



ICLG

The International Comparative Legal Guide to:

Oil & Gas Regulation 2019

14th 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:

Advokatfirmaet Simonsen Vogt Wiig AS

ALC Advogados

Ashurst LLP

Bernitsas Law

Blake, Cassels & Graydon LLP

Dentons

Estudio Randle

Faveret Lampert Advogados

Gjika & Associates Attorneys at Law

González Calvillo, S.C.

HRA Advogados

Jeantet

LPA-CGR Avocats

Miyetti Law

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Moravčević, Vojnović and Partners in cooperation with Schoenherr

Nunziante Magrone

Project Lawyers

Rustam Kurmaev and Partners

Schoenherr

SSEK Legal Consultants

Stone Pigman Walther Wittmann PLLC

Torres, Plaz & Araujo

Türkoğlu & Çelepçi in cooperation with Schoenherr

Unicase Law Firm

Youssry Saleh & Partners



Contributing Editors
Philip Thomson & Julia Derrick, Ashurst LLP

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Sales Support Manager
Toni Hayward

Sub Editor
Jenna Feasey

Senior Editors
Rachel Williams
Caroline Collingwood

CEO
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
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 2019

Copyright © 2019
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-912509-53-9
ISSN 2051-3348

Strategic Partners



General Chapters:

1	Investment Protection: Managing Investment Risk in an Uncertain World – Tom Cummins & Emma Martin, Ashurst LLP	1
2	Developments in the North American Oil and Gas Sector – John P. Cogan, Jr. & Annie G. McBride, Stone Pigman Walther Wittmann PLLC	5

Country Question and Answer Chapters:

3	Albania	Gjika & Associates Attorneys at Law: Gjergji Gjika & Ergys Hasani	11
4	Algeria	LPA-CGR Avocats: Rym Loucif	20
5	Angola	ALC Advogados: Irina Neves Ferreira & João Francisco Cunha	33
6	Argentina	Estudio Randle / Stone Pigman Walther Wittmann PLLC: Ignacio J. Randle & John P. Cogan, Jr.	42
7	Austria	Schoenherr: Bernd Rajal & Dagmar Hozová	54
8	Brazil	Faveret Lampert Advogados: José Roberto Faveret Cavalcanti & Carolina Assano Massocato Escobar	66
9	Canada	Blake, Cassels & Graydon LLP: Kevin Kerr & Christine Milliken	79
10	Croatia	Schoenherr: Bernd Rajal & Petra Šantić	92
11	Egypt	Youssry Saleh & Partners: Maha Ibrahim & Ahmed Salah	109
12	France	Jeanetet: Thierry Lauriol & Martin Tavaut	117
13	Gabon	Project Lawyers: Jean-Pierre Bozec	135
14	Greece	Bernitsas Law: Yannis Seiradakis & Eleni Stazilova	145
15	Indonesia	SSEK Legal Consultants: Fitriana Mahiddin & Syahdan Z. Aziz	154
16	Italy	Nunziante Magrone: Fiorella F. Alvino & Giovanna Branca	164
17	Kazakhstan	Unicase Law Firm: Zhanar Abdullayeva	176
18	Mexico	González Calvillo, S.C.: Jorge Cervantes & Diana María Pineda Esteban	187
19	Moldova	Schoenherr: Andrian Guzun	198
20	Mozambique	HRA Advogados: Paula Duarte Rocha & Tiago Arouca Mendes	210
21	Nigeria	Miyetti Law: Dr. Jennifer Douglas-Abubakar & Fatimah Dattijo Muhammad	221
22	Norway	Advokatfirmaet Simonsen Vogt Wiig AS: Bjørn-Erik Leerberg & Frode Vareberg	231
23	Portugal	Morais Leitão, Galvão Teles, Soares da Silva & Associados: Tomás Vaz Pinto & Claudia Santos Cruz	242
24	Russia	Rustam Kurmaev and Partners: Rustam Kurmaev & Vasily Malinin	250
25	Serbia	Moravčević, Vojnović and Partners in cooperation with Schoenherr: Miloš Laković & Aleksandra Petrović	267
26	Turkey	Türkoğlu & Çelepçi in cooperation with Schoenherr: Levent Çelepçi & Murat Kutluğ	278
27	United Arab Emirates	Dentons: Mhairi Main Garcia & Stephanie Hawes	286
28	United Kingdom	Ashurst LLP: Philip Thomson & Julia Derrick	299
29	USA	Stone Pigman Walther Wittmann PLLC: John P. Cogan, Jr. & James A. Cogan	320
30	Venezuela	Torres, Plaz & Araujo: Juan Carlos Garantón-Blanco & Valentina Cabrera Medina	333

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

EDITORIAL

Welcome to the fourteenth edition of *The International Comparative Legal Guide to: Oil & Gas Regulation*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of oil and gas regulation.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with an overview of key issues and developments affecting oil and gas regulation.

Country question and answer chapters. These provide a broad overview of common issues in oil and gas regulation in 28 jurisdictions.

All chapters are written by leading energy lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Philip Thomson and Julia Derrick of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Albania

Gjika & Associates Attorneys at Law

Gjergji Gjika



Ergys Hasani



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.

The exploration of gas in Albania began in 1955. The exploitation of gas in Albania for industrial use (chemical residues industry, oil industry and production of electric power) dates back to 1963, when the gas field of Bubullima (Area of Kallm) was first exploited, followed by the gas field of Divjaka in 1964 with a total production of 70 million cubic metres ("Mcm")/year, Frakulli in 1972, Finiq-Krane in 1974, Ballaj in 1983, Povelça in 1987 and Delvina in 1989.

The highest production of gas in Albania was registered in 1982 with a total production of 0.937 billion cubic metres ("Bcm"), while the cumulative production of natural gas is 3.15 Bcm, and the cumulative production of accompanying gas is 8.7 Bcm. After the 1990s, the production of natural gas decreased to 12 Mcm/year.

Currently, the number of wells producing natural gas is approximately 20, with a minimum production of 200–300 normal cubic metres ("Nm³")/day.

According to the data provided by the National Agency of Natural Resources ("NANR"), the geological reserves of natural gas are 18,163,700,000 Nm³ and lie mainly in the Kuçova and Patos oilfields.

By virtue of Law No. 104/2013, dated 25.03.2013 "On the ratification of the agreement between the Republic of Albania, the Republic of Greece and the Republic of Italy for the project for the Trans Adriatic Pipeline" ("TAP"), and Law No. 116/2013, dated 15.04.2013 "On the ratification of the agreement with the government of the hosting country between the Republic of Albania, represented by the Council of Ministers and Trans Adriatic Pipeline Ag, in relation to TAP, as well as the agreement between the Republic of Albania represented by the Council of Ministers and Trans Adriatic Pipeline Ag, in relation to TAP", the Republic of Albania will implement the TAP.

This project will link three countries, namely Greece, Albania and Italy. In January 2010, TAP opened country offices in Greece, Albania and Italy. The implementation of TAP in Albania will develop the natural gas sector in Albania. According to studies, the

consumption of natural gas is predicted to increase to 1.6 Bcm in 2030, of which approximately 70% is expected to be used for the production of electric power. Initially, the natural gas shall be used in the industry sector for the production of electric power, whereas after the year 2020, the gas shall be provided to domestic consumers with an expected final consumption of 37% in 2030.

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

Currently, Albania's energy requirements are not met using natural gas due to the lack of infrastructure. By virtue of the data provided by the Institute of Statistics ("INSTAT"), the production of natural gas in Albania for the year 2016 was 79 kilotons of oil equivalent ("ktoe"), while the quantity distributed to the consumer was only 51 ktoe. The final and completed data for the year 2016 shall be published within September 2018.

However, the consumable produced quantities are used in the industry sector, while the energy requirements in Albania are mainly met by other sources such as crude oil, coal, firewood and electric power.

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

Albania's natural gas requirements are not met through domestic natural gas production. According to the data provided by INSTAT, the production of natural gas in Albania for the year 2016 was 0.27 ktoe/10,000 habitants, while the quantity distributed to the consumer was only 0.18 ktoe/10,000 habitants. Currently, the produced quantities of natural gas are used only in the industry sector.

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

There is no export of natural gas through pipelines due to the lack of infrastructure.

2 Overview of Oil Sector

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

The oil sector in Albania is regulated by the following:

- Law No. 7746/1993 “On hydrocarbons – (exploration and production)” (“**Law 7746/1993**”).
- Law No. 9876/2008 “On the production, transport and trade of bio fuels and other fuels, renewable, for transport, as amended” (“**Law 9876/2008**”).
- Law No. 8450/1999 “On the processing, transport and trading of oil, gas and their by-products” (“**Law 8450/1999**”).
- Law No. 8561/1999 “On the expropriation and temporary taking over of private property for public interest” (“**Law 8561/1999**”).
- Law No. 7811/1994 “On the approval of the Decree No. 782/1994 ‘On the fiscal regime in the hydrocarbons sector (exploration and production)’” (“**Law 7811/1994**”).
- Law No. 9975, dated 28.7.2008 “On National Taxes” (“**Law 9975/2008**”).

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

Albania’s energy requirements are not met using oil, but mainly electric power; however, the production of oil in Albania is at high levels. By virtue of the preliminary data provided by INSTAT, the production of oil in Albania for the year 2016 was 1,056 ktoe, while the quantity available for consumption was 1,266 ktoe. The final and completed data for the year 2016 shall be published within September 2018.

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

According to the preliminary data provided by INSTAT, the production of oil in Albania for the year 2016 was 3.67 ktoe/10,000 habitants, while the quantity available for final consumption was 4.40 ktoe/10,000 habitants. The final and completed data for the year 2016 shall be published within September 2018.

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

According to the data provided by NANR, 378,275 tons of crude oil were produced this year, up until June 2018, whilst 30,324 tons of crude oil were exported. The export of oil for the year 2017 was 316,130 tons of crude oil.

Based on the data provided by the Albanian customs, the principal countries to which Albanian oil is exported are Italy, Spain and Malta.

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.

The oil and natural gas sector in Albania is regulated by all the laws mentioned in question 2.1, as well as: Law No. 102/2015 “On the natural gas sector” (“**Law 102/2015**”); DCM 848/2016 “On the establishment of the company ‘Albgaz’ Sh.a. and determination of the public authority representing the state as shareholder of the

company ‘Albpetrol’ sh.a. and ‘Albgaz’ Sh.a.” (**DCM 848/2016**); and “Regulation on Procedures and Time Limits for Granting, Modification, Transfer or Licence Distribution in the Natural Gas Sector”, approved by ERA with Decision No. 97, dated 04.07.2017 (“**Regulation 97/2017**”).

By virtue of Albanian law, all petroleum in its natural state is the exclusive property of the Albanian State, represented by the Ministry of Infrastructure and Energy (the “**MIE**”). The MIE is entitled to conclude petroleum agreements with any contractor interested in the research and production of oil and gas, granting them the right to research and produce as per the terms and conditions of the petroleum in the relevant contract area.

NANR is an institution dependent on the MIE. NANR is entitled to negotiate petroleum agreements, prepare the necessary documentation and practices concerning the granting of the permits, licences and authorisations in compliance with the law which enables an applicant to enter into agreements and to perform petroleum operations.

AlbpetrolSh.A. (“**Albpetrol**”) is a State-owned company, having as its object the production and trade of petroleum products based on the petroleum agreement concluded with the MIE on 26.07.1993 “On the authorization for the performance of Petroleum Operations”, and having the right to grant to third parties a licence agreement for the areas under its administration.

AlbgazSh.A (“**Albgaz**”) is a State-owned company, operating as a combined operator performing the activity of the Transmission System Operator (“**TSO**”) and Distribution System Operator (“**DSO**”) of natural gas.

The ERA is the regulatory authority in the sector of natural gas and electric power, with the exception of the exploration and production/exploitation of natural gas.

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 State mineral rights to develop oil and natural gas are transferred to an investor by entering into a petroleum agreement with the latter. The petroleum agreement may be for a term of up to five years for exploration, and up to 25 years for production and exploitation of the hydrocarbon reserves.

The petroleum agreement may provide to the investor the right to construct and operate pipelines in Albania, the right to own part of the production and the right to sell and export the production.

Any interested party wishing to enter into a petroleum agreement on hydrocarbons should submit an application to NANR and the latter must submit to the MIE the necessary documents. The MIE decides on the approval or refusal within 10 days and, in case of approval, NANR starts the negotiation on the terms and conditions of the petroleum agreement with the applicant.

The final draft may be sent for review to the Ministry of Finance and to the Ministry of Justice. The MIE should sign the petroleum agreement within 10 days of receiving the revised and renegotiated agreement, and send it to the Council of Ministers for final approval.

Even in case of a licence agreement to be entered into with Albpetrol for the areas administered by the latter, the negotiation should be undertaken with NANR, and the licence agreement must be signed by the MIE and Albpetrol, and finally the agreement should be approved by the Council of Ministers.

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).

Any legal entity wishing to perform exploration activity in relation to oil and natural gas should enter into a petroleum agreement with the MIE or into a licence agreement with Albpetrol for areas under the operation of the latter. The exploration agreement may be entered into for a period of five to seven years.

Any legal entity wishing to perform production and exploitation activity in relation to oil and natural gas should enter into a petroleum agreement with the MIE or into a licence agreement with Albpetrol for areas under the administration/operation of the latter. The production and exploitation agreement may be entered into for a period of 25 years and renewed for a period of not more than five years.

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)?

All oil and natural gas in their natural state are the exclusive property of the Albanian State. The latter may delegate the right to explore, produce and exploit to any interested third party by entering into a petroleum agreement or licence agreement. In such agreement, the Albanian State is represented by the MIE, while the implementation of such agreement is supervised by NANR.

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

The following taxes are applicable:

- Profit tax amounting to 50% of the net profit for the relevant fiscal year, payable according to the relevant petroleum agreement.
- Royalty tax on oil and gas amounting to 10% of the sales, payable not later than the 15th day of the following month.
- Bonuses paid for entering in a concession agreement, as stipulated in the respective agreement.
- Share of the production of oil and gas, as stipulated in the respective agreement.

In case of a production-sharing agreement, the contractor is entitled to compensate the State authority in oil or natural gas as compensation for business costs.

3.6 Are there any restrictions on the export of production?

There are no restrictions in relation to the export of oil and natural gas. Limitations may be imposed by the petroleum agreement to supply or contribute to the supply of the internal market in case of an emergency.

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

There are no currency exchange restrictions or restrictions on the transfer of funds derived from production out of the jurisdiction.

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

The oil and natural gas development rights may be transferred or assigned to any third party depending on the provisions of the petroleum agreement with the MIE.

The natural gas development rights may be transferred or assigned to any third party upon the prior approval of ERA.

The approval from ERA is not required in case of:

- The transfer of the assets of the licensee with installed capacity up to 1MW.
- The transfer of the assets of the licensee operating a direct line in the natural gas sector.
- The transfer of assets with a total value of less than 150 million ALL or assets that are not closely related to the licensed activity.

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

Any operator wishing to operate in the oil and natural gas sector, in order to enter into an exploration or exploitation agreement, should have necessary financial means proving the ability to undertake such activity. There is no specification on what kind of security or guarantee should be provided; however, in practice, a bank guarantee is required.

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 right to develop oil and natural gas may not be pledged.

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?

In addition to the authorisation mentioned in question 3.3, the following permits are required:

- The Environmental Permit approved by the Minister of Environment and issued by the National Licensing Center.
- The Development Permit, Construction Permit and Use Permit issued by the National Territory Council.
- The exploration and production of hydrocarbons may be performed by experts equipped with a professional permit for such activity. This does not apply to foreign experts who perform such activity for not more than 12 months as of their entry into Albanian territory.

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?

There is no specific law or regulation on the abandonment or decommissioning of physical structures used in oil and natural gas development. However, the holder of an oil and natural gas development right should take all necessary measures for the protection of the environment and diminution of the pollution due to the performance of petroleum operations.

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

Gas storage is regulated by Law No. 102/2015. Gas storage may be performed by any legal entity duly licensed by ERA. The licence is granted for a period of not more than 30 years and may be renewed. Depending on the efficiency and profitability, ERA may license one or more operators.

3.14 Are there any laws or regulations that deal specifically with the exploration and production of unconventional oil and gas resources? If so, what are their key features?

There are no regulations pertaining to exploration and production of unconventional gas in Albania.

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).

By virtue of Law No. 102/2015, only legal entities duly licensed by ERA may perform wholesale and retail of natural gas (including LNG). Such licence is issued for a period of not more than 10 years and may be renewed.

The price in relation to wholesale and retail sale of gas is determined based on supply and demand.

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.

There are no specific requirements, limitations or rules in relation to cross-border sales of oil and oil products. Any legal entity duly licensed may perform the import/export of oil and oil products in accordance with the international convention ratified by the Albanian government.

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).

Recently, the Albanian Parliament approved Law No. 102/2015, which implements Directive 2009/73/EC of the European Parliament and of the Council of 13.07.2009 concerning common rules for the internal market in natural gas, and governs the transport and associated infrastructure in relation to natural gas.

The construction and use of pipelines for the transmission and distribution of natural gas, LNG and natural gas deposits, direct lines connecting the Albanian natural gas system with neighbouring systems, as well as any plant, installation or other device incorporated in the natural gas sector, is subject to approval by the Council of Ministers. Such approval is granted for a period of 30 years, renewable.

Any legal person wishing to operate in the natural gas sector and to perform the following activities should obtain a licence issued by ERA for the transmission, distribution, supply and trade of natural gas, as well as operation of natural gas storage facilities and LNG facilities.

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?

The following permits and authorisations are required for the construction and operation of the natural gas transportation pipelines and associated infrastructure:

- The Environmental Permit approved by the Minister of Environment, issued by the National Licensing Council (“NLC”).
- The approval of the Council of Ministers on the construction and use of the natural gas transportation pipelines and associated infrastructure.
- The Development Permit, Construction Permit and Use Permit issued by the National Territory Council.

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?

An investor, who has entered into a petroleum agreement, or a holder of the permit to construct natural gas transportation pipelines, is also granted the right of use of the land. The right to use the land is exercised by virtue of an agreement entered into with the landlord, being between the State entity, local government or private person owning the immovable property and the investor/holder of the permit, against the payment of a fee. The investor shall compensate the landlord for all the damages suffered by the latter due to such construction works, instalment of infrastructure, or the limitation to use the land.

In case the landlord fails to enter into such an agreement with the investor, the latter is entitled to address the competent court for the purpose of determining the easement rights and the annual payment which is due to the landlord.

Furthermore, Albanian law provides for the expropriation of private property, provided that the oil and natural gas activity in a certain area is of special public interest and is the object of dispute between the investor and the landlord in relation to use of the relevant property.

The expropriation right is exercised for a public interest that cannot be completed or protected by other means, only on the grounds set out in Law No. 8561/1999 and against fair compensation.

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

The TSO, in the capacity of the administrator of natural gas transportation infrastructure, should ensure unlimited access to the transmission system to any third party in accordance with the terms and conditions determined in the Network Transmission Code, approved by ERA.

Access for third parties may be granted, provided that the operator has the necessary financial and professional capacity to exercise the access right.

The access right to the natural gas transportation pipelines is regulated by virtue of an agreement entered into with the TSO. The terms and conditions of the access agreement as well as the access fees should be in compliance with the methodology approved by ERA.

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?

To date, the oil transportation system is not integrated or interconnected with any transportation system of any third country.

Upon completion of the TAP Project, it is expected that the natural gas transportation pipelines in Albania will be integrated and interconnected with the Greek and Italian natural gas transportation systems.

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?

The TSO may refuse third-party access to the natural gas transportation pipeline or associated infrastructure due to lack of capacity, in case such access impairs the performance of obligations to public service.

In such case, TSO should make the necessary improvements to the infrastructure, to the extent it is suitable from a financial point of view, or in case the interested third party is willing to pay for such improvements. TSO should make the method of calculation of the costs public.

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?

In relation to oil, the parties are free to agree to the terms and conditions of transport by entering into an agreement, which should then be filed with NANR.

In relation to the transport of natural gas, the terms and conditions, as well as tariffs, are regulated in accordance with the proposed methodology which is expected to be approved by ERA.

7 Gas Transmission / Distribution

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

The transmission and distribution of natural gas is regulated by Law No. 102/2015 and Regulation 97/2017.

Transmission means the transport of natural gas to the client through a network of high-pressure pipelines, which are different from the pipelines in the exploration-production system and the distribution pipelines, excluding the service of supply. Natural gas transmission is an activity of public interest and may be performed by a TSO licensed by ERA. A TSO is a legal entity that operates only in the transmission of natural gas and has, *inter alia*, the following powers: to construct, own, operate, maintain and develop a safe, efficient system for natural gas transmission and ensure a competitive market, as well as ensure sufficient capacity to meet reasonable demand for the transmission of natural gas; to provide a natural gas transmission service; and to grant third-party access to the transmission system in accordance with the Transmission Network Code.

Distribution means the transport of natural gas through a pipeline network to the client, excluding the service of supply. The distribution of natural gas may be performed by a DSO. A DSO is a legal entity that operates only in the distribution of natural gas and has, *inter alia*, the following powers: to construct, own, operate, maintain and develop a safe, efficient and environmentally-friendly system for natural gas distribution; to provide a stable and efficient distribution of natural gas in accordance with licence conditions; and to grant third-party access to the transmission system in accordance with the Distribution Network Code.

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

The governmental authorisations required to operate a distribution network are:

- The Approval of the Council of Ministers on the construction and use of a distribution network.
- The Distribution Licence issued by ERA.
- The Environmental Permit approved by the Minister of the Environment and issued by the NLC.
- The Development Permit, Construction Permit and Use Permit issued by the National Territory Council in case of the construction infrastructure.

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

The DSO provides access to the distribution system, within the limits of distribution capabilities and technical regulations, in accordance with the terms and conditions stipulated in the Distribution Network Code, approved by ERA.

The DSO should publish the terms and conditions approved by ERA, including rules guarantees and access fees. The same terms apply to all customers without discrimination.

The DSO should grant access to the natural gas distribution network taking into consideration the financial ability of the third party. However, all the criteria for granting access should be non-discriminatory, proportional and transparent.

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

Law No. 102/2015 does not provide for the right of ERA to require a DSO to grant capacity or expand its system in order to accommodate new costumers. However, the Distribution Network Code, regulating, *inter alia*, the terms and conditions for providing third-party access, is expected to be approved by ERA.

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

The access fee should be calculated in accordance with the methodology approved and published by ERA.

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)?

The licence or assets forming part of the distribution system may be transferred entirely or partially to any third party upon prior approval of ERA, with the exception of assets having a minimal value or those not related to the licensed activity. In case of transfer of assets, the transferee should apply to ERA to obtain a new licence.

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.

The wholesale and retail of natural gas may be performed by a legal entity duly licensed by ERA. A company licensed for the supply of natural gas is also entitled to perform the trading of natural gas, provided that separate accounts are kept of each of the activities.

ERA surveys the natural gas market in cooperation with the Competition Authority at least every two years, and the Competition Authority takes measures to ensure effective competition in the natural gas market and to identify market abuse cases.

A regulation on the organisation and functionality of the natural gas market is expected to be approved by ERA.

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?

There are no specific provisions on tradable natural gas commodities. However, by virtue of Law No. 102/2015, natural gas comprises methane, including any associated gas, and all hydrocarbons in gaseous state in normal atmospheric conditions, including LNG, biogas or other types of gas transmitted and distributed in the pipeline system.

9 Liquefied Natural Gas

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

The operation of LNG facilities is regulated by Law No. 102/2015. The LNG system may be operated by any legal entity licensed by ERA and depending on the efficacy, by one or more operators.

The LNG system has, *inter alia*, the following powers: to operate, maintain and develop safe, reliable and efficient LNG facilities; to connect the LNG facilities with the transmissions system in accordance with the technical rules related to LNG plants; install measurement equipment for inflow and outflows, as well as gas quality parameters; and to ensure objective, equal and comprehensive conditions of access to LNG facilities.

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

The following governmental authorisations are required in order to construct and operate LNG facilities:

- The Approval of the Council of Ministers on the construction and use of LNG facilities.
- The LNG facilities operation licence issued by ERA.
- The Environmental Permit approved by the Minister of Environment and issued by the NBC.
- The Development Permit, Construction Permit and Use Permit issued by the National Territory Council.

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

The price for accessing LNG facilities is calculated in accordance with the methodology approved by ERA with Decision 178/2017 “On approval of the methodology for calculation of the fees for transmission and distribution network of natural gas”. This methodology aims to set out rules for calculation of the fee for access and use of the transmission and distribution system of the natural gas in Albania.

The access fee shall be based on the following principles: (i) the access fee shall reflect the costs; (ii) the access fees shall be calculated in such manner that at the end of the regulatory period, the difference between the real cost of the network (the realised incomes) and those allowed through the fee, is as small as possible; (iii) the subventions between different classes of the customers is prohibited; (iv) the access fee should reflect the actual cost of the service for each customer and should be allocated as fairly as possible; (v) the access fees should give the right signals for the

efficient use of the network; (vi) the allowed expenses in the fee should be transparent for all the participants; and (vii) the access fee should remain stable over time.

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

The LNG system operator should offer services on a non-discriminatory basis to all network users that comply with the market requirements.

An LNG system operator may refuse access to a third party to LNG facilities or associated infrastructure due to lack of capacity, in case such access impairs the performance of obligations to public service.

10 Downstream Oil

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

In addition to the laws indicated in question 2.1, the downstream oil sector is regulated, *inter alia*, by the following:

- DCM 755/2014 “On the determination of procedures and requirements with regard to the award of a “Processing Licence” for processing plants of the by-products of oil”.
- DCM 19/2015 “On the procedures and requirements with regard to the granting, transfer and renewal of the concession licence for refineries for crude oil processing activity for the production of the by-products thereof”.
- DCM 970/2015 “On the determination of the procedures and requirements for granting licences for the trading of crude oil and its by-products”.
- Order of the Ministry of Energy and Industry 389/2014 “On the data that should be sent by legal entities exercising their activity in the sector for processing, transporting and trading crude oil and its by-products”.
- Order of the Ministry of Energy and Industry 315/2017 “On the procedures for issuing technical certification for the entities carrying out activities in the sector of processing, transport and trade crude oil and its by-products”.

A legal entity may operate an oil refinery for processing crude oil, provided that it is established as a joint stock company and after obtaining a concessionary licence through a decision of the Council of Ministers for a term of 30 years, renewable.

Processing plants are entitled to carry out the activity of processing petroleum by-products, provided they are established as a joint stock company and have obtained the processing licence, issued by the Ministry of Energy and Industry, which is issued for a period of 15 years, renewable.

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

The wholesale of oil may be performed by any legal entity established as a joint stock company, provided it has obtained a trade permit from the Ministry of Energy and Industry for a period of 10 years, renewable.

In addition to the above, the wholesale of oil may be performed by (i) legal entities producing hydrocarbons, the latter being entitled to sell the produced crude oil only to oil refineries for export purposes, and to companies that have obtained a trade licence for crude oil, (ii) oil refineries, which may trade their own production, and (iii) processing plants, which may trade their own production.

Albanian law does not impose any restriction as to the ownership of such companies.

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?

The competent authority responsible for the regulation of competitive and anti-competitive practices in both oil and gas sectors is the Competition Authority (“CA”).

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

By virtue of Law No. 9121/2003 “On the protection of competition”, the following are considered anti-competitive conducts that might restrict or distort competition: prohibited agreements; abuse of dominant position; and concentrations.

Prohibited agreements, specifically, are agreements that: directly or indirectly fix purchase or selling prices or any other trading condition; limit or control production, markets, technical development or investment; share markets or sources of supply; provide dissimilar conditions to equivalent transactions with different parties, thereby placing them at a competitive disadvantage; and render the conclusion of agreements subject to acceptance by other contracting parties of additional obligations that, due to their nature or commercial use, are not related to the object of such agreements.

The abuse of dominant position may occur in the following cases: the direct or indirect fixing of unfair selling or purchase prices or other unfair trading conditions; the restriction of production, markets or technical development; the provision of dissimilar conditions to equivalent transactions with different parties, thereby placing them at a competitive disadvantage; and rendering the conclusion of agreements subject to the acceptance by other contracting parties of additional obligations that, due to their nature or commercial use, are not related to the object of such agreements.

The concentration may occur in the following cases: the merger of two or more companies; the acquisition of direct or indirect control by one or more individuals or legal entities that simultaneously control at least one other company; and direct or indirect control over one or more companies or parts thereof.

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

In case of doubt for anti-competitive actions, the CA, on its own initiative, is entitled to carry out investigations within the premises of the companies or group of companies, and the residences of the administrators, directors and other employees of the companies. The Inspectors of the CA are also entitled to obtain information or seize objects when such seizure is deemed necessary.

Moreover, the CA, according to the information received, may perform either a preliminary or in-depth investigation. Depending on the results of such investigation, the CA applies the respective measures provided for in the Law “On the Protection of Competition”.

In case of anti-competitive conduct, the CA may impose penalties to up to 10% of the turnover of the previous fiscal 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?

Concentrations are considered as such and need to be approved by the CA in case during the year prior to the transaction: (a) the combined worldwide turnover of all participating companies is more than 7 billion ALL (approx. 50 million Euros) and the domestic Albanian turnover of at least one participating company is more than 200 million ALL (approx. 1.4 million Euros); or (b) the combined domestic turnover of all participating companies is more than 400 million ALL (approx. 2.9 million Euros) and the domestic turnover of at least one of the participating companies is more than 200 million ALL (approx. 1.4 million Euros).

The above concentrations should be notified to the CA within 30 days of their conclusion, and the latter must approve or refuse it within two months as of receipt of the notification.

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?

There are no restrictions on acquisition of interests by foreign companies. Therefore, the foreign investors may either establish a company or a branch in Albania for the purpose of exercising its activity.

There are no restrictions as to the nationality of shareholders of a company.

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?

Albania has ratified the Energy Community Treaty and has become a part of the Energy Community. In light of the above, and the subsequent obligation of applying the *acquis communautaire*, the new legislation on natural gas, namely Law No. 102/2015 "On the natural gas sector", dated 23.09.2015, is completely harmonised with the European legislation in force.

Moreover, in relation to the TAP Project, the Albanian Parliament has ratified the intergovernmental agreement entered into with Italy and Greece.

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.

Any dispute arising from a petroleum agreement in the oil sector is settled in accordance with the provisions of the agreement and in practice, petroleum agreements also determine an international court of arbitration as the competent authority for resolving such disputes.

With regard to the companies operating in the natural gas sector, the competent authority for the resolution of disputes arising with regard to licensing and the amendment, transfer, revocation or renewal of a licence is the Albanian Energy Regulator. The decision of the latter authority may be appealed at the Albanian national court.

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")?

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by the Albanian Parliament on 09.11.2000 and entered into force on 27.06.2001.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID") was signed and ratified by the Albanian Parliament on 15.10.1991 and entered into force on 14.11.1991.

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)?

The governmental authorities do not benefit from any immunity, and to date there have not been any difficulties with regard to the enforcement of judgments against the governmental authorities.

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?

Recently, there have been court procedures initiated by one of the companies operating in the Albanian oil sector; however, due to confidentiality we may not provide further details on the case and the company.

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.

On 14.02.2018 the Council of Ministers approved the Decision No. 87 “On approval of the development plan in the natural gas sector in Albania and identification of the priority projects” (“DCM 87/2018”).

By virtue of DCM 87/2018 the Master Plan aiming to identify the priority projects in the area of gas, should be approved in September 2018.

This development plan and the Master Plan to be approved shall include at least: (i) the identification of the demands for gas and the possible scenarios for gas supplying; (ii) the policies for gas prices, fees and legal framework of gas; (iii) promotion of natural gas in Albania; (iv) developing knowledge in gas area and training of the respective employees of the Ministry of Energy and Infrastructure, Transmission Gas Operator and Energy Regulator Entity; and (v) developing a plan on the priority projects in the natural gas area including a pre-feasibility analysis of the possible projects of gas infrastructure, along with the strategy for attracting the investors.



Gjergji Gjika

Gjika & Associates Attorneys at Law
Ambasador 3 Building
“Dervish Hima” Street, 20th floor
Office No. 159
Tirana
Albania

Tel: +355 42 400 900
Email: ggjika@gjika-associates.com
URL: www.gjika-associates.com

Gjergji Gjika is the founder of Gjika & Associates Attorneys at Law.

He has many years of experience providing legal counsel to domestic and international multinational companies, with a focus on business and commercial law, tax and employment law, administrative and public procurement law, mergers and acquisitions, re-organisations and corporate governance. He is regularly involved in drafting contracts, legal opinions and due diligence in relation to mining, hydrocarbons and the natural gas and energy sectors.

Gjergji Gjika is recognised as a leading lawyer in the 2014–2019 editions of the *IFLR1000*. He has been a member of the Albanian National Bar Association since 2006.



Ergys Hasani

Gjika & Associates Attorneys at Law
Ambasador 3 Building
“Dervish Hima” Street, 20th floor
Office No. 159
Tirana
Albania

Tel: +355 42 400 900
Email: ehasani@gjika-associates.com
URL: www.gjika-associates.com

Ergys Hasani joined Gjika & Associates Attorneys at Law as an Associate in January 2016. He graduated from the Faculty of Law University of Tirana and holds a Master’s degree in Civil Law. He has been a member of the Albanian National Bar Association since 2017.

He has important experience in consulting, due diligence and regularly advises clients in relation to corporate and business law, labour law, administrative law, as well as hydrocarbons and the natural gas and energy sectors.

GJIK & ASSOCIATES

ATTORNEYS AT LAW

Gjika & Associates is a dynamic business-oriented law firm, established in 2013 as a fruitful joining of highly skilled attorneys with extensive experience in the national and international arena.

Our attorneys have experience in all segments of the natural resources industry, ranging from renewable resources to power generation to oil and gas. We apply a distinctly commercial approach to guide clients through strategic decisions, policy initiatives, commercial transactions, project financing and development, regulatory compliance, tax matters, credit trading, and litigation. We pride ourselves on our responsiveness and teamwork, as well as on maintaining a thorough grounding in both legal and business dimensions of the energy and utilities industries.

Our clients include: independent power producers; alternative energy project developers and producers; investor-owned and publicly owned electric, gas, water, and telecommunications utilities; emerging businesses in the smart energy sector; power marketers; oil and gas producers; natural gas and petroleum product storage and transmission companies; lenders; developers; and contractors.

Gjika & Associates has been recognised as a recommended firm in the 2015–2019 editions of the *IFLR1000*.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk