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Oil & Gas Regulation 2020

A practical cross-border insight into oil and gas regulation work

15th Edition

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1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Pursuant to the last available data, in 2016, final consumption of natural gas in Serbia amounted to 16,750 billion cubic metres (Bcm) (EC 2018 Implementation Report). The biggest exploration areas (e.g. Banatski Dvor) are located in the Serbian Autonomous province of Vojvodina. The only natural gas producer is a public joint stock company "Naftna Industrija Srbije" a.d. Novi Sad (NIS), majority-owned by Russian company Gazprom Neft.

The key market players in Serbia are: wholly state-owned company JP "Srbijagas" Novi Sad (Srbijagas), the transportation system operator (TSO) and owner of the grid; vertically integrated joint stock company "Yugorosgaz" a.d. (Yugorosgaz) (in the ownership of Gazprom o.a.o. Moscow (Gazprom) (50%), Srbijagas (25%); and Centrex Europe Energy & Gas AG (25%)), a licensed public supplier and distribution system operator (DSO).

Serbia imports natural gas from Russia, via the long-term gas supply agreement between Serbia and the Russian Federation, pursuant to which Russian Gazprom is nominated as the exclusive natural gas supplier to Serbia until 2021. The aggregate import flows in 2016 amounted to 18,040 Bcm (EC 2018 Implementation Report).

The "destination clause" identified by the European Commission in the inter-governmental gas supply agreement between Serbia and Russia was recognised as limiting the natural gas supplies only to the Serbian market and infringing the anti-trust rules considering the consequential limitation of the territory in which the gas buyers in Serbia could sell on the gas. The "destination clause" was finally removed on 27 September 2018 by the approval of the Serbian Government.

The right to freely choose a supplier in the market is guaranteed to all customers as of 1 January 2015. The transportation grid is comprised of a high-pressure gas pipelines grid, which in turn comprises main gas and distribution pipelines, and the facilities located within them. The length of the said transmission grid is *ca.* 2,400 km in total. Medium-pressure gas grids and low-pressure local distribution grids are operated by Yugorosgaz and 31 other local DSOs.

Srbijagas and Yugorosgaz are not yet functionally unbundled to the state of compliance (even) with the Second Energy Package. Srbijagas continues to act as the TSO and as the supplier of natural gas in Serbia. Despite incorporating the subsidiary "Distribucijagas Srbija" d.o.o. (a DSO) in 2015, Srbijagas still acts as the DSO in practice. Likewise, legal and functional unbundling of transport activities of Srbijagas was not successfully implemented in practice. The wholly owned subsidiary of Yugorosgaz-Yugorosgaz-Transport d.o.o., is the second licensed gas TSO in Serbia.

NIS owns "Elemir" gas refinery, whose prevailing business activity is the preparation of domestic natural gas for transport and production of liquefied gas and oil. According to the Licence Register run by the Serbian Energy Agency (AERS), there are: 32 licensed public suppliers of natural gas, most of which also hold a licence for unregulated supply; 63 licensed suppliers of natural gas; and 32 licensed DSOs.

In the retail gas supply market, Srbijagas is the dominant market player, accounting for *ca.* 80% of the total natural gas sales in 2017 (remaining gas suppliers have a market share of 3% and below).

The only underground storage of natural gas has been developed by the company "Banatski Dvor" d.o.o. (Banatski Dvor) founded by Srbijagas and "Gazprom Germania" GmbH, which still continues to be the only licensed operator of underground storage of natural gas. Banataski Dvor operates on a surface area of 54 square metres at a depth of 1,000 m to 1,200 m. Pursuant to the AERS 2017 Report, in 2017 the maximum daily injected quantity was 2.4 million cubic metres, whereas the maximum daily withdrawn quantities totalled 5.1 million cubic metres. The prices for access to the natural gas storage at Banatski Dvor are regulated under the Energy Act (EA) [*Zakon o energetici*, (Official Gazette of RS no. 145/2014 and 95/2018)].

Currently, there are no LNG facilities in Serbia. However, the authorities have demonstrated awareness that construction of such terminal would significantly decrease the Serbian dependency on import of gas from Russia and that it would substitute the anticipated quantities of the South Stream (a major CEE gas pipeline project cancelled by the European Commission in 2014). Serbia has received the offer from Romania to be involved in the project "AGRI" (Azerbaijan-Georgia-Romania Interconnector), the first LNG terminal in the Black Sea, designed to enable transportation of natural gas from the Caspian region to Europe. The AGRI transportation system should have an annual capacity of 5–8 Bcm and it envisages a gas pipeline running from Azerbaijan to Georgia, where gas would be turned into LNG and then transported to Romanian

terminals for further distribution to European countries, including Serbia.

At the end of 2016, the Serbian Government adopted the Decree regulating the spatial plan of the special purpose area for the infrastructural corridor of the main gas pipeline Niš-Dimitrovgrad, with detailed regulation [*Uredba o utvrđivanju Prostornog plana područja posebne namene infrastrukturnog koridora magistralnog gasovoda Niš-Dimitrovgrad, sa elementima detaljne regulacije* (Official Gazette of RS no. 102/2016)]. At 109 km long and 400 m wide, the Niš-Dimitrovgrad gas pipeline is intended to provide additional gas quantities to Serbia from Bulgaria and connect the Serbian gas market with that of Bulgaria. The Niš-Dimitrovgrad gas pipeline is part of the main pipeline extending to the capital of Bulgaria, Sofia. The estimated value of the project was *ca.* EUR 60 million, which the Serbian Government intended to procure through EU resources. Construction of the pipeline is still pending. The initial deadline for completion of the project was the end of 2018, but has been extended until the end of 2019. The contract for the exploration works and provision of project documentation was awarded to a group of local companies through a tender procedure in April 2018. Srbijagas, as the leader of this project before Serbia, has been also engaged in procuring necessary land rights for the pipeline. The project is to be implemented in conjunction with the *TAP* and *TANAP* gas pipelines that secure gas supplies from Turkey and Azerbaijan instead of Gazprom's South Stream.

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Pursuant to the Energy Balance of Republic of Serbia for 2019, natural gas (excluding LNG) accounts for 11.1% of the final energy consumption in 2019. The estimated consumption of natural gas in 2019 is 13% smaller than it was in 2018.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Only 17.1% of Serbia's natural gas requirements in 2019 are met through domestic production.

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

Serbia does not export natural gas.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

The production of oil in Serbia is conducted from 63 oilfields with 666 drill holes. NIS is the only company in Serbia licensed for the exploration and production of oil. Refining is done at two major refineries operated by NIS: Pancevo and Novi Sad, having an aggregate annual refinement capacity of 7.3 million tonnes of crude oil.

The transport of oil derivatives in Serbia is done by rail, river and road. The only company engaged in oil pipeline transportation is JP "Transnafta", a wholly state-owned entity, which operates on non-discriminatory principles under regulated prices (for access to the network). Transnafta is engaged in oil transport by oil pipelines within the entire territory of Serbia.

Currently, pipeline transport is only performed through the oil pipeline in Sotine, at the border with Croatia, to Novi Sad and Pancevo, Serbia, where the two refineries are located. The Sotine-Novi Sad section is 63.3 km long, whereas the Novi Sad-Pančevo section is 91 km long. This oil pipeline is part of the main Adriatic oil pipeline (Jadranski naftovod, "JANAF"), which has operated since 1979.

As of October 2018, AERS has issued: (i) 24 licences for storage of oil, oil derivatives and biofuels; (ii) 51 licences for wholesale of oil and oil derivatives, biofuels and compressed gas; (iii) 460 retail licences; and (iv) one transport licence.

The oil retail network in Serbia is done through the wide network of *ca.* 1,450 retail facilities, dominated by "NIS Petrol", "OMV Srbija" and "Lukoil".

Production of crude oil is done domestically and in Angola (at drill holes owned by NIS). The predicted supply of oil and oil derivatives in 2018 was expected to reach 23% from domestic production – 0.870 million tonnes – and 77% from imports – 2.839 million tonnes.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

Liquid fuels (including oil) account for 32% of Serbian energy requirements, i.e. final consumption.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

Domestic oil production remained unchanged from the previous reporting period, with around 20% of Serbia's oil requirements met through domestic oil production.

2.4 To what extent is your jurisdiction's oil production exported?

The planned export quantity of oil derivatives for 2017 was estimated at 0.8 million tonnes (0.6 million tonnes in 2016, which is *ca.* 50% higher than in 2015). The only market to which Serbia exports crude oil is that of Bosnia and Herzegovina, while by-products are mostly exported to Kosovo and Metohija (petroleum and diesel), Bulgaria (euro diesel B-7), Romania and Hungary (aviation fuel).

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

Exploration, extraction of natural gas, production, processing and refining of oil, as well as construction of mining facilities and mining works, are governed by EA and the new 2015 Mining and Geological Exploration Act (MGEA) [*Zakon o rudarstvu i geološkim istraživanjima*, (Official Gazette of RS no. 101/2015)]. The MGEA's secondary legislation also governs specific areas of exploration and extraction of natural gas and oil. Oil and gas are considered mineral resources of strategic importance for

Serbia under the MGEA, which, *inter alia*, ensures entitlement to expropriation.

The Serbian Ministry of Mining and Energy (Ministry) [*Ministarstvo rudarstva i energetike Republike Srbije*] is the competent authority for implementation of the EA and the MGEA – i.e. the competent authority for giving consent to the extraction of hydrocarbons and the construction of mining plants. In the event that a project is conducted on the territory of an autonomous province, provincial authorities will be competent for implementation of MGEA provisions. The MGEA stipulates that hydrocarbons are considered natural resources owned by the Republic of Serbia and may be used under the conditions set out in the MGEA. Further, the Public Property Act [*Zakon o javnoj svojini*, (Official Gazette of RS nos 72/2011, 88/2013 and 105/2014, 108/2016, 113/2017 and 95/2018)] stipulates that natural resources, such as hydrocarbons, are public property.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The extraction of natural gas may only be conducted based on an extraction licence. The licence may be issued to a legal entity or entrepreneur holding an exploration licence. In order to acquire such licence, the applicant is required to prove the rights it holds over the pertaining land on which the extraction facilities are to be constructed (ownership, lease or easement). Under the MGEA, for oil and gas exploration and performance of mining works related thereto, a lease or easement right must be valid for up to 10 years. For exploitation of oil and natural gas, as mineral resources of strategic importance for Republic of Serbia, a special act of the Government on determining the public interest shall be issued, in order to allow a five-year exploitation period for the applicant.

The MGEA allows foreign legal entities to perform activities of geological exploration and exploitation, under the terms and conditions prescribed under the MGEA, limitations as to use of public interest goods by foreigners and state defence and confidentiality restrictions. The new MGEA reduced the number of documents required for the issuance of various approvals to carry out geological exploration and exploitation of minerals, thus easing the process for private investors.

Further, the licence for exploration of oil and natural gas is given on the basis of a "public tender" procedure, initiated and conducted by the Ministry, in line with MGEA provisions. The licence for exploitation of mineral resources is issued by the Ministry, upon the duly submitted request of an applicant, i.e. by the competent authority of the autonomous province, if exploitation is to be conducted on its territory. On the other hand, the Public-Private Partnerships and Concessions Act (PPP Act) [*Zakon o javno privatnom partnerstvu i koncesijama*, (Official Gazette of RS nos 88/2011, 15/2016 and 104/2016)] specifically recognises exploration and exploitation of mineral resources and other geological resources as general interest activities, that may only be performed subject to concession arrangements regulated thereunder. The beneficiary of the results from previously implemented geological exploration may, in principle, acquire consent for exploitation and/or exploitation fields based on confirmation on such exploration results.

Further, the PPP Act excludes the application of any other procedure for granting the right to perform these activities regulated under different legal acts, by stating that its provisions shall apply to the procedure on granting the right to perform them, whereas other legal acts may govern other significant matters pertaining to the performance of such activities. Considering that the two acts (the MGEA and the PPP Act) contain conflicting provisions as to the procedure that needs to be applied and that there is no settled practice or authorities on this matter, it cannot be determined with full certainty which procedure would be applicable. The PPP Act seems to prevail over the MGEA as it explicitly excludes application of any other act in terms of the applicable procedure.

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

As noted, the exploitation licence can only be issued to a legal entity holding the exploration licence, obtained through the competitive procedure. The Government's Decree regulating the particularities for implementation of such public tender for exploration of mineral resources has not been enacted. Under the PPP Act, a public tender procedure for concession is initiated upon the proposal of either the authority or the investor. Given that the said activities are considered public interest activities, the concession forms an integral part of the relevant licences for their performance. The concession agreement can be concluded for at least five years or a maximum period of 50 years, depending on the potential effects on the competition and the reasonable period for the amortisation of a private partner's investment and return of the invested capital. The exploration licence is issued for an initial period of three years and can be extended twice for an additional three, then two years.

With regards to the terms of the exploitation licence, the MGEA only sets a term of two years for completion of the preparation works, whereas the term of the exploitation, i.e. use of the mineral resources, will be determined pursuant to production dynamics determined in the feasibility study and quantities of the relevant mineral resources' stocks. The exploitation also requires prior obtainment of the approvals for mining works and, ultimately, a use permit for the mining plant. Exploration, mining works, construction and the use of mining plants and other facilities are licensed by the Ministry and the provincial authority, depending on the location of the exploitation area.

In principle, the investor bears the risk related to the commercial use (exploitation) of the mineral resource. However, the distribution of risk between the public and private partner may be further regulated under the concession/public agreement.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

Oil and natural gas reserves are considered public property and are in the state ownership, as a matter of law (please see question 3.1 above).

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

The investor is required to pay the following fees when engaged in mineral resources development:

(i) exploration fee – the MGEA sets the fee in the amount of *ca.* EUR 80 per square km of approved exploration area, with a surface over 0.5 square km, i.e. *ca.* EUR 40 for exploitation areas smaller than 0.5 square km;
(ii) exploitation fee – for oil and gas exploitation, the exploitation fee amounts to 7% of the revenue achieved from their sale and use; and
(iii) concession fee – proposed by the investor when submitting the bid and determined in the concession agreement on the basis of the type of the mineral resource, type of activity, term of the concession agreement, commercial risk and expected revenue, fit-out and the surface of the exploitation area (quantity of the mineral resource), including the exploitation fee payable by the investor.

The ore rent, i.e. the exploitation fee payable by NIS, amounts to 3% of the revenue achieved from the sale and use of the oil and gas (which was the fee applicable under the old MGEA). Such alleged beneficial rent was part of an inter-governmental agreement between Serbia and the Russian Federation (which is not publicly available).

3.6 Are there any restrictions on the export of production?

The EA and MGEA do not provide for any specific restrictions to the export of mineral resources (oil and natural gas). However, pursuant to the EA, potential restrictions may be imposed on the export of mineral resources in case of crises and a general lack of mineral resources to meet domestic requirements.

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Pursuant to the Serbian Foreign Exchange Act (FX Act) [*Zakon o deviznom poslovanju*, (Official Gazette of RS nos 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018)], as of 1 October 2015, foreign payment transactions may be executed in both foreign and local (RSD) currency, through the banks.

Additionally, the FX Act states that the import and export of goods, agreed either in foreign or local (RSD) currency, can be considered a commercial credit and loan arrangement, if (i) the payment was not settled for more than one year, as of the moment of the completed import or export, and (ii) the goods were not imported/exported, i.e. imported for more than one year as of the day the payment in foreign or local (RSD) currency was settled. The commercial credit and loan arrangement must be notified to the National Bank of Serbia, as well as any change made in relation to such agreement. However, in practice, no transfers can be achieved without the official stamp of the National Bank of Serbia confirming that it has been notified. Cross-border loans cannot be repaid before the expiration of one year from the drawdown date, pursuant to a separate decision of the National Bank of Serbia.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

There are no specific restrictions on transferring oil and natural gas development rights and interests. The transfer of the licences for exploration and exploitation is permitted upon completion of certain typical requirements set out under Art. 9 MGEA and the requirements to be prescribed under secondary legislation which was not adopted to date. However, the concession rights for exploration and exploitation of oil and natural gas reserves, in principle, cannot be transferred to third parties (save to a substitute nominated by the financiers of the concessionaire, pursuant to the step-in agreement concluded with the public authority).

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

In its proposal for granting a concession, a public partner may request a performance guarantee or other type of security from the investor under the concession agreement. Besides this, the public partner is obliged under the PPP Act to acquire from the selected partner a guarantee for payment of the concession fee. The amounts of these guarantees are determined on a case-by-case basis, considering the terms of the concession agreement. A standard seriousness-of-the-bid guarantee in the maximum amount of 5% of the total estimated value of the concession shall also be provided by the investor within the competitive procedure.

Pursuant to Art. 103 MGEA, an interested party applying for approval for the construction of mining facilities and/or for conducting mining works is obliged to submit a bill of exchange (promissory note) or proof of bank guarantee or corporate guarantee for conducting the activities of remediation and reclamation of degraded land due to the exploitation in favour of the Republic of Serbia. Either of the said securities shall be issued in the amount of 30% of the total value of the project determined under the main mining project and shall be valid for the period of three years. Every subsequent security must be valid for two years and issued in the amount of 30% of the remaining value of the works. Final security must be valid for an additional 60 days as of the estimated date for completion of the works.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The PPP Act envisages that, with the previous consent of a public partner, security (in the form of a mortgage, pledge or otherwise) may be set up in order to secure the financing of the project. It further depends on the specific right whether it is eligible for encumbering and whether such encumbrance would be enforceable, subject to the mandatory provisions of the Serbian law.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Apart from the principle licences determined under the MGEA, the exploration and extraction of natural gas may also trigger other approvals and/or licences, mainly in construction and spatial planning, environmental protection, occupational health and safety, water management and waste management. The competent authority for issuing required approvals in the construction and spatial planning field, as well as in the field of environmental protection, is either the relevant Ministry or the local or provincial authorities, depending on the capacity and the location of the contemplated project.

For example, the construction and spatial planning approvals and permits are issued by the authority competent for the exploration/extraction area at hand (i.e. Ministry of Construction, Traffic and Infrastructure, local municipality or the autonomous province). Also, the competent authority depends on the type and the size of the project. Pursuant to the Spatial Planning and Construction Act (SPC Act) [*Zakon o planiranju i izgradnji*, (Official Gazette of RS nos 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 54/2013, 98/2013, 132/2014, 145/2014 and 83/2018)], the Ministry of Construction, Traffic and Infrastructure is, *inter alia*, competent for issuing a construction permit for: (i) plants for the processing of fuel (oil) and gas (*rac*) that are constructed outside of the exploitation area; and (ii) gas pipelines with a normal working pressure of over 16 bars, if it passes through territories of two or more municipalities. An autonomous province shall issue a construction permit for the same plants if they are to be constructed completely on its territory. Lastly, the local municipality is competent for issuing construction permits for all other plants/infrastructure that are not within the competencies of the above authorities, as specifically listed under Art. 133 SPC Act (e.g. residential buildings).

With regard to the environmental protection approvals, natural gas and oil extraction are considered activities subject to the environmental impact assessment study (EIA), pursuant to the Decree on the determination of the list of projects for which an EIA is required, and the list of projects for which an EIA may be requested [*Uredba o utvrđivanju Liste projekata za koje je obavezna procena uticaja i Liste projekata za koje se može zahtevati procena uticaja na životnu sredinu*, (Official Gazette of RS no. 114/2008)]. Additionally, pursuant to the Protocol on the strategic environmental impact assessment [*Zakon o potvrđivanju Protokola o strateškoj proceni uticaja na životnu sredinu uz Konvenciju o proceni uticaja na životnu sredinu u prekograničnom kontekstu*, (Official Gazette of the RS no. 1/2010)], a strategic environmental impact assessment study (SEA) may be requested for major mining, on-site extraction and processing of metal ores or coal and for surface industrial plants for the extraction of coal, petroleum, natural gas and ores, as well as of bituminous shale. EIA and SEA approvals must be issued before obtaining the construction permits. Finally, gas and mineral oil refineries are subject to the IPPC – Integrated Pollution Prevention and Control – permit [*Zakon o integrisanom sprečavanju i kontroli zagađivanja životne sredine* (Official Gazette of RS nos 135/2004 and 25/2015)]. Potentially, Seveso II approval for prevention and control of the major accidents resulting from the handling of dangerous and combustible substances (such as oil and gas) may have to be obtained. The competent authority for EIA/SEA approvals, an IPPC permit, as well as for Seveso II approval, is either the Ministry of Agriculture and Environmental Protection or the municipal authority or provincial authority competent for environmental protection, i.e. the same authority that was determined as competent under the SPC Act (as mentioned above).

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

Pursuant to the MGEA, the exploitation area must be rehabilitated and reclaimed after the works on exploitation have been completed, at the latest after one year of such completion. This must be done in accordance with the reclamation plan and obligatory measures for the exploitation area's recovery and protection of the environment, water, land and public health and safety, as determined within the process.

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

The storage of natural gas is regulated under the EA. A natural gas storage system operator (SSO) is obliged to comply with the principles of objectivity, transparency and non-discrimination, with regard to access to the storage system, under regulated prices. An SSO must operate under the terms of the storage licence issued, pursuant to the EA. The SSO may reject third-party access to the system in certain justified cases such as a lack of system capacity (please see question 6.6).

Further, in order to access the system, the third party is obliged to:

- register with the SSO in order to participate in the allocation of the gas capacity; and
- submit a request for access to the system, in which it defines whether it is applying for an entry or exit point, the intended duration of the transport and the relevant type of capacity (i.e. permanent or temporary).

After the SSO allocates gas capacities based on the request of the third party (and minimum gas quantity expected), it notifies the third party thereof. Such notification is considered as the acceptance of the third party's request/offer.

After the third party receives a signed copy of the agreement by the SSO and has settled the advance payment (or provides a bank guarantee as a security for fulfilment of its payment obligations undertaken by the agreement), the SSO and the third party officially become parties to the access agreement.

As stated above, currently there is only one licensed SSO – the underground gas storage "Banatski Dvor". However, the relevant storage code has not yet been enacted. Therefore, *inter alia*, specific conditions and procedure for access to the storage grid, tariffs in line with methodology adopted by AERS, as well as the allocation of storage capacities, are not currently regulated.

3.14 Are there any laws or regulations that deal specifically with the exploration and production of unconventional oil and gas resources? If so, what are their key features?

No such legislation has been enacted in Serbia to date.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Cross-border sales or deliveries of natural gas are accomplished by the bilateral agreement between a supplier and a producer. There are no specific restrictions or rules pertaining to the cross-border sales or deliveries of natural gas, except in case of crisis (as described under question 3.6 above) and foreign exchange notification requirements, if applicable (as described under question 3.7 above).

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

Cross-border sales or deliveries of oil are accomplished by a bilateral agreement between a supplier and a producer.

Additionally, the Serbian Government adopted the Decree on marking of oil derivatives [*Uredba o obeležavanju (markiranju) derivata nafte*, (Official Gazette of RS nos 51/2015 and 5/2017)] (Marking Decree), which has obliged all energy companies engaged in the production and trade of oil and oil derivatives to comply with the specific marking regime. The marking regime requires that all oils imported to or traded within the Serbian market are marked in accordance with Marking Decree and the guidelines rendered for its implementation (Guideline) by the exclusive provider of marking service – "SGS Beograd" d.o.o.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

In principle, the applicable regulatory requirements are stipulated in the EA, the MGEA, the Act on the Pipeline Transportation of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons [*Zakon o cevovodnom transportu gasovitih i tečnih ugljovodnika i distribuciji gasovitih ugljovodonika*, (Official Gazette of RS no. 104/2009)] (Pipelines Transportation Act), and other relevant gas and oil-related regulations.

Pursuant to the EA, oil and oil derivatives pipeline grids must be in public ownership and in the ownership of the transport operator established by the state for performance of transport activities. The natural gas pipelines may also be in private ownership. However, the EA failed to regulate requirements and restrictions regarding private ownership of the natural gas grid. The basic principle nevertheless remains that the grid or parts of the grids that are constructed by the private entity acting as a system operator, or acquired by it in a legal transaction, shall remain in its possession. The storage facilities are owned by the only licensed SSO – Banatski Dvor.

Srbijagas and Yugorosgaz operate pursuant to the rules set under the EA and their grid codes, approved by the AERS (Codes). The wholesale price of gas sold to the public supplier was regulated until September 2013, and thereon, the gas price is set according to the cost-reflective formula set in the tendering procedure whereby Srbijagas was appointed as the supplier of public suppliers. Public suppliers' prices are previously approved by AERS. The Codes regulate third-party access to the grid, injection into the gas grid and upstream pipelines, allocation of capacities, balancing, congestion management and other terms of the transmission services. TSOs must operate transparently and they must ensure third-party access on non-discriminatory grounds. Third-party access may only be rejected in certain cases, such as lack of capacity (please see question 6.6). The Codes also provide for a model access agreement to the transportation grid. However, the Codes do not allow for capacity rights transfer on a monthly and daily basis, only annually. The minimum assignable quantity is 2,000 cubic metres.

Pursuant to EA, AERS has also approved the oil transmission grid code rendered by Transnafta (Transnafta's Code). Transnafta's Code regulates the technical requirements for operation of the system, rules on the use of the system, transport models measuring terms, third-party access agreement, etc. Third-party access may only be rejected in a number of instances such as the lack of capacity and inappropriate quality of the fuel (please see question 6.6). Transnafta's Code regulates the terms of the access agreement, which must specify, *inter alia*, the quality and the quantity of the fuel, term, payment dynamics, contractual penalties, etc.

As of 1 January 2015, the wholesalers are obliged to submit the reports on storage and transport of the oil, along with the delivery of the oil and oil derivatives.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

According to the SPC Act, a location permit and a building permit must be acquired for construction of, *inter alia*: (i) oil pipelines; (ii) gas pipelines; and (iii) product pipelines (*produktovod*). Pursuant to the Pipelines Transportation Act, the company licensed for transport, i.e. distribution through pipelines, must implement the measures for occupational health and safety, environmental protection, and fire and explosions in accordance with separate legal and technical acts (please see question 3.11). The use/occupation permit may be acquired upon obtaining said environmental permits, as well as upon determining the fulfilment of the conditions set under the construction permit.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

According to the EA, the energy companies are entitled to use (lease, easement, etc.) the land owned by third parties for the purposes of construction, reconstruction or maintenance of energy facilities. Private land may also be expropriated provided that the Government has established the public interest in such a project and mineral resource (facilities in the area of energy infrastructure are considered objects of the public interest in general under the expropriation regulations, whereas the SPC Act considers pipelines as the facilities for public purposes).

In principle, the construction of the new pipeline infrastructure must be determined in the spatial plan of the special purposes area, and the detailed plan of the regulation of the project area. Additionally, pursuant to the MGEA, oil and gas pipeline construction may be subject to the prior approval of the Ministry, in case the pipelines are designated to pass through the exploitation areas.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Third-party access to the transportation system is regulated by the EA and it secures access on a non-discriminatory basis. As stated in the answer to question 6.1 above, TSOs have mandatorily provided a model connection agreement within their Codes.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

The TSO is obliged to cooperate with the other system operators and to provide support and all necessary information to the independent system operator. In its 10-year plan for the transportation system's development, the TSO must define and achieve its aims towards the procurement of the new interconnections with the neighbouring countries.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

As stated above, the TSO must enable third-party non-discriminatory access to the grid. The Codes and EA provide the instances in which the TSO may reject third-party access to the system in certain justified cases, such as: (i) a lack of system capacity; (ii) if such access would prevent the successful execution of the obligations for the security of supply; and (iii) in case of serious economic and financial hurdles incurred due to the "take or pay" obligations. The TSO is obliged to offer all available quantities up to a level which does not jeopardise the operation of the system. Although obliged by the EA, the Codes do not provide the obligatory offering of the unused capacities on the primary market at least on a day-ahead and interruptible capacity basis. The Codes and EA do not regulate the mandatory expansion of the system and capacities in case it is required by a third party seeking access.

Third-party access to the oil transmission grid, operated by Transnafta, is subject to the same principles of transparency and non-discrimination. Besides a lack of capacity, Transnafta may reject the third-party access due to the following reasons: (i) operational disturbances or if the system is overloaded; (ii) endangered security of the system; (iii) inappropriate quality of the oil and oil derivatives of the third party seeking access; and (iv) other reasons determined in Transnafta's Code (the Code does not provide any specific grounds for rejection, and it is based on the non-discriminatory principle as well).

Due to the failure of SSO Banatski Dvor to adopt its storage code, third-party access is currently unregulated, which is against the EA. Despite this, Banatski Dvor would have to uphold the basic principles of third-party access to the grid prescribed by the EA (e.g. principle of non-discrimination).

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

As stated above, the TSO must enable third-party non-discriminatory access to the grid. The Codes and EA provide the instances in which the TSO may reject third-party access to the system in certain justified cases, such as: (i) a lack of system capacity; (ii) if such access would prevent the successful execution of the obligations for the security of supply; and (iii) in case of serious economic and financial hurdles incurred due to the "take or pay" obligations. The TSO is obliged to offer all available quantities up to a level which does not jeopardise the operation of the system. Although obliged by the EA, the Codes do not provide the obligatory offering of the unused capacities on the primary market at least on a day-ahead and interruptible capacity basis. The Codes and EA do not regulate the mandatory expansion of the system and capacities in case it is required by a third party seeking access.

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Due to the failure of SSO Banatski Dvor to adopt its storage code, third-party access is currently unregulated, which is against the EA. Despite this, Banatski Dvor would have to uphold the basic principles of third-party access to the grid prescribed by the EA (e.g. the principle of non-discrimination).

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

Gas transmission and distribution are regulated energy activities and are considered as public interest activities. Srbijagas was partially unbundled in June 2015, as analysed in question 1.1. According to the licence registry of AERS, currently there are 32 companies (including Srbijagas and Yugorosgaz) licensed as DSOs with another licensed company who has not yet begun activity. Pursuant to the last available information published by AERS in its Annual Progress Report for 2018 [http://www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202018.pdf], the licensed DSOs are not subject to the unbundling requirements and they can be also engaged in supply activities, either on the regulated or market terms, given that they have less than 100,000 customers.

Transmission and distribution networks are subject to regulated third-party access (please see questions 6.1 and 6.6). The EA allows for the private ownership of the distribution and transmission networks, but it fails to regulate it specifically enough. The EA has established ownership of Srbijagas over the existing distribution and transportation networks in the market.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Pursuant to the EA, distribution networks may, in principle, be either in the public ownership, in the ownership of a DSO incorporated by the state, a company which is the subsidiary of a state-owned company, or in private ownership. As stated, Srbijagas is the owner of the distribution and transportation network that used to be in state ownership before the adoption of the EA in December 2014, and such ownership right cannot be alienated. Distribution of natural gas and operation of distribution networks is considered a general interest activity under the EA. A distribution network may thus be operated through a concession agreement granted pursuant to the PPP Act.

7.3 How is access to the natural gas distribution network organised?

As is the case with the third-party access to the transportation and storage networks, access to the distribution network is secured by the EA on the basis of non-discrimination, as further regulated by the relevant operators' codes (please see questions 3.13 and 6.6).

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Access to the distribution system may be rejected on the grounds specified under the EA, such as a lack of capacity (please see question 6.6). Rejection on any other grounds may be disputed, upon which, presumably, AERS may order the DSO to grant capacities, provided that all requirements are satisfied. The EA does not regulate instances of expansion of the distributor's capacities in order to accommodate new customers.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Yes, the fees for access to the distribution system are regulated under the EA. Pursuant to the methodology adopted by AERS, the prices are determined by the DSOs and finally approved by AERS.

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Pursuant to the EA, the distribution of natural gas may be performed by a private entity. However, the EA has established the ownership right of Srbijagas over the existing distribution and the transportation networks.

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Serbia has implemented the entry-exit tariff model as of 1 January 2015. Currently, there is no commodity exchange or any gas hubs.

8.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

We are not aware of any restrictions to the types of commodities that can be traded with.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Currently, no LNG facilities exist in Serbia. With regards to the planned construction of LNG facilities, please refer to question 1.1.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

The LNG facilities' construction would be subject to a standard construction procedure set out under the SPC Act – acquiring of the location conditions, building permit and use permit. Additionally, certain LNG-related facilities (e.g. liquefaction and regasification plants) may be subject to the special environmental protection licences (EIA, SEA, IPPC permit and potentially a Seveso II approval).

9.3 Is there any regulation of the price or terms of service in the LNG sector?

Under the current legal framework, there are no defined prices or terms of services in the LNG sector.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

Third-party access related to LNG facilities is not regulated under the current legal framework.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

The downstream oil sector falls within the competencies of the Ministry, although there is no specific legal framework for oil trading at the downstream level. Oil trading is carried out pursuant to the market terms. The major oil market player is NIS, who also owns and operates the two biggest oil refineries in Serbia.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

Oil trading is not a regulated energy activity under the EA, nor is it a public interest activity that is subject to a concession procedure under the PPP Act. Other than prices for access to the pipeline and product pipeline transport networks, oil prices, i.e. oil trading prices, are not regulated. Therefore, oil trading is performed on a contractual basis. The Directorate for Energy Reserves, as an administrative body under the Ministry, was partially established in 2015. Pursuant to the Marking Decree, all oils and oils' derivatives produced within or imported to Serbia must be marked, in accordance with the procedure and requirements set therein and the relevant Guideline, before being placed on the market.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

On the administrative level, AERS is the competent authority for monitoring and control of all energy activities. However, the competencies of the Commission for Protection of Competition (CC) remain unaffected with regards to the antitrust practices in the market.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The regulator must take into consideration the Serbian Act on Protection of Competition [*Zakon o zaštiti konkurencije*, (Official

Gazette of RS nos 51/2009 and 95/2013)] and the EA, as well as other applicable energy-related regulations.

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

CC can initiate the investigation upon receipt of a complaint or *ex officio*. It is entitled to receive any information and documents required for investigation, from market players, state authorities and organisations, who are obliged to cooperate.

Upon completion of the proceedings, the CC may order behavioural or structural measures, conditionally approve an investigated agreement or practice, preclude it or prohibit the abuse of a dominant power position. CC may impose a fine in the amount of 10% of the total annual turnover of the relevant parties achieved within the territory of Serbia in the preceding year.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The Serbian merger control regime regulates and monitors the concentration in the form of merger of the independent undertakings, acquisition of control and formation of a full-functioning joint venture.

A transaction has to be notified if either of the following thresholds is met:

(i) the aggregate worldwide turnover of all the undertakings concerned in the year preceding the concentration is above EUR 100 million, provided that at least one of the undertakings concerned achieved a turnover in Serbia of above EUR 10 million; or

(ii) the aggregate turnover in Serbia of at least two undertakings concerned is above EUR 20 million in the year preceding the concentration, and each of at least two of the undertakings concerned achieved a turnover in Serbia above EUR 1 million in the same period.

The CC is obliged to decide within one month from the receipt of a complete merger notification whether to clear the transaction in summary proceedings or to initiate investigation proceedings. Should the CC decide to open investigation proceedings, it has to ultimately decide whether to (unconditionally or conditionally) clear or prohibit the transaction within four months from the date of initiating investigative proceedings.

In certain cases, CC may allow for remedies proposed by the undertakings within the proceedings if it is of the view that such measures are sufficient, and as a result of such, the concentration will not restrict, distort or prevent competition.

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

As stated in the answer to question 7.2 above, the distribution and transportation network of natural gas may be in private ownership, but existing networks are in the ownership of Srbijagas and such ownership right cannot be alienated, pursuant to the EA. The system operator (regardless of whether it is domestic or foreign), in principle, may acquire the ownership rights over the facilities of the gas network that it has constructed from its own funds, acquired in the business transaction or by incorporation or capital increase.

Pursuant to the Serbian Act on the Investments, the foreign investor is entitled to exactly the same regime, rights and obligations as those applicable to the domestic investors. The MGEA explicitly provides that geological explorations can be conducted by the foreign legal entities in line with that Act and the Serbian Act on Investments and in accordance with the laws governing the area of defence and confidentiality principles.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

The regulatory policy in respect of the oil and natural gas sectors in Serbia is particularly influenced by the Treaty on Establishing the Energy Community 2005 (ratified by Serbia in July 2006) (EC Treaty). The EC Treaty sets the obligations and targets to parties in order of compliance with the *acquis communautaire* and creation of the integrated energy market, allowing for cross-border trades and integration with EU markets.

Also, Serbian regulatory policy is led by the Treaty on Stabilisation and Association to the EU (TSA), which entered into force on 1 September 2013. One of the main obligations undertaken by Serbia under the TSA is the transposition of the EU legislative and regulatory framework into domestic law.

Pursuant to the EC Treaty and TSA, Serbia has harmonised its oil and natural gas legislation with, *inter alia*, the oil-related EU directives and the Third Energy Package. Also, the respective regulatory policy is governed by the inter-governmental treaties entered into by the Serbian Government (e.g. the above-mentioned agreements with the Russian Federation).

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

There are no compulsory dispute resolution procedures prescribed by the applicable legal acts. The parties are, in principle, entitled to negotiate and agree on the dispute resolution mechanisms under their agreements. Notably, the model agreements under the Codes provide for dispute resolution before the competent local court. Presumably, the foreign investor may request arbitration, as the dispute resolution forum, under their agreements with the system operators. Pursuant to the PPP Act, the parties may agree on domestic or foreign arbitration in the concession agreement, whereby the foreign arbitration may be contractually agreed only if a private partner, or its direct or indirect shareholder, is a foreign legal entity or individual, i.e.

in case of consortium, if at least one member of a consortium or its direct or indirect shareholder is a foreign legal entity or individual.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Yes, 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 have been duly ratified into Serbian legislation on 12 March 2001 and on 9 May 2007, respectively.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Generally, there is no special difficulty in litigating or seeking to enforce judgments or awards against Government authorities. However, due to the general administrative hurdles in Serbian judicial practice and rather lengthy processes, the companies often try to resolve the dispute amicably and without seeking judicial remedy.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

We are aware of numerous successful commercial litigation and administrative dispute cases resolved in favour of energy companies before the local courts.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

Serbia has not resolved the major non-compliance issue that constitutes a persistent and serious breach of its Energy Community Treaty obligations, i.e. the unbundling of Srbijagas and certification of Yugorosgaz in line with the Second and the Third Energy Package. There is, therefore, a wide gap between transposition and implementation of the Energy Community acquis. For this reason, the European Council has opened Case ECS-9/13 against Serbia.

In January 2018, AERS has notified CC on numerous complaints received by the gas suppliers, alleging that Srbijagas has acted contrary to EA and restricted access to the transport system of Srbijagas at the access point "Horgoš". This access point is located at the border between Serbia and Hungary and is the only access point for natural gas import to Serbia. To date, CC has not initiated a relevant investigation.

Gastrans d.o.o. Novi Sad, a company owned by South Stream Serbia AG, Switzerland (which is jointly held by Gazprom (51%) and Srbijagas (49%)), intends to develop a pipeline for transmission of natural gas on the territory of Serbiaion points in Bulgaria and Hungary. In 2018, Gastrans published an invitation for submission of binding bids for contracting of long-term transmission of natural gas in this pipeline. Further, Gastrans has submitted to AERS a request for exemption from the third-party access rules (general transportation terms and application of the regulated access prices) on the entire natural gas pipeline on the territory of Serbia, which was granted by AERS in March 2019.

No significant developments in the oil market have occurred in the past term.

14.2 Please provide a brief comment on the impact (if any) of the "energy transition" on the oil and gas industry in your jurisdiction.

The energy transition has not had any remarkable impact on the Serbian oil and gas industry. The conventional energy sources remain dominant in this field. A slight impact has, however, been seen in transportation in terms of a notable increase in the use of electric vehicles across the country. The Serbian authorities have not yet adopted any incentive schemes for the use of electric vehicles. Despite that, the authorities have seemed to acknowledge the trend of increased electric vehicle usage and supported this through an increase in charging stations throughout the country. Currently, there are around 30 installed charging stations in the cities and around 10 on the Serbian high-ways. In 2018, there were approximately 170 electric vehicles and 250 hybrid vehicles registered.

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