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The International Comparative Legal Guide to:

Oil & Gas Regulation 2016

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

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Spain

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1 Overview of Natural Gas Sector

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

Spain possesses scarce reserves of natural gas (in 2014, only 0.06% of the total gas consumption [<http://www.cores.es/es/estadisticas>]). Therefore, the Spanish gas system relies on imports coming from different countries.

Our main provider is Algeria, followed by Norway, Qatar and Nigeria (respectively, 52.7%, 11.6%, 11.4% and 9.3% during the third quarter of 2015). Spain is connected to Algeria by means of two international pipelines. Spain imports natural gas from other countries thanks to the re-gasification plants located in different ports, which receive the LNG tanker vessels. At the end of 2014, Spain had a storage capacity of 3,316,500 m³ of LNG, distributed in six regasification plants: Barcelona (760,000 m³); Huelva (619,500 m³); Cartagena (587,000 m³); Bilbao (450,000 m³); Sagunto (600,000 m³); and Mugaros (300,000 m³). This volume represents 36.5% of the storage capacity of LNG in the European Union ("EU"). [http://www.enagas.es/stfls/ENAGAS/Gesti%C3%B3n%20T%C3%A9cnica%20del%20Sistema/Documentos/Seguimiento%20del%20Sistema%20Gasista/El_Sistema_Gasista_Informe_2014.pdf].

Once the natural gas is introduced into the system, it is conducted through the transmission pipeline network. Almost all of the transmission network belongs to a private company, Enagás, which belongs to the same group of companies as the appointed transmission system operator ("TSO"). Enagás is also the owner and operator of most of the re-gasification plants and underground storage facilities. However, in recent years, other agents have acquired and developed transportation facilities.

There is also a highly developed distribution pipeline network that allows the supply of natural gas to household and industrial consumers.

The Spanish natural gas system has three underground storage facilities. However, the storage capacity is currently reduced. Another

project has been stopped due to certain problems (seismic activity), meaning the exploitation concession has been revoked.

Also, the re-gasification plants are being used not only for the import of LNG to cover the needs of supply for internal consumption, but also to store and sell it to other countries.

In this regard, Spain aims to become a natural gas hub for Europe thanks to its re-gasification capacity and its pipelines connected to Algerian reserves. However, cross-border connections with France and the rest of the EU (except Portugal) are currently reduced.

The Spanish Government has recently passed the regulation of an organised wholesale natural gas market, which is expected to be integrated with the Portuguese market in few years.

The following authorities are present in the natural gas sector:

- (i) The Spanish Government.
- (ii) The Ministry of Industry, Energy and Tourism ("MINETUR").
- (iii) Autonomous Regions.
- (iv) Municipalities.
- (v) National Commission of Markets and Competition ("NCMC").

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

17.6% of the total Spanish energy needs in 2014 were met directly by natural gas. [<http://www.foronuclear.org/es/energia/2015>].

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

The national production of natural gas is very low (refer to question 1.1). However, it might be possible that some non-conventional hydrocarbon reserves (mainly shale gas) exist, but no research activities have been carried out as yet.

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

Since the national production of natural gas is very low (refer to question 1.1), it is completely consumed in the Spanish domestic market.

2 Overview of Oil Sector

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

Spain almost entirely lacks oil reserves (in 2014, only 0.5% of total oil consumption was internally produced [<http://www.cores.es/es/estadisticas>]), making it necessary to import oil.

Many Spanish ports have terminals for the reception of oil tanker vessels. From there, the oil is conducted to refineries.

Most of the pipeline network belongs to Compañía Logística de Hidrocarburos ("CLH") (approx. 4,000 km), which is also the owner of most of the storage facilities (approx. 80 including airports and ports), although there are other operators.

The three companies holding refineries in Spain are Repsol (six), Cepsa (three) and BP (one).

In recent years, the Government tried to foster competition in the sale of petroleum by-products to end-consumers. In this sense, certain restrictions on the number of gas stations and supply agreements have been implemented. It is also worth noting the obligations relating to biofuels, and minimum security stock.

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

50.8% of the total Spanish energy needs in 2014 were covered directly by oil. [<http://www.fornuclear.org/es/energia/2015>.]

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

Since Spain almost entirely lacks oil reserves (refer to question 2.1), oil needs are covered by imports.

During the first eight months of 2015 the main foreign oil suppliers per country were: (i) Nigeria (15.3%); (ii) Mexico (14.1%); and (iii) Russia (12.6%). In that period of time, the main suppliers per region were: Africa (37.5%); Europe and Eurasia (19.2%); the Middle East (14.9%); North America (14.8%); and Central and South America (13.7%). [<http://www.expansion.com/empresas/energia/2015/10/1/561a3c05268e3e777b8b4611.html>.]

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

Since Spain almost entirely lacks oil reserves (refer to question 2.1), there are no exports.

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 framework applicable to upstream activities is contained in the Hydrocarbon Sector Act (Act 34/1998, of 7 October 1998,

"HSA"), which has been amended several times (the last one in 2015) in order to adapt it to the new EU directives and to update it to suit the new situation of the oil and natural gas sectors.

The HSA is complemented by Royal Decree 2362/1976, of 30 July 1976 (as amended), which is not totally updated and adapted to the version of the HSA currently in force. Provisions contained in the HSA prevail in any case.

Additionally, certain provisions on taxation, fees and payments relating to upstream activities are contained in Act 8/2015, of 21 May 2015.

The hydrocarbon reserves and underground storage facilities are considered public domain goods. This implies that the exploitation of the reserves requires administrative concessions granted by the Spanish Government following public tender procedures in which different operators can submit offers.

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 exploitation of hydrocarbon reserves requires that the operator has previously obtained an administrative concession (refer to question 3.3).

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).

Each stage of the process requires different permits.

The authorisation for initial exploration activities does not grant exclusivity to the holder of the authorisation. The area under investigation may be vast. However, superficial exploration can be freely carried out without prior authorisation.

The licence for investigation grants its holder exclusivity to carry out research activities in the area within the perimeter of the licence (between 10,000 ha and 100,000 ha). The applicant must provide evidence of the legal, technical and economic capacity, and attach a research plan (including a works programme), an investment plan and a restoration plan, and must perform a guarantee. The relevant authority shall publish the application in the relevant official gazette in order that other operators can submit offers. The applicant and competitors include in their offers certain undertakings (e.g. investment commitments, increase of the fees, reduction of time to conclude the research, etc.) in order to be awarded the licence. The licence is granted for an initial period of six years, which may be extended for three additional years (in which case, the licensed area shall be reduced by 50%).

The holder of an investigation licence discovering hydrocarbon reserves is entitled to apply for an exploitation concession. The applicant must submit an exploitation programme, including an investment plan, environmental impact study and restoration plan, and must perform the required guarantee. Exploitation concessions are granted for 30 years, being extendable for two additional periods of 10 years each.

Exploration authorisations and investigation licences are granted by the MINETUR if the area within the authorisation or licence exceeds one Autonomous Region and/or include offshore areas; otherwise,

the relevant Autonomous Region grants the licence. Exploitation concessions are granted by the Spanish Government.

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)?

The Spanish Government has shown no interest in participating in the production of hydrocarbons. The HSA does not foresee the intervention of the Government in such activities.

Some Autonomous Regions (e.g. País Vasco) have incorporated mercantile companies to develop upstream activities. However, those companies are subject to the same rules as private operators and have no privileges or particularities in relation to application for and obtainment of licences and concessions.

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

Act 8/2015 regulates that holders of exploration authorisations, investigation licences and exploitation concessions must pay certain fees:

- (i) Occupation fee: applicable to investigation licences and exploitation concessions; the amount depends on the surface (ha) and the year of the relevant licence or concession.
- (ii) Fee for research drilling regarding investigation licences and exploitation concessions, with a fixed amount per drilling.
- (iii) Fee for seismic investigations; the amount depends on the depth (metres) (2D investigation) or the area (square metres) (3D investigation).

Furthermore, the holders of exploitation concessions must pay a new tax (applicable from 1 January 2016) for the production of hydrocarbons. The tax is calculated considering the value of the hydrocarbons (which is determined by the MINETUR), and the applicable rate is between 1% and 8% depending on whether the concession is onshore or offshore, and regarding natural gas, also taking into account whether it is conventional or non-conventional.

3.6 Are there any restrictions on the export of production?

The HSA does not foresee any restrictions on the export of hydrocarbon production.

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

The HSA does not foresee any restrictions in this regard.

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

The transfer (total or partial) of investigation licences and exploitation concessions is subject to prior authorisation from the relevant authority. The acquirer must meet all prerequisites (legal, technical and financial capacity). If the relevant authority grants the authorisation, the acquirer will subrogate the rights and obligations to the transferee.

The disposal of investigation licences and exploitation concessions is allowed, provided that the holder has met all undertakings, including investments. If the holder has not met those undertakings, the relevant authority may call the guarantee and claim for damages.

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

Applicants of investigation licences and exploitation concessions must perform a guarantee in response to any breaches and infringements that may occur, including taxes, social security and restoration.

The amount of the guarantee depends on the investment plan and the restoration plan.

The holder can apply for the cancellation and return of the guarantee once the licence or concession is terminated. However, if the holder breaches any of its obligations or undertakings (among them, minimum investment), the relevant authority may call the guarantee and, if its amount does not suffice to cover all infringements and damages caused, the relevant authority may claim further amounts.

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?

Holders of exploitation concessions can ask the relevant authority to authorise mortgages over the facilities linked to the concession with the aim of obtaining funds for the construction, modification or extension of those facilities. In that case, those mortgages will terminate not later than the same date when the concession terminates.

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?

Aside from investigation licences and exploitation concessions, the holder needs to obtain other permits in order to construct the facilities and to carry out drillings and other activities. The most remarkable permits are the following ones:

- (i) Municipal licences: granted by the relevant municipalities.
- (ii) Authorisation for use of non-urban land: if the facilities are located in non-urban land, applicable legislation on town and territorial planning requires authorisation (in some cases, it is necessary to previously amend the planning). This authorisation is granted by the relevant Autonomous Region or municipality.
- (iii) Environmental impact assessment: this should be filed with the relevant Autonomous Region or the Ministry of Agriculture, Food and Environment, as it corresponds, depending on the authority entitled to grant licences or concessions.
- (iv) Other environmental permits: as far as upstream activities are concerned, permits from the relevant authorities may be required for the consumption of water, the production of waste, wastewater or air emissions, or activities that produce other environmental impacts.
- (v) Occupation permits: if the area where the activities and facilities are going to be located is considered a public domain, it would be necessary to obtain an occupation concession from the relevant authority. If that area belongs to private individuals or companies, it would be necessary to reach an agreement for occupation. Note that the granting of occupation concessions is subject to the payment of the

corresponding rental fee to the relevant authority; regarding lease agreements, the holder must pay, aside from the agreed rental, compensation equivalent to 1% of the value of the production of hydrocarbons (this payment to owners is a new obligation, entering into force from 1 January 2016).

- (vi) Other permits: required for the crossing of roads, rivers, cattle roads, municipal roads and streets, etc.
- (vii) Works programme: the holder of investigation licences and exploitation concessions is obliged to submit every year in advance the corresponding works programme.

Note that all the aforementioned permits must be obtained prior to the commencement of the corresponding works and activities.

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?

The application for investigation licences and exploitation concessions must have attached a restoration plan, also including provisions on abandonment and decommission of the facilities. The restoration plan is also linked to the environmental impact assessment.

An applicant for an investigation licence and exploitation concession must guarantee that it will respond to any breach in relation to the restoration plan.

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

Regarding underground storage facilities, it is necessary to obtain an investigation licence and, recently, an exploitation concession.

If the holder wants the underground storage facility to be included within the natural gas system, it is necessary that the natural gas infrastructure planning passed by the Spanish Government includes it and the MINETUR authorises it. If so, it shall be subject to the general third party access (“TPA”) regime (however, the holder may apply for total or partial exemption from the TPA regime, it being necessary to obtain the corresponding authorisations from national and EU authorities); remuneration shall be determined according to the applicable regulations and ministerial orders.

If the holder does not want the underground storage facility to be included within the natural gas system, it would be excluded from the general TPA regime and would not receive any regulated remuneration. The TPA and related price would be agreed with each interested party but the holder must observe principles of transparency, objectivity, and non-discrimination.

In any case, the holder of the storage facilities must apply for and obtain the required permits for construction and commissioning.

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 incorporation of natural gas in the Spanish system for commercial purposes is normally carried out by trading companies

(and by market direct consumers). Normally, they acquire natural gas in international markets, and need to obtain TPA rights in the relevant connection pipeline or re-gasification plant.

The Spanish system is connected to a number of different countries: Algeria (which is the main provider of natural gas for Spanish market); Portugal; and France.

The connections with Portugal are developed and it is possible to both import and export natural gas. On the contrary, the current connection with France is very limited. Both countries are working on a new connection (Midcat).

The connections with Portugal and France follow the rules envisaged in EU Regulation (EC) 715/2009 of the European Parliament and of the Council, of 13 July 2009, on conditions for access to the natural gas transmission networks; Regulation (EU) 347/2013 of the European Parliament and of the Council, of 17 April 2013, on guidelines for trans-European energy infrastructure; Commission Regulation (EU) 984/2013, of 14 October 2013, establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems; Commission Regulation (EU) 312/2014, of 26 March 2014, establishing a Network Code on Gas Balancing of Transmission Networks; and Commission Regulation (EU) 2015/703, of 30 April 2015, establishing a Network Code on interoperability and data exchange rules.

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.

Spain is not connected to other countries by pipeline. All imports require oil tanker vessels arriving at Spanish port terminals. Since Spain almost entirely lacks oil reserves, there are no exports.

Regarding petroleum by-products, there are no particular requisites, and there are no restrictions on cross-border sales.

In any case, note that any agent that intends to act in the Spanish market must comply with applicable requisites (refer to questions 10.1 and 10.2).

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).

Regarding the oil sector, transportation pipelines and storage facilities are subject to the provisions of the HSA and its developments regulations.

Regarding the natural gas sector, transportation companies comprise the holders of transmission pipelines (basically, pipelines with a pressure of over 16 bar), re-gasification plants and underground storage facilities.

They must submit their investment plans annually (including the next 10 years).

Transportation companies are subject to certain unbundling obligations. Should they fail to comply with them, they must transfer the management of the transportation facilities to an independent transmission manager. They must observe the orders from the TSO and the network code.

Transportation companies receive the remuneration established in the applicable regulations. The economic framework is currently regulated in Act 18/2014, of 15 October 2014, on Urgent Measures for Growth, Competitiveness and Efficiency. The remuneration is linked to a determined profitability depending on the yield of Spanish bonds in secondary markets plus a specific spread. All economic parameters relating to the remuneration (including the spread) are revised every six years, while other parameters are updated every three years. The specific yearly remuneration for each transportation company is determined in an order annually approved by the MINETUR.

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 holder of oil and natural gas transportation pipelines and associated infrastructure must obtain from the relevant authority (the MINETUR, but in some cases the Autonomous Regions) authorisations for construction and commissioning. To obtain them, the holder must prove its legal, technical and financial capacity.

Regarding natural gas pipelines belonging to the trunk network, the authorisations can only be obtained by the holder of the majority of the trunk network (i.e. Enagás). Regarding natural gas pipelines belonging to the local network, they are awarded following a public tender called by the MINETUR.

In parallel, the holder must also obtain a favourable environmental impact assessment in events where the applicable regulations require it (e.g. depending on the length of the pipelines).

Furthermore, it is necessary to obtain the corresponding municipal licences, as well as any other corresponding permits (among them, crossing of roads, rivers, occupation of public domain, etc.).

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?

Holders of transportation facilities are entitled to apply for the recognition of public utility. Once this is obtained, the holder can initiate the expropriation procedure following the rule for urgent occupation (i.e., the occupation occurs with the only requisite of a preliminary payment, while the fair price is determined in a subsequent phase). The recognition of public utility is granted by the relevant authority (the MINETUR or corresponding Autonomous Community, as the case may be).

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

Regarding oil facilities, access requires a negotiation between the holder and the interested party. Hence, no general TPA rules apply. However, the holder must observe principles of non-discrimination, transparency and objectivity, and the terms and conditions agreed must be reported to the relevant authorities, which make them publicly available.

Regarding the natural gas sector, a new regulation recently passed has amended the general TPA regime, to which transportation facilities are subject. The TPA is regulated. The TSO must implement an electronic platform not later than 1 October 2016 where the holders

of the transportation facilities will introduce their capacities, and parties interested in obtaining capacity will submit their offers. The TSO will validate the offers submitted and match them with the available capacity following market procedures (although in some events it will be possible to award capacity considering chronologic criteria). The exit capacity for supply to end consumers is also regulated, and the holder of the relevant facility must accept it within a determined term.

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?

Regarding the oil sector, most of the pipeline network belongs to a private operator (“CLH”). The Spanish pipeline network is not connected with other countries.

Regarding the natural gas sector, the Spanish system is connected to Algeria, Portugal and France (refer to question 4.1).

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?

Additionally to what is described in question 6.4, the holder of pipelines and storage facilities in the oil sector is entitled to deny access if there is no available capacity, or if the applicant is in default of its obligations relating to the previous use of the facilities.

There is no obligation for the holder to expand its facilities in the event of an application exceeding current capacity.

Regarding the natural gas sector, holders of natural gas transportation facilities are entitled to reject access if there is not sufficient capacity available, or if the granting of the access may entail a breach in the supply undertakings, or as a result of serious financial difficulties derived from take-or-pay agreements. It is also envisaged that the access may be rejected if the applicant is resident in a country where the principle of reciprocity is not met.

The price for the access (tariffs), the rules, standard TPA agreements, ancillary services, etc. are approved by the Spanish Government and the MINETUR.

For both oil and natural gas sectors, if an application for TPA is rejected, the applicant can file an appeal with the NCMC.

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?

Regarding the oil sector, the terms can freely agree between the holder of the facilities and the applicant, provided principles of non-discrimination, transparency and objectivity are observed.

Regarding the natural gas sector, the TPA is regulated (with the sole exception of certain transportation facilities – including underground storage facilities – if they obtain an exemption to the general TPA regime, and underground storage facilities outside the Spanish natural gas system).

7 Gas Transmission / Distribution

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

The ownership and management of natural gas distribution network is divided into several distribution companies implanted in different areas of Spain. HSA considers this activity as a natural monopoly. The establishment of distribution networks in new areas normally follows public tender processes.

They must submit every their investment plans annually.

Distribution companies are subject to certain unbundling and reporting obligations.

They must observe the orders from the TSO and the network code.

Distribution companies receive the remuneration established in the applicable regulations. The economic framework is currently regulated in Act 18/2014, following a specific methodology. All economic parameters relating to the remuneration are revised every six years, while other parameters are updated every three years. The specific yearly remuneration for each distribution company is determined in an order annually approved by the MINETUR.

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

The holder of natural gas distribution facilities must obtain from the relevant authorities (usually the Autonomous Regions, but in some cases this could be the MINETUR) authorisations for construction and commissioning. To obtain them, the holder must prove its legal, technical and financial capacity.

In parallel, the holder must also obtain the environmental impact assessment in cases where the applicable regulations require it (e.g. depending on the length of the pipelines).

Furthermore, it is necessary to obtain the corresponding municipal licences, as well as any other corresponding permits (among them, crossing of roads, rivers, occupation of public domain, etc.).

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

Natural gas distribution facilities are subject to the general TPA regime regulated in the HSA and its development regulations. A new regulation has been recently passed amending the former TPA regime. The allocation of capacity in the distribution network will be carried out by the TSO through an electronic platform, which will be ready on 1 October 2016. Applications for exit capacity of natural gas from the distribution network to end consumers will have to be answered by the holder of the network within a determined term.

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

Holders of natural gas distribution facilities are entitled to reject access if there is not sufficient capacity available. The rejection can only be based on the criteria of safety, regularity and quality of the supply. If an application for access is rejected, the applicant can file an appeal with the NCMC.

The price for access (tariffs), the rules, standard TPA agreements, ancillary services, etc. are approved by the Spanish Government and the MINETUR. However, holders of distribution facilities are obligated to expand their respective networks to cover supply demands from new consumers within their respective areas. The cost of that expansion is borne by the distribution company (with some exceptions), although the final connection to the consumer's installations is at the consumer's cost.

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

The access fees are called tariffs. They are regulated, i.e. are determined by the Spanish Government and the MINETUR, on a yearly basis.

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 acquisition of stakes in companies that carry out activities of transportation, re-gasification, underground storage and distribution in the natural gas sector, as well as the acquisition of assets of those companies, is subject to notification to the relevant authority (the NCMC temporarily; then, to the MINETUR). The notification must be filed within 15 days after the completion of the acquisition.

However, if the acquirer is an entity with domicile outside the European Economic Area and the acquisition (direct or indirect) gives the acquirer a significant influence or comprises the acquisition of assets, some conditions may be imposed if it is considered that the acquisition entails an actual and serious threat for the supply guarantee (i.e., impact on safety or quality of the supply, reduction of investments or undue maintenance of facilities, breach of requisites of legal, technical and financial capacity).

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 legal framework applicable to natural gas trading is contained in the HSA and its development regulations.

Trading of natural gas can be carried out freely. The only requisite is that the trading companies file a notification to the MINETUR prior to the commencement of the activity and comply with legal, technical and financial capacity requisites.

The Government has recently implemented a new organised wholesale natural gas market. The market is managed by an independent market operator (MIBGAS, S.A.) through an electronic platform. The products that can be negotiated in the market require physical settlement between the date when the transaction is executed and the last day of the following month (however, the MINETUR is entitled to approve new products with a settlement beyond that term, as well as other products – purchase of cushion gas, etc.). The rules, requisites, rights and obligations of agents, and other aspects will be included in the regulations and instructions to be passed by the MINETUR and the market operator, respectively.

The supply to end consumers is freely agreed between the trading companies and the consumers, although HSA envisages certain

consumers' rights, and these transactions are subject to legislation on consumer protection. However, regarding certain consumers (connected below 4 bar and with yearly consumption below 50,000 kWh) they can benefit from the last resort tariff, which is determined by the MINETUR.

Trading companies are obligated to keep a minimum security stock of natural gas. The public law entity Corporación de Reservas Estratégicas de Productos Petrolíferos ("CORES") is in charge of the management of the minimum security stock.

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 introduction of natural gas in the Spanish system and the supply to end consumers are linked to the use of transportation networks, distribution networks and/or storage capacity. Along with the trading of natural gas, trading companies must obtain TPA in the relevant transportation, distribution and/or storage facilities. In this regard, a new regulation recently passed has amended the former TPA regime (please refer to questions 6.4 and 7.3)

9 Liquefied Natural Gas

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

Aside from the re-gasification plants, where imported LNG is introduced in the Spanish natural gas system, and which also store LNG to be exported to other countries, the LNG sector is limited to the supply needs of some industrial consumers.

The LNG is transported by means of tanker lorries to LNG storage facilities, which are located near the LNG consumers. LNG storage facilities are considered part of the distribution facilities (provided it is not connected to just one consumer). LNG is marketed by trading companies.

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

Regarding re-gasification plants, please refer to question 6.2.

Regarding LNG storage facilities, please refer to question 7.2.

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

There are no differences with regards to trading LNG in comparison to natural gas.

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

There are no differences with regards to the TPA regime of LNG in comparison to natural gas.

10 Downstream Oil

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

The construction, commissioning and operation of refineries require prior authorisation. Refineries must meet the corresponding technical, safety, and environmental requisites.

Wholesale operators of petroleum by-products include the holders of refineries and marketing companies which sell those products to retailers. Wholesale operators must meet technical requirements and, before the commencement of the activity, must file a notification with the MINETUR.

Retailers comprise those operators who sell petroleum by-products to end consumers. The facilities where the supply to end consumers is carried out must meet the corresponding technical requirements and must be registered with the relevant public register. There are certain rules in order to coordinate the authorisation procedures before the relevant Autonomous Region and municipality. The installation of those facilities in supermarkets and commercial areas is also permitted, in order to facilitate the opening of gas stations by new entrants.

Additionally, the supply contracts between wholesalers and retailers have been regulated in order to promote a higher level of competition, by limiting the maximum duration of the contracts. Furthermore, Act 8/2015 prohibits that a wholesaler holds more than a particular quota of gas stations in the relevant market by virtue of ownership or exclusive supply contracts.

There are some obligations on mixing gasoline and fuel with biofuels, which is applicable to wholesalers and retailers. A certification system is established in order that they meet their obligations in this regard.

Wholesalers and certain retailers must comply with the obligations on minimum security stock, which is managed by CORES.

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

Petroleum by-products can be freely marketed.

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 NCMC is in charge of monitoring competition in the energy market. The NCMC also acts as a regulator of the energy sector.

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

The legal framework is contained in articles 101 and 102 of the Treaty on the Functioning of the European Union and the Spanish Act 15/2007, of 3 July 2007, on Defence of Competition.

Abuse of dominant position, restrictive practices in the market and any action entailing prevention, restriction or distortion of competition are prohibited.

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

The NCMC must investigate and prosecute any anti-competitive conduct. The NCMC can request information and collaboration from the agents involved. The NCMC is entitled to initiate sanctioning files, which may conclude with the imposition of fines and other measures.

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

The NCMC has been allocated the task of processing any case of merger or acquisition of companies and/or assets exceeding certain thresholds.

Furthermore, regarding the natural gas and oil sectors, note that, even if those thresholds are not met, the CNMC must be notified (please refer to question 7.6).

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?

The HSA does not contain any specific rule on foreign investment, and is limited to a reference to the particular legislation. In this regard, Act 18/1992, of 1 July 1992, does not include any limitation to foreign investment in the hydrocarbon sector.

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?

Spain is part of the EU. Consequently, EU law applies in Spain, which is obliged to adapt Spanish legislation. This applies to all energy sectors, including natural gas and oil.

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.

Litigation stemming from TPA applications regarding the natural gas and oil sectors must be brought before the NCMC.

Regarding the natural gas sector, marketing companies are obligated to provide their consumers with mechanisms for out-of-court settlement of disputes, leaving the consumers free to decide to go down that route or follow any other consumer dispute resolution procedure.

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”)?

Spain has ratified both Conventions.

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 Spanish Act 29/1998, of 13 July 1998, on Contentious Administrative Jurisdiction, regulates the procedures to follow when challenging any decision adopted by Spanish Government, the MINETUR, the NCMC, Autonomous Regions, municipalities and any other public administration.

They must all comply with the rulings issued by the courts, as well as the awards issued by arbitrators as far as the arbitration system applies.

There is no immunity of public administrations. However, note that the enforcement of rulings and awards is limited in the sense that it is not possible to seize public domain goods (pursuant to Spanish Constitution and applicable legislation on public domain goods).

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?

As far as we are aware, there has not been any case in the oil or natural gas sectors of a foreign corporation bringing a lawsuit against the Spanish Government or any public administration.

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.

The main aspects in which the Spanish Government has been working on during the last few years in the hydrocarbon sector are:

- (i) The increase of competition in the oil retail sector, by limiting the maximum number of gas stations and market quota of the main wholesale operators.



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Santiago advises clients in administrative processes and civil and criminal actions related to natural resources and environmental damage, as well as interpreting and challenging legislation. He also has broad experience in the acquisition of companies in different regulated sectors (Mining, Telecommunications, etc.), foreign investments and government contracts/public procurement. Clients say he is "experienced and proactive", as well as "technically brilliant, resolute, with the great virtue of understanding legal problems from a business point of view" (Chambers Europe 2014).

- (ii) The development of a legal framework where the exploration of non-convention hydrocarbons can be performed, including the environmental procedure for obtaining licences and concessions, as well as taxation and payments for owners of affected lands.
- (iii) The extension of the natural gas sector, with an organised wholesale market managed by an independent market operator, with the aim of providing the sector with transparent pricing formation, to attract new entrants and increase cross-border capacity with the EU through France.



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David advises clients in matters involving regulated sectors, including acquisition of companies, businesses and assets, and processing of permits before the relevant authorities.

He has collaborated in collective books (including hydrocarbon sector legislation) and has published several articles on different aspects of energy law, including new trends in the EU renewable energy policy and the Energy Union.

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