

The International Comparative Legal Guide to: Gas Regulation 2009

A practical insight to cross-border Gas Regulation work



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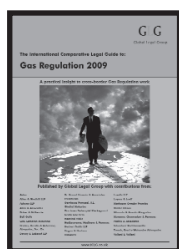
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Romania

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1 Overview of Natural Gas Sector

1.1 A brief outline of Romania'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; importation and exportation 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.

Regarding the natural gas, Romania's primary reserves are estimated at 1,630 billion cubic metres. The identified natural gas reserves (approx. 150 billion cubic metres) are estimated to cover domestic production for a period of approximately 15-20 years. Please be informed that all information regarding the Romanian gas reserves are deemed as classified or public interest information. Consequently, the holders of approvals and permits must observe the confidentiality of such. Please also note that according to Law No. 238/2004 ("Oil Law"), natural gas is construed as a form of oil.

The natural gas production is estimated at approximately 13 billion cubic metres, Romania ranking first among the natural gas producers in Central Europe. The domestic production of associated natural gas represents 10% of the overall production.

Imports of natural gas provide 30%-40% of the necessary domestic consumption. Imports are made mainly from the Russian Federation through the national transportation network. At present, Romania is not included in the list of natural gas exporters. Romania does not benefit from liquefaction and re-gasification facilities for LNG.

The transportation activity represents a service of national public interest, is the property of the Romanian State and is considered as a strategic activity. Transportation of natural gas is performed through the National Transportation Network ("NTN"), which is public property.

Natural gas distribution represents a service of national public interest that may be subject to concession, in accordance with the legislation in force.

The activity of natural gas storage is a service of national public interest and the storage of natural gas is qualified as a natural State monopoly.

Natural gas sales can be performed under supplier and/or sale-purchase agreements concluded between the supplier and the consumers or clients. The following agreements may be concluded for the purpose of selling natural gas:

- natural gas supply agreements concluded with captive consumers;
- sale-purchase agreements concluded with eligible consumers; and
- sale-purchase agreements concluded with another supplier, both on or out of the stock exchange.

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

At present, natural gas represents approximately 40% of the overall power reserves consumed in Romania.

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

The internal natural gas production covers the domestic consumption by approximately 70%-80%. In order to fully cover the above-mentioned consumption, natural gas importation is performed by Romania mainly from the Russian Federation (approximately 20%-30%).

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

At present, the natural gas production of Romania is not exported (please see question 1.1 above).

2 Development of Natural Gas

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

The legal framework regarding natural gas reserves is mainly represented by: i) the Oil Law; ii) Law No. 351/2004 ("Natural Gas Law"); and iii) Government Resolution No. 2075/2004 approving the implementation rules of the Oil Law ("GR 2075/2004").

According to Oil Law, the natural gas deposits are the exclusive public property of the Romanian State.

The Romanian State exercises such right through its competent authority, i.e. the National Agency for Mineral Resources ("NAMR"), an expert body of the central public administration with a juridical personality, controlled by the Government and authorised to apply the provisions of the Oil Law.

NAMR issues the mandatory rules and technical instructions for compliance with the provisions of the main legislation applicable to natural gas storage.

2.2 How are the State's mineral rights to develop 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 rights of the State regarding the development of natural gas reserves are transferred to Romanian or foreign legal entities under an oil agreement (*Romanian: "acord petrolier"*) between NAMR and such legal entity, which is in fact a concession agreement concluded following a public offer. The scope of the oil agreement is the performance of oil operations and the concession of the assets required to perform oil operations.

The following oil agreements may be concluded for the development of natural gas resources:

- a) concession oil agreements for exploration-development-exploitation;
- b) concession oil agreements for development-exploitation; and
- c) concession oil agreements for exploitation.

The oil agreements are concluded in a written form and enter into force after the approval of the Romanian government. The applicable rules of the concession regime in the oil field are provided by Oil Law and GR 2075/2004.

The oil agreements for the concession of development and/or exploitation of natural gas reserves are concluded for a period of thirty (30) years, with a potential extension of up to fifteen (15) years.

The beneficiaries of oil agreements, who are granted the right to perform oil exploration operations, including experimental exploitation, shall pay oil royalties, in accordance with the applicable legal provisions.

Please note that the right obtained by concession is distinct from the ownership right over the land.

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

The right to perform exploration/exploitation activities is granted by NAMR under the oil agreement, and oil operations are commenced based on authorisations issued by NAMR.

The oil agreement shall be concluded following a bid, the applicable legislation indicating only the criteria that must be considered by NAMR to select the winner of the tender. No standard terms are provided for the oil agreement except for its maximum term. The royalty shall be determined as a percentage from the gross production extracted as a result of the exploitation operations of the natural gas reserves.

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

The Romanian State is the owner of the natural gas reserves. A real competition market exists in exploitation as a result of the involvement in oil operations of both Romanian State and private companies, as well as of foreign companies.

There is no real competition market in the field of production and there are only two major manufacturers, i.e. Petrom, presently in private property and Romgaz, in the State property, but which shall be subject to privatisation.

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

The Romanian State derives value from natural gas development by charging oil tariffs and royalties due by the holders of oil agreements. The amount of the oil royalties due to the State budget is determined based on the reference price established by NAMR.

In compliance with the provisions of the Romanian Fiscal Code (Law No. 571/2003), delivery of natural gas is subject to VAT payment.

For the purpose of the Romanian Fiscal Code, delivery shall mean any transfer of the ownership title over an asset from the owner to another person, directly or through persons acting on behalf of the owner.

2.6 Are there any restrictions on the export of production?

In compliance with the provisions of Oil Law, the holder of an oil agreement has the right to dispose of the amounts of natural gas to which it is entitled, including exporting such amounts, upon observance of the terms and conditions stipulated by the oil agreement.

2.7 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 the natural gas. In compliance with the general applicable rules issued by the Romanian National Bank, no such restrictions are applicable. Romania concluded with other countries bilateral agreements providing for the non-restrictive character of the transfer of funds from one jurisdiction to another.

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

The holder of an oil agreement may transfer to another legal entity its acquired rights only under the prior written approval issued by NAMR. In the absence of a prior written approval from NAMR, any transfer of rights or interests shall be null. NAMR grants the approval of the transfer of such rights only if such rights are transferred to a legal entity which attests to its technical and financial capacity required to perform oil operations in compliance with the terms set forth by the oil agreement.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

The holder of an oil agreement is compelled to register in its accounting books and to deduct the provision for abandonment, environmental recovery and restoration to the agricultural or forest circuit. Such provision is deemed as the amount registered in the accounting books and annually deducted upon the calculation of the tax on profit, in compliance with the legal provisions in force.

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

The natural gas exploitation and public services operation rights may be pledged in compliance with Law No. 99/1999 regarding acceleration of economic reform.

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

The following main authorisations are required for conducting exploration/production activities:

- environmental permit issued by the competent public territorial environmental protection authority in whose jurisdiction the exploitation area is located;
- authorisation of personnel by the State Inspection for Kettles, Pressure Containers and Lifting Equipment ("SIKPCLE") and the Romanian Office of Legal Metrology ("ROLM"); and
- authorisation for fire prevention issued by the military fire brigades and squads.

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

Oil Law establishes the necessity of drafting a certain plan for the abandonment of physical structures used in the exploitation of natural gas, consisting of a complex technical, economic, social and environmental documentation justifying the closing of the plant and provides for the necessary actions to ensure financing and the effective fulfilment of the measures for cessation of activity.

The abandonment plan shall be endorsed by NAMR. The exploitation rights may be abandoned only if measures to protect the reserves and the ground are taken.

The holders of the oil agreement must register in their accounting books and deduct the provision for abandonment, environmental recovery and restoration to the agricultural or forest circuit, if applicable.

3 Importation / Exportation

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

In compliance with the applicable laws, no specific requirements, terms, limitations or rules apply in respect of cross-border sales or

deliveries of natural gas or LNG.

4 Transportation

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

Natural gas transport is governed by the Natural Gas Law, the Oil Law, Government Resolution No. 784/2000 approving the Rules for granting approvals and permits in the natural gas sector ("**GR 784/2000**") and the Commercial Rules regarding the natural gas market issued by National Regulating Authority for Energy ("**NRAE**"), former National Regulating Authority for Natural Gas.

Under Romanian legislation, the activity of natural gas transportation represents a service of national public interest, is part of the State property and is regarded as a strategic activity. The works for execution, restoration, modernisation, exploitation and maintenance of the natural gas transportation objectives/networks are works of public utility.

The national transportation network ("**NTN**") is public property. The activity of natural gas transport requires the independence of the transport operator, the legal entity holding the transport licence.

The law provides for concession of the activity of transport to any Romanian or foreign legal entity complying with the terms provided by the Natural Gas Law.

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

The construction of natural gas transportation pipelines is preceded by a first step, represented by the projection of the work, thus being attributed by NRAE to a company after an auction and is performed based on a projection authorisation issued by NRAE. After obtaining such a *projection authorisation*, a permit and further approvals are to be obtained from the pipeline operator.

The second step, the construction of natural gas transportation pipelines, requires an *authorisation for the execution* of such works, issued by NRAE, as well as an *authorisation for establishment*, representing a technical and legal document issued by NRAE, under which permission is granted to a legal entity, either Romanian or foreign, to establish transportation facilities. Further on, a *building permit*, and if the case may be, a *modification authorisation*, representing a technical and legal document issued by NRAE, under which permission is granted to a legal entity to modernise, improve technology, develop and restore a transport objective, as well as for capital repairs of the same, following which the technical features making the object of the authorisation are changed, are required.

For the operation of natural gas transportation pipelines, a natural gas transportation license, representing a technical and legal document issued by NRAE, under which permission is granted to a legal entity, either Romanian or foreign, to render services in connection with one or several transport functions, is required. Further on, an *operating permit*, representing a technical and legal document issued by NRAE attesting to the commissioning of new transportation systems, under which permission is granted to a legal entity, either Romanian or foreign, to establish transportation facilities, and an *environmental permit*, are needed.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct 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 in order to conduct oil activities shall be acquired in compliance with the legislation, by:

- purchasing the land and, if applicable, the buildings located on such land, at the price agreed by the parties;
- exchanging the land, accompanied by the transfer of the involved owner and reconstruction of the buildings on the newly granted land, at the expense of the holder benefiting from the released land, in compliance with the parties' agreement;
- leasing the land for a determined term, based on agreements concluded between the parties;
- concession of land; and
- forming a partnership between the owner of the land and holder of the agreement.

As far as the infrastructural work for the development of the gas network has been declared to be of public utility, the Government and county councils or the Bucharest Municipality Local Council are entitled to expropriate the necessary land.

The competent court of law does not have the right to censor the necessity to declare a land as being a public utility. The competence of the court of law is restricted to verify if the legal requirements for the expropriation were observed.

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

Access to natural gas transport pipelines is governed by the decisions issued by NRAE and by the principles of non-discriminatory access of third parties to the national transport network. Access to the NTN represents the right of a manufacturer, distributor, storage operator, supplier, consumer and/or investor to use the transport network, paying tariffs and meeting the obligations for its use.

Access to the NTN implies three stages:

- a request of information from the NTN operator regarding the possibility to access the NTN in the area in which the objective is located;
- the reservation of facilities in the NTN for the applicant/user, by drafting the access approval; and
- connection to NTN.

Access to storage facilities is the right of a manufacturer, supplier, transporter, eligible consumer and/or foreign legal entity benefiting from the transit in the territory of Romania to use such storage facilities.

At the request of entities in the priority rank, NRAE shall approve the amounts of natural gas allotted to them.

Access to storage facilities shall be granted based on a written request accompanied by justifying documents. The storage facilities operators shall make public the available capacities, respectively the Initial List of Available Capacities to store natural gas ("ILAC") for each storage facility. Storage capacities shall be allotted by the operators of storage facilities. Access to the allotted capacity is materialised by concluding a storage agreement, in compliance with the frame agreement for storage of natural gas, issued by NRAE.

The transporter/operator of storage facilities may decline access of third parties to the network/storage facilities only in the situations explicitly provided by the law: e.g. insufficient facilities, or if the quality standards of the natural gas to be used in the network and/or

in storage facilities does not comply with the minimal requirements regarding safety operation and environmental protection in compliance with the applicable law.

The Natural Gas Law provides that the new important infrastructures for natural gas, respectively the interconnection between the EU member countries, the installations for liquefied natural gas and storage facilities may be exempted by NRAE, upon request, from the provisions of the legislation in force regarding both the access of third parties to the transportation, distribution, storage and upstream pipes and the applicable methodologies of tariffs, subject to the following conditions:

- the investment reinforces the competition in natural gas supplying field and increases the security of supply;
- the investment may not be performed without such exemption, due to its degree of risk;
- the infrastructure has to be owned by a legal entity which is separate (at least, as regards its legal form) from the operators system in whose systems the infrastructures shall be built;
- tariffs are collected for the users of the respective infrastructure; and
- such exemption does not negatively influence the competition, the efficient functioning of the domestic natural gas market or the efficient functioning of the regulated system to which the infrastructure is connected.

The exemptions may be applicable as well to the significant increase of the capacity of the existing infrastructures and to the modifications of such infrastructures which allow the development of new sources of natural gas supply.

NRAE may impose conditions regarding the duration of the exemption and the non-discriminating access to the interconnection pipe. In case of an interconnection pipe, any decision of granting an exemption is made upon consultation with the other member states or, as the case may be, with the regulatory authorities. Such decision shall be immediately communicated by NRAE to the European Commission together with all relevant information.

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

Romania benefits from only one transportation network exclusively operated by Transgaz (please see questions 1.1 and 4.1 above). The interconnection pipes are those pipes that cross a frontier between countries, their sole purpose being connecting the national transport system of the respective states. The Natural Gas Law aims to ensure the legal framework for interconnection of NTN to the European systems.

4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a 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?

NRAE has the right to compel the licensed operator to finance the required works, if such works are economically justified, for the purpose of granting access to those requesting it, if the transport operator declines access due to lack of facilities or lack of

components of the network to which connection is intended.

If the new investments are not economically justified for the licensed operator, a new client has the right to participate, in collaboration with the licensed operator, in financing new investments, provided that an agreement is executed.

Under such agreement, the licensed operator is granted permission by the client to take over the investments in its patrimony, at the date of their commissioning, while the client shall be able to recover its investment as provided by law.

NRAE has the competence to settle disputes in case of an ungrounded access refusal by the licensed operator.

The applicant shall forward to NRAE a petition and NRAE, through its Commission for the settlement of the refusal to access the transport network, (which is in the subordination of NRAE), shall issue a decision within sixty (60) days as of receipt of such petition.

The decision of the Commission shall be final, but subject to appeal with the Bucharest Court of Appeal.

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

In Romania, the natural gas market has two segments:

- the regulated segment, for activities with a legal and/or natural monopoly nature; and
- the negotiated segment.

Transport of natural gas is performed on the regulated segment of the market. The terms and conditions of the transportation agreements shall be governed by the decisions issued by NRAE.

5 Transmission / Distribution

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

Under the Romanian legislation, the natural gas distribution network is public property and is considered as being of national strategic importance. In this legal context, all investments and developments of the network performed by the distribution network operators, are public property.

The operators of the gas distribution networks perform their activity based on a distribution license issued by NRAE under fulfilment of special conditions, and taking into consideration that they perform a service of public interest, they have to assure the continuity of their activity and the access of third parties to the distribution network.

The natural gas distribution operators have the following main obligations: (i) to operate, to maintain and develop the distribution network under safe conditions, with economically efficiency and protecting 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 in equal and non discriminatory conditions and to provide all required information to the other distribution network operators and the competent authority.

A current major initiative of the Romanian Government is the modernisation of the pipeline network, which implies replacement of existing steel pipes with polyethylene ones that ensure a longer lifetime. The rehabilitation and expansion of the gas distribution network shall be executed between 2006 and 2010.

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

In compliance with the Romanian applicable legal provisions, for the operation of a distribution network, the license for natural gas distribution is needed. Further on, additional permits and authorisations are required in order to operate a distribution network, these being similar to the authorisations required to construct and operate natural gas transportation pipelines (please see question 4.2 above).

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

Under the Romanian legislation, access to the distribution network represents the right of a manufacturer, supplier and/or end-user to use the network, paying tariffs and meeting the obligations for its use. The access to the natural gas distribution network is governed by NRAE.

The Natural Gas Law provides the conditions on the distribution operators aiming to avoid non-discriminatory practices. The natural gas distribution is a national public interest service. Concession of the natural gas distribution is performed by the Ministry of Economy and Commerce, with the endorsement of the NRAE, such being exclusive as regards 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.

Access to the distribution network may be granted in one of the following situations:

- performance of a new connection installation (new connection, relocation or resizing of the existing connections);
- adjustment of several technical elements; or
- change of administrative elements of the user.

The distribution operators must make public the procedures for the organisation of their own business for the stages of granting access to the network. Refusal to grant access to the distribution network to third parties can be expressed in the same situations as in the case of the transporters' refusal (see question 4.4 above).

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

The NRAE may require a distributor to grant capacity or expand its system in order to accommodate new customers, under the same terms as described in question 4.6 above.

5.5 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 NRAE based on its own methods drafted for such purpose.

For the purpose of tariffs established by the NRAE, the distribution operators must draft an annual programme of development regarding their natural gas distribution network, and shall request the regulating authority to endorse the investment programme for each regulated period for which regulated tariffs and prices are established.

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

5.6 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)?

The operators of the assets in the distribution network are not permitted to make such network subject to concession, and as regards their alienation, there are limits provided in the privatisation agreements or in the licences, the latter covering only core assets.

6 Natural Gas Trading

6.1 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 governed by the provisions of the Natural Gas Law and the rules issued by the NRAE.

The domestic natural gas market consists of:

- a) a competition segment, including natural gas trading between suppliers and between suppliers and eligible consumers. In the competition segment, prices are freely formed based on demand and offer, as a result of competition mechanisms; and
- b) a regulated segment, including activities with a natural monopoly 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 NRAE based on its own methods drafted for such purpose.

The eligible consumers have the right to directly negotiate sale-purchase agreements with the licensed suppliers.

An eligible consumer is the consumer who may choose its supplier, while a captive consumer is the consumer who cannot choose its supplier in compliance with the regulations. The criteria for eligibility are established by the NRAE.

The opening degree of the natural gas market is considered depending on the number of existing eligible consumers who may freely negotiate their purchase price for natural gas.

6.2 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?

The Natural Gas Law reflects the provisions of the EU legislation and provides the separation of supply activities from distribution activities. As regards the transport operator, the legislation in this field does not permit its direct or indirect involvement in the exploitation, extraction, distribution and supply of natural gas to consumers, including the holding of shares or stock or under management agreements in which the legal entities conducting such business are involved.

7 Liquefied Natural Gas

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

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

The applicable legislation provide for the technical requirements in the basic activities regarding the LNG storage, transport, distribution and use of the LNG infrastructure, transfer of information flows from the holder of the permits/licences to the competent authorities, as well as the methods to exercise control and inspections.

The LNG facilities may be in the property of Romanian or foreign legal entities, conducting LNG storage, transportation and distribution activities in Romania.

7.2 What Governmental authorisations are required to construct and operate LNG facilities?

The following authorisations and permits issued by the NRAE are required in order to construct and operate LNG facilities:

- authorisation for LNG storage and supply activities;
- authorisation to construct new objectives related to the LNG storage activity;
- authorisation of natural persons operating the objectives related to the LNG storage; and
- permission granted to entities to conduct LNG commercial storage and supply activities.

For the operation of LNG facilities, it is mandatory to previously obtain operating approvals from the ISCIR for equipment working under pressure, as well as operating approvals from the military fire brigade and squads. It is also mandatory to obtain the specific environmental permits from the territorial competent public environmental authority for designing, constructing and operating LNG facilities.

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

There are no legal provisions regarding criteria to establish LNG tariffs. The applicable legislation does not provide for terms of service in the LNG sector.

8 Competition

8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

The competent authority responsible for the regulation of competition aspects and anti-competitive practices is the Competition Council, an autonomous administrative authority with legal personality established in compliance with Law No. 21/1996 regarding competition (the "**Competition Law**").

NRAE, as the competent authority in the natural gas sector, holds responsibilities regarding competition on the relevant market and anti-competitive practices in this sector. In this regard, NRAE drafts and promotes the rules regarding prevention of abuse of dominant

positions on the domestic market of natural gas and promotes and ensures competition on the natural gas market. This authority plays the main role to prevent anti-competitive practices, and when identifying a potential abuse of dominant position, it notifies such to the Competition Council together with justifying documents, for the purpose of implementation of the required legal measures.

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

In compliance with the Competition Law, the anti-competitive practices cover economic concentration, abuse of dominant positions and any concerted practices that may result in a limitation, prevention or distortion of competition in the market or a part of it.

The Competition Law does not permit economic concentrations having as their purpose the acquisition and consolidation of a dominant position that results or may result in a significant limitation, removal or distortion of competition in the Romanian natural gas market or a part of it.

The criteria, under which economic concentrations are appraised, are the following:

- the market share held by the involved entities, their economic and financial power;
- the available alternatives for suppliers and users, their access to markets and supply resources, as well as any limitations set forth by legal provisions or regulations upon access on the market;
- the trend of the demand and offer for the relevant goods and services;
- the extent to which interests of the beneficiaries and consumers are affected;
- contribution to technical and economic progress; and
- the need to maintain and develop competition on the Romanian market, considering the structure of all the relevant markets and the existing or potential competition among entities headquartered in Romania or abroad.

The rules issued by the NRAE specify the facts qualified as abuse of a dominant position. Such anti-competitive practice is defined by law as the act performed by a legal entity holding a dominant position, which aims to maintain or improve the company's market position, which affects the economic activity and harms the consumers.

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

In case NRAE identifies a potential abuse of dominant position, the authority must notify the same to the Competition Council together with justifying documents, for the purpose of having the required legal measures applied by the Competition Council.

In case of breach of the legal provisions, the Competition Council, upon investigations, may order cessation of the identified anti-competitive practices, may provide recommendations, may impose special terms or other obligations to the parties and may apply fines.

If in the specific case the situation cannot be improved and recurrence of the abuse cannot be prevented, the Competition Council, on grounds of seriously affecting a major public interest, may request the Bucharest Court of Appeal to order appropriate measures for the purpose of ceasing the dominant position on the market.

The Bucharest Court of Appeal may order the following, as applicable:

- invalidation of agreements or clauses of agreements under which the dominant position is abusively exercised;

- invalidation of the documents which constitute the basis of the concentration that resulted in the dominant position, even if under the relevant legal document or documents a new legal entity was established;
- limitation of or interdiction for access on the market;
- sale of assets; and
- restructuring by way of split of the entity.

8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the 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?

Economic concentrations presumably leading to significant limitation, removal or distortion of competition on the natural gas market or on a part of it, may be authorised if the parties involved in the concentration attest to the cumulative compliance with the following conditions:

- a) the economic concentration shall contribute to a better economic efficiency, improvement of production, distribution and technical progress or a higher competition in exports;
- b) favourable effects of the economic concentration compensate the unfavourable effects of competition limitation; and
- c) consumers would benefit to a reasonable extent from the advantages of the economic concentration, especially as a result of lower real prices.

Economic concentrations exceeding the turnover value limit established by the Competition Council are subject to control by and have to be notified to the Competition Council.

The procedure for authorisation of economic concentrations involves the following stages:

- (i) Brief information of the Competition Council by the legal entities within seven (7) days as of the date on which the event subject to the Competition Law occurs.
- (ii) Notification of the Competition Council by the legal entities shall be performed within thirty (30) days as of the date on which the situation governed by the legal provisions occurs. Such term may be prolonged by the Competition Council upon the parties' request with a maximum term of 15 days. The notification shall become effective as of its registration with the Competition Council, except for situations in which the data in the notification are inaccurate or incomplete. In such situation, the Competition Council shall request in writing within twenty (20) days the amendment of the notification and shall establish a deadline for submitting the requested information. The deadline shall be established depending on the nature of the requested information, but such may not exceed fifteen (15) days as of the date of request.
- (iii) The Competition Council shall issue a decision within thirty (30) days as of notification date, for:
 - non intervention, if the notified economic concentration does not fall within the scope of the Competition Law;
 - no objection on economic concentration, if there is no ground for refusal although the notified economic concentration is governed by the law; and
 - the decision to commence an investigation if the economic concentration casts serious doubts on the compatibility with a regular competition environment. Within five (5) months as of the date when the notification

become effective, the Competition Council may issue a decision of:

- a) refusal;
 - b) authorisation; and
 - c) conditioned authorisation.
- (iv) The decisions taken by the Competition Council regarding the economic concentration may be challenged within thirty (30) days as of notification, with the Bucharest Court of Appeal.

Consequently, the standard term for the approval or rejection of a transaction is up to sixty (60) days, to which additional terms of up to twenty (20) days should be considered if the Competition Council sends written request, to supplement the notification.

However, notice should be made that in cases explicitly provided by law, parties may benefit from a simplified notification procedure.

9 Foreign Investment and International Obligations

9.1 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?

The specific law applicable in the natural gas sector does not include discriminatory provisions regarding acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies.

Foreign investors benefit from an equal treatment with Romanian investors, provided that the foreign legal entities establish and maintain a branch or subsidiary headquartered in Romania.

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

Harmonisation of the domestic law with the EC law was considered in the adoption of the laws applicable to the natural gas sector for the purpose of Romania's integration in the European Union.

The provisions of the Natural Gas Law were harmonised with the European Directive on Gas No. 2003/55/CE, upon observance of the principle of subsidiary.

The NRAE is involved in the observance of the provisions of the Complementary Position Document promoting the laws complying with the EC *acquis* in the matter, *i.e.*:

- the LNG technical code;
- the rules regarding access to underground natural gas storage facilities;
- the rules regarding abuse of a dominant position;
- the rules regarding access to the NTN for natural gas; and
- the rules regarding access to the natural gas distribution networks.

10 Dispute Resolution

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

In the regulated segment of the natural gas market, the commercial agreements are concluded based on framework agreements imposed by NRAE. In case of pre-contractual disputes between participants in the natural gas sector with regard to commercial agreements concluded based on the framework agreements, NRAE through a Conciliation Committee, is authorised to settle such disputes.

The disputes may concern the following aspects of the commercial agreements concluded based on the framework agreements:

- negotiable clauses;
- new clauses that parties intend to include in the agreements; and/or
- mandatory clauses of the framework agreements that are interpreted differently by parties.

The resolution of the Conciliation Committee with regard to the pre-contractual disputes is not binding on parties. Thus, parties may conclude the commercial agreements with observations as regards the clauses of the commercial agreements under disputes.

In the case that the parties do not amicably reach an understanding within 30 days as of the conclusion of the agreement, the disputes between parties will be solved according to the ordinary procedure.

In other situations, the parties may agree to the agreement if the competence to settle the disputes that may arise in connection with performance of contractual obligations belongs to ordinary courts of law or arbitration courts.

10.2 Is Romania 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 is part of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was ratified in 1961, under the Decree No. 186/1961.

Romania is also part of ICSID which was ratified in 1975, under the Decree No. 62/1975.

10.3 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 matter of law or practice, under the Romanian jurisdiction, 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 the public domain of the State.

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

To date, to the best of our knowledge, no foreign corporations have successfully obtained judgments or awards against the Government authorities or State organs pursuant to litigation before domestic courts in the natural gas sector.



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11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Romania.

A new case of major importance is represented by the construction of the Nabucco pipeline on the Romanian territory.

On first of July, 2008, the Romanian competent regulatory authority, NRAE, approved the request of Nabucco Gas Pipeline International GmbH Austria, regarding the excluding of the construction and the operation of the Romanian part of the Nabucco pipeline, from the Romanian applicable legislation regarding the access of third parties to the pipeline and also the exception from the application of the Romanian tariffs methodologies.



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