

# The International Comparative Legal Guide to: Gas Regulation 2009

A practical insight to cross-border Gas Regulation work



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# Poland

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### 1 Overview of Natural Gas Sector

1.1 A brief outline of Poland'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; importation and exportation 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.

Natural gas never played a key role in Polish energy balance, dominated by the hard and brown coal. Even after political changes in 1989 resulting in better access to world energy trends, the natural gas extraction was kept on the same level. Consumption in 2007 of natural gas in Poland equalled to 13.1% (approx. 13 bn m<sup>3</sup>) of total consumption of fossil fuels as compared with 25.9% consumption of crude oil and 61% consumption of coal.

However, nowadays there seem to appear new trends in Polish energy balance and as a result there are some moves in order to increase the role of the natural gas on the Polish market. The prognosis for 2010 estimates that consumption of natural gas in Poland will increase up to 16.5 bn m<sup>3</sup> or even 19 bn m<sup>3</sup>.

#### Natural gas reserves

Today Poland's identified and developed natural gas resources equal to 138.82 bn m<sup>3</sup>. Nevertheless, forecasts predict the development of about 160 bn m<sup>3</sup> or more. However in 2007 out of the total of 263 located fields of natural gas, only 181 were developed.

#### Natural gas production

The level of production of natural gas has not changed for the last four years (5.183 bn m<sup>3</sup> in 2007). Almost 65% of natural gas is produced in Central Poland and another 34% is produced in the region called Carpathian Foreland. Of that production 9% constitutes associated natural gas.

#### Importation of natural gas

Last available data for 2007 provide that the structure of importation of natural gas is as follows:

- the total number of imported natural gas equals to 9.286 bn m<sup>3</sup>;
- over 91% of imports come from the east with a large share (66.98%, i.e., 6.219 bn m<sup>3</sup>) delivered from the Russian Federation. Other main suppliers are countries of Central Asia - Uzbekistan and Kazakhstan - which supply 24.55%, i.e., 2.279 bn m<sup>3</sup> of total imports; and

- other imports (from Germany, Norway and Czech Republic) equal to 8.5% i.e., 0.7881 bn m<sup>3</sup>.

#### Market leaders

The natural gas market in all its segments (i.e. extraction, storage, trade, transfer and distribution) is highly concentrated with Polskie Górnictwo Naftowe i Gazownictwo S.A. ("PGNiG") being by far the biggest player (98% market share) in extraction and distribution of natural gas.

The second is Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. ("OGP GAZ-SYSTEM") established in 2004 as a 100% subsidiary of PGNiG. It took over the transmission of natural gas with strategic pipelines in Poland. In 2005 all its shares were transferred to the Polish State.

After the unbundling of the transmission activity from PGNiG in 2007, and as a result of the implementation of the EU Directive 2003/55/EC, resulting in separation of the distribution services from the wholesale and retail market, PGNiG is concentrating on the wholesale with retail trading and the distribution taken over by six distribution operators.

Apart from PGNiG group there are around 30 other entities conducting distribution and sales activities i.e., Media-Odra-Warta, GEN GazEnergia S.A. and KRI Sp. z o.o.

Besides PGNiG, there are also few entities in the area of extraction of natural gas, including Petrobaltic S.A. (which holds exclusive concession for Baltic Sea shelf), EuroGas Polska Sp. z o.o., FX Energy Poland Sp. z o.o., RWE Dea Polska Oil Sp. z o.o., CalEnergy Gas Polska Sp. z o.o., and Energia Zachód Sp. z o.o.

#### Pipeline transportation and distribution/transmission network

Most of the natural gas in Poland comes from the transit pipeline, Yamal-Europe, with total length of approx. 4,000 kilometres, connecting Western Europe with deposits of the Yamal peninsula. Initially there were to be two parallel pipelines, however only one was constructed. The length of the Polish part of this pipe is 680 km. Targeted capacity of the pipe is 32.3 bn m<sup>3</sup> per annum. The pipeline is owned by the SGT EuRoPol Gaz S.A. Its shareholders are: PGNiG (48%), OAO Gazprom (48%) and Gas Trading (4%).

The Polish transmission network is 9,900 km long as of January 1, 2008 with 970 exit points. The amount of natural gas transported by the transmission network in 2007 totals 14.6 bn m<sup>3</sup>.

Distribution networks, still under development, are under control of six distribution system operators (forming part of PGNiG group). The total length of the distribution pipelines is 107,000 km.

#### Natural gas storage

All natural gas storage facilities belong to PGNiG. The storage facilities accommodate surplus gas volumes from the system

during the summer season and provide supplementary volumes to the system in winter. Currently, PGNiG has seven gas storage facilities and operates six of them (Wierzchowice, Husów, Mogilno Stachocina, Swarzędów and Brzeźnica), with the total capacity of 1.66 bn m<sup>3</sup>, which represents 13.4% of the yearly gas consumption by the customers of PGNiG. On a daily basis, this corresponds to 49 days of storage consumption. By the year 2012, PGNiG plans to increase the existing storage capacity up to 2.8 bn m<sup>3</sup>.

#### Natural gas customers

In 2007, the total gas sales volume was 13.7 bn m<sup>3</sup>. Customers receiving gas from the distribution and transmission network included primarily companies in the chemical, metallurgic and power sectors of the industry as well as households. The households, accounting for 99.6% of the entire customer base, amounted to a 28.1% share in sales volume. The major share in the natural gas sales was claimed by industrial customers at 60.5%, with the dominating position of nitrogen plants and companies in oil-refining and petrochemical sectors.

#### LNG facilities

PGNiG performed a feasibility study with regard to LNG and in December 2006 a decision was made on the location of regasification terminal to be in Swinoujście with a capacity of 2.5 bn m<sup>3</sup> of gas per annum with a potential for expansion of up to 7.5 bn m<sup>3</sup>. At the moment, some design and implementation steps are being commenced. There are also negotiations carried out with potential suppliers of liquefied natural gas into Poland. The completion was originally scheduled for 2012 but is dependent upon factors such as construction of a port on the Baltic.

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

In 2007 coal was still the major primary fuel with consumption amounting to 58% (47% hard coal, 11% brown coal). Consumption of crude oil in the Polish energy balance equals to 25%. The share of natural gas in the primary fuel balance was 12% of the total energy consumption in Poland, whereas the EU average was 25%. It is expected that the role of gas in Poland's energy balance will increase in the nearest future. In addition, increased consumption of natural gas as a cleaner energy source alternative to coal is considered to be a key component of Poland's plan to meet stricter EU regulations. Energy from renewable sources constitute only 5% share in the national energy balance.

### 1.3 To what extent are Poland's natural gas requirements met through domestic natural gas production?

In 2007, domestic production accounted for more than 30% of the gas supply volume of PGNiG, and its level has been increasing systematically in the last years. The remainder in 2007 originated from imports, mainly from Russia, countries of Central Asia and Germany.

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

There are no significant amounts of natural gas exported from Poland. The amount of exportation does not surpass 50 million of m<sup>3</sup>. Generally, the main exportation of Polish natural gas is to Germany.

## 2 Development of Natural Gas

- 2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The legal framework for the exploration and production of natural gas is encompassed by the Geological and Mining Law of February 4, 1994 as amended (hereinafter the "**Geological and Mining Law**"). The abovementioned regulation specifies the rules and terms of conducting and carrying out of geological works, minerals exploitation from deposits, storing of waste in the subsurface, including underground mining excavations. The Geological and Mining Law states also that activities such as prospecting for or exploration of mineral deposits, exploitation of minerals from deposits as well as non-reservoir storage of substances and disposal of waste in the subsurface, including underground mining excavations require concession.

#### Ownership of the deposits

The mineral deposits that do not constitute components of land real estate are the property of the State Treasury. Within the bounds specified by the Geological and Mining Law, the State Treasury may use mineral deposits as well as dispose of the right thereto by establishing a so-called mining usufruct.

#### Geological administration

The geological administration authorities are (i) the Minister of environment, assisted by the Chief Geologist of the Country, (ii) voivodship marshals, and (iii) county administrators all assisted by geologists. The scope of activities of the geological administration with include (i) granting of concessions, (ii) exercising supervision and inspection over the realisation by an entrepreneur of its rights under the concession and (iii) balancing mineral resources.

While exercising supervision and inspection, the employees have the right to access all places where geological works are carried out, and also the right to access to mining plants, if supervision and inspection are exercised with respect to the performance by an entrepreneur of his rights under the concession. They may also demand access to necessary information, documents as well as explanations.

In natural gas development the mining supervision authorities, including the President of the State Mining Authority and the directors of the regional mining authorities, are also important. These authorities exercise supervision and inspection over mining plant operations, in particular over (i) work, health, and fire safety, (ii) mine rescue, (iii) management of mineral deposits during their exploitation, (iv) environmental protection, including damage prevention and (v) mining plant construction and closing down.

#### State authorities

The Minister of Economy has a significant role in the natural gas sector, since its range of duties covers *inter alia* outlining policies for the natural gas industry. It is also responsible for diversification of sources of the energy, directions of supply and development of the natural gas infrastructure.

The Minister of State Treasury exercises right to control state-owned companies operating in the natural gas sector as well as production, transportation and distribution.

#### Policies

"Poland's energy policy to the year 2025" is currently the main source

of policy and initiative for the natural gas sector. “Poland’s energy policy to the year 2025” was adopted by the Council of Ministers on January 4, 2005. However, the Minister of Economy is preparing a new policy called “Poland’s energy policy to the year 2030”.

Furthermore, the Ministry of Economy published in March 2007 a document “Policy for the natural gas industry” explicitly focused only on issues regarding natural gas.

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**2.2 How are the State’s mineral rights to develop 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?**

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The Geological and Mining Law provides that activities such as prospecting for or exploration of mineral deposits, exploitation of minerals from deposits as well as non-reservoir storage of substances and disposal of waste in the subsurface, including underground mining excavations require concession.

The Minister of the Environment is the authority granting concessions, however the issuance must be preceded by obtaining the consent of the Minister of Economy and be consulted with the competent local self-government unit. Concession may be granted for a period not shorter than 5 years and no longer than 50 years.

**Transfer of concession**

The issuing Authority may transfer the concession to other entity. When it is not to the detriment of a public interest associated with environmental protection, the concession authority is obliged to transfer concession to the entity which (i) agrees to all the conditions arising therefrom; (ii) in the extent necessary for conducting the intended activity, demonstrates the right to the geological information, right to the land real estate, the right of mining usufruct, or the promise of obtaining them; and (iii) demonstrates that it is able to meet the requirements associated with the activity.

**Refusal to issue a concession**

The concession may be refused if the intended activity violates the requirements of environmental protection, including those associated with the rational management of mineral deposits.

**Expiry of the concession**

A concession expires in the following cases: (i) when the period for which it was granted has elapsed; (ii) when it has become purposeless; (iii) in case of the closing down of the activity of the entrepreneur; or (iv) in case of the surrender of the concession.

The concession authority will proclaim the expiry of the concession. When a bankruptcy of the entrepreneur is announced, the concession authority may withdraw the concession without compensation.

**Mining usufruct**

The State Treasury acting as the owner of the deposits may use mineral deposits as well as transfer the right thereto by establishing mining usufruct (*uzytkowanie górnicze*).

Mining usufruct is granted by way of an agreement providing for a fee and subject to obtaining a concession. Within the limits defined in law and in a mining usufruct agreement, the mining usufructuary may prospect for, explore or exploit a mineral from the deposit. The establishment of the mining usufruct may be subject to tender.

An entrepreneur who explores and documents a mineral deposit being the property of the State Treasury and prepares geological documentation for granting of a concession for mineral exploitation, may demand the establishment of the mining usufruct for its own benefit, with priority over other parties.

**2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).**

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The concession should specify: (i) type and manner of the conduct of activity covered by the concession; (ii) limits within which the activity is to be conducted; (iii) period of validity of the concession and the date of commencement of activities, and (iii) other requirements concerning the conduct of the activities covered by the concession (in particular general safety and environmental protection).

Specific elements of specific types of concessions:

- (1) A concession issued prospecting for or exploration of mineral deposits may not exceed 1200 km<sup>2</sup>. A concession should specify purpose, scope, type, schedule of the geological works, and accuracy of geological exploration.
- (2) A concession for mineral exploitation has to define the boundaries of the mining area and the mining protective area as well as identify the exploitable resources of the mineral deposit and the minimum degree of their utilisation.

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**2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?**

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The activities of prospecting for or exploration of mineral deposits and mineral exploitation are limited to the extent described in particular concessions and by virtue of Geological and Mining Law. The State neither seeks nor directly participates in the development of natural gas reserves.

It should be noted that PGNiG holds 66 licences for prospecting and exploration of crude oil and natural gas deposits, and 208 licences for production of crude oil and natural gas from fields.

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

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The holder of mining usufruct right is obliged to pay a remuneration for the mining usufruct. The amount and manner of payment should be specified in the agreement on establishing a mining usufruct right. The fee may be paid in a single payment or in instalments.

An entrepreneur who exploits a mineral from its deposit is obliged to pay royalty for the mineral exploited. The royalty is to be calculated as the product of the rate of the royalty for a given type of mineral and the amount of the mineral exploited in the calculation period.

The Council of Ministers by way of an ordinance of November 23, 2007 specified rates of the royalties in the following amounts:

- high methane natural gas PLN 5.50 per 1000 m<sup>3</sup>; and
- other natural gas PLN 4.57 per 1000 m<sup>3</sup>.

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

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Production of natural gas is subject to a concession to be issued on terms defined in the Freedom of Business Activity Act of 2004.

According to the Energy Law of April 10, 1997 (“Energy Law”) licence is required to perform business activity of the trade in gaseous fuels if their annual turnover value exceeds the equivalent of EUR 100,000, and the trade in liquid gas exceeds EUR 10,000.

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

Currently there are no currency exchange restrictions or restrictions on the transfer of funds derived from production out of the jurisdiction. Profits resulted from all activities can be freely transferred to another jurisdiction, subject to binding tax laws including tax treaties.

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

**Concession**

An Issuing Authority may transfer the concession to other entities.

**Mining usufruct**

According to Geological and Mining Law, the mining usufructuary may, to the exclusion of other parties, transfer its right. As a matter of rule all manners of transfer of the mining usufruct right is permissible unless mining usufruct agreement states otherwise.

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

**Establishing of a collateral**

The granting of a concession may be subject to establishing a collateral to secure claims that may arise as a result of carrying out the activities covered by the concession. The form and amount of the collateral is to be specified in the concession depending on the kind of activities carried out and degree of possible harm to environment.

**Mining plan liquidation fund**

The entrepreneur who has been granted a concession is obliged to set up a fund for the closing down of the mining plant and must keep the resources of the fund at a separate bank account. The level of the allocation to the fund depends on the applied method of exploitation:

- resources equivalent from 3% to 10% of the depreciation allowances for fixed assets of the mining plant; and
- resources equivalent to 10% of the due royalty for the mineral exploited.

**2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?**

According to Geological and Mining Law within the bounds specified by Polish regulations and by the mining usufruct agreement, the mining usufructuary may, dispose of its right. As a matter of rule disposing of the mining usufruct right is permissible unless mining usufruct agreement states otherwise. There are no obstacles for establishing a pledge for security over mining usufruct right, nor can they be booked for accounting purposes under Polish law.

**2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?**

The Geological and Mining Law provides for additional obligations of entity filing for concession. In addition to the basic requirements an application should be supplemented with a deposit development plan, reviewed by a mining supervision authority.

**2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?**

The Geological and Mining law specifies certain obligations for entities conducting natural gas development applicable in the event of liquidation of a natural gas mining plant. If a mining plant is liquidated, principle requirements obligate an entrepreneur to (i) secure or close down mining excavations as well as facilities and equipment of the mining plant, (ii) secure the unutilised part of the mineral deposit, (iii) secure neighbouring deposits of minerals, (iv) take necessary measures to protect the excavations of the neighbouring mining plants, and (v) take necessary measures to protect the environment, reclaim land and develop post-mining areas.

### 3 Importation / Exportation

**3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).**

Neither the Geological and Mining Law nor the Energy Law provide for specific regulations in respect of cross-border sales or deliveries of natural gas. As a general rule arising from Energy Law, concession is required to perform business activity of the trade in liquid gas, if the annual turnover value exceeds EUR 10,000.

### 4 Transportation

**4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).**

In 1993 the governments of Poland and Russia signed the agreement on the construction of a gas pipeline system for the transit of Russian gas through the territory of the Republic of Poland and supplies of Russian gas to Poland (Yamal-Europe). As mentioned in question 1.1 above the pipeline is owned by the SGT EuRoPol Gaz S.A.

Trade and technical details in the scope of transportation are subject to the separate agreements signed by the Polish and Russian companies which provide that the gas imported by this pipeline cannot be re-exported by Poland to third countries.

The Energy Law does not regulate the transportation pipeline separately, however it is assumed that the transportation pipeline is recognised as a transmission pipeline for regulatory purposes as described in question 5.1 below.

**4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?**

The relevant pre-WWII regulation was repealed in 1953 without enacting any new regulation. Currently, legally binding regulations such as the Energy Law do not provide for special rules for construction and operation of natural gas transportation pipelines.

The transportation system in Poland does not presently have an operator, since the owner of the part of the pipeline crossing Poland (SGT Europol Gaz) did not file for a designation of a transmission

system operator. The above issue is also the subject of the currently designed amendment to the Energy Law.

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**4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?**

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As a matter of rule, the primary way of obtaining the necessary land in order to construct a pipeline is by way of civil law agreements. Nevertheless, the Polish Constitution allows for a possibility of expropriation, however it may be allowed solely for public purposes and for compensation. According to the Real Estate Management Act, expropriation consists in deprivation or limitation of the ownership right, perpetual usufruct right or any other tangible right by way of a decision. Expropriation can be performed only if the goals cannot be achieved in any other way than deprivation or limitation of the rights to the property. A person may be expropriated from its right to the property only to the favour of the State or local government. Expropriation proceedings must be preceded by the negotiations with the person holding the right to the property that is in need for public purpose.

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**4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?**

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According to the Energy Law, an energy enterprise whose activity consists of the transmission of gaseous fuels is obliged to provide services of transmission of gaseous fuels on the terms of equal treatment and in compliance with the relevant law to all the customers and companies dealing with the sale of gaseous fuels on the basis of an agreement governing the provisioning of such services. However since the owner of the transportation pipeline (SGT Europol Gaz) is not designated as a system operator, the right to transmit natural gas with the transportation pipeline is pretty much theoretical.

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**4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?**

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There is only one transportation pipeline in Poland, i.e., Polish part of Yamal - Europe pipeline. The length of the Polish part of this pipe is 680 km. Yamal-Europe, totalling 4,000 kilometres, connects Western Europe with the Yamal peninsula. The pipeline is connected to the German system. The rules governing the interconnection are not available.

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**4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a 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?**

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The Energy Law provides - in respect to various types of energy transmission and distribution activities - for the Third Party Access Principle to be applied. Gas transportation is further regulated by equal treatment of customers subject to observance of safety rules,

conditions of operation of existing sources and performance under already existing contracts.

Provision of transport services may be refused if:

- the characteristic of gas to be transported differs from the one that is not viable due to technical or economical reasons;
- could result in decreasing output of existing oil or gas production installations;
- in case transmission, distribution or transportation of gas may result in financial or economical difficulties and fulfilling terms of concluded agreements providing for payment on "take-or-pay" basis; or
- provision of the service results in inability of the provider to secure interests of the recipients and observe rules of environmental protection.

A refusal to provide the service should be notified by the transmission provider to ERO with the request for temporary suspension of such obligation, which can be granted by ERO. of i.a. general situation of the provider, its contracts and their impact on the financial situation and rights of recipients, level of competition, observance of rules provided in the law.

The European Commission should be notified of ERO's position and after agreeing necessary variations ERO shall make a decision to be published in its official bulletin.

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**4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?**

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The basic document regulating the relationship is an agreement between the parties which should cover volumes, prices and tariff groups, settlements, quality discounts, etc. Certain elements governing the functioning of the gas system also have an impact on the content of the agreement.

## 5 Transmission / Distribution

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

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**Ownership and organisational framework of transmission network**

The Gas Transmission Operator GAZ-SYSTEM S.A. was established on April 16, 2004 as PGNiG - Przesył Sp. z o.o. - 100% shares of the company were taken over at the time by Polskie Górnictwo Naftowe i Gazownictwo SA (PGNiG). From that moment, GAZ-SYSTEM S.A. took over supervision and responsibility for the transport of natural gas through strategic gas pipelines in Poland. In 2005 PGNiG passed on all the GAZ-SYSTEM shares to the State Treasury.

The separation of activity connected with the transmission of natural gas from the PGNiG structures resulted from the provisions of the Gas Directive adopted in 2003 by the Council and the European Parliament, which required gas companies to separate the technical transmission of gas from trade (TPA - Third Party Access Principle).

**Ownership and organisational framework of distribution network**

Activities of the Distribution segment are conducted by six Gas Distribution Companies, which are responsible for supplying natural gas to households, industrial and wholesale customers, as well as operation, maintenance and expansion of gas pipelines. The gas distribution companies are engaged in the operation, maintenance

and expansion of the distribution network. The distribution networks consist of around 107 thousand km of gas pipelines.

#### **Regulatory framework for transmission and distribution network**

The Energy Law defines the transmission network as a high pressure gas network, with the exclusion of upstream pipelines and direct pipelines, whose operation is controlled by a transmission system operator. The transmission system operator is an energy enterprise dealing with the transmission of gaseous fuels responsible for network operation in the gas system.

The distribution network is defined as a high, medium and low pressure gas network, with the exclusion of an upstream pipeline network and direct pipelines, whose operation is controlled by a distribution system operator. A distribution system operator deals with the distribution of gaseous fuels, responsible for network operation in the gas distribution system.

The main responsibilities of the operators include (i) security of supply by securing the operation of the gas system; (ii) a coordinated, reliable and effective network; (iii) maintenance and repairs of the network; (iv) ensuring the long term capability of the gas system to satisfy the substantiated needs with respect to the national and international transmission and distribution of gaseous fuels; (v) managing the flows of fuels; (vi) providing indispensable services; and (vii) balancing the system and managing the restrictions within the gas system.

#### **5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?**

According to the Energy Law conducting the distribution operations is subject to concession issued by the President of the Energy Regulatory Office, however the above requirement is not applicable to the distribution of gaseous fuels in networks of less than 1 MJ/s capacity.

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

The distribution system operator has an obligation to conclude a network connection agreement with entities requesting connection to the network, on terms of equal treatment, if it is technically and economically feasible to supply fuels and the applicant meets the requirements. There is a fee for the connection to the network.

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

If the energy company rejects concluding a network connection agreement, it should notify ERO and the entity requesting the connection in writing and state the reasons. Any disputes over refusal to conclude a network connection agreement, should be resolved by the President of ERO if requested. ERO may also issue a statement in which they will specify the terms of commencing until the dispute is resolved.

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

Under Energy Law calculating charges for connection to the network is as follows:

- 1) fee for connection to high pressure gas distribution network is determined on the basis of a fourth part of the investment incurred in relation to the connection;
- 2) fee for connection to a gas distribution network other than the one referred above, is determined on the basis of the fee rates included in the tariff, calculated on the basis of a fourth part of average annual costs of investment in the construction of the network sections used to connect such entities; and
- 3) fee collected for the connection of sources cooperating with the network or the networks of energy enterprises is calculated on the basis of the actual costs of investments incurred in relation to the connection.

#### **5.6 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)?**

Neither Polish Commercial Law nor Energy Law, with one exception, provide restrictions or limitation in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network. The abovementioned exception states that the transmission system operator shall have the legal form of a stock company whose sole shareholder is the State Treasury. As a result nobody can acquire shares in an entity performing the role of a transmission system operator.

Where a foreign person or entity is interested in acquiring interests in a gas utility or specific assets of the distribution network, it will need permission from the Ministry of Administration. This does not relate to foreign persons or entities with their seat in one of the European Union or European Economic Area countries.

## **6 Natural Gas Trading**

#### **6.1 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.**

Gas trading is regulated by the Energy Law, with prices established on the basis of tariffs approved by the President of ERO. A concession is required to perform trade in gaseous fuels if the annual turnover value exceed the equivalent of EUR 100,000. The concessions for the activity referred above are granted with a consideration for the diversification of the sources of gas and the energy security levels specified in the ordinance of the Council of the Ministers.

#### **6.2 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?**

We are not aware of any legal restriction limiting the scope of natural gas commodities that may be traded.

## **7 Liquefied Natural Gas**

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

Polskie LNG Sp. z o.o., the shares of which are now in the process of being transferred from PGNiG S.A. to Gaz System S.A., was the

SPV to construct and operate the LNG terminal which is in the stage of initial designing.

The operation of terminal and obligation of its operator, defined as the operator of the system for liquefaction of natural gas, has been already included in the Energy Law.

### 7.2 What Governmental authorisations are required to construct and operate LNG facilities?

The provisions of law do not provide for any specific rules differing from other investments in the energy sector. In addition due to the foreseen location of the terminal (on the sea, close to Polish-German border) all necessary aspects relating to maritime and shipping issues, environmental protection safety of transport and cross border impacts need to be considered within the existing legislation.

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

At this stage only general rules applicable to service providers under the Energy Law exist.

## 8 Competition

### 8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

Under the Polish Energy Law these tasks are performed by the central state authority for the energy market - the Chairman of the Energy Regulatory Office (hereinafter - the Chairman of ERO). Activities of the Chairman of ERO are supported by the general, central state body as regards the competition issues - the Chairman of the Office of Competition and Consumer Protection (hereinafter - the Chairman of OCCP).

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

The Chairman of ERO considers the following factors deciding whether conduct of the energy enterprise is anti-competitive: financial condition of enterprise; dates and terms of its agreements; impact of agreements on the financial condition of a company and on consumers; degree of development of the competition in the sector; implementation of the obligations imposed by the act of law; impact of that decision on a correct operation and the development of the gaseous fuels market; and the degree of interconnection between the gas systems and their interoperability.

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

The President of ERO approves and supervises the application of tariffs for gas. In case of anti-competitive practices, he may impose financial penalties on energy enterprises and is entitled to revoke the license, if the energy enterprise conducts its activity in breach with provisions of law.

OCCP has instruments to take action in relation to anti-competitive practices of energy enterprises by issuing decisions concerning merger of enterprises and companies, submitting motions with the court to recognise the admissibility of the contractual provisions;

and recognising whether the energy enterprise has a dominant position (its market share exceeds 40%) and abuses of competition in the market.

### 8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the 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?

Intention of concentration (mergers and changes in control over the enterprise - including energy enterprises) must be notified to the President of OCCP if they exceed the scope provided by the Act on Competition and Consumer Protection (if in the year preceding the year of notification combined worldwide turnover exceeds EUR 1 billion or combined turnover in the territory of Poland exceeds EUR 50 million). The undertakings whose intention of concentration is subject to a notification are under obligation to refrain from implementing the concentration until the issuance of the decision by the President of OCCP.

The concentration is approved if it does not result in significant impediments to competition in the market. Nevertheless, in such cases approval is granted, if it is justified by expected contribution to economical development and technical progress or it may exert a positive impact on the national economy.

The proceedings in concentration cases should be terminated not later than within 2 months from its institution. After lapse of this time limit, if the President of OCCP fails to issue a decision, a concentration may be performed.

## 9 Foreign Investment and International Obligations

### 9.1 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?

Under Polish law, foreign persons from member states of the European Union and the European Free Trade Association may undertake the economic activity on the same rules as Polish citizens. The same legal requirements are applicable both for Polish citizens and foreign persons.

In order to conduct the economic activity related to the production, processing, storage, transport, distribution and trade in fuels and energy the entrepreneur has to obtain the concession. Also, foreign entrepreneurs have to comply with the requirements set forth in the Energy Law in order to obtain a concession. In particular cases the procedure of obtaining the concession may be regulated by other legal acts e.g. Geological and Mining Law.

### 9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

Whereas Poland is a member state of the European Union, the legal acts of the authorities of the European Union are applicable on its territory. The provisions of Directive 2003/55/EC concerning common rules for the internal market in natural gas were implemented to the Polish legal framework by way of amendments



to the Energy Law of 2004 and 2005.

The Republic of Poland is a party to the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and related Environmental Aspects, which were ratified by the Republic of Poland in 2003.

## 10 Dispute Resolution

**10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.**

Pursuant the provisions of Energy Law, the President of the Energy Regulatory Office is decides on disputes connected with the refusal to conclude the following agreements: (i) connection agreement; (ii) sales agreement; (iii) fuel or energy transmission or distribution agreement; (iv) natural gas transport agreement; (v) gaseous fuels storage agreement; (vi) natural gas liquefaction agreement; (vii) agreement for providing the facilities which are required for the purpose of storage of gaseous fuels; and (viii) general framework agreement. The President of Energy Regulatory Office is also solely competent to resolve the disputes connected with the cases of unjustified suspension of supply of gaseous fuels or energy.

The President of Energy Regulatory Office resolves the matters pursuant to the administrative procedure, and issues an administrative decision. The party may appeal from the decision to the Circuit Court in Warsaw for Competition and Consumer Protection. The proceedings before the Circuit Court are, in turn, conducted pursuant to the Polish Civil Procedure Code (so called "hybrid procedure"). Once the Circuit Court has reached a decision and issued a judgment, the party may appeal to the Court of Appeals. The dissatisfied party may file the cassation claim, from the judgment of Court of Appeals, with the Supreme Court.

**10.2 Is Poland 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")?**

Poland ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1961.

ICSID has not been ratified, however a number of treaties on reciprocal promotion and protection of investments refers to it by giving the foreign investor an opportunity to submit a potential dispute to the International Centre for Settlements of Investments Dispute.

Poland is also a party to the Energy Charter Treaty providing parties' choice i.e., ICSID's competence in resolving certain disputes.

**10.3 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)?**

Polish regulations provide that the State Treasury shall be considered the subject of the rights and duties which pertain to the State property that does not belong to other State legal persons. As a consequence, the State Treasury is not liable for the liabilities of State legal persons unless specific rules state otherwise and vice versa.

The position of a person seeking justice or enforcement against Government authorities or State organs is pretty much the same as in the disputes with private persons.

**10.4 Have there been instances in the 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 unaware of such instances.

## 11 Updates

**11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Poland.**

The Ministry of Economy has published recently a draft version of The Polish Energy Policy until 2030. The paper presents a new approach to the exploitation of resources of energy raw materials. It has been emphasised in the paper that they will be a stabilising instrument in the security of energy supplies of Poland. Priority activities indicated in the draft paper include: (i) improvement of energy effectiveness; (ii) increased security of energy supplies; (iii) increased use of renewable sources of energy, including biofuels; (iv) development of competitive fuels and energy market; and (v) limiting the impact of energy industry on the environment. However, for each of the above priorities, only general objectives have been formulated. The detailed objectives and activities for their implementation and expected results will be prepared.

Apart from long term policy, Energy Law is also a subject of amendment. The Ministry of Economy has made a third version of the project of the amendment publicly available. Generally, the amendment results from a necessity of implementation of the Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006, concerning measures to safeguard security of electricity supply and infrastructure investment. It is not clear when the aforementioned draft amendment will be passed.

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Prior to joining Hogan & Hartson, Tomasz was a partner in the Warsaw office of a London-based firm. Before entering private practice, he worked for a number of Polish trading houses as in-house legal counsel. He also served as legal counsel for a major trading house in Poland where his last position was head of the Legal Department.

Tomasz's experience includes work for one of the major Polish power plants on its rehabilitation program, involving debt financing and euro-bond issues; some of the sponsors of major expansion of Poland's biggest lignite fired plant; successful investors bidding for a controlling stake in one of Poland's second biggest hard coal fired power plants; the green-field projects in the energy sector; infrastructure projects involving i.a. motorways, heat distribution and energy transmission.

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Karol Walczuk's practice focuses presently on infrastructure and energy sectors. He has experience in matters relating CO2 trading and "green" certificates, including their regulatory aspects. He works also on green field projects relating to those sectors.

Karol has also experience in real estate matters, including the construction and development of properties, leases, and also in transactions involving sale, purchase, and financing of sales and acquisitions of properties, as well as commercial leases of commercial and office spaces.

Prior to joining Hogan & Hartson, Karol trained at the Warsaw office of a leading professional services consultancy firm.

## HOGAN & HARTSON

Hogan & Hartson traces the energy practice roots to the 1920s. The Firm is active throughout the world, including Europe, Latin America, the Middle East, West Africa, China, and Southeast Asia.

We work in all sectors of the natural gas industry - upstream oil and gas, oil and natural gas pipelines, liquefied natural gas (LNG), gasification, storage, and local distribution companies. We also represent crude oil and petroleum products carriers, and their shippers. Additionally, we work in all areas of the electric power industry, including generation, transmission and distribution by both investor-owned utilities and electric cooperatives.

Our lawyers have extensive experience in structuring complex financings for oil and gas refineries, pipeline projects, and LNG import and regasification facilities. We handle the development, siting, financing, and restructuring of LNG projects, including terminals, regasification plants, and generating facilities powered by natural gas converted from LNG, for a wide variety of clients.