

Client Brief

ENERGY AND NATURAL RESOURCES | ROMANIA

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PETROLEUM LAW: NEW RULES ON PETROLEUM TRANSPORT SYSTEMS AND ON PETROLEUM ROYALTIES

The Romanian Parliament has recently adopted Law no. 127/2014 amending and supplementing the Electricity and Natural Gas Law no. 123/2012 and the Petroleum Law no. 238/2004 (“**Law no. 127/2014**”).

1. Legislative Background

According to the Explanatory Memorandum which accompanied the draft of this enactment, Law No. 127/2014 is meant to ensure the appropriate transposition into the national legislation of the directives of the Third Energy Package, namely Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (the “**Electricity Directive**”) and Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (the “**Gas Directive**”). Although in the past these directives were the subject of certain national transposition measures¹, which were notified to the European Commission before the adoption of Law no. 127/2014, the European Commission found that such measures did not fully and accurately transpose the two directives and, therefore, it decided to bring an action before the Court of Justice European Union in this respect.

The main changes brought by Law no. 127/2014 regarding the natural gas sector² concern the transmission systems and their operation.

As per the legal framework prior to Law no. 127/2014, the gas transmission system in Romania (the National Natural Gas Transmission System - NTS) is State property and is operated by Transgaz, a State-controlled company. The choice was made by Romania for Transgaz to use the ISO (“*independent system operator*”) model for the operation of the NTS.

Law no. 127/2014 does not affect the choice made for the NTS and Transgaz, but introduces, in accordance with the Gas Directive, the “*ownership unbundling*” model for any new natural gas transmission systems that may be developed in the future in Romania.

¹ Law on Electricity and Natural Gas no.123/2012 and Law no. 160/2012 on the approval of the Government Emergency Ordinance no. 33/2007 amending and supplementing the Electricity Law no. 13/2007 and the Gas Law no. 351/2004.

² Law no. 127/2014 amends and supplements Chapter II (Natural Gas) of the Electricity and Natural Gas Law no. 123/2012 (the “**Energy Law**”).

The implementation of the “ownership unbundling” model in the Energy Law made necessary a number of amendments also in respect of the Petroleum Law no. 238/2004 (the “**Petroleum Law**”), which regulates both the liquid hydrocarbons (oil and condensate) and the gaseous hydrocarbons (natural gas), including the issues related to the transport thereof. In addition to the changes regarding the transport of petroleum, the Law no. 127/2014 brings some novelties regarding the petroleum royalties system.

2. Petroleum Transport Systems

The new enactment introduces the concept of “**petroleum transport system**”, defined as “*all interconnected main pipelines that ensure the collection of petroleum extracted from the production blocks or originating from petroleum imports and the directing thereof from the points of delivery by the producers or importers, to the processing units, towards the distribution and consumption centres or for export, the pumping and compression stations, the railroad loading and unloading ledges, as well as all installations, equipment and related endowments*”.

As of the introduction of this new concept, the Petroleum Law recognizes the possibility of coexistence of two types of petroleum transport systems:

- (i) the national petroleum transport system (the “**SNTP**”), with its two components: (a) the National Natural Gas Transmission System and (b) the National Transport System for Crude Oil, Gasoline, Condensate and Ethane);
- (ii) one or more petroleum transport systems (the “**STP**”).

The main difference between the two types of transportation systems is given by the form of ownership. Thus, SNTP is the STP “*under the public property of the state and is of strategic importance*” (Art. 14 (1) of the Petroleum Law).

As regards the STP, the Law no. 127/2014 brings certain clarifications on the legal regime applicable thereto, by providing that, by derogation from the provisions of the Public Property Law no. 213/1998, “*the investments made from titleholder’s own resources, materialized in new goods, [which are] similar to those provided in Art. 14, but which are not part of the national petroleum transport system, shall have the legal regime of private property assets and may be connected thereto*”.

Under the Petroleum Law, the carrying out of petroleum transport activities by main pipelines (including within an STP) may be made based on a petroleum agreement. The royalty payable for the operation of an STP or of a private petroleum terminal is established as “*a percentage rate of the value of the gross income obtained from the petroleum transport operations by transport systems [...], as well as from the petroleum operations carried out by petroleum terminals, other than those under the public property of the state, such percentage rate to be determined based on a methodology drawn up by the competent authority and approved by Government decision*” (Art. 49 para. (2) letter b¹) of the Petroleum Law, as added by Law no. 127/2014).

Law no. 127/2014 does not regulate the awarding of the petroleum agreements for the operation of the STPs and of the private petroleum terminals. We believe that, for all types of STPs (i.e. both for natural gas and for liquid hydrocarbons), in order to give full effect to the “ownership unbundling” model, as provided under the Gas Directive, the petroleum agreements should be awarded directly to owners of STPs/private petroleum terminals (i.e. without carrying out any competitive procedures). Therefore, the new methodology referred to in Art. 49 para. (2) letter b¹) of the Petroleum Law should bring clarifications on this topic.

3. A New Approach to Royalties

Law no. 127/2014 amends the definition of petroleum concession, providing that it shall mean “*the legal operation whereby the Romanian State, represented by the competent authority, as concession grantor, transfers, for a fixed period of time, to a Romanian or foreign legal entity, as concessionaire:*

- (i) ***the right and the obligation to perform, at its own risk and expense, the petroleum operations falling under the scope of this law, in exchange for a royalty;***
- (ii) ***the right to use the public property assets, which are necessary for the carrying out of petroleum operations, in exchange for a royalty”.***

Therefore, as compared to the previous definition of the petroleum concession³, which used to make reference to a sole petroleum royalty payable for both the carrying out of the petroleum operation and the right to use public property assets, this new definition makes a clear separation between two types of petroleum royalties:

- royalties for oil operations and
- royalties for the right to use public property assets.

The new definition for petroleum royalty, which was also amended by Law no. 127/2014, seems to support this interpretation, by providing that the petroleum royalty is “*the amount due by the titleholders of petroleum agreements to the State budget, pursuant to the law, for the carrying out of petroleum operations, as well as for the use of the assets under the public property of the State for the purposes of the petroleum operations”.*

Therefore, given the new legal provisions that were approved by Law no. 127/2014, it is no longer clear (i) whether the royalties provided by Art. 49 para. (2) of the Petroleum Law (and calculated by reference to the production/income achieved from petroleum operations) are the only petroleum royalties payable by the titleholders of petroleum agreements, or (ii) whether in addition to these royalties, the titleholders will have to pay other amounts, representing royalties for the right to use public property assets (if the titleholders of petroleum agreements also receive the right to use public property assets). These issues should be clarified by future legislative amendments to the Petroleum Law or to its implementation norms.

³ Prior to this change, the petroleum concession was defined as “*the legal operation whereby the Romanian State, represented by the competent authority, as concession grantor, transfers, for a fixed period of time, to a Romanian or foreign legal person, as concessionaire, the right and the obligation to perform, on its own risk and expense, the petroleum operations falling under the scope of this law and the right to use the public property assets which are necessary for the carrying out of the petroleum operations, in exchange for a royalty”.*

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If you are interested in receiving further information on this topic, please do not hesitate to contact us.

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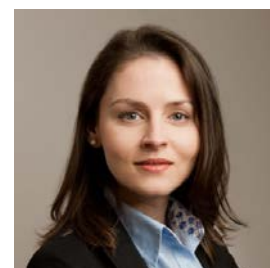
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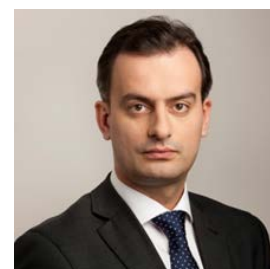
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