder of such elaborate reserves and resources of oil/natural gas and thus acquires all rights they derive from.

Last but not least, the holder of the exploration permit must pay royalties to the Republic of Serbia for exploration as well as for taking the oil and natural gas during the exploration phase, as set out by the law governing fees for usage of public goods.

3.5. Risks to be considered

As already mentioned, resources of the oil and natural gas in the Republic of Serbia are, to the great extent, already explored and exploited. Thus, potential investment in this regard is accompanied by the risk of possible scarce findings.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

The main laws regulating the production of oil and natural gas are Law on Mining and Geological Exploitation and Energy Law. As per first law, it is envisaged that the holder of a certificate on reserves and resources is entitled to submit a request for obtaining an exploitation permit, which permits the Ministry of Mining and Energy is authorized to issue in the administrative proceedings. Please note that process of obtaining a complete exploration permit is divided into three parts.

First, it is necessary to obtain a permit for the exploitation field. In this permit is determined, *inter alia*, the type of resources subject to exploitation and deadline for commencement of preparatory works and deadline for obtaining a permit for construction of mining objects and conduction of mining works. Therefore, when the permit for exploitation field is obtained, the holder may commence on preparatory works (clearing the terrain and removing facilities in order to provide space for the construction of future mining objects and performing mining works) and should commence on drafting necessary documents (see below paragraph) for obtaining next permit.

Second, holders of a permit for exploitation field may submit a request for obtaining a permit for construction of mining objects and conduction of mining works. For obtaining this permit, it is necessary to prepare investment-technical documentation consisting of among others: **i)** feasibility study for exploitation of mineral resources, **ii)** long-term exploitation program, **iii)** yearly operation plan, and **iv)** the mining project. The mining project represents a set of the following projects: main mining project, supplementary mining project, technical mining project, and simplified mining project. The mining project is subject to technical control. When the Ministry of Mining and Energy issues this permit, the entity is entitled to commence construction of mining objects in line with the mining project.

Third, in case mining objects are constructed in compliance with the mining project, a usage permit for mining objects may be obtained, and exploitation commences.

From the *Energy Law*'s perspective, the production of natural gas does not represent licensed activity. Production of crude oil is also license-free activity. However, for the production of oil derivates, i.e., unleaded motor gasoline, aviation gasoline, jet fuel, gas oil, heating oil, marine fuels, liquefied petroleum gas, and similar, a license is mandatory. Energy Agency is authorized to issue licenses for energy activities, upon the request of the interested entity. License is issued for a period of 10 years, with the possibility of extension.

Additionally, as a precondition to commencing the construction of objects for oil production, Energy Law envisages obtaining energy permits as well. The Ministry of Mining and Energy is authorized to issue an energy permit.

Incentives

Currently, the Republic of Serbia is more devoted to granting incentives for renewable energy sources. However, the newly adopted *Regulation on Conditions and Criteria of Harmonized State Aid for Environmental Protection and in Energy Sector ("Official gazette of the RS" no. 99/2021*) envisages the possibility of state aid for investment in energy infrastructure. State aid may be granted for energy infrastructure located in the area of level two of the nomenclature of statistical territorial units whose GDP per capita is less than or equal to 75% of the EU-27 average. Under energy, infrastructure is considered any physical equipment or facility located in the Republic of Serbia or connecting the Republic of Serbia with at least one country and is classified as infrastructure natural gas or oil infrastructure. The amount of state aid may not exceed the difference between the eligible costs and the operating profit of the investment, whereby the operating profit is deducted from eligible costs in advance or through a refund mechanism, up to a maximum of EUR 50 million per market participant per investment project.

Pursuant to the *Law on State Aid ("Official gazette of the RS" no. 73/2019)*, state aid can be granted through the following instruments: **1)** subsidy (grant) or subsidized interest rate on loans, **2)** fiscal relief (reduction or exemption from taxes, contributions, customs duties, and other fiscal duties), **3)** a guarantee from the state, any legal entity that disposes of and/or manages public funds or another state aid provider, given under conditions more favorable than market ones, **4)** waiver of profits and/or dividends of the state, local self-government or legal entity that manages or disposes of public funds, **5)** write-off of debt to the state, local self-government or a legal entity that manages or disposes of public funds, **6)** sale or use

of the publicly owned property at a lower market price, **7)** purchase or use of the property at a price higher than the market price by the state, local self-government or a legal entity that manages or disposes of public funds.

4.2. Foreign production

Pursuant to the *Law on Mining and Geological Exploration*, when the holder of certification on resources and reserves is the Government of the Republic of Serbia, it may transfer such certificate to another entity in two ways: **i)** through a public auction, on which most appropriate entity shall be chosen, and with such certification, it may commence the procedure for obtaining exploitation permit (see Section 4.1.) or **ii)** by executing PPP or concession agreement.

Furthermore, if the holder of exploitation permit (i.e., permit for exploitation field, permit for construction of mining objects and conduction of mining works and permit for the usage of mining objects) is a public company, it may, under the same conditions as a private entity, submit a request to the Ministry of Mining and Energy to transfer relevant permit to another eligible entity. If all conditions for the transfer of permit, as set out by the law, are met, the Ministry of Mining and Energy shall render resolution on the transfer of the relevant permit.

Additionally, if the holder of the exploitation permit is in the process of privatization, the buyer of the holder's property which is used for exploitation may obtain the holder's exploitation permit as well, by an agreement executed between the holder, buyer of property, Ministry of Mining and Energy and Privatization Agency. The government of the Republic of Serbia must give its consent to such an agreement.

4.3. Stages of the production process

Oil

For the sake of a better understanding of the regulatory part, please take into consideration two different stages of oil production: production of crude oil and production of oil derivates.

With respect to the production of crude oil, it is necessary to obtain an exploitation permit. This permit may be obtained by domestic companies as well as foreign entities. However, a foreign entity cannot directly perform this activity, but only through its branch office duly registered with the Business Register Agency of the Republic of Serbia. For this activity, no energy license is needed.

Regarding the production of oil derivates, *Energy Law* stipulates mandatory licenses for this energy activity, which license is issued for a validity period of 10 years. However, please note that energy activity production of oil derivates may perform only in a domestic company.

Natural gas

In respect of natural gas production, *Energy law* considers this activity as license-free activity. However, from the point of *Law on Mining and Geological Exploration*, an exploitation permit must be obtained (see Section 4.1.).

Export

Regarding oil and natural gas export please see Section 2.1.

4.4. Obligatory state participation

The Republic of Serbia has an interest in and benefits from the exploitation of oil and natural gas to the same extent from the domestic as from the foreign companies. As already said, *Law on Investment* envisages national treatments of investors meaning that foreign investors shall have the same position as domestic companies.

Law on Fees for Usage of Public Goods envisages a list of royalties connected with the production of oil and natural gas. The most important and significant one is the fee for usage of oil and natural gas in the amount of 7% of acquired income from selling of goods. Furthermore, producers of oil and natural gas must pay a fee for the environment, as such production is classified as a high-risk activity for the environment.

With respect to oil production, energy entities conducting the production of oil derivates are obliged to pay a fee for establishing and maintaining mandatory reserves as well as fees for energy efficiency.

In relation to the export of natural gas and oil, the Republic of Serbia envisages no specific restrictions. For detailed information on export, please see Section 2.1.

4.5. Risks to be considered

As already said, the Republic of Serbia does not have a sufficient amount of oil and natural gas reserves, which may attract major investments in this sector (see Section 3.5.).

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

Pursuant to the *Law on Mining and Geological Exploration*, it is possible to **i)** temporary suspense production and **ii)** abandon production.

Temporary suspension occurs due to unforeseen circumstances (gas or water burglary, problems with mountain strikes, pit fires, disturbances on main ventilation routes, passage, drainage

and transport, landslides, eruptions, etc.) or due to force majeure. In such an event, the holder of exploitation shall notify the mining inspector of the reasons for the suspension.

Prior to the planned suspension of works, which will last longer than 30 days, the holder of the exploitation permit is obliged to perform the necessary measurement, draft supplement mining projects and plans, and make a record of the reasons for the suspension of works, indicating hazards for reopening of the oil, i.e., natural gas field. During the temporary suspension of works, facilities in the oil i.e., natural gas fields must be maintained in such a condition that they do not represent danger.

On the other hand, if the holder of an exploration permit wants to abandon the production of oil, i.e., natural gas, it must notify the Ministry of Mining and Energy.

In case of abandonment, the holder of exploitation is obliged to undertake all measures to protect the mining facility and land on which the works were performed and measures to protect and rehabilitate the environment to ensure life and health of people and property, all in line with the mining project. The works on rehabilitation must be undertaken within one year as of the abandonment, and the Ministry of Mining and Energy must be informed on the results of rehabilitation of the environment and conservation of the abandoned mining facilities.

Additionally, when applying for an exploration permit, it is necessary to submit security for the rehabilitation of the environment. Such security may be in form of either a bank guarantee, promissory notes, or corporate guarantee. If the holder of an exploration permit does not undertake necessary measures of environmental rehabilitation, the costs of rehabilitation shall be collected from the provided security.

5.2. Environmental and HSE consideration

Please see Section 5.1.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

The Republic of Serbia is a party to no international treaty governing safe exploration and production of oil and natural gas.

6.2. Offshore Safety Directive

Having in mind that the Republic of Serbia has no exit to the sea, *Offshore Safety Directive* is not implemented, nor any similar rule.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Oil

Subject wanting to import oil in order to sell it in the Republic of Serbia must have an energy license (see Section 2.1.). But in case of import for own needs, please have in mind that license is not needed.

When exporting license is also needed, regardless of the purpose of export. Having in mind that an energy license may obtain only domestic company (save for wholesale supply of natural gas), this means that import and export of oil may perform only licensed domestic company.

Additionally, producers and importers of oil are obliged to pay excise tax as well.

The Republic of Serbia does not envisage additional authorizations/permits to conduct these activities.

Natural gas

In the field of natural gas, the situation is less complex. Namely, for the import of natural gas with the purpose to sell it in the Republic of Serbia, an energy license is mandatory. Foreign companies may directly (not through the branch office) obtain a license for wholesale supply of natural gas.

On the other hand, in the case of export and just transit through the Republic of Serbia (without selling within), a license is not needed.

Contrary to oil, natural gas is not subject to excise tax.

7.2. Transportation

Transmission of natural gas and oil is regulated by the *Energy Law*. Taking into account that transmission of both, natural gas and oil, is a licensed activity, only a domestic company may conduct it.

Natural gas

In the Republic of Serbia exists only three transporters of natural gas, Gastrans doo Novi Sad, Transportgas doo Novi Sad, and Yugorosgaz-Transport doo Nis. As the *Energy Law* is drafted in compliance with the *EU Third Energy Package* and *EU Directive 2009/73* concerning common rules for the internal market in natural gas, transmission of natural gas must be completely unbundled from the energy activities of natural gas distribution, natural gas storage, supply of natural gas and natural gas production, meaning that the same person cannot have directly or indirectly control over the transmission of

natural gas and any of the said three activities.

In order to prove to unbundle from related energy activities, TSO, prior to licensing, must be certified. The administrative procedure of certification is conducted before Energy Agency. Additionally, in the case when the TSO is controlled by a third person from a foreign country, such TSO must also be unbundled from related energy activities. Upon obtaining certification, TSO may submit a request for issuing a license for energy activity transmission of natural gas.

In addition to the regulatory part, pursuant to the *Energy Law* before obtaining a construction permit for commencement of construction of transmission pipeline, it is necessary to obtain an energy permit for such facility.

In relation to the access to the transmission system, TSO is obliged to enable users of the system access to the transmission system on the principle of transparency and non-discrimination. Gastrans doo Novi Sad, for example, uses the Regional Booking Platform for the allocation of transmission capacities to the users.

Regarding the terms of transmission, such terms must be agreed upon in the gas transmission agreement. Pursuant to the *Energy Law*, gas transmission agreement must include, *inter alia*, data on delivery point, capacity on delivery point, calculation period.

Price for access to the system is regulated, meaning that Energy Agency renders methodology for establishing prices and each TSO is obliged to form its prices to access to the system in line with methodology. Such formed prices are subject to the approval of the Energy Agency before they may be applied. Each of the TSO publishes its prices on its website.

The only exception in regard to the unbundling obligation and access to the transmission system is an exemption from such obligations. Pursuant to the *Energy Law* (same stipulated in the *EU Directive 2009/73*), new gas pipeline infrastructure may be exempted from said obligations if such exemption, *inter alia*, does not prevent competition, improves the security of supply, users of new infrastructure object shall bear costs for it using, etc. The exemption is granted by the Energy Agency. In the Republic of Serbia, only one TSO, being Gastrans doo Novi Sad, is exempted and operates under an exemption regime.

Oil

Same as for the transmission of natural gas, oil transportation is a licensed energy activity and thus only domestic companies may conduct it. Access to the transportation system is free and based upon principles of transparency and non-discrimination. Prices for access to the system are, same as for natural gas, regulated.

7.3. Land rights

Acquisition of land may be obtained through an agreement with the landowner. In case it is not feasible, *Law on Mining and Geological Exploration* envisages the possibility for expropriation of land for the benefit of the entity who is the holder of either exploration or exploitation permit.

The process of expropriation is conducted before the administrative body on which's territory the land is situated. Within this process, agreement on the fee for expropriation for land may be achieved between the beneficiary of expropriation and the landowner. If this agreement omits, in the administrative procedure only expropriation of land will be conducted, and land will be transferred to the beneficiary. However, in such a case, a separate procedure for determining of expropriation fee has to be conducted before the competent court.

7.4. Access and integration

For access to the transmission system by users, please see Section 7.2.

On the other hand, in the case of the interconnection of transportation pipelines, an interconnection agreement has to be executed between respective TSO, or TSO and distribution system operator/storage operator, by which agreement parties shall regulate their relations.

7.5. Gas transmission and distribution

For transmission of natural gas please see Section 7.2.

The sector of natural gas distribution is quite similarly regulated as the transmission of natural gas. Namely, *Energy Law* envisages mandatory energy license for conduction of activity distribution of natural gas. Therefore, only domestic companies may conduct this energy activity.

The distribution system operator must be unbundled from the related energy activities (transmission, supply, and production of natural gas) as well-meaning that it must be independent in the legal form, organization, and decision making from the vertically integrated undertaking. However, the distribution system operator does not need to undergo a certification process before licensing.

Regarding access to the distribution system, access must be on the principles of transparency and non-discrimination. Same as for natural gas, prices for access are regulated, meaning that Energy Agency renders methodology on the basis of which distribution system operators form their prices. Such prices are subject to approval by Energy Agency.

8. TRADING

8.1. Trading license

In respect to the supply of natural gas, the *Energy Law* envisages three kinds of supply: **i)** supply, **ii)** public supply and **iii)** wholesale supply.

The supply of natural gas means to supply to the consumers on the free market under market-based prices. Currently, 64 energy entities have licenses for natural gas supply, out of which only eleven were active in 2020.

Public supply may perform only public suppliers and, in this case, natural gas is selling under regulated prices to the households and small customers. Regulated prices mean that public suppliers form them in line with the methodology rendered by Energy Agency. Regulated prices are subject to approval by Energy Agency. Additionally, JP Srbijagas is designated as a supplier of public suppliers, by the decision of the Government of the Republic of Serbia. When a regulated natural gas market is established, public suppliers will buy natural gas on a regulated market (see Section 8.2.). Currently, thirty-two energy entities have a license for the public supply of natural gas.

Wholesale supply means selling natural gas to the customers, but not final customers (being costumers buying only for their own needs). Currently, no energy entity has a license for wholesale supply of natural gas.

Pursuant to the *Energy Law*, all three kinds of supplies are energy activities for which a license is needed, but a foreign entity may obtain a license only for wholesale supply.

8.2. Products

The Republic of Serbia, for the time being, is not an established regulated market of natural gas. By the latest amendments of the *Energy Law* it is envisaged that TSO with the most exits points on its transmission system shall be responsible for the management and administering of the regulated market of natural gas. The government of the Republic of Serbia shall designate such TSO.

So far, trade with natural gas is conducted on a bilateral market, meaning that trade is conducted directly between market participants on the basis of executed supply agreements. Prices are based on market principles. The only exception is regulated prices for public supply, which are determined by the public supplier. For the year 2021 average regulated price per cubic meter is 0.4 EUR.

9. COMPETITION

9.1. Authorities

In the Republic Serbia energy sector, monitor over competition field conduct Energy Agency and Anti-Competition Agency. In this respect, pursuant to the *Energy Law* suppliers of natural gas and wholesale suppliers of natural gas are obliged to deliver to the Energy Agency and Anti-Competition Agency, as well as to the competent body of the Energy Community, data in connection with the transactions from supply agreements. Such data encompass, *inter alia*, duration, rules on delivery of natural gas and settlement of obligations, data on quantities, prices, manner on the identification of users. Suppliers and public suppliers are obliged to keep a record of this data for at least five years.

9.2. Anti-competitive actions

Please note that Energy Agency is authorized to monitor competition in the oil and natural gas market in the Republic of Serbia. In case irregularities are detected, necessary anti-competitive actions are undertaken by the Competition Agency.

Pursuant to the *Competition Law ("Official gazette of the RS" no. 51/2009 i 95/2013)*, acts and actions of market participants with a consequence of significant restriction, distortion, or prevention of competition are deemed anti-competition actions.

Furthermore, in case of acquisition, it is necessary to notify Competition Agency on concentration in order to obtain approval on concentration, in line with the law.

If during the monitoring of the energy market, Energy Agency detects any action that may be considered to prevent or restrict competition, it is obliged to notify thereon Competition Agency which shall conduct the administrative procedure in order to determine whether a breach of competition occurs or not. In case of a positive answer, Competition Agency shall render resolution in which it may determine measures aimed at eliminating the established violation of competition, i.e., preventing the possibility of the same or similar violation, by issuing an order to undertake certain behavior or prohibiting certain behavior.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

Law on PPP and Concession ("Official gazette of the RS" no. 88/2011, 15/2016 i 104/2016) envisages stability clause in a way that after execution of PPP or concession agreement change of law occurs, which leads to deterioration of the po-

sition of the public or private partner, the agreement may be amended in order to put public or private partner in the same position as was before the change of law. This law applies to all public or private partners of the state which have PPP or concession agreements.

Additionally, the *Agreement between the Government of the Republic of Serbia and the Government of Russian Federation on Cooperation in Fields of Oil and Natural Gas* contains a stability clause, and therefore NIS as a producer of oil is obliged to pay a fee for exploitation in the amount of 3% of income, instead of 7% as it is now prescribed by the law.

10.2. Compulsory dispute resolution procedure

Dispute resolution between energy entity and their users initially shall be resolved between involved parties. Namely, energy entities are obliged to adopt network codes, within which is regulated right of users to submit objections/appeals to the respective energy entity in case of any breach to the detriment of users. Energy entities are obliged to undertake necessary actions in order to resolve such objections/appeals. If through this internal mechanism it is not possible to resolve the dispute, the interested party may initiate a procedure before the competent court. Furthermore, it is allowed to include in the agreement between energy entity and user arbitration for dispute resolution.

Additionally, suppliers of natural gas are obliged to make a report on resolving objections/appeals of its users and to submit it to the Energy Agency.

As per dispute resolutions between energy entities and state authorities, in case the energy entity is not satisfied with the rendered resolution (on energy licenses, energy permitting, and exploration and exploitation permits) it is possible to initiate a procedure before the Administrative Court. A judgment of the Administrative Court is final and binding for all parties.

10.3. International treaty protection

The Republic of Serbia is a contracting party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* as of 1981 as well as a contracting party to the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* as of 2006.

In addition, when an investor wants to initiate court procedure against state or any state authority, there are no special conditions that have to be fulfilled. *Law on Civil Procedure ("Official gazette of the RS" no. 72/2011, 49/2013 – CC decision, 74/2013 – CC decision, 55/2014, 87/2018 and 18/2020)* provides the possibility for, before filing a claim against the state, to submit a proposal for a peaceful settlement of the dispute to the Republic Public Attorney's Office. If the Republic Public Attorney's Office does not respond within 60 days, it is considered that proposal was not accepted, and the claim may be submitted to the competent court.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

In terms of oil & gas supplies, Slovenia is highly import-dependent. The majority of natural gas is being imported from Russia through the system of transmission pipelines, whereas oil and oil products are being imported by means of sea and ground transportation. With regard to domestic production, there are certain natural gas and oil resources in northeast Slovenia and according to the *National Mining Strategy*, the Government sees the possibility for further prospecting and exploration of these capacities. One of the main goals highlighted in the National Mining Strategy is also to optimize administrative procedures for granting the exploitation concessions and to thereby facilitate the investors` access to the natural resources.

As the natural gas resources in northeast Slovenia are being exploited also with hydraulic stimulation (fracking", there is an ongoing heated debate in public and in the parliament on the potential prohibition of fracking. In February 2022 the Government has prepared a draft amendment of the *Mining Act* which was sent to the legislative procedure and is currently being discussed in the parliament. The Government`s draft provides for a prohibition of "large-scale" fracking, whereas the opposition on the other hand advocates for a complete prohibition of fracking, regardless of its scope, and is not fond of the government`s proposal to keep the smaller-scale fracking allowed. In the natural gas sector, the members of the Parliament are currently discussing also a proposal to enact a two-month exemption from payment of network charges for households. In the public debate, the proposal is being strongly opposed by the shareholders of the companies operating the network of gas pipelines.

In January 2022 the newly passed *Gas Supply Act* entered into force. Thereby the natural gas transmission, storage, and supplies have been extracted from the umbrella *Energy Act* and are now regulated separately.

Regarding the recent trends in the oil sector, it should be noted that in September 2020 the Government deregulated the oil derivatives prices with the effect as of October 1, 2020.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of Slovenian oil & gas sector

In its upstream segment Slovenian oil & gas sector is governed mainly by the *Mining Act* (*Zakon o rudarstvu*, MA-1) and its bylaws, such as the Rules on auctions for the selection of holders of mining rights for the exploration and exploitation of mineral resources (*Pravilnik o drazbi za izbiro nosilca rudarske pravice za raziskovanje in izkoriscanje mineralnih surovin*).

Midstream, Slovenian gas sector is regulated by the *Gas Supply Act* (*Zakon o oskrbi s plini*, GSA) which came into force in January 2022. Regarding the midstream transportation of oil, there is no sector-specific legislation in place.

Downstream, the Slovenian gas market is governed by the GSA and the Decree on the operation of the natural gas market (*Uredba o delovanju trga z zemeljskim plinom*). As of October 1, 2020, the Slovenian oil sector is downstream (i.e., sales and trading) fully liberalized.

Slovenian legislation governing the gas sector aims to ensure a competitive, secure, and accessible gas supply – taking into account the principles of sustainable development – and to establish comprehensive competitive, flexible, fair, and transparent gas markets – considering the important role of natural gas as a transitory energy source in the envisaged transition to a carbon-free economy. Similarly, the legislation governing the oil sector focuses on sustainable and effective use of this natural resource, with a particular emphasis on economic development and protection of the environment.

Recent legislative trends in the Slovenian oil & gas sector that shall be mentioned already at the outset of this overview, are as follows. First, with effect from February 15, 2022, the field of gas supply was extracted from the umbrella *Energy Act* (*Energetski zakon*, EA) and regulated separately in the newly passed GSA. As the legislation in the energy sector is becoming more extensive and is subject to frequent amendments due to the changes of EU law, it was no longer feasible to have all its sectors governed by one umbrella law. Thus, two separate acts have been passed for gas and electricity supplies, respectively. Second, in September 2020, the Government of Slovenia concluded that the regulation of the oil derivatives prices is no longer required and therefore deregulated the market with the effect as of October 1, 2020.

2.2. Domestic oil & gas production and imports/exports

Compared to other energy resources, approximately 10% of Slovenian energy requirements are met using gas. According to the data published by the Statistical Office of the Republic of Slovenia, in 2021 domestic gas production amounted to 5,066.119 (1000 standard cubic meters), whereas the import of gas in the same year amounted to 1,116,700.00 (1000 standard cubic meters), which shows a very strong import dependency. Most of the gas is imported from Russia, based on a five-year take-and-pay contract with Gazprom concluded in 2018. Some excessive imported quantities are being also exported to other neighboring import-dependent countries. In 2021 the export of gas from Slovenia amounted to 20,800.00 (1000 standard cubic meters). Transport of gas, including transport for import and export, is mostly carried out via the network of pipelines,

whereas only a very modest percentage is transported in the form of LNG – only in rare areas not covered by the gas pipelines.

Oil and oil products satisfy approximately 34 % of Slovenian energy requirements. Domestic production is minimal, amounting to 84,433.00 tons in 2021. In the same year, the quantities of imported oil and oil products amounted to 3,382,124.83 tons, according to the data published by the Statistical Office of the Republic of Slovenia. In the absence of oil pipelines in Slovenia, oil is being transported – including import – via sea and ground transport.

2.3. Foreign investment and participation

With the *Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic* which came into force in May 2020, Slovenia temporarily (until June 30, 2023) introduced a screening of foreign direct investments in specified critical sectors – energetics being one of them. If foreign investors wish to acquire at least a 10% share in a domestic company, they must notify the Ministry of Economic Development and Technology. The Ministry assesses whether the investment poses a risk to security and public order in Slovenia and can either approve it, determine additional requirements for carrying out the transaction or block it.

2.4. Protection of investment

With regard to international treaties protecting investments, in 1992 Slovenia became the successor to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, and in 1994, Slovenia ratified the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Furthermore, investments in these sectors are enhanced and protected also with bilateral investment treaties. Slovenia is also a signatory to the *Energy Charter Treaty*.

Indirectly, the legislative goals of sustainability are influenced also by the *Paris Agreement* of December 12, 2015, which Slovenia has ratified on November 25, 2016.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

As seen from the domestic production figures listed in Section 2.2., the resources and exploration of oil & gas in Slovenia are relatively scarce. Thus, also the national provisions in this field are in practice not of particular importance – except for certain cases of investments in the development and redevelopment of gas fields in north-east Slovenia.

Exploration of oil & gas reserves is governed by the MA-1 and its bylaws. For the exploration of oil & gas reserves in Slovenia, an exploration approval (*dovoljenje za raziskovanje*) is required. The approval is granted in a public tender procedure by the Ministry of Infrastructure, for the exploration area, mineral resources, and the time period defined therein.

According to the *National Mining Strategy*, the Government sees the possibility for further prospecting and exploration of the oil & gas capacities in the Mura depression area (*Murska depresija*) in northeast Slovenia.

3.2. Foreign exploration

In the public tender procedure (see Section 3.1.) the exploration approval may also be granted to foreign investors from **(i)** the European Union; **(ii)** the European Economic Area; **(iii)** Switzerland; **(iv)** the members of the Organization for Economic Co-operation and Development (OECD); **(v)** third countries under the condition of material reciprocity. The legal status of such approval is an administrative decision granted by the Ministry of Infrastructure. The approval, regardless of the holder being a domestic or a foreign investor, is non-transferable and cannot be sold, leased, or anyhow disposed of. Transfers of the exploration approval are thus null and void. The exploration approval is issued for a maximum period of five years.

3.3. Stages of the exploration process

Prospecting of mineral resources is free and not subject to administrative approvals. For exploration, an exploration approval is required (see Section 3.1.), whereas a concession is required for the exploitation of mineral resources (see Section 4.1.).

Within the exploration process, no separate authorizations are required for its different stages.

3.4. Obligatory state participation

All mineral resources, including oil & gas, are owned by the Republic of Slovenia. Its direct pecuniary benefits are the compensations and fees imposed on the holders of exploration and/or exploitation rights.

3.5. Compensation for Exploration

If there are at least two applicants in the public tender for the exploration approval, an auction between these bidders is carried out by the Ministry of Infrastructure, in which the bidders compete who will offer the highest compensation for the exploration of mineral resources. The compensation paid by the successful bidder is then shared by the state and the local community in which the exploration takes place.

3.6 Concession fee

For exploitation of mineral resources, the concession holder has to pay the concession fee determined in the concession act and in the concession contract. The fee is calculated depending on the size of the mining area and on the average price of the mineral resource being exploited.

3.7. State`s ownership interest

The state holds a 100% share in the company Nafta Lendava, d.o.o. According to the annual report of this company for 2020, its activities are also exploration and exploitation of crude oil and natural gas resources in northeast Slovenia.

3.8. Geological data

Geological data obtained in the exploration process must be shared with the Ministry of Infrastructure. The Ministry is obliged to consider and keep this data as a business secret throughout the period of validity of the respective exploration approval. Besides this, the holder of the exploration approval is also obliged to allow the Geological Survey of Slovenia (a 100% state-owned institution) to take samples from the exploration area.

3.9. Risks to be considered

When applying to the public tender for exploration rights, the bidder has to submit the project documentation for the envisaged exploration. This project documentation has to be prepared in line with environmental and spatial planning requirements applicable to the exploration area. As the practice shows, it is of particular importance to have these legal requirements diligently examined before applying.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Production of oil & gas is governed by the MA-1 and its by-laws. For the production of oil & gas in Slovenia, a concession for exploitation of mineral resources (*koncesija za izkoriscanje mineralnih surovin*) is required. The concession is granted in a public tender procedure by the Ministry of Infrastructure, for the exploitation area, mineral resources, and the time period defined therein.

Regarding the government initiatives in this field, it should be noted that the government has recently prepared a draft of the MA-1 amendment which was sent to the legislative procedure and is being discussed in the parliament. The draft amendment provides for a prohibition of "large-scale" fracking. On the other hand, the opposition would like to entirely forbid fracking, regardless of its scope, and is not fond of the government`s proposal to keep smaller-scale fracking allowed. A heated parliamentary debate is expected.

It should also be added that according to the *National Mining Strategy*, one of the main goals is to optimize administrative procedures for granting the exploitation concessions and to thereby facilitate the investors` access to natural resources.

4.2. Foreign production

Exploitation concession may also be granted to foreign investors from: **(i)** the European Union; **(ii)** the European Economic Area; **(iii)** Switzerland; **(iv)** the members of the OECD; **(v)** third countries under the condition of material reciprocity.

Granting of the concession is first foreseen in the concession act issued by the Government. Based on the concession act, a public tender is carried out by the Ministry of Infrastructure. The selected bidder then signs a concession contract with the Ministry of Infrastructure. In legal terms, a concession is thus a contract with the ministry, based on an administrative decision on the selection of the best bidder. The concession, regardless of whether the holder is a domestic or a foreign investor, may be transferred only with the approval of the Ministry of Infrastructure and only if the statutory conditions for such transfer are fulfilled – e.g. the new holder should meet all the conditions for obtaining the concession, which have been set in the concession act and in the public tender. The exploitation concession may be issued for a maximum period of fifty years.

4.3. Stages of the production process

See Section 3.3. Also within the production process, there are no different concession procedures envisaged for different stages of the production. The stage and method of exploitation are described in the concession contract.

4.4. Obligatory state participation

The concession holder is obliged to pay an annual concession fee and the reserve funds for the remediation. The concession fee is calculated in line with the decree determining the mining site reclamation payment (*Uredba o rudarski koncesnini in sredstvih za sanacijo*), depending on the size of the exploitation area and on the average price of the mineral resource being exploited.

Regarding the state`s ownership interest, see Section 3.4.

As for the export of production, no specific statutory restrictions or significant infrastructure challenges (except for the scarce resources and the absence of oil pipelines) have been identified.

4.5. Risks to be considered

When applying to the public tender for the exploitation concession, the bidder has to submit the project documentation for the envisaged production. This project documentation has to be prepared in line with environmental and spatial planning requirements applicable to the exploitation area. As the practice shows, it is of particular importance to have these legal requirements diligently examined before applying.

For any potential investors in fracking, it would also be advisable to monitor the legislative process concerning the recent MA-1 draft amendment.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

Abandonment and decommissioning of infrastructure used in oil & gas production are governed by the MA-1. If the concession holder intends to terminate the exploitation of oil or gas, it has to notify this in advance to the mining inspection and at the same time request permission of the Ministry of Infrastructure for the termination of mining works. The ministry then appoints a commission for the technical inspection which inspects the mining site and checks whether the conditions for safe termination of mining works are fulfilled. Based on the commission`s protocol the ministry issues a permit for termination of mining works in which it also defines the content and scope of the required termination and decommissioning works. After the concession holder carries out these works, it provides the Ministry of Infrastructure with evidence thereof (e.g., audited decommissioning project and the geodetic plan of the area after the completed decommissioning) and applies for a decision on the termination of the exploitation right. After receiving such an application, the ministry again appoints a commission that examines whether the required termination and decommissioning works have been done adequately. If the commission`s findings are positive, the Ministry of Infrastructure issues the decision on the termination of the exploitation right.

5.2. Environmental and HSE consideration

The commission appointed by the Ministry of Infrastructure (see Section 5.1.) is composed of the representatives of ministries responsible for mining (including its health and safety aspects), spatial planning, environmental protection, and of the local commune representatives. Considering its composition, the commission examines also the environmental, health and safety issues of the abandonment, and decommissioning process.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

Slovenia is a party to the *Energy Charter Treaty* and to the *Protocol on Energy Efficiency and Related Environmental Aspects*.

6.2. Offshore Safety Directive

With the amendment of the MA-1 in 2013, Slovenia partially implemented the OSD. In article 1 of the MA-1, it is explicitly stated that the prospecting, exploration, and exploitation of oil and gas at sea (offshore) is forbidden.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Cross-border sales and deliveries of natural gas have to be entered into the Virtual Trading Point established by the Slovene Transmission System Operator (TSO) – Plinovodi d.o.o. For such transactions, the parties have to acquire sufficient cross-border capacities at the transmission systems connecting points. The primary allocation of capacities is carried out by the TSO through electronic auctions on an online reservation platform – in line with the Slovenian rules on terms and conditions for capacity allocation mechanisms at interconnection points of the transmission system through auction, congestion management procedure, and capacity trading on the secondary market and with *Commission Regulation (EU) 2017/459*.

In the absence of oil pipelines, there are no sector-specific rules governing the import and export of oil. Cross-border sales are agreed bilaterally between the parties and there is no particular state governed system for carrying out these transactions. In the unlikely event of disruptions and instability of oil supplies, certain limitations may be imposed on the export of oil pursuant to the decree on emergency procedures in the event of disruptions and instability in the supply of oil and petroleum products.

7.2. Transportation

Pursuant to Article 19 of the GSA, the transmission of natural gas is performed as an obligatory public service by virtue of a concession. The TSO is the company Plinovodi d.o.o., owned by the holding company Plinhold d.o.o. in which the state is one of the shareholders. The operation of the system is governed by the network code for the natural gas transmission system (Network Code), whereas the network fees are calculated in line with the act on the methodology for determining network charges for the natural gas transmission system.

For the construction and operation of the natural gas transmission system (besides the building permit and other administrative permits pertaining to construction), a concession issued by the Government is required. Pursuant to Article 24 of the GSA, the transmission system pipelines have to be owned by the TSO.

7.3. Land rights

For the construction of pipelines, a building permit is required. After the construction and before the start of operations it is obligatory to obtain the operating permit – confirming that the pipeline and the accompanying infrastructure have been built in accordance with the building permit. Depending on the scale and specifics of the pipeline, several other administrative approvals may be required, such as the environmental permit or allowances under the *Water Act* or under the decree on waste management.

Pursuant to the *Spatial Management Act*, the state or a municipality may, for adequate compensation, expropriate the landowners or limit their ownership rights in the interest of the public good, under the condition that such measures are necessary and proportionate. If the construction of pipelines is in the interest of the public good and if these conditions are met, the land necessary for the construction of pipelines may be expropriated.

7.4. Access and integration

The GSA provides for regulated third-party access to the transmission system. Conditions for the access are further defined in the network code in which the TSO sets out clear and efficient procedures and tariffs for non-discriminatory access of producers, storage facilities, LNG plants, and industrial customers to the transmission system.

The transmission network consists of four major pipelines, with a joint length of 1,121 kilometers. Through connection points, these pipelines are connected to distribution systems of 16 distribution system operators (DSO) which distribute gas to 85 local communities and to more than 136,000 end customers. Cooperation between the TSO and the DSOs is governed by the GSA and the network code. The latter sets out the conditions for the connection of the distribution system to the transmission network (i.e., technical conditions, conditions pertaining to the stability of the system and criteria for the economic viability of the connection) and duties of the TSO and DSOs regarding the balancing of the transmission network.

Slovenian natural gas transmission system is connected to the transmission systems of Italy, Austria, and Croatia and is an integral part of the European gas transmission system. For the import and export of natural gas through connecting points between these transmission systems see Section 7.1.

7.5. Gas transmission and distribution

The natural gas transmission network is owned by the company Plinovodi d.o.o. The sole shareholder in this company is the holding company Plinhold d.o.o. with dispersed ownership – the state, state-owned companies, and several other companies being among the shareholders. The owner of the transmission network is also the TSO. The operation of the transmission system is governed by the GSA and the network code.

Pursuant to Article 58 of the GSA, the distribution of natural gas is performed as an optional local commercial public service. The DSO is appointed by the Slovenian Energy Agency. The DSO has to be either the owner or a tenant of the distribution pipelines. For the construction and operation of the pipelines, depending on their scale and specifics, several other administrative approvals may be required, such as the environmental permit or allowances under the *Water Act* or under the decree on waste management. Among the 16 DSOs are state-owned as well as entirely private-owned companies. To the DSOs with less than 100,000 end customers, the unbundling provisions of the GSA do not apply.

The GSA provides for regulated third-party access to the distribution system. The DSO has to grant access to the network on an objective and non-discriminatory basis. Fees for accessing the distribution network are regulated and calculated in line with the methodology set out in Article 110 of the GSA.

8. TRADING

8.1. Trading license

In line with the decree on the operation of the natural gas market (*Uredba o delovanju trga z zemeljskim plinom*), natural gas is traded on the balancing market and on the open market. On the open market, the participants can freely negotiate the conditions of the contract. For the trading itself, no particular license is required, but as the transactions are done through the Virtual Trading Point (VTP), the traders have to register with the TSO before starting trading on the VTP. TSO charges the traders an annual cost of registering and a cost for every transaction with natural gas. The price list of services in the VTP is published on the TSO's website. The market is monitored by the Slovenian Energy Agency.

8.2. Products

Natural gas is being traded on the VTP that was established by the TSO in 2015. As the traders may trade only virtually and are not considered as users of the transmission or distribution system (Article 2 of the decree on the operation of the natural

gas market), it is our understanding that natural gas can be traded as an unbundled commodity, separate from trading with network capacities.

9. COMPETITION

9.1. Authorities

The authority responsible for the regulation of competition aspects in the oil & gas sector is the Slovenian Competition Protection Agency (CPA). Criteria for determining whether conduct is anti-competitive is set out in Articles 6 (anti-competitive agreements) and 9 (abuse of a dominant position) of the *Prevention of Restriction of Competition Act* (PRCA) which are Slovenian equivalents of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Pursuant to Article 11 of the PRCA, the CPA also has authority to assess concentrations and to disapprove mergers or other changes in control over businesses if they significantly impede effective competition on the Slovenian market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

9.2. Anti-competitive actions

The CPA may *ex officio* commence procedures to examine alleged restrictive agreements and abuses of a dominant position. When price rigidity or other circumstances indicate the possibility of a restriction or distortion of competition on the territory of the Republic of Slovenia, the agency may also conduct a study of an individual sector of the economy or certain types of agreements.

After carrying out the assessment procedure, the agency may issue a decision establishing the existence of an infringement of Article 6 or Article 9 of the PRCA or of Article 101 or Article 102 of the TFEU, and require the undertaking concerned to bring such infringement to an end. With the same decision, it may impose on the undertaking the obligation to take reasonable measures to bring an infringement and its consequences to an end, in particular through the disposal of a business or part of the undertaking's business, division of an undertaking, or disposal of shares in undertakings, transfer of industrial property rights and other rights, the conclusion of license and other contracts which may be concluded in the course of operations between undertakings, or ensuring access to infrastructure. Within its authorities, the CPA may also impose fines in case of CPA violations.

In merger clearance procedures the agency shall within 25 working days (Phase 1) examine the merger notification and decide that either **(i)** the concentration does not fall within the scope of the PRCA; or **(ii)** the concentration does not raise serious doubts as to its compatibility with competition rules and is thus allowed; or **(iii)** the concentration raises serious anti-competitive doubts and shall thus be further assessed in Phase 2. After carrying out the assessment in Phase 2, the PCA either issues a decision declaring the concentration compatible with competition rules or issues a decision declaring the concentration incompatible with competition rules and prohibits it. The criterion for the assessment is aligned with *Council Regulation (EC) No. 139/2004*. A decision in Phase 1 shall be issued within 25 working days, whereas a decision in Phase 2 shall be issued within 60 working days.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1 Stability clause

No particular stability clauses for oil & gas companies have been identified.

10.2. Compulsory dispute resolution procedure

The Energy Agency is competent to decide disputes between the users of the natural gas pipelines, natural gas suppliers, TSO, and DSOs regarding the **(i)** access to the network; **(ii)** network fees; **(iii)** breaches of the network code; **(iv)** balancing obligations; **(v)** self-sufficiency provisions. Other than that, no compulsory dispute resolution procedures applying to the oil & gas sectors have been identified.

10.3. International treaty protection

In 1992, Slovenia became the successor to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, and in 1994 Slovenia ratified the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Furthermore, the investments in these sectors are enhanced and protected also with bilateral investment treaties.

According to our experience and the publicly available data, there are no special difficulties in litigating or seeking to enforce judgments or awards against government authorities or state organs. According to unofficial information from the media, the British company Ascent Resources PLC has in 2021 initiated an arbitration proceeding against Slovenia over a dispute regarding the permits for the extraction of gas by means of hydraulic fracturing in Petisovci, claiming that Slovenia has breached its obligations under the UK – Slovenia bilateral treaty and the *Energy Charter Treaty*. Allegedly, the claimant claims compensation in the amount of EUR 120 million. Further details of the proceeding and on its current stage are not published.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

Turkish law provides that all rights (i.e., ownership, exploration, exploitation, and sale) relating to natural resources belong to the state. The exploration and exploitation rights can be delegated to private parties (individuals and legal entities) through licensing, which is carried out by the Energy Market Regulatory Authority (EMRA) and the General Directorate of Petroleum Affairs (General Directorate). The *Turkish Petroleum Law No. 6491* (TPL) governs procedures and principles regarding regulation, promotion, and supervision of petroleum exploration and production activities in Turkey and the *Natural Gas Market Law No. 4646* (NGML) covers the import, transmission, distribution, storage, marketing, trade and export of natural gas, the licensing requirements pertaining to such activities, and the rights and obligations of all natural and legal persons involved, together with relevant secondary legislation in respect of both petroleum and natural gas.

Energy prices have risen sharply in Turkey, driven by global increases and a decline in the lira's value against the dollar last year. Turkey is almost fully dependent on imported gas from Russia, Azerbaijan, and Iran. According to the latest official data, Iran provided 16% of Turkey's natural gas needs in the first ten months of 2021. In January 2022, Iran cut the gas flow to Turkey claiming technical issues. Sudden stoppage in the flows caused interruptions in the industry. Following the cuts caused by Iran, it is stated that Azerbaijan will increase the gas flow to Turkey for support. Turkey has been the biggest client of Azerbaijani gas in the first 11 months of 2021.

As Turkey's oil and natural gas demand is primarily met through imports, the country has focused on oil and natural gas exploration activities to increase domestic production. Accordingly, Turkey is looking forward to accelerating the process of making the natural gas explored in the Black Sea available for use.

2.2. Domestic oil & gas production and imports/exports

The TPL governs procedures and principles regarding regulation, promotion, and supervision of petroleum exploration and production activities in Turkey. Its secondary legislation, namely the Regulation on the *Implementation of the Turkish Petroleum Law* (*Turk Petrol Kanunu Uygulama Yonetmeligi* – the Regulation) regulates the procedures and principles for petroleum survey, exploration, production, reporting, taxation, supervising, and licensing.

As for natural gas, the NGML covers the import, transmission, distribution, storage, marketing, trade, and export of natural gas, the licensing requirements pertaining to such activities, and the rights and obligations of all natural and legal persons involved.

According to Article 4 of the NGML, the annual amount of imported natural gas held by any wholesale company cannot exceed 20% of the annual national gas consumption forecast, which is determined by the EMRA on an annual basis.

Currently, the Turkish Petroleum Pipeline Corporation (BOTAS) imports natural gas to Turkey through two methods. In addition to the natural gas purchases of liquefied natural gas (LNG) from Algeria and Nigeria and natural gas imported from Russia, Azerbaijan, and Iran through pipelines within the framework of long-term contracts, Turkey imports spot LNG from the USA and Qatar without entering into long-term contracts.

Article 22 of the TPL imposes that only 35% of crude oil and natural gas produced onshore and 45% of the same produced offshore may be exported. The remainder must be retained in Turkey to fulfill domestic demand.

Furthermore, as per Article 30 of the *Natural Gas Market License Regulation*, the export cannot interrupt local needs or the supply system which is relevant to the transfer of natural gas via pipelines. Accordingly, exporters of natural gas must adhere to the technical specifications introduced by the EMRA, taking into account the capacity of the transmission network and the export exit points.

As Turkey's oil and natural gas demand is primarily met through imports, the country has focused on oil and natural gas exploration activities to increase domestic production. The Turkish Petroleum Corporation (TPAO), a state-owned oil company, has initiated an offshore exploration and discovered approximately 320 billion cubic meters of natural gas reserves in the Black Sea. Although the newly discovered reserve is far from meeting the entire demand of Turkey or effectively ending the need for imports, it is likely to increase Turkey's bargaining power in the renegotiation of longer-term contracts.

2.3. Foreign investment and participation

According to the TPL, private entities are entitled to acquire permits and licenses for investigation, exploration, and production of petroleum, and foreign participation is allowed for upstream activities.

On the other hand, as per Article 7 of the *Petroleum Market License Regulation*, applications for downstream oil licenses can

only be filed by Turkish legal entities (or individuals) residing in Turkey, registered with the Turkish trade registry (or industry registry) who are corporate (or income) taxpayers. However, there is no restriction that prevents a Turkish licensee company from being wholly or partially owned by foreign individuals and/or legal entities.

Article 5 of the *Petroleum Market License Regulation* prohibits the transfer of downstream licenses with an exception in favor of project lenders (such as banks and other financial institutions). Accordingly, depending on the terms and conditions of the financing agreements, lenders are entitled to request the EMRA to reissue the subject matter license in the name of another legal entity, provided that all of the initial license holder's undertakings in relation to the license are transferred to that third party and the new licensee satisfies the criteria sought for license applicants within the scope of the regulation. The same practice is also applicable to the natural gas market and is governed under Article 5 of the *Natural Gas Market License Regulation*.

Pursuant to Article 21 of the TPL, any share transfer that may lead to a change of control in the licensed entity is subject to the prior approval of the Ministry of Energy and Natural Resources (*Enerji ve Tabii Kaynaklar Bakanligi* – MENR). Accordingly, as per Article 13 of the Regulation, the parties of the share transfer apply to the General Directorate with their reasoning of the proposed transfer and the General Directorate reviews the application and sends it to the approval of the MENR. Together with its opinion. If the MENR provides its consent to the transaction, the closing of the transaction must be completed within 60 days following the date on which the MENR issued its consent. Evidentiary documentation showing such a change should be provided to the General Directorate.

As per the natural gas market, applications for downstream natural gas licenses can only be filed by Turkish legal entities.

As per Article 42 of the *Natural Gas Market License Regulation*, acquisition of 10% (5% for listed companies) or more shares of a licensee company, directly or indirectly, by an individual or a legal entity and acquisitions that result in one of the shareholders having more than 10% of the shares and/or share transfers that result in a decrease of the shareholding of a shareholder below the abovementioned thresholds are subject to the approval of the EMRA. Any changes to the privileged shares (although there are no share transfers) and transfer of existing privileged shares (although not meeting the thresholds) are subject to the approval of the EMRA without prejudice to the exceptions provided by the legislation.

2.4. Protection of investment

Turkey is 74% dependent on imported energy to meet its energy demand. Being located as the neighbor to 60% of the oil and gas reserves in the world, Turkey aims to become the center of the energy trade within its region. For this purpose, Turkey took part in several crude oil and natural gas pipeline projects. The main ones are as follows:

- Crude oil pipelines
  - The Kirkuk-Yumurtalik Crude Oil Pipeline (Iraq-Turkey Crude Oil Pipeline)
  - The Baku-Tbilisi-Ceyhan Crude Oil Pipeline (BTC)
- Natural Gas Pipelines
  - The Iran – Turkey Natural Gas Pipeline
  - The Blue Stream Natural Gas Pipeline
  - The Baku-Tbilisi-Erzurum Natural Gas Pipeline (BTE)
  - The Turkey-Greece Natural Gas Interconnector (ITG)
  - The Trans-Anatolian Natural Gas Pipeline Project (TANAP)
  - The TurkStream Natural Gas Pipeline

Turkey is also party to bilateral investment treaties with 98 countries, 76 of which are currently in force, including the United States, all European Union Member States, excluding Ireland; all OECD member countries except Iceland, Canada, Norway, and New Zealand; several Asian countries such as China, Japan, and the Republic of South Korea; and Middle Eastern countries such as Lebanon and Iran.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

The TPL governs procedures and principles regarding regulation, promotion, and supervision of petroleum exploration and production activities in Turkey whereas the Regulation (as defined under Section 2.2.) regulates the procedures and principles for petroleum survey, exploration, production, reporting, taxation, supervising and licensing.

There are different governmental authorities that take part in the process. The General Directorate is responsible for the issuance and monitoring of permits and licenses for the upstream activities pertaining to petroleum. As to the downstream licenses, the EMRA is the governmental authority that evaluates the applications. As per the TPL, any share transfer that may lead to a change of control in the licensed entity is

subject to the prior approval of the MENR.

3.2. Foreign exploration

The TPAO no longer has the exclusive right to explore and produce petroleum due to Turkey's liberalized energy regime. Private entities are entitled to acquire permits and licenses for upstream activities, mainly for the investigation, exploration, and production of petroleum. Upstream activities are also open to foreign participation.

3.3. Stages of the exploration process

There are three types of licenses and permits required to conduct upstream activities as per the TPL: **(i)** an investigation permit, **(ii)** an exploration license, and (iii) an operation license.

The investigation permit grants the right to survey the land by gathering data from the ground or air through topographic, geological, geophysical, geochemical, and similar methods for petroleum exploration purposes and by performing drilling works to gather geological information. This permit does not grant its holder the right to drill a well. The exploration license grants the holder the right to explore within the area defined in the license. As per Article 8 of the TPL, upon the discovery of a petroleum reserve for commercial production, an exploration license holder must apply for an operation license to be able to develop and produce petroleum in the defined area and to transport and trade the same to downstream licensees that hold a petroleum market activity license issued by the EMRA. The General Directorate is the authority in charge of applications for these licenses

The criteria regarding granting exploration licenses are detailed under Article 6 of the TPL and Article 16 of the Regulation. Accordingly, exploration licenses may be granted for onshore and offshore petroleum exploration. The maximum term for an exploration license is five years for onshore activities whereas the term for offshore activities is eight years, with a right of extension. In any event, the term of the license, including any extension period, cannot exceed nine years for onshore exploration and fourteen years for offshore exploration licenses. The General Directorate may also choose to close the application process for a specific field and to conduct a public auction.

Under Article 6 of the TPL, it is governed that the exploration licenses are based on map sections on a scale equal to 1/50,000 or 1/25,000. The exploration license applications for grids available for petroleum exploration are published and announced in the Official Gazette and all applications, including business and investment plans, should be submitted to the General Directorate.

As per Article 7 of the TPL, the applicants are under the obligation to provide a bank letter of guarantee to the General Directorate in an amount equal to 2% of their total investment whereas this rate is 1% for offshore activities.

Pursuant to Article 9 of the TPL, explorers or operators are under the obligation to pay the state share equal to one-eighth of the petroleum produced from the area subject to the production lease in cash on a monthly basis at the production stage.

The General Directorate examines applications based on the applicant's business, investment plans, financial status, technical capacity, human resources, experience in the energy sector, and achievements. Upon its review, the General Directorate issues its decision within a maximum period of 60 days.

In addition to the above-mentioned sector-specific licenses, environmental permits may also be required to conduct exploration and production activities together with a workplace opening and operating license which will be obtained from the relevant municipality.

According to Article 22 of the TPL, license holders are under the obligation to build facilities and equipment without harming nature or the environment and to secure compensation for any damages that might be caused during their petroleum-related activities. The amount of the loss and damages guaranteed to be paid per hectare is 5/10,000 of the required application fee for investigation permits applicants, 1/1,000 of the required application fee for exploration license applicants, and 5/1,000 of the required application fee for operation license applicants. The *President of Turkey* has the authority to increase or decrease this rate by 50%.

According to Article 26 of the Regulation, the guarantee is returned to the license holder one year after the announcement of the termination of the relevant petroleum license in the Official Gazette, provided that no loss or damage has occurred and that no third-party claims have been made regarding this guarantee. In case of any loss or damage, the amount of the guarantee that remains following the compensation of such loss and damage will be returned to the license holder.

Article 4 of the NGML foresees that the natural gas exploration and production activities are conducted in line with the TPL and that the exploration and operation licenses are granted by the General Directorate. Production is not classified as market operation.

3.4. Obligatory state participation

Pursuant to Article 9 of the TPL, explorers or operators are under the obligation to pay the state share equal to one-eighth

of the petroleum produced from the area subject to the production lease in cash monthly at the production stage.

As per Article 19 of the TPL, the information and data pertaining to the boreholes drilled in the exploration license site and geophysical details together with the geological and laboratory information and data become public at the end of the term of the license whereas those pertaining to the wells drilled in the operation license site become public at the end of the fifth year and information obtained as per the investigation permit become public at the end of the eighth year. Local and international marketing and sales of the information and data that are deemed to have become public are conducted by the General Directorate.

General technical, financial, and geological information, borehole locations, bowing profiles, casing tube records, and general production and sales numbers are not deemed confidential.

3.5. Risks to be considered

According to Article 23 of the TPL, those that:

- cause damages that cannot be repaired due to dangerous activities,
- carry out dangerous operations,
- operate without an exploration or operation license,
- conduct exploration activities without having an investigation permit or an exploration license,
- restrain the use of a right or prevent an officer from doing his duty in line with the law,
- make false statements on their applications,
- fail to send the information and documents required two times in one calendar year,

shall be imposed to administrative fines.

Actions that may result in cancellation of the license such as failing to meet the criteria governed by the legislation or required by the relevant license, not paying the state share three times in one calendar year, and not meeting the undertaken business plan for two consecutive years are listed and detailed separately under Article 24 regarding administrative measures.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

The production of petroleum including crude oil and gas is regulated under the TPL and its secondary legislation. As per Article 8 of the TPL, an operational license for the continuation of exploration, petroleum production, and trade of the produced petroleum is issued upon a petroleum discovery during the exploration activity conducted by an exploration license holder. An exploration license holder must promptly notify the General Directorate regarding the discovery and the General Directorate shall register or reject the discovery within six months at the latest by deciding whether to monitor the production, to carry out long-term flow and pressure tests in the well, and consequently whether the discovered petroleum accumulation will be operated commercially or not. Following the registration of the discovery, the exploration license holder is obliged to continue production, develop the petroleum field to form the basis of the operation license and sell the produced petroleum. The operation license is given for a period of 20 years maximum by considering the reserve, its economic life, production program, and work and investment program of the field. Such a period may be extended twice, each for a period of 10 years. The license holder is obliged to continue production except for *force majeure* events. The field, of which operation license has expired, may be put up for auction following the approval of the Minister of Energy and Natural Resources for the granting of the operation license if the TPAO does not request the field for production.

According to data provided by PETFORM (the Petroleum and Natural Gas Platform Association), Turkey provided 7.1% of its consumption in 2020 with an oil production of 60,845 barrels/day and a total of 3.2 million tons. While the country's total producible oil reserves are 209.9 million tons, the remaining producible oil reserves are 48.1 million tons as of 2020. 37 companies, 12 of which are foreign, operate in oil production in Turkey and there are a total of 322 licensed companies.

4.2. Foreign production

The TPL provides that any foreign private legal entity established as a stock corporation according to the law of their domicile country may obtain investigation, exploration, and operation licenses. However, as per the conditions stipulated under the Regulation regarding the application procedure, such legal entities should provide information and documentation with respect to its registration in Turkey. Since there is no specific form stated under the Regulation, the foreign legal entity may establish a subsidiary or a branch to fulfill such registration requirements. According to the legislation on the protection of the value of the Turkish currency, foreign legal entities having petroleum rights are deemed to be residents in Turkey in terms of their activities in Turkey. There are no other additional obligations arising from the license holder being a foreign legal entity.

4.3. Stages of the production process

In the context of the production process, the legislation basi-

cally regulates the operation license, and no different stages are stipulated in the process. For details on the operation license, please refer to Section 4.1.

4.4. Obligatory state participation

Oil and gas producers in Turkey are obliged to pay one-eighth of the petroleum they produce as state shares. Petroleum used in transactions related to the licensing procedures is exempted from such obligation up to 0.5% of the petroleum produced. Oil and gas producers are subject to the *Income Tax Law* and *Corporate Tax Law* for their tax obligations. However, the total amount payable as tax of such producers shall not exceed 55% of their taxable income.

License holders are entitled to export 35% of the crude oil and gas they produce on onshore fields and 45% of they produce in offshore fields, either as raw or as refined. Considering the pipelines stated in Section 2.4. and the ports located at various points of Turkey, there are no infrastructure barriers for exporting the petroleum produced.

4.5. Risks to be considered

Please see Section 3.5.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

The Abandonment and decommissioning of oil and gas facilities are regulated under the TPL and its secondary legislation. A license holder may partially or completely abandon the investigation permit and exploration license by applying to the General Directorate at least one month in advance and the operation license by applying at least three months in advance. The license holder should also notify any related public institution or organization regarding the field if any. Rights arising from exploration or operation licenses expire on the application date for the abandoned part. Before the abandonment, together with the abandonment application, the inventory and detailed layout plans of the underground and above-ground facilities should be submitted to the General Directorate. The General Directorate should be informed on how and when this inventory and facilities will be removed from the field. With the expiration of the licenses, the license holder restores the land. In case the license holder does not remove such inventory and facilities from the land within six months following the expiry of the license, the ownership passes to the landowner. The license holder is also obliged to fully compensate and pay the damage caused to the landowner, possessor of the land, the land, the facilities over the land, and the lost profit damages arising from the product or business.

In case the abandoned facility still has the resources to produce, the operation license of the facility will be offered to the TPAO. If the TPAO does not accept such an offer, the operation license will be given to a third party by auction. To determine the price of the inventory and facilities, a commission of at least five people will be formed, one of which is the transferor's representative, and one is the transferee's representative. The commission determines the value of the inventory and facilities and if the parties agree, the transfer is completed over this price. In case the parties cannot agree on this price, the existing inventory and facilities are transferred to the ministry free of charge. Upon the request of the new license holder within thirty days, the ministry transfers the inventory and facilities with the price determined by the commission. If the new license holder does not want to complete the transfer at the price determined, the operation license request is deemed to have been waived and will be auctioned again.

5.2. Environmental and HSE consideration

The oil and gas facilities are deemed as "businesses with a high level of polluting effect on the environment" under the *Regulation on Environmental Permit and License*. Accordingly, such facilities should obtain environmental permits and licenses. As per the regulation, any business having such a permit and license should inform relevant authorities in case of termination of their activities. The authorities to be informed include the Ministry of Environment and Urbanisation and other administrations depending on the characteristics of the facility such as its location.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

Below is a list of the main international treaties in the field of safe exploration and production of oil and gas to which Turkey is a party:

- The Energy Charter Treaty;
- The International Convention on Civil Liability for Bunker Oil Pollution Damage;
- The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- The International Convention on Civil Liability for Oil Pollution Damage;
- The International Convention on Oil Pollution Preparedness Response and Co-Operation;

- The International Convention for the Prevention of Pollution from Ships;
- The Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea;
- The Barcelona Convention;
- The C152 Occupational Safety and Health (Dock Work) Convention;
- The C155 Occupational Safety and Health Convention;
- The C167 Safety and Health in Construction Convention; and
- The C187 Promotional Framework for Occupational Safety and Health Convention.

6.2. Offshore Safety Directive

OSD is not adopted in Turkey. There is not one legislative act that covers all the issues regulated in the OSD. Different legislative acts correspond to different sections of the OSD.

For example, the *Law on the Principles of Emergency Response and Compensation for Damages in Pollution of the Marine Environment with Petroleum and Other Harmful Substances* numbered 5312 which sets out **(i)** the principles of intervention and preparedness to be applied in order to eliminate the danger of pollution arising from activities in ships and coastal facilities in emergency situations or to reduce, limit, and eliminate pollution, **(ii)** principles of determination and compensation of damages resulting from the event, and **(iii)** principles of the fulfillment of international obligations.

As for health and safety, the occupational health and safety legislation and regulations in Turkey applicable to oil and gas operators are **(i)** the *Occupational Health and Safety Law* numbered 6331 and **(ii)** the *Occupational Health and Safety Regulation* dated December 9, 2003.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Pursuant to the TPL, license holders are entitled to export 35% of the crude oil and gas they produce on onshore fields and 45% of they produce in offshore fields, either as raw or as refined. License holders can keep the foreign currency obtained from the exported petroleum. The amount of foreign currency is deducted from the transfer of the capital imported to Turkey and the net assets exceed this amount.

According to the NGML, gas producers can export the gas they produce by obtaining the exporter license. In addition, the importer companies can sell the gas they import to the markets abroad by obtaining the exporter license.

Pursuant to the *Petroleum Market Law*, those who will import crude oil and fuel must have a refiner or distributor or bunker fuel delivery company license. Those who produce crude oil in Turkey can import crude oil in an amount to be mixed with low gravity domestically produced crude oil. Crude oil and fuel imports are made through authorized customs administrations that are equipped to make certain technical measurements.

Pursuant to the NGML, legal entities are obliged to obtain an import license to import natural gas. To obtain the import license, such entities must have the technical and economical power to carry out import activities, have certain information and guarantee about the source, reserves, production facilities and transmission system of the natural gas to be imported, obtain the commitments and guarantees determined by the Energy Market Regulatory Board (Board) from the legal entities that will carry out storage activities to have underground storage facilities in the national territory within five years, have the ability to contribute to the development and security of the national transmission system and provide economic support to the investments of the legal entities that will realize the development of the system for this purpose. Importer companies must obtain a separate license for each import connection they will make and notify the EMRA of the contract periods, time extensions, anticipated annual and seasonal import quantities and the changes in these quantities, and the obligations included in the import contracts or their extensions concerning the security of the system. Importer companies can transfer the gas they obtain through import to wholesale companies or exporter companies in Turkey with a sales agreement or sell the gas abroad, provided that they obtain an export license. The transfer to the exporter companies does not remove the commitments of the importer companies given under the license. The annual amount of imported gas cannot exceed 20% of the national gas consumption estimate to be determined by the EMRA for the current year. The importer company is obliged to provide the information and documents requested by the EMRA regarding all the executed import contracts.

7.2. Transportation

Pursuant to the TPL, an operation license holder may request permission from the General Directorate for collection lines in the field, and for the connection lines to be constructed to the nearest refineries or main transmission pipelines or sales points. The General Directorate concludes the application within 90 days.

As per the *Petroleum Market License Regulation*, a transmission license is required to transport oil through the pipeline and

operate a transmission facility. The transmission license application is made to the EMRA and decided by the Board. There are also several exemptions set out under the *License Regulation*. A transmission license is not required for transportation activities carried out via pipelines to facilities/warehouses owned by persons who do not serve third parties and/or who directly purchase oil from refineries. In addition, refinery license holders may carry out pipeline transportation activity to other nearby facilities without obtaining a separate license, provided that such activity is included in their licenses, and distributor license holders may transport fuel to facilities near their warehouses via pipelines without obtaining a transmission license.

According to the *Natural Gas Market License Regulation*, a transmission license is required to transport gas through the pipeline. The transmission license application is made to the EMRA and decided by the Board. While there is no restriction for private legal entities to obtain such a license, the only transmission license holder in Turkey is BOTAS (Petroleum Pipeline Corporation), which is a state economic enterprise owned by the Turkey Wealth Fund.

7.3. Land rights

Pursuant to the TPL, a license holder may obtain the right to use the land required for petroleum processing in or around the exploration or operation license if **(i)** the land is privately owned, by agreement or by expropriation in case of disagreement or if **(ii)** the land belongs to the Treasury or at the disposal of the state, by leasing, obtaining right of easement or right to use from the Ministry of Treasury and Finance and registering such right to its license. The ownership of the expropriated land belongs to the Treasury, and the right to use belongs to the license owner who pays the expropriation price. In this case, the right of easement is established by the Ministry of Treasury and Finance in favor of the license holder free of charge and for the duration of the license. The obtained usage rights continue throughout the license period as part of the exploration and operation license.

According to the *Petroleum Market Law*, it is essential that the acquisition of rights and ownership regarding the lands, plots, and buildings required for the facilities within the scope of the law is made primarily by agreement. If required by the activities regulated by the law, acquisitions regarding refinery and licenses storage facilities, the establishment of the easement right on the lands and plots where the transmission lines are located, other buildings that are inseparable parts of these lines, and immovables in their vicinity, and processing facilities to be determined by the EMRA may be acquired through expropriation. The ownership of the expropriated land belongs to the Treasury, and the right to use belongs to the legal entity paying the expropriation price. The right to use is registered to the land registry on behalf of the license holder and such rights are a part of the license and continue for the duration of the license. Legal entities may request the establishment of incorporeal rights on lands owned by the Treasury and their lease by paying their price. Upon approval of the Board, the EMRA usufruct, easement, right of construction, or long-term lease depending on the need. Such rights are also a part of the relevant license or certificate, and their validity is limited to their term.

If required by the activities regulated under the NGML, expropriation will be made on the relevant immovables. The ownership of the expropriated land belongs to the Treasury, and the right to use belongs to the legal entity paying the expropriation price. The right to use is a part of the relevant license or certificate and its validity is limited to their term. Legal entities may request the establishment of incorporeal rights on lands owned by the Treasury and their lease by paying their price. Upon approval of the Board, the EMRA usufruct, easement, right of construction, or long-term lease depending on the need. Such rights are also a part of the relevant license or certificate, and their validity is limited to their term.

Pursuant to the *Law on Transit Transmission of Petroleum by Pipelines*, the President of the Republic may appoint a state institution or organization to carry out the expropriation process regarding the transit petroleum pipeline project within the scope of the transit petroleum transmission within Turkey by means of a pipeline, by diverting the oil coming from or via another country to another country. The state institution or organization assigned with the expropriation must fulfill this duty as soon as possible and with priority. The said state institution or organization is also the addressee of legal disputes that may arise in relation to all kinds of actions and transactions within the framework of this expropriation. The expropriation and/or other acquisitions may be made by acquiring relevant property or establishing an easement right, including independent and permanent rights on the immovable. Such rights established in favor of the relevant state authority may be transferred and allocated to the petroleum rights holders within the scope of the project.

7.4. Access and integration

According to the TPL, those engaged in transmission activities as stated in Section 7.2. and licensed warehouses are obliged to meet the transmission and storage requests when they have the capacity in their facilities. Such request must be in accordance with the license holder's tariff and the capacity of the relevant facility, must not cause adverse or risk increasing effects on the license holder's facility, its operating rules, and conditions, the oil transmitted or stored, must be in accordance with the nature of the facility, transmitted or stored oil and the minimum

amount specified by the license holder's tariff. Transmission requests must be made by the producer, refiner, transmitter, or distributor by taking into account the type of oil and storage request must be made by everyone, provided that it is above the minimum amount specified in the warehouse's tariff.

According to the *Natural Gas Market License Regulation*, a transmission license holder is obliged to connect the users who want to connect to the system within the framework of the criteria determined by the EMRA, at the most convenient point of the network within 12 months at the latest, provided that the system is suitable.

In case the license holder rejects the system connection request, the user may notify the EMRA of this situation. If it is determined by the EMRA that the license holder has violated the regulation regarding network operation, the license holder connects the user to the system according to the decision of the Board. The license holder must reply to the users' connection requests within thirty days at the latest. In case of rejection, the reasons for the rejection are notified to the user. If such users apply to the EMRA within sixty days, the Board makes a decision within three months at the latest and notifies the parties. In its decision, the Board pays maximum attention not to interrupt transmission activities and not disrupt the functioning of the system.

7.5. Gas transmission and distribution

Distribution license refers to the permit issued by the Board for legal entities to engage in urban natural gas distribution activities.

The company that will be entitled to obtain a natural gas distribution license is determined by the tender announced by the EMRA. The procedures and principles regarding the distribution license and the tender are mainly set out by the *Regulation on Distribution Customer Services*. The distribution license is given to the company that is entitled to receive a distribution license following the fulfillment of the procedures included in the relevant legislation and the tender dossier.

The distribution license tender is made by a Board decision. The city subject to the tender, the license period, the eligible consumer limit, the subscriber connection fee to be applied during the license period, the amount of temporary, and definite letters of guarantee and other issues related to the tender are specified in the Board decision. The tender to be made by the EMRA is announced in the Official Gazette. The tender announcement contains the application period, place of application, Q&A method and timing, information, documents to be requested, and other issues.

The specification containing preparation and submission of the offer, type of currency in which the offers will be submitted, opening, evaluation, and concluding of the offers, limit of eligible consumers in the city where the distribution license will be granted, license period, subscriber connection fee to be applied throughout the license period, amount of temporary and definite letters of guarantee, the period for which the unit service and depreciation fee will be applied as fixed, the start date of the investment, the procedures and principles regarding issuance of the distribution license, the procedures and principles to be applied all stages including the design, construction, materials to be used for the construction of the distribution network, and the commissioning of the completed network and the basic principles and procedures and technical criteria are included. The specification is determined according to the characteristics of the city where the distribution license will be granted.

The tariffs to be applied by distribution companies are determined according to the *Natural Gas Market Tariffs Regulation*. The retail sale price to be applied by a distribution company consists of the natural gas unit purchase price, the system usage fee, and tax and tax-like liabilities. This price constitutes the upper limit to be applied by the distribution company. The distribution company cannot demand any price from the customers under any name other than the retail sale price, excluding the prices determined by law.

The system usage fee is determined to the extent that the efficiency targets determined for the relevant legal entity are achieved, taking into account the load and costs that customers bring to the system and/or the consumption levels specified by the Board in a way to allow a reasonable return to meet the variable and the fixed costs and to continue the investments within the framework of procedures and principles determined by the Board.

8. TRADING

8.1. Trading license

According to the NGML, different types of licenses allow different trading options. The licenses giving trading rights are mainly import license, wholesale license, distribution license, CNG license, and export license.

Import license holders have the right to sell imported gas to exporter companies, distribution companies, CNG sales companies, OtoCNG companies, wholesales (OtoLNG) companies, and eligible consumers.

Wholesale license holders have the right to sell gas to exporter companies, eligible consumers, CNG sales companies, OtoCNG companies, wholesales (OtoLNG) companies, importer companies, distribution companies, and other wholesale

companies.

Distribution license holders have the right to sell gas to their subscribers and eligible consumers.

To obtain relevant licenses giving the right to trade, an application should be made to the EMRA. Following review and assessment of the application by the EMRA, the Board concludes the application within 60 days beginning from the application date.

8.2. Products

As per the definitions provided under the NGML and the *Liquefied Petroleum Gases Market Law*, natural gaseous hydrocarbons that are or can be extracted from the ground and other forms of these gases that have been liquefied, pressurized, or physically treated by various methods for placing on the market can be traded.

Tariffs for natural gas commodities (excluding LPG) are regulated in accordance with the *Natural Gas Market Tariffs Regulation*. The tariffs of connection, transmission and shipment control, storage, wholesale, and retail sales are determined by the Board's approval of the application made by the relevant legal entities to the EMRA. These tariffs are binding on all relevant natural persons and legal entities.

LPG pricing is regulated under the *Liquefied Petroleum Gases (LPG) Market Pricing System Regulation*. Pursuant to the regulation, refiners and distributors notify the EMRA of the prices of market activities they carry out under their licenses as ceiling prices, taking into account the price formation in accessible world free markets, and are obliged to comply with such ceiling price.

9. COMPETITION

9.1. Authorities

The Turkish Competition Authority (TCA) regulates competition aspects and anti-competitive practices, based on *Protection of Competition* numbered 4054 (Competition Law).

There are no specific regulations for the oil & gas market, and the general provisions set forth by the Competition Law and the TCA apply to all markets.

9.2. Anti-competitive actions

As per Article 42 of the *Natural Gas Market License Regulation*, acquisition of 10% (5% for listed companies) or more shares of a licensee company, directly or indirectly, by an individual or a legal entity and acquisitions that result in one of the shareholders having more than 10% of the shares and/or share transfers that result in a decrease of the shareholding of a shareholder below the abovementioned thresholds are subject to the approval of the EMRA. Any changes to the privileged shares (although there are no share transfers) and transfer of existing privileged shares (although not meeting the thresholds) are subject to the approval of the EMRA without prejudice to the exceptions provided by the legislation.

Article 15 of the *Petroleum Market Pricing System Regulation* provides the EMRA with the power to intervene and determine a floor and/or ceiling price in case of arrangements or market practices that have the aim and effect of restricting and disrupting competition and market activities. The EMRA is also empowered to take the necessary precautionary measures in the petroleum market, be it regional or national, for a duration of two months max.

Article 7 of the Competition Law prescribes that any merger or acquisition that would result in a significant lessening of effective competition within a market for goods or services in the entirety or a part of the country, particularly in the form of creating or strengthening a dominant position, is prohibited.

The *Communique on Mergers & Acquisitions that Require Permission from The Competition Board* (Communique) provides details of the merger control regime. On March 4, 2022, the TCA published *Communique No. 2022/2* and introduced significant changes in the control thresholds which will be effective starting from May 5, 2022.

Accordingly, parties to a merger must file an application to the TCA to receive permission:

If the total turnovers of the transaction parties in Turkey exceed TRY 100 million (to increase to TRY 750 million from May 5, 2022), and turnovers of at least two of the transaction parties in Turkey each exceed TRY 30 million (to increase to TRY 250 million from May 5, 2022), or in acquisition transactions, the turnover of the asset or activity, in merger transactions, the Turkey turnover of at least one of the transaction parties exceeds TRY 30 million (to increase to TRY 250 million from May 5, 2022) and the world turnover of at least one of the other transaction parties exceeds TRY 500 million (to increase to TRY 3 billion from May 5, 2022).

In relation to merger or acquisition agreements that fall within the scope of Article 7 of the Turkish Competition Act and exceed the turnover thresholds stipulated in the Communique, the TCA makes a preliminary examination within a 15-day time frame commencing from the date of notification. The TCA could either grant permission to the transaction or undertake a final examination. Typically, it takes around 4-6 weeks to obtain a decision approving or disapproving the transaction.

In the event that the TCA does not respond to the applica-

tion regarding the merger or acquisition within the prescribed period, or does not take any action, merger or acquisition agreements enter into force 30 days after the notification date and become valid legally.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

Chapter 12, provisional sub-clause 1 of the TPL states that the rights and obligations regarding exploration and operation licenses obtained before the effective date of the law – May 30, 2013 – shall continue until the end of the license period.

However, apart from this sub-clause, there is no specific stability clause for oil & gas companies.

10.2. Compulsory dispute resolution procedure

Article 20 of the TPL prescribes that the applications regarding all rights received or to be acquired pursuant to the provisions of the law or objections regarding the disputes that may arise between the right holders shall be determined by the MENR. The cases to be filed against the decisions that affect the rights arising from the application, research permit, exploration license, and operating license delivered by the Ministry are heard before the Council of State (Danistay), acting as the court of first instance.

As per article 10 of the *Petroleum Market Law*, the EMRA has the power to settle disputes over oil and gas pricing. Dissatisfied parties may challenge the EMRA's rulings relating to license holders' rights and obligations before the Council of State. As per Article 46 of the *Administrative Procedures Law*, judgments made by administrative courts may be appealed before the Council of State within 30 days of the notification date.

According to Article 16 of the *Transmission Network Operation Principles*, published in the Official Gazette numbered 25561, dated August 22, 2004, disputes arising between the transporter and shipper from the implementation of the network operating principles regarding:

- Capacity reservations, cancellations,
- Allocations,
- System balancing participation fees,
- Interruption balancing fees,
- Service interruption fees, and
- Emergency event, difficult day, and limited capacity day applications

shall be settled by the EMRA.

Regarding the expropriation procedures, a landowner has the right to appeal an expropriation decision before the administrative courts. Should the landowner and the license holder fail to reach an agreement regarding the price of the land, the dispute shall be resolved before the civil court of first instance.

10.3. International treaty protection

Turkey is a signatory to and has duly ratified into domestic legislation both the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID).

Court judgments in Turkey are not publicly available so it is not possible to check whether there have been instances in the oil & gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or state organs pursuant to litigation before domestic courts.

As for arbitral awards, ICSID records indicate that in the oil & gas sector, an investment arbitration was commenced against Turkey by Nabucco Gas Pipeline International GmbH in Liquidation on July 16, 2015, however, the proceeding was discontinued upon the claimant's request.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: OIL & GAS 2022

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1. SUMMARY

In brief, in the last few years the Ukrainian oil & gas market has been characterized by legislative trends favoring both international and domestic investments, including inter alia: **(1)** the development of the new *Subsoil Code of Ukraine* (it has not yet been adopted by the Ukrainian Parliament) aimed at harmonizing Ukrainian legislation with the European Union acquis; **(2)** opening up access to geological data for all potential investors; **(3)** promoting PSAs; **(4)** reducing rental rates for produced oil & gas; **(5)** unbundling the largest oil & gas company (JSC Naftogaz of Ukraine) and launching the competitive internal gas market; and **(6)** introducing the regulation of biomethane in Ukraine.

Ukraine's subsoil use sector has in recent times undergone significant transformation and major development. In 2019, for the first time in several years, auctions for the sale of special subsoil use permits and tenders for production sharing agreements (PSAs) for numerous oil & gas fields were conducted. In December 2019, the Investment Atlas of Subsoil Users was presented, with over 100 investment-ready facilities. Included in the list were 23 prospective oil & gas deposits with an area of more than 3,500 kilometers. Having considered the regulatory deficiencies and poor results when holding subsoil use auctions in the past, the Ukrainian authorities have taken the necessary steps, which promise to deliver tangible progress in the years to come.

Significant changes were introduced to the Law On Production Sharing Agreements, the *Subsoil Code*, the *Land Code*, and other legislative acts, which:

- Simplified the issue of subsoil use permits and land access required for subsoil activities;
- Moved forward the requirement for an environmental impact assessment (EIA), and it will now be conducted only after the PSA has been executed. Previously, the draft PSA was subject to an EIA before its execution;
- Introduced electronic bidding for auctions on the sale of special permits for subsoil use. Therefore, all auctions for issuing special permits shall be held only through the ProZorro online public procurement platform.

2. OVERVIEW OF THE COUNTRY'S OIL & GAS SECTOR

2.1. Legal framework – a brief outline of your jurisdiction's oil & gas sector

Despite having large deposits of oil & gas, as demonstrated below, Ukraine is still heavily dependent on imports. Therefore, Ukraine is changing its legal environment to make the exploration and production of oil & gas more attractive for foreign investors. The major principles of oil & gas legislation are as follows: **(1)** subsoil belongs to the people of Ukraine; therefore subsoil areas may be granted to investors for oil & gas exploration/production only on a temporary basis; **(2)** there are two ways of acquiring the right to explore/produce oil & gas: either to get a license (special permit) or conclude a production sharing agreement (PSA) with the state; **(3)** special permits are usually awarded through auctions to the bidder offering the highest price; **(4)** PSAs offer more flexible rules governing oil & gas exploration/production: the parties may choose the applicable law and the dispute resolution forum, investors may enjoy stabilization clauses protecting them from unfavourable changes in legislation, the state undertakes to issue all necessary permits and approvals in a timely manner and get permission from the land owners for access to the drilling site, etc.; **(5)** in addition to the auction price the holders of special permits pay rental payments charged on the produced hydrocarbons produced; **(6)** investors under PSAs transfer to the state its share of the produced hydrocarbons, but the terms of PSAs may contain additional terms as, for example, the payment of a signature bonus, etc.; **(7)** with some minor exception the investors may freely dispose of the produced hydrocarbons, including their export outside of Ukraine or sale on the Ukrainian gas market.

In recent years, several important events in the field of oil & gas have taken place. Among others, we may recall the introduction of incentive taxation for drilling new gas wells in 2018. Such a novelty not only appeared to be an effective mechanism to combat the natural decline in gas production but also increased the interest of investors in new drilling. As an outcome, in the four years of this rule being in operation, 273 new gas wells have been created.

In addition, in 2019, Ukraine held the largest wave of tenders for the conclusion of production sharing agreements and proposed to investors 12 promising oil & gas blocks with a total acreage of 11,000 square kilometers. At the beginning of 2021, 8 product sharing agreements were signed with leading Ukrainian gas production companies, including Naftogaz Group, DTEK Naftogaz, Geo Alliance Group, Zakhidnadraservis, and the American company Aspect Energy. All the companies together must invest at least USD 400 million in drilling 39 new exploration wells over the next five years. Three additional product sharing agreements with the UK company York Energy and the European energy holding EPH (Nafta) are in the process of being concluded. Their signing is expected at the beginning of 2022, and the minimum investment in the development of these blocks in the first five years will be USD 70 million.

Lastly, at the beginning of 2021, the Ukrainian government

approved the *National Economic Strategy 2030*, in which it determined an increase in gas production and complete abandonment of foreign suppliers as the central goal in the sector of oil & gas. This way, it is expected that, by the end of 2030, domestic gas production will meet domestic gas demand in Ukraine. To achieve this strategic goal, national gas-producing companies have developed and are implementing their own strategies to increase natural gas production. At the same time, however, the Ukrainian government will support foreign investment in the industry, either directly or in partnership with Naftogaz and private producers.

2.2. Domestic oil & gas production and imports/exports

Among the main legislative acts which regulate the oil & gas market in Ukraine, we may consider the *Constitution of Ukraine*, the *Subsoil Code of Ukraine*, the *Laws of Ukraine On Oil and Gas*, *On the Natural Gas Market, On Production Sharing Agreements, On Pipeline Transport*, several international treaties, ratified by the Ukrainian Parliament, and other legal acts, which *inter alia* set out regulations for environmental protection and competition in the relevant markets.

As regards imports and exports, it should be outlined that national producers currently satisfy only two-thirds of domestic consumption. Ukraine's annual gas production is about 20.7 billion cubic meters, while an additional 9.1 billion cubic meters of gas are imported from Western Europe via pipelines. The main suppliers are Poland, Hungary, and Slovakia. Nowadays, Ukraine's economy remains heavily dependent on natural gas and oil imports.

2.3. Foreign investment and participation

Broadly speaking, foreign investors in Ukraine enjoy the same rights as national legal entities and individuals, while foreign investments may be performed in any form that is not prohibited by law, including the incorporation of Ukrainian entities, purchasing of shares or stakes in existing Ukrainian undertakings, purchase of movable or immovable property, etc. However, there are certain important limitations: it is prohibited to obtain control over (i.e., to privatize) a gas Transmission System Operator or its property used in gas transportation via main gas pipelines and gas storage; the same restriction applies to the National Joint-Stock Company Naftogaz of Ukraine and its subsidiaries and their respective property used for the same purpose. Apart from this, foreign investors enjoy complete freedom and protection under the numerous investment protection treaties to which Ukraine is a signatory/party.

2.4. Protection of investment

The *Association Agreement* between Ukraine and the European Union, *Memorandum of Understanding concerning the Strategic Energy Partnership* between Ukraine and the European Union, the *Energy Community Treaty*, the *Protocol on the Accession of Ukraine to the Treaty Establishing the Energy Community*, as well as the *Energy Charter Treaty* (ECT) are among the main international treaties in the oil & gas sector of Ukraine that should be mentioned.

Investors may seek protection under a multilateral treaty like the ECT or bilateral international treaties (e.g., the UK-Ukraine BIT).

Remedies available to investors under the ECT include:

- Unlawful expropriation – the host state may not "take" (directly or indirectly) or substantially interfere with the investment of an investor,unless it is done for a public purpose, is non-discriminatory, is in accordance with the due process of law, and prompt, adequate and effective compensation is paid.

- Fair and equitable treatment – the host state must provide a transparent and stable legal and regulatory framework for the investments of investors. It must not act unreasonably or arbitrarily, nor contrary to the legitimate expectations of the investor and it must provide due process.

- National treatment – the host state must grant Investors the same treatment that is given to its own nationals.

- Most favored nation treatment - the host state must provide the investor with treatment as favorable as that given to nationals of any third country.

The types of damages that may be claimed, include, but are not limited, to lost profits over the expected life of the investment, sunk investment costs, contractual losses, finance costs, and legal fees and costs.

Undeniably, all the above legislative acts have a significant impact on the regulatory framework of the oil & gas market in Ukraine. This is because they envisage further approximation of Ukrainian legislation with the European Union acquis, and the development of competitive, transparent, and non-discriminatory energy markets, etc.

3. EXPLORATION OF OIL & GAS

3.1. Granting of oil & gas exploration rights

The main documents shaping the legal/regulatory framework for oil & gas exploration in Ukraine are the *Subsoil Code of Ukraine*, the *Law On Oil and Gas*, the *Law On Production Sharing Agreements*, and two by-laws regulating the procedure for issuing special permits for subsoil use, namely, the *Resolution of the Cabinet of Ministers of Ukraine No. 615* of May 30, 2011, and the procedure for holding auctions for the sale of special

permits for subsoil use, namely the *Resolution of the Cabinet of Ministers of Ukraine No. 993* of September 23, 2020.

Although the oil & gas sector in Ukraine has traditionally been regulated by two ministries, i.e., the Ministry of Energy and the Ministry of Environmental Protection and Natural Resources, oil & gas exploration issues such as issuing subsoil licenses, monitoring the activities of subsoil users, and imposing sanctions for infringement of subsoil use conditions traditionally belong to the competence of the State Service of Geology and Subsoil of Ukraine (Derzhgeonadra).

Major governmental initiatives in the oil & gas sector include, *inter alia*:

- expected adoption of a new *Subsoil Code* harmonizing Ukrainian legislation in this area with the European Union acquis;
- stimulation of domestic production of oil & gas by reducing rental payments;
- stimulating conclusion of PSAs, which resulted in increasing the number of PSAs concluded in the last two years, etc.

3.2. Foreign exploration

Under the *Constitution of Ukraine* subsoil resources belong to the people of Ukraine, therefore investors (both foreign and domestic) may only be granted the right of temporary use of subsoil. The right of use can be granted both under a license and pursuant to the relevant PSA concluded between the State and a foreign investor.

Foreign investors in the Ukrainian oil & gas sector enjoy the same rights as domestic ones. Under a license (special permit), foreign investors may explore and use subsoil resources for testing or commercial production of oil & gas within the time limits set by the relevant special permit and subsoil use agreement attached thereto.

Theoretically, a PSA may contain some exploration period, but in practice, the state proposes subsoil areas for PSAs with deposits of hydrocarbons that have already been confirmed.

At present, a special permit for subsoil use is not transferrable. That is, a party that has received a special permit may not transfer it to another party, even to a related one. However, Ukrainian law does not prohibit the change of control in the shareholders of a company possessing a special permit.

The draft of the new *Subsoil Code* provides for a possibility of transfer of the license subject to a new licensee meeting the requirements and assuming the obligations of the initial license holder.

3.3. Stages of the exploration process

There are two types of special permits related to the development of oil & gas deposits:

- A special permit for exploration, including experimental commercial development, with an initial duration of five years; and
- a special permit for exploration, including experimental commercial development with subsequent commercial production with an initial duration of 10 years, which, in some cases, can be extended to 20 years (30 years for sea shelf).

There is a possibility of one-time prolongation of the above permits, but only for a period that does not exceed the initial terms (that is, five and 10/20/30 years).

3.4. Obligatory state participation

Under the special permits regime, the state benefits from selling a special permit at auction and later, in the event of production of hydrocarbons, from rental payments. PSAs may contain different terms, including signing bonuses.

Natural gas and crude oil are not subject to excise duties, only petroleum products and LNG that are sold to customers.

Pursuant to *Regulation No. 939* of November 7, 2018, secondary geological data (i.e., interpreted geological data) received in the course of the exploration process belongs to the explorer and can be used as an asset. At the same time, the explorer has to report some part of the geological data to the State Geological Data Fund (Geoinform of Ukraine).

3.5. Risks to be considered

The main risks associated with oil & gas exploration in Ukraine are:

- lack of open geological data;
- potential problems with getting access to exploration/drilling sites (sometimes an easement may only be established after a long-lasting litigation process);
- non-transferable special permits, etc.

4. PRODUCTION OF OIL & GAS

4.1. Granting of oil & gas production rights

Oil & gas production in Ukraine is governed by the same legal acts as the process of exploration, so please refer to Section 3.1.

4.2. Foreign production

In terms of the production of hydrocarbons, foreign investors enjoy the same rights as national producers.

Under the special permit regime, the specific rights and obligations of foreign investors are set out by the relevant special permit and the *Subsoil Use Agreement*, and the Working Program attached to the special permit. The obligations of foreign investors contained in these documents inter alia define the time frames and number of wells, their depth, the expected debit of such wells, etc.

Special permits for oil & gas production are not transferrable. For more information, please refer to Section 3.2.

PSAs are more flexible in regulating the relationship between the state and investors. Upon the state's consent, the investor may transfer its rights and obligations to another investor, provided that the latter has the organizational and financial capacity to undertake the commitments of the initial investor under the PSA.

4.3. Stages of the production process

Two major stages of oil & gas production envisaged by two different types of special permits are:

- commercial production that takes place during experimental commercial development; and
- commercial production after confirmation of the deposits.

The volume of hydrocarbons produced during experimental commercial development shall not exceed 10% of the preliminary estimated total volume of the deposit.

4.4. Obligatory state participation

- Under the special permit regime, the major interest of the state lies, in addition to selling special permits at auctions, in receiving rental payments. As of 2022, the rates of the rental payments paid to the state budget by oil & gas producers are as follows:
- for old wells up to 5 kilometers in depth – 29% of the value of the extracted hydrocarbons;
- for old wells deeper than 5 kilometers – 14% of the value of the extracted hydrocarbons;
- for new wells up to 5 kilometers in depth – 12% of the value of the extracted hydrocarbons;
- for new wells deeper than 5 kilometers – 6% of the value of the extracted hydrocarbons.

The terms of PSAs may differ and contain additional incentives for the state as, for example, signature bonuses.

Under the special permit regime, investors are not limited in their right to dispose of produced oil & gas. It could be used for their own purposes, to be sold on the domestic market, or to be exported outside of Ukraine. However, on December 30, 2021, the Cabinet of Ministers of Ukraine adopted *Regulation No. 1433*, which obligates all gas producers to temporarily, until April 30, 2022, sell gas on the Ukrainian Energy Exchange to meet increased domestic consumption.

Under a PSA a part of the produced hydrocarbons usually goes to the state, but the investor may freely dispose of its part of the produced hydrocarbons. This is a general rule but each PSA may contain specific rights and obligations of the parties.

4.5. Risks to be considered

The major risks to be considered by foreign investors in the course of oil & gas production are:

- frequently changing tax rules/rates;
- temporary obligations to sell 20% of the produced hydrocarbons on the domestic market;
- problems with connection to oil/gas pipelines, etc.

5. TERMINATION OF PRODUCTION OF OIL & GAS

5.1. Abandonment and decommissioning

5.2. Environmental and HSE consideration

The obligations of oil & gas explorers/producers regarding decommissioning of wells and production sites are established by the *Subsoil Code of Ukraine*, by the laws *On Oil and Gas*, *On Environmental Protection*, and some secondary legislation.

Exploration/production site decommissioning measures to be taken by oil & gas explorers/producers are set in the relevant Environmental Impact Assessment Report and the working program that constitutes a part of the special permit.

The major principle to be observed by the oil & gas explorers/producers is to restore to the maximum extent possible the exploration/production site to its pre-development condition. Or, when complete restoration is impossible, to take compensatory measures to mitigate the harmful effect of exploration/production on the environment.

6. SAFETY OF OIL & GAS EXPLORATION AND PRODUCTION

6.1. International treaties to which the jurisdiction is a party

Ukraine is a party to the *Convention on the Continental Shelf* (1958), which establishes the rights of member states over the continental shelf for the purpose of exploration and exploitation of its natural resources. Proceeding from the articles of the convention, states have the right to right to construct, maintain and operate relevant structures and other installations on the continental shelf. At the same time, the member states should create security zones around those structures and undertake appropriate measures for the protection of the environment. Also, the exploration of the continental shelf and exploitation of its natural resources should not unreasonably interfere with shipping, fishing, or scientific research carried out for the purpose of publication.

6.2. Offshore Safety Directive

Although the *Offshore Safety Directive* is not implemented into the domestic legislation of Ukraine, protection of the environment and rational use of energy resources are among the core principles of the Ukrainian oil & gas market. To illustrate, the *Law of Ukraine On Oil and Gas* stipulates that the undertakings involved in the use of oil & gas subsoil, production, transportation, storage, processing, or sale of oil & gas are obliged to comply with environmental legislation, be responsible for its violation and carry out technical and organizational measures in order to reduce harmful effects on nature. Alternatively, reference could also be made to the *Order of the Ministry of Energy of Ukraine No. 686 of 02.11.2015 On Approval of the Rules on the Security of Natural Gas Supply*, which was issued to ensure the security of natural gas supply in Ukraine by forecasting and assessing possible risks, taking measures to prevent risks or reduce any possible damage from such risks.

7. IMPORT, EXPORT, AND SALES OF OIL & GAS

7.1. Import and Export of oil & gas

Pursuant to Article 3 of the *Agreement on the Implementation of Coordinated Policy in the Field of Transit of Oil and Oil Products by Main Pipelines*, ratified on June 11, 1997, the transit of oil & gas should be carried out in accordance with multilateral and bilateral protocols for the coordination of transit quantities and schedules, taking into account the volume of their production. Accordingly, the specificities of oil & gas supply are commonly governed by transit agreements (contracts), which determine the capacity booking, transportation, or any other specific conditions. The same also stems from Article 2 of the *Law of Ukraine On Oil and Gas*, which provides that the transit of oil, gas, and the products of their processing, should take place in accordance with the respective agreements.

7.2. Transportation

Relationships in the field of transportation pipelines are generally regulated by the *Laws of Ukraine On Transport*, *On Pipeline Transport*, and other legal acts. Taking into consideration that transportation pipelines and associated infrastructure play an important role in the economic prosperity and defense of the state, it is normally owned by Ukraine. At the same time, trunk pipeline facilities built at the expense of undertakings belong to them.

PSA investors have the right to build and operate pipeline facilities provided that they comply with Ukrainian legislation. Activities related to the construction, repair, and operation of pipeline transport facilities are carried out on the basis of a license, which is issued in the manner prescribed by law. Furthermore, the enterprises, institutions, and organizations of pipeline transport carry out reception, storage, transshipment, and transportation by pipelines, including for the purpose of transit on the basis of contracts taking into account the economic efficiency and capacity of the main pipelines.

To determine environmental safety during the placement, construction of new and reconstruction of existing pipeline transport facilities, as well as during their operation, an environmental impact assessment is carried out in accordance with the procedure established by the legislation of Ukraine. Also, when building oil & gas pipelines and related infrastructure, it is mandatory to comply with urban conditions and restrictions on land development, engineering and geodetic works, development, and approval of the external gas supply project and its budget. Lastly, permits for the location of pipeline transports should be obtained from the local bodies of state executive power and bodies of local self-government.

7.3. Land rights

Pursuant to Article 19 of the *Law of Ukraine On Oil and Gas*, land plots of all forms of ownership and categories could be granted to the holders of special permits for the use of oil & gas subsoils for construction, placement, and operation of oil & gas facilities by establishing land easements without changing the purpose of these land plots, except for nature reserves, health, recreation, historical and cultural purpose, and water fund. Landowners and land users are compensated for losses caused by the use of their lands. Financing of land management works and state registration of easement is carried out at the expense of the persons in whose favor the easement is established. Alternatively, Ukrainian legislation provides the possibility for the compulsory expropriation of land. In this case, reference should be made to the *Law of Ukraine On the*

Expropriation of Land Plots and Other Privately Owned Immovable Property for Public Needs, which establishes the powers of state authorities to acquire the relevant lands.

7.4. Access and integration

As a general rule, entities operating on oil & gas markets have equal rights to access the transportation and distribution system. Producers of biogas or other types of gas from alternative sources also have the right to such access on condition they comply with the relevant technical and legal standards, as well as safety requirements. The operator of the transmission or distribution system is obliged to provide the aforesaid undertakings with appropriate access and provide the required service. Transportation or distribution of oil & gas is usually carried out on the basis of and in accordance with the agreement in the manner prescribed by the Code of the Gas Transmission System and other regulations. Under the agreement, the gas TSO undertakes an obligation to provide the customer with transportation or distribution services for the period and conditions specified in the agreement, while the customer promises to pay the price for the respective services. The term of service provision and the amount of fees payable are also determined in the agreement.

7.5. Gas transmission and distribution

See Sections 7.2 and 7.4

8. TRADING

8.1. Trading license

The major instrument governing natural gas trading is the *Law On the Natural Gas Market*. Pursuant to this law, wholesale natural gas trading in Ukraine does not require a license. At the same time, a natural gas trader shall obtain a special identification number (EIC code) and conclude a contract with the state-owned gas TSO. All major rules applicable to natural gas trading are set out by the *Code of the Gas Transmission System*.

Natural gas may be traded both through the system of bilateral contracts and the Ukrainian Energy Exchange.

8.2. Products

Natural gas is commonly traded on the Ukrainian Energy Exchange, which is an association of market participants, i.e. sellers and buyers, created for the sake of providing favorable conditions for pricing, trade, and conclusion of agreements.

9. COMPETITION

9.1. Authorities

The Antimonopoly Committee of Ukraine (AMCU) is a Ukrainian competition watchdog. The AMCU, as a state authority with special status, is responsible for the protection of economic competition. The Cabinet of Ministers of Ukraine is not directly involved in the enforcement of legislation on the protection of economic competition. However, it may authorize certain mergers, as well as concerted practices which were prohibited by the AMCU if the latter have an overwhelming positive effect on competition. When deciding on a case the Cabinet of Ministers of Ukraine may involve any governmental authorities (including ministries) as well as independent experts.

9.2. Anti-competitive actions

There is a general prohibition of anti-competitive concerted practices unless an exemption applies.

Anti-competitive concerted practices typically take one of the following forms:

- fixing prices or other purchase or sale conditions;
- limiting production, markets, technological development, or investment;
- dividing markets or sources of supply according to territory, type of goods, sale or purchase volumes, or classes of sellers, buyers, or consumers;
- distorting the results of trading, auctions, competitions, or tenders;
- ousting other companies from the market or limiting their market access;
- applying different conditions to identical agreements to put a specific company at a disadvantage;
- executing agreements that are conditional on the contracting party's acceptance of additional obligations unrelated to the subject of the agreement;
- substantially limiting the competitiveness of other companies without justifiable reasons; or
- parallel behavior (similar actions or omissions), which resulted or may result in the prevention, elimination, or restriction of competition is also considered a violation unless there are objective reasons for this behavior.

The AMCU can authorize (grant an individual exemption to)

certain potentially anti-competitive concerted practices if both these conditions are met:

- the parties can prove that these practices encourage manufacturing, technological or economic development, or other efficiencies; and
- the practices do not lead to a substantial restriction in competition.

The AMCU clears mergers under either the standard or simplified procedure.

The standard timeline of the filing review by the AMCU is as follows:

Phase I

- First Stage – 15 calendar days

15 calendar days for the AMCU to conduct a formal review of the notification and accept or reject it (upon expiration of the initial 15 calendar days period a merger control notification is deemed to have been accepted);

- Second Stage – 30 calendar days

30 calendar days (beginning upon the expiration of the initial 15 calendar day period of review) for the AMCU to consider the substance of the transaction (permission is granted or an in-depth investigation is opened);

Phase II

- Third Stage – up to 135 calendar days

three months for an in-depth investigation of the transaction (so-called "concentration case") that starts running after the AMCU has received all additional information it needs from the notifying parties to reach a decision, but it cannot exceed 135 days. In practice, the AMCU can initiate an in-depth investigation of a transaction in what it views as a complicated case. For example, where the joint market share of the parties to the concentration upon completion of the transaction is likely to exceed 20%.

- Fourth Stage

within 30 calendar days after the AMCU's decision prohibiting the transaction, the notifying parties may apply for clearance to the CMU if they can prove that the positive social effect of the transaction will outweigh its anti-competitive impact. This stage in practice is rarely resorted to.

At the same time, Ukrainian law allows the simplified procedure of consideration of merger notification, lasting 25 days from the date of submission of the notification (as opposed to regular 45 days under the general procedure). The parties to a transaction may take advantage of the simplified procedure if:

- only one party to the transaction is active in Ukraine;
- the aggregate market share of parties to the transaction does not exceed 15% on the same market; or
- share of any party or aggregate shares of parties to the transaction do not exceed 20% on key markets.

In certain cases, AMCU may clear the merger with conditions or, rarely, reject issuing merger clearance.

In recent years the fuel and energy sector was one of the most popular sectors applying for AMCU clearance.

10. STABILITY CLAUSE AND DISPUTE RESOLUTION

10.1. Stability clause

Only PSAs can contain stabilization clauses protecting investors from unfavorable changes in fiscal and other policies affecting the exploration and production of hydrocarbons. But this advantage is not available to investors under the special permits system. Consequently, the investors under the special permits system may be affected by an increase in oil & gas production rental rates.

10.2. Compulsory dispute resolution procedure

The choice of applicable law and a dispute resolution forum is only possible under PSAs concluded between the state and foreign investors.

Subsoil use agreements that are parts of the relevant special permits are governed by Ukrainian law and are subject to the mandatory jurisdiction of Ukrainian courts.

According to the *Law of Ukraine On the Natural Gas Market*, the governmental regulator on the oil & gas sector has the remit to approve the procedure and review complaints against the actions of participants in oil & gas markets (except for consumers), as well as resolve disputes between them. According to the procedure, the regulator provides its binding decisions within a specified period of time and posts them on the official website. An appeal can then be submitted against such a decision in the national courts of Ukraine.

10.3. International treaty protection

Ukraine is a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. In the process of implementing an arbitration decision against governmental authorities or state organs, a foreign investor may normally

face two problems. First, in the event of the state disagreeing with the arbitration decision or it being unwilling to execute it voluntarily, the foreign investor will be forced to search for state property independently and then apply for recognition and enforcement of the decision in various jurisdictions. Second, an issue could arise that a significant part of state property enjoys protection under state immunity and, thus, may not be subjected to coercive measures or be the subject of legal proceedings.

As for those instances in the Ukrainian oil & gas market where a foreign corporation successfully obtained a judgment or award against governmental authorities, a vivid example could be *Case No 2-K-8/12*, where the District Court of Kyiv granted permission to Remington Worldwide Limited (UK) to enforce an arbitral award against the state of Ukraine under the *New York Convention* (1958).

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