

# International Comparative Legal Guides



## Oil & Gas Regulation 2020

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

**15<sup>th</sup> Edition**

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# Austria

Schoenherr



Bernd Rajal



Felix Schneider

## 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 January 2013, a new gas market model was introduced in Austria. This new model provides for the merger of national and transit pipelines into three market areas, namely "East", "Tyrol" and "Vorarlberg". The market areas are managed by the market manager (*Marktgabietsmanager*), who is designated by the TSOs active in the respective market area.

In 2017, gross inland consumption (production + imports – exports + storage variations) of natural gas in Austria amounted to 7.8 Mtoe. Only about 1.0 Mtoe thereof was covered by domestic production of natural gas (EU Commission, DG Energy, EU energy in figures – Statistical pocketbook 2019, September 2019; [https://publications.europa.eu/en/publication-detail/-/publication/e0544b72-db53-11e9-9c4e-01aa75ed71a1/language-en?WT.mc\\_id=Searchresult&WT.ria\\_c=37085&WT.ria\\_f=3608&WT.ria\\_ev=search](https://publications.europa.eu/en/publication-detail/-/publication/e0544b72-db53-11e9-9c4e-01aa75ed71a1/language-en?WT.mc_id=Searchresult&WT.ria_c=37085&WT.ria_f=3608&WT.ria_ev=search)).

Austria, therefore, is dependent on the import of natural gas, mainly from Russia, Norway and Germany.

On 23 September 2016, Austria's NRA (E-Control) approved the Coordinated Network Development Plan 2016 (CNEP 2016) by a formal decision. The CNDP 2016 provided for 16 new projects. One of such projects is the "Bidirectional Austrian-Czech Interconnector (BACI)" between Baumgarten (AT) – Reintal (AT/CZ) – Břeclav (CZ). The project sponsors, i.e. the Austrian and the Czech Transmission System Operators Gas Connect Austria GmbH (GCA) and NET4GAS, plan to connect their pipeline systems and create additional transportation possibilities. The planned pipeline will run for approximately 61 km (49 km in Austria and 12 km in the Czech Republic) and cross the border near the village of Reintal. The current planning envisages that transport will start in 2020. The BACI Project has the potential to open the Eastern Austrian market to Northern European gas importers via the Czech market.

Another important infrastructure project is the "Entry Mosonmagyaróvár" project, relating to the cross-border point of Mosonmagyaróvár, connecting the markets of Austria and Hungary. The physical flow direction is currently going from

Austria to Hungary. This project, which is currently in the conceptual phase, would ensure a reverse flow from Hungary to Austria. At present, planning is based on market indications. This project could be combined with other projects to lay the foundation stone for the establishment of a South Corridor. Its most important benefit, however, lies in the diversification of routes and supply sources. To further develop the Southern Corridor GCA together with the Hungarian transmission system operator (TSO), FGSZ Zrt. and the Romanian TSO SNTGN Transgaz SA are considering jointly conducting an open season (OS) procedure for the booking of new or incremental cross-border transmission capacity at the Romanian-Hungarian border and the Hungarian-Austrian border.

A similar project is the "Entry/Exit Murfeld" project, relating to the cross-border point of Murfeld, connecting the markets of Austria and Slovenia. This project would also ensure a reverse flow, but in this case from Slovenia to Austria. Its main advantage lies in the diversification of supply sources, e.g. by supplying LNG from the Adriatic region.

On 20 December 2017, E-Control approved the long-term Network Development Plan 2017 (LTP 2017) for the period 2018–2027 by a formal decision. The LTP 2017 approves the modification of existing projects as well as a newly submitted project. The latter, the "Auerthal" project, foresees the creation of a new central inflation system according to the DIN and API standards. This system should guarantee two separately working systems for GCA and OMV Exploration & Production GmbH, who presently share one system. It is expected that two separate systems will lead to a more efficient and secure use of inflation systems.

On 19 January 2018, E-Control approved the Coordinated Network Development Plan 2017 (CNEP 2017) by a formal decision. The CNEP 2017 approves, *inter alia*, the "Entry/Exit Murfeld" project mentioned above.

On 20 December 2018, E-Control approved the long-term Network Development Plan 2018 (LTP 2018) for the period 2019–2028 by a formal decision. Like the LTP 2017, the LTP 2018 approves the modification of existing projects as well as several newly submitted projects. The latter include, among others, the restoration and re-establishment of the distribution area facilities of the Baumgarten station that had been destroyed in a devastating incident on 12 December 2017.

On 11 February 2019, E-Control approved the Coordinated Network Development Plan 2018 (CNEP 2018) by a formal decision. The CNEP 2018 approves, *inter alia*, various projects related to capacity increases at entry/exit points.

The Austrian gas market is currently not linked to LNG terminals outside Austria. However, importing LNG is an option, since some Austrian companies, together with JV partners, plan

to build new LNG infrastructures in the Adriatic region and to develop or expand the necessary transport capacities. EconGas, the European natural gas company with Austrian roots, was among the first companies to sign long-term capacity contracts with “Gate Terminal” (an LNG terminal in Rotterdam) in late 2007. Since the opening of “Gate Terminal” in 2011, EconGas has been able to purchase up to three billion cubic metres of natural gas per year for its customers via Gate.

In Austria, trading of natural gas and especially transfers of titles to natural gas must be performed via the Virtual Trading Point (VTP), i.e. the Central European Gas Hub (CEGH), which is a subsidiary of OMV Gas & Power GmbH and one of the most important natural gas trading platforms in Central Europe. From there, Russian natural gas is shipped to Europe via the Austrian pipeline system. The CEGH provides hub services such as title transfer services, wheeling services or gas auctions (e.g. within the context of gas release programmes).

Transit of natural gas is carried out via the TAG (Trans-Austria Gasleitung) and WAG (West-Austria-Gasleitung) pipeline systems (the major transmission lines in Austria), the South East Gas Pipeline (SOL), the Hungarian-Austrian Gas Pipeline (HAG), the March-Baumgarten Pipeline (MAB), the Kittsee-Pipeline (KIP), the Austria-Bavaria-gasline (ABG) and the PENTAWest pipeline (PW). The WAG pipeline system consists of a pipeline with a DN800 interior diameter which is enhanced by a second DN1,200 parallel pipeline for approx. 140 km and its auxiliary equipment (metering and control stations, slide gate valve station, etc.). WAG runs from Baumgarten an der March on the Austrian-Slovak border, through Lower Austria and Upper Austria to Oberkappel on the border to Germany. WAG is operated by GCA. The TAG pipeline comprises three parallel pipelines and the auxiliary equipment for each, including compressor stations and entry/exit points. The nominal diameters (DN) of the pipelines are between 900 mm and 1,050 mm. TAG runs from Baumgarten an der March on the Austrian-Slovakian border, through Lower Austria, Burgenland, Styria and to Arnoldstein in Carinthia on the border between Austria and Italy. TAG is owned and operated by Trans Austria Gasleitung GmbH, a joint venture between Italian TSO Snam and GCA. Both GCA and Trans Austria Gasleitung GmbH have been certified by E-Control as TSOs under the ITO model. Distribution lines are operated by several regional and municipal Distribution System Operators (DSOs).

EconGas is the dominant supplier on the market for delivery of local re-distributors and on the wholesale supply market. Customers of EconGas are industrial customers with an annual natural gas consumption exceeding 500,000 m<sup>3</sup> and power plants. Markets for supply of retail customers (customers with an annual natural gas consumption of up to 500,000 m<sup>3</sup>) are divided into several geographical areas, which are deemed identical to the distribution grids.

Given Austria’s geological set-up, the only type of underground storage available is pore storage facilities. The unbundled storage undertakings that constitute market capacity in Austria are: astora GmbH & Co KG; Uniper Energy Storage GmbH; GSA LLC; OMV Gas Storage GmbH; and RAG Energy Storage GmbH. The development of storage sites during the last 10 years (7-fields, Haidach, Aigelsbrunn) and the 685 million-cubic-metre increase in storage capacity by Uniper Energy Storage on 1 April 2014 have meant that the working gas volume in Austrian storage facilities is currently 92.836 TWh – which is more than the annual gas consumption in 2018.

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

The Austrian energy supply is based on a balanced mix of energy sources. In the long run, the importance of fossil energy sources has been declining in favour of renewable energy sources. This trend is also true for gas consumption; however, it is slightly less distinct. While the share of gas (mixed gas and natural gas) in 2016 accounted for 20.9 per cent of the gross inland energy consumption, it rose slightly to 22.4 per cent in 2017 and then fell again to 21.8 per cent in 2018 (Federal Ministry of Sustainability and Tourism, energy in Austria – Data, facts and numbers 2019, <https://www.bmnt.gv.at/energie-bergbau/energie/Zahlen--Daten--Fakten.html>). Nevertheless, the share of fossil energy sources in Austria’s energy portfolio (imports, domestic production and storage) is still very high.

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

Domestic natural gas production is performed by OMV and the Crude Oil Search Corporation (“*Roboel Aufsuchungs AG – RAG*”). Only about 1 Mtoe of gross domestic consumption may be covered by domestic production of natural gas (see question 1.1 above). Austrian re-distributors import gas from Russia (approx. 82.2 per cent), and other countries like Germany and Norway (17.8 per cent; Federal Ministry of Economy, Family and Youth, Energy Strategy 2015). In 2016, net imports amounted to 6.2 Mtoe of natural gas. In 2016, more than 80 per cent of all physical gas imports were re-exported ([www.e-control.at](http://www.e-control.at), Market Report 2017).

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

In 2017, the production output amounted to 1.0 Mtoe, of which OMV’s share of the volume was about 80 per cent, and RAG’s 20 per cent. LNG is not exported from Austria. In 2016, natural gas imports reached 552.6 TWh and, with an increase of 11.1 per cent and 55.3 TWh respectively, recorded a slightly higher increase than exports, which increased by 10.5 per cent and 43.8 TWh respectively to 460.8 TWh ([www.e-control.at](http://www.e-control.at), Market Report 2017).

## 2 Overview of Oil Sector

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

The two companies engaged in the exploration and production of oil in Austria are OMV and RAG. The only oil refinery in Austria is located in Schwechat and operated by OMV.

Austria is considered a transit country for crude oil with two main oil pipelines crossing Austrian territory: (i) the Trans-Alpine Pipeline (*Transalpine Ölleitung – TAL*), which transports oil from the Port of Trieste (IT) to Austria; and (ii) the Adriatic Sea-Vienna pipeline (*Adria-Wien Pipeline – AWP*), which branches off from the Trans-Alpine Pipeline close to the Italian-Austrian border and pumps the imported crude oil intended for the domestic market from Trieste directly to the refinery in Schwechat. The TAL throughput in 2016 was 41.4 Mtoe. Forty-three per cent of the latter went to refineries in Ingolstadt, Vohburg, Neustadt and Burghausen, 34 per cent

to the refineries in Karlsruhe and 18 per cent via AWP to the Schwechat refinery. Five per cent was forwarded to Czech refineries via the Central European Pipeline (MERO).

The TAL is currently owned by a consortium of 10 oil companies. The shareholders of the TAL Group include some of the major names in the global oil sector: OMV; Shell; Rosneft; ENI; C-Blue Limited (Gunvor); BP; Exxon Mobil; Mero; Phillips 66/ Jet; and Total. In Austria, the operator of the pipeline is the “*Transalpine Ölleitung in Österreich GmbH*”.

The AWP is operated by the OMV Refining & Marketing GmbH.

OMV’s refinery in Schwechat (AT) is Austria’s sole refinery, which covers around 60 per cent of the domestic oil consumption. The construction of a pipeline linking MOL’s refinery in Bratislava (SK) with OMV’s refinery in Schwechat has long been planned; however, due to heated debates on the Slovakian track it has been postponed several times. In December 2017, the Slovak Ministry of Economy presented a statement about the status of the working activities and the further procedure to the Slovak Government. The main issue of the debate between the Slovak Ministry of Economy (in cooperation with BSP Bratislava – Schwechat Pipeline GmbH) and Slovakia’s capital Bratislava remains the decision about the so-called city corridor going through Bratislava as the best route. Bratislava, the entire Bratislava region and interested civil organisations oppose the route under the Petržalka district. In addition, a project to connect the Družba crude pipeline system via Bratislava to Vienna is the subject of intense discussion.

The main distribution terminal is located in the OMV central warehouse in the Lobau (a Vienna floodplain on the northern side of the Danube in the district of Donaustadt). The oil products are delivered from the Lobau by rail, by ship along the Danube or by truck.

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

Oil and oil products still account for almost 40 per cent of the energy requirements of Austria. Total domestic oil consumption in 2018 amounted to around 13.4 Mtoe. This figure includes the consumption of petroleum products ranging from liquid gas to petrol, kerosene, gas oils, fuel oils, lubricants. Between 2011 and 2015, a total of around 38 Mtoe of crude oil were imported into Austria. About 28 per cent originated from Kazakhstan, 12 per cent from Libya and 10 per cent from Algeria.

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

In 2016, the total domestic oil production (including LNG) amounted to 0.8 Mtoe. In total, approximately 9 per cent of the Austrian oil demand was covered by domestic crude oil production in 2016.

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

Crude oil produced in Austria is directly transported to OMV’s oil refinery in Schwechat. Therefore, crude oil is not exported directly. However, petroleum products made of refined oil amounting to 2.5 Mtoe are exported from Austria. Exact figures on which exact products are exported to which country are not available.

## 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.**

According to the Austrian federal system, the exploration and production of oil and natural gas are regulated by the federal legislator in the Mineral Resource Act (“*Mineralrohstoffgesetz – MinroG*”, Federal Law Gazette I 1999/38, as amended). This act applies to the whole of Austria and not only regulates the exploration and production of oil and natural gas, but also the search and exploration of geological structures which can be used as storage facilities. Additionally, this act contains provisions concerning the underground storage of natural gas without tanks and the purification of stored natural gas. An Environmental Impact Assessment (EIA) has to be conducted when the exploration of oil or natural gas exceeds 500,000 m<sup>3</sup>/d (reduced thresholds of 250,000 m<sup>3</sup>/d apply to exploration fields located in a special protected area). The EIA approval, issued under the EIA Act, replaces the approval under the MinroG.

On an administrative level, the competent authorities are the Federal Ministry of Sustainability and Tourism and, in case an EIA is required, the Government of the State concerned (“*Landesregierung*”). Applicants can appeal against decisions of the Federal Ministry of Sustainability and Tourism with the Constitutional and the Administrative Court. The EIA decision, issued by the State Government, can be repealed with the Federal Administrative Court (“*Bundesverwaltungsgericht*”) and thereafter with the Constitutional and Administrative Court.

**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?**

Oil and natural gas are considered “federally owned mineral resources”, i.e. mineral resources owned by the Austrian Federal State (Sec. 1 No. 10 MinroG). Therefore, the Austrian Federal State has the right to search, explore and produce oil and natural gas (Sec. 68 para. 1 MinroG). The same applies to the search of hydrocarbon-bearing geological structures which are to be used as storage facilities for oil or natural gas. The Federal State is authorised to transfer the exercise of rights under Sec. 68 para. 1 MinroG to individuals or legal entities and also groups of persons based on commercial law, which dispose of necessary technical and financial means for the establishment and operation of such mining activities (Sec. 69 para. 1 MinroG). The transfer of these rights is governed by a civil-law contract. The latter determines the general rights and obligations as well as the consideration for the transfer of such rights, e.g. appropriate remuneration or interest payments for the used area. These contracts are concluded by the Federal Ministry of Sustainability and Tourism in coordination with the Federal Ministry of Finance. Civil courts are competent to adjust any arising legal differences. The search and exploration of, as well as the storage in, non-hydrocarbon-bearing geological structures, which shall

be used as storage facilities for oil or natural gas, are subject to the approval of the competent authority. Such an approval may be granted to individuals, but also to legal persons and groups of persons based on commercial law. In contrast to the above, it is not possible to transfer the exercise of rights in order to avoid malpractice; the transfer of the approval, however, is possible, but must be notified to the authority.

**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).**

The search, exploration and production of oil and natural gas and the search for geological structures to be used as storage facilities depend on work plans. Work plans shall provide, e.g. information concerning the purpose, scope, mode and time of work and also safety measures and the names of the responsible persons.

See question 3.2 with regard to the search, exploration of and storage in non-hydrocarbon-bearing geological structures to be used as storage for oil or natural gas. The mining beneficiary has to notify the set-up of a mining establishment or an independent section of a mining establishment to the authority. According to Sec. 119 para. 1 MinroG, a permit must be obtained from the authorities for the construction (erection) of surface mining facilities and of tunnels, shafts, bores with boreholes of a 300 m depth and probes of a 300 m depth originating from the surface which serve the purposes of mining. A mining facility is defined as an artificial independent local object which is used for the search, production, purification in operational connection with the search and production of natural gas, and also the search and exploration of geological structures used for the underground storage of natural gas without tanks and the operational purification in connection with storage. An authorisation for a mining facility can only be granted, if: (i) it is constructed (set up) on the property of the applicant, or on the property of another person with the owner's consent, or on the basis of a legally binding decision of the authority (Sec. 148 *et seq.* MinroG); (ii) according to the "best available technology", the planned mining facility does not emit any avoidable emissions; (iii) on the basis of medical or other scientific evidence which may be considered, the life or health of persons is not endangered and there is no unreasonable impairment of persons; (iv) no danger for items not provided for use to the applicant and no impairment of the environment and water bodies beyond reasonable limits are to be expected; and (v) either the operation of the mining installation will not give rise to waste which is avoidable or non-recoverable according to the best available techniques or, where prevention or recovery of the waste is not economically justifiable, if it is ensured that the waste produced is properly disposed of. Additionally, public interests have to be taken into consideration. The authority has the power to impose obligations, terms and conditions and limitations when granting an authorisation. Generally, an operating approval is not required (Sec. 119 para. 8 MinroG).

**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, OMV and RAG carry out oil and natural gas development activities in Austria. Currently, the Austrian Federal State,

via the *Österreichische Beteiligungs AG – ÖBAG* has a stake of 31.5 per cent in OMV. In addition, various Austrian federal provinces are indirectly involved in RAG. However, the shareholdings of those federal provinces have been reduced in recent years.

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

As stated above (see question 3.2), the exercise of specific rights in connection with oil and natural gas development (production) is transferred by contract (Sec. 69 para. 1 MinroG); this is done against the payment of an appropriate consideration. The latter consists of:

- (i) an area interest for the search for oil or natural gas and the search and exploration of hydrocarbon-bearing geological structures planned to be used as storage;
- (ii) a field interest and royalties for the extraction including the right to acquire oil or natural gas; and
- (iii) a storage interest for the storage of oil or natural gas in hydrocarbon-bearing geological structures.

Sec. 69 MinroG further specifies how royalties are calculated. Finally, this provision forms the basis for a regulation which provides for certain exemptions (e.g. related to economic reasons) from the above-mentioned interests and royalties.

**3.6 Are there any restrictions on the export of production?**

Austrian law does not provide special restrictions on the export of oil or natural gas production. In the event of a crisis, however, certain measures (including export restrictions) may be taken on the basis of the Energy Steering Act 2012 ("*Energielenkungsgesetz*", Federal Law Gazette I 2013/41).

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

No specific currency exchange restrictions or restrictions on the transfer of funds derived from production out of the jurisdiction are stipulated by Austrian law.

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

The transfer or disposal of specific oil or natural gas development rights (search, exploration, extraction and production of oil and natural gas and the search for hydrocarbon-bearing geological structures and storage therein) requires the consent of the competent Federal Minister (see question 3.2). The authorisation to search and explore non-hydrocarbon-bearing geological structures, which shall be used as storage, as well as the storage therein, can be transferred by contract; this transfer must be notified to and verified by the authority. The authority shall authorise the transfer of storage rights if the acquirer disposes of necessary technical and financial means for storage in such structures.

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

According to Sec. 69 para. 1 MinroG, participants are obliged to dispose of necessary technical and financial means for

the establishment and management of a mining company. Consequently, civil-law contracts with the applicants provide for securities or guarantees related to oil and natural gas development. Existing contracts are not disclosed to the public. If the development activities are linked to the operation of landfills, applicants must provide securities or guarantees for potential restorations of the landfills to the competent authority.

### 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?

There are no special regulations in connection with the pledge for security or the booking for accounting purposes of rights to develop oil or natural gas under Austrian law; such regulations may be stipulated in the civil-law contract with the competent Federal Minister.

### 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 authorisations based on the Mineral Resource Act (see question 3.3), several other authorisations (of different authorities) may be required, depending on the specific project. The obligation to obtain such authorisations may arise, e.g., from the Nature Conservation Act or the Water Rights Act. If a specific project is subject to an EIA, the competent authority issues a single decision under the EIA Act, covering all necessary licences (“one-stop-shop”); see question 3.1.

### 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?

According to Sec. 119 para. 14 MinroG, the abandonment of a mining facility must be notified to the competent authority by the owner of a mining facility. This notification requirement does not apply if the abandonment of a mining facility has been indicated to the authority in connection with a closure plan. This plan needs to be approved by the authority. The latter is finally empowered to prescribe safety measures in this regard.

### 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 carried out by the RAG and OMV Gas Storage GmbH. Natural gas may be stored in (non-)hydrocarbon-bearing geological structures. According to Sec. 97 of the Austrian Gas Act 2011 (“*Gaswirtschaftsgesetz – GWG*”, Federal Law Gazette I 2011/107, as amended), storage undertakings must grant access to storage facilities to producers, natural gas traders and suppliers domiciled in the EU (parties entitled to storage access) on non-discriminatory and transparent terms. The storage utilisation fees must be stipulated by the storage undertaking on a non-discriminatory basis. The principles underlying the determination of the storage utilisation fees shall be published once a year and after each change (Sec. 99 para. 1 GWG). Access to storage can be refused under certain

conditions, e.g. if access is economically unreasonable, in the event of failure conditions or a lack of storage capacities. If access to the storage facility is denied, the party concerned may submit an application to the regulatory authority (E-Control) to determine whether the conditions for refusal of access to storage apply. This determination must be carried out within one month. If the regulatory authority finds that the right to grant storage access has been violated, the storage undertaking shall grant the applicant storage access without delay.

### 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?

In Austria there are no specific regulations regarding the exploration and production of unconventional oil and gas resources. However, it is noteworthy that, pursuant to Annex 1 No. 28 of the Environment Impact Act (*Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G*, Federal Law Gazette I 1993/697, as amended), a full environmental impact permission applies for hydraulic fracturing of rock formations at unconventional reservoirs of mineral oil and natural gas (e.g. tight gas, shale gas, etc.).

## 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).

The GWG provides for the setting up of a Virtual Trading Point that can be used, *inter alia*, for cross-border trading. The VTP is a notional point in a market area at which market participants may trade natural gas within the market area after feed-in and before feed-out even without having the right to system access for the market area. Access to the VTP shall be subject to the operational rules of the market area manager and the transmission system operators, in line with the market rules. The VTP is not a physical entry or exit point but enables natural gas buyers and sellers to purchase and sell natural gas without the need to book capacity. The operator of the virtual trading point, who is designated to the regulatory authority by the market area manager, shall be independent in terms of legal form, organisation and decision making, in particular from the vertically integrated natural gas undertaking.

## 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.

According to the Oil Stockholding Act (“*Erdölbevorrattungsgesetz – EBG*”, Federal Law Gazette I 2012/78, as amended), oil importers must report their import activities to the Federal Ministry of Sustainability and Tourism. If petroleum from other EU Member States is brought into the geographical area of application for commercial purposes or by mail order, a declaration as specified in the EBG shall be lodged with the competent customs office (together with accompanying documents required by the Petroleum Excise Act (“*Mineralölsteuergesetz*”, Federal Law Gazette I 1994/630, as amended)). The Ministry is competent to verify the completeness and accuracy of the imported quantities of oil and oil products as registered by the importer. As

of 1 April of each year until 31 March of the following year, oil importers have to keep an emergency reserve of 25 per cent of their net imports of the previous year in domestic stock.

The transport of fuel oils in main or reserve tanks of vehicles is not considered import or export in accordance with the EBG.

## 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).

As regards ownership of transportation pipelines and storage facilities, see questions 1.1 and 3.2. Regulations on the operation of transportation pipelines and storage facilities for natural gas can be found in the GWG. The transmission and distribution grid is divided into three market areas (“East”, “Tyrol” and “Vorarlberg”), within which a market area manager, a distribution area manager and a clearing and settlement agent are entrusted with providing system services. The market area manager shall be designated by the transmission system operators. The market area manager shall have, *inter alia*, the following responsibilities: (i) to ensure the establishment of non-discriminatory access to the virtual trading point; (ii) to manage the balance groups which are active in the market area; (iii) to coordinate system operations and the use of line pack, as well as the use of physical balancing energy together with the market area’s distribution area manager, mainly via the virtual trading point; (iv) to establish a uniform methodology for the calculation and announcement of capacity at the entry/exit points of the market area’s transmission network; (v) to organise the establishment and operation of the online platform for offering capacity; (vi) on the basis of a variety of load-flow scenarios and together with the transmission system operators and the distribution area manager, to draw up a common forecast of the capacity need and utilisation in the market area’s transmission network over the next 10 years; (vii) to draw up a coordinated network development plan; (viii) to coordinate measures to overcome physical congestions with the distribution area manager, the system operators and storage system operators in the market area; and (ix) to coordinate the nomination procedure for the transmission system, including the exchange of nominations with the operator of the virtual trading point.

Network users must be a member of a balance group or establish their own balance group. A balance group representative bears the responsibility for the balance group. He is obliged to develop schedules and transmit them to the clearing and settlement agent and the control area manager. Natural gas storage facilities are operated by RAG and OMV. Natural gas is stored in hydrocarbon-bearing geological structures. Storage undertakings are obliged to grant access to their storage facilities to parties entitled to storage access (producers, natural gas traders and suppliers domiciled in the European Union) at non-discriminatory and transparent conditions. Storage utilisation charges have to be stipulated on a non-discriminatory and cost-oriented basis. Access can be denied under certain conditions (Sec. 97 para. 2 GWG) (see also question 3.13 above).

### 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?

In general, the construction, expansion, fundamental changes and the operation of natural gas pipelines are subject to an

approval of the authority (*see* Sec. 148 GWG). Within the framework of such an approval procedure, the authority examines the potential impacts of planned natural gas pipeline systems on life, health, rights *in rem*, neighbours and the environment. The authority further considers the compliance with safety regulations and relevant technical rules and ensures that the waste heat from the compression of natural gas is supplied to a utilisation concept to the extent that is technically possible and economically reasonable (Sec. 135 GWG). The competent authority must be notified of any completion or permanent shutdown of pipelines. Generally, the operator of natural gas pipelines may start operations with the notification of completion. Depending on the specific project, several other authorisations and approvals may be required (e.g. resulting from the Nature Conservation Act). If a specific project is subject to an EIA, the competent authority issues a single decision under the EIA Act, covering all necessary authorisations (“one-stop-shop”).

The operation of a transport pipeline is subject to a licence (Sec. 119 GWG). In general, the TSO has to comply with one of the unbundling models set out in the Gas Directive 2009/73/EC (OU, ISO, ITO or ITO+). Gas storage pipes and spherical gas storage tanks also require a licence under the GWG; gas storage facilities are subject to the approval requirements under the MinroG.

As regards the construction and operation of oil pipelines and associated infrastructure, the Pipeline Act (“*Rohrleitungsgesetz*”, Federal Law Gazette I 1975/411, as amended) applies. According to Sec. 3 of the Pipeline Act, as a general rule, the transportation of goods via a pipeline, as well as the construction and operation of a pipeline, is subject to a concession issued by the provincial governor. In case the pipeline crosses more than one federal province or the national border, the Federal Minister is the competent authority. Furthermore, a permit for the construction and operation of the pipeline has to be obtained (Sec. 17 Pipeline Act). Such a permit is granted on the basis of a technical construction plan submitted by the project developer. In addition to the permit under the Pipeline Act, further regulatory permits (e.g. in accordance with the Water Act or Waste Management Act, etc.) may have to be obtained from the respective competent authorities.

### 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 Sec. 144 para. 1 GWG, the authority shall authorise the temporary use of third-party land on application with regard to preparatory work in connection with the construction, expansion or conversion of a natural gas pipeline system. The application shall state the nature and duration of the intended preliminary works and provide a work plan. The applicant is legally entitled to obtain such a decision (only) if the preliminary works begin within one year of the application being filed. The party authorised to carry out preliminary works has to duly compensate the owners of the properties concerned, any parties who have a right *in rem* on these properties (except mortgage creditors) and any parties who hold mining licences for any restrictions they had at the time when the permit was granted (see further Sec. 144 para. 9 GWG). Property owners and any other parties who have a right *in rem* on a property may be expropriated, or restricted in these property rights, provided that this is required with a view to construct a pipeline (transmission or distribution line) and that the expropriation or restriction is in the public interest. A public



interest shall be deemed to exist if an according provision for such natural gas pipeline facility has been laid down in the long-term plan or the network development plan. In such a case, the regulatory authority (E-Control) shall confirm the existence of a public interest by official decision. Where a natural gas pipeline facility is not included in the long-term plan or network development plan, a public interest shall be deemed to exist if the construction of such facility is necessary to achieve the objectives of the GWG. For natural gas line facilities with a pressure range up to, and including, 0.6 MPa, private property may only be expropriated if no public land is available in the area concerned or if the natural gas undertaking cannot, for economic reasons, be reasonably expected to use public land.

For the construction of oil pipelines, the Pipeline Act provides for the right of the project developer to access foreign land in order to conduct preliminary studies for the preparation of the project (Sec. 7 para. 1 Pipeline Act). Furthermore, the authority shall, upon application by the project developer, pronounce the expropriation of a property, if the permanent positioning of the pipeline at a certain location is required either for technical reasons or for reasons of disproportional costs for an alternative routing of the pipeline. Expropriation may include easement rights or the transfer of the property to the project developer. However, the transfer of the property must be a measure of last resort (Sec. 27 Pipeline Act).

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

The system operator to whose system the customer, production, storage or natural gas pipeline system for which grid access is requested is connected shall grant eligible customers grid access under the General Terms and Conditions and the regulated tariffs (i.e. a system usage charge set out by Regulation (*Systemnutzungsentgelte-Verordnung*); see in detail Sec. 27 *et seq.* and Sec. 58 *et seq.* GWG). Insofar as the request for network access also relates to the natural gas pipelines upstream of the respective distribution system, the system operator shall immediately submit the request for network access to the distribution area manager for further action.

To this end, the natural gas undertakings concerned shall conclude civil-law contracts in favour of the party entitled to grid access. The line capacity previously used by the customer in the line network up to the VTP remains available to the customer even in the event of a change of supplier and in the case of supply by several suppliers. In the latter case, the current supplier shall make available that part of the capacity currently used for the customer that is needed by the additional supplier for the partial supply of the customer. Imbalance charges relating to customers with several suppliers shall be settled in the balance group to which the customer's metering point is assigned.

Unlike in the gas sector, access to oil pipelines is not regulated. Access to the central stockholding entity *Erdöl-Lagergesellschaft GmbH* (ELG) is regulated under the Oil Stockholding Act. In accordance with Sec. 8 para. 5 of the Oil Stockholding Act, the Federal Minister shall establish a tariff of maximum charges per 1,000 crude oil units for the assumption of stockholding obligations by regulation (currently the tariff amounts to EUR 50.20 excl. value-added tax). The ELG shall conclude stockholding contracts in accordance with these charges and general terms and conditions, with any compulsory stockholder offering to assume stockholding obligations as required by the Oil Stockholding Act.

#### 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 Austrian natural gas transportation network is disconnected and consists of three market areas. Transportation of natural gas between different control areas, e.g. from the Eastern part of Austria to Tyrol, is only possible by using foreign networks (e.g. via Germany). A market area manager is established for each of the market areas. For responsibilities of the market area manager, see question 6.1. The TSOs are obliged to cooperate with other system operators. For instance, they have to exchange information and data in order to set up a long-term network development plan. Moreover, system operators are obliged to conclude uniform interconnection point agreements with each other for all interconnection points between their systems. Such interconnection point agreements at interconnection points shall be concluded in consultation with, and following, the specifications of the market area manager and the distribution area manager, as applicable. The same shall apply for interconnection point agreements with system operators in other countries and the operators of storage or production facilities.

As stated in question 2.1, there are two main pipelines crossing the Austrian territory: the TAL, transporting oil from Italy to Germany and the Czech Republic via Austria; and the AWP which branches off from the TAL and transports oil from the Austrian-Italian border to the refinery in Schwechat.

#### 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 system operator operating the system to which the customer wishes to be connected is obliged to grant non-discriminatory access under approved general terms and conditions (GTC) and regulated tariffs. The regulatory authority (E-Control) decides upon appeals regarding any denial of access. Access may be denied by the system operator under certain conditions, e.g. extraordinary system conditions, insufficient system capacity or insufficient interconnection of systems. The refusal must be notified in writing (Sec. 33 GWG). In the event of refusal of network access due to lack of network capacity or lack of network integration for transports in the distribution network, the party entitled to network access may submit an application for capacity expansion. The distribution area manager shall take due account of the capacity need indicated in such application when drawing up the long-term plan. Capacity expansion applications shall be approved under certain conditions. The costs arising from the capacity expansion are allocated to the grid users via the regulated transport tariffs. The regulated tariffs are based on the allowed costs of the system operators (to be calculated in accordance with chapter 5 of the GWG).

Unlike in the gas sector, access to oil pipelines is not regulated.

**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?**

GTC for access to the grid have to be approved *ex ante* by the regulatory authority, which also sets the tariffs for access to the domestic transport system. Tariffs are paid by the end-consumers (“postage stamp tariff”). The tariffs for transmission system operators shall be calculated by applying a methodology which is subject to approval by the regulatory authority (E-Control) by official decision and must comply with the requisites of Article 13 Regulation (EC) No. 715/2009. Upon request of E-Control, the methodology shall be adjusted or redesigned. The tariffs resulting from the application of the approved methodology are enacted by means of a regulation of the regulatory authority and are published on the internet.

Unlike in the gas sector, the terms for the transportation of oil are not regulated. The parties are free to agree on such terms in contractual agreements.

## 7 Gas Transmission / Distribution

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

The existing Austrian transit pipelines are (at least partly) owned and operated by GCA, a subsidiary of OMV (51 per cent) and the consortium consisting of Allianz and Snam S.p.A. (49 per cent). The domestic transmission and distribution networks are owned and operated by GCA and TAG as TSOs and various DSOs (see question 1.1). Domestic transmission and distribution networks are subject to regulated third-party access (TPA), which means that GTC are approved *ex ante* and tariffs are regulated.

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

A licence from the regulatory authority (E-Control) is required to operate a distribution network and has to be granted if certain licence conditions are fulfilled (e.g. third-party liability insurance). The authority may impose obligations and terms or grant the authorisation temporarily (Sec. 43 GWG). DSOs are required to appoint an individual as technical director in charge of managing and supervising the operation of the system before the initial operation. Additionally, the system operator may appoint a managing director to carry out its function, who shall be responsible to the authority for compliance with the provisions of the GWG (see Sec. 46 GWG). A DSO has to notify the appointment of these two persons to the authority.

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

The DSO operating the system to which the customer wishes to be connected is obliged to grant non-discriminatory access under the approved GTC and regulated tariffs. DSOs are obliged to enter into civil-law contracts with consumers on the connection to the natural gas distribution system and system utilisation under approved GTC within their distribution area (compare Sec. 27 and 58 GWG).

**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 denied by the DSO under certain conditions, as provided by law. The regulatory authority (E-Control) decides upon appeals regarding the denial of access. DSOs are obliged to conclude civil-law contracts with consumers for connection to the natural gas distribution system and use in accordance with the GTC in their distribution area (general obligation to connect). The system user’s installation must primarily be connected to the system at a technically suitable point, considering the economic interests of the system user. The general obligation to connect shall not apply if no economically justifiable individual connection can be expected from the distribution system operator, taking into account the interests of all its customers.

See also question 6.6 with regard to insufficient system capacity or insufficient interconnection.

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

According to Sec. 72 GWG, the following tariffs for the usage of the distribution networks are charged:

- (i) a system utilisation charge;
- (ii) a system admission charge;
- (iii) a system provision charge;
- (iv) a metering charge; and
- (v) supplementary service charges.

The regulatory authority (E-Control) shall set the distribution system charges listed above under (i), (iii), (iv) and (v), with the charges under (i), (iii) and (v) being fixed rates, by regulation. The charge under (iv) shall be capped. The tariffs for the transmission system charges listed under (i) to (iii) at the entry and exit points concerned shall be determined by applying a methodology to be approved by E-Control upon a proposal by the transmission system operators and shall be enacted by regulation.

**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)?**

There are no restrictions or limitations in relation to acquiring an interest in a natural gas utility, or the transfer of assets forming part of the distribution network.

## 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.**

According to the GWG, natural gas traders are natural or legal persons buying or selling natural gas without carrying out the function of transmission or distribution within or outside the system in which such a natural gas trader is established. Natural gas traders buying or selling natural gas in the federal territory of Austria have to notify their activities to the regulatory authority (E-Control). The conclusion of natural gas supply contracts

with a duration exceeding one year and a volume exceeding 250 million m<sup>3</sup> per year, based on normal conditions, for the purchase of natural gas from the territory of the European Union or third countries, shall be notified to the regulatory authority (E-Control) stating the duration and the agreed level of supply. Additionally, independent natural gas traders (applicants) must register as balance group representatives who establish and are responsible for a balance group in at least one of the three Austrian control areas (or may join an existing balance group). Contracts must therefore be concluded with the clearing and settlement agent and the control area manager.

An amendment to the GWG in 2013 introduced administrative and criminal penalties for breaches of EU Regulation No. 1227/2011 (REMIT), which came into force on 28 December 2011 in Austria. REMIT prohibits insider trading and attempted or actual market manipulation in wholesale energy markets. According to Sec. 10a GWG, market participants who are obliged to publish inside information pursuant to Article 4 of EU Regulation No. 1227/2011 are additionally obliged to inform E-Control simultaneously.

The European Market Infrastructure Regulation (EU Regulation No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counter-parties (CCPs) and trade repositories (TRs) – EMIR) entered into force on 16 August 2012. If the energy trader exceeds the clearing threshold hereunder, the clearing obligation, the risk mitigation techniques and the reporting obligations must be fulfilled. Below the clearing threshold only the reporting obligation and certain risk mitigation techniques are applicable.

According to the Data Storage Regulation (“Energiegroßhandels-Transaktionsdaten-Aufbewahrungsverordnung”, Federal Law Gazette II 2012/337), a regulation on wholesale energy transaction data storage, energy traders are obliged to keep data of their transactions for five years. This data includes the identity of the buyer/seller, the energy exchange or other trading venue on which the transaction was affected, trading day and time of transaction, contract specifications, etc. This obligation applies for over-the-counter (OTC) trading as well as for exchange trading. The data shall be made available to E-Control, the Austrian Federal Competition Authority and the European Commission at any time as required.

**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?**

The GWG provides for the establishment of a virtual trading point system. The VTP is a notional point in a market area at which market participants can trade natural gas even without having the right to system access for the market area. The VTP is not a physical entry or exit point but enables natural gas buyers and sellers to purchase and sell natural gas without the need to book capacity; therefore, trading of unbundled products is possible. See also question 4.1.

## 9 Liquefied Natural Gas

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

Currently only one LNG plant is operated in Austria. It is considered a pilot project of RAG and produces about two tons of LNG per day, which may then be used at RAG’s (together with Ennshafen OÖ GmbH and Iveco Austria) Ennshafen LNG filling station. RAG already has plans to build a larger LNG plant.

Furthermore, a JV involving several Austrian companies plans to build an LNG terminal in the Adriatic region (see also question 1.1).

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

LNG is not regulated under the GWG.

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

No, there is not.

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

Access to LNG terminals is not (yet) regulated.

## 10 Downstream Oil

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

There is no specific regulatory framework for the downstream oil sector in Austria.

However, in 2010 the Austrian Government introduced a regulation on the timing of fuel price labelling at service stations. This legal provision stipulates that a price increase may only occur at 12 noon on any given day.

As regards the regulatory requirements for emergency reserves, the Oil Stockholding Act stipulates that importers of crude oil or petroleum products must each hold 25 per cent of their imports of crude oil and the individual crude oil products as well as biofuels and raw materials for the direct production of biofuels in the previous calendar year (previous year’s import) as compulsory emergency reserves in Austria from 1 April of each year (start of a stockholding period). This stockholding obligation ends on 31 March of the following year or is newly created as of 1 April of the following year.

This includes the following stock categories: petroleum oils; petrol; middle distillates; and fuel oils.

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

Unlike in the gas sector, oil trading is not regulated *per se*. There are no licence or concession requirements for oil trading activities in Austria. Furthermore, there is no price regulation for oil products. Oil trading is carried out on a contractual basis.

## 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 an administrative level, E-Control is competent for the regulation of the gas market. The competence of other authorities being responsible for competition aspects remains unaffected, the Federal Minister of Sustainability and Tourism being

the highest authority. The Federal Minister is also responsible for regulating the search, exploration and production of oil and natural gas (regulations, notices). The competence of other authorities responsible for competition aspects such as the Federal Competition Authority (FCA), the Federal Cartel Attorney and the Cartel Court remains unaffected.

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

The regulator must observe the criteria of the Austrian Anti-Trust Act (“*Kartellgesetz*”, Federal Law Gazette I 2005/61, as amended), Arts 101 and 102 TFEU as well as the Gas Act and the Energy Regulatory Authority Act (“*Energie-Control-Gesetz*” – *E-Control-G*, Federal Law Gazette I 2010/110, as amended).

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

According to the Energy Regulatory Authority Act, one of the regulator’s key tasks is to exercise market oversight. If the regulator identifies any competition violations, it has the power to instruct the respective market participant by way of official decision to act in compliance with the legal obligations. In carrying out these tasks, the regulator must seek agreement between the parties involved (Sec. 24 para. 2 *E-Control-G*).

### 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?

According to the Austrian Anti-Trust Act, intended mergers must be notified to the FCA if the undertakings concerned generated the following turnover in the last financial year before the merger:

- (i) more than EUR 300 million worldwide;
- (ii) more than EUR 30 million in Austria; and
- (iii) at least two companies worldwide, each with more than EUR 5 million.

In 2017, the Austrian merger control was amended, introducing a transaction value test that extends the reach of Austrian merger control. Effective from 1 November 2017, this amendment introduces additional thresholds, even if the above-listed thresholds are not met. A transaction requires a pre-merger approval in case the following four cumulative conditions are fulfilled:

- (i) combined turnover of the undertakings exceeds EUR 300 million worldwide;
- (ii) combined turnover of the undertakings exceeds EUR 15 million in Austria;
- (iii) the “value of consideration” for the transaction exceeds EUR 200 million; and
- (iv) the target has significant activities in Austria (local nexus).

The FCA and the Federal Cartel Attorney may, within a period of four weeks from notification, either clear a merger or request the Cartel Court to examine the intended merger. The Cartel Court has to decide within a period of five months from reception of the request. The court must prohibit the merger if it expects the merger to lead to the creation or strengthening of a dominant position.

## 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?

According to the Foreign Trade Act (FTA, “*Außenwirtschaftsgesetz – AußWG*”, Federal Law Gazette I 2011/26, as amended), acquisitions of (at least) 25 per cent, or of controlling interests in companies in specific industries, including in energy, by foreign investors (i.e. non-EEA and non-Swiss persons) require approval (“FTA approval”) by Austria’s Federal Ministry for Digitisation and Economic Affairs. The FTA approval is a so-called *ex ante* approval and applies in case of the acquisition of energy supply and network companies. It requires the foreign investor to file for approval prior to entering into a legally binding agreement regarding such acquisition. Any acquisition entered into without required approval is invalid and, if implemented, can be unwound. FTA approval is only required for direct investments by Foreign Investors. Therefore, as a general rule, indirect investments by Foreign Investors via EU/EEA or Swiss entities are not captured by the approval regime, since EU law would not allow such investment restrictions. Accordingly, if the acquiring entity is domiciled within the EEA/EU or Switzerland, no FTA approval is required even if the acquiring entity’s (indirect) shareholder is a Foreign Investor (so called indirect investment), unless such structure was implemented and used to circumvent the approval requirement. Indirect investments might trigger an *ex officio* review procedure which aims at suspicious circumvention structures. The review procedure can be initiated by the Ministry in exceptional cases only. It requires (i) a reasonable suspicion that the investment structure was chosen in order to circumvent the FTA approval requirement, (ii) a reasonable suspicion that the circumvention results in a threat to certain public interests, such as public order and public security, and (iii) the absence of EU provisions conflicting with the application of the FTA approval requirement.

### 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 sector is especially influenced and affected by European law, in particular by the TFEU.

## 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.**

No compulsory dispute resolution procedures apply between the regulator and corporations in the oil or natural gas sector.

**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 in 1961, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was ratified in 1971.

**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 or State organs.

**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 any instances in the oil and natural gas sector when foreign corporations have successfully obtained commercial judgments or awards against Austrian Government authorities or State organs pursuant to litigation before domestic courts. However, Austria's legal system is globally recognised as being independent and impartial. Thus, generally, there is no reason why foreign corporations should not be able to obtain judgments or awards against the Austrian Government or State organs.

## 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.**

In 2017, E-Control initiated a process for the further development of the gas balancing model and developed a final concept together with industry representatives. The legal implementation

of the final concept will take place as part of the new Gas Market Model Ordinance 2020 (GMMO-VO 2020), which is to replace the previous Gas Market Model Ordinance 2012 as of 1 October 2021. In addition to the introduction of integrated market area balancing, this new decree also fundamentally restructures and streamlines the other contents of the ordinance with regard to network access, registration in the market area and congestion management, etc.

On 18 December 2018, E-Control published the 2019 amendment to the Gas System Charges Ordinance 2013 (*Gas-Systemnutzungsentgelte-Verordnung 2013 – Novelle 2019* (GSNE-VO 2013 – Novelle 2019)). This amendment entered into force on 1 January 2019 and provides, *inter alia*:

- that the reserve supplier ("*Regelreserveanbieter*") shall provide the gas distribution network operator with the data required for billing per gas metering point;
- for a reduction of usage charges in most network areas since significantly more gas was sold in 2017 than in 2016 and 2015; charges have only been increased in the Vorarlberg network area;
- for a reduction of storage fees due to lower booking costs for the East market area;
- for a supplementation of the provisions on measurement charges by the "consumption recording meter" newly created in the Load Profile Ordinance 2018 (*Lastprofilverordnung 2018 – LPV*), which transmits consumption information daily and is only installed at the customer's request if the use of a load profile meter or intelligent measuring device is not mandatory; and
- for the determination of compensation payments between network operators of a network area if necessary.

With the Renewable Expansion Act 2020, which is to enter into force in 2020 in accordance with Austria's "Climate and Energy Strategy #Mission2030", the framework conditions for the significantly accelerated introduction of renewable gas into Austria's energy system will be shaped. Measures will be taken to expand and better integrate renewable energies, which will be determined on the one hand by the new version of the Renewable Energy Sources Directive, but in particular by the ambitious Austrian national targets on the other hand.

With the announcement of the Gas Labelling Ordinance, E-Control has created a basis which now also enables gas suppliers to voluntarily label their gas supplies according to a uniform model. The Ordinance was announced on 12 September 2019 and will enter into force on 1 January 2020. Gas suppliers who voluntarily label their invoices and advertising materials *vis-à-vis* their customers can now do so in the same way as with electricity labelling. The growing field of renewable gases in particular generates certificates of origin that can be used directly for labelling.

**14.2 Please provide a brief comment on the impact (if any) of the "energy transition" on the oil and gas industry in your jurisdiction.**

The Austrian "Climate and Energy Strategy #Mission2030" announced the implementation of a "consistent decarbonisation path by 2050" with the goal of a "decarbonised energy supply by 2050". Austria's federal government is thus committed to a complete phasing-out of fossil energy.

Planned Government actions include (but are not limited to):

- From 2020 onwards, fossil fuels will no longer be used in newly constructed buildings for space heating, hot water and cooling. The building law standards are to be laid down by 2020 at the latest.

- “Renewable regulation”: This is intended to stipulate that renewable energy sources are to be used to replace oil heating systems.
- Socially acceptable phasing out of fossil oil heating from 2025 onwards, starting with boilers older than 25 years.
- Expansion and promotion of e-mobility through the provision of a support package for e-mobility for the years 2019 and 2020 with a total volume of EUR 93 million for both years, i.e. EUR 46.5 million per year.
- A significant proportion of natural gas is to be replaced by renewable methane in the future. “Greening the gas” through biomethane from biogenic residual furnaces, through hydrogen and synthetic methane from renewable electricity sources on the basis of a significantly improved system of proofs of origin, are the main components for the envisaged sustainable further development of the energy system.
- In order to promote non-fossil energy sources and create legal certainty for investors, hydrogen is to be assigned to the Natural Gas Tax Act (“*Erdgasabgabegesetz*”, Federal Law Gazette I 1996/201, as amended) and tax concessions are to be established. Biogas should be treated in the same way.
- The most important energy sources for Austrian industry after 2030 shall be electricity and hydrogen (both from renewable sources), synthetic, renewable methane (“power-to-gas”) and biogenic fuels. This transformation is to be supported, among others, by the expansion of generation capacities (e.g. for electricity).

In addition to green gas, the technical possibilities for carbon separation and storage during the production of natural gas are also being explored. The result is the so-called “blue” hydrogen, which is obtained from the separation of carbon dioxide from natural gas. This hydrogen is not CO<sub>2</sub>-free, but low in carbon. Gas producers could thus become hydrogen suppliers.

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