



volciuc·ionescu

Romania: Oil & Gas

## 1. General Structure of Petroleum Ownership and Regulation

### 1.1 System of petroleum ownership

Subsoil hydrocarbon resources located within the territory of Romania are public property of the Romanian State (Article 136 (3) of the Romanian Constitution and article 1 (1) of the Petroleum law no. 238/2004 (Petroleum Law)).

The state manages these resources through a specialized central agency – the National Agency for Mineral Resources of Romania (NAMR), who can grant petroleum concessions to Romanian or foreign entities that confer exclusive rights to explore and exploit oil and gas. Each of these concessions confers such rights over a limited area and for a limited period. Title to hydrocarbons passes to the investor at the wellhead and the investor has the right to freely dispose of the whole production. The Romanian state receives royalties and taxes in compensation for the use of the resource by the investor.

### 1.2 Which Ministry and/or agencies primarily regulate petroleum activity?

Petroleum activity is mainly regulated and supervised by the Ministry of Energy and by two specialized central agencies, namely NAMR and the National Regulatory Authority for Energy (NRAE).

The Ministry of Energy has general jurisdiction over energy matters in Romania (including petroleum activities) and functions according to the Government Decision no. 980/2015 regarding organization and functioning of the Ministry of Energy. The main competences of the Ministry of Energy are (i) to enact secondary legislation in the energy sector; (ii) to develop and apply long-term and short-term energy strategies and programs; (iii) to represent the state and government, on a national and international level in relation to energy matters; (iv) to monitor the energy sector and compliance with international treaties in the energy sector.

NAMR is the central administrative authority which regulates and supervises upstream oil and gas operations. NAMR functions according to the provisions of the Petroleum Law and the Government Decision no. 1419/2009 regarding the organizing and functioning of the NAMR, and has the following main competences: (i) to enact secondary legislation in the oil and gas sector; (ii) to monitor regulatory compliance of market participants with the relevant legislation; (iii) to negotiate, set the terms and conditions of, and sign in the name of the Romanian state petroleum concession agreements, mining licenses and permits; (iv) to issue permits and approvals in relation to the petroleum operations; (v) to manage data obtained from petroleum activities.

NRAE is the central administrative authority which regulates and supervises the natural gas market. NRAE functions according to the provisions of the Electricity and natural gas law no. 123/2012 (Energy Law) and the Government Emergency Ordinance no. 33/2007 regarding the organizing and functioning of the NRAE, and has the following main competences: (i) to enact and enforce secondary legislation applicable in the natural gas sector; (ii) to issue various authorizations and licenses in the natural gas sector, such as authorizations for the design, construction and exploitation of upstream gas pipelines, natural

gas transmission and distribution systems, natural gas storage installations, installations for the production of CNG, licenses for the gas supply, operation of the natural gas transmission and distribution pipelines, management of the gas centralized markets; (iii) to determine regulated prices and tariffs for various activities (e.g. transportation, regulated supply); (iv) to monitor regulatory compliance of participants to the natural gas midstream and downstream market with the relevant legislation.

There are also non-specialized local authorities with regulatory powers in relation to the carrying out of petroleum operations. To name a few, town halls and county councils issue building permits for the installations required by onshore operations and local environmental protection agencies issue environmental permits and authorizations for petroleum activities.

### 1.3 Is there a national oil or gas company?

The oil and gas industry in Romania dates back to the mid-19th century. It was nationalized soon after the end of World War II and continued to be managed under the communist regime until 1989. The first licensing rounds after the fall of the communist regime were held in 1992, but the majority of the concessions within the country continued to be held by Petrom (the national oil company at that time) and Romgaz (the national gas company). Petrom was privatised in 2004, a majority stake being purchased by the Austrian group OMV.

Romgaz remained the only petroleum company in which the state still holds a majority stake (70%), and it is still the largest natural gas producer in Romania. The company is listed on the Bucharest Stock Exchange and its GDRs are traded on the London Stock Exchange. Romgaz however has the same legal regime as private petroleum companies and it does not enjoy any regulatory rights or other special competences.

### 1.4 Describe the principal petroleum law(s) and regulations.

#### *Upstream oil and gas legislation*

The Petroleum Law together with its Implementation Norms approved by Government Decision no. 2075/2004 establish the regulatory regime applying to oil and gas exploration and production in Romania and transpose Directive 94/22/EC on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons into national legislation. The main aspects covered by the two legal acts are: (i) petroleum concessions legal regime (including awarding procedure, content of the petroleum concession agreement, key rights and obligations of the concession holder, transfer of interest in the petroleum concession); (ii) terms and conditions for the conduct of the petroleum operations; (iii) access to land for carrying out petroleum operations; (iv) legal regime of the oil transportation system and the oil transport activity; (v) level of royalties; (vi) access to and management of petroleum data; (vii) NAMR's competences.

Secondary legislation issued by NAMR, the regulator of the upstream oil and gas sector, details matters such as the annual program for petroleum exploitation, petroleum conservation, abandonment and decommissioning operations, experimental exploitation, the petroleum book, evaluation, classification and confirmation of petroleum reserves determining petroleum reference prices for calculation of the royalties, due to the Romanian

state, technical documentation for setting out the development and exploitation blocks, regime of the exploration wells.

The Petroleum Law and secondary legislation issued by NAMR is supplemented by various environmental and health and safety legislative provisions applicable to the oil and gas industry.

### **Midstream and downstream gas legislation**

The legal regime applicable to midstream and downstream gas operations and the natural gas market is laid down in the Energy Law and secondary legislation issued by NRAE.

The Energy Law implements the Third Energy Package in Romania and covers: (i) the legal regime applicable to the transmission, storage, distribution and supply of natural gas; (ii) the conditions for obtaining authorizations and licenses for various activities/operations in the gas midstream and downstream sector and the rights and obligations of the license holders; (iii) third party access to networks.

Secondary legislation issued by NRAE, as energy regulatory authority, addresses matters such as (i) the functioning and monitoring of the natural gas market; (ii) prices and tariffs applicable to the natural gas sector; (iii) issuance of licenses and authorizations; (iv) rules applicable to the centralized natural gas markets; (v) forms of standard contracts for the gas market; (vi) gas network code; (vii) performance standards for the transmission, distribution and supply of natural gas; (v) other technical regulations in the gas sector.

## **2. Private Investment in Petroleum - Upstream**

### **2.1 What are the forms of allowed private investment in upstream interests?**

Under the concessionary regime applied by Romania, private investors (Romanian and foreign entities) may obtain the right to conduct exploration, development and production of oil and gas in a particular block based on concessions awarded by NAMR (acting in the name of the Romanian State) following competitive bid rounds organized by NAMR for specific petroleum perimeters.

Depending on the rights awarded to the investor, the following types of petroleum concession agreements may be concluded: (i) agreements for exploration, development and production; (ii) agreements for development and production; (iii) agreements for production. The petroleum concession agreements may be concluded for an initial period of up to 30 years, which may be further extended with up to 15 years.

Under the petroleum concession agreement, the titleholder secures the exclusive right to undertake oil and gas operations in the relevant block. Once extracted, the oil and gas becomes the ownership of the titleholder.

While the Petroleum Law does set out certain easement rights for the titleholder over the land required to access the petroleum blocks subject to concession, the petroleum concession agreement does not automatically grant to the titleholder rights over the land corresponding to the surface of the block, but the titleholder must acquire such rights from the land owners, by means of sale purchase of land, land swap, joint ventures entered into between the titleholder and land owner, expropriation by the Romanian State or other means provided by law. In fact, getting access to the land necessary for

petroleum operations has been a significant challenge for oil and gas companies in Romania due to the refusal of land owners to allow such access to the petroleum perimeter or, in some cases, the difficulty to identify the land owners in order to obtain their consent for accessing the land. The oil and gas industry has been lobbying intensively the amendment of the legislation to address and overcome this hurdle which is causing delays and interruptions during various stages of the oil and gas operations and leads to high administrative and compliance costs.

Exploration works may be carried out based on nonexclusive prospecting permits as well. Such permits may be granted by NAMR upon request (no tender proceedings required) for specific blocks for a maximum period of 3 years.

Petroleum operations cannot be performed on land where historical, cultural, religious monuments or archaeological sites, natural reservations, sanitary security areas are located, or next to areas of hydro-geological protection of water sources.

### **2.2 How are upstream licenses issued?**

The concessions for the exploration and production of petroleum resources are awarded through competitive tenders organized by NAMR based on transparency and competitive principles. NAMR publishes the bid call documentation (which contains the tender requirements and procedure, selection criteria and details of the required content of the offer) and the list of hydrocarbon blocks subject to the tender. Interested bidders submit to NAMR their offers, which generally have to include, inter alia, the proposed exploration program and proof of technical and financial capacity of the bidder. The winning bidder and NAMR sign the petroleum concession agreement, which enters into force upon its approval by government decision.

Foreign investors benefit from equal treatment with Romanian investors, but a foreign company which is awarded a petroleum concession has the obligation to set up a branch or a subsidiary in Romania within 90 days from the effective date of the petroleum concession agreement.

### **2.3 What are the typical fiscal terms under upstream licenses?**

Romania's current fiscal regime for oil and gas upstream operations was established in 2002 by an amendment of the petroleum law in force at that time and was kept as such in the Petroleum Law currently in force. A revision of this system is envisaged to take place this year. In the last two years, there have been discussions as to whether the royalty system should be redesigned as a mechanism (method of computation) or rather to change only the percentage of the royalty.

In a nutshell, Romania applies a system of gross royalties for both oil and gas payable by the titleholders of petroleum concession agreements to the Romanian State on a quarterly basis, with rates ranging between 3.5% and 13.5% for oil and 3.5% and 13% for gas (as detailed in the table below) in respect of gross production and by reference to prices established by NAMR (based on a methodology which refers to prices at global trading hubs).



Royalty rate	Gross production
%	Crude oil / condensate 103 tons/quarter
3.5% for fields which produce	below 10
5% for fields which produce	between 10 and 20
7% for fields which produce	between 20 and 100
13.5% for fields which produce	above 100
%	natural gas 106 m <sup>3</sup> /quarter
3.5% for fields which produce	below 10
7.5% for fields which produce	between 10 and 50
9% for fields which produce	between 50 and 200
13% for fields which produce	above 200

The royalty regime is valid for the duration of a concession agreement. The Petroleum Law does not apply different royalty regimes to onshore and offshore production or to conventional and unconventional oil and gas. Failure to pay the royalty may lead to termination of the petroleum concession agreement.

## 2.4 What income or profits tax regime applies to upstream operations, and what other key taxes apply?

Romanian resident companies (including oil&gas companies) are subject to a 16% corporate income tax on their worldwide taxable profits.

A few special rules apply to companies active in the upstream oil and gas industry:

- a Depreciation/amortisation:
  - depreciation of successful wells is calculated per unit of production, by reference to the exploitable/ useful hydrocarbon reserve, over the period of the petroleum agreement;
  - exploration and development expenses are amortised over a period of 5 years since incurred;
  - failed exploration wells are depreciated over 5 years from their declaration as unsuccessful;
  - the undepreciated value of the assets cannot be deducted when wells are abandoned, but the same depreciation method continues to be used.
- b Obligation to create a tax deductible provision for dismantling of wells and installations and rehabilitation of environment:
  - for titleholders operating onshore and offshore up to 100 meters deep – a provision in the amount of 1% of the difference between income and expenses corresponding to the hydrocarbons production;
  - for titleholders operating offshore in waters deeper than 100 meters – a provision in the amount of 10% of the difference between income and expenses corresponding to the hydrocarbons production.

Two additional taxes for hydrocarbons have been introduced in 2013 and are still applicable until 31 December 2017 (although the government may decide to extend their applicability):

- a tax of 0.5% on revenues from oil extraction (computed based on specific rules);
- a tax of 60% on windfall gains (computed based on specific rules) achieved by natural gas producers from gas price liberalization.

In addition, upstream operations are also subject to the following general taxation regime:

- value added tax (VAT) of 19% on the sale price (standard

VAT rate);

- social contributions on wages;
- withholding taxes for payments made to non-residents (subject to double tax treaties concluded by Romania);
- local tax on buildings, as set by the local council within the range provided by the Fiscal Code: (i) for residential buildings, between 0.08% and 0.2% of the taxable value of the building; (ii) for non-residential buildings, between 0.2% and 1.3% of the taxable value of the building. In case the owner of the building has not updated the taxable value of the building in the last 3 years prior to reference year, the local tax on building is 5%;
- local tax on land: certain amount per sqm, depending on the surface area of the land, the rank of the locality where the land is situated, zone and use category of the land, as established by the local council.

## 2.5 What special rights are given the national oil or gas company in connection with upstream licenses?

The national oil and gas company (i.e. Romgaz) does not enjoy any special rights in connection with upstream licenses under the current legislation.

## 2.6 What are the local content requirements applicable to upstream operations by private investors?

There are no local content requirements, but foreign investors do need to set up a subsidiary or branch in Romania if awarded a petroleum concession by NAMR.

## 2.7 What requirements must the license holder satisfy to proceed to development and production once it has a commercial discovery?

Development and production works in connection with oil and gas fields may be carried out only in relation to reserves confirmed by NAMR. To obtain such confirmation, titleholders have to submit to NAMR studies for evaluation of the geological reserves and hydrocarbon reserves, summarizing the outcome of the exploration operations (with details of the quantity and quality of the resources and reserves), the financial analysis regarding the efficiency of the proposed exploitation, the production process etc. Upon confirmation of the hydrocarbon resources and reserves by NAMR, titleholders have to submit to NAMR specific documentation for the delineation of the development – exploitation blocks.

The development phase commences on the date of the approval by NAMR of the exploitation project on the basis of the confirmed reserves. The exploitation project which constitutes the basis for the development and production works has to include all the data necessary for the evaluation of the petroleum resources and reserves, taking in consideration the applicable production technologies, costs and prices existing on the evaluation date and future trends, and the delineation of the production block.

The production phase has to be approved by NAMR as well, and may be commenced only upon obtaining the environmental approval and other authorizations, ensuring the conditions for collecting the petroleum, disposal of waste water and, if necessary, flaring of the associated gas which is not used.

Any refusal by NAMR to issue such approvals may be challenged in court by the titleholder following the general procedure for challenging administrative acts.

## 2.8 What are the other key terms of each type of upstream license?

### *Content of the petroleum concession agreement*

The template petroleum concession agreement to be concluded following each public bid call is made available by NAMR as part of the bid documentation and, although the winner of a bid call may propose amendments to the terms of the template and submit them to NAMR, in practice, NAMR accepts only few comments and changes. The petroleum concession agreement is signed by the titleholder and NAMR and enters into force upon its approval by government decision.

### *Appointment of operator*

Pursuant to the Petroleum Law, the operator under a petroleum concession agreement may be the titleholder (ie concessionaire) or another entity appointed by the titleholder to manage the petroleum operations set under the petroleum concession agreement and to represent the titleholder in the relationship with NAMR. The duties and powers of the operator are established by the titleholder.

In order to be allowed to act as operator, its technical competence has to be certified by a commission within NAMR according to a certification procedure set in methodological norms approved by NAMR. Moreover, certain employees of the operator have to be certified by NAMR as well under a similar procedure. Although deadlines for the whole procedure are provided by the methodological norms, in practice the certification procedure may be quite time consuming. The certification is issued for an unlimited duration, unless the certification requirements are no longer fulfilled.

### *Exploration phase*

The initial duration of the exploration period is set in the petroleum concession agreement and is split in two phases.

The first phase is mandatory, the titleholder having the obligation to complete the minimum exploration program – ie specific petroleum operations undertaken by the titleholder to be carried out within a specific period of time, as detailed in its offer submitted during the bid call (offer including estimated costs of such operations as well) and taken over in the petroleum concession agreement. If the titleholder fails to complete any of the operations established in the minimum exploration program, it will have to pay to NAMR an amount equal to the estimated cost of the non-performed operations.

The second phase is optional, the titleholder having the possibility to relinquish the concession without performing the petroleum operations undertaken in its offer submitted to NAMR during the bid call for this second phase, but only following completion of the first phase and subject to fulfillment of the other conditions for relinquishment laid down in the Petroleum Law. The duration of this second phase and specific petroleum operations to be carried out are also reflected in the petroleum concession agreement.

The titleholder has the right to request the extension of the initial duration of the exploration period up to a maximum duration

specified in the petroleum concession agreement, provided that (i) it has completed the minimum exploration works during the first phase and (ii) it undertakes to carry out a minimum works program during such additional exploration period.

### *Development and Production phases*

Rules applicable to the development and production phases are provided both by the petroleum legislation and by the petroleum concession agreement.

A key obligation of the operators is to prepare each year the annual exploitation program on the basis of the technical-economic studies approved by NAMR for each commercial field and to submit it to NAMR for approval for the following year. The annual exploitation program contains a technical memoir regarding the compliance with the previous year program and detailed account of the potential changes as to the provisions of the approved technical-economic study, as well as a schedule of the works for the following year, the program for technical, organizational, economic and protection measures for the hydrocarbons reserve and the environment, technical measures for preservation of the reserve and rehabilitation of the environment in case of abandonment.

### *Relinquishment*

A title holder may relinquish the petroleum concession provided that it makes available to NAMR the following: (i) all documentation regarding the activity conducted until the date the relinquishment is notified, and the outcome of such activity; (ii) the amount representing the equivalent of the operations included in the minimum exploration program set in the petroleum concession agreement, and of the development and production operations, which were accruing on the date of notification of the relinquishment and were not carried out for reasons attributable to the title holder; (iii) the document issued by the competent environmental authority certifying the performance of the works for restoration of the environment which was damaged as a result of the petroleum operations conducted up to the moment of relinquishment; and (iv) the amount representing the equivalent of the non-performed abandonment works related to the petroleum operations conducted up to the moment of relinquishment and the post-closing monitoring program of the environmental factors, as such are provided in the abandonment plan.

### *Domestic supply requirements*

There is no domestic supply obligation for crude oil. The oil producer may freely dispose of the crude oil at the wellhead.

As concerns natural gas, the Energy Law imposes an obligation on the natural gas producers to sell their domestic production with priority on the regulated market (ie quantities of natural gas required for covering the consumption of the households and of the thermal power plants (including co-generation) delivering heat to households) until 31 March 2017. The balance of gas production (save for the technological consumption) has to be made available on the competitive gas market. As of 1 April 2017, all domestic natural gas production (save for the technological consumption) will be sold on the competitive market. Given the impact that full liberalization of the gas market may have on prices for the consumers as of 1 April 2017, legislation amending the regime applicable to the disposal of the natural gas is currently debated by the Romanian Parliament.

### **Export rights**

There are no legal restrictions as regards export of crude oil and natural gas. However, in the last years Romania exported very limited quantities of crude oil (being a net crude oil importer). As regards natural gas, until recently, the lack of physical infrastructure prevented Romania from exporting any natural gas. Some insignificant virtual exports have been carried out using the backhaul procedures. Starting with 2015, Romania is exporting natural gas to the Republic of Moldova. The completion of planned gas interconnections with Hungary and Bulgaria will likely enable export of natural gas in other countries as well in the next years.

### **Professional training and technology transfer requirements**

The petroleum concession agreement usually contains obligations for the titleholder regarding professional training and technology transfer. As part of the annual budget and works program, the titleholder has to agree with NAMR the specific professional training and technology transfer which will be carried out by the titleholder that year.

### **Liability and risk regime**

Petroleum operations are performed by the titleholder at its own cost and risk and based on the general environmental principle of "polluter pays". The titleholder may incur (cumulatively or separately) contractual liability, tort liability, administrative liability and even criminal liability, depending on the type of obligation breached and the persons affected by that breach. The Petroleum Law expressly provides that the tort liability of the titleholders for damages caused to third parties as a result of the petroleum operations carried out, subsists even if that damage is discovered after the termination of the petroleum concession agreement.

### **Abandonment of wells**

The abandonment of wells is defined by NAMR Order 175/2009 as all activities executed within the well in order to protect all impacted geological strata as well as the surface works carried out for the recovery and rehabilitation of the environment.

A well may be abandoned in one of the following cases: (i) relinquishment of the concession by the titleholder; (ii) drilling works can no longer be performed because of technical or geological reasons; (iii) the well cannot be reconditioned because of technical reasons; (iv) the well flows are lower than the economic exploitation limit established for that particular field; (v) public utility reasons; (vi) the well depleted the reserves of all strata known as being productive.

The abandonment of wells is subject to NAMR's approval and obtaining required authorizations and permits for the abandonment works. The works are made in accordance with technical projects submitted to NAMR and are monitored by independent specialists or experts certified by NAMR. A report describing all abandonment operations conducted is prepared by the respective independent experts.

### **Suspension and termination of the petroleum concession**

NAMR may suspend the petroleum concession in case the titleholder continues one of the following situations for more than 60 days as of the date it was notified / sanctioned:

- fails to comply with a court decision regarding litigation

occurred in connection with the performance of the petroleum operations;

- is undergoing judicial reorganization or bankruptcy;
- endangers, through the way in which it performs petroleum operations, the possibility of future exploitation of the petroleum reserves, breaches the norms for protection and safe exploitation of petroleum reserves;
- causes serious breaches to work health, safety and security.

NAMR may terminate the petroleum concession agreement if the titleholder:

- does not observe the term for commencement of the petroleum operations;
- ceases petroleum operations for a period of more than 60 days, without the approval of the competent authority;
- breaches the provisions of the technical - scientific studies for exploitation;
- performs petroleum operations in the absence of the authorizations required by the law or if the labor or environmental authorizations have been withdrawn;
- supplies, willfully, the competent authority with false data and information regarding petroleum operations or breaches the confidentiality clauses provided in the petroleum concession agreement;
- does not pay within 6 months as of the due date the royalty owed to the Romanian State;
- does not observe a clause of the petroleum concession agreement, for which termination is provided in the agreement;
- does not perform the minimum volume of works provided for a set period that has expired;
- does not remedy within 60 days the cause which triggered the suspension of the petroleum concession.

## **2.9 What are the requirements for transfers of interest in upstream licenses?**

The titleholder may, subject to NAMR's prior approval, partially or totally transfer its interest in a petroleum concession to third parties. The law does not provide a preferential right for the government or state-owned companies.

A partial transfer may occur with regard to a share of the rights and obligations under a petroleum concession pertaining to the entire petroleum block, or a share pertaining to a petroleum area of a given petroleum block. In case of a partial transfer of interest in an entire block, the assignor and assignee become jointly liable under the petroleum concession, while in case of partial transfer of interest in a petroleum area only, the liability of the partners is separate for each petroleum area.

The assignee must have the technical and financial capacity to take over the obligations set forth in the petroleum concession agreement. Part of the approval application documentation submitted to NAMR by the assignor and assignee is a report regarding the status of the petroleum operations performed by the titleholder up to the date when the approval of the transfer is requested. Another condition for the transfer is that the obligations undertaken by the titleholder under the petroleum agreement have been fulfilled proportionally for the period lapsed thereunder or the transferee undertakes to carry out the obligations which have not been performed.

### 3. Private Investment in Petroleum- Downstream

#### 3.1 What are the forms of allowed private investment in pipelines, plants (including refineries) and wholesale and retail marketing?

##### *Midstream*

###### *Oil transport*

The national oil transportation system is public property of the Romanian state and of strategic importance. The right to operate the national oil transportation system is granted based on a petroleum concession agreement. Any investments made to the national oil transportation system by the concessionaire become public property as well. Currently the national oil transportation system is granted in concession to Conpet S.A., company controlled by the Romanian State, under a petroleum concession agreement entered into in 2002 with a duration of 30 years.

###### *Oil terminals*

In 2002 Oil Terminal S.A. Constanta, company controlled by the Romanian state, has been granted a 30-year concession for the Black Sea oil terminal, one of Europe's largest oil terminals in CEE, and connected installations. Rompetrol, private company controlled by KazMunayGas group, also operates its own oil terminal in the Black Sea. A terminal for petroleum products on the Danube River is operated by Unicom Oil Terminal Galati, private operator.

###### *Natural gas transmission*

The national gas transmission system is also public property of the Romanian State. The gas transmission is a public service of national interest, which may be carried out based on a concession agreement by an operator certified by NRAE. Currently, Transgaz, company controlled by the Romanian State, holds in concession the national gas transmission system based on a concession agreement entered into in 2002 with a duration of 30 years. Transgaz has been certified as operator of the national gas transmission system organized in accordance with the model "independent system operator" in 2014.

###### *Natural gas storage*

Currently Romania has seven operational underground natural gas storage facilities, six of which are operated under concession granted by NAMR to Romgaz, company controlled by the Romanian State, and one operated under concession granted by NAMR to Depomures, private entity part of Engie group. Romgaz has already announced its intention to develop further natural gas storage capacity.

###### *Natural gas distribution*

The natural gas distribution activity in Romania is of public interest and is subject to exclusive concession for one or several administrative territorial units. There are approximately 40 natural gas distribution operators. There is no interdiction for investors to build privately owned oil transportation systems, gas transmission systems or gas storage facilities.

##### *Downstream*

All three refineries currently in operation in Romania (out of 11 existing refineries) are privately owned: Petrobrazii (owned by OMV Petrom), Petromidia (owned by Rompetrol) and Petrotel (owned by Lukoil).

Oil and gas marketing is also predominantly carried out by private entities.

#### 3.2 What are the rights and terms of access to any downstream operation run by a national monopoly (or near monopoly)?

According to the Energy Law, whenever natural gas transmission, storage or distribution services are ensured by a single operator for a specific area, as it is the case in Romania, a natural monopoly occurs. A natural monopoly exists also for the operation of the Romanian oil transportation system.

On the regulated market including activities of a natural monopoly nature, pricing and tariff systems are established by NRAE (for gas) and NAMR (for oil). For example, the calculation of the regulated prices and tariffs for underground storage and natural gas transmission is based on the revenue-cap methodology, while for regulated gas distribution, a price-cap methodology is implemented.

The general rules on third party access to oil and gas infrastructure described under section 3.10 below apply in the case of natural monopoly type activities as well.

#### 3.3 How are downstream licenses issued?

The supply of natural gas, biogas/biomethane, LNG, CNG/CNGV, LPG, the operation of upstream gas pipelines corresponding to production fields, the operation of natural gas storage facilities, gas transmission systems, gas distribution systems, LNG terminals and the management of natural gas centralized markets are subject to specific licenses for each such activity issued by NRAE. Prerequisites for obtaining each such type of license are laid down in a licensing regulation approved by NRAE and include inter alia, evidence of technical, human resources and financial capacity of the applicant.

Exclusive concession of gas distribution systems is granted for determined geographical areas (administrative territorial units) based on public tender procedures regulated by the Energy Law and the Government Decision no. 749/2014. The awarding authority is the Ministry of Energy. A public tender procedure may be launched by the Ministry of Energy upon request of an interested entity or local authority submitted together with a feasibility study approved by NRAE.

The concessionaire applies for the gas distribution license following the award of the concession. Also, the concessionaire has the obligation to deliver to the awarding authority an unconditional bank letter of guarantee, in the form set in the Government Decision no. 749/2014, in relation to the payment of the royalty due under the concession agreement.

Gas storage facilities (which are public property of the Romanian State) are granted to private investors through concession agreements pursuant to public tender procedure similar to that for granting upstream petroleum concessions.

The construction of new gas infrastructure (natural gas upstream pipelines, production facilities for biogas, biomethane, LNG and CNG / CNGV, natural gas transmission and distribution pipelines and installations) is also subject to various authorizations and permits, including setting-up authorizations from NRAE, building permits and environmental permits and approvals from local authorities.



### 3.4 What are the typical fiscal terms under downstream licenses?

The oil transportation and transit and gas storage activities are subject to payment of royalties set forth by the Petroleum Law:

- (i) a 10% quota of the gross revenues achieved from oil transportation and transit through the oil national transportation system, and from petroleum operations performed through the oil terminals which are part of the Romanian State public property;
- (ii) a quota determined based on a methodology prepared by NAMR and approved by government decision applied to the gross revenues achieved from oil transportation carried out through transportation systems other than the national oil transportation system and from petroleum operations carried out through oil terminals which are not part of the Romanian State public property;
- (iii) a 3% quota of the gross revenue achieved from gas storage activities.

Transgaz, the natural gas transmission system operator (TSO), pays a royalty of 10% of the income achieved from the natural gas transmission and transit activities.

The gas distribution activities are also subject to payment of royalties, determined on a case-by-case basis, in an amount equal to the quota offered by the concessionaire during the public tender for the award of the exclusive right to operate the gas distribution system of a specific area, applied to the gas distribution tariffs for the total quantity of natural gas supplied in the respective area.

In addition, a monopoly tax on gas transmission and distribution in an amount ranging between EUR 0.02 and EUR 0.19 per MWh applies until 31 December 2017.

Sale of energy products is subject to payment of excise duties: unleaded petrol (approximately EUR 478 per ton), leaded petrol (approximately EUR 563 per ton), diesel (EUR 400 per ton), natural gas (EUR 2.7 per GJ if used as fuel, EUR 0.18 per GJ if used for commercial purposes, EUR 0.34 per GJ if used for non-commercial purposes).

### 3.5 What income or profits tax regime applies to downstream operations, and what other key taxes apply?

The general taxation regime (summarized in section B.4 above) applies to Romanian resident companies active in the oil & gas midstream and downstream sectors.

### 3.6 What special rights, if any, are given the national oil or gas company in connection with downstream licenses?

Romgaz, the national oil and gas company, does not enjoy any special rights in connection with downstream licenses. Further, the legislation does not provide any special rights for Transgaz and Conpet in view of their status of companies controlled by the state, but only rights in their capacity of gas TSO and oil transportation operator respectively (as detailed in section 3.8 below).

### 3.7 What are the local content requirements applicable to downstream operations by private investors?

There are no obligations provided by the legislation in force for the titleholders to use/ involve local goods, services or employees in downstream operations.

### 3.8 What are the other key terms of each type of downstream license?

#### *Oil sector*

The rights and obligations of Conpet, as operator of the national oil transportation system are set out in the concession agreement approved by government decision 793/2002 and in the Petroleum Law. The terms of the concession agreement are confidential.

According to the Petroleum Law, Conpet has to ensure non-discriminatory and transparent access to the available capacity of the system and guarantee the integrity of the transported oil both in terms of quantity and quality. Further, it must make available a capacity reserve necessary for the safe, flexible and efficient operation of the system in accordance with the applicable technical regulations. Under the concession agreement, Conpet has the obligation to make investments for the maintenance and upgrade of the transportation system, which become public property of the state as well. Upon termination of the concession, Conpet will have to return all assets part of the national oil transportation system to the state.

#### *Gas sector*

The rights and obligations of Transgaz, as operator of the national gas transmission system are set out in the concession agreement approved by government decision 668/2002 and in the Energy Law. The terms of the concession agreement are confidential. Transgaz has a triple role within the Romanian natural gas market: (i) internal gas transmission; (ii) natural gas transit; and (iii) natural gas dispatch. Under the concession agreement, Transgaz has investment obligations with respect to the maintenance and upgrade of the national transmission system, according to minimum investment plans prepared for 5 years periods and approved by the competent authority. Failure to comply with the investment obligations may lead to sanctions ranging from payment of fines to termination of the concession. As regards gas storage, the petroleum concession agreements based on which Romgaz and Depomures operate the gas storage facilities are also confidential. Rights and obligations of operators of gas storage facilities are laid down in the Energy Law as well.

The concession agreements regarding the gas distribution service are based on a template approved by Government Decision no. 749/2014. Rights and obligations of gas distribution operators are laid down in the Energy Law and in the concession agreements.

A general principle applicable in case of all concessions is that the concessionaire exploits the object of the concession (assets and services) at its own risk and is liable for the works carried out, services rendered and assets given under concession. The legislation usually sets forth certain performance standards that have to be observed by the concessionaire when rendering the public service subject to concession.



The Energy Law sets out a number of joint obligations for all entities holding concessions and licenses in the gas sector for activities of production, transport, distribution, underground storage, management of the centralized gas markets:

- to keep in the internal accounting record system separate accounting records broken down according to the type of activities carried out and for each of the regulated activities as if such activities were performed by separate economic operators;
- to draft, submit for auditing and publish yearly financial statements for each economic operator;
- to keep the confidentiality of commercial information obtained from third parties;
- not to abuse commercially sensitive information obtained from third parties in the process of ensuring access to the system;
- to provide all information necessary for the access of third parties to the system in a manner which is clear, transparent, easily accessible and at adequate intervals;
- to hold all authorizations and licenses required by the legislation in force;
- to observe the validity conditions for authorizations and licenses granted by the NRAE;
- to use the natural gas in accordance with the obligations provided by the Energy Law regarding the mix of natural gas;
- to provide NRAE, on request, copies of all contracts for acquisition/sale-purchase/supply of natural gas and transit of natural gas, as the case may be;
- not to abuse the classified information system and ensure the transparency of public information; and
- to provide in a correct and complete manner the information requested by NRAE.

Further, each type of activity in the gas sector requires compliance with specific obligations:

- the operator of the national gas transmission system must: (i) ensure physical stability and develop and maintain the system; (ii) ensure third-party access to the system in non-discriminatory conditions; (iii) ensure the odorisation of the gas; (iv) develop the procedures for allocation of cross-border interconnection capacity; (v) manage congestion at interconnection points;
- operators of distribution systems must: (i) ensure the operation, maintenance and development of the distribution system, and its safety and continuing stability; (ii) ensure access by third parties to the system; (iii) ensure the odorization of the gas; (iv) avoid cross-subsidizing between the categories of end consumers with respect to the allocation of costs;
- operators of storage facilities must: (i) ensure the operation, maintenance and development of the storage system; (ii) ensure access to the system to third parties and for this purpose, publish the necessary information; (iii) prepare investment plans for 5 years, to be submitted to NRAE;
- suppliers of natural gas must: (i) purchase natural gas which is supplied to household customers, minimizing the costs of the allocated resources; (ii) comply with the performance standards required for supply of natural gas; (iii) set up

- points of contact for the customers; (iv) allow the customers to change the supplier free of charge and within 21 days; (v) avoid incorrect or misleading commercial practices.

The conditions for termination of downstream concession agreements are, generally, provided in the concession agreements themselves. Nevertheless, the Energy Law expressly provides that the concession of the gas distribution service may be withdrawn in case the titleholder does not carry out the works undertaken in the concession agreement, or breaches the essential clauses as defined by the concession agreement (including payment of royalties and environment protection), or systematically breaches the terms and conditions of the distribution license. In case of termination of the distribution concession, irrespective of the ground for termination, the assets in the ownership of the titleholder may be taken over by the authority that granted the concession or by another concessionaire, with payment of compensation. The assets granted in concession are returned to the authority. Irrespective of the ground for termination of the concession, the concessionaire remains liable for any damages caused for the works performed during the concession, even if such damages are discovered following termination.

### **3.9 Does a private investor constructing infrastructure have condemnation/ eminent domain rights?**

The oil transportation operator enjoys certain legal easement rights over third-party land located within the safety and protection areas corresponding to the national oil transportation system in accordance with the Petroleum Law. However, the operator may access such third-party land for carrying out works at the national oil transportation system only upon notifying the land owners and has the obligation to compensate the owners for any losses incurred.

Natural gas transmission and distribution operators also enjoy certain use, access and easement rights over third party land for carrying out development, rehabilitation, upgrade works to the natural gas facilities operated by them, as well as for the exploitation and maintenance of those facilities, as detailed by the Energy Law. Owners of the affected plots of land have the right to request the gas transmission and distribution operators to enter into certain standard form agreements based on which the owners are indemnified for the use of the plots of land and compensated for any damages incurred as a result of the works conducted by the operators.

### **3.10 What are the rules for third party access to infrastructure?**

#### **Access to infrastructure**

Third party access to the national oil transportation system, the gas upstream pipelines, gas transmission system, gas storage facilities and gas distribution system is regulated and is based on transparency and non-discrimination principles. Access is granted based on specific framework agreements and against payment of access tariffs set by NRAE or NAMR.

In certain cases, the third party requesting access may have to contribute to the financing of the construction of the connection installation.

Operators may refuse access to their facilities only in limited cases set out by applicable legislation, capacity, technical, operational or safety considerations.

### **Third party access exemptions for new gas infrastructure**

New major natural gas infrastructure, such as interconnections with other countries, LNG facilities, storage facilities, may benefit of a total or partial exemption from the third-party access rule, for a limited period of time, provided certain conditions are met. The exemption may be granted by NRAE.

### **Unbundling requirements**

#### *Natural gas sector*

Romania implemented the Third Energy Package which require Member States to ensure the separation of vertically integrated energy companies, resulting in separation of the various stages of energy supply (generation, distribution, transmission and supply).

Transgaz, the gas transmission system operator, has been certified as operator of the national gas transmission system organized in accordance with the model "independent system operator" in 2014.

The legal unbundling of the gas distribution and supply activities of distribution/supply operators with over 100,000 customers was completed in 2007-2008 period by the establishment of distinct distribution and supply undertakings.

#### *Oil sector*

Oil transportation activity is subject to unbundling rules provided by the Petroleum Law: an oil transportation operator (i) cannot be controlled by an entity that carries out oil production, refining, processing or sale activities; (ii) cannot be under the control of an entity that also controls other entities performing such activities; (iii) cannot perform, directly or indirectly, petroleum operations such as the exploration, development and production or refining, processing or sale of oil.

## **3.11 What restrictions are there on product sales into the local market?**

### **Gas**

Both wholesale and retail sale of natural gas may be carried out only by holders of natural gas supply licenses issued by NRAE. Although the gas market should be fully liberalized as of 1 April 2017, the sale price to households continues to be regulated, being established by NRAE. Liberalization for this segment of the market is expected to be done in stages and completed by 2021.

The legal regime applicable to natural gas wholesale transactions set forth by the Energy Law no. 123/2012 was recently amended by Government Emergency Ordinance 64/2016 aimed at establishing a competitive, transparent and non-discriminatory mechanism for natural gas transactions on the Romanian market.

While a significant improvement is brought by the elimination of the legal restrictions with respect to natural gas export starting with 1 April 2017, in line with the EU requirements, the new legislation continues to impose restrictions for the way natural gas wholesale sale / purchase transactions are made.

The ordinance imposes an obligation for the domestic natural gas producers and natural gas traders to conclude wholesale contracts on the Romanian centralized natural gas markets (OPCOM or the Romanian Commodities Exchange) for a minimum quantity determined as a percentage of the total quantity of natural gas traded by them each year, until 31 December 2021. The quota is set annually by government decision. For example, for the period 1 December 2016 – 31 December 2017, each producer has to conclude contracts for 30% of the gas from own production on the Romanian centralized markets, and each trader has to purchase 20% of the total natural gas bought by it within that period and, respectively to sell 30% of the total natural gas sold wholesale by it within that period, on the Romanian centralized markets.

As regards retail transactions, the Energy Law and NRAE Order 160/2014 mandates the supply of natural gas to households and to thermal power plants delivering heat to households to be performed in compliance with the so-called "natural gas basket" requirements until 30 June 2021. The natural gas basket comprises natural gas from the domestic production and imported natural gas in the quotas determined on a monthly basis by NAMR. The percentage of natural gas from the domestic production and of imported natural gas supplied to a consumer has to be the same for each consumer.

### **Oil and petroleum products**

The sale of oil, diesel and other fuels, and recovery of gasoline, condensate, petrol, diesel and other petroleum products are subject to prior authorization or registration, regulated mainly by Government Emergency Ordinance no. 271/2000 regarding the legal regime of transportation, commercialization and recovery of oil products, Ministry of Public Finance Order 2491/2010 regarding the procedure and conditions for registration of undertakings that sell energy products (including oil products) and Government Resolution 928/2012 regarding the conditions for the introduction of oil and diesel fuels on the domestic market.

According to Order 2491/2010, any entity intending to trade crude oil or oil products has to obtain a trading certificate from the Directorate of Excise Duties and Customs Operations, part of the Ministry of Finance.

## **3.12 What are the requirements for transfers of interest in downstream licenses?**

According to Regulation for the issuance of setting-up authorizations and licenses in the natural gas sector approved by NRAE Order no. 34/2013, in case the concession agreement or petroleum concession based on which it is carried out the natural gas sector activity is transferred to another entity, NRAE will issue or amend the setting-up authorization or corresponding license for the transferee.

Petroleum concessions may be transferred only with the approval of NAMR as detailed in section 2.9 above.

As regards concession agreements for the gas distribution service, the template approved by Government Decision no. 749/2014 sets forth that the concessionaire does not have the right to transfer, partially or totally, the object of the concession to a third party. In fact, in case of termination of the concession agreement, the granting authority has the obligation to organize a new public tender for the award of the gas distribution service

## 4. Foreign Investment

### 4.1 What foreign investment rules and protections apply to investments in petroleum?

The legal regime of foreign investments in Romania is based on a set of principles, such as: (i) foreign investment allowed in all sectors of economy, (ii) national favorable treatment for foreign investors, residents and non-residents, (iii) full repatriation of capital and profits, (iv) protection of investments by specific warranties against nationalization, expropriation and other equivalent measures, (v) access to incentives and funds provided by EU and Romanian legislation etc.

Provisions regarding protection of foreign investments are also included in the Bilateral Investment Treaties (BITs) to which Romania is party. The BITs aim to protect and encourage investment flows between the signatory parties, creating obligations owed by the host state to the foreign investor. Most BITs allow foreign investors to enforce these obligations directly against the host state. Due care must be taken and caution should be used in case of intra-EU BITs, taking into consideration the possible conflict with EU law. In fact, on 8 September 2016, the President of Romania submitted to the Romanian Parliament a draft legislation for termination of all 22 treaties for promoting and mutually protecting investments concluded by Romania with other EU Member States following the European Commission's commencement on 18 June 2015 of infringement proceedings against five EU Member States, including Romania, requesting such five Member States to terminate intra-EU BITs. This draft has been approved by the Chamber of Deputies, as first decisional chamber, on 4 October 2016 and is currently subject to debates within the Senate.

Romania is also a signatory to the Energy Charter Treaty (ECT), which aims to establish a legal framework conducive to economic growth by means of rules designed to liberalize trade and investment flows in the energy sector, and minimize the risks associated with energy-related trade and investment. The promotion and protection of energy investments and investment dispute resolution are at the heart of the ECT framework.

#### **Stability clause**

The Petroleum Law recognizes the principle of stability of the petroleum concession agreement, but the stability refers only to the provisions of the concession agreement and does not extend to the entire legal framework applicable to titleholders. Thus, pursuant to article 31 paragraph 2 and article 61 paragraph 1 of the Petroleum Law the provisions of a petroleum agreement remain valid throughout the duration of this agreement, subject to the conditions at the time the agreement was entered into, save for the enactment of legal provisions establishing a more favorable treatment for the titleholder.

Paragraph 3 of article 31 of the Petroleum Law further stipulates that in case during the performance of the petroleum operations, events which could not be predicted at the time of entry into the petroleum agreement occur, except for provisions which led to winning the public bid, the parties shall agree to amend the petroleum agreement by additional acts which shall enter force upon approval by the government.

## 5. Environmental, Health and Safety (EHS)

### 5.1 What are the principal environmental laws, and environmental regulator(s), having jurisdiction over upstream operations, and downstream operations?

The principal environmental laws having jurisdiction over oil and gas upstream and downstream operations are Government Emergency Ordinance no. 195/2005 regarding environmental protection (GEO 195/2005), Law no. 278/2013 concerning industrial emissions (Emissions Law), and Government Emergency Ordinance no. 68/2007 on the environment liability, implementing the provisions of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (GEO 68/2007).

GEO 195/2005 sets out the legal framework for environmental protection in Romania, regulating aspects such as the issuance of environmental permits, approval and authorizations, regime of hazardous substances and products, waste regime, protection of waters and ecosystems, protection of atmosphere, soil and subsoil, preservation of biodiversity and protected natural areas, liability towards third parties in case of environmental damages.

The Emissions Law sets out the necessary measures for preventing or, if not possible, reducing air, water and soil emissions that result from certain types of activities having a significant impact on the environment, including measures concerning waste management for achieving a high level of environmental protection.

Under GEO 68/2007 operators of occupational activities are required to take action to prevent the environmental damage, to rectify the same when occurred and to bear the corresponding costs of such measures. GEO 68/2007 does not entitle private legal persons and individuals to obtain compensation from the operator as a consequence of any environmental damage or of an imminent threat of such damage, but such right of compensation against the operator for damage to property or personal injury may be exercised in accordance with the general liability regime set forth by GEO 195/2005.

The main environmental regulators are Ministry of Environment, Waters and Forests, core central authority for environment protection, the National Environmental Guard and its local divisions, responsible for ensuring the prevention, compliance and sanctioning of any noncompliance with environmental regulations, and the National Environmental Protection Agency, with its local divisions, competent authorities for permitting and for enacting secondary legislation. Another authority which has specific powers regarding permitting and control in water management matters is the "Romanian Waters" National Administration along with the water basin administrations.



## 5.2 What are the environmental obligations that must be satisfied before commencing a major petroleum project?

Investors may be required to obtain certain environmental administrative acts issued by the Environment Protection Agency in connection with the development, construction and operation of petroleum infrastructure and facilities, as follows:

- the environmental permit is required for plans and programs which may have an impact on the environment (such as urban or land development plans preceding a building permit for construction works); an environmental assessment (SEA) may be necessary;
- the environmental approval is required for construction of projects which may have an impact on the environment (as a prerequisite for obtaining the building permit for construction works); an environmental impact assessment (EIA) may be necessary;
- the environmental authorization is required to carry out a business activity that may have a significant impact on the environment;
- the integrated environmental authorization is required to carry out certain activities that have an environmental impact (such as energy, production and processing of metals, mineral, chemical and waste management).

The relevant legislation does not set out time-limits for the issuance of the environmental acts as an overall process, but only for specific stages - timing depends very much on the cooperation between authorities and the complexity of the project or plan. The mentioned environmental procedures are subject to public debate and may require preparation of an environmental study necessary to determine potential issues deriving from the environmental effects and impact of the proposed plans or projects.

For hydrocarbons exploration, the National Environmental Protection Agency decides, on a case-by-case basis, whether an EIA is required and if the activities are likely to have significant environmental effects. However, an EIA is mandatory for extraction of petroleum when the extracted amount is of minimum 500 tons of oil per day or 500,000 cubic meters of natural gas per day. Moreover, an EIA is mandatory for oil or gas transportation pipelines with a diameter of more than 80 mm and a length of more than 40 km.

Additional environment related permits may be necessary for construction and operation of petroleum infrastructure, such as a water management permit and authorization (which is issued by the local or central water basin administrations).

## 5.3 What specific EHS requirements apply to offshore development?

On 31 July 2016, the new Law 165/2016 on safety of offshore oil and gas operations transposing Directive 2013/30/EU, has entered into force, aimed at reducing the occurrence of major accidents relating to offshore oil and gas operations, establishment of a framework for the safe exploration and production of oil and gas, ensuring that clean up and mitigation are carried out to limit consequences of accidents and improving the response in the event of an incident in the

Black Sea. Some of the key obligations for the operators of offshore oil and gas operations are:

- to take all suitable measures to prevent major accidents and limit consequences for human health and the environment in the event of a major accident;
- to prepare a (i) report on major hazards, (ii) internal emergency response plan, covering both environment and safety matters and taking into account the major accident risk assessment, (iii) safety and environmental management system (organizational arrangements), (iv) corporate major accident prevention policy, (v) description of the scheme of independent verification;
- to obtain approval from competent authority before commencement of operations with fixed and mobile installations;
- to demonstrate technical and financial capacity throughout the lifecycle of operations, starting at the licensing stage;
- to submit several reports to the competent authority.

Titleholder is financially liable for the prevention and remediation of environmental damage caused by operations carried out by, or on behalf of, the titleholder or any operator participating in the operations on the basis of a contract with the titleholder.

A new supervisory authority named the Competent Regulatory Authority for Black Sea Oil Offshore Operations will have the power to: (i) prohibit operations at any installation if the measures proposed by the operators in their mandatory reports on the potential damages or accident remediation are deemed not to comply with the legal requirements; (ii) demand upgrades of the installations, or even stop the exploitation of installations, in case of failure to comply with the legal requirements; (iii) apply fines ranging between EUR 10,000 to EUR 55,000 for non-compliance with the legal requirements

## 5.4 What are the requirements for decommissioning?

According to the Petroleum Law, the decommissioning of petroleum production infrastructure requires preparation of a decommissioning plan which is approved by NAMR, rehabilitation of the environment and reinsertion of the plots of land in the agricultural or forestry circuit. The decommissioning plan consists of complex technical, economic, social and environmental documentation, justifying the closing of the production wells and setting out the necessary actions to ensure the financing and the effective fulfilment of the measures for cessation of production activity.

From an environmental perspective, titleholders bear the financial liability for the restoration of the environment affected by petroleum activities and must prepare an environmental restoration plan to be approved by the competent environmental authorities. Additionally, a separate EIA procedure may be necessary for the decommissioning phase.

## 5.5 What climate change laws are in effect, and are there specific provisions relating to the oil and gas industry?

In addition to the specific EU regulations and international treaties to which Romania is a party (such as the 1996 Kyoto Protocol), there are several climate change laws relevant for the oil and gas activities.

The Emissions Law was enacted in order to prevent and control the pollution resulted from industrial activities, establishing certain conditions for the prevention and reduction of air, water and ground emissions. According to the Emissions Law, petroleum refining, hydrocarbons exploitation and connected activities generally require an integrated environmental authorization - which is obtained based on a procedure that involves public consultations and environmental impact assessment. The integrated environmental authorization sets out obligations to use best available technological solutions and process to limit harmful emissions and imposes maximum emission thresholds (based on the limits provided by the law).

It is also worth mentioning the greenhouse certificates scheme implemented in Romania through the Government Decision no. 780/ 2006 regarding the establishment of the trading scheme for greenhouse gas emissions certificates.

## 6. Miscellaneous

### 6.1 Is there any special scheme relating to unconventional upstream interests?

Exploration and production of unconventional hydrocarbon resources are subject to the same rules as the conventional resources. Romania does not have any special legislation regulating the unconventional upstream interests and current legislation is not adapted to the specifics of unconventional exploration and production operations.

### 6.2 Is there any special scheme relating to liquefied natural gas (LNG) projects?

Romania does not have any LNG facilities, but two major projects have been under discussions by the Romanian Government with potential partner states: (i) Azerbaijan-Georgia-Romania Interconnector, aimed to bring natural gas from Azerbaijan, through Georgia, crossing the Black Sea to the Romanian shore, so that the gas would be further transported to Western Europe; and (ii) the construction of a LNG terminal in Constanta (on the Black Sea shore line) part of the LNG project masterplan, the Rhine-Main-Danube axis, within the "Trans-European Network for Transport Program".

The legal regime applicable to LNG facilities is laid down in the Energy Law and the LNG Technical Code issued by NRAE. Moreover, NRAE has a specialized department for monitoring the compliance of the LNG operations with applicable legislation.

Generally, the legal regime applicable to activities in relation to natural gas apply also to activities in relation to LNG. In fact, there are no special export provisions or incentives in relation to LNG projects or special treatment for development of upstream gas reserves in support of LNG projects. New LNG projects may benefit from same as any new natural gas infrastructure.

### 6.3 Is there any other unique or interesting aspect of the petroleum industry in the country that are worthy of mention?

#### *Amendment of the fiscal regime for upstream sector*

The fiscal regime of the upstream oil and gas industry is currently under review by the government and a new regime is envisaged to be approved by the Parliament in the second half of 2017.

#### *The 11th bid round*

In 2017, a new bid round (the 11th bid round) for upstream licenses is expected to be organized by NAMR, whereby approximately 28 new petroleum blocks will be offered, both onshore (22 perimeters) and offshore (6 perimeters in the Black Sea). The public bid will be launched following the amendment of the fiscal regime.

#### *Development and construction of BRUA*

The Romanian section of the envisaged new European gas corridor Bulgaria-Romania-Hungary-Austria (BRUA) is currently developed by Transgaz. The Ministry of Energy already issued the building permit for BRUA on 27 February 2017.

Transgaz received financing from the European Union for the construction of the Romanian section of BRUA, the pipeline being envisaged to improve the country's interconnections with its neighbours, but also to enable the transportation of the gas extracted from the Black Sea.

### 6.4 Have there been any material changes in oil and gas law or regulation over the past year?

#### *Measures facilitating implementation of projects of national interest in the natural gas sector*

Aiming to promote and accelerate projects of national interest in the natural gas sector, such as the Bulgaria-Romania-Hungary-Austria gas pipeline (BRUA), new legislation (Law no. 185/2016 regarding necessary measures for implementing projects of national interest in the natural gas sector) was passed in October 2016.

The key matters addressed by the new legislation relate to the rights granted to the initiators of projects of national interest in the natural gas sector (private investors or state-owned companies) for the access to, use and operation of such projects, as well as for the carrying out of the construction, development, upgrade, revision and maintenance of the pipelines which are projects of national interest.

The new law provides for rights of use, easement rights and access rights with respect to the land necessary for the aforementioned works and operations, such rights being exercisable without the consent of the affected land owners, but subject to payment of compensation. The law also establishes significant exceptions from special regulations governing agricultural, forestry, natural habitats lands.

Another critical hurdle in the implementation of this type of projects is addressed by establishing roles and deadlines for the relevant central and local authorities and their obligation to cooperate with a view to speed up the identification of the properties affected by the exercise of the aforementioned

rights of the investors, but also for solving other procedural aspects.

The law also aims to unblock the procedure for obtaining the required permits, approvals and authorizations for such projects, setting out shorter deadlines.

***Landmark court decision on land access for petroleum activities***

The Petroleum Law provides a legal servitude right over the petroleum perimeters (other than those declared of public utility) necessary for the exploration and exploitation operations. In practice the land owners have denied access to the titleholders to the petroleum blocks, claiming that the exercise of the legal servitude right represents an expropriation.

Timis Tribunal ruled in April 2016 that, far from being an expropriation, the legal servitude right represents a legal limitation of the land owners' property rights and is in line with the Romanian Constitution and with Additional Protocol no. 1 of the European Convention of Human Rights. This welcomed court decision is among the first of its type. Nevertheless, legislative amendment remains necessary in order for the titleholders of petroleum concessions to fully benefit from the legal servitude rights.

**7. Law stated**

August 2017

For further information on this topic please contact:



Ramona Volciuc-Ionescu LL.M MBA  
Partner, Head of Energy & Natural Resources

E: [ramona.volciuc@volciucionescu.com](mailto:ramona.volciuc@volciucionescu.com)  
A: 10 Gh. Manu Str., 2<sup>nd</sup> Floor,  
Bucharest, 010445, Romania  
T: +40 312 255 261



**"...displays impressive experience in the execution of deals with complex structures"**

*"...receptive, supportive and always delivers on time"*

*"...quick to respond and has outstanding business acumen."*

**"...accomplished practitioner, praised for very good commercial understanding"**

**"...thorough, checks everything, goes into detail, and nothing is missed."**

*"...very professional, quick-thinking, and intelligent"*

**"...very sharp"**

**"...tailoring advice so that it can be used in a business context"**



## About us

Founded as a spin-off of several lawyers led by the heads of the energy, finance and projects teams of a global international law firm, Volciuc-Ionescu is an independent Romanian law firm that strives for excellence and guarantees fast and flexible specialised services, recommended as a leading firm by the international legal directories (Chambers Global, Legal500 and IFLR1000). Our main objectives are to build long-term working relationships with clients (traditionally, financial institutions, global corporations and local champions from key sectors of Romania) and to offer a high level of quality and efficiency in all legal matters we work on.

### Understanding Clients' Needs and Relevant Expertise

Our lawyers have been advising national and international companies in headline transactions and have developed an excellent understanding of their legal needs in the context of the business and the environment in which they operate. Our extensive experience and the comprehensive knowledge of our clients' industries allow us to offer added-value advice in all areas of business.

### International Exposure and Commercial Awareness

Our lawyers have worked and studied in major financial, industrial and educational centres in Europe (London, Vienna, Paris and Rotterdam), China (Shanghai) and the US (both East and West Coast). Their extensive international exposure and, for our founding partners, the energy and banking MBA experiences, allow them to deliver commercially oriented legal services at the highest international standards.

### Customized and Innovative Services

Our depth of experience, strengthened on a daily basis by handling of new and complex transactions, allows us to offer effective and innovative solutions. In a constantly evolving legal environment, we provide straightforward and pragmatic advice to clients seeking practical business solutions.

### Partner Involvement

We take partner involvement seriously. The partner in charge is always available, working closely with the client to analyse the issues at stake and potential solutions, and to identify the most successful strategy.

### Efficiency and Predictability

We offer an excellent quality, experience and professionals ratio, while still being cost efficient, and do understand our client's need for predictability of the legal spend.



**volciuc·ionescu**

**VOLCIUC-IONESCU SCA**

**A:** 10 Gh. Manu Street, 2<sup>nd</sup> Floor, District 1, Bucharest 010445, Romania

**T:** +40 312.255.255 • **F:** +40 312.255.256

**E:** office@volciucionescu.com • **W:** www.volciucionescu.com

