

Briefing

01 September 2015

It's official – Shale gas is covered by the Petroleum Law

1. Background

The validity of a number of petroleum concession agreements has been challenged in court on claims that shale gas is not covered by the petroleum law No. 238/2004 ("Petroleum Law"), and therefore, the National Agency for Mineral Resources ("NAMR") could not have validly concluded such petroleum agreements regarding exploration and exploitation of shale gas based on the procedure set out in the Petroleum Law.

Further, in 2013 the Pungesti Local Council issued a decision prohibiting the exploration and exploitation of shale gas on the territory of Pungesti Commune (one of the petroleum concession agreements challenged in court referred to an area within Pungesti Commune). The decision of the Pungesti Local Council was challenged in court by the Vaslui prefect. Given the contradicting interpretation of the parties regarding article 1 of the Petroleum Law during the litigation, and more specifically if shale gas is subject to the provisions of the Petroleum Law, the Bacau Court of Appeal has asked the High Court of Cassation and Justice to rule on the unclear legal matter, namely: "is shale gas part of the public domain of the State or of the public domain of the local authorities, and, if part of the public domain of the State, is shale gas subject to the provisions of the Petroleum Law?".

Pursuant to the Romanian Civil Procedure Code, upon the request of a court of law, the High Court of Cassation and Justice may set up a panel for solving new legal matters which require clarification for the purposes of settling a court case (provided certain conditions are met). The decisions of the High Court of Cassation and Justice on such legal matters are binding upon the court of law seeking clarification, but also upon all courts of law in Romania as of publication of the decision in the Official Journal of Romania.

2. Outcome

The Decision No. 25/2015 of the panel set up for solving legal matters within the High Court of Cassation and Justice ("Decision") finally puts an end to the long debate on whether shale gas is covered by the Petroleum Law, and is part of the public domain of the State, and not of the local communities.

The Decision clearly states that shale gas is covered by the definition of petroleum resources in Article 1(2) of the Petroleum Law, and is exclusive public property of the State. As such, the procedure regarding the right to explore, develop and exploit petroleum resources and to conclude a petroleum concession agreement in this respect set out in the Petroleum Law covers shale gas as well, meaning that NAMR has the right to grant concession for the exploration and exploitation of shale gas in compliance with the Petroleum Law.

The Decision was published in the Official Journal of Romania, Part I. No. 638 of 21 August 2015 and is binding on all courts of law. Although under the current market conditions exploitation of shale gas in Romania will not take place in the near future, this clarification is still a welcomed development for the upstream oil & gas industry.

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