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Global Legal Group

# The International Comparative Legal Guide to: Gas Regulation 2012

## A practical cross-border insight into Gas Regulation work

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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; 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.**

As a general overview, we would like to mention that Romania has the largest natural gas market in Central Europe and was the first to use natural gas for industrial purposes.

Romania's primary reserves of natural gas are estimated at 1,630 billion cubic metres and the identified natural gas reserves (approx. 150 billion cubic metres) are estimated to cover domestic production for a period of 15-20 years. Nevertheless, detailed information regarding Romanian proper gas reserves is deemed as classified or public interest information.

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

Imports of natural gas provide about 25% of the necessary domestic consumption and are made exclusively from Russia. At present, Romania does not export natural gas.

The gas transportation activity represents a service of national public interest and is considered as a strategic activity. The sole entitled natural gas transportation network operator is the state-owned company SNTGN Transgaz S.A. ([www.transgaz.ro](http://www.transgaz.ro)), performing such activity through the National Transportation Network ("NTN"), which is public property.

Natural gas distribution and storage activities represent services of national public interest that may be subject to concession.

Imports of gas from Russia are performed by some private intermediation companies, such as Imex Oil or Wintershall. Among the main natural gas traders on the internal market, Romgaz S.A., a State-owned company, has the biggest market share (27.97%), followed by Petrom S.A. – part of OMV Group, Distrigaz Sud, Interagro and WIEE – a joint venture between Gazprom and Wintershall.

Romgaz and Gazprom aim to establish a Russian-Romanian joint-venture company, which will be responsible for building ten natural

gas storage facilities in Romania. Each company will have a share of 50%, and the joint-venture company is planned to develop storage capacities of 5-6 billion cubic metres of natural gas, among which, about 2 billion cubic metres will be the capacity of the storage facility located in Roman-Margineni.

The natural gas import is performed from Russia by transiting Ukraine's territory, through the measuring stations located at Isaceea (Tulcea County – south-eastern part of Romania) and Mediesu Aurit (Satu Mare County – northern part of Romania).

It is estimated that by 2015 the Romanian natural gas consumption will reach 22 billion cubic metres/year. Considering the reduction of the internal production at 6 billion cubic metres/year, the natural gas import will increase at approximately 16 billion cubic metres/year, which is 4 billion cubic metres more than the existing capacity of the above-mentioned stations.

In this context, the necessity to invest in new pipelines is of material importance. The main issue is that such investments, for which there are already plans, must be focused on other natural gas sources than the Russian ones. The newly built Arad-Szeged (Hungary) natural gas pipeline is no coincidence. The same goes even for the much larger Nabucco project.

Further on, recently, Romania and Bulgaria agreed on the interconnection of the gas pipelines, and as future important projects in the natural gas field, we could mention the South Stream, Nabucco and AGRI, such projects which are, for the moment, under discussion at governmental level.

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

At present, Romania's energy requirements are covered by the following resources: natural gas 36%; oil and oil products 24%; coal 24%; and hydro plants 16%.

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

At the moment, the internal natural gas production covers the domestic consumption by approximately 75%; such percentage being variable and monthly established by the Romanian Energy Regulatory Authority ("RERA"). In order to fully meet the internal consumption requirements, the remaining percentage of approximately 25% of natural gas, is imported from Russia.

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

At present, the natural gas production of Romania is not exported, due to the fact that the entire domestic production must first cover the entire internal consumption. Only in case the internal consumption would be covered, the difference, meaning the production exceeding the internal consumption, might be exported. Furthermore, it should also be considered that the actual pipeline system does not allow for the export of natural gas. However, in accordance with the proposal for a new regulation regarding measures to safeguard security of gas supply, approved by the European Parliament on September 21, 2010, all natural gas interconnection pipelines between EU Member States must assure the transport of gas in both directions (import and export), so it is expected that Romania would be able to export natural gas by the end of 2013.

However, considering the reserves estimated and the potential of Romania for alternative gas sources, such as recently discovered shale gas, the total liberalisation of the market is expected to be performed in the near future, so that export will be possible as well under such circumstances.

## 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 main pieces of legislation regulating the exploration and production of natural gas are the Oil Law No. 238/07.06.2004, as further amended, the Natural Gas Law No. 351/2004, as further amended, and Government Resolution No. 2075/2004, approving the implementation rules of the Oil Law.

According to the Romanian Constitution and the 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.

At administrative level, the main competent authority in the natural gas sector is the National Agency for Mineral Resources ("NAMR"), controlled by the Government and authorised to apply the legal provisions regulating the natural gas development activities, such as thus to organise the public bid calls for awarding of concessions in the natural gas sector and issuance of production licences.

Complementary to the attributions of NAMR, there is a second public authority, RERA, with the role of issuing the secondary legislation applicable in the natural gas sector and the energy sector, such as the issuance of licences and authorisations, including those required for the development of natural gas, the drafting of technical requirements related to natural gas development activities or the organisation, coordination and supervising of the gas market.

During the last 2 years we have witnessed an increasing interest in major foreign investors in unconventional gas, namely shale gas. Even if such actions are at an inception phase, the Romanian authorities are starting their first initiative in adapting the existing

gas legal frame work to the specifications of shale gas. We will most probably have suitable shale gas legislation within the next couple of years.

### 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?

Considering that natural gas is one of the State-owned mineral resources, the rights related to the development of natural gas reserves are transferred to Romanian or foreign legal entities, following bidding procedures by means of concession rights provided under petroleum agreements (*Rom.*: "acord petrolier"). Such agreements are concluded between NAMR, as 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 the performance and operation of such activities.

### 2.3 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 natural gas resources:

- (concession) petroleum agreements for exploration-development-production;
- (concession) petroleum agreements for development-production; and
- (concession) petroleum agreements for production.

The beneficiaries of petroleum agreements, who are granted the right to perform E&P operations, including experimental production, have to pay oil royalties to the Romanian State, in accordance with the applicable legal provisions. The royalty shall be determined as a percentage from the gross production extracted as a result of the production operations of the natural gas reserves.

The right to perform exploration/production operations is granted by NAMR under the petroleum agreement, and such may commence based on authorisations issued by NAMR, RERA and some other authorities, such as the Environmental Agency.

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

Further on, a positive environmental impact assessment is required and approvals of several other public authorities (in sectors like labour or environment) are necessary.

### 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 and controls almost half of the natural gas production market through Romgaz S.A., a State-owned company. The main competitor of

such State-owned company on the natural gas production market is Petrom S.A., a former Romanian State-owned company, passed into private hands in 2004 and controlled for the moment by OMV Group, holding 51%, (while the Romanian State still owns 20% of Petrom S.A.). Furthermore, Romgaz S.A. also has a share of 45% of the natural gas wholesale supply market.

Therefore, the development of the natural gas reserves, is at the moment, mainly performed either by Romgaz S.A., based on concessions obtained more than 20 years ago and which are still in force (partially currently prolonged) or by Petrom S.A., based on same concession rights obtained when it was a State-owned company, even if in the past few years some additional foreign companies obtained, following public bid calls, the right to perform natural gas development activities in Romania, which are at this moment not of a relevant quota.

The presence of the Romanian State in the natural gas sector is a matter of policy, whereas the Romanian authorities want to have control and manage part of this important sector in order to secure the country's energy requirements.

Nevertheless, it is planned that, in the near future, such State-owned companies, especially Romgaz S.A., will be privatised, while a first round for selling Petrom S.A. was organised earlier this year.

## **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 petroleum agreements. For the production operations, the royalty is determined considering a percentage quota of the value of the gross production extracted, ranging from 3.5% for the natural gas fields with low productivity rates and up to 13% for the natural gas fields with high productivity rates.

## **2.6 Are there any restrictions on the export of production?**

In compliance with the provisions of the Oil Law, the holder of a petroleum 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 petroleum agreement and the applicable legislation.

On the other hand, in accordance with the applicable legislation, the export of natural gas is not allowed for the moment, until the domestic demand is fully covered by domestic natural gas; such interdiction being justified by the intention of the Romanian Government to reduce the dependency on Russian natural gas and keep the prices at a lower level. Due to this requirement, Romania does not currently export any of its natural gas production.

## **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.

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

The holder of a petroleum agreement may transfer its rights, part of the petroleum agreement, only with the prior written approval of

NAMR. In absence of the prior written approval of NAMR, any transfer of rights or interests shall be null.

Moreover, NAMR will grant its approval for the transfer of such rights, provided that the transferee has the required technical and financial capacity in order to perform petroleum operations in compliance with the terms set forth by the petroleum agreement.

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

Any participant must include in its offer for participating at the public bid call for concluding a petroleum agreement, a bank guarantee, confirming its solvability and global liquidity levels, gross profit margin, and financial profitability. Moreover, the holder of a petroleum agreement is compelled to register in its accounting books and to deduct the provision for abandonment, environmental recovery and restoration to the agricultural or forestry 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?**

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 natural gas may be booked as fixed assets under the heading "concessions, patents, and other similar rights and assets".

## **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?**

Additionally to the authorisations to be obtained from NAMR and RERA, several other authorisations are necessary, such as an environmental impact assessment and authorisations related to the personnel or occupational health and safety, just to name a few.

## **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?**

The Oil Law establishes the necessity of drafting an abandonment plan in respect of the physical structures used in the production of natural gas, consisting of a complex technical, economic, social and environmental documentation, justifying the closing of the plant and providing 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 production rights may be abandoned only if all the necessary measures to protect the reserves and the ground are taken.

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

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

The gas storage activity is governed by Natural Gas Law No. 351/2004. Together with gas transportation, distribution and transit activities, gas storage falls under the regulated segment of the natural gas market.

In order to perform gas storage activities, any legal entity, domestic or foreign, has to be duly licensed by RERA. In addition, all technical installations used in gas storage activities have to be prior approved by RERA and other relevant authorities. The gas storage activity is performed at a regulated tariff, duly established by RERA.

As a general rule, any gas producer, supplier, transporter, eligible consumer or foreign entity that benefit from gas transit, are entitled to use the gas storage facilities located in Romania.

The gas storage operator is entitled to refuse access to the gas storage facility only in the following circumstances:

- insufficient capacity;
- when there is no pipeline to which the connection may be established;
- if the access to the storage facilities will interfere with the safe operation of the natural gas system;
- if the installations used by the applicant do not observe the technical characteristics required by the applicable legislation;
- if the access to the storage facilities may lead to material economic and financial difficulties for the gas storage licence holder;
- if the quality of the natural gas to be stored does not observe the minimum requirements applicable on the domestic market; and
- failure to pay the services provided by the gas system operator according to the contractual provisions.

By law, natural gas is stored with the purpose of ensuring the safety of its supply to consumers, to harmonise the variations of the seasonal, daily and hourly gas consumption with the stored natural gas, to ensure the physical balance of the national transportation system and to perform other commercial activities.

## 3 Import / Export of Natural Gas (including LNG)

### 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).

Romania does not perform any cross-border sales or deliveries of natural gas due to the fact that the applicable legislation prohibits natural gas exports, as long as the domestic consumption is not fully covered. At present, Romania does not benefit from any LNG facilities.

## 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 RERA, the former National Regulating Authority for Natural Gas.

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

The national transportation network (“NTN”) is public property. The law provides that the activity of transport may be subject to concession by the Romanian State, through NAMR, to Romanian or foreign legal entities complying with the terms provided by the Natural Gas Law.

Nevertheless, for the moment, the single transportation operator and therefore, the only entity holding a natural gas transportation licence for the Romanian territory, is Transgaz S.A., a joint-stock company where the Romanian State is the owner of 73.5% of its capital share.

### 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 subject to an authorisation procedure regulated by RERA, and may be performed by either Romanian or foreign entities. Provided that all necessary documents are presented, RERA may issue an establishment authorisation. Later on, a building permit is required. Please consider that any restoration or modernisation works to be performed in relation with the existing transportation pipelines must be authorised by RERA as well.

As regards the operation of the natural gas transportation pipelines, any interested party must apply and obtain from RERA a natural gas transportation licence (while for the moment only Transgaz S.A. is holding such a licence).

### 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 construct natural gas transportation pipelines or associated infrastructure 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
- concluding a partnership agreement between the owner of the land and holder of the agreement.

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

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

Access to natural gas transportation pipelines is strictly regulated by Government Resolution No. 1043/2004 and by the principles of non-discriminatory access of third parties to the national transportation network. The natural gas producers, distributors, storage operators, suppliers, consumers and investors in natural gas facilities have the right to access the NTN.

The access procedure to the NTN implies three stages:

- an initial request of information filed by the interested party, followed by the answer from the NTN operator providing for the possibility and solution to access the NTN in the area in which the objective is located;
- the reservation of the required facility in the NTN for the applicant/user, by issuance of an access approval; and
- connection to the NTN.

Access to the NTN may be denied by the transport operator only for legitimate reasons (technical incompatibilities, insufficient transport capacity, the natural gas which will be pushed into the NTN does not observe the minimum quality requirements, etc.).

#### 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?

For the moment, the only interconnection of the NTN with a different transportation system (except for that with Russia as mentioned under question 1.1 above) is the Arad-Szeged pipeline, assuring the connection with the Hungarian gas transportation network. At this initial phase, the pipeline only allows for the import of natural gas, but in the near future, when all the technical aspects will be properly adjusted and the internal market will allow the export, such shall be also used for the export of natural gas from Romania to Hungary.

The construction works at the new Arad-Szeged pipeline have been finalised in September 2010, the pipeline having a length of 100 km, a diameter of 700 mm and a capacity of 4.4 billion cubic metres per year.

For the future, Transgaz S.A. is planning to build a second interconnection pipeline linking the Romanian NTN with the Bulgarian gas transportation network. In accordance with Transgaz S.A. representatives, such pipeline will have a 23 km length and the works at such project shall be commissioned in 2012.

#### 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?

Any company holding the required licences and wishing to perform natural gas transportation activities or expand its natural gas facilities is entitled to have access to the NTN, provided that there are no legitimate reasons to deny access (i.e. the safe operation of the NTN is affected, the existence of various technical incompatibilities, etc.).

In case of a dispute, the new customer shall forward to RERA a petition and RERA, through its Commission for the settlement of

the refusal to access the transport network, (which is a specialised department under the subordination of RERA), 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.

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

However, RERA has the right to compel the licensed 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.

If the new investments are not economically justified for the licensed operator, a new client has the right to participate, in cooperation 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. RERA has the competence to settle disputes in case of an ungrounded access refusal by the licensed operator.

#### 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?

The Romanian natural gas market has two segments:

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

Transport of natural gas is performed on the regulated segment of the market and therefore, the terms and conditions of the transportation agreements are regulated as well. The present transportation fee is RON 7.5/MWh (approximately EUR 1.7/MWh), VAT excluded.

## 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 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 licence issued by RERA 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, under regulated conditions.

The natural gas distribution operators have the following main obligations: (i) to operate, to maintain and develop the distribution network under safe conditions, with economic 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.

### 5.2 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 RERA, the public competent authority. Further on, 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 (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 producer, supplier and/or end-user to connect to the network. The access conditions to the natural gas distribution network are governed by RERA.

The Natural Gas Law provides the conditions to the distribution operators, with the purpose of avoiding 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 RERA, 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.

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?

RERA 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 RERA, based on its own methods drafted for such purpose.

In order to determine the tariffs due to RERA, 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 RERA 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)?

There are no specific legal limitations as regards the acquiring of interest in private gas utilities. 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.

## 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 RERA.

The domestic natural gas market consists of:

- a competition segment, including natural gas trading between suppliers and between suppliers and eligible consumers. On the competition segment, prices are freely formed based on demand and offer, as a result of competition mechanisms; and
- 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 RERA, 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 eligibility criteria are established by RERA.

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. In accordance with the latest analysis performed by RERA, the opening degree on the Romanian natural gas market has reached 55%.

### 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?

Natural gas may be traded as an "unbundled" product, either on the open market or on the regulated market, as mentioned under question 6.1 above.

## 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 RERA. A relevant department under RERA monitors compliance with the provisions regarding the LNG.

The applicable legislation provides 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.

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

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

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

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

For the operation of LNG facilities, it is mandatory to obtain, in advance, 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.

### 7.4 Outline any third-party access regime/rights in respect of LNG Facilities.

Since 2004, Romania has in place a Technical Code for regulating LNG activities. However, the Technical Code does not provide for specific provisions regarding the access of a third-party to LNG facilities. Under these circumstances the access of a third party to LGN facility should be performed in compliance with the principles of maintaining a suitable competing environment in order to avoid imbalances on the LNG market and anti-competitive behaviours.

Further clarifications are provided by the provisions of Natural Gas Law No. 351/2004, whereas in case of new gas infrastructures, including LNG facilities, such may be exempted from the

provisions of the applicable legislation regarding the access of third parties to the transportation, distribution and storage systems, and from the standard tariffs, provided that:

- the investment enforces the competition in natural gas supply and increases the safety of the gas supply;
- the investment may only be implemented provided that a financial incentive is granted;
- the facility has to be in the ownership of a third party other than the system operator;
- tariffs are levied to third parties for using the new gas facility; and
- the financial incentive does not affect the competition, the efficient operation of the natural gas internal market or the proper operation of the system where the facility is connected.

## 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 authority who has general competence, regulating the 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").

In the natural gas sector, RERA is responsible for the regulation of competition aspects and anti-competitive practices. In this context, RERA drafts and promotes the rules regarding prevention of abuse of dominant positions on the domestic market of natural gas and promotes and ensures fair competition on the natural gas market. When identifying a potential abuse of dominant position, RERA notifies 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?

The regulator, and in a further stage the Competition Council, have to observe the criteria of the Competition Law, which does not allow economic concentrations to have 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 part of it.

The rules issued by the RERA 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, and which influences the economic activity and harms the consumers.

As regards the competition status of the Romanian natural gas market, there are internal and external factors that should be considered, namely the significant players on the market, the poor infrastructure, the connection with the EU natural gas market.

When it comes to the level of production and distribution, there are only a few major players and an increasing number of small players. The existence of the important players may lead to anti-competitive market sharing agreements. The Competition Council will closely follow the players' behaviour and the changes on the natural gas market, with a view to sustain the entrance of new players on such

market. For a better operation of the natural gas market, the Competition Council recommends the establishment of a natural gas exchange market, similar to the one existing in the electricity sector.

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

Within the scope of its surveillance and control duties, when RERA identifies a potential abuse of dominant position, the authority must notify the Competition Council together with any justifying documents that lead to such conclusion, 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 may, upon investigations, order cessation of the identified anti-competitive practices, provide recommendations, impose special terms or other obligations to the parties and apply fines.

If in the specific case the situation cannot be improved and recurrence of the abuse cannot be prevented, the Competition Council, on the grounds of seriously affecting a major public interest, may request that the Bucharest Court of Appeal apply additional measures for the purpose of ceasing the dominant position on the market, such as 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; limitation of or interdiction for access on the market, etc.

### 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?

Intended mergers have to be notified to the Competition Council, in case the turnover of the companies involved in such transaction have reached, during the last year before the merger, the threshold of EUR 10m, and provided that at least two of the involved companies have each registered on Romanian territory a turnover exceeding EUR 4m.

Nevertheless, economic concentrations presumably leading to significant limitation, removal or distortion of competition on the natural gas market may still be authorised if the parties involved attest to the cumulative compliance with the following conditions:

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

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

- (i) Brief information of the Competition Council by the entities involved.
- (ii) 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; or
  - c) conditioned authorisation.

- (iii) 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.

## 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 applicable law does not provide for any 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, 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 European law was first considered for the purpose of Romania's accession to the European Union.

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

Moreover, the regulatory policy is especially influenced and affected by the Council Directive No. 90/377/EEC, with regard to the methodology to be applied for the collection of gas and electricity prices charged to industrial end-users, the Directive No. 2003/55/EC of the European Parliament, and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, the Council Directive No. 2004/67/EC, concerning measures to safeguard security of natural gas supply, and the Directive 98/34/EC of the European Parliament and of the Council, laying down a procedure for the provision of information in the field of technical standards and regulations, only to name a few.

## 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 RERA. Therefore, in case of pre-contractual disputes between participants in the natural gas sector with regard to commercial agreements concluded based on the framework agreements, RERA, by means of 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, such as:

- 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.

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

**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 ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in 1961, under Decree No. 186/1961 and ICSID in 1975, under 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 many cases in the State's public property.

**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 obtained judgments or awards against the Government authorities or State bodies pursuant to litigation before domestic courts in the natural gas sector.

## 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.**

Romania has proven to be an interesting and appealing destination for strategic foreign investors from both the USA and Russia. Following the resources assessments performed within the last years and considering the Romanian overall geological data, foreign investors have made important steps in establishing permanent headquarters within Romania and have revealed their appetite for participating on the gas market, both in the upstream and downstream sectors.

In this context, we could mention that, while US corporations look for unconventional gas resources in Romania and the gas reserves estimated to be located offshore, in the Black Sea, the Russian giant Gazprom is looking to sign direct contracts with the Romanian authorities for natural gas importation, removing intermediaries, and is also considering investing in underground natural gas storage facilities and the downstream sector.

Moreover, considering the investors' interest, shale gas could be the next big thing to happen on the Romanian market on the medium term. If successful, shale gas production will take the Romanian gas market to a whole new level. Consequently, the Romanian authorities have shown an increasing concern in respect of the particularities of shale gas. Due to the fact that Romania does not have any specific legislation to cover shale gas activities, it is highly probable that we will witness to the implementation of the first legal regulations on shale gas within the next 2 years.

Nevertheless, the main challenge facing Romania's energy sector is adopting the legal framework and European regulation, such as including the fully liberalisation of the gas market, as Romania has not incorporated the two Gas and Electricity Directives into its national law. The authorities failed to adopt the third EU energy package by March 2011, and were granted another six months, but as this term has elapsed, Romania may face an infringement procedure, together with some other EU Member States.

Therefore, the EU pressure and the foreign investors' lobby will most probably change this situation, leading to a fully liberalised market where natural gas exports will be possible.

From another perspective, it is worth mentioning that the Competition Council has initiated for the first time an important investigation in the natural gas sector, concerning a possible price arrangement of the technical services suppliers that have concluded commercial contracts amounting to EUR 25m with Transgaz S.A., the Romanian natural gas transportation operator, and Romgaz S.A., one of the major gas producers.

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