



ICLG

The International Comparative Legal Guide to:

Oil & Gas Regulation 2016

11th Edition

A practical cross-border insight into oil and gas regulation work

Published by Global Legal Group, in association with Ashurst LLP, with contributions from:

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London SE1 3PL, UK
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Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
January 2016

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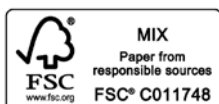
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ISBN 978-1-910083-77-2

ISSN 2051-3348

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1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

In 2013 and 2014, gross consumption of natural gas amounted to 2.2140 Bcm and 2.0020 Bcm respectively [https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3872267/EnC_IR2015WEB.pdf, (EC 2015 Implementation Report)]. The biggest exploration areas (e.g. Banatski Dvor) are located in the Serbian Autonomous province of Vojvodina. The only natural gas producer is a joint stock company "Naftna Industrija Srbije" a.d. Novi Sad (NIS), majority owned by Russian company Gazprom Neft (Gazprom). NIS also holds the licence to supply.

The key market players in Serbia are the state-owned company JP "Srbijagas" (Srbijagas), owner of the grid, and a vertically integrated joint stock company "Yugorosgaz" a.d. (Yugorosgaz) (in the ownership of Gazprom (50%), Srbijagas (25%) and "Central ME Energy & Gas" GmbH, Vienna (25%)).

Srbija procures the natural gas from its exclusive natural gas supplier "Gazprom" o.a.o. Moscow based on the long-term agreement between Serbia and Russian Federation, through Yugorosgaz. The Serbian natural gas market is mainly dependent on imports. The aggregate import flows in 2013 amounted to 1.8240 Bcm and 1.3930 Bcm in 2014.

The right to freely choose a supplier in the market is guaranteed to all customers as of 1 January 2015. The transmission grid is comprised of a high-pressure gas pipelines grid, which in turn comprises main gas and distribution pipelines, and the facilities located within them. The length of the said pipelines is approximately 2,400 km in total (as of the end of 2014). Medium-pressure gas grids and low-pressure local distribution grids are operated by Srbijagas, Yugorosgaz and 32 other local DSOs.

In June 2015, Srbijagas was unbundled, resulting in incorporation of "Transportgas Srbija" d.o.o., TSO, and "Distribucijgas Srbija" d.o.o., DSO. The full legal and functional unbundling is not yet completed and the said companies are yet to acquire relevant licences, as stated under the EC 2015 Implementation Report.

NIS owns "Elemir" gas refinery, whose prevailing business activity is the preparation of domestic natural gas for transport

and production of liquefied gas and oil. According to the Licence Register run by the Serbian Energy Agency (AERS), there are 33 licensed public suppliers of natural gas, most of which also hold a licence for unregulated supply.

The only underground storage of natural gas has been developed by the company "Banatski dvor" d.o.o. (Banatski Dvor) founded by Srbijagas and "Gazprom Germania" GmbH. Banatski Dvor operates on a surface area of 54 square metres at a depth of 1,000 metres to 1,200 metres. Pursuant to the Serbian Energy Balance for 2015, in 2014, the maximum daily injected quantity was 2.7 mn cubic metres, whereas the maximum daily withdrawn quantity was 4.2 mn cubic metres. The prices for access to the natural gas storage at Banatski Dvor are regulated under the Energy Act (EA) [*Zakon o energetici*, (Official Gazette of RS nos. 145/2014)].

Currently, no LNG facilities exist in Serbia. The authorities are aware that construction of such terminal would significantly decrease the Serbian dependency on Russian gas and that it would substitute the anticipated quantities of the South Stream (major CEE gas pipeline project which was cancelled by the European Commission in 2014). Serbia has received the offer to be involved in the project "AGRI" (Azerbaijan-Georgia-Romania Interconnector) from Romania that would enable transportation of natural gas from Azerbaijan to Europe. The "AGRI" transportation system should have an annual capacity of 5 to 8 billion cubic metres, and it envisages a gas pipeline running from Azerbaijan to Georgia, where gas would be turned into LNG and then transported to Romanian terminals for further distribution to European countries, including Serbia. The feasibility study is currently being prepared, after which Serbian authorities plan to apply for EU financing.

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

Total energy requirements for 2015 amount to 16.206 Mtoe, which is 11% more than the estimated total primary energy consumption for 2014, which amounts to 14.26 Mtoe. The Serbian energy requirements will be satisfied 69% by domestic production and 31% from imports.

According to the planned primary energy production established in the Serbian Energy balance for 2015, the following sources of energy were consumed:

- coal – 67%;
- oil – 11.2%;
- natural gas – 4%;
- hydro – 7%;
- biomass – 10.3%; and
- geo-thermal, solar, wind and biogas – less than 1%.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

According to the Serbian Energy Balance for 2015, the natural gas requirements shall be met as follows: (i) 20% from domestic production; and (ii) 80% from imports from Russia. The import shall cover the energy requirements for 2015 in the amount of 2214.307 mn cubic metres, which is 36% more than the estimated import total in 2014. The import of natural gas amounts to 35% of total net energy imports in 2015.

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

Serbia does not export natural gas.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

The production of oil in Serbia is done on 42 oil fields with 650 drill holes. NIS is the only company in Serbia licensed for the exploration and production of oil. Refining is done at two major refineries operated by NIS: Pančevo and Novi Sad, having the aggregate annual capacity of 7.3 mn tonnes of crude oil refining.

The transport of oil derivatives in Serbia is done by rail, river and road. The only company engaged in oil pipeline transportation is JP "Transnafta", a fully state-owned entity, which operates on non-discriminatory principles under the regulated prices (for access to the network). Transnafta is engaged in oil transport by oil pipelines within the whole territory of Serbia, whereas the product pipeline (*produktovod*) for transport of oil derivatives is planned to be realised.

Currently, pipeline transport is only realised through the use of the oil pipeline in Sotine, at the border with Croatia, to Novi Sad and Pančevo, in Serbia. The section Sotine-Novı Sad is 63.3 km long, whereas Novi Sad-Pančevo section is 91 km long. This oil pipeline is part of the main Adriatic oil pipeline (*Jadranski naftovod, "JANAF"*), which has been in operation since 1979.

AERS has so far issued: (i) three licences for production of oil derivatives; (ii) one for transport of oil by oil pipelines; (iii) 21 for storage of oil, oil derivatives and biofuel; (iv) 40 for the wholesale of oil and oil derivatives; and (v) 463 retail licences.

The oil retail network in Serbia is done through a wide network of ca. 1,450 retail facilities, dominated by "NIS Petrol", "OMV Srbija" and "Lukoil".

Production of crude oil is done domestically and in Angola (at drill holes owned by NIS). However, only domestic production is included in the annual energy balance. The supply of oil and oil derivatives in 2015 is expected to reach 43% from domestic production – 1.22 mn tonnes – and 57% from import – 1.58 mn tonnes. The expected total production in Angola amounts to 55,676 tonnes.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

As stated in question 1.2, oil accounts for 11.2% of Serbian energy requirements. The import of oil and oil derivatives has the biggest share in net energy imports in 2015, i.e. 41%.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

Serbian oil requirements are mostly met through domestic oil production, i.e. 43% of the total.

2.4 To what extent is your jurisdiction's oil production exported?

The planned export quantity of oil for 2015 amounts to 0.6 mn tonnes. Serbia mostly exports oil to Kosovo and Metohia (petroleum and diesel), Bulgaria (euro diesel B-7), Romania and Hungary (aviation fuel).

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

Exploration, extraction of natural gas, production, processing and refining of oil, as well as construction of mining facilities and mining works, are governed by EA and the Mining and Geological Exploration Act (MGEA) [*Zakon o rudarstvu i geološkim istraživanjima* (Official Gazette of RS no. 88/2011)]. MGEA's secondary legislation also governs specific areas of exploration and extraction of natural gas and oil. A new MGEA is currently in the parliament procedure, expected to be adopted by the end of 2015 (New MGEA). Oil and gas are considered mineral resources of strategic importance for Serbia under the New MGEA, which, *inter alia*, ensures entitlement to expropriation.

The Ministry of Mining and Energy (Ministry) [*Ministarstvo rudarstva i energetike*] is the competent authority for implementation of the MGEA – i.e. the competent authority for giving consent to the extraction of hydrocarbons and the construction of mining plants. In the event that a project is conducted on the territory of an autonomous province, provincial authorities will be competent for execution of MGEA provisions. The MGEA stipulates that hydrocarbons are considered natural resources owned by the Republic of Serbia and may be used under the conditions set out in the MGEA. Further, the Public Property Act [*Zakon o javnoj svojini* (Official Gazette of RS nos. 72/2011, 88/2013 and 105/2014)] stipulates that natural resources are public property.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The extraction of natural gas may only be conducted based on an extraction licence. The licence may be issued to a legal entity or entrepreneur holding an exploration licence. The applicant is also required to provide proof of rights (ownership, lease or easement) to the pertaining land on which the extraction facilities are to be constructed (expropriation may also be ordered). Under the New

MGEA, a lease or easement right must be valid for at least a 10-year period. If expropriation is ordered, the investor must provide the Government's decision on determining the public interest of a project for a period of five years of exploitation. Pursuant to the MGEA, the licence for exploration of natural gas is given on the basis of a public tender procedure. However, the Governmental decree regulating the tender procedure has not been enacted to date. On the other hand, the Public-Private Partnerships and Concessions Act (PPP Act) [*Zakon o javno privatnom partnerstvu i koncesijama* (Official Gazette of RS no. 88/2011)] specifically stipulates that the exploration and extraction of raw mineral materials and other geological resources, as general interest activities, are activities subject to a concession procedure defined thereunder. Further, the PPP Act excludes the application of any other procedure for granting the right to perform these activities, by stating that its provisions shall apply to the procedure on granting the right to perform them, whereas other legal acts may govern other significant matters pertaining to performance of such activities. Therefore, given that the two acts (the MGEA and the PPP Act) contain conflicting provisions as to the procedure that needs to be applied, that both acts were enacted at the same date and that there is no settled practice or authorities on this matter, it cannot be determined with full certainty which procedure would be applicable. The PPP Act seems to have prevalence because it explicitly excludes application of any other act in terms of the applicable procedure. This uncertainty was not rectified under the New MGEA.

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

As stated in question 3.2 above, the exploitation licence can only be issued to a legal entity holding the exploration licence, obtained through the competitive procedure. The decree regulating the public tender for exploration of mineral resources has not been enacted. Under the PPP Act, a public tender procedure for concession is initiated upon the proposal of either the authority or the investor. Given that the said activities are considered public interest activities, the concession forms an integral part of the relevant licences for their performance. The concession agreement can be concluded for at least five years or a maximum period of 50 years, depending on the potential effects on the competition and the reasonable period for the amortisation of a private partner's investment and return of the invested capital. The exploration licence is issued for a initial period of three years, and it can be extended for two additional periods of two years each. Under the New MGEA, extension periods are for an additional three and two years.

With regards to the terms of the exploitation licence, the MGEA only sets the term of two years for completion of the preparation works, whereas the term of the exploitation, i.e. use of the mineral resources, will be determined pursuant to production dynamics determined in the feasibility study and quantities of the subject mineral resources' stocks. The exploitation also requires prior obtainment of the approvals for mining works and ultimately, a use permit for the mining plant. Exploration, mining works, construction and the use of mining plants and other facilities are licensed by the Ministry and the provincial authority, depending on the exploitation area.

In principle, the investor bears the risk related to the commercial use (exploitation) of the mineral resource. However, the distribution of risk between the public and private partner may be further regulated under the concession/public agreement.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

Generally, NIS is the only company in Serbia licensed for exploration and exploitation of oil and natural gas. The state holds 29.87% of the stake in NIS; 51.16% is held by Gazprom; whereas the minority shareholders hold 13.98% in the stake thereof. For further State ownership and interests with regard to the oil and natural gas grids, please see question 6.1.

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

The investor is required to pay the following fees when engaged in mineral resources development:

- (i) exploration fee – a maximum amount of *ca.* EUR 80 per square km of approved exploration area, depending on the type of mineral or other geological resource, the level of exploration in the area, estimated mineral potential of the exploration area, and similar. The exploration fee is determined annually by the Government (the exploration fee for 2015 is *ca.* EUR 80 per square km of the approved exploration area);
- (ii) exploitation fee – the amount of the exploitation fee depends on the type of mineral and is determined by the Government every three months, pursuant to the special application submitted by the investor, on the basis of the type of mineral resource and the revenue achieved from the sale and the use of such mineral resource (for oil and gas, the investor will pay 7% of the revenue achieved from their sale and use); and
- (iii) concession fee – proposed by the investor when submitting the bid and determined in the concession agreement, on the basis of the type of the mineral resource, type of activity, term of the concession agreement, commercial risk and expected revenue, fit-out and the surface of the exploitation area (quantity of the mineral resource), including the exploitation fee payable by the investor.

Notably, the ore rent i.e. the exploitation fee payable by NIS amounts to 3% of the revenue achieved from the sale and use of the oil and gas, pursuant to the agreement between Serbia and the Russian Federation.

3.6 Are there any restrictions on the export of production?

The EA and MGEA do not provide for any specific restrictions to the export of mineral resources (oil and natural gas). However, pursuant to the EA, potential restrictions may be imposed on export of mineral resources in case of crises and a general lack of mineral resources for meeting domestic requirements.

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Pursuant to the Serbian Foreign Exchange Act (FX Act) [*Zakon o deviznom poslovanju* (Official Gazette of RS nos. 62/2006, 31/2011, 119/2012 and 139/2014)], as of 1 October 2015, foreign payment transactions may be executed in both foreign and local (RSD) currency, through the banks.

Additionally, the FX Act states that the import and export of goods, agreed either in foreign or local (RSD) currency, can be considered a

commercial credit and loan arrangement, if (i) the payment was not settled for more than one year, as of the moment of the completed import or export, and (ii) the goods were not imported/exported, i.e. imported for more than one year as of the day the payment in foreign or local (RSD) currency was settled. The commercial credit and loan arrangement must be notified to the National Bank of Serbia, as well as any change made in relation to such agreement. However, in practice, no transfers can be achieved without the official stamp of the National Bank of Serbia confirming that it has been notified. Cross-border loans cannot be repaid before the expiration of one year from the drawdown date, pursuant to a separate decision of the National Bank of Serbia.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

There are no specific restrictions on transferring oil and natural gas development rights and interests. The Rulebook on the terms and the manner of transfer of the exploration licence and exploitation of stocks of raw mineral materials and other geothermal resources [*Pravilnik o uslovima i načinu prenosa odobrenja za primenjena geološka istraživanja i odobrenja za eksploataciju rezervi mineralnih sirovina i geotermalnih resursa* (Official Gazette of RS no. 119/2012)] provides requirements that have to be met for a successful transfer of the licence(s). However, the Rulebook is not clear whether the competent authority must approve the transfer if the said requirements are satisfied or it still has a discretionary right to reject such request.

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

In its proposal for granting a concession, a public partner may request a performance guarantee or other type of security from the investor under the concession agreement. Besides this, the public partner is obliged under the PPP Act to acquire from the selected partner a guarantee for payment of the concession fee. The amounts of these guarantees are to be determined on a case-by-case basis, considering the terms of the concession agreement. A standard bid guarantee in the maximum amount of 5% of the total estimated amount of the concession agreement shall also be provided by the investor within the public procurement procedure.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The PPP Act envisages that, with the previous consent of a public partner, security (in the form of a mortgage, pledge or otherwise) may be set up in order to secure the financing of the project.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Apart from the principal licences determined under the MGEA, the exploration and extraction of natural gas may also trigger other approvals and/or licences, mainly in construction and spatial planning, environmental protection, health and safety at work, water management and waste management. The competent authority for

issuing required approvals in the construction and spatial planning field, as well as in the field of environmental protection, is either the relevant Ministry or the local or provincial authorities, depending on the capacity and the location of the contemplated project.

For example, the construction and spatial planning approvals and permits are issued by the authority competent for the exploration/extraction area at hand (i.e. Ministry of Construction, Traffic and Infrastructure, local municipality or the autonomous province). Also, the competent authority depends on the type and the size of the project. Pursuant to the Spatial Planning and Construction Act (SPC Act) [*Zakon o planiranju i izgradnji* (Official Gazette of RS nos. 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 54/2013, 98/2013, 132/2014 and 145/2014)], the Ministry of Construction, Traffic and Infrastructure is, *inter alia*, competent for issuing the construction permit for: (i) plants for the processing of fuel (oil) and gas (*rac*) that are constructed outside of the exploitation area; and (ii) gas pipelines with a normal working pressure of over 16 bars, if it passes through territories of two or more municipalities. An autonomous province shall issue a construction permit for the same plants if they are to be constructed completely on its territory. Lastly, the local municipality is competent for issuing the construction permits for all other plants/infrastructure that are not within the competencies of the above authorities, as specifically listed under Article 133 of the SPC Act (e.g. residential buildings).

With regard to the environmental protection approvals, natural gas and oil extraction are considered activities subject to the environmental impact assessment study (EIA), pursuant to the Decree on the determination of the list of projects for which an EIA is required, and the list of projects for which an EIA may be requested [*Uredba o utvrđivanju Liste projekata za koje je obavezna procena uticaja i Liste projekata za koje se može zahtevati procena uticaja na životnu sredinu* (Official Gazette of RS no. 114/2008)]. Additionally, pursuant to the Protocol on the strategic environmental impact assessment [*Protokol o strateškoj proceni uticaja na životnu sredinu* (Official Gazette of RS no. 1/2010)], a strategic environmental impact assessment study (SEA) may be requested for major mining, on-site extraction and processing of metal ores or coal, and for surface industrial plants for the extraction of coal, petroleum, natural gas and ores, as well as of bituminous shale. EIA and SEA approvals must be issued before obtaining the location permits. Finally, gas and mineral oil refineries are subject to the IPPC permit – Integrated Pollution Prevention and Control permit [*Zakon o integrisanom sprečavanju i kontroli zagađivanja životne sredine* (Official Gazette of RS nos. 135/2004 and 25/2015)]. Potentially, Seveso II approval for prevention and control of the major accidents resulting from handling of dangerous and combustible substances (such as oil and gas) may have to be obtained. The competent authority for EIA/SEA approvals, an IPPC permit, as well as for Seveso II approval, is either the Ministry of Agriculture and Environmental Protection or the municipal authority or provincial authority competent for environmental protection, i.e. the same authority that was determined as competent under the SPC Act (as mentioned above).

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

Pursuant to the MGEA, the exploitation area must be reclaimed (*rekultivacija*) and recovered after the works on exploitation have been completed, at the latest after one year of such completion. This must be done in accordance with the reclamation plan and obligatory measures for the exploitation area's recovery and protection of the environment, water, land and health and safety of the public as determined within the process.

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

The storage of natural gas is regulated under the EA. A natural gas storage system operator (SSO) is obliged to comply with the principles of objectivity, transparency and non-discrimination, with regard to access to the storage system, under regulated prices. An SSO must operate under the terms of the storage licence issued, pursuant to the EA. The SSO may reject third party access to the system in certain justified cases such as a lack of system capacity (please see question 6.6).

Further, in order to access the system, the third party is obliged to:

- register with the SSO in order to participate in the allocation of the gas capacity; and
- submit a request for access to the system, in which it defines whether it is applying for an entry or exit point, the intended duration of the transport and the relevant type of capacity (i.e. permanent or temporary).

After the SSO allocates gas capacities based on the request of the third party (and minimum gas quantity expected), it notifies the third party thereof. Such notification is considered as the acceptance of the third party's request/offer.

After the third party receives a signed copy of the agreement by the SSO and has settled the advance payment (or provides a bank guarantee as a security for fulfilment of its payment obligations undertaken by the agreement), the SSO and the third party officially become parties to the access agreement.

As stated above, currently there is only one licensed SSO – the underground gas storage “Banatski Dvor”. However, the relevant storage code has not yet been enacted. Therefore, *inter alia*, specific conditions and procedure for access to the storage grid, as well as the allocation of storage capacities, are not currently regulated.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Cross-border sales or deliveries of natural gas are accomplished by the bilateral agreement between the supplier and producer. There are no specific restrictions or rules pertaining to the cross-border sales or deliveries of natural gas, except in case of crisis (as described under question 3.6 above) and foreign exchange notification requirements, if applicable (as described under question 3.7 above).

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

Cross-border sales or deliveries of oil are accomplished by a bilateral agreement between the supplier and producer.

Additionally, in April 2013, the Serbian Government adopted the Decree on marking of oil derivatives [*Uredba o obeležavanju*

(*markiranja*) *derivata nafte* (Official Gazette of RS no. 46/13)] (Marking Decree), which has obliged all energy companies engaged in the production and trade of oil and oil derivatives to comply with the specific marking regime. The marking system requires that all oils imported to or traded within the Serbian market are marked in accordance with the Marking Decree and guideline rendered for its implementation (Guideline) by the exclusive provider of a marking service – “SGS Beograd” d.o.o.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

In principle, the applicable regulatory requirements are stipulated in the EA, MGEA, the Act on the Pipeline Transportation of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons [*Zakon o cevovodnom transportu gasovitih i tečnih ugljovodnika i distribuciji gasovitih ugljovodnika* (Official Gazette of RS no. 104/2009)] (Pipelines Transportation Act), and other relevant gas and oil-related regulations.

Pursuant to the EA, the oil and oil derivatives pipeline networks must be in public ownership and in the ownership of the transport operator established by the state for performance of transport activities. The natural gas pipelines may also be in private ownership. However, the EA failed to regulate requirements and restrictions regarding private ownership of the natural gas grid. The basic principle nevertheless remains that the grid or parts of the grid that are constructed by the private system operator, or acquired by a legal transaction, shall remain in its possession. The storage facilities are owned by the only licensed SSO – Banatski Dvor.

Srbijagas and Yugorosgaz operate pursuant to the rules set under the EA and their transmission grid codes approved by the AERS (Codes). The wholesale price of gas sold to the public supplier was regulated until September 2013, and from thereon, the gas price is set according to the cost-reflective formula set in the tendering procedure whereby Srbijagas was appointed as the supplier of public suppliers. Public suppliers' prices are previously approved by AERS. The Codes regulate third party access to the grid, injection into the gas grid and upstream pipelines, allocation of capacities, balancing, congestion management and other terms of the transmission services. TSOs must operate transparently and they must ensure third party access on non-discriminatory grounds. Third party access may only be rejected in certain cases, such as lack of capacity (please see question 6.6). The Codes also provide for a model access agreement to the transmission grid. However, the Codes do not allow for capacity rights transfer on a monthly and daily basis, only annually. The minimum assignable quantity is 2,000 cubic metres. Further, the Codes do not provide the obligatory offering of unused capacities on the primary market at least on a day-ahead and interruptible basis, although provided in the EA, thus breaching the congestion management principles, as noted by the EC 2015 Implementation Report.

The methodology of determination of the price for access to the natural gas transmission system introduces an entry-exit tariff system, in accordance with the Third Energy Package (Methodology) [*Metodologija za određivanje cene pristupa sistemu za transport prirodnog gasa*, Official Gazette of RS nos. 93/2012, 123/2012, 5/2014 and 116/2014].

Pursuant to the EA, AERS has also approved the oil transmission grid code rendered by Transnafta (Transnafta's Code). Transnafta's

Code regulates the technical requirements for operation of the system, rules on the use of the system, transport models measuring terms, third party access agreement, etc. Third party access may only be rejected in a number of instances such as a lack of capacity and inappropriate quality of the fuel (please see question 6.6). Transnafta's Code regulates the terms of the access agreement, which must specify, *inter alia*, the quality and the quantity of the fuel, term, payment dynamics, contractual penalties, etc.

Currently, there are 21 licensed oil, oil derivatives and biofuels storage operators in Serbia. As of 1 January 2015, the wholesalers are obliged to submit the reports on storage and transport of the oil, along with the delivery of the oil and oil derivatives.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

According to the SPC Act, a location permit and a building permit must be acquired for construction of, *inter alia*: (i) oil pipelines; (ii) gas pipelines; and (iii) product pipelines (*produktovod*). Pursuant to the Pipelines Transportation Act, the company licensed for transport, i.e. distribution through pipelines, must implement the measures for health and safety at work, environmental protection, fire and explosions in accordance with separate legal and technical acts (please see question 3.11). The use permit may be acquired upon the obtaining of the said environmental permits, as well as upon determining the fulfilment of the conditions set under the construction permit.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

According to the EA, the energy companies are entitled to use (lease, easement, etc.) the land owned by third parties for the purposes of construction, reconstruction or maintenance of energy facilities. Private land may also be expropriated provided that the Government has established the public interest in such a project and mineral resource (facilities in the area of energy infrastructure are considered objects of the public interest in general under the expropriation regulations, whereas the SPC Act considers pipelines as the facilities for public purposes).

In principle, the construction of the new pipeline infrastructure must be determined in the spatial plan of the special purposes area, and the detailed plan of the regulation of the project area. Additionally, pursuant to the MGEA, oil and gas pipeline construction may be subject to the prior approval of the Ministry, in case the pipelines are designated to pass through the exploitation areas.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Third party access to the transmission system is regulated by the EA and it secures access on a non-discriminatory basis. As stated in question 6.1 above, TSOs have mandatorily provided a model connection agreement within their Codes.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

The TSO is obliged to co-operate with the other system operators and to provide support and all necessary information to the independent system operator. In its 10-year plan for the transmission system's development, the TSO must define and achieve its aims towards the procurement of new interconnections with neighbouring countries.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

As stated above, the TSO must enable a third party non-discriminatory access to the grid. The Codes and EA provide the instances in which the TSO may reject third party access to the system in certain justified cases, such as: (i) a lack of system capacity; (ii) if such access would prevent the successful execution of the obligations for the security of supply; and (iii) in case of serious economic and financial hurdles incurred due to the "take or pay" obligations. The TSO is obliged to offer all available quantities up to a level which does not jeopardise the operation of the system. Although obliged by the EA, the Codes do not provide the obligatory offering of the unused capacity on the primary market at least on a day-ahead and interruptible capacity basis. The Codes and EA do not regulate the mandatory expansion of the system and capacities in case it is required by a third party seeking access.

The third party access to the oil transmission grid, operated by Transnafta, is subject to the same principles of transparency and non-discrimination. Besides the lack of capacity, Transnafta may reject the third party access due to the following reasons: (i) operational disturbances or if system is overloaded; (ii) endangered security of the system; (iii) inappropriate quality of the oil and oil derivatives of the third party seeking access; and (iv) other reasons determined in Transnafta's Code (the Code does not provide any specific grounds for rejection, and it is based on the non-discriminatory principle as well).

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Under Serbian law, natural gas transportation and the pipeline transportation of oil are public interest activities. The access tariff, i.e. entry-exit tariff, is determined by the TSO, based on the methodology rendered by AERS. The same applies for access to the oil transportation system, i.e. the final tariff is established by the TSO Transnafta in accordance with the AERS methodology.

Other terms may be regulated by the access agreement between the relevant TSO and the party seeking the connection, provided that they comply with the principles under the codes (i.e. the Codes and the Transnafta's Code), EA or other applicable decisions of AERS.

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

Gas transmission and distribution are regulated energy activities of public interest. Srbijagas has been partially unbundled in June 2015, as analysed in question 1.1. According to the licence registry of AERS, currently there are 34 companies licensed as DSOs. Pursuant to the last available information published by AERS in its Annual Progress Report for 2014 [<http://www.aers.rs/Files/Izvestaji/Godisnji/Izvestaj%20Agencije%202014.pdf>], the licensed DSOs are not subject to the unbundling requirements and they can operate either on the regulated or market terms, given that they have less than 100,000 customers.

Transmission and distribution networks are subject to regulated third party access (please see questions 6.1 and 6.6). The EA enables the private ownership of the distribution and transmission networks, but it fails to regulate it specifically enough. The EA has established ownership of Srbijagas over the existing distribution and transmission networks in the market.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Pursuant to the EA, distribution networks may be either in public ownership, in the ownership of a DSO incorporated by the state, a company which is the subsidiary of a state-owned company, or in private ownership. As stated, Srbijagas is the owner of the distribution and transmission network that used to be in state ownership before the adoption of the EA in December 2014, and such ownership right cannot be alienated. Distribution of natural gas and operation of distribution networks is considered a general interest activity under the EA. A distribution network may thus be operated through a concession agreement granted pursuant to the PPP Act.

7.3 How is access to the natural gas distribution network organised?

As is the case with third party access to the transmission and storage networks, access to the distribution network is secured by the EA on the basis of non-discrimination (please see questions 3.13 and 6.6).

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Access to the distribution system may be rejected on the grounds specified under the EA, such as a lack of capacity (please see question 6.6). Rejection on any other grounds may be disputed, upon which, presumably, AERS may order the DSO to grant capacities, provided that all requirements are satisfied. The EA does not regulate instances of expansion of the distributor's capacities in order to accommodate new customers.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Yes, the fees for access to the distribution system are regulated under the EA. Pursuant to the methodology adopted by AERS, the prices are determined by the DSOs and finally approved by AERS.

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Pursuant to the EA, the distribution of natural gas may be performed by a private entity. However, the EA has established the ownership right of Srbijagas over the existing distribution and transmission networks.

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Serbia has implemented the entry-exit tariff model as of 1 January 2015. Currently, there is no commodity exchange or gas hubs.

8.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

We are not aware of any restrictions to the types of commodities that can be traded.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Currently, no LNG facilities exist in Serbia. With regards to the planned construction of LNG facilities, please refer to question 1.1.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

The LNG facilities' construction would be subject to a standard construction procedure set out under the SPC Act – obtainment of the location permit, building permit and use permit. Additionally, certain LNG-related facilities (e.g. liquefaction and regasification plants) may be subject to the special environmental protection licences (EIA, SEA, IPPC permit and potentially Seveso II approval).

9.3 Is there any regulation of the price or terms of service in the LNG sector?

Under the current legal framework, there are no defined price terms of services in LNG sector.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

Third party access related to LNG facilities is not regulated under the current legal framework.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

The downstream oil sector falls within the competencies of the Ministry of Energy, although there is no specific legal framework for oil trading at the downstream level. Oil trading is carried out pursuant to the market terms. The major oil market player is NIS, which also owns and operates the two biggest oil refineries in Serbia.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

Oil trading is not a regulated energy activity under the EA, nor is it a public interest activity that is subject to a concession procedure under the PPP Act. Other than prices for access to the pipeline and product pipeline transport networks, oil prices, i.e. oil trading prices, are not regulated. Therefore, oil trading is performed on a contractual basis. The Directorate for Energy Reserves, as an administrative body under the Ministry of Energy, has been partially established in 2015. Pursuant to the Marking Decree, all oil and oil derivatives produced within or imported to Serbia must be marked, in accordance to the procedure and requirements set thereof and in the Guideline, before being placed on the market.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

On the administrative level, AERS is the competent authority for monitoring and control of all energy activities. However, the competencies of the Commission for Protection of Competition (CC) remain unaffected with regard to the anti-trust practices in the market.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The regulator must take into consideration the Serbian Act on Protection of Competition [*Zakon o zaštiti konkurencije* (Official Gazette of RS, nos. 51/2009 and 95/2013)] and the EA, as well as other applicable energy-related regulations.

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

CC can initiate the investigation upon receipt of complaint or *ex officio*. It is entitled to receive any information and documents required for investigation, from market players, state authorities and organisations, who are obliged to cooperate.

Upon completion of the proceedings, the CC may order behavioural or structural measures, conditionally approve an investigated agreement or practice, preclude it or prohibit the abuse of a dominant power position. CC may impose a fine in the amount of 10% of the total annual turnover of the relevant parties achieved within the territory of Serbia in the preceding year.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The Serbian merger control regime regulates and monitors the concentration in the form of merger of the independent undertakings, acquisition of control and formation of a full-functioning joint venture.

A transaction has to be notified if either of the following thresholds is met:

- (i) the aggregate worldwide turnover of all the undertakings concerned in the year preceding the concentration is at least EUR 100 mn, provided that at least one of the undertakings concerned achieved a turnover in Serbia of at least EUR 10 mn; or
- (ii) the aggregate turnover in Serbia of at least two undertakings concerned is at least EUR 20 mn in the year preceding the concentration, and each of at least two of the undertakings concerned achieved a turnover in Serbia of at least EUR 1 mn.

The CC is obliged to decide within one month from the receipt of a complete merger notification whether to clear the transaction in summary proceedings or to initiate investigation proceedings. Should the CC decide to open investigation proceedings, it has to ultimately decide whether to (unconditionally or conditionally) clear or prohibit the transaction within four months from the date of initiating investigative proceedings.

In certain cases, CC may allow for remedies proposed by the undertakings within the proceedings if it is of the view that such measures are sufficient, and as a result of such, the concentration will not restrict, distort or prevent competition.

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

As stated in question 7.2 above, the distribution and transmission network of natural gas may be in private ownership, but existing networks are in the ownership of Srbijagas and such ownership right cannot be alienated, pursuant to the EA. The system operator, in principle, may acquire the ownership rights over the facilities of the gas network that it has constructed from its own funds, acquired in the business transaction or by incorporation or capital increase.

Pursuant to the Serbian Act on the Foreign Investments, the foreign company may use natural resources, be engaged in activities of public interest or operate facilities of public interest under the concession arrangements concluded pursuant to the PPP Act. The foreign company may also be granted the right to build, operate and transfer (B.O.T.) certain facilities and plants, as well as infrastructure and communication facilities.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

The regulatory policy in respect of the oil and natural gas sectors in Serbia is particularly influenced by the Treaty on Establishing the Energy Community 2005 (ratified by Serbia in July 2006) (EC Treaty). The EC Treaty sets the obligations and targets to parties in order of compliance with the *acquis communautaire* and creation of the integrated energy market, allowing for cross-border trades and integration with EU markets.

Also, Serbian regulatory policy is led by the Treaty on Stabilisation and Association to the EU (TSA), which entered into force on 1 September 2013. One of the main obligations undertaken by Serbia under the TSA is the transposition of the EU legislative and regulatory framework into domestic law.

Pursuant to the EC Treaty and TSA, Serbia has harmonised its oil and natural gas legislation with, *inter alia*, the oil-related EU directives and the Third Energy Package. Also, the respective regulatory policy is governed by the international treaties entered into by the Serbian Government (e.g. the abovementioned agreements with the Russian Federation).

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

There are no compulsory dispute resolution procedures prescribed by the applicable legal acts. The parties are in principle entitled to negotiate and agree on the dispute resolution mechanisms. Notably, the model agreements under the Codes provide for dispute resolution before the competent local court. Presumably, the foreign investor may request arbitration from the TSOs/DSOs. Pursuant to the PPP Act, the parties may agree on domestic or international arbitration in the concession agreement, provided that the private investor is a foreign company (percentage of foreign stake is not specified).

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?

Yes, both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States have been duly ratified into Serbian legislation on 12 March 2001 and on 9 May 2007, respectively.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Generally, there is no special difficulty in litigating or seeking to enforce judgments or awards against government authorities. However, due to the general administrative and time difficulties in courts' practice, the companies often try to resolve the dispute without seeking judicial remedy.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

We are not aware of the existence of any such dispute resolution cases.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

2015 is seen as a game changer year for Serbia when it comes to liberalisation and gas market development, as per the EC 2015 Implementation Report. Serbia is the first contracting party of the EC Treaty that has transposed the Third Energy Package, even before the deadline, which is seen as major step in reforming its energy sector overall.

Serbia has finally undertaken the measures for the legal unbundling of its TSOs Srbijagas and Yugorosgaz in June 2015, whereby the full legal and functional unbundling shall be completed by the end of 2016, as per the EA and the EC Treaty. New MGEA, currently in the Parliament procedure, shall ease the process in obtaining exploration and exploitation licences for private investors. The changes of the exploitation fees are announced through a separate Act on Fees for the Use of the Public Goods [*Zakon o naknadama za korišćenje javnog dobra*] proposed to the Government. The relevant oil and gas exploitation fee amounts to 8% of the market price. However, the said Act has not yet entered the Parliament procedure.

Pursuant to the publicly available information, the Association of the Oil Companies of Serbia [Udruženje naftnih kompanija Srbije, <http://www.unks.rs/?page=home&lang=1>] comprising the key retail and wholesale oil market players (AOCS), has initiated the procedure before the Constitutional Court of Serbia for the purposes of evaluating compliance with the Marking Decree and Guideline with the Constitution of Republic of Serbia and other applicable legal acts. AOCS claims that oil companies are suffering irreparable monetary and reputational damages due to deficiencies in the marking procedure prescribed by the Guideline, as well as due to irregularities in the procedure for appointing SGS Beograd d.o.o. as the exclusive provider of marking services within the market. As a result, the Ministry may be held liable for compensation of damages incurred by AOCS members.

Acknowledgment

The authors would like to thank **Miloš Laković** for his invaluable assistance in the preparation of this chapter. Miloš Laković is a partner with Moravčević, Vojnović & Partneri in cooperation with Schoenherr. He focuses on energy and corporate/M&A projects in Serbia and in the region, has extensive experience in energy transactions, and has advised a number of foreign investors in the energy sector (including RWE, EGL, Seci Energia and Gazprom),

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