

Mining in Romania: overview

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A Q&A guide to mining regulation in Romania.

The Q&A gives an overview of the domestic mining sector, its regulatory structure and ownership, the environment and health and safety. It covers foreign ownership and tax issues and proposals for reform.

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Overview

1. Provide an overview of the recent developments in the exploration and extraction of mineral resources in your jurisdiction.

Primary mineral resources

The 2012-2035 Mining Industry Strategy of the Romanian Government lists the following primary mineral resources and their production potential:

- Pit coal: more than 300 million tonnes.
- Soft coal: more than 500 million tonnes.
- Salt: reserves of 100 million tonnes that will meet current demand for 40 years.
- Gold and silver: reserves of 760 million tonnes.
- Cupriferous ore: reserves of 443 million tonnes.

Current state of mining activity

In 1989 there were almost 300 mines in operation. By the late 1990s, Romania's mining operations needed huge government subsidies to continue operating. Between 2002 and 2012 the government closed 255 mines.

In 2015, three production licences were awarded (*Annual Report of the National Agency for Mineral Resources (NAMR)*).

Government policy and the importance of the mining sector to the overall economy

The 2012 to 2035 Romanian Mining Strategy (Strategy) includes, among other matters, a legal approach to the development of the mining sector. In particular, it proposes amendments to the current legal framework governing mining and mine closure activities, as well as the enactment of new legislation on mineral waters and restructuring of the salt extraction sector. The Strategy also contemplates the restructuring of the NAMR and the creation of an independent Mining Authority and policies for development of research and development (R&D) activities in the mining sector.

The March 2017 bulletin of the Romanian Institute of Statistics (INS) indicates that, in March 2017 as compared to March 2016, although the gross industrial production index increased by 10.3%, the same index in the mining and quarrying sector saw a decrease of 4%. Similarly, in March 2017 as compared to March 2016 the overall labour productivity in industry increased by 8.4%, and mining and quarrying encountered a significant labour productivity increase of 1.7%. The monthly turnover in mining and quarrying decreased by 9% in March 2017 with respect to the same month in 2016.

The revenues or estimated revenues from exploitation

For the first nine months of 2015, royalties and taxes from mining activities contributed about EUR37.8 million to state budget revenues, compared to about EUR27.3 million in 2014 (*Report of the NAMR*).

Current major mining projects

Currently there are no new major mining projects in Romania.

Regulatory structure

Regulation

2. Describe the regulatory framework for the exploration and extraction of mineral resources.

Regulatory framework

The mining sector has undergone a large scale restructuring process over the past 20 years, regarding both ownership and legislative framework. Environment legislation has gone through substantial amendment following Romania's accession to the EU as a result of the implementation of EU legislation on environmental protection. Consequently, mining activities are subject to a very complex and diverse legal framework.

The core legal mining provision in Romania is Law No 85/2003 (Mining Law) and its implementation guidelines. The Mining Law provides general principles of transparency and free competition, irrespective of the ownership structure, source of capital and nationality of the mining operators.

A production licence is awarded only after the relevant environmental impact assessment (EIA) is conducted.

EIA procedure is governed by Government Resolution No 445/2009 (GR 445/2009) and its implementation guidelines. The mining activities for which an EIA is required are listed under Exhibits 1 and 2 of GR 445/2009.

Other key rules are set out in the Government's Emergency Ordinance No 195/2005 on Environment Protection. It contains the general principles to observe on environmental protection in the development of any economic activity, including mining.

Regulatory authorities

The National Agency for Mineral Resources is the main institution with supervisory and regulatory authority in the mining sector. Its responsibilities include:

- Administration of mineral resources subject to public property.
- Negotiation and granting of licences and permits in the mining field.
- Enactment of secondary legislation.
- Supervision of compliance by beneficiaries of licences and permits and the applicable legislation.
- Establishment of royalties.
- Approval of exploration activities.
- Termination of mining activities.
- Professional certification.

Ownership

3. How are rights to the mineral resources held, and who holds those rights?

Under Romanian law, mineral resources are severable from the general ownership of land and are exclusively subject to the public ownership of the Romanian State.

Consequently, exploitation of such resources requires the grant of rights by the National Agency for Mineral Resources in accordance with the Mining Law, as follows:

- Concession rights for private operators.
- Administration rights for public institutions.

The use of the land for mining activities within the exploration or production blocks can be acquired by several means, including purchase, exchange, lease, expropriation and concession of lands.

Moreover, the Mining Law stipulates a legal easement to licence holders over land for necessary access to exploration or exploitation blocks.

Authorisation

4. What are the key features of the leases, licences or concessions which are issued under the regulatory regime? Can these rights be leased by the right-holder?

Mineral resources are exploited by the award of concession or administration rights, as applicable (*see Question 3*). The following types of licences can be awarded for mining activities carried out under either concession or administration rights:

- **Prospecting permit.** This is awarded on a non-exclusive basis on a written request to prospect in a specific block as established by the National Agency for Mineral Resources (ANRM). The beneficiary must execute a minimum volume of work with a minimum value, both being established by negotiation with the ANRM on the award of the permit.
- **Exploration licence.** This is awarded on an exclusive basis to national or foreign legal entities for the exploration of resources in a specific block. The beneficiary can engage in exploration activities on the basis of the anticipated annual payment of an exploration tax and the establishment of a security interest for the purposes of environmental reconstruction.
- **Production licence.** This is awarded on an exclusive basis to national or foreign legal entities for production activities regarding mineral resources in a specific block. The beneficiary can request a production licence following bilateral negotiations for any of the mineral resources discovered within the block within 90 days of providing its final exploration report communication to the ANRM.
- **Production permit.** This is generally awarded to individuals or legal entities for the exploitation of a limited number of mineral resources as provided by the Mining Law, for example, moor coal and alluvial gold.

Exploration and production licences can only be transferred to other legal entities with the prior approval of the ANRM. Any transfer of licences in breach of the rule is deemed null and void.

Lease/ licence/ concession term

Terms vary as follows:

- Prospecting permits are awarded for a maximum of three years and cannot be extended.
- Exploration licences are awarded for a maximum of five years and can be extended for an additional maximum of three years.
- Production licences are awarded for a maximum of 20 years and can be extended for additional, successive, five-year periods.
- Production permits are awarded for a maximum term of one year.

Fees

Fees are approved by order of the ANRM for the necessary deeds for the undertaking of mining activities such as:

- Registration of deposits.
- Termination of mining activities.
- Transfer of licences.
- Approvals.
- Permits.

Currently the fees for the most important licences and permits issued by the ANRM are:

- Prospecting permit: RON815.
- Exploration licences: RON2,445.
- Production licences: RON2,040.
- Production permits: RON2,445.

Fees for other documents relating to mining activities as well as for the issuance of documents required for obtaining the above licences and permits are detailed in the exhibits to ANRM Order No 138/2010.

Liability

Liability can be civil, administrative or criminal:

- **Civil liability.** Under the Mining Law, the beneficiary of a licence is liable for the damage caused to other individuals or legal entities by the mining activities until lapse or waiver of the licence, irrespective of whether the damage is discovered before or after the end of the licence.
- **Administrative liability.** If the beneficiaries breach the terms of licences, fines amounting to between RON3,000 and RON50,000 can be applied, depending on the nature and gravity of the breach. Under some circumstances, the breach may be considered a criminal offence (*see below*).

Moreover, the Mining Law provides for the suspension or revocation of the licence when the beneficiary breaches the concession or administration agreement.

- **Criminal liability.** Undertaking mining activities without a licence or a permit is a criminal offence, sanctioned with imprisonment from six months to three years or with a fine.

Restrictions

Mining activities are limited to the area of the block set out in the licence or permit.

The beneficiary of an exploration licence can reduce the exploration only on prior approval of from the ANRM and only if all the work necessary to restore environmental damage on the waived surface have been executed.

In addition, the beneficiaries of production licences or permits are entitled to waive the benefit of the licence or permit provided specific and limited conditions are complied with, mainly relating to the:

- Reimbursement of the value of the outstanding non-executed works.

- Execution of works for mine conservation or closing and recovery of the damaged natural environment or awarding of the corresponding amounts to the competent authority.

5. How are such leases, licences or concessions awarded?

Licences and permits are awarded in a variety of ways depending on their type:

- Prospecting permits are awarded on written request. The beneficiary can be granted an additional valuation score during the competitive bidding organised for the award of the exploration licence for the block subject to a prospecting permit.
- Exploration licences are awarded by competitive bidding organised by the National Agency for Mineral Resources (ANRM) during which bidders submit the proposed exploration schedule and documents confirming the technical and financial capacity of the bidder.
- Production licences are awarded by either:
 - direct award, at the beneficiary's request of an exploration licence for any of the resources discovered in the block;
 - competitive bidding, on the initiative of the ANRM for specific production blocks in the list approved by order of the ANRM president.
- Production permits are issued on request to the first individual or entity requesting the permit.

Competitive biddings organised for the award of exploration and production licences are exempted from the application of the general rules governing public procurements stipulated by Law No 98/2016 (Public Procurement Law) or Law No 100/2016 (Works Concession and Services Concession Law), as well as from the general legal provisions governing the award of concession contracts.

The guidelines for the implementation of the Mining Law establish a special set of awarding rules, pertaining mainly to the organisation of a public tender for the award of production and exploration licences.

Even if exempted from the general procurement rules, the core principles of the Public Procurement Act must be observed, that is, the award of exploration and production licences must observe the principles of:

- Non-discrimination.
- Equality of treatment.
- Mutual acknowledgement.
- Transparency.
- Proportionality.
- Efficiency in spending public funds.

- Acknowledgement of liability.

Environment

6. What are the main ongoing requirements for environmental protection?

The legal framework for waste disposal is the Waste Law No 211/2011. This establishes the necessary measures for the protection of the environment and human health by:

- Preventing or reducing the adverse impact of waste generation or management.
- Reducing the overall impact of resource use and improving the efficiency of such use.

Government Resolution No 856/2008 on the management of waste from extractive industries deals with waste resulting directly from:

- Prospecting, extraction, treatment and storage of mineral resources.
- The working of quarries.

Mineral extractive waste must be managed pursuant to the relevant waste management plan endorsed by the National Agency for Mineral Resources (ANRM) and approved by the Ministry of Environment.

Before performing any operation involving the pile and storage of extractive waste into a waste installation, the ANRM requests the establishment of a financial security interest. This ensures that all obligations in the environmental permit are financially secured and funds are available at any time for the rehabilitation of the site affected by waste installations.

Health and safety

7. What are the main ongoing requirements for compliance with health and safety regulations?

The health and safety regime for industrial activities is governed by Law No 319/2006 on occupational health and safety.

Law 319/2006 imposes on employers, several specific measures including to:

- Obtain an operating permit before starting any activity.
- Draft a plan for the prevention and protection of workers' health and safety.
- Draft internal guidelines implementing the health and safety provisions.
- Monitor the operation of all protection systems and devices.
- To provide work and protection equipment suitable for each job position.

In addition to the general legal requirements, specific safety provisions apply in the mining sector to ensure that:

- Workplaces are developed, operated and maintained to allow works to be performed without endangering workers' safety and health.
- The operation of workplaces when workers are present takes place under the supervision of a person in charge.
- Work involving a special risk is entrusted only to competent staff and carried out in accordance with the instructions given.
- All safety instructions are comprehensible to all the workers concerned.
- Appropriate first-aid facilities are provided.
- Appropriate precautions for the avoidance and detection of fires and explosions and for the prevention of explosive and/or health-endangering atmospheres.

Foreign ownership

8. Are there any restrictions concerning the foreign investment and ownership of companies engaged in the exploration and extraction of mineral resources in your jurisdiction?

The provisions of the Mining Law apply irrespective of an investor's citizenship or seat of incorporation. Foreign investors in Romania enjoy equal legal treatment to the legal treatment applied to Romanian investors. No restrictions are provided for foreign individuals or companies willing to apply for a mining licence or permit. However, foreign companies that are awarded a mining licence must incorporate a subsidiary in Romania within 90 days from the date the licence enters into force and maintain the subsidiary for the entire term of the concession.

Tax

9. What payments, such as taxes or royalties, are payable by interest holders to the government?

Mining activities are subject to:

- An annual tax for prospecting, exploration and production of mineral resources. The annual tax is updated every year in accordance with inflation. Currently, the following values of the annual tax are applicable:
 - prospecting: RON341 per square kilometre;
 - exploration: RON1,367 per square kilometre. The tax is doubled after the first two years and multiplied by five after four years;
 - production: RON34,180 per square kilometre.
- A mining royalty. This is established when awarding the production licence or permit in accordance with the quotas for each type of mineral resources provided in the Mining Law. For example, the royalty level is calculated as a percentage of the value of the outturn for the following resources:
 - ferriferous and non-ferriferous, aluminium and radioactive ores, rare and dispersed soils, precious and semi-precious stones, and thermo-mineral waters: 5%;
 - coal: 4%;
 - precious metals: 6%.

10. Does the government derive any other economic benefits from the exploration and extraction of the mineral resources?

Mining operators are subject to:

- Standard profit tax of 16%.
- VAT of 19%.

The government derives other benefits from mining, such as:

- Income tax and social contributions on wages.
- Withholding taxes for payments made to non-residents (subject to double tax treaties concluded by Romania).
- Contribution to the special environmental fund.

Joint ventures are not treated as legal entities under Romanian tax laws. The revenues, expenses and profits of the joint venture are allocated to each partner in consideration of its stake in the joint venture.

11. What taxes and duties apply on the import and export of mineral resources?

Romania applies the combined nomenclature classification in accordance with EU customs regulations.

Reform

12. Are there any plans for changes to the legal and regulatory framework?

A legislative proposal aiming to amend the Mining Law was submitted in 2015. However, this was rejected by the Deputies Chamber on 28 December 2016. Although some minor changes were considered (for example, the sanctions level), no other major amendments were brought to the attention of the public.

The regulatory authority

National Agency for Mineral Resources (ANRM)

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Main responsibilities. ANRM has the following main duties:

- To administer the mineral resources subject to public property as provided by the Mining Law.
- To organise the National Geological Fund, to establish the National Resources/Reserves Fund, to confirm, control, record and manage the movement of resources/reserves.
- To act as grantor, together with other state authorities, to negotiate and conclude, in the name of the Romanian State, mining concession licences and exploitation permits.
- To issue regulations, guidelines, instructions, orders and other regulatory deeds.
- To supervise compliance by the mining operators with the provisions of the granted licences and permits.
- To cancel concession or administration deeds.

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Electricity regulation in Romania: overview

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OVERVIEW

Electricity market

1. What is the role of the electricity market in your jurisdiction?

The energy sector plays a central role in Romania's economy and policy. The draft of the National Energy Strategy for the years 2016 to 2030, with an outlook to 2050, is due to be approved in the second part of 2017. The draft:

- Includes the vision and strategy of the government on the development of the energy sector for the future.
- Identifies the vulnerable aspects of the industry and suggests solutions for reaching the country's objectives.

The core priorities of the National Energy Strategy are:

- The security of energy supply.
- Ensuring economic competitiveness while maintaining an acceptable price for final consumers.
- Environmental protection.
- The progressive shift from a regulated to a liberalised electricity market started officially in 2000 and was fully completed 1 July 2007, when all consumers became eligible to change electricity supplier. Regarding the de-regularisation process of electricity prices, for non-household consumers, price liberalisation was finalised on 1 January 2014, while for household consumers, the electricity prices will be fully liberalised stepwise by 31 December 2017.

During 2016, the most important problems facing investors on the Romanian energy market included:

- Unpredictable and numerous changes in laws and regulations (mostly referring to the renewable energy sector).
- Issues related to the electricity infrastructure.
- A reduced consumption of electricity, caused by the reduced consumption in the economic sector.

According to the annual report presented by the Romanian transport and system operator (TSO), Transelectrica SA, in 2016 electricity generation reached 60.7 terrawatt-hours (TWh), about 1.7% lower than in 2015. Internal consumption amounted to 55.6 TWh, representing an increase in the consumption of about 1.2%, compared to 2015. During 2016, Romania was a net electricity exporter, the import-export balance being negative, amounting to less than 5 TWh.

Integration of the Romanian electricity market into the internal European market is one of Romania's strategic targets. Starting 19 November 2014, the Romanian day ahead market (DAM) is operating in a coupled regime with the markets in the Czech Republic, Slovakia and Hungary.

Recent trends

To encourage the generation of renewable energy, Romania introduced a support scheme for the first time in 2004, which was substantially amended in 2008, with full applicability starting July 2011 (after approval from the EU). This has so far has generated almost EUR8 billion worth of investment in the renewable sector.

Support is based on a green certificate (GC) trading mechanism combined with a mandatory GCs acquisition quota. The support programme consists of the right of renewable energy producers (using technologies such as solar, wind geothermal, biomass, bio-liquids, biogas, gas from waste, gas from wastewater treatment and hydropower plants with an installed capacity of up to 10 MW) to receive GCs and to sell these to the suppliers of electricity to end consumers, where the suppliers must acquire a regulated share of GCs, according to the amount of electricity sold to end consumers. GCs are traded separately from electricity, on regulated markets, at regulated prices. In 2016, GCs were traded at a minimum price of EUR29.39 and a maximum price of EUR59.88. From 2017, the new regulated prices for the GCs are between EUR27 and EUR55.

As of 12 June 2017, about 3.37 million GCs were traded at the minimum regulated price in Romania.

In 2016, the impact of GCs on consumers' bills was estimated to be about RON43 per megawatt-hour (MWh) (around EUR9.5 per MWh).

In 2016, almost 20% of the energy production was generated from renewable energy sources.

From 2013, a series of regulatory changes affected the renewable energy sector. One of the main changes was the reduction to the number of GCs that can be granted for renewable energy sources (RES) projects commissioned after 1 January 2014 and the postponement of GCs from trading for projects commissioned before 1 January 2014, with the possibility for the suspended GCs to be gradually recovered during April 2017 to December 2025, depending on the technology.

Moreover, part of the GCs to be granted to solar power projects commissioned before 1 January 2014 will be suspended from trading between 1 April 2017 and 31 December 2024. These GCs will be recovered gradually starting with 1 January 2025.

To further promote the generation of E-RES and ensure Romanian's renewable energy targets are met, improve the current GCs trading system and to create a transparent, anonymous and non-discriminatory market for the GCs, the Romanian government recently adopted the Government Emergency Ordinance 24/2017 (Ordinance), which amended some of the main regulations in the renewable energy sector.

The main changes brought about by the Ordinance are as follows:

- The validity period for GCs issued after 1 April 2017 and those suspended from trading from 1 July 2013, have been extended from 12 months to 15 years (until 31 March 2032).
- A new centralised and anonymous GCs market will be operational from September 2017. The new market will enable participants to remain anonymous, so transactions are

expected to take place only based on objective and transparent criteria.

- A new centralised market for E-RES and greencertificates will be operational from September 2017. On this new market, electricity produced from renewable energy sources will be traded together with the afferent amount of GCs in an anonymous, competitive, transparent, public, centralised and non-discriminatory way.
- A fixed annual number of GCs has been introduced. For 2017, this has been set at around 14.9 million GCs. From 2018, the Romanian Energy Regulatory Authority (*Autoritatea Națională de Reglementare în domeniul Energiei*) (ANRE) will set the fixed annual amount of GCs every two years, based on a methodology to be further published by ANRE. The fixed annual number of GCs, set by the ANRE, is to be approved by government resolution. The fixed annual number of GCs consists of the total number of GCs estimated to be issued until the expiry of the GCs support scheme and the GCs suspended from trading between 2013 and 2024 divided by the number of years remaining until the end of the GCs support scheme.
- Each year, in December, ANRE will set the annual mandatory quota for the acquisition of GCs estimated for the following year, taking into consideration the fixed amount of GCs and the electricity price for the end consumer, for the following year, which should not exceed an average impact of EUR11.1 MWh, reflected in the electricity invoice of the end consumer.

An important development expected to be implemented by the end of 2017 is related to the opening of the GCs support scheme to imports of E-RES coming from other member states. E-RES producers from other member states will be able to apply for subsidies based on GCs for the energy exported to Romania and producers in Romania will also benefit from the support schemes applicable in other member states when they export energy consumed in the respective member states. This should be applicable based on reciprocity agreements to be further concluded between Romania and other member states and in accordance with further implementation rules to be issued by the regulatory authority. As at the date of this article, no information about the existence of reciprocity agreements concluded by Romania, is available.

As Romania is a net electricity exporter (last year, Romania exported 5 TWh), the new regulations and new interconnections are expected to have a significant impact on the Romanian electricity market.

Regulatory structure

2. What is the regulatory framework for the electricity sector?

Regulatory framework

The principles of the Romanian electricity market are set out in the Electricity and Natural Gas Law 123/2012 (Electricity and Gas Law) and detailed in secondary legislation. Electricity-related activities are strictly regulated under the Electricity and Gas Law and are generally subject to a specific authorisation or licence issued by the Romanian Energy Regulatory Authority (ANRE).

The Electricity and Gas Law establishes the:

- General framework for electricity regulated activities, electricity licences and authorisations.
- Definition of the main concepts applicable in the electricity sector.
- Strategy and energy policy of the country.
- Main competencies of the authorities in this field.

Other important regulatory acts in the electricity sector are:

- Law 220/2008 (Renewable Energy Law) regarding the system for promoting production of energy from renewable energy sources.
- ANRE Order 60/2015 on the approval of the Regulation for the green certificates market.
- ANRE Order 12/2015 on the approval of the Regulation for the issuance of licences and permits in the electricity sector.

The EU directives providing for the separation between companies involved in generation, transmission, distribution and supply/trading, have been transposed and implemented into the country's domestic legislation.

The transposition of the Third Energy Package into national legislation was achieved by the Electricity and Gas Law, which:

- Defined the concept of vulnerable consumer.
- Provided for increased transparency in the electricity market.
- Provided for the centralisation of transactions in the electricity sector.
- Provided for actions to lead to the interconnection of the internal market with neighbouring electricity markets.

The Electricity and Gas Law sets out the separation model used for the Romanian transmission and system operator (TSO). Romania has chosen the "Independent System Operator" (ISO) model for both the electricity and natural gas sectors, given the public ownership of the transmission networks. This model allows the certification of the TSO as complying with EU requirements while maintaining the current ownership regime over the networks, ensuring at the same time an effective separation between transmission, generation and supply interests.

Regulatory authorities

The key regulatory authorities in the electricity market include:

- **Ministry of Energy.** Its responsibilities include:
 - managing the public assets in the energy sector;
 - drafting the national energy policy and strategy and the implementation of the government policy in the energy sector;
 - identifying and defining the objectives of the energy sector and the best ways of achieving such objectives;
 - initiating legislative projects in the energy sector;
 - supervising the application of and compliance with environmental protection measures;
 - monitoring compliance with EU obligations and requirements.
- **Romanian Energy Regulatory Authority (ANRE).** This is the Romanian energy regulatory authority, responsible for the regulation of the electricity and gas sectors. It has broad regulatory powers, mainly in relation to:
 - issuing and approving regulations in the energy sector;
 - establishing the contracting framework in the energy sector, setting up prices and tariffs for captive consumers and for the natural monopoly segments of the markets;
 - monitoring the electricity market and compliance with the existing regulations;
 - authorising and licensing the companies acting in the energy sector.
- **National Environmental Protection Agency.** This is a specialised authority of the public central administration,

subordinated to the Ministry of Environment, with competences in the following areas:

- strategic environmental planning and environmental factors monitoring;
- permitting of activities which have an impact on the environment;
- implementation of the environmental legislation and policies;
- reporting to the European Environment Agency;
- co-ordinating the implementation of environmental strategies and policies at national, regional and local level; and
- permitting the activities having an impact on the environment and providing the compliance with the legal provisions.

See box, *The regulatory authorities*.

ELECTRICITY COMPANIES

Main companies

3. What are the main companies involved in electricity generation, transmission, distribution and supply?

The main participants in the electricity market are:

- The transmission and system operator (TSO): CNTEE Transelectrica SA.
- The Electricity and Green Certificates Markets Commercial Operator: OPCOM SA (owned by Transelectrica).
- The Metering Operator for the wholesale electricity market: OMEPA SA (owned by Transelectrica).
- The Telecommunication and IT Operator: TELETRANS (owned by Transelectrica).
- Eight main distribution companies (DSOs):
 - SC CEZ Distributie SA;
 - SC ENEL Distributie Banat SA;
 - SC ENEL Distributie Dobrogea SA;
 - SC E.ON Moldova Distributie SA;
 - SC ENEL Distributie Muntenia SA;
 - SC FDEE Electrica Distributie Muntenia Nord SA;
 - SC FDEE Electrica Distributie Transilvania Sud SA; and
 - SC FDEE Electrica Distributie Transilvania Nord SA.
- Hidroelectrica SA, the major national (state-owned) hydro-power producer.
- Nuclearelectrica SA, the major national (state-owned) nuclear power producer.
- Around 20 producers with thermal power plants (state-owned) and few municipal co-generation power plants producers.
- Private wind, solar and biomass power producers.
- About 190 independent suppliers and traders of electricity.

Generation

The main electricity generation companies in Romania are state-owned. These are the Cernavoda nuclear power plant, operated by Nuclearelectrica, the hydro-power plants operated by Hidroelectrica and around 20 thermal power plants using coal. In

the private sector, OMV Petrom owns the biggest gas power plant with a capacity of 800MW and CEZ owns the biggest wind farms cluster with a total capacity of 600MW.

The total amount of electrical power generated in Romania in 2016 was of 60.7 TWh and the total consumption was of 55.6 TWh.

The main resources in the generation of electrical power from primary sources are coal and hydrological resources, together having a contribution of 53.2% in the generation of electrical power, followed by the nuclear production with a contribution of 17.3%.

Transmission

The electricity transmission system in Romania is publically owned by the Romanian state. The operation of the electricity transmission system is a public service of national interest. The system operator role is partially separated from the transmission asset owner. This is because the National Company Transelectrica SA is the only authorised and licensed transmission system operator (TSO) in Romania, and has a concession right over the existing transmission lines, whereby new transmission lines (that are newly built) are owned by the TSO.

The electricity transmission system in Romania and the interconnection system with the neighbouring countries is managed and operated by the National Company Transelectrica SA. Transelectrica is a company listed at the Bucharest Stock Exchange and the state owns 58.7% shares in the company. Transelectrica is member of the European Network of Transmission and System Operators for Electricity (ENTSO-E) and is responsible for the electricity transmission, system and market operation, grid and market infrastructure development, and ensuring the security of the Romanian power system. Romanian has an estimated import capacity of 2,000MW and an export capacity of 1,900MW.

Distribution

In Romania, the level of consumers connected to the electricity distribution system is relatively high (at national level, about 96%), but there are isolated areas, located at significant distances from cities that are still not electrified (about 30% of these are areas with about five to ten houses).

The electricity distribution service is ensured by eight independent Distribution System Operators (DSOs), which have exclusive electricity distribution rights in specific regions of the country. Five of the eight DSOs are private companies, which are members of the utility groups of companies ENEL, E.ON and CEZ, and the other three DSOs are state-owned companies. The privately-owned DSOs have obtained concession rights over the distribution grid in the region where they operate the distribution grid, following the privatisation of the former state-owned companies, whereby new distribution lines (that are newly built) are owned by the DSOs.

Supply

In Romania, the distribution system operators sell electricity to almost all captive end consumers in the region where they operate the distribution system.

There are around 90 electricity suppliers currently operating and around 199 companies hold valid electricity supply and/or trading licences.

Unbundling requirements

The provisions of Directive 2003/54/EC on the common rules for the internal market in electricity (Electricity Directive) has been transposed into the Romanian legislation by the Energy Law 13/2007, later replaced by the Electricity and Gas Law, and all electricity companies concerned have complied with the unbundling obligations. There are no restrictions on who can operate storage assets, as there is no regulation specifically related to the rules on electricity storage.

Foreign ownership

4. Are there any restrictions concerning the foreign ownership of electricity companies or assets?

There are no legal restrictions on the foreign ownership of electricity companies in Romania. However, the existing transmission and distribution infrastructure is owned by the Romanian state.

Moreover, there are no restrictions in force concerning the foreign ownership of electricity companies or assets, in relation to the import or export of electricity.

Import and export of electricity

5. To what extent is electricity imported and/or exported?

In recent years, Romania recovered its traditional position as a net electricity exporter, given the excellent hydrological conditions and the production of electricity from wind. One of Romania's major objectives is to remain an exporter of electricity.

In 2016, Romania exported 7.3 TWh electricity, the equivalent of 15% of the total national consumption, whereas electricity imports have only been 2.3 TWh, representing 3% of the total consumption, according to the data regarding the electricity exchanges provided by the transmission and system operator (TSO). The main export destinations for the electricity produced in Romania were Hungary, Serbia and Bulgaria.

ELECTRICITY GENERATION AND RENEWABLE ENERGY

Sources of electricity generation

6. What are the main sources of electricity generation?

In relation to the mix of energy production for 2016, according to data from Transelectrica:

- Nuclear power accounted for 17.1% of total energy produced (down from 17.3% in 2015).
- Coal powered plants produced 23.4% of total energy (down from 26.3% in 2015).
- Hydro power accounted for 29.8% of total energy production (up from 26.8% in 2015).
- Gas powered plants provided 15.3% of total energy produced (up from 14.2% in 2015).
- Renewable energy accounted for 14.5% of total energy produced (down from 15.4% in 2015).

Fossil fuels

Fossil fuels (lignite and coal) are important primary sources for electricity generation and are used in about 40% of the total electricity production in Romania.

Most of the thermo-energy generation power plants in Romania use lignite, with around 30% of the electricity generated in 2014 from lignite.

Nuclear fission

Nuclearelectrica is the only nuclear power plant operator in Romania, which is owned by the state. The only nuclear power plant is the Cernavoda nuclear power plant, using uranium and heavy water. It has two reactors (two separate production units) with a total installed capacity of 1,414 MW (2 x 706.5 MW).

Cernavoda generates about 17% of the country's total electricity production, with an annual average production of 11 TWh.

Renewable energy

About 29% of the total electricity is produced in hydropower plants, while other renewable energy sources produce an additional 14% of the total domestic production (including wind, solar, biomass, biogas and geothermal).

Romania produced about 9 TWh of electricity from renewable energy sources (RES) in 2016. RES accounted for around 14.5% of the 60.7 TWh used in 2016 and subsequently, Romania has met its objective as share of total renewable energy of 24% for 2018. Currently, Romania has reached a renewables quota of 27%.

7. Are there any government policies, targets or incentives in place to encourage the use of renewable or low carbon energy?

Government policies/incentives

The Romanian Government encouraged the production of electricity from renewable energy sources by implementing a support scheme based on green certificates (GCs) trading combined with a mandatory GCs acquisition quota. The GCs support scheme benefits the producers of energy generated from solar, wind, geothermal, biomass, bio liquids, biogas, gas from waste and gas from wastewater treatment, as well as the producers of energy in hydropower plants with an installed capacity of up to 10MW.

For new equipment, the life span of the support scheme is applicable for 15 years (from the accreditation decision date), provided that the power plants were commissioned and qualified for the support scheme before 31 December 2016.

Renewable energy targets

The Renewable Energy Law (Law 220/2008 as further amended and completed) was enacted to support the production of electricity from renewable energy sources (E-RES) in response to Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Renewable Energy Directive), which requires a quota of 24% of Romania's final energy consumption of electricity to originate from RES by 2020.

According to the information provided by the TSO, by adding the electricity produced in large hydropower plants with installed capacities over 10MW and measuring the level of the energy produced and consumed last year, it is arguable conclude that Romania has achieved and surpassed a quota of 35% renewable energy within total consumption.

8. What are the main obstacles to the development of renewable energy?

Following significant changes to the renewable energy support scheme that took place in 2013, investment in this sector became less attractive (see *Questions 1 and 7*). A main obstacle is the fact that the support scheme with green certificates was applicable only to projects commissioned by the end of 2016. Legislative instability and the lack of predictability proved to be the main obstacles in the medium and long term.

From a development perspective, the recent changes in regulations applicable to renewable energy projects may be seen as obstacles imposed on the development of this sector. The obstacles mainly consist of the new regulated obligations for the electricity from renewable energy sources (E-RES) producers (for example, to pay an additional tariff for the reinforcement of the grid or to provide financial guarantees for commissioning the projects).

9. Are there any plans to build new nuclear power stations?

The authorities did not change the nuclear power policy following the Fukushima disaster.

On 9 November 2015, Nuclearelectrica and China General Nuclear Power Corp signed a memorandum of understanding for the development, construction and operation of two additional power generation units (units three and four) in the Cernavoda nuclear power plant, a project estimated at EUR6.45 billion.

Also, the two existing and operating reactors of the nuclear power plant require modernisation and the investment needed is estimated at around EUR1.5 billion. According to the company's representatives, it is estimated that the modernisation of the first reactor will be completed by 2023.

There are no government policies to encourage or discourage the use of nuclear power.

Authorisation and operating requirements

10. What are the authorisation requirements to construct electricity generation plants?

There is no specific law in Romania governing the permitting regime as a whole and not a single authority ("one-stop shop") to authorise or supervise the permitting process of an electricity generation plant.

The provisions related to the permitting process for the construction of an electricity generation plant are set out in various pieces of legislation, including:

- ANRE Regulation on connecting users to the grid.
- ANRE Regulation for the issuance of licences and permits in the electricity sector.
- Construction Law 50/1991.
- Order 1798/2007 for the approval of the issuance procedure of environmental permits.
- Many other related laws and regulations.

In general, all construction works can only be performed based on a building permit (BP) obtained by the beneficiary following the securing of a real right over the land where the construction will be erected that can be an ownership right, a superficies right, an easement right or a concession right over public owned land.

The first procedural step is for the beneficiary of the construction to obtain the urbanism certificate (UC), which includes a list of all endorsements and approvals that must be in place before submitting the application for the BP. The beneficiary must obtain all endorsements and approvals mentioned in the UC. Usually, these endorsements are issued by the environmental protection agency, the water management and the land planning authorities. However, other authorities may be further involved in the initial endorsement process, depending on the location of the land/generation plant on the neighbouring constructions (if any) and the grid connection solution, as well as other particularities of the land and/or of the project.

If the project could have an impact on the environment, an Environment Impact Assessment (EIA) procedure must be followed.

Depending on the type and location of the plant, further additional endorsements may be required from several different authorities, including the:

- Local and county authorities.

- Ministry of Defence.
- Romanian Intelligence Service.
- Aeronautical authority.
- Utility services providers that operate sites and/or equipment located close to the land where the plant will be erected.

In addition to the general authorisations, the construction of an electricity generation plant requires sector-specific permits and approvals, including:

- **A technical grid connection permit (ATR).** This is issued by the network operator (by the TSO or by the DSO, depending on the capacity of the project and the location of the available grid connection point), providing for the technical and economic conditions for the connection of the electricity generation unit to the grid.
- **An establishment (set-up) authorisation.** This is issued by the Romanian Energy Regulatory Authority (ANRE), allowing the establishment of a new electricity production unit (required for new electricity production units with an installed capacity higher than 1MW).

11. Are there any requirements to ensure new power stations are ready for carbon capture and storage (CCS) technology, or requiring a plant to retrofit CCS technology once this is ready?

There are currently no carbon capture and storage (CCS) requirements. The applicable legislation requires the use of best available techniques (BAT), without prescribing the use of any technique or specific technology.

For the operation of a fossil fuel power generation facility with a capacity exceeding 20 MW, a greenhouse gas emission permit is required. The issuing authority of the permit is the national EPA (ANPM). To obtain the permit, the operator must draft the monitoring plan for the greenhouse gas emissions of the power plant, in accordance with the provisions of Regulation (EU) 601/2012 on the monitoring and reporting of greenhouse gas emissions (Monitoring and Reporting Regulation) and Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (Emissions Trading Directive).

12. What are the authorisation and main ongoing requirements to operate electricity generation plants?

Some general authorisations must be obtained in order to have the right to operate electricity generation plants, such as, an authorisation regarding health and safety and environmental protection. However, certain sector-specific licences and contracts are also required, including a:

- Licence for the commercial operation of the power plant, which is issued by the Romanian Energy Regulatory Authority (ANRE) and has a maximum validity period of 25 years.
- Transmission service agreement (to be signed with the TSO).

If the electricity production unit is qualified as a dispatchable unit, registration as a balancing responsible party is further required.

The operator of an electricity generation plant must also register on the electricity markets operated by OPCOM. The most relevant trading platforms are the day-ahead market and the centralised market for bilateral contracts, which are both part of the wholesale electricity market.

13. What requirements are there concerning connection of generation to the transmission grid?

The general principle under Romanian law is a non-discriminatory access to the grid (that is, regulated third-party access with the right to connect to and use the transmission or the distribution networks, under the conditions provided by law). The grid operators have a legal obligation to allow access to the grid for any third party, subject to the third party observing all legal requirements.

The possibility and solution of connecting a power generation plant to the grid is based on a solution study that analyses the technically possible and economically feasible alternatives for the project to be connected to the grid. As a general principle, the grid operator must collaborate with the investors in order to find the most convenient connection solution, both from an economic and technical point of view.

Based on the grid connection solution chosen by the investor (if there are several options available) and on the necessary documentation provided by the investor, the grid operator will then issue the technical grid connection permit. Generally, a grid connection agreement is then concluded between the investor and the grid operator, covering the construction of the grid connection installation upstream the grid connection point, to be owned and operated by the grid operator.

The connection of generation power plants to the grid requires the observance of legal obligations and taking all necessary measures to minimise any risk related to the safety of the national power system, including:

- Observing the specific voltage approved in the grid connection permit obtained for the project (the voltage is determined on an individual basis for each project and the maximum voltage of the transmission grid is 400 kilovolts).
- Not exceeding the approved output capacity of the power plant.
- Using standard measurement equipment.

ELECTRICITY TRANSMISSION

Authorisation and operating requirements

14. What are the authorisation requirements to construct electricity transmission networks?

Similar to the construction of an electricity generation plant, the construction of electricity transmission networks is subject to obtaining the general authorisations mandatory under Romanian law and sector-specific licences and authorisations (see *Question 10*).

15. What are the authorisation and main ongoing requirements to operate electricity transmission networks?

The state-owned transmission and system operator (TSO), Transelectrica, is the only operator authorised to provide electricity transmission services in Romania, while the transmission electricity infrastructure is public property of the Romanian state.

To operate an electricity transmission network, an electricity transmission licence must be granted by the Romanian Energy Regulatory Authority (ANRE), and an environmental authorisation for the transmission of electricity must be issued by the Environmental Protection Agency.

Transmission charges

16. How are the charges and conditions for the transmission of electricity regulated?

As the transmission of electricity is considered to be a state monopoly, the rates and conditions for the transmission of electricity are regulated by means of orders issued by the president of the Romanian Energy Regulatory Authority (ANRE).

Third parties must enter into an agreement with the transmission and system operator (TSO) to benefit from electricity transmission services. The framework agreement is approved by an ANRE order.

The rates applicable until 30 June for the calendar year 2017, established by ANRE Order 27/2016, are:

- The average tariff for transmission of the electricity is about EUR4 per MWh.
- The average tariff for the extraction of electricity from the grid is about EUR4 per MWh.
- The tariff for system services is about EUR3 per MWh.

Export capacity is allocated by public auctions organised by Transelectrica together with the TSOs of the neighbouring countries. Auctions are organised for annual and monthly export electricity capacity allocation, as well as for intra-day and day-ahead electricity export capacity allocation.

To participate to the capacity allocation auctions, the bidders must hold an ANRE licence (this applies to Romanian undertakings), to provide the ETSO identification code (EIC) and to be registered as a balancing responsible party.

The charges for connecting a project to the transmission system are provided in the technical grid connection permit of each project and depend on several factors, including the:

- Location of the grid connection point, the cost of the grid connection installation.
- Capacity of the project.
- Need to perform upgrade works of the transmission grid in the area in order to integrate the new project and to be able to evacuate the power.

System balancing

17. How is electricity supply and demand balanced?

Electricity supply and demand is balanced based on transactions on the electricity balancing market, managed and operated by the transmission system operator, Transelectrica. According to the Commercial Code of the Electricity Market, for the purpose of participating on the balancing market, the producers and suppliers must be registered on the balancing market, and the dispatchable units must offer to trade all their available electricity on the balancing market.

They must also provide financial guarantees to the transmission and system operator for all the imbalances which may occur between the notified and effectively generated electricity. Most licence holders choose to delegate the balancing responsibility to a balancing responsible party.

ELECTRICITY DISTRIBUTION

Authorisation and operating requirements

18. What are the authorisation requirements to construct electricity distribution systems?

The construction of electricity distribution networks is subject to obtaining the general authorisations mandatory under Romanian law (see *Question 10*). An Environmental Impact Assessment (EIA) procedure is required for the development of overhead power lines with a capacity exceeding 220kV and exceeding 15km in length. The EIA is required for the issuance of the environmental agreement. A water management endorsement (WME), issued by the competent authority (the National Administration "Romanian Waters"), is required for distribution networks crossing waters.

19. What are the authorisation and the main ongoing requirements to operate electricity distribution systems?

Electricity distribution services are deemed to be of public interest. Distribution of electricity is subject to licensing by the Romanian Energy Regulatory Authority (ANRE). The distribution service is provided by eight authorised DSOs and the electricity distribution companies have exclusive distribution rights within their region. Only one distribution licence is issued for each region.

Distribution charges

20. How are the charges and conditions for the distribution of electricity regulated?

The tariff for the distribution of electricity is determined in accordance with the methodology approved by order of the president of the Romanian Energy Regulatory Authority (ANRE).

ANRE calculates the distribution tariffs to be charged by each electricity distribution company. The distribution tariffs for the following year are published by ANRE by the end of the current year and are binding on each electricity distribution company.

The distribution tariffs are differentiated for each operator and for the year 2016 these ranged between EUR3/MWh for high voltage electricity distribution lines and EUR29/MWh for low voltage electricity distribution lines.

ELECTRICITY SUPPLY

Authorisation and operating requirements

21. What are the authorisation and the main ongoing requirements to supply electricity to end consumers?

Electricity supply activities require an electricity supply licence issued by the Romanian Energy Regulatory Authority (ANRE), which is valid for ten years.

Suppliers must ensure the supply of electricity at reasonable prices or at regulated prices, depending on the type of the end consumer. The pricing policy must be transparent and non-discriminatory. The supplier must ensure labelling of the electricity and must inform end-users about the structure, origin and environmental impact of the electricity supplied.

The supplier must offer customers more payment methods for the supplied energy.

Trading between generators and suppliers

22. How is electricity trading (between generators and suppliers) regulated?

Under the Electricity and Gas Law, the trading of energy on the competitive market is performed in a transparent, public, centralised and non-discriminatory manner. To further ensure this and to enforce the provisions of Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency (REMIT), Law 127/2014 for the amendment of the Electricity and Gas Law has been enacted.

The sale of electricity between generators and suppliers can be performed by transactions that are agreed by means of bilateral contracts concluded following public auctions on the OPCOM operated market for bilateral contracts, on the day-ahead market (PZU), on the intra-day market (ID), on the balancing market (PE) or on the electricity market for large consumers (PMC).

By the enactment of Law 122/2015, as an exception from the provisions of the Electricity and Gas Law, producers of E-RES operating power plants with a capacity not exceeding 1 MW (or 2 MW in case of high efficiency co-generation power plants) have the opportunity to sell their electricity directly to suppliers of electricity to end-consumers by concluding direct negotiated power purchase agreements (outside the OPCOM markets).

More recently, following legal provisions enacted on 1 April 2017, a new market, called "the centralised market for renewable energy and greencertificates" (GCs) is now being regulated. This market will operate from September 2017, when the rules and the methodology are published by the ANRE. This market will operate as a centralised and anonymous market where competitive, transparent, public, centralised and non-discriminatory trading of renewable energy is ensured along with the GCs corresponding to the amount of electricity traded on this platform. On the centralised electricity market, the price of GCs, corresponding to the amount of electricity traded, will be sold at the closing price of the GCs established in the last trading session on the centralised anonymous GC spot market.

Electricity price and conditions of sale

23. How is the price for electricity and conditions of sale regulated at the consumer and wholesale level?

Consumer

The Romanian electricity market has been fully liberalised. Electricity price deregulation was finalised for industrial consumers on 1 January 2014, while for household consumers the process extended until 1 January 2018. Therefore, the tariffs of sales of electricity to household consumers are still regulated by the Romanian Energy Regulatory Authority (ANRE). From 1 January 2014, the regulated tariffs apply only to household consumers who did not exercise their eligibility right.

The rates applicable to household consumers include a "component from the competitive market" (CCM component). This is determined based on the costs of acquisition of the electricity by the supplier from the liberalised market.

Last resort suppliers must include this component in the monthly invoice issued to the captive household consumers. The percentage of the component in the total value of the invoice is determined in accordance with the calendar for the elimination of regulated tariffs. The CCM component is approved by ANRE for each supplier.

Wholesale

The sale of electricity at the wholesale level is performed on the competitive markets, based on the principles of transparency, publicity, centralisation and non-discrimination (see *Question 27*). Therefore, prices for the electricity are the result of free competition.

According to the data published by OPCOM, on the wholesale markets, the average spot electricity price is about EUR44/MWh, as at May 2017.

TAX ISSUES

24. What are the main tax issues arising on electricity generation, distribution, transmission and supply?

Companies active in the electricity sector are subject to the general 16% tax on profit and 19% VAT.

Electricity is an excisable product. The value of the excise for 2016 is EURO.55/MWh for commercially used electricity and EUR1.1/MWh for electricity used for non-commercial purposes.

Statutory powers

25. Do companies involved in the generation, transmission, distribution or supply of electricity have any statutory powers to undertake work (for example, compulsory purchase powers or street works powers)?

The Transmission and System Operator and the Distribution System Operators must perform upgrade and rehabilitation works at the transmission and distribution lines they operate in accordance with annual development plans. No other statutory powers to undertake works are provided by law.

INSURANCE

26. Are there any insurance requirements from the regulatory authority?

According to the Electricity and Gas Law and the Regulation for the issuance of licenses and authorisations in the electricity sector, there are no mandatory insurance requirements from the regulatory authority. However, when applying for a licence or authorisation, the beneficiaries must submit:

- Financial documentation attesting to their creditworthiness.
- Letters from the state authorities attesting that the applicant has no outstanding debts to the state budget.

REFORM

27. What reform proposals are there for the regulation of the electricity sector?

While there are no relevant reform proposals currently under discussion, considering the suggestions of the European Commission in relation to measures Romania should take by the end of 2017, future developments may involve measures and reform proposals related to the:

- Promotion of more efficiency and competitiveness in the state-dominated conventional energy sector.
- Continuation of corporate governance reform within the state-owned companies in the energy sector.
- Continuation of the electricity prices deregulation.
- Improvement of energy efficiency and interconnection capacity.
- Further development of the renewable energy sector.

THE REGULATORY AUTHORITIES

Romanian Energy Regulatory Authority (*Autoritatea Națională de Reglementare în domeniul Energiei*) (ANRE)

Address. 3, Constantin Nacu St, Sector 2, 020995, Bucharest, Romania T +40 21 327 81 74; 40 21 327 81 00 F +40 21 312 43 65 E anre@anre.ro W www.anre.ro

Main responsibilities. Regulating the Romanian electricity and gas sectors; setting up prices and tariffs for captive consumers and for the natural monopoly segments of the markets; monitoring the electricity and gas markets and compliance with the regulations; authorising and licensing companies active in the energy sector.

Ministry of Energy

Address. 202E, Splaiul Independenței St, Sector 6, 060021, Bucharest, Romania; 152 Calea Victoriei St, Sector 1, 010096 Bucharest, Romania T +40 21 407 99 11 F +40 21 316 68 03 E office@energie.gov.ro W www.energie.gov.ro

Main responsibilities. Applying the government programme and strategy in the energy sector, representing the state and the government, at a national and international level, in energy-related matters, monitoring the energy sector and the compliance with international treaties in the energy sector.

National Environmental Protection Agency

Address. 294 Splaiul Independenței, Building B, Sector 6, 060031 Bucharest T +40 21 207 11 01 F +40 21 207 11 03 E office@anpm.ro W www.anpm.ro/

Main responsibilities. Planning and monitoring strategic environmental factors, permitting of activities with impact on the environment, reporting to the European Environment Agency, co-ordinating the implementation of environmental strategies and policies at national, regional and local level, permitting the activities having an impact on the environment and providing the compliance with the legal provisions.

ONLINE RESOURCES

Romanian Energy Regulatory Authority (ANRE)

W www.anre.ro

Description. This website is the official site of ANRE and all relevant pieces of legislation referred to in this article can be found on this website in Romanian. A few of these are also available in English. The information is all official and mostly up to date.

Romanian transmission and system operator (TSO)

W www.transelectrica.ro

Description. This website is maintained by the TSO and provides relevant updated data related to the GCs market, including the number of GCs issued, the prices and lists of beneficiaries. Important information relating to the status of the renewable energy market, lists of all electricity generating companies and related data are also available. Information is official and mostly up-to-date. The website is available in English.

Practical Law Contributor profiles



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Professional qualifications. Senior attorney specialised in energy law, with a focus on the electricity generation, distribution, supply and trading, the renewable energy sector and energy infrastructure.

Areas of practice. Electricity generation, distribution and supply; renewable energy and energy trading; hydrocarbons and natural resources: regulatory compliance in the oil and natural gas upstream, downstream & midstream sectors; commercial and regulatory agreements in the energy sector; regulatory compliance in the electricity and natural gas competitive and centralized markets; energy Infrastructure; finance, public procurement and PPP projects in the energy sector.

Education: LLM, Transnational Oil, Gas and Energy Law, University of Derby; LLM International Commercial Law, Nicolae Titulescu University, 2006; Bachelor of Law, West University, 2004

Recent transactions

- Offering legal advice to investors acting on the Romanian energy market.
- Providing legal support needed in relation to the development of energy related projects.
- Monitoring and ensuring regulatory compliance of operations in the energy industry, commercial and regulatory agreements regarding energy related operations in compliance with the Romanian and European legislation.
- Advising clients during the entire process of planning, implementation and operation of energy projects in Romania.
- As co-ordinator of the energy department, Delia assists clients in matters related to the energy market, such as the performance of energy trading activities or legal assistance on regulatory aspects and applicable procedures.

Languages. English, German, Italian, Romanian

Professional associations/memberships. Member of the Bucharest Bar Association; Member of the Associated European Energy Consultants e.V. (AEEC) (Europe); Member of the American Chamber of Commerce in Romania - Environment and Energy Committee; Member of JCA International; founding member of EPG (Energy Policy Group-a Romanian energy think tank).

Publications

- *The International Comparative Legal Guide to: Oil & Gas Regulation 2016, Romanian Chapter, published by Global Legal Group (GLG), co-author, London, December 2016.*
- *PLC Thomson Reuters Energy Global Guide (Electricity Regulation), Romania Chapter, Practical Law Global, UK, 2016.*
- *Global Legal Insights: Energy 4th Edition - Romania chapter, Global Legal Group (GLG), co-author, London, 2016.*
- *The International Comparative Legal Guide to: Oil & Gas Regulation 2016, Romanian Chapter, published by Global Legal Group (GLG), co-author, London, December 2015.*



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Professional qualifications. Romania, Attorney, 2014

Areas of practice. Renewable energy, electricity, energy trading; renewable and conventional energy projects; regulatory and environmental law; licensing and regulatory compliance for energy projects; commercial contracts; corporate operations and regulatory compliance.

Education: Graduate of the Faculty of Law at the University of Bucharest, holds a LLM in International Business Law with the Tilburg University, the Netherlands and attended the Summer School on European Business Law at Dusseldorf University

Languages. English, Romanian

Professional associations/memberships. Member of the Bucharest Bar Association; Member of the Associated European Energy Consultants e.V. (AEEC) (Europe); Member of the American Chamber of Commerce in Romania; Member of JCA International; Consulegis.

Publications

- *Practical Law (Thomson Reuters) Energy Global Guide (Regulation of conventional and unconventional onshore oil and gas extraction in Romania).*
- *Romania Chapter, Practical Law Global, UK, 2016-2017.*

Oil and gas regulation in Romania: overview

Laurentiu Pachiu and Raluca Mustaciosu, Pachiu & Associates

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OVERVIEW

1. Provide an overview of the recent developments in the exploration and extraction of mineral resources in your jurisdiction.

Primary mineral resources

The 2012-2035 Mining Industry Strategy of the Romanian Government lists the following primary mineral resources and their production potential:

- Pit coal: more than 300 million tonnes.
- Soft coal: more than 500 million tonnes.
- Salt: reserves of 100 million tonnes that will meet current demand for 40 years.
- Gold and silver: reserves of 760 million tonnes.
- Cupriferous ore: reserves of 443 million tonnes.

Current state of mining activity

In 1989 there were almost 300 mines in operation. By the late 1990s, Romania's mining operations needed huge government subsidies to continue operating. Between 2002 and 2012 the government closed 255 mines.

In 2015, three production licences were awarded (*Annual Report of the National Agency for Mineral Resources (NAMR)*).

Government policy and the importance of the mining sector to the overall economy

The 2012 to 2035 Romanian Mining Strategy (Strategy) includes, among other matters, a legal approach to the development of the mining sector. In particular, it proposes amendments to the current legal framework governing mining and mine closure activities, as well as the enactment of new legislation on mineral waters and restructuring of the salt extraction sector. The Strategy also contemplates the restructuring of the NAMR and the creation of an independent Mining Authority and policies for development of research and development (R&D) activities in the mining sector.

The March 2017 bulletin of the Romanian Institute of Statistics (INS) indicates that, in March 2017 as compared to March 2016, although the gross industrial production index increased by 10.3%, the same index in the mining and quarrying sector saw a decrease of 4%. Similarly, in March 2017 as compared to March 2016 the overall labour productivity in industry increased by 8.4%, and mining and quarrying encountered a significant labour productivity increase of 1.7%. The monthly turnover in mining and quarrying decreased by 9% in March 2017 with respect to the same month in 2016.

The revenues or estimated revenues from exploitation

For the first nine months of 2015, royalties and taxes from mining activities contributed about EUR37.8 million to state budget revenues, compared to about EUR27.3 million in 2014 (*Report of the NAMR*).

Current major mining projects

Currently there are no new major mining projects in Romania.

REGULATORY STRUCTURE

Regulation

2. Describe the regulatory framework for the exploration and extraction of mineral resources.

Regulatory framework

The mining sector has undergone a large scale restructuring process over the past 20 years, regarding both ownership and legislative framework. Environment legislation has gone through substantial amendment following Romania's accession to the EU as a result of the implementation of EU legislation on environmental protection. Consequently, mining activities are subject to a very complex and diverse legal framework.

The core legal mining provision in Romania is Law No 85/2003 (Mining Law) and its implementation guidelines. The Mining Law provides general principles of transparency and free competition, irrespective of the ownership structure, source of capital and nationality of the mining operators.

A production licence is awarded only after the relevant environmental impact assessment (EIA) is conducted.

EIA procedure is governed by Government Resolution No 445/2009 (GR 445/2009) and its implementation guidelines. The mining activities for which an EIA is required are listed under Exhibits 1 and 2 of GR 445/2009.

Other key rules are set out in the Government's Emergency Ordinance No 195/2005 on Environment Protection. It contains the general principles to observe on environmental protection in the development of any economic activity, including mining.

Regulatory authorities

The National Agency for Mineral Resources is the main institution with supervisory and regulatory authority in the mining sector. Its responsibilities include:

- Administration of mineral resources subject to public property.
- Negotiation and granting of licences and permits in the mining field.
- Enactment of secondary legislation.
- Supervision of compliance by beneficiaries of licences and permits and the applicable legislation.
- Establishment of royalties.
- Approval of exploration activities.
- Termination of mining activities.
- Professional certification.

Ownership

3. How are rights to the mineral resources held, and who holds those rights?

Under Romanian law, mineral resources are severable from the general ownership of land and are exclusively subject to the public ownership of the Romanian State.

Consequently, exploitation of such resources requires the grant of rights by the National Agency for Mineral Resources in accordance with the Mining Law, as follows:

- Concession rights for private operators.
- Administration rights for public institutions.

The use of the land for mining activities within the exploration or production blocks can be acquired by several means, including purchase, exchange, lease, expropriation and concession of lands.

Moreover, the Mining Law stipulates a legal easement to licence holders over land for necessary access to exploration or exploitation blocks.

Authorisation

4. What are the key features of the leases, licences or concessions which are issued under the regulatory regime? Can these rights be leased by the right-holder?

Mineral resources are exploited by the award of concession or administration rights, as applicable (see *Question 3*). The following types of licences can be awarded for mining activities carried out under either concession or administration rights:

- **Prospecting permit.** This is awarded on a non-exclusive basis on a written request to prospect in a specific block as established by the National Agency for Mineral Resources (ANRM). The beneficiary must execute a minimum volume of work with a minimum value, both being established by negotiation with the ANRM on the award of the permit.
- **Exploration licence.** This is awarded on an exclusive basis to national or foreign legal entities for the exploration of resources in a specific block. The beneficiary can engage in exploration activities on the basis of the anticipated annual payment of an exploration tax and the establishment of a security interest for the purposes of environmental reconstruction.
- **Production licence.** This is awarded on an exclusive basis to national or foreign legal entities for production activities regarding mineral resources in a specific block. The beneficiary can request a production licence following bilateral negotiations for any of the mineral resources discovered within the block within 90 days of providing its final exploration report communication to the ANRM.
- **Production permit.** This is generally awarded to individuals or legal entities for the exploitation of a limited number of mineral resources as provided by the Mining Law, for example, moor coal and alluvial gold.

Exploration and production licences can only be transferred to other legal entities with the prior approval of the ANRM. Any transfer of licences in breach of the rule is deemed null and void.

Lease/ licence/ concession term

Terms vary as follows:

- Prospecting permits are awarded for a maximum of three years and cannot be extended.

- Exploration licences are awarded for a maximum of five years and can be extended for an additional maximum of three years.
- Production licences are awarded for a maximum of 20 years and can be extended for additional, successive, five-year periods.
- Production permits are awarded for a maximum term of one year.

Fees

Fees are approved by order of the ANRM for the necessary deeds for the undertaking of mining activities such as:

- Registration of deposits.
- Termination of mining activities.
- Transfer of licences.
- Approvals.
- Permits.

Currently the fees for the most important licences and permits issued by the ANRM are:

- Prospecting permit: RON815.
- Exploration licences: RON2,445.
- Production licences: RON2,040.
- Production permits: RON2,445.

Fees for other documents relating to mining activities as well as for the issuance of documents required for obtaining the above licences and permits are detailed in the exhibits to ANRM Order No 138/2010.

Liability

Liability can be civil, administrative or criminal:

- **Civil liability.** Under the Mining Law, the beneficiary of a licence is liable for the damage caused to other individuals or legal entities by the mining activities until lapse or waiver of the licence, irrespective of whether the damage is discovered before or after the end of the licence.
- **Administrative liability.** If the beneficiaries breach the terms of licences, fines amounting to between RON3,000 and RON50,000 can be applied, depending on the nature and gravity of the breach. Under some circumstances, the breach may be considered a criminal offence (see *below*).

Moreover, the Mining Law provides for the suspension or revocation of the licence when the beneficiary breaches the concession or administration agreement.
- **Criminal liability.** Undertaking mining activities without a licence or a permit is a criminal offence, sanctioned with imprisonment from six months to three years or with a fine.

Restrictions

Mining activities are limited to the area of the block set out in the licence or permit.

The beneficiary of an exploration licence can reduce the exploration only on prior approval of from the ANRM and only if all the work necessary to restore environmental damage on the waived surface have been executed.

In addition, the beneficiaries of production licences or permits are entitled to waive the benefit of the licence or permit provided specific and limited conditions are complied with, mainly relating to the:

- Reimbursement of the value of the outstanding non-executed works.
- Execution of works for mine conservation or closing and recovery of the damaged natural environment or awarding of the corresponding amounts to the competent authority.

5. How are such leases, licences or concessions awarded?

Licences and permits are awarded in a variety of ways depending on their type:

- Prospecting permits are awarded on written request. The beneficiary can be granted an additional valuation score during the competitive bidding organised for the award of the exploration licence for the block subject to a prospecting permit.
- Exploration licences are awarded by competitive bidding organised by the National Agency for Mineral Resources (ANRM) during which bidders submit the proposed exploration schedule and documents confirming the technical and financial capacity of the bidder.
- Production licences are awarded by either:
 - direct award, at the beneficiary's request of an exploration licence for any of the resources discovered in the block;
 - competitive bidding, on the initiative of the ANRM for specific production blocks in the list approved by order of the ANRM president.
- Production permits are issued on request to the first individual or entity requesting the permit.

Competitive biddings organised for the award of exploration and production licences are exempted from the application of the general rules governing public procurements stipulated by Law No 98/2016 (Public Procurement Law) or Law No 100/2016 (Works Concession and Services Concession Law), as well as from the general legal provisions governing the award of concession contracts.

The guidelines for the implementation of the Mining Law establish a special set of awarding rules, pertaining mainly to the organisation of a public tender for the award of production and exploration licences.

Even if exempted from the general procurement rules, the core principles of the Public Procurement Act must be observed, that is, the award of exploration and production licences must observe the principles of:

- Non-discrimination.
- Equality of treatment.
- Mutual acknowledgement.
- Transparency.
- Proportionality.
- Efficiency in spending public funds.
- Acknowledgement of liability.

ENVIRONMENT

6. What are the main ongoing requirements for environmental protection?

The legal framework for waste disposal is the Waste Law No 211/2011. This establishes the necessary measures for the protection of the environment and human health by:

- Preventing or reducing the adverse impact of waste generation or management.
- Reducing the overall impact of resource use and improving the efficiency of such use.

Government Resolution No 856/2008 on the management of waste from extractive industries deals with waste resulting directly from:

- Prospecting, extraction, treatment and storage of mineral resources.
- The working of quarries.

Mineral extractive waste must be managed pursuant to the relevant waste management plan endorsed by the National Agency for Mineral Resources (ANRM) and approved by the Ministry of Environment.

Before performing any operation involving the pile and storage of extractive waste into a waste installation, the ANRM requests the establishment of a financial security interest. This ensures that all obligations in the environmental permit are financially secured and funds are available at any time for the rehabilitation of the site affected by waste installations.

HEALTH AND SAFETY

7. What are the main ongoing requirements for compliance with health and safety regulations?

The health and safety regime for industrial activities is governed by Law No 319/2006 on occupational health and safety.

Law 319/2006 imposes on employers, several specific measures including to:

- Obtain an operating permit before starting any activity.
- Draft a plan for the prevention and protection of workers' health and safety.
- Draft internal guidelines implementing the health and safety provisions.
- Monitor the operation of all protection systems and devices.
- To provide work and protection equipment suitable for each job position.

In addition to the general legal requirements, specific safety provisions apply in the mining sector to ensure that:

- Workplaces are developed, operated and maintained to allow works to be performed without endangering workers' safety and health.
- The operation of workplaces when workers are present takes place under the supervision of a person in charge.
- Work involving a special risk is entrusted only to competent staff and carried out in accordance with the instructions given.
- All safety instructions are comprehensible to all the workers concerned.
- Appropriate first-aid facilities are provided.

- Appropriate precautions for the avoidance and detection of fires and explosions and for the prevention of explosive and/or health-endangering atmospheres.

FOREIGN OWNERSHIP

8. Are there any restrictions concerning the foreign investment and ownership of companies engaged in the exploration and extraction of mineral resources in your jurisdiction?

The provisions of the Mining Law apply irrespective of an investor's citizenship or seat of incorporation. Foreign investors in Romania enjoy equal legal treatment to the legal treatment applied to Romanian investors. No restrictions are provided for foreign individuals or companies willing to apply for a mining licence or permit. However, foreign companies that are awarded a mining licence must incorporate a subsidiary in Romania within 90 days from the date the licence enters into force and maintain the subsidiary for the entire term of the concession.

TAX

9. What payments, such as taxes or royalties, are payable by interest holders to the government?

Mining activities are subject to:

- An annual tax for prospecting, exploration and production of mineral resources. The annual tax is updated every year in accordance with inflation. Currently, the following values of the annual tax are applicable:
 - prospecting: RON341 per square kilometre;
 - exploration: RON1,367 per square kilometre. The tax is doubled after the first two years and multiplied by five after four years;
 - production: RON34,180 per square kilometre.
- A mining royalty. This is established when awarding the production licence or permit in accordance with the quotas for each type of mineral resources provided in the Mining Law. For example, the royalty level is calculated as a percentage of the value of the outturn for the following resources:
 - ferrous and non-ferrous, aluminium and radioactive ores, rare and dispersed soils, precious and semi-precious stones, and thermo-mineral waters: 5%;

- coal: 4%;
- precious metals: 6%.

10. Does the government derive any other economic benefits from the exploration and extraction of the mineral resources?

Mining operators are subject to:

- Standard profit tax of 16%.
- VAT of 19%.

The government derives other benefits from mining, such as:

- Income tax and social contributions on wages.
- Withholding taxes for payments made to non-residents (subject to double tax treaties concluded by Romania).
- Contribution to the special environmental fund.

Joint ventures are not treated as legal entities under Romanian tax laws. The revenues, expenses and profits of the joint venture are allocated to each partner in consideration of its stake in the joint venture.

11. What taxes and duties apply on the import and export of mineral resources?

Romania applies the combined nomenclature classification in accordance with EU customs regulations.

REFORM

12. Are there any plans for changes to the legal and regulatory framework?

A legislative proposal aiming to amend the Mining Law was submitted in 2015. However, this was rejected by the Deputies Chamber on 28 December 2016. Although some minor changes were considered (for example, the sanctions level), no other major amendments were brought to the attention of the public.

THE REGULATORY AUTHORITY

National Agency for Mineral Resources (ANRM)

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Main responsibilities. ANRM has the following main duties:

- To administer the mineral resources subject to public property as provided by the Mining Law.
- To organise the National Geological Fund, to establish the National Resources/Reserves Fund, to confirm, control, record and manage the movement of resources/reserves.
- To act as grantor, together with other state authorities, to negotiate and conclude, in the name of the Romanian State, mining concession licences and exploitation permits.
- To issue regulations, guidelines, instructions, orders and other regulatory deeds.
- To supervise compliance by the mining operators with the provisions of the granted licences and permits.
- To cancel concession or administration deeds.

Practical Law Contributor profiles



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