ICLG

The International Comparative Legal Guide to:

Oil & Gas Regulation 2017

12th Edition

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

Published by Global Legal Group, in association with Ashurst LLP, with contributions from:

Advokatfirmaet Simonsen Vogt Wiig AS
Ashurst LLP
Blake, Cassels & Graydon LLP
Bloomfield Law Practice
Bowmans
CMS Bulgaria
Cogan & Partners LLP
Estudio Randle
Gjika & Associates Attorneys at Law
Iranpour & Associates
Jeantet
Josh and Mak International
Koep & Partners
Miranda & Associados, Sociedade de Advogados R.L.
Mohamed Ridza & Co.
Moravčević, Vojnović and Partners
Noerr
Pachiu & Associates
Project Lawyers
Rodríguez Dávalos Abogados (Consultores en Energía RDA, S.C.)
Rolim, Viotti & Leite Campos Advogados
Schoenherr
SSEK Legal Consultants
Türkoğlu & Çelepçi
Ughi e Nunziante – Studio Legale
Windahl Sandroos & Co.

glg
global legal group

global legal group

Contributing Editors
Geoffrey Picton-Turbervill & Julia Derrick, Ashurst LLP

Sales Director
Florjan Osmani

Account Directors
Oliver Smith, Rory Smith

Sales Support Manager
Paul Mochalski

Editor
Sam Friend

Senior Editor
Rachel Williams

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George Print Group
December 2016

ISBN 978-1-911367-30-7
ISSN 2051-3348

Strategic Partners

PEFC Certified
This product is from sustainably managed forests and controlled sources
PEFC
PEFC/16-33-254
www.pefc.org

General Chapters:

Country Question and Answer Chapters:

Romania

Laurentiu Pachiu

Pachiu & Associates

Raluca Mustaciosu

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.

Romania has the largest natural gas market in Central Europe and was the first country in the world to use natural gas for industrial purposes.

In 2015, Romania's natural gas reserves were estimated by BP at 100 billion cubic metres (bcm). According to the data provided by the National Agency for Mineral Resources (ANRM), at the current yearly depletion rate of 5 per cent, in conjunction with an 80 per cent replacement rate of natural gas reserves and considering the average annual production of natural gas in Romania (10.3 bcm), without new field development, Romania is deemed to have another 14 years' worth of conventional production.

According to the US Energy Information Administration (2013), Romania has 1,610 billion cubic metres of technically recoverable shale gas resources. The U.S. company, Chevron Romania Holdings B.V., recently completed one shale gas exploration drill, but later decided to abandon the operations in Romania due to difficult market circumstances.

Detailed official information on gas reserves is classified.

Romania's natural gas production in 2015 was 11.3 bcm, up to 0.7 per cent compared to the previous year, which ranks it first as a gas producer in Central and Eastern Europe (CEE). The main gas producers are Romgaz and OMV Petrom, which together covered 94.64 per cent of domestic gas production in 2015.

According to the Romanian Energy Regulatory Authority (ANRE), in 2015, natural gas consumption amounted to 11.6 bcm, declining by 4.61 per cent compared to the previous year, amid a slight decrease in the consumption of end customers.

Romania has a unique position in the region through limited dependence on external sources of natural gas. Although import is considered a necessity due to the reduced flexibility of domestic gas production, combined with relatively large variations in seasonal consumption of natural gas, in 2015, natural gas imports declined by 74.23 per cent, compared to the previous year, thus amounting to 206 million m^3.

In terms of prospective new gas field developments, the Black Sea offshore is a promising area, especially in the deep-water sector, with production likely to commence in 2019.

The current physically available natural gas export capacity is limited to the point of interconnection with Hungary (Csanédpalota) and the point of interconnection with Moldova (Iasi-Ungheni). Although the Iasi (Romania)-Ungheni (Moldova) Interconnector was completed at the end of June 2014, exports were delayed due to technical and commercial reasons. The Szeged (Hungary)-Arad (Romania) Interconnector, commissioned in 2010, has operated only in the west-to-east sense, at 1.7 bcm out of its 4.4 bcm/year capacity. As of 1 January 2014, small volumes of gas can be transported in reverse flow from Arad (RO) to Szeged (HU).

Romania's interconnection capacity with neighbouring States will improve once the Giurgiu-Ruse interconnection pipeline becomes fully operational. Although the interconnector was expected to be completed by the end of 2014, the gas transmission operators Bulgartransgas and Transgas have completed the construction of the interconnection pipeline Bulgaria-Romania only in November 2016. The interconnector Bulgaria-Romania has a total length of 25 km, of which 15.4 km is on Bulgarian territory, 7.5 km on Romanian territory and a 2.1 km underwater pipeline under the Danube. This pipeline project is part of the Bulgaria-Romania-Hungary-Austria interconnector (BRUA), which will connect natural gas networks in four countries, will provide connection to the Southern Corridor and will collect natural gas from the Romanian Black Sea continental shelf. The Romanian part of BRUA shall be partly financed as an EU Project of Common Interest (PCI).

In 2016, the natural gas TSO, Transgaz, offered for bid natural gas transport capacity on one of the three transit pipelines which used to be reserved by Gazprom for gas shipments to Bulgaria.

Romania's natural gas interconnections with the transport systems of neighbouring countries have significantly improved in recent years. A major technical hurdle that Bucharest must deal with, in order to fulfil its reverse-flow obligations, is related to the lower pressure in the Romanian gas transport system. Exports will demand a sizeable compression capacity to be implemented next to the exit points. Recent developments indicate that the Romanian authorities are considering several solutions to mitigate this issue. In the context of the efforts made at European level, to strengthen regional energy security, during the Eastern Partnership Summit held in Riga on 22 May 2015, Romania, Bulgaria, Hungary and Slovakia signed an agreement to interconnect their natural gas transmission networks to allow mutual natural gas transit.

Moreover, in April 2015, Transgaz concluded a memorandum of understanding with the natural gas carrier from Ukraine, Ukrtransgaz, aiming at identifying the technical solutions for reversing the flow of natural gas, to ensure the export of an estimated amount between one and two billion cubic metres of gas per year from Romania to Ukraine.

Romania has no LNG import or export facilities. The possibility of developing such facilities lies in the Azerbaijan-Georgia-Romania Interconnector (AGRI) project, which involves the construction of two terminals for liquefaction (on the Georgian coast of the Black Sea) and regasification (on the Romanian coast of the Black Sea). Although on a standstill for several years, the Romanian Government intends to revive the project. However, the chances of the AGRI project being implemented are low, at least for the near future.

The number of participants in the gas market in Romania has grown steadily as it has been liberalised, so that in 2015, it comprised a National Transmission System Operator – Transgaz Medias; six providers (Romgaz, OMV Petrom, Amromco Energy, Raffles Energy, Foraj Sonde and Stratum Energy); six foreign suppliers that bring natural gas from foreign sources to Romania (Wintershall, Axpo – Switzerland; GDF Suez, Imex Oil, Mol Zrt si Wiee – Hungary), two storage operators (Romgaz and Depomureş); 40 distribution operators (the largest being Distrigaz Sud Retele and E.ON Gas Distributie); 39 suppliers operating in the regulated natural gas market and 76 suppliers operating in the competitive natural gas market.

Gas transport activity is considered a service of national public interest and a strategic operation. At present, the transport system operator is the State-controlled company Transgaz, which operates the National Transportation System (NTS). Legislative amendments enforced in recent years allow for private undertakings to become gas transport system developers and operators, subject to obtaining an operation licence.

Underground storage capacity of natural gas has been constantly developed. Out of the seven storage facilities installed in depleted reservoirs, six are operated by Romgaz, while the Tragu Mures facility is owned by GDF SUEZ (the majority shareholder) and Romgaz.

The gas distribution activity in Romania is of public general interest and is subject to concessions.

Imports of gas from Russia are made by private middleman companies, such as Wintershall or Imex Oil. Among the main natural gas traders on the domestic market, OMV Petrom Gas has the biggest market share (24.92 per cent), followed by Interagro Zimnicea (15.26 per cent) and State-owned Romgaz (23.52 per cent).

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

According to the National Institute of Statistics (INS 2016), the structure of the primary energy resources in Romania, in 2015, was the following: coal – 29 per cent; crude oil – 11.7 per cent; usable natural gas – 11.4 per cent; electric power – 44.8 per cent; and imported oil products – 2.9 per cent.

Currently, the country has no installed LNG capacity.

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

In 2015, Romania's natural gas consumption was 11.6 bcm, and Romania produced 11.3 bcm (according to the ANRE annual report for 2015).

By May 2015, Romania's energy requirements for natural gas were fully met by the domestic production of natural gas (extracted either from producing fields or from underground storage facilities). Although consumption in Romania decreased from year to year, domestic production fails to fill the current demand. The required quantities of natural gas from other sources (other than domestic production) and those stored in the cycles of injection, being covered by means of imports from Russia via nine importers. During 2015, the quantity of natural gas imported amounted to 206 million m^3.

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

The first natural gas delivery to the Republic of Moldova took place in March 2015, through the Iasi-Ungheni interconnector. Currently, the pipeline provides 1 per cent of Moldova's total natural gas demand.

The development of the export capacity at the Hungary-Romania interconnection point, to a capacity of 1.75 bcm/year, at a pressure of 40 bar, is estimated to be completed in 2019. In the past (2013), minor quantities of virtual exports took place through back-haul procedures from Romania to Hungary.

With improving interconnectivity, moderate gas exports – about 1 bcm/year – will likely be possible by 2020. The flipside is that, thanks to reverse-flow capacity, by 2020 Romanian consumers will also be able to import natural gas from new regional sources:

- the Southern Gas Corridor (via the Greece-Bulgaria and the Bulgaria-Romania interconnections, which are works in progress);
- the Adria LNG terminal on Croatia's Krk island and the Croatia-Hungary and Hungary-Romania links; and
- the EU-supported North-South corridor, planned to connect the LNG terminals of Croatia and Poland.

Currently, the country has no installed LNG capacity.

2 Overview of Oil Sector

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

Since 1990, Romania's oil sector has undergone several changes, including the privatisation of its largest oil and gas company, Petrom. This has not diminished the oil sector's importance to the Romanian economy.

Romania's oil reserves are limited, given that the discoveries of the past 30 years can be categorised as modest, except for some recent indications coming from the shallow waters of the Black Sea.

Romania's oil reserves were estimated by BP at 100 million tonnes in 2015. According to the data provided by the ANRM, at the current yearly depletion rate of 5 per cent, in conjunction with a 5 per cent replacement rate of crude oil and condensate reserves, and considering the average annual production of oil in Romania (4 million tonnes), without new field development, Romania is deemed to have another 23 years' worth of oil production.

Nevertheless, detailed official information on oil reserves is classified.

Although Romania's oil production is experiencing a natural decline, due to depletion of reservoirs, since 2012, the oil production was stabilised at 4 million tonnes. Thus, Romania remains the fourth-largest oil producing country in the European Union and the fifth-largest in Europe, domestic oil production amounting to a quota of 2 per cent of production in Europe and 6 per cent in the EU. Romania imports about 60 per cent of its crude oil supply, most of it from Russia and the Caspian Basin. In 2015, oil imports amounted to 7.150 million tonnes of oil equivalent (up 6.3 per cent compared to 2014).

Romania has, theoretically, the largest installed capacity of refineries in Central and Eastern Europe. The country's main refineries have a high complexity index.

Regarding the refining capacity, out of the country's 11 workable refineries, only three are presently in operation: OMV Petrom's Petrobrazi, where the entire domestic oil production is processed; KazMunayGas's Petromidia; and Lukoil's Petrotel, totalling 9 million tonnes of oil per year. They have utilisation rates totalling more than 60 per cent. Romania refines its entire oil production and imports. It does not export crude oil, but only oil products.

The national oil transportation system (Oil SNT) is managed by Conpet, whose majority shareholder is the Ministry of Economy. Conpet has about 3,800 km of pipelines and a total transportation capacity of 27.5 million tonnes per year. The rate of utilisation has suffered a decline from 28.8 per cent in 2009 to 21.6 per cent in 2014, following Rompetrol's construction of its own marine terminal in the Black Sea.

The Romanian Oil SNT is a public asset of strategic importance and Conpet has a monopoly over it.

Oil Terminal S.A. Constanta owns one of Europe's largest oil terminals in CEE, with a capacity of 24 million tonnes/year.

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

Crude oil and petroleum products account for around 26 per cent of Romania's gross energy consumption.

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

In 2015, Romania's oil consumption was 9.1 million tonnes, out of which Romania produced 4 million tonnes (BP 2016 report). The difference was covered by imports.

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

There are no crude oil exports from Romania. Crude oil is refined domestically and only oil products (especially gasoline) are exported.

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.

The main Romanian legal act that regulates activities related to the upstream sector (oil and gas) is Law 238 of 7 June 2004, published in the Official Gazette of Romania No. 535 of 15 June 2004, as further amended (Petroleum Law) and Government Resolution 2075 of 24 November 2004, approving the implementation rules of the Petroleum Law. These reflect the implementation of Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons. In the Petroleum Law, *petroleum* refers both to oil and natural gas.

The competent authority responsible in the oil sector is the ANRM (as defined under question 1.1 above), organised as a specialised body of the central public administration, with legal personality, subordinated to the Government.

The ANRM is mainly responsible for: (i) managing the petroleum resources of the State; (ii) concluding petroleum agreements in the name of the Romanian State; (iii) supervising and verifying the petroleum production in order to compute the royalties due by the title holders of petroleum agreements; (iv) monitoring the implementation of the measures set to protect the areas affected by petroleum operations; and (v) regulating underground storage operations of hydrocarbons, petroleum terminals and the national pipeline system.

The main piece of legislation regulating the gas sector (production, transport, distribution and supply) is the Electricity and Natural Gas Law 123 of 10 July 2012.

According to the Romanian Constitution and secondary legislation, all natural gas reserves are exclusive property of the Romanian State and their development is granted to private investors by means of concessions, following public bid call procedures. 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 licences and authorisations, including those required for the production of natural gas), drafting of technical requirements related to natural gas production and supply activities or the organisation, co-ordination and supervision of the natural gas market.

The construction of new upstream gas supply pipelines and gas transmission, storage and distribution systems, by Romanian or foreign legal entities, further require establishment permits issued by the ANRE.

The performance of natural gas supply activities (including biogas/bio methane, LNG, LPG, CNG/CNGV), and storage of natural gas, operation of the gas upstream supply pipelines (related to the production, transmission and distribution systems) and of the LNG terminals, as well as the management of the natural gas centralised markets, require licences issued by the ANRE.

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?

Considering that oil and natural gas represent State-owned mineral resources (*in situ*), the rights related to the development of such resources are transferred to Romanian or foreign legal entities following public tendering procedures, by means of establishing a concession right of the investor over the State-owned resource. The concession right in each exploration and/or exploitation block (perimeter) is granted based on a contract, called a "petroleum agreement" (Rom.: "*acord petrolier*"). Such contract has standard provisions, being part of the tendering documentation, and is concluded between the ANRM, 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 such activities, and who are designated as successful bidders during the public tendering.

The object of the petroleum agreement includes both the right and obligation on behalf of the title holder to perform the exploration and/or exploitation and production activities within the area comprised in each block (perimeter). The investor can sell the production and has the obligation to pay to the State budget an annual production revenue (royalty).

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).

Depending on the rights to be granted to the investors, the following types of petroleum agreements may be concluded for the development of oil and natural gas resources: (i) petroleum agreements for exploration/development/production; (ii) petroleum agreements for development/production; and (iii) petroleum agreements for production.

The right to perform exploration and/or production operations is granted by the ANRM under the petroleum agreement. The commencement of petroleum operations must be approved in writing by the ANRM. The authorisation on the commencement of relevant operations is issued once the title holder proves that it holds additional permits, authorisations and endorsements required from several national and local authorities, such as the ANRE or the Environmental Agency.

The right to perform exploration operations only may be granted through a separate prospecting permit. This permit is issued by the ANRM for a three-year period, without extension, and is non-exclusive. It can be simultaneously granted to several applicants to conduct exploration operations in a defined petroleum block (perimeter).

The title holders of petroleum agreements also have the obligation to perform a minimum exploration programme, expressly provided for under the petroleum agreement.

About the terms of each type of petroleum agreement, these are mainly established by law and are negotiable only to a limited extent. Petroleum agreements for the concession of development and/or production of oil and natural gas reserves are concluded for a maximum period of thirty (30) years, with a potential extension of up to fifteen (15) years.

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)?

According to the Romanian Constitution and the Petroleum Law, the State has the ownership right of all oil and natural gas reserves (*in situ*) located within Romania's territory. Therefore, the State's rights in this regard are a matter of law. There is no legal prohibition for the State to develop activities in the field of exploration and production of oil and natural gas. Such activities are currently performed by the national company owned by the State, Romgaz SA – in the natural gas sector, or through companies where the State is a shareholder, such as OMV Petrom SA – in the oil and gas sector.

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

The State has the right to collect royalties from oil and natural gas development. In case of oil production activities, the royalty level varies between 3.5 per cent and 13.5 per cent, calculated from the gross production extracted at the surface of each well. The level of royalty is therefore influenced by the production capacity of each oil reservoir. The same is applicable in respect of natural gas production activities. The maximum natural gas royalty is 13 per cent.

The State collects a 10 per cent royalty calculated in respect of the gross income obtained from oil transportation and transit activities (through the national oil transportation systems) and of petroleum operations (through oil terminals under the public property of the State), as well as a 3 per cent royalty calculated from the gross income obtained from natural gas underground storage activity.

Following the enactment of Law 127/2014 on the amendment and supplementation of the Electricity and Natural Gas Law and of the Petroleum Law (hereinafter *Law 127/2014*), an important amendment to the royalty system has been implemented as of October 2014. Thus, the gross income obtained from oil transportation activities (performed through transportation systems, other than the Oil SNT), as well as the gross income obtained from petroleum operations performed through oil terminals (other than those under the public property of the State), is also subject to royalty payments. The rate is due to be approved by means of a Government resolution.

In addition to royalties, gas producing companies owe the Romanian State a windfall tax of 60 per cent which applies, as of February 2013, to their extraordinary revenues resultant from gradual price deregulation. The tax shall apply until 31 December 2016.

Moreover, as of January 2014, the special constructions tax (known as "pillars tax"), computed by applying 1 per cent to the gross accounting value of all buildings owned by companies that are not otherwise subject to building tax in Romania, has been levied by the Romanian Government. According to the provisions of the new Fiscal Code, the "pillars tax" will be gradually eliminated by 1 January 2017.

In the same regard, the decrease of the VAT from 24 per cent to 20 per cent at the beginning of 2016, had a further positive impact on the companies developing oil and gas projects in Romania. Starting with January 2017, the VAT will be decreased to 19 per cent.

3.6 Are there any restrictions on the export of production?

The right to export the oil and natural gas production obtained by a title holder of a petroleum agreement is expressly provided by the Petroleum Law.

However, there are technical restrictions in this regard, considering that the existing interconnection capacities of Romania have basically only one way of interconnection, allowing, for now, mostly the import of natural gas.

It should be noted that the gas infrastructure interconnectivity of the country has recently undergone significant progress (please see the answer to question 1.1 above), so that Romania has the prospect of becoming a net natural gas exporter by 2020.

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

There are no special legal provisions on currency exchange restrictions or restrictions on the transfer of funds derived from the production of oil and natural gas.

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

Irrespective of the type of natural resources (oil or gas), the holder of a petroleum agreement may transfer its rights and obligations pertaining to a petroleum agreement only with the prior written approval of the

ANRM. Absent the prior written approval of the ANRM, any transfer of rights or interests shall be null and void.

The ANRM will grant its approval for the transfer of such rights, if the petroleum agreement holder has the required technical and financial capacity to perform petroleum operations in compliance with the terms set forth by the petroleum agreement.

As a general principle, the title holder is entitled to dispose freely of the entire production of natural gas and oil.

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

Each participant to the public bid call for concluding a petroleum agreement must include in the participation offer a bank letter of good standing, indicating its solvency and global liquidity levels, gross profit margin and financial profitability.

The petroleum agreement further contains a chapter entirely concerning environmental protection and risk management. This chapter explicitly stipulates that petroleum operations are strictly confined to the areas designated by the ANRM and the competent authority for environmental protection.

In the same regard, the petroleum agreement provides for measures to reduce the environmental impact of oil and natural gas development and to repair the damage incurred.

Moreover, the recent adopted Law 165/2016 on the safety of offshore oil operations (implementing EU Safety of Offshore Oil and Gas Operations Directive 2013/30/EU), which entered into force in July 2016, regulates the minimum requirements necessary to prevent major offshore accidents and limit their consequences. Therefore, when assessing the technical and financial capacity of a participant to the public bid call for concluding a petroleum agreement, evaluation criteria are set forth, such as the cost of degradation of maritime environment, financial guarantee for covering the liability for damage which may result from oil offshore operations, including the liability for potential economic damage.

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?

In accordance with the Romanian Civil Code, the right to develop natural gas reserves may be pledged for security, and under the Romanian accountancy norms, the rights to develop oil and natural gas may be booked as fixed assets under the heading "concessions, patents and other similar rights and assets".

The execution and enforcement of a pledge agreement on the right to develop oil and natural gas reserves would, however, require the prior approval of the ANRM.

Notwithstanding the above, at present, minimum stocks of crude oil and/or petroleum products maintained in accordance with mandatory legal provisions may not be used as collateral. The European Commission formally requested Romania to ensure the correct implementation and application of the Council Directive 2009/119/ (EC Oil Stocks Directive), by eliminating, among others, the restriction of using minimum stocks of crude oil and/or petroleum products as collateral.

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?

The executed version of the petroleum agreement is to be endorsed by seven different Ministries and then approved by the Government. In addition, specific authorisations and licences must be obtained from the ANRM and the ANRE, and a series of several other approvals and authorisations to be issued either at national level and/or at county and/or local level are necessary in order to start the activities and related operations. For example, the establishment and operation of upstream supply pipelines related to natural gas production may be performed only after the ANRE issues the required permit and licence.

Apart from some standard endorsements required for performing activities in this industry, the type and necessity of approvals and authorisations may further depend on several aspects, such as the location of the perimeter (onshore or offshore), the specifics of the neighbourhood areas (such as a natural reservation or a protected area), or the technology to be used. The building permit, environmental approval and authorisations related to personnel or occupational health and safety are, of course, part of the generally required endorsements.

From an environmental point of view, for the exploration phase, the environment protection authority (EPA) decides, on a case-by-case basis, whether an environmental impact assessment (EIA) is required and if the activities are likely to have significant environmental effects.

Regarding the production phase, exploitation works can only begin after the environmental agreement has been obtained and providing the necessary conditions for the capture of petroleum, disposal of waste water and, if necessary, flaring of the associated gas have been fulfilled.

Thus, an EIA is mandatory for the extraction of petroleum and natural gas for commercial purposes where the amount extracted is a minimum of 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of natural gas. Moreover, the EIA is required by law in the case of pipelines with a diameter of more than 80 cm and a length of more than 40 km for the transport of gas, oil and chemicals.

For other projects, the Environmental Protection Authority (ANPM) must decide on the basis of established thresholds/criteria, or on a case-by-case examination, whether an EIA is required.

In addition, a population health impact assessment is mandatory for any activity which is subject to the EIA.

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?

The Petroleum Law establishes the necessity of drafting, by the licence holder, an abandonment plan in respect of the physical structures used in the production of petroleum, consisting of complex technical, economic, social and environmental documentation, justifying the closing of the petroleum well and providing for the necessary actions to ensure the financing and the effective fulfilment of the measures for cessation of activity.

The abandonment plan shall be endorsed by the ANRM. The production rights may be abandoned only if all the necessary measures to protect the reserves, land and environment are taken. The procedure for the abandonment of a petroleum well is provided in the standard technical instructions regarding the approval of the abandonment of petroleum wells, adopted by the ANRM.

The above-mentioned provisions are similar for both oil and natural gas developments.

Title holders are financially liable until the reparation of all environmental factors that were affected by the petroleum operations is completed, in accordance with the reclamation plan, as approved by the National Environmental Protection Authority ("ANPM").

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

Gas storage activity is regulated under the Electricity and Natural Gas Law. Together with gas transportation, distribution and transit activities, gas storage falls under the regulated segment of the natural gas market. The scope of performing gas storage activities is to ensure security of supply for end-customers, to harmonise the seasonal, daily and hourly fluctuations in consumption of available gas sources and to ensure the permanent physical balance of the national transportation system.

In order to perform gas storage activities, any legal entity, domestic or foreign, has to be duly licensed by the ANRE. All technical installations used in gas storage activities have to be approved in advance by the ANRE and other relevant authorities. The gas storage activity is subject to a regulated tariff established by the ANRE. As a rule, any gas producer, supplier, transporter, eligible consumer or foreign entity that benefits from gas transit, is entitled to use the gas storage facilities located in Romania. However, the gas storage operator is entitled to refuse access to the gas storage facility for a legitimate reason.

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 not limited in Romania. Such activities begun in March 2015, when the first natural gas delivery to the Republic of Moldova took place.

At present, Romania does not have any LNG facilities, but is planning one development in the city of Constanta on the Black Sea coast.

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.

Romanian legislation does not provide for specific terms or rules applying in respect to cross-border sales of oil and oil products, other than the ones established at the EU level.

As a rule, the undertakings that want to perform cross-border sales of oil and oil products on EU territory shall obtain an Operator Registration and Identification number ("ORI"). An ORI is a unique number in the European Community, assigned by a Member State customs authority to operators, based on which the latter may perform cross-border sales in the Community territory. The ORI number cannot be assigned between different operators and shall be used for the identification of undertakings in their relations with the customs authorities.

According to Council Regulation 2964/95, any person or undertaking importing crude oil from third countries or receiving a crude oil delivery from another Member State shall be obliged to provide information to the Member State where it is established concerning the characteristics of the imports or deliveries. In Romania, the competent authority to collect such data is the Ministry of Economy. The competent authority will communicate to the European Commission, at regular intervals, the information so collected.

For the performance of the cross-border sale of oil and oil products to a non-EU territory, the undertaking shall have to obtain an export licence.

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).

The natural gas national transmission system ("Gas SNT") and the Oil SNT are the public property of the State.

The transport of oil through the Oil SNT is a service of national public interest and strategic importance, whereas the transport of natural gas is a service of national public interest.

Under Law 127/2014, any entity may own and operate, subject to unbundling requirements, a natural gas transmission system, other than the Gas SNT under the public property of the State. Law 127/2014 also introduced the concept of "petroleum transportation system for natural gas", to differ from the national transportation system (SNT) managed by majority State-owned Transgaz.

At this moment, the only entity holding a Gas SNT licence (concession) is Transgaz, a joint-stock company, where the Romanian State owns 58.5 per cent of its share capital.

In the oil sector, the national oil transportation infrastructure is operated exclusively by Conpet, a State-controlled joint-stock company, the only entity holding an Oil SNT licence.

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?

In order to develop the natural gas and oil national transportation pipelines and the associated infrastructure, such operators would require an urbanism certificate, the approvals of the Ministry of National Defence General Staff and the Romanian Intelligence Service, the environmental authorisation and a building permit, just to name few of the most relevant approvals, in order to proceed with the performance of the infrastructure construction, rehabilitation or modernisation works.

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?

The right to use the land to construct oil transportation pipelines or associated infrastructure will be acquired by the following means:

- purchasing the land and, if applicable, the buildings located on such land, at the price agreed by the seller and buyer;
- 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, in compliance with the parties' agreement;
- leasing the land for a determined period, based on lease agreements;
- concession of land from the State; and
- concluding a partnership agreement between the owner of the land and the title holder of the petroleum agreement.

As for the construction of natural gas transportation pipelines or associated infrastructure, the developer shall benefit from the following rights *in rem* over the lands and other assets in the public or private property of natural persons or legal entities, as well as over the activities conducted by natural persons or legal entities near such infrastructure:

- the right of use for the execution of works required for development of transportation pipelines or associated infrastructure;
- the right of use for ensuring normal operation of the infrastructure by conducting repair, maintenance works and necessary interventions;
- underground, aboveground or aerial right of way for the installation of grids, pipelines, lines or other equipment and for access to their location;
- the right to obtain the restraint or cessation of several activities that might endanger individuals and assets; and
- the right of access to public utilities.

A decision of the Romanian Supreme Court confirmed that, as of October 2011 (the entry into force of the new Civil Code), in exercising the right of use and the right of way mentioned above, the undertaking benefitting from the special rights must pay an allowance to the landlord, as well as an indemnity in case any damage to the property occurs during the performance of construction works. Prior to October 2011, the above rights over the lands (either in private or public property) were exercised free of charge.

Nevertheless, in case the infrastructural work for the development of the oil or natural gas pipelines is declared to be of public interest, the Government and county councils or the Bucharest Municipality and the local councils are entitled to expropriate the necessary land.

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

The operator of the Oil SNT is obliged to ensure access to all applicants considering the available capacity of the system and may refuse to grant access in the following situations:

(i) if there are solid reasons of a technical, operational or safety nature which may affect the system's operational security;

(ii) if the available pipeline capacity is not enough for the requested routes; and/or

(iii) if the oil to be transported does not match the quality specifications.

Third party access to gas transmission systems, both Gas SNT and private gas transmission systems, shall be made under the ANRE-regulated regime. The grounds for refusal to grant access to third parties mentioned at points (i)–(iii) above are also applicable to the gas transmission systems.

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?

At present, the Romanian oil transportation system is not integrated or interconnected with any oil transportation system belonging to a third country.

The Romanian natural gas transport system has interconnection points with neighbouring countries at Mediesul Aurit (Ukraine to Romania), Csanadpalota (Hungary to Romania), Isaccea (Ukraine to Romania) and Ungheni (Romania to Moldova).

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?

Third party access to national oil transportation and associated infrastructure takes place based on a framework agreement. The agreement is concluded between the national transportation system operator and the third party (the shipper) for a determined period, considering a transportation schedule drafted on a yearly basis.

The shipper must provide the oil quantities at a quality level as provided in the annexes to the agreement. In case the oil does not meet the indicated quality, the national transportation system operator is entitled to refuse the shipment. The operator of the national oil transportation system is entitled to refuse the access to the transportation system in case that: (i) there are technical, operational or safety considerations that may affect the operation of the oil national transportation system; (ii) the shipper has not fulfilled the financial obligations assumed with the national transportation system operator in relation with prior shipments; (iii) there is no available capacity in the national transportation system; or (iv) the available capacity is needed to meet certain obligations in relation with the performance of public services by the carrier, as provided by law.

The tariffs for the oil transportation services are regulated by law, and the invoices related to such are issued weekly by the national transportation system operator, based on the quantities effectively delivered.

In the gas sector, the distribution or transport system operator cannot deny the access of third parties to the pipeline.

In case the interconnection or the facility expansion is economically justified, the distribution or transport system operator is obliged to bear the costs for the connection. In the event that the development of the gas transmission network or pipelines is not economically justified for the distribution or transport system operator, the applicant may participate *pro rata* to the financing of the gas transmission network or pipelines. In this situation, the assets of the applicant shall be taken over by the distribution or transport system operator, whereas the applicant is entitled to recover the invested amount, upon commissioning of the gas transmission network or pipelines, from the subsequent beneficiaries connected to such network or pipelines.

The costs associated with the Gas SNT interconnection, capacity reservation and facility expansions are to be paid by the interested third party by means of a "connection fee", as such is to be established under the access approval.

However, the ANRE has the right to compel the licensed transport operator to finance the required works, if such works are economically justified, with a view to grant access to those requesting it, if the transport operator declines access due to insufficient capacity or lack of components of the network to which connection is intended.

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?

The transport of oil and natural gas through the Oil and Gas SNTs is based on framework agreements and cannot be negotiated. The tariff is regulated by the ANRM and the ANRE respectively, on a yearly basis.

7 Gas Transmission / Distribution

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

The gas transmission, storage and distribution services are subject to concessions by the Government to Romanian or foreign legal entities. The distribution of gas is a public service subject to concession for one or several delimited areas – administrative-territorial units. After the award of a concession, for the purposes of operation, the concessionaire must obtain the specific transmission, storage or distribution licence from the ANRE, as well as related permits and authorisations. The licensed operators must assure the continuity of their activity and the access of third parties to the transmission or distribution network, under regulated conditions.

The natural gas distribution operators have the following main obligations: (i) to operate, to maintain and to develop the distribution network under safe conditions, economic efficiency and protect the environment; (ii) to provide the eligible consumers the natural gas quantities as mentioned in the sale-purchase agreements concluded between the eligible consumers and the natural gas suppliers; and (iii) to use the distribution network under equal and non-discriminatory terms and to provide all required information to the other distribution network operators and the competent authority.

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

For the operation of the distribution network, a licence for natural gas distribution is required. Such licence is to be issued by the ANRE. Further, additional permits and authorisations must be obtained in order to operate a distribution network, these being similar to the authorisations required to construct and operate natural gas transportation pipelines.

Among others, for the operation of a distribution network, an environmental authorisation is necessary, to be issued by the competent environmental protection authority. In addition, the use of water resources (underground and surface water) for the purpose of a distribution network is regulated under a particular authorisation (Water Management Authorisation) issued by the Romanian Water Authority.

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

Access to the distribution network represents the right of a producer, supplier and/or end-user to connect to the network. The access conditions to the natural gas distribution network are regulated by the ANRE.

The Electricity and Natural Gas Law provides for the conditions for the distribution operators, aiming to avoid non-discriminatory practices. Natural gas distribution is a national public interest service.

Concessions for natural gas distribution is granted by the Ministry of Economy, with the endorsement of the ANRE, such being exclusive about the delimited areas for which it is granted.

Access to the distribution network of an applicant/user implies the following stages:

- reservation of facilities for an applicant/user; and
- connection to the distribution network.

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

The ANRE may require a distributor to grant capacity or expand its system in order to accommodate new customers.

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

Natural gas distribution is part of the regulated sector of the market. Prices and tariffs are established by the ANRE.

In order to determine the tariffs due to the ANRE, the distribution operators must draft an annual programme of development regarding their natural gas distribution network, and shall request the regulatory authority to endorse the investment programme for each regulated period for which regulated tariffs and prices are established.

The endorsement by the ANRE of the investment programme shall be granted for the purpose of determining costs and corroborating such with the approved tariffs and prices.

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)?

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.

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.

Natural gas trading is regulated under the Electricity and Natural Gas Law and the secondary regulations issued by the ANRE.

The domestic natural gas market consists of:

- a competitive market, including natural gas trading between suppliers and between suppliers and eligible consumers. On the competitive market, prices are freely formed based on demand and offer, as a result of competition mechanisms; and
- a regulated market, including activities with a monopolistic nature and supply at regulated prices and based on framework agreements. In the regulated segment of the market, prices and tariffs are set forth by the ANRE based on its own methods drafted for such purpose.

Currently, Romania has implemented two natural gas trading platforms, one being managed by the Romanian Commodities Exchange and the other by the Electricity and Gas Market Operator, OPCOM.

In 2012, the EU Commission opened an infringement procedure against Romania concerning restrictions on the export of gas. The Commission considered that by obliging the producers in Romania to give priority to sales on the domestic market, Romania created unjustified barriers to exports of natural gas. In this context, the amendments brought in October 2014 to the Electricity and Natural Gas Law are examined by the Commission on whether these measures fully transpose the Electricity and Gas Directives and will decide on the pending infringement cases accordingly. Moreover, in 2016, the Commission, following a complaint by Hungary, also carried out dawn inspections at the offices of the main players in the oil and gas sector, Transgaz, Romgaz and OMV-Petrom, under suspicion of agreements aimed at blocking gas exports from Romania to EU members.

The Commission also referred Romania to the EU Court of Justice on grounds of lack of adoption of the national natural gas supply emergency plan.

The Electricity and Natural Gas Law was recently amended in October 2016, providing the obligation of the natural gas producers and suppliers in Romania, during 1 December 2016 until 31 December 2021, to conclude agreements on the centralised market in Romania in a transparent and non-discriminatory manner, for the sale/purchase of a minimum amount of natural gas, which cannot be less than a percentage share, which will be regulated under a Government resolution, of the natural gas amount for which such producer or supplier concluded sale purchase agreements as a seller or buyer during that period.

Until 30 November 2016, the ANRE shall issue, with the endorsement of the Competition Council, the necessary regulations so as to ensure for buyers transparent and non-discriminatory competitive conditions and access to natural gas amounts to be offered on the competitive market.

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?

Natural gas may be traded as an "unbundled" product, either on the competitive market or on the centralised and regulated market.

9 Liquefied Natural Gas

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

LNG facilities are governed by the Electricity and Natural Gas Law and the LNG Technical Code issued by the ANRE. A relevant department under the ANRE monitors compliance with the provisions regarding LNG.

The applicable legislation provides for the technical requirements in the basic activities regarding LNG storage, transport, distribution and use of the LNG infrastructure, as well as the methods to exercise monitoring and inspections.

Currently, Romania does not have any LNG facilities. The Romanian Government has been planning an ambitious project, called the Azerbaijan-Georgia-Romania Interconnector, also known as "AGRI". The aim of the project was to bring natural gas from Azerbaijan, through Georgia, over the Black Sea, to the Romanian shore, so that the gas would be further transported to Western Europe.

The construction of a future LNG terminal in Constanta (Eastern part of Romania) has been recently included in the LNG project masterplan – the Rhine-Main-Danube axis, developed by an international consortium consisting of 33 participants, within the "Trans-European Network for Transport Program".

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

The following authorisations and permits issued by the ANRE are required to construct and operate LNG facilities: (i) authorisation to construct new objectives related to LNG storage activity; (ii) authorisation for LNG storage and trading activities; (iii) authorisation of natural persons operating the units related to LNG storage; and (iv) permission granted to entities to conduct LNG commercial storage and trading activities.

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

For building new major natural gas infrastructures, such as LNG installations, an exemption from the provisions of the legislation related to the pricing methodologies may be granted for a fixed period, under the following conditions:

- the investment must reinforce competition in the natural gas supply sector and improve the safety of supply;
- the risk level related to the investment is to be achieved only provided that an exemption is granted;
- the infrastructure must be owned by a legal entity which is separated at least in terms of its legal form from the system operators in the systems of which the infrastructure is built;
- tariffs shall be charged for the beneficiaries of the infrastructure in question; and
- the exemption does not negatively impact competition, the effective operation of the natural gas domestic market or the effective operation of the regulated system to which the infrastructure is connected.

The exemption decision shall be issued by the ANRE and notified further to the European Commission which decides on the amendment or withdrawal of the exemption decision.

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

Starting in 2013, Romania has implemented a new Technical Code for regulating LNG activities. Under this Code, LNG terminal operators must ensure third-party access to terminals based on objective, transparent and non-discriminatory conditions and are entitled to collect the access tariff. Further regulations in this sector are expected to be issued by the ANRE.

10 Downstream Oil

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

The Romanian downstream oil sector is regulated in accordance with the provisions of Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003, amending Directive 98/70/EC relating to the quality of petrol and diesel fuels. This Directive has been transposed into the Romanian legislation by Government Resolution 928/2012 regarding the conditions for the introduction of oil and diesel fuels on the domestic market. In order to ensure the implementation of Government Resolution 928/2012, the Ministry of Economy issued Order 2458/2012 and Order 2459/2012, regulating the system for monitoring the quantity and quality of oil and diesel fuels through the distribution stations. To ensure that the entities operating the distribution stations observe the oil and diesel fuels quality requirements, special inspection bodies, duly authorised by the Ministry of Economy, are entitled to take fuel samples on a regular basis and report the findings in order to apply sanctions.

Moreover, to duly report the findings to the European Commission, the Ministry of Economy issued Order 662/2004 transposing into national legislation the provisions of Decision 2002/159/EC of 18 February 2002 in a common format for the submission of summaries of national fuel quality data.

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

The possibility of performing oil trading activities is provided under the Petroleum Law. The Petroleum Law expressly provides that the title holder of a petroleum agreement is entitled to perform oil trading activities on the domestic market, including oil export. The main statutes related to oil trading activities are Government Emergency Ordinance 271/2000 regarding the legal regime of transportation, commercialisation and recovery of oil products and Ministry of Public Finance Order 2491/2010 regarding the procedure and conditions for registration of undertakings that sell energy products (including oil products).

In compliance with the provisions of the Emergency Ordinance 271/2000, the title holders of the petroleum agreements, the undertakings that import oil and oil products and the undertakings that process oil products are authorised to sell oil and oil products. However, according to Order 2491/2010, any undertaking that intends to trade oil or oil products must first obtain a trading certificate to be issued by the Directorate of Excise Duties and Customs Operations, part of the Ministry of Finance. Some of the most important conditions that must be observed by any undertaking interested in the whole sale or retail of oil and oil products are the following: (i) there are no outstanding debts to the State budget; (ii) the company was not declared fiscally inactive; (iii) the company holds proper storage facilities for the oil and oil products; and (iv) the premises where the specific activities will be performed must be equipped with video monitoring systems.

If all conditions are met, the Directorate of Excise Duties and Customs Operations will issue the trading certificate and the applicant will be registered in a special registry.

Trading of oil or oil products performed by an unauthorised undertaking may be considered as a misdemeanour, which is subject to a fine, or under circumstances, an offence, subject to criminal law.

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?

The Competition Council, an autonomous Government authority established in compliance with Law 21/1996 on competition (Competition Law) has authority in regulating competition aspects, as well as in investigating and sanctioning any anti-competitive practices.

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

As a rule, the Competition Council will analyse any agreements, decisions of associations of undertakings or concentrated practices that have as their object or effect the prevention or distortion of competition on the Romanian market or on a significant part thereof. At the same time, any abuse of a dominant position by an undertaking (irrespective on how the dominant position has been obtained) will be sanctioned.

There are no pre-defined criteria to be observed by the Competition Council. In general, the regulator will analyse the object and/or effect of a conduct and, if such are deemed to affect competition, the regulator will intervene. Some hard-core restrictions, expressly provided by law (such as cartels, for example) will not require proofs attesting to their effects on the relevant market in order for an infringement to be found.

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

The pre-emptive role of the Competition Council is quite limited. In order to educate undertakings active on a relevant market, the regulator issues guidelines or instructions allowing such undertakings to better understand how the principles of competition law would apply to their domain.

At the same time, by controlling mergers, the Competition Council prevents companies combining their strength in entities with a dominant position, especially when there is a high probability of abuse of such position.

However, the regulator takes the most important actions to stop anti-competitive actions during or following investigations for alleged infringements of competition law.

During the course of an investigation, the Competition Council may impose any interim measures it considers appropriate if, following a *prima facie* assessment of the investigated practices, it comes to the conclusion that there is a risk of grave and irremediable damage to competition. Such measures may be imposed for a limited period but may be extended if the Competition Council considers them adequate and necessary.

If, following an investigation, an infringement is found, the regulator may (i) order the cessation of the identified anti-competitive practices, (ii) provide recommendations, (iii) impose special terms or other obligations to the parties, or (iv) apply fines.

Generally, any agreements or decisions that are found to be infringing Competition Law are null and void.

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?

As per the Petroleum Law, the title holder of a petroleum agreement may totally or partially assign to another entity the rights obtained and the obligations assumed by it subject to the prior written approval of the ANRM. The partial assignment shall refer to:

(i) a share of the acquired rights and obligations undertaken under the petroleum agreement regarding the entire petroleum block;

(ii) a share of the acquired rights and obligations undertaken by the petroleum agreement with regard to a petroleum area; and

(iii) all rights acquired and obligations undertaken by the petroleum agreement with regard to a petroleum area.

In case of a partial transfer as per points (ii) and (iii), the ANRM shall be entitled to impose delimitations of the petroleum areas located within a petroleum block. Any assignment concluded in the absence of the approval of the ANRM shall be null and void.

The distribution concession right can be withdrawn by the concession grantor in the event that the title holder: (i) fails to complete the volume of works within the due dates provided in the agreement; (ii) fails to observe the essential provisions defined as such by the parties in the agreement, which mandatorily include the provisions regarding the payment of royalties and environmental protection; and (iii) systematically breaches the validity conditions of the gas distribution licences or of the legislation related to the safe operation of objectives.

Upon termination of the concession agreement, the assets related to the public distribution service which are in the ownership of the concessionaire, can be taken over either in full or in part by the concession provider or by another concessionaire, based on the approval of the former, in exchange for a compensation equal to the regulated amount left non-depreciated, established by the ANRE.

According to the Competition Law, any economic concentration in which at least two parties are involved, each having a turnover in Romania of minimum EUR 4 million and a cumulated turnover in excess of EUR 10 million must be notified to the Competition Council for clearance. However, these thresholds may be amended by decision of the Competition Council, which is implemented by order of the President of the Competition Council, after consulting the Ministry of Economy, Trade and Tourism, and enters into force six months after its publication in the Official Gazette of Romania.

An economic concentration occurs when there is a change of control on a lasting basis resulting from:

(a) the merger of two or more previously independent undertakings; and

(b) the acquisition of direct or indirect control of the whole or parts of one or more other undertakings.

If the scenario described under (a) above raises no problems about its applicability, there may be some difficulties in determining if a change of control occurs in case parts of an undertaking are acquired. It is usually considered that, if an undertaking takes control of parts of another undertaking, such parts being able to be regarded as a whole and to generate turnover, then there is a change of control in the sense mentioned by the Competition Law. Consequently, a case-by-case appraisal is required in order to determine if acquiring development assets, transportation or associated infrastructure or distribution assets may fall under the restrictions provided by Competition Law. The Competition Council will analyse the notified concentration and determine its effects on the market. Usually, within 45 days as of the date of receipt of a complete notification, the Competition Council will issue a decision with respect to the notified transaction.

However, if serious doubts exist with respect to the compatibility of the transaction with free competition on the relevant market, the regulator may decide to open an investigation in order to thoroughly analyse the notified transaction. A decision must be issued by the regulator within a maximum of five months as of the date of receipt of a complete notification. Usually, the entire procedure takes around three to four months.

The Competition Council may issue a decision (i) clearing the transaction, (ii) conditionally approving the transaction, or (iii) not allowing the notified concentration, when it raises serious barriers to competition on the relevant market.

Any transaction which fulfils the criteria for being notified to the Competition Council cannot be implemented prior to obtaining the approval from the authority. Failure to observe this obligation could lead to the application of a fine ranging between 0.5 per cent and 10 per cent of the turnover for the previous financial year of the year when the sanction is applied.

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?

There are no discriminatory requirements or limitations on acquisitions of interests in the natural gas sector by foreign companies. Foreign investors benefit from an equal treatment with Romanian investors. Foreign legal entities acquiring interest in a petroleum agreement must establish and maintain a branch or subsidiary headquartered in Romania.

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?

Harmonisation of Romanian domestic law with European law was first considered for Romania's accession to the European Union.

The provisions of the Petroleum Law have been substantially aligned with the Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospecting activities, as well as for the exploration and production operations of hydrocarbons.

As concerns the natural gas sector, the Electricity and Natural Gas Law has been harmonised with the European Directive 2009/73/CE of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

Moreover, the regulatory policy in the sector is in accordance with Directive 2008/92/EC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users, Regulation 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for

access to the natural gas transmission networks and repealing Regulation (EC) 1775/2005, and Regulation 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, to name only a few.

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.

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 submit a claim with the Romanian courts of law. 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.

Any disputes related to the transportation, processing or storage of natural gas, downstream oil infrastructure, development or distribution of natural gas or oil, are to be settled amicably. In case the parties do not reach an agreement, the disputes shall be settled either by Romanian or international arbitration courts, as agreed by the parties, or by the Romanian courts of law.

An amendment of the legislation related to dispute resolution in the energy sector provides, as an initial step in resolving the dispute, for the possibility of the licensed operators acting in the natural gas sector to defer disputes related to access to natural gas systems to the ANRE (such as the transmission and distribution networks, LNG terminals, storage facilities, etc.). The dispute will be resolved by a committee of experts appointed within the ANRE, whereby the decision of the ANRE is definitive and binding on the parties.

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")?

Romania ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in 1961, under Decree 186/1961 and ICSID in 1975, under Decree 62/1975.

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)?

As a rule, no special difficulty occurs in litigating or seeking to enforce judgments or awards, against Government authorities or State organs. Such State authorities do not enjoy any immunity in this respect, except for their assets, which are in many cases in the State's public property. Therefore, such may not be subject to a forced execution procedure.

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?

There were several claims before domestic courts between foreign corporations and State bodies. The most significant claims were related to breaches of the Competition Law by some foreign companies and to the non-observance of the State's obligations assumed under privatisation agreements in the oil sector, as well as related to the privatisation procedures. Litigation including foreign corporations and government authorities was recorded by initiation of third party claimants on issues pertaining to permitting and environment protection.

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.

According to the Electricity and Natural Gas Law, the price liberalisation on the gas market started for industrial consumers on 1 December 2012, while for household consumers, the price liberalisation commenced on 1 July 2013. The regulated prices for industrial consumers were eliminated on 1 January 2015, while for household consumers, the liberalisation process should be finalised by 1 July 2021.

Industry associations have negotiated with the ANRM an extensive legislative amendment designed to facilitate access of oil and gas operators to onshore exploration and production blocks, as well as, in case of offshore operators, to the coastal area. The legislative amendments for the onshore operators are still pending promotion and approval by the Government/Parliament.

A recent ruling of the Supreme Court of Justice (dated July 2015) clarifies the legal nature of shale gas, indicating that the term is properly regulated under the Petroleum Law, being covered by the statutory definition of "natural gas". Moreover, the Supreme Court of Justice concluded that the legal capacity to grant leases/concessions for petroleum operations related to shale gas is a prerogative pertaining solely to the Government of Romania.

As of January 2014, the Government imposed a 1.5 per cent tax on the value of 'special constructions' such as crude oil and gas wells, marine drilling and extraction rigs, trunk pipelines for the transmission of gas and petroleum products, pipelines, technological facilities and connections for the distribution of gas and petroleum products as well as other related petroleum distribution and transmission constructions. The tax was decreased to 1 per cent as of 1 January 2015 and will be eliminated by 1 January 2017.

In 2017, a new bid round (the 11th bid round) for petroleum concessions is expected to be organised by the ANRM, whereby new petroleum blocks shall be offered for bid for exploration and production activities of oil and natural gas (both onshore and offshore).

Further expected changes in the legislation are related to the intention of the Romanian Government to pass a new National Energy Strategy by the end of 2016 and to introduce a supplementary profit tax for upstream operators.

Government priorities for transmission systems refer to the development of reverse flow interconnectors and the development of transmission systems for the shipment of offshore natural gas from the Black Sea to the Romanian coast.

Laurentiu Pachiu
Pachiu & Associates
75–77 Buzesti Street, 5th floor
Bucharest 1, RO 011013
Romania

Tel: +40 21 312 1008
Fax: +40 21 312 1009
Email: laurentiu.pachiu@pachiu.com
URL: www.pachiu.com

Laurentiu Pachiu is the Managing Partner and founder of Pachiu & Associates, and is co-head of the Energy Practice Group of the firm.

Laurentiu Pachiu is a Romanian national with policy and legal expertise in the field of energy, oil and gas and natural resources, having 22 years of expertise in business law and diplomacy.

The energy practice initiated by Laurentiu Pachiu has been among the first legal practices of such kind established in the country, the firm founded by Laurentiu growing at the same fast pace at which the Romanian energy market evolved.

Laurentiu Pachiu provides legal advice with regard to the planning, implementation, development and operation of significant energy projects, advising clients on regulatory and licensing matters, the obtainment of oil and gas exploration permits, the development of land securitisation strategies and also the negotiation and conclusion of contractual arrangements with service companies and Romanian authorities, including the signing of relevant concession licences. Laurentiu has been leading the team that assisted one of the first energy supermajors entering Romania for the development of unconventional upstream projects and serves other important regional players and independent companies in promoting their oil and gas projects.

He is a graduate of the Bucharest University School of Law and a graduate of the Diplomatic Academy of the German Federal Ministry of Foreign Affairs. Laurentiu is fluent in Romanian, German and English and conversant in French.

Professional associations/memberships: Member of the Associated European Energy Consultants e.V. (AEEC); Member of the American Chamber of Commerce in Romania – Environment and Energy Committee; and member of JCA International, Consulegis, the Association of International Petroleum Negotiators, the Working Group on Energy Security, US-Romania Strategic Partnership and the Energy Policy Group.

Raluca Mustaciosu
Pachiu & Associates
75–77 Buzesti Street, 5th floor
Bucharest 1, RO 011013
Romania

Tel: +40 21 312 1008
Fax: +40 21 312 1009
Email: raluca.mustaciosu@pachiu.com
URL: www.pachiu.com

A lawyer with over nine years of professional experience, Raluca is a member of both the Real Estate and Corporate and M&A Departments within the firm.

Her experience includes, among others, assisting clients in the negotiations and conclusion of sale and purchase agreements of real estates, lease of commercials premises and business transfer.

Raluca also has extensive legal expertise in the field of environment, energy and climate change, being involved in numerous projects related to the oil and natural gas sector and renewable (photovoltaic/wind) energy. She has advised on many facets of the development phases with highly effective input on real estate, environment and permitting matters.

Raluca holds an LL.M. in business law, awarded by Nicolae Titulescu University in Bucharest and a double degree in law and business administration from the University of Bucharest. She is fluent in English and conversant in French and Spanish.

PACHIU & ASSOCIATES
ATTORNEYS AT LAW · RECHTSANWÄLTE · ABOGADOS

Pachiu & Associates is a leading business law firm based in Bucharest. The firm has a strong focus on the energy sector.

Bound by Excellence, our purpose is to offer **prompt, effective and personalised solutions** to all legal matters that our domestic and international clients, regardless of their size, are confronted with in Romania.

Pachiu & Associates is the exclusive Romanian member of the Europe-wide network for leading energy law and consultancy firms, Associated European Energy Consultants (AEEC) and its lawyers are active members of the Association of International Petroleum Negotiators, the Working Group on Energy Security, the US-Romania Strategic Partnership, Consulegis International Network of Law Firms and the Energy Policy Group which is a Bucharest-based, non-profit, independent think-tank specialising in energy policy, markets and strategy analysis. We also share privileged relationships with some of the leading global law firms like Herbert Smith Freehills, Mayer Brown, Norton Rose, Taylor Wessing or Freshfields, which enables us to provide integrated solutions worldwide.

Pachiu & Associates has full transactional capabilities in energy projects being noted for the commitment and ability to assist clients with their most complex and demanding legal and business challenges worldwide.

We are always keeping an eye open to any cross-selling and new business opportunity which arises in our well established network of clients and partners. It gives us great satisfaction whenever our efforts turn into value for our clients.

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.co.uk