

Brief

The regime governing upstream oil and gas development in Romania

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1. Introduction

Romania is an attractive destination for oil and gas production. The country has a long history of oil development and is in an excellent location in terms of access to infrastructure and markets. We briefly outline below the legal regime governing petroleum exploitation in Romania.

2. A brief history of oil and gas development in Romania

Modern petroleum exploitation in Romania began in 1857 when the first commercial well was drilled. In that year, Romania also became the first country officially registered in international statistics as having oil production of 250 tonnes. Oil production in Romania grew rapidly and by 1900 Romania was the third largest oil producer in the world with an annual production of 1.9 million barrels. It also became the first country in the world to export gasoline.

Following World War II, the oil industry in Romania was nationalized. Companies seeking to explore, produce and develop petroleum in Romania were required to enter into an Exploration and Production Sharing Agreement (ESPA) with Geomin or its successor, Rompetrol (the state body performing foreign trade and international cooperation related to petroleum at the time).¹

Following the fall of the communist regime in 1989, the government continued to use these ESPAs for a period. However, the country's oil industry entered a new era after the enactment of the first petroleum law and the establishment of the National Agency for Mineral Resources (NAMR) in 1995. This was followed by the reformation of the petroleum law and the enactment of several incentives along with the privatization of Petrom SA (the state-owned company initially established with the purpose to manage and exploit internal oil and gas resources) in 2004.

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¹ Geomin was reorganized several times: since 1979 foreign trade and international cooperation activities were performed by Rompetrol, and in 1990 Rompetrol–Geomin was set up to attract foreign capital in exploration activities. In 1991 Rompetrol–Geomin was reorganized into several joint stock companies and *régies autonomes*, leading to the establishment of, *inter alia*, the company Rompetrol SA for foreign trade and international cooperation activities related to petroleum, and the *régie autonome* Petrom RA for exploration, management and exploitation of internal petroleum reserves. In 1997, Petrom RA became a national joint stock company. Rompetrol SA was privatized in 1993, and Petrom SA in 2004. Both of them are admitted to trade on the Bucharest stock exchange.

3. Rights to oil and gas

Petroleum reserves located underground or in the Romanian continental sea are public property of the Romanian state. Consequently, the right to exploit such reserves must be granted by the state, acting through NAMR.

Concession agreements

Under Romanian law, petroleum operations are concessioned by NAMR, which enters into Concession Agreements with companies (Romanian-owned or foreign) wanting access to petroleum resources in the country. The Concession Agreements enter into force when approved by the Government and, in principle, are classified information.

A Concession Agreement gives a company the right to perform the operations specifically provided therein (which usually consist of exploration, development and production of oil and gas in a particular area) in exchange for payment of royalties to the Romanian government.² The royalties are scaled, varying proportionally with the gross production in a given quarter. The royalty for oil ranges from 3.5 to 13.5 per cent, while for gas the royalty ranges from 3.5 to 13 per cent. When Petrom SA was sold to OMV in 2004, the Romanian government made an undertaking not to increase royalties again until 2014.

NAMR uses a bidding process to decide which company will be awarded a Concession Agreement in a particular area. The process can be initiated by NAMR or by any interested company and it follows the standard procedure of a public procurement bid. The successful bidder is selected by comparison of the financial and technical capabilities of the applicants. The typical term of a Concession Agreement is 30 years, with the possibility to extend for a further 15 years.

Under Romanian petroleum law, the terms of the Concession Agreement remain in effect for the duration thereof, save for the enactment of regulations that are more favorable to the concession holder.

The transfer of any of the rights awarded pursuant to the Concession Agreement and the formation of joint ventures are possible only with the prior written approval of NAMR.

Exploration licences

In addition to Concession Agreements, the Romanian government also grants exploration licences which give a company a limited right to explore an area for petroleum for a term of 3 years. The term cannot be extended. An exploration licence is limited in comparison to a Concession Agreement as it does not give any right to develop or produce discoveries of oil and gas. Any discovery will be subject to a public bidding process and a subsequent Concession Agreement with NAMR.

² However, concession agreements can be concluded also for: (i) development and production of oil and gas; (ii) production of oil and gas; (iii) underground gas storage; and (iv) operation of petroleum terminals.

4. Rights to land

The rights granted pursuant to the Concession Agreement refer exclusively to the petroleum reserves underground. Consequently, rights over the surface are a different matter and can take any of the legal forms allowed under Romanian law.

Romanian petroleum law grants a legal easement in favour of a concession holder over private property lands where petroleum operations are carried out. The legal easement must affect the smallest area possible, and lasts for the duration of the relevant Concession Agreement. The concession holders must pay the owners an annual rent, which is, in principle, freely negotiated. If the parties fail to agree in 60 days, the dispute can be referred to the courts.

5. State involvement

The involvement of the Romanian government in the exploitation of petroleum is limited and indirect, through the powers reserved under the law to NAMR. NAMR is not licensed to operate oil and gas activities itself. Its primary role is to grant Concession Agreements, to enact secondary legislation and to supervise and approve the operations of companies conducting exploitation activities. As such, NAMR has extensive involvement in the technical certification of operators, the approval of the petroleum operations and controlling performance of Concession Agreements. NAMR has the right to suspend or even terminate a Concession Agreement in certain situations provided by the law.³

The national transport systems for both oil and gas are concessioned public services with a posted tariff. The national transport system for oil is operated by Conpet, while the national transport system for gas is operated by Transgaz. Both Conpet and Transgaz are majority state-owned companies, and Transgaz is also admitted to trade on the Bucharest stock exchange.

The state has no preferential right to any of the oil or gas production. However, gas produced by a concession holder that is not used for internal consumption must be made available on the national market or, if not used and capitalized, delivered to NAMR free of consideration.

6. Company requirements in Romania

Romanian law does impose specific company law requirements on businesses that want to carry out petroleum exploitation activities in the country. Under Romanian Petroleum Law, a company that is granted a Concession Agreement must set up a Romanian subsidiary or branch company within 90 days of the agreement entering into force. This subsidiary or branch must be maintained for the duration of the Concession Agreement. However, if there is more than one company entering into the same Concession Agreement, it is sufficient for only one of them to comply with this requirement.

³ Note that while NAMR regulates upstream operations for both oil and gas, the Romanian Energy Regulatory Authority is the government agency regulating midstream and downstream natural gas operations.

The procedure to set up a Romanian subsidiary company or branch is relatively simple. The applicant must file an application form together with the relevant documentation and the requisite registration fee with the Trade Registry. If the application is satisfactory, it takes only one working day for it to be processed and another two days to receive the official certificates issued by the Trade Registry.

There is no mandatory requirement on companies to use local Romanian employees. However, there is a requirement that any legal and natural persons carrying out oil and gas operations be certified to be of a certain technical competence. This requires both the concession-holding company and its personnel (whether local or foreign) to be certified by NAMR as being suitably qualified. The certification is carried out by a standard 2-stage procedure including filing of relevant documents and an interview. The relevant certification is granted by NAMR for an unlimited duration, subject to the continuous fulfilment of the conditions underlying it. However, certification by NAMR does not cover operations performed exclusively in the field of natural gas, such as design, construction and exploitation of technological facilities related (exclusively) to production and/or underground storage of natural gas, or of gas transport, distribution or consumption systems. Any legal and natural persons carrying out such operations must undergo another technical certification procedure by the Romanian Energy Regulatory Authority (ANRE). Usually, a Concession Agreement will also require a company to finance new technology and carry out training for its Romanian personnel.

7. Energy charter treaty

The Energy Charter Treaty (ECT) is a multilateral international agreement with the fundamental aim of strengthening the rule of law on energy issues. The treaty is designed to establish a framework for international cooperation and mitigate the risks of energy-related investment and trade by introducing some common rules. Romania signed the ECT in December 1994 and ratified it by national legislation in March 1996.

8. Conclusion

Romania has a long history of oil and gas production and is a proven oil province. The country's close vicinity to refining infrastructure, proximity to a deep water port and easy access to the European market make it an attractive location for oil and gas production. In addition, it also has a comparatively low cost basis in terms of labour and infrastructure, as well as one of the most competitive company tax rates in the region (16 per cent flat rate), which further drives its appeal.

In recent years, Romania has moved towards becoming a more transparent, investor-friendly and stable democratic country. It has so far avoided the gaze of the major oil and gas companies but this seems likely to change.