

Chapter 31

Oil, Gas and Natural Resources

1. General

Romania is a traditional crude oil and gas producer, but the current level of production is not enough to make the country self-sufficient. Although at one time Romania was Europe's largest producer of oil, most of its reserves were used during the communist regime and, as a result, today it is a net oil and gas importer. Furthermore Romania is a mature processing country, with numerous refining capacities and developed transport and storage infrastructure. The prospect of full energy independence largely depends on future discoveries in the Black Sea, where the first deep water well drilled in 2012 provided a preliminary estimation of a potential gas production of approximately 630 million cubic feet per day, and on the political decisions made with respect to the exploration and exploitation of unconventional resources by means of hydraulic fracturing.

Romania has considerable natural resources for a country of its size, including coal, iron ore, copper, chromium, salt, uranium, antimony, mercury, gold, silver, lead, barite, borate, celestine, feldspar, limestone, magnesite, marble, perlite, pumice and pyrites (sulfur) and a long history of mining, dating back to Roman times. The country has undertaken far-reaching programs to restructure its mining sector prior to and after joining the European Union. One aspect of restructuring has been the closure of loss-making mines, which are often located in communities where the mining industry is the dominant employer, and the significant downsizing of the workforce. Mitigation efforts implemented at the time of mine closures were doubled by Romania's efforts to attract investors into the mining sector, able to provide adequate guarantees as regards the usage of best available and environmentally friendly technologies, and the assistance of local communities in order to achieve sustainable development. However, despite some privatization attempts, the mining sector in Romania is still largely controlled by the State, with companies such as Salrom (the national salt producer), SNAM (the national company for mineral waters) and the operators in coal and metalliferous mining sectors being state-owned.

2. Main regulations

- Petroleum Law No. 238/2004, as further amended and supplemented (“**Law No. 238/2004**”);
- Government Decision No. 2075/2004 approving the methodological norms for the application of Law No. 238/2004;
- Electricity and Natural Gases Law No. 123/2012, as further amended and supplemented (“**Law No. 123/2012**”);
- Mining Law No. 85/2003, as further amended and supplemented (“**Law No. 85/2003**”)
- Government Decision No. 1208/2003 approving the methodological norms for the application of Law No. 85/2003.

3. Oil

3.1. Competent authority

The competent authority assigned to implement the regulations in the oil sector is the National Agency for Mineral Resources (“ANRM”), organized under Governmental subordination, having, *inter alia*, the following powers:

- (i) to manage oil resources, which are under State ownership;
- (ii) to negotiate and conclude oil agreements;
- (iii) to regulate oil operations conducted in accordance with oil agreements, as well as with the relevant technical norms and instructions;
- (iv) to receive, check and register the data and information on oil resources, ensuring their storage, systematization and recovery;
- (v) to set the reference price for oil extracted in Romania, and the transport tariffs through trunk pipelines for crude oil and condensate;
- (vi) to prepare and keep the Petroleum Book (a record instrument containing all data on the legal regime of the surfaces related to the development and exploration block, land property, topographic status of works related to the oil operations, resources/reserves of oil, as well as data with respect to the boundaries of the blocks and oil operations related to the prospecting and exploration phases);
- (vii) to monitor and check oil production for the purpose of calculating royalties.

3.2. Right of use and access to oil fields

In accordance with Law No. 238/2004, petroleum operations may be performed by Romanian or foreign legal entities only within the boundaries of specific blocks, determined by ANRM.

The surface rights to the land where petroleum operations are performed may be gained based on:

- (i) sale-purchase of the land and, if the case may be, of the accessory buildings, for a consideration to be agreed by parties;
- (ii) land exchange;
- (iii) lease of the land;
- (iv) expropriation for public utility cause, subject to the law;
- (v) land concession;
- (vi) joint-venture between the owner of the land and the titleholder of the oil agreement.
- (vii) other regulated procedures.

Ownership over land does not give any preemption right for concession of the oil and gas resources beneath such land.

3.3. National oil transport system

In accordance with Law No. 238/2004, the national system of oil transport is part of public property and of strategic importance. All investments made over the period of the concession by the titleholder become part of public property.

The transit of oil is made through trunk pipelines on a contractual basis, negotiated by the entities appointed by the Romanian Government with their correspondent entities from other states involved.

The transport of oil through the national oil system is a public service of strategic importance and of national interest. The concessionaire of this service acts in the capacity of a general transporter and is compelled to:

- (i) ensure the integrity of the transported oil both in terms of quantity and quality, except for technological losses;
- (ii) ensure any and all backup needed for the safe, flexible and efficient operation of the system in accordance with the applicable technical regulations.

3.4. Concessions in the oil sector

Petroleum exploration may be performed based on non-exclusive prospection permits for blocks determined by ANRM and granted for a maximum 3 years period, without any right of extension.

Concession of petroleum operations is made based on agreements concluded between the ANRM and Romanian or foreign legal persons, subsequent to a public tender procedure. The tender procedure follows a public offer round organized by ANRM. The concessionaires are selected by comparing their offers mainly based on the financial and technical capabilities of the bidders. In case the concession is granted to a foreign legal person, such an entity is bound to maintain a branch or a subsidiary in Romania for the entire concession period. The concession agreement enters into force after its approval by Government Decision and its maximum term may not exceed 30 years (with the possibility of extension of an additional 15 year period).

Transfer of interests in an existing concession agreement is possible only with the ANRM's prior approval, and may concern:

- (i) all rights and obligations under the concession agreement relating to a block;
- (ii) a percentage of the rights and obligations under the concession agreement relating to a block;
- (iii) a percentage of the rights and obligations under the concession agreement relating to a petroleum area within a block;
- (iv) all rights and obligations under the concession agreement relating to a petroleum area within a block.

3.2.1. Rights and obligations of the titleholder

The law provides for several rights of the titleholder, *inter alia*, as follows:

- (i) use and access to the lands necessary for the performance of oil operations, within the block granted in the oil agreement;
- (ii) access to pipelines, docks, ports and other installations, if necessary, for the performance of oil operations. Access is granted by paying the relevant tariffs to the concessionaires of the national oil transportation system and oil terminals;
- (iii) right to dispose of the oil and gas production, export included;
- (iv) request the concession of exploitation activities for useful mineral substances, other than oil, discovered during oil operations, in case such substances may be exploited and capitalized.

The law provides also for several obligations to be observed by the titleholder during the concession period, *inter alia*:

- (i) compliance with the relevant norms and instructions and with the provisions of the oil agreement;
- (ii) preparation of the technical and economic documents for performing petroleum operations. These documents are subject to ANRM approval;
- (iii) informing the competent authority with respect to the controls conducted by the labor and environmental protection authorities;
- (iv) returning to ANRM the oil block within 60 days of the termination of the concession.

3.2.2. End of concession

The concession ceases by:

- (i) expiry of the term for which it was granted;
- (ii) relinquishment by the titleholder in certain conditions;
- (iii) withdrawal by ANRM, when the titleholder fails to observe certain legal or contractual obligations;
- (iv) the titleholder's request, in case of force majeure events which render impossible the initiation, or, as the case may be, the performance of petroleum operations.

As of the date of the concession cessation, the block, with all its facilities and annexures, is transferred to State property, with no indemnity payable and free of any encumbrances.

3.2.3. Royalties and Incentives

A concessionaire of petroleum operations owes to the State budget an oil royalty, set as follows:

- (i) a percentage quota ranging between 3.5% and 13.5%, applied to the value of the gross production obtained, for petroleum production operations for crude oil and/or condensate fields, for each established commercial field. For production obtained from petroleum production operations of natural gas fields, the royalty ranges between 3.5% and 13% ;
- (ii) a 10% quota from the gross income made from operations of transport and transit of oil through the national transport systems and also from the operations conducted via the terminals, which are the public property of the State;
- (iii) a quota of the gross income amount obtained from transport operations of oil through transport systems others than the National System of oil transport, as well as from oil operations performed through oil terminals others than those in State public property, a quota determined based on a methodology developed by the competent authority and approved by Government Decision;
- (iv) a 3% quota from the gross income generated from natural gas underground storage operations.

The oil royalty is due as of production inception, and is payable on a quarterly basis.

In accordance with the Romanian Fiscal Code, excises are due for the oil extracted in Romania at the time of delivery (provided that the excisable product was a prior subject to a suspensive regime). However, producers who directly export the extracted oil are exempted from paying such excise.

Another incentive that oil producers benefit from is the exemption from local property taxes on oil wells owned by the oil producers. However, such an incentive may become ineffective, since as of 1 January 2014, oil producers must pay a construction tax of 1% of the oil well's accounting value at the end of the previous year.

4. Natural Gas

4.1. Natural Gas Sector Policies

The Romanian Government determines state policy in the natural gas sector in order to set the objectives and the optimal ways to implement such objectives, having in view sustainable development. Such policy is drafted based on, *inter alia*:

- (i) building the institutional framework by setting competent entities and authorities in order to implement such a policy;
- (ii) forecasting the level of imports and exports, elaborating development programs in the natural gas sector and ensuring environmental protection;
- (iii) ensuring price transparency and regulating tariffs in view of growing efficiency in production, deposit, transport, distribution and use of natural gas;
- (iv) issuing guidelines with respect to research and development of the natural gas sector;

- (v) drafting regulation proposals in the sector.

4.2. Competent authority

The national regulatory authority in the electrical energy and natural gas sector is the National Energy Regulatory Authority (“ANRE”), a public institution with legal status, coordinated by the Prime Minister. It represents the competent authority assigned to draw up, establish and monitor the implementation of mandatory regulations from the natural gas sector under conditions of efficiency, competition, transparency and consumer protection.

ANRE has, *inter alia*, the following powers and duties:

- (i) prepares and submits for Governmental approval the Regulations on permits and licenses in the natural gas sector;
- (ii) establishes the conditions of validity for the award of permits and licenses;
- (iii) draws up and approves regulations for the examination and authorization of the personnel of the entities that design, execute and explore in the natural gas sector;
- (iv) draws up and approves regulations and technical norms at a national level on the technical safety level for an efficient development of the natural gas system, and submits for the Governments’ approval the methodology of granting technical certificates;
- (v) draws up and approves the regulations for certification of project controllers and natural gas experts;
- (vi) draws up, approves and applies the regulations on the organization and operation of the natural gas market, regarding the continuity and safety of the natural gas supply to the consumers;
- (vii) endorses the clauses and terms of the concession agreements for natural gas transport and distribution systems;
- (viii) draws up and approves standard contracts regarding the supply of natural gas, transport, transit, deposit and distribution of natural gas, and standard contracts for connected services on a tariff basis;
- (ix) issues technical norms at a national level by setting technical security criteria, minimum technical requirements criteria for efficiency and safety in the natural gas sector;
- (x) monitors the internal natural gas market and the observance of the regulations regarding the organization and functioning of the natural gas market;
- (xi) establishes criteria and methods for price and tariffs calculation in the natural gas sector.

4.3. Production, transport, transit, distribution, storage and supply of natural gas

Natural gas producers are legal entities whose object of activity is natural gas production, who are parties to

an oil agreement, holders of a license for the set-up/functioning of the surface technological utilities needed for production and holders of the supply license for the natural gas supply.

Natural gas transport activity (a public service of national interest) may be performed by legal entities which are holders of a transport license which have as the object of activity natural gas transportation.

The National Natural Gas Transport System (SNT), as part of the State public property, is constituted from the trunk pipelines, as well as from all installations, equipment and related facilities that ensure the transport of natural gas extracted from exploitation blocks or import originated, in order to be fed to dispatchers, direct consumers, or exported and/or to be stored.

The transport activity consists of transport through the national transport system and/or through the trunk pipelines on Romanian territory, with or without reloading the natural gas from another state, destined for a third state.

Natural gas transport activity through already existing pipelines is ensured by the SNT operator. The transport contracts are negotiated by the SNT operator on a commercial and legal basis, in accordance with the national legislation and international treaties to which Romania is a party.

Natural gas distribution activity is a public service of national interest. The natural gas distributor is the legal entity, a titleholder of a distribution license under the terms of Law No. 123/2012.

Natural gas supply is the activity performed by holders of supply licenses, by virtue of a supply contract concluded between the supplier and the consumer/client, and which must contain the clauses stipulated by ANRE in the standard-contracts set forth dependent on consumer categories. Natural gas subject to a supply contract may not be re-sold by a final consumer.

4.4. Authorizations and licenses

Building new production, transport, storage and distribution facilities, the upgrade and refurbishment of existing capacities, as well as commissioning of the same, may be exclusively performed by Romanian or foreign legal entities who hold a license issued by ANRE.

The main authorizations in the natural gas field are: set up licenses, operating licenses and amending licenses.

The licenses are required for the following activities in relation to natural gas:

- (i) operation of upstream natural gas pipelines;
- (ii) supply of natural gas, biogas/ bio methane, liquefied natural gas ("LNG"), compressed natural gas for vehicles, liquefied petroleum gas;
- (iii) operation of transportation, distribution and storage systems;
- (iv) operation of LNG terminals; and
- (v) management of centralized markets.

4.5. Certification in the natural gas sector

All equipment, technologies, devices, machineries, products, and measures used in the natural gas sector must be technically certified by the competent authority based on a methodology/procedure set up by ANRE and approved by the Government.

4.6. Access and access denial to SNT

The access with the SNT, the distribution and storage systems, capacities/LNG terminals and upstream pipes is divided into two categories: the connection to a system and the use of a system.

Denial of access to the SNT may appear in case of:

- (i) insufficient capacity of the system;
- (ii) restraining the fulfillment of public service duties and the safe exploitation by access to the system;
- (iii) failure to comply with the required specifications for the quality of the natural gas to be inserted in the systems and/or deposits;
- (iv) economic and/or financial difficulties related to “take – or – pay” contracts for the titleholder of the license/authorization from whom access is requested, caused by access to the system;

Denial to connect to the SNT may occur in the following situations:

- (i) insufficient capacity of the system/objective;
- (ii) there are no objectives/component parts of the system to which the connection can be performed;
- (iii) failure to comply with the payment obligations for the services of the system operator.

New major natural gas infrastructures, interstate connections, natural liquefied gas and storage equipment may be exempt upon request from the provisions regarding access denial to the SNT, based on an ANRE motivated decision. Such a decision is published in the Official Gazette and communicated to the European Commission.

4.4.1. Direct trunk pipelines

Based on a request made by applicants located in certain areas, ANRE may approve the building of a direct trunk pipeline. Such a direct trunk pipeline is integrally financed by the applicants and is under their property.

4.7. Concession in the natural gas sector

Natural gas production, transport, storage and distribution services, and the public property assets related to the same, may be granted into concession to Romanian or foreign legal entities. Such a concession is governed by Law No. 123/2012.

The concession of the natural gas distribution service is exclusive for the areas for which it was granted.

The general framework on the legal regime of concession agreements for natural gas distribution services, the procedures for granting concessions and the standard content of tender books, are drafted by the contracting authority according to the legal provisions and are approved by Government Decision. After the concession is granted, the concessionaire must obtain all required authorizations/licenses, in order to perform the distribution activity.

The concession ceases (i) at the end of the concession period, (ii) if the concessionaire waives the concession agreement or (iii) if the conceding authority withdraws the concession right (a) in case the titleholder does not perform the works in their contractual term, (b) as a result of the titleholder's failure to observe certain legal or contractual obligations or (c) if the titleholder systematically fails to observe the conditions of validity of natural gas distribution licenses, or the legislation related to safety in operational objectives.

During a concession period, the concessionaire may use third parties private property, or may have an underground, surface or aerial easement right for the entire period of existence of the natural gas equipment, in order to perform the transport or distribution service.

4.8. Prices and tariffs

The price and tariffs system is conceived with a view to ensure fair competition on the market, energy efficiency and the improvement of the quality of the natural gas and the services in this sector. No social security policies may be promoted through a price and tariffs system.

Law no. 123/2012 provides the following prices and tariff categories:

- (i) negotiated, as a result of market competition mechanisms between suppliers and eligible consumers. The eligible consumer is the Romanian or foreign individual or legal entity who has the complete freedom to buy natural gas from any producer and/or supplier that has access to the system;
- (ii) regulated, as approved by the order of ANRE's President and published in the Official Gazette; the order also contains the date of entry into force of the new prices and tariffs.

Regulated prices concern natural monopoly activities and supply, based on framework agreements such as:

- (i) supply of natural gas to the consumers at a regulated price based on a framework agreement;
- (ii) supply of last instance of natural gas;
- (iii) natural gas transport;
- (iv) natural gas transport through upstream pipelines;
- (v) underground storage of natural gas;
- (vi) storage of natural gas within a pipeline;
- (vii) natural gas and biogas/bio methane distribution;

- (viii) activities corresponding to the operation of LNG terminals;
- (ix) other activities related to the above.

5. Mineral Resources

5.1. Mining activities

Mining activities include:

- (i) all works regarding prospecting, exploring, development, exploitation, processing, concentration, sale of mining products, preservation and closing of mines, including works for environmental recovery and rehabilitation, as well as
- (ii) other activities necessary for the development of mines and quarries, namely, construction and assemblage of the plant and of tailings management facilities, equipment and other specific tools necessary for the extraction, processing, transport and temporary storage of mining products, tailings, and residual products, outside and/or underground works for the extraction of mineral resources/reserves, their possession and delivery in specific forms, as well as research works for the increase of knowledge on mineral resources and reserves.

The mining legislation covers the whole life-cycle of a mining project: prospection, exploration, exploitation, processing, closure, environmental rehabilitation and post-closure.

5.2. Competent authority

The National Agency for Mineral Resources (“ANRM”) is the competent authority responsible for the application of the provisions of Law No. 85/2003.

ANRM has the following main powers in the mining sector, *inter alia*:

- (i) manages the mineral resources and the national geologic fund, which are State property;
- (ii) issues mining licenses and permits, sets their clauses and conditions and regulates the performance of mining activities through norms, rules and technical instruction;
- (iii) monitors and tests the output of mineral resources in order to calculate royalties;
- (iv) orders the suspension of mining works performed outside the established perimeter, of any works lacking authorized technical documentation, as well as of any works that involve irrational exploitation or deposit degradation, until their causes are removed.

5.3. Concessions in the mining sector

5.3.1. Overview

For the exploitation of mineral resources, mining activities may be granted into concession to Romanian or foreign legal persons, or granted into administration to public institutions.

In order to develop mining activities, the applicant may request permission to perform the following: (i) prospecting activities, (ii) exploration activities and (iii) exploitation activities.

- (i) **Prospecting activities** refer to all the necessary studies and surface works carried out in order to identify the potential existence of mineral resources concentrations.

Prospecting is performed based on a non-exclusive permit, issued for a maximum 3 years period, based on a prior payment of an annual tax, without any right of extension.

The holder of a prospecting permit should perform a volume of work with a minimal value established by negotiation with the competent authority, and should submit half-year and annual reports to the competent authority regarding the works performed and their value, supported by documentation.

- (ii) **Exploration activities** refer to all studies and activities necessary for the identification of deposits, their quantitative and qualitative evaluation, as well as the setting of technical and economic conditions for their capitalization.

Exploration activities are performed based on an exclusive license, granted on request to Romanian and foreign legal entities, for any mineral resources discovered in the perimeter.

An exploration license is granted to the winners of a public tender for a maximum 5-year term, which may be further extended for a maximum period of 3 years.

- (iii) **Exploitation activities** refer to all works carried out underground and/or at the surface for the extraction of mineral resources, their processing and delivery in specific forms.

An exploitation license is granted for a maximum 20-year term and may be extended for successive 5-year terms.

Exploitation activities are performed based on a license granted as follows:

- (i) directly to the titleholder of the exploration license at their request, in a 90-day term as of the submission to the competent authority of the final exploration report, for any discovered mineral resources;
- (ii) to the winner of a public tender, organized by ANRM under Law No. 85/2003, for the mineral resources described by the order of the competent authority, published in the Official Gazette of Romania.

5.3.2. Rights and obligations of the titleholders

The titleholder of the exploration license is entitled to:

- (i) decrease the area of the exploration perimeter, based on ANRM's consent, under the condition of providing relevant documentation and evidence that all the environmental restoration works have been performed;
- (ii) directly obtain the exploitation license for any mineral resources discovered.

The titleholder of the license/permits is entitled to, *inter alia*:

- (i) have access to the land necessary for carrying out the mining activities within the limits of the block set forth in the license;
- (ii) dispose of the quantities of mining products achieved;
- (iii) obtain, hold and use the data and information necessary for developing mining activities from the competent authority or from its own activity.

Also, the titleholder of the license/permit has the following main obligations:

- (i) starting the performance of the mining activities within a 210 day-term, as of the coming into force of the license;
- (ii) maintaining the confidentiality of data and information related to the mining activities, obtained from the competent authority or from its own activity;
- (iii) maintaining during the entire period of the exploitation activities, a financial guarantee for environmental rehabilitation, and bearing all expenses related to the transfer of technology and training stated in the license;
- (iv) obtaining all authorizations, permits and endorsements necessary for developing mining activities, based on the exploitation license.

5.3.3. Mining taxes and royalties

The titleholders of mining licenses and permits owe to the State budget taxes for prospecting activities, exploration activities and exploitation activities of the mineral resources.

The titleholder also owes a mining royalty, determined based on the achieved mining output, and due as of production inception.

5.3.4. Transfer, suspension and cessation of the concession licenses

(i) Transfer of the license

Based on the prior written consent of the ANRM, a titleholder of a license may transfer to other legal persons the rights and the obligations arising from the license. For the transfer of a license, ANRM establishes objective criteria of assessment.

In case a titleholder of a license amends its statute by reorganization, sale or any other means, the license may be granted, by means of an addendum, to the legal successor of the titleholder, based on a Court decision, or on the parties' agreement, presented to ANRM.

(ii) Suspension of the license

ANRM may suspend the license whenever it ascertains that the titleholder:

- a) fails to comply with a Court decision regarding the disputes arising from the performance of the mining activities;
- b) undergoes bankruptcy or is part of a judicial reorganization;
- c) the endorsement or the authorization regarding environmental protection or labor protection is suspended;
- d) endangers the possibility of future exploitation of the deposit by the manner it performs the mining activities, or infringes the norms regarding deposit protection and safe operation;
- e) perpetrates serious infringements, acknowledged by the competent authorities, regarding labor health and safety regulations.

A suspension of a mining license becomes effective as of the communication date of the relevant decision by ANRM, until the cause that determined the suspension is remedied, but not more than one year.

(iii) Cessation of the mining concession

The mining concession ceases by:

- a) expiry of the term for which it has been granted;
- b) waiver by the license titleholder;
- c) revocation of the license/permit by ANRM;
- d) at the titleholder's request, in case of force majeure which triggers the objective and final impossibility of complying with certain obligations and/or fulfillment of the rights of the titleholder, mentioned in the license, and which are essential for the performance of the mining activities;
- e) the exhaustion of the exploitable reserves, only in case of concession/administration of exploitation mining activities.

A concession ceases based on a decision of ANRM. In a 3 months-term as of the cessation of the concession, the technological annexes and fixtures, the dismantling of which may endanger work safety, are returned to the State's property without any indemnity, and free of any encumbrances, regardless of their nature.

5.4. Mine closure

Mining activity for the exploitation of ore deposits ceases whenever:

- (i) exploitable mineral resources are exhausted;

- (ii) continuation of the activity becomes impossible due to certain causes (floods, landslides etc.), the effects of which cannot be remedied by technical intervention measures, in acceptable economic conditions;
- (iii) the operation has become economically unprofitable.

At the request of the titleholder, ANRM may endorse a temporary or final closure of exploitation activity, based on a cessation plan.