

Austria



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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.

Austria has a well-developed natural gas sector. Already in the first half of the 20th century, Austrian natural gas was produced from production fields situated mainly north of the Austrian capital (Vienna) in the province of Lower Austria and in the province of Upper Austria. The main industry and big cities were supplied with natural gas from these fields. In addition, the so-called "city gas" (produced from coal) was used to supply mainly Viennese households. In the late 1960s, the demand for "clean" natural gas rose with the objective of replacing wood, coal and oil-fired household heating. Therefore, in 1968, the first import contract for the supply of Russian gas was concluded between Gazprom and OMV AG (the main oil and gas exploration and production company in Austria, which was 100 per cent state-owned at this time). This and following contracts for the supply of additional volumes of Russian gas as well as Norwegian gas supply concluded in the 1980s led to the development of a substantial distribution network in Austria. In addition, two main transmission pipelines were built to transit natural gas from the Austrian-Slovakian border near Baumgarten to Italy with the cross-border point at the Austrian-Italian border near Arnoldstein (Trans Austria Gasleitung GmbH, "TAG"), and to Germany with the cross-border point at the Austrian-German border near Oberkappel (West-Austria Pipeline, "WAG").

The Austrian natural gas market is divided into three areas: the Market Area "Tyrol" and the Market Area "Vorarlberg" (each a province in western Austria), which are both separately upstream only connected to the German distribution network; and the Market Area "East" (consisting of the remaining seven Austrian provinces) containing the two main transmission pipelines, TAG and WAG, as well as connections to Czechia, Slovakia, Hungary (Hungarian-Austrian Pipeline, "HAG") and Slovenia (South-East Pipeline, "SOL") as well as major underground gas storage sites.

The main underground gas storage sites are depleted gas fields constructed and technically operated by the two main oil and gas exploration and production companies active in Austria, namely the OMV Group ("OMV") and RAG Austria AG

("RAG"). These gas storages are marketed by different storage undertakings in accordance with the Austrian Natural Gas Act 2011 (*Gaswirtschaftsgesetz 2011*, "GWG 2011"). The following unbundled storage undertakings currently market capacity in Austria: Astora GmbH & Co KG (Storage Haidach operated by RAG); Uniper Energy Storage GmbH (Storage 7 Fields operated by RAG); GSA LLC (the capacities originally attributed to GSA LLC are currently managed by RAG due to a decree of the Austrian Regulatory Authority for Electricity and Gas, "E-Control"); OMV Gas Storage GmbH (Storage OMV operated by OMV Exploration & Production Austria GmbH); and RAG Energy Storage GmbH (Storage RAG operated by RAG). The Austrian storage capacity holds a working gas volume of approximately 95.5 TWh. This is the fifth-largest storage capacity in Europe. This storage capacity covers almost the annual Austrian natural gas consumption.

AGGM Austrian Gas Market Manager AG ("AGGM"), the Market Area and Distribution Area Manager, and AGCS Austrian Gas Clearing & Settlement AG ("AGCS"), the Balancing Agency, are entrusted by law with the tasks of coordinating network operations and balancing of the system.

In the Market Area East, the trading of natural gas takes place at the virtual trading point ("VTP") operated by Central European Gas Hub AG ("CEGH").

There are two companies exploring and producing natural gas in Austria. The first is OMV Austria Exploration & Production GmbH, which is indirectly owned by OMV AG. The shares in OMV AG are quoted on the Austrian stock exchange with two major shareholders. About 31.5 per cent are held by Österreichische Beteiligungs AG ("ÖBAG"), the Austrian state-owned holding company, and about 25 per cent are held by Mubadala Petroleum and Petrochemicals Holding Company LLC ("MPPH"), the state-owned holding company of Abu Dhabi. The other company is RAG. They extract their natural gas out of gradually depleting old fields. New production can hardly close this gap. Due to environmental concerns unconventional production methods (e.g., fracking) have not been started in Austria.

Austria has no direct access to LNG. LNG is imported by traders also active in Austria mainly via transmission lines from LNG terminals situated in Italy, Croatia or Germany.

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

The Austrian internal energy supply is based on a balanced mix of energy sources. An estimated one-third of Austria's energy needs are supplied by domestic production, and the remainder is imported from abroad. Due to Austria's topography and other

factors, 85 per cent of national primary energy production is derived from renewable sources, most notably from hydropower and biomass. Hydrocarbons make up the majority of imports. Therefore, the primary energy sources used to cover the Austrian energy consumption are diverse. In 2021, approximately 34.5 per cent oil, 22.7 per cent natural gas, 31.4 per cent renewable energies, 7.6 per cent coal, and 1.9 per cent combustible waste were used. Imports account for the remaining 1.9 per cent. As a result of the federal law for a non-nuclear Austria, the production of nuclear energy has been banned in the country since 1978.

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

In 2021, the gas production in Austria accounted for 4.5 per cent of Austria's domestic demand. Austria imports approximately 80 per cent of its gas from Russia. This dependency, which has grown over decades, cannot be changed either immediately or within a short period of time. Moreover, this situation is considered extremely critical, given the fact that the gas flow from Russia has been significantly reduced since mid-2022 as a result of the Russian-Ukrainian war. Therefore, efforts have been intensified to diversify the supply portfolio of gas and to secure gas in storage units for the cold winter period.

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

The Austrian natural gas production is mainly fed into the gas network at distribution level. Therefore, on a physical level, no molecule of natural gas produced in Austria is exported to other countries. Notwithstanding that, since natural gas fed into the system can be traded at the VTP, it would be possible to export Austrian natural gas on a virtual level. There is no statistic available that shows such figures for the Austrian domestic production. In general, the Market Area East is a transit area where major volumes of natural gas are imported into Austria and exported to the neighbouring countries.

Available statistics show a total net import amount of 444.5 TWh and a total net export amount of 393.5 TWh for 2021. Austria exports natural gas to Italy, Germany, Hungary, Slovakia, Slovenia, Liechtenstein and Switzerland. Imports over the German border fell sharply by 33.8 TWh, while those over the Slovakian border fell by only 5.8 TWh. This was compensated by more storage withdrawals.

2 Overview of Oil Sector

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

The Austrian exploration and production of oil is performed by OMV, RAG and ADX VIE GmbH, a subsidiary of Australian ADX Energy Ltd. In Austria, only one oil refinery exists. This refinery is located in Schwechat near Vienna and is operated by OMV. It has a processing capacity of up to 9.6 Mtoe per year. In 2020, a total of 8.1 Mtoe oil was processed at a capacity utilisation of 84 per cent. Further, 8 per cent of the oil processed was derived from domestic sources; 92 per cent stemmed from imports. Two storage facilities are connected to this refinery via pipelines: one storage facility is located in Vienna (Lobau); and the other in Upper Austria (St. Valentin). These storage facilities cover a total of 3.3 million cubic metres of oil.

Austria is also a transit country for oil with one major transit pipeline, the Transalpine Pipeline ("TAL"), which is 753 km long and runs from Italy across Austria to Germany and connects the port of Trieste with the German provinces of Bavaria and Baden-Württemberg. In 2021, it transported a total of 37.2 Mtoe crude oil. The shares in TAL are currently owned by a consortium of major oil companies: OMV; Shell; Rosneft; ENI, C-BLUE B.V. (Gunvor); ExxonMobil; Mero; Phillips 66/ Jet Tankstellen; and Total. In Austria, TAL is operated by the Transalpine Ölleitung Ges.mbH.

A branch pipeline of TAL, the 420 km long Adria-Wien Pipeline ("AWP") deviates from TAL at Würmlach (Carinthia) and transports oil from the Italian oil terminal in Trieste through various Austrian provinces (i.e., Burgenland, Carinthia, Lower Austria and Styria) to the oil refinery in Schwechat. An oil pipeline of 14 km connects the AWP to the oil storage facility (Erdöl-Lagergesellschaft mbH) in Lannach (Styria), which stores mandatory emergency reserves. Consequently, the refinery in Schwechat can be supplied with oil from Lannach in case of an emergency. OMV Refining & Marketing GmbH is the sole owner of the AWP.

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

In 2021, 34.5 per cent of Austria's gross domestic consumption was covered by oil. In 2021, the consumption of heating oil increased by 6.8 per cent compared to the previous year. As a consequence of the COVID-19 pandemic, fuel consumption decreased in 2020 and 2021 compared to previous years. The consumption of fuel has recently recovered to a normal level as a result of the discontinuity of pandemic-induced curfews.

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

In 2021, the oil production in Austria accounted for 4.5 per cent of Austria's primary energy production. As of 2021, oil imports came from 12 different countries, of which Kazakhstan, Libya, and Iraq are the most important. There have been no oil imports from Russia since February 2022.

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

Austria has no significant oil 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 exploration and production of oil and natural gas are regulated in the Mineral Resources Act (*Mineralrohstoffgesetz*, "MinroG"). The MinroG applies to: the exploration and extraction of non-mineable, federally owned mineral resources; the processing of these raw materials, insofar as it is carried out

by the person entitled to mine in operational connection with the exploration or extraction; the search for and exploration of geological structures that are to be used for the storage of liquid or gaseous hydrocarbons; the underground storage of such hydrocarbons without containers; and the processing of the stored hydrocarbons, insofar as this is carried out by the party entitled to storage in operational connection with the storage.

Pursuant to section 1, para. 10 in connection with section 4, para. 1, item 2 of the MinroG, Austria's crude oil and natural gas resources are considered state-owned mineral resources. According to section 68, para. 1 of the MinroG, the Republic of Austria is entitled to conduct the search for and exploration and production of crude oil and natural gas. Furthermore, the Republic of Austria has the right to the exclusive extraction of federally owned mineral resources from officially recognised extraction fields and to the exclusive storage of crude oil and natural gas in hydrocarbon-bearing geological structures or parts thereof.

If the exploration of crude oil or natural gas exceeds 500,000 cubic metres per day (reduced thresholds of 250,000 cubic metres per day may apply to exploration fields located in specific "protected areas"), an environmental impact assessment is required under the Environment Impact Act 2000 (*Umweltverträglichkeitsprüfungsgesetz 2000*, "UVP-G 2000"). The approval under the UVP-G 2000 replaces the approval under the MinroG.

The competent Austrian authorities at the administrative level are the Federal Ministry of Finance (*Bundesministerium für Finanzen*, "BMF") and if an environment impact assessment is required, the respective provincial government (*Landesregierung*). Applicants are entitled to appeal against a decision by the BMF at the Austrian Constitutional Court (*Verfassungsgerichtshof*) and/or the Austrian Supreme Administrative Court (*Verwaltungsgerichtshof*). A decision regarding an environmental impact assessment issued by the provincial government can be appealed at the Federal Administrative Court (*Bundesverwaltungsgericht*) and, as a last instance, at the Constitutional Court and/or the Supreme Administrative Court.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies ("participants") (e.g., licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The Republic of Austria may transfer its rights under the MinroG to individuals, legal entities, etc., which possess the required technical and financial resources to open and operate such mining operations. The transferee must pay an appropriate remuneration to the Republic of Austria. The act of transferring such rights is governed by a private-law contract. The Austrian Civil Courts have jurisdiction over disputes arising from such contracts.

Pursuant to section 86, para. 1 of the MinroG, the search for and exploration of non-hydrocarbon-bearing geological structures to be used for the storage of crude oil or natural gas, are subject to the approval of the competent authority. An approval may be granted to individuals, legal entities, etc., under commercial law. In order to prevent malpractice, section 86, para. 4 of the MinroG prohibits the transfer of such a right. Nevertheless, the transfer of the respective approval itself is possible, and the competent authority must be informed of such a transfer.

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).

For the search, exploration and production of crude oil and natural gas as well as the search for geological structures to be used as respective storage facilities, a work programme within the meaning of the MinroG must be submitted to the competent authority and approved. Such a work programme must contain all information required under the MinroG (i.e., the nature, extent and purpose of the intended work, the sequence and timing, the planned mining installations, the planned safety measures and measures for securing the surface use after the undertaking and the names of the personnel responsible).

The mining right holder is obliged to notify the relevant authority of the establishment of a mining operation or an independent part of a mining operation. Furthermore, a permit of authority must be obtained for the construction of surface mining facilities and shafts, boreholes with a depth of 300 m and probes with a depth of 300 m serving mining purposes. In order to obtain the required construction permit, the application must contain the following information: a description of the planned mining installation; the necessary plans and calculations in triplicate; a list of the plots of land on which the mining installation is planned, with the names and addresses of the landowners; information on the waste to be expected from the operation of the planned mining installation, with any precautions for its avoidance or recycling as well as the proper plans for the disposal of the waste; and in the case of mining installations with emission sources, the documents for the assessment of the expected emissions are required as well as, if applicable, an alarm plan for major accidents (dangerous events threatening or likely to threaten the life or health of persons or, to a large extent, the property not entrusted to the person authorised to mine or to the environment).

According to section 117a, para. 1 of the MinroG, the mining right holder shall prepare a waste management plan for the minimisation, treatment, recovery, and disposal of mining waste, taking into account the principle of sustainable development. Such waste management plan shall be notified to the authority in due time, but no later than two weeks before the commencement of the respective mining project.

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)?

Despite the fact that the Republic of Austria is the primary owner of all hydrocarbons underground (please see questions 3.2 and 3.3 for more details), it regularly transfers the rights to qualified undertakings and does neither participate in the exploration and the development of hydrocarbon reserves nor does it take part in such ventures.

Notwithstanding this, the Republic of Austria currently holds a share of 31.5 per cent in OMV indirectly via ÖBAG. The shares in RAG are indirectly held by different Austrian provinces via various holding companies. The majority of shares in RAG (50.03 per cent) is held by EVN AG. The majority shareholder in EVN AG is the holding company of the province of Lower Austria, namely the NÖ Landesbeteiligungsholding GmbH (51 per cent). As described above, OMV and RAG are the key players in the field of exploration and production of hydrocarbons in Austria.

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

The Republic of Austria derives value from various remunerations that may arise from the various activities under the MinroG. These remunerations can be divided into four groups, namely: (i) the area interest; (ii) the field interest; (iii) the extraction interest; and (iv) the storage interest. For the duration of the transfer of the exercise of the rights of exploration for federally owned mineral resources, as well as the search for and exploration of hydrocarbon-bearing geological structures to be used for the storage of liquid or gaseous hydrocarbons, the area interest must be paid. For the duration of the transfer of the exercise of the right of extraction of federally owned mineral resources, including the right of appropriation of these mineral resources, the field rate and the production rate must be paid. For the exercise of the right to store liquid or gaseous hydrocarbons in hydrocarbon-bearing geological structures, or parts thereof, the storage interest must be paid.

3.6 Are there any restrictions on the export of production?

The Austrian crude oil and natural gas exports were not restricted in 2021.

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

At present, there are no currency exchange restrictions, or restrictions on the transfer of funds derived from production, in place in Austria.

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

The transfer or disposal of oil and natural gas development rights requires the approval of the competent authority (please see question 3.2 for more details).

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

The contractual framework (section 69, para. 1 of the MinroG) only provides that the respective applicant must fulfil the technical and financial requirements to open and operate the respective mining undertaking; however, the respective agreement concluded between the Republic of Austria and the respective applicant contains various regulations on financial securities and guarantees.

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?

At present, the relevant provisions do not provide for any regulations in this regard.

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?

Depending on the details of the respective mining project and its potential implications, further permits may be required in addition to MinroG approvals (e.g., approvals under the respective provincial nature conservation law or the Austrian Water Rights Act). If the respective mining project triggers an environmental impact assessment within the meaning of the UVP-G 2000, this procedure covers all approvals required by law.

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

According to section 119, para. 14 of the MinroG, the owner of the mining structure shall notify the authority of the abandonment of mining structures. This notification is not required if the abandonment of mining facilities takes place on the occasion of the cessation of extraction in a mine or the cessation of the activity of a mining operation, an independent operating department, or a major part thereof, and the intended abandonment is specified in the final operating plan.

Pursuant to section 159, para. 1 of the MinroG, the holder of the mining right must take appropriate measures to secure the use of the surface after the end of the mining activity. He must restore third-party land and parts of land required for mining purposes to their former condition unless this land has been used for the extraction of deposits of mineral raw materials. In addition, there is a statutory liability of the last owner of the mining rights for any damages caused by the mining activities or any mining installations.

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

In addition to the mining aspects of underground gas storage activities, which are governed by the MinroG, the marketing of the gas storage capacities (working volume, injection and withdrawal rates) is governed by the GWG 2011. Section 97, para. 1 of the GWG 2011 provides that storage system operators of natural gas storage facilities are required to grant access to their facilities to prospective storage users (i.e., a natural or legal person or a registered partnership that wishes to gain storage access, including but not limited to gas companies, to the extent required to fulfil their responsibilities) under non-discriminatory and transparent conditions. Pursuant to section 99, para. 1 of the GWG 2011, storage companies are obliged to agree storage usage fees with prospective storage users in good faith based on the General Terms and Conditions for Storage Access, which comply with the principle of equal treatment. The principles underlying the calculation of the storage fee shall be published once a year and after every amendment.

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

Currently, there are no specific regulations regarding the exploration and production of unconventional oil and gas resources in Austria.

3.15 What has been the impact, if any, of the “energy transition” on the oil and gas industry in your jurisdiction, and are there any policies or laws/regulations that require the oil and gas industry to decarbonise? Are there any policies or laws/regulations relating to the development of low-carbon hydrogen and its use in conjunction with or in place of natural gas, or the development of carbon capture and storage?

Based on Commission proposals published in November 2016, the Clean Energy for all Europeans Package consists of eight legislative acts. All new rules have been enacted since mid-2019; EU countries, including Austria, had between one and two years to transpose the new directives into national law.

The changes will bring considerable benefits from a consumer, environmental, and economic perspective. They also underline EU leadership in tackling global warming and provide an important contribution to the long-term strategy for achieving carbon neutrality by 2050 proposed by the EU.

After the EU Commission presented its climate and energy policy in November 2016, under which all EU Member States would be required to further reduce greenhouse gas emissions and increase energy efficiency by 2030, Austria passed a minor green electricity amendment package, which included several amendments in various Austrian laws. This package simplified administrative procedures and increased their efficiency. It also focused on the promotion of solar systems by adjusting rules and regulations enabling the joint construction and operation of solar system plants at apartment housing that provides an independent electricity power plant for multiple households living in such buildings. Moreover, additional funds were made available for wind power plants, solar system plants, small hydropower plants and biomass plants.

This amendment package, however, did not aim at an overall adjustment of the Austrian renewable funding regime to the EU Commission’s guidelines for environmental State protection and energy aid, nor at responding to other structural problems.

To implement the goals of the abovementioned mission for 2030 and to achieve the planned climate neutrality of Austria in 2040, the Austrian Parliament – after a six-month delay – passed the Renewable Energy Expansion Act (*Erneuerbaren-Ausbau-Gesetz*, “EAG”) on 7 July 2021, with the necessary two-thirds majority. This law was published in the Federal Law Gazette 150/2021 on 27 July 2021. Pursuant to constitutional article 103, para. 1 of the EAG, most of the provisions contained in the EAG became effective on the day following the date of promulgation. Since the second part of the first main section of this Act contains rules on granting a market premium for the generation of electricity from renewable sources (subsidies), this part is subject to the approval of the EU Commission according to article 108, para. 3 of the Treaty on the Functioning of the European Union. The EU Commission approved this part of the EAG at the end of 2021. However, the approval was only granted on the condition that strict requirements are met. Therefore, the EAG had to be amended again in the National Parliament.

The EAG is one of the central instruments for the further evolution of the renewable energy sector. The EAG pursues the goal of increasing electricity production through renewable

energy by 27 TWh by 2030 (11 TWh photovoltaics, 10 TWh wind power, 5 TWh hydropower, and 1 TWh biomass). This corresponds to an increase of 50 per cent of the existing renewable power capacity in Austria. To ensure that this increase can be implemented, the EAG provides a suitable subsidy system. Until 2030, €1 billion shall be annually invested in the expansion of renewable energy. Furthermore, the EAG introduces the model of so-called “energy communities”. The idea is to have two different systems so that as many people as possible can benefit from it; namely, “renewable energy communities”, which enable the joint use of locally produced renewable energy, for example, in the neighbourhood, in the settlement, etc., and “citizen energy communities”, which realise the joint use of renewable energy on a supra-regional level by several users joining together to form a virtual community. Moreover, the EAG follows the approach of social justice. Not only are low-income households exempt from green electricity charges, but even households with a low income that do not fall into this category will pay a maximum of €75 a year. More than 550,000 households should benefit from these measures. Further, the EAG provides investment grants to intensify the expansion of green hydrogen and green gas. This is intended to make a significant contribution to the decarbonisation of the industry. In addition, the EAG supports the domestic industry with €500 million to remain competitive and to provide the basis for the “green transformation” of the domestic industry.

The Renewable Heat Act (*Erneuerbaren-Wärme-Gesetz*, “EWG”), which is part of the Austrian Heat Strategy, was submitted for appraisal on 14 June 2022 and its entry into force is now eagerly awaited. This law aims to ban central or decentralised heating systems in new buildings that can be operated with fossil fuels from 2023. By 2035, all coal and oil heating systems are to be decommissioned. From 2040, Austria aims to achieve complete climate neutrality. This law, therefore, serves the decarbonisation of “space heating”. Likewise, all fossil-powered gas heating systems are to be decommissioned by this date.

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).

In the Austrian Market Area East, the trading of natural gas is exclusively performed via the VTP. Pursuant to section 68, para. 1 of the GWG 2011, the VTP is defined as a virtual trading point allocated to the market area at which natural gas can be traded by market participants, even without network access authorisation for the market area in question. Access to the VTP is based on the operational rules of the Market Area Manager, AGGM, and the transmission companies in accordance with the Market Rules. The VTP is not assigned to any physical entry/exit points and enables buyers and sellers to buy or sell natural gas even without capacity booking.

In the Market Areas Tyrol and Vorarlberg, no such VTP exists. The gas to be delivered to endconsumers located in the Market Area Tyrol or Vorarlberg is traded at the German VTP operated by Trading Hub Europe GmbH (“THE”) and transferred to the balance group of the Distribution Area Manager, AGGM, at the THE, which holds the entry/exit capacities at the Austrian-German border to transfer the gas to the Market Area Tyrol or Vorarlberg.

According to section 121, para. 1 of the GWG 2011, gas traders shall notify their activities to the regulatory authority prior to commencing them. The regulatory authority shall publish an up-to-date list of gas traders. In case of trading at the VTP, traders are obliged to register with the CEGH as virtual traders. In case traders also transport gas volumes cross-border at any entry/exit point, they must register with AGGM as gas suppliers. Furthermore, they are obliged to become a member of a balance group or establish their own balance group.

According to section 121, para. 6 of the GWG 2011, the conclusion of gas supply contracts having a term of more than one year and a volume of more than 250 million normal cubic metres of gas from the territory of the EU or from third countries per year shall be notified to the regulatory authority. The regulatory authority shall keep a record of such gas supply contracts.

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.

Security of supply rules for cross-border sales of deliveries of oil are enshrined in the Austrian Oil Reserves Act (*Erdölbevorratungsgesetz 2012*, “**EBG 2012**”). Section 11, para. 1 of the EBG 2012 provides that an import of oil from other EU Member States must be reported to the Austrian customs. The Austrian customs then replots the planned import to the competent authority (in Austria, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology). Importers of oil and oil products are obliged to hold 25 per cent of the import of oil and oil products of the previous calendar year (previous year’s import) as compulsory domestic emergency reserves.

6 Transportation

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

As outlined above (please see question 3.2), the Austrian crude oil and natural gas resources are owned by the Republic of Austria. Pursuant to the provisions of the MinroG, these rights may be transferred to certain third parties by a civil law contract. The third parties to whom these rights are transferred own and operate all transportation pipelines and associated infrastructure:

- In case of domestic oil production, this includes the pipelines necessary to transport oil to the only refinery in Austria, which is located in Schwechat (Lower Austria), and operated by OMV. The two transit pipelines for import and export of oil, namely TAL and AWP, run through Austria, and are owned by oil companies (please see question 2.1 for more details on TAL and AWP).
- In case of domestic natural gas production, this includes any processing plants necessary to meet the prescribed quality parameters for feeding natural gas into the distribution network.
- In case of an import, the upstream transmission pipelines tie into the Austrian transmission system directly at the border. Therefore, there is no part of the pipeline in Austria not subject to the regulatory regime for gas transmission and gas distribution network operations.

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?

Transportation pipelines and associated infrastructure are subject to construction and operation permits under the MinroG. Depending on the respective project, further permits may be required under other laws (e.g., the Austrian Water Rights Act, the Austrian Forestry Act, or the respective provincial nature conservation law).

For the construction and operation of oil transit pipelines and associated infrastructure such as TAL, a permit under the Pipeline Act (*Robrleitungsgesetz*) is required. In order to obtain this permit, the respective project developer must file a technical construction plan with the competent authority.

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?

In general, the right to use third-party property to construct oil and natural gas transportation pipelines or associated infrastructure is subject to a civil law contract between the respective licence holder and the landowner. According to section 149 of the MinroG, the authority may grant access to third-party property (expropriation) at the request of the mining licence holder in return for a reasonable remuneration to be determined by the authority. In case of a disagreement with the decision of the remuneration amount, a civil lawsuit may be filed.

For the construction of oil pipelines under section 7, para. 1 of the Pipeline Act, the project developer is entitled to access third-party property to carry out necessary preliminary examinations for the preparation of the respective project, while protecting any affected third-party rights. According to section 7, para. 2 of the Pipeline Act the project developer must notify the owners or authorised users of the respective property at least four weeks prior to the commencement of examinations. Further, the project developer must pay compensation for any financial disadvantages caused. Claims may be asserted up to three months after the day on which the project developer demonstrably notified the affected parties of the completion of the preliminary activities. Pursuant to section 27 of the Pipeline Act, expropriation is permitted if the permanent existence of the pipeline system at a particular location requires expropriation for compelling technical reasons or with regard to the disproportionate costs of its relocation. Nonetheless, the property owner or authorised user of such real property may claim compensation for its transfer to the project developer. In any event, expropriation of land is the *ultima ratio*.

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

In Austria, access to the oil and natural gas transportation pipelines under the MinroG is not regulated by law. Hence, it is subject to civil law agreements. According to section 6 of the Pipeline Act, the licence holder must fulfil third-party transport needs and may be even required to amend the pipeline concept to accommodate third-party needs. However, this only applies to those third-party needs that have been notified to the licence holder within a certain time frame after a public notification before the start of construction of the pipeline. Third-party transports are performed on a negotiated basis.

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

The two transit pipelines for crude oil in Austria (TAL and AWP) are interconnected, as the AWP branches off from TAL at Würmlach and redirects the transport of crude oil from the port of Trieste to the Schwechat refinery (please see question 2.1 for more details). The oil and transportation pipelines transporting oil produced north of Vienna are interconnected with trunklines leading to the refinery in Schwechat.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

Please see question 6.5.

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?

Parties are free to agree the terms for transportation of oil and natural gas pipelines.

7 Gas Transmission / Distribution

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

Only in the Market Area East transmission pipelines are in operation. There are two transmission pipeline operators: TAG and Gas Connect Austria GmbH (“GCA”). TAG operates the TAG Gas Pipeline system running from the Austrian-Slovakian border near Baumgarten to the Italian-Austrian border near Arnoldstein. The shares in TAG are held by Snam (Italy) (84.47 per cent) and GCA (15.53 per cent). GCA operates the WAG running from Baumgarten at the Austrian-Slovakian border to the German-Austrian border near Oberkappel, the HAG, the SOL, the Penta-West Pipeline (“Penta-West”), and the Kittsee-Petrachalka Pipeline (“KIP”). The shares in GCA are held by VERBUND (51 per cent) and AS Gasinfrastruktur GmbH (49 per cent), a joint venture between Allianz Capital Partners and Snam.

In the Market Areas Tyrol and Vorarlberg, only distribution networks are in place. The distribution gas pipelines are owned and operated by regional and municipal distribution system operators (“DSOs”). Access to the domestic transmission and distribution networks is subject to regulated third-party access, with the General Terms and Conditions for Network Access approved and the corresponding tariffs regulated.

Transmission system operators must be ownership unbundled according to the rules set out in Directive (EU) 2009/73. Both Austrian gas transmission operators are certified as independent transmission system operators (“ITO or TSO”), being part of the virtually integrated undertaking of VERBUND.

Network access and the steering of the gas flow as well as the balancing of the system is organised by the Austrian Market Area and Distribution Area Manager, AGGM. Balancing energy is procured and accounted for by the AGCS. The VTP in the Market Area East is operated by the CEGH.

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

Pursuant to section 43 of the GWG 2011, the operation of a distribution network requires a licence issued by E-Control. This licence is granted provided that the prerequisites pursuant to section 44 of the GWG 2011 are met. Furthermore, the licence can be subject to additional stipulations, conditions or a time limit as required. Prior to putting a system into operation, a DSO must appoint a natural person as a technical director in charge of managing and supervising the operation of the system. Several technical directors may be appointed provided that their respective areas of competence are clearly delimited. In addition, the DSO may appoint a managing director accountable to the authority with regard to compliance with the provisions of the GWG 2011. A DSO is required to inform E-Control of such appointments.

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

Pursuant to section 58, para. 1, item 7 of the GWG 2011, DSOs must grant access to their facilities to prospective system users in a non-discriminatory manner, under the approved General Terms and Conditions and the system charges set by E-Control. According to section 59, para. 1 of the GWG 2011, the DSO shall enter into private-law contracts with final customers on the connection to the gas distribution system and system utilisation under the General Terms and Conditions for the distribution network within the area covered by their distribution system. Hence, the GWG 2011 provides for a general obligation to connect (*allgemeine Anschlusspflicht*). The system user’s facility must be connected to the system of the DSO at a technically suitable point with due regard to the economic interests of the system user.

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

Section 59, para. 1 of the GWG 2011 provides for a general obligation to connect customers to the grid. This obligation to connect does not apply if the operator of the distribution system cannot with any economic reasonability be expected to make an individual connection, considering the interests of all customers. If no agreement can be reached between a DSO and a final customer on whether or not the general obligation to connect applies, the provincial governor shall decide upon application of either party.

According to section 34, para. 1 of the GWG 2011, the Market Area Manager shall, on the basis of a variety of load-flow scenarios and together with the transmission system operators and the Distribution Area Manager, draw up a common forecast of the capacity need and utilisation of the market area’s network over the next 10 years. The forecast shall be updated every two years. If the calculation conducted in accordance with section 34, para. 2 of the GWG 2011 reveals that capacity will continually fall short of the current demand and the demand forecast

pursuant to section 34, para. 1 of the GWG 2011, the Market Area Manager is obliged to coordinate measures that are suitable to result in an increase of the capacity to the extent needed. These measures must be notified to E-Control without delay. If these measures do not lead to the capacity demand being satisfied and if there are permanent or frequent high actual load flows and a decrease of such load flows is not to be expected, the DSOs shall assess appropriate network expansion measures and take them into account in network development planning. In accordance with section 58, para. 1, item 1 of the GWG 2011 any DSO is obliged to develop its network according to the needs.

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

The tariffs charged for accessing the distribution network are defined in section 72 of the GWG 2011, and consist of: (i) a system utilisation charge; (ii) a system admission charge; (iii) a system provision charge; (iv) a metering charge; and (v) a supplementary service charge. The tariffs shall respect the principles of equal treatment of all system users, facilitation of efficient gas trade and competition, cost reflectiveness and, to the greatest possible extent, cost causality, and shall ensure that gas is efficiently used and that the amount of energy distributed or transported is not unnecessarily increased.

E-Control sets the tariffs outlined under (i), (iii), (iv) and (v) by issuing a respective ordinance, while (ii), (iii), and (v) are subject to fixed rates. For (iv) a ceiling is set.

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)?

In accordance with the Investment Control Act 2020 (*Investitionskontrollgesetz 2020*), direct and indirect investments by foreign (i.e., non-EU/EEA/Swiss) individuals or corporations in a company with a registered seat or central administration in Austria require prior authorisation by the competent Federal Minister if such an investment may pose a risk to Austria's security or public order. For example, this is assumed for an investment in the Austrian energy infrastructure (please see question 12.1 for more detail).

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.

Natural gas trading in Austria is a free trade that can be performed by anyone. As of 2 January 2023, about 90 different gas suppliers are registered with the AGCS. Section 7, para. 1, item 14 of the GWG 2011 defines the Austrian gas trader as a natural or legal person or a registered partnership buying and selling gas without carrying out the functions of transmission or distribution, neither within nor outside the system in which such gas trader is established. Pursuant to section 121, para. 1 of the GWG 2011, a gas trader is obliged to notify its trading activities to the regulatory authority prior to commencing them. The regulatory authority keeps, updates and publishes a list of gas traders.

Gas traders and suppliers selling gas to consumers subject to the provisions of the Consumer Protection Act (*Konsumenschutzgesetz*) shall always provide for an option to enter into non-interruptible gas supply contracts.

Pursuant to section 121, para. 6 of the GWG 2011, the conclusion of gas supply contracts having a duration in excess of one year and involving the purchase of a quantity of gas in excess of 250 million normal cubic metres per year from the territory of the EU or from third countries, as well as their duration and the quantity of gas they relate to, shall be notified to the regulatory authority. The regulatory authority keeps a record of such gas supply contracts.

Further, gas traders are obliged to either join an existing balance group or register as a balance group representative and be responsible for such balance group in at least one of the three Austrian control areas. Respective agreements are to be concluded with the Clearing and Settlement Agent, AGCS, and the Market Area and Distribution Area Manager, AGGM.

If a gas trader has been sanctioned for gross infringement of any provisions under the GWG 2011 and further infringement is to be feared, or if measures have been taken or are about to be taken in response to a gas trader becoming insolvent or excessively indebted, E-Control is authorised to prohibit such natural gas trader from carrying out its business.

If a gas trading undertaking has its seat or permanent establishment in Austria, the undertaking must apply for a trade licence under the Austrian Trade Act 1994 (*Gewerbeordnung 1994*).

In addition, gas traders are obliged to store specific data on any financial or physical transaction for five years under the Data Storage Ordinance on Wholesale Energy Data (*Energiegroßhandels-Transaktionsdaten-Aufbewahrungsverordnung*) enacted by E-Control.

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?

In the Market Area East, gas is traded via the VTP. The VTP is not assigned to physical entry/exit points and enables buyers and sellers to buy or sell natural gas without capacity booking (please see question 4.1 for more details). Hence, the trade of gas in the Market Area East is not restricted to "bundled" products. In the Market Areas Tyrol and Vorarlberg, trading activities are performed on the upstream German marketplace (i.e., the THE).

9 Liquefied Natural Gas

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

Currently, there are no large-scale liquefaction or regasification terminals in operation in Austria due to the fact that Austria is a landlocked country. Three LNG filling stations have been constructed in Austria. These stations are operated by OMV, RAG and F.Leitner Mineralöle GmbH.

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

LNG facilities are governed by the Austrian Trade Act 1994. For the construction and operation of a LNG facility, the respective permit under the Austrian Trade Act 1994 is required. In addition, further permits may be required under other laws (e.g., the Austrian Water Rights Act, or provincial nature conservation laws).

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

There is no regulation of the price or terms of service in the LNG sector in Austria.

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

To date, there is no specific third-party access regime to LNG terminals enacted in Austria.

10 Downstream Oil

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

Currently, the downstream oil sector is not subject to a separate regulatory framework in Austria. The operation of both refineries and fuel stations is governed by the Austrian Trade Act 1994. Therefore, a trade licence must be obtained. For the construction and operation of downstream facilities respective permits must be applied for and granted. Regarding the security of supply, importers of oil and oil products are obliged to hold 25 per cent of the import of oil and oil products of the previous calendar year (previous year's import) as compulsory domestic emergency reserves. Each year, this obligation begins on 1 July and ends on 30 June of the subsequent year.

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

In case the oil trading is performed by an undertaking with its registered seat or permanent establishment in Austria, a trade licence is required under the Austrian Trade Act 1994. Apart from that, no further specific regulations apply.

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 governmental body in charge of the general supervision of competition in the natural gas sector, in particular with regard to the principle of non-discriminatory treatment of market participants, is E-Control. E-Control also cooperates with the Federal Competition Authority in prosecuting anti-competitive practices under the Cartel Act 2005 (*Kartellgesetz 2005*), such as abuse of market dominance and price fixing. Since 2010, E-Control also has powers to monitor the market. Fines under the Cartel Act 2005 may be imposed by the Cartel Court upon the request of E-Control or the Federal Competition Authority for anti-competitive conduct. Finally, the district administrative authorities are competent to prosecute violations of administrative law as set out in the Austrian Gas Act 2011 at the request of E-Control.

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

The criteria to be taken into account when assessing possible anti-competitive conduct in Austria are set out in the Cartel Act 2005, the GWG 2011 and the EControl Act (*Energie-Control-Gesetz*).

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

E-Control has investigative powers and can order market participants to comply with the regulatory framework. E-Control, as the national regulatory authority, has even more investigative powers in the scope of REMIT. Furthermore, fines of up to €150,000 can be imposed by the district administrative authority upon violation of the obligations under the GWG 2011, in particular violations against REMIT. Moreover, the Cartel Court may order the market participants involved to refrain from anti-competitive conduct and may also impose fines up to 10 per cent of the undertaking's annual turnover pursuant to the Cartel Act 2005 in the case of discrimination by a system operator, storage undertaking or operator of the VTP.

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?

Under the exploration, production and storage agreement, the federal government regularly reserves the right to cancel an agreement if mergers or other changes of control of the contracting party take place without the prior approval of the federal government. There is no formal approval procedure in place since this right derives from a contract under civil law. However, depending on the issue, the BMF has proven in the past that decisions can be obtained in a timely manner.

Besides this special contractual requirement, any merger (or other form of concentration within the scope of the Austrian Cartel Act 2005) is subject to the general pre-merger notification obligation; such notification must be filed at the Federal Competition Authority if the turnover thresholds under the Cartel Act 2005 (turnover in the year before the merger or concentration of undertakings involved exceeded €300 million on the worldwide market, €30 million on the Austrian market, thereof at least two undertakings each more than €1 million, and €5 million on the worldwide market) are reached. The merger must not be implemented before the Federal Competition Authority and the Federal Cartel Prosecutor have abstained from initiating an in-depth investigation (within four weeks of notification) or – in the case of an in-depth investigation – the Cartel Court has approved the merger or concentration (the merger or concentration can only be disapproved within five months of the beginning of the in-depth investigation procedure). A merger or concentration will not be approved if its implementation creates or strengthens a dominant market position. Dominance is presumed if the undertakings hold a combined market share of at least 30 per cent after the implementation of the merger.

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?

Since 24 July 2020, foreign direct investments may be subject to the Investment Control Act 2020. The federal legislature has created a comprehensive legal basis to prohibit acquisitions or participations of foreign investors in Austrian companies or to make them subject to conditions and requirements if the acquisition might endanger security or public order, including crisis management and services of general interest. Part 1 and Part 2 of the Annex to the Investment Control Act 2020 list economic sectors in which foreign direct investment – above certain quantitative or qualitative thresholds (co-ownership of the enterprise or acquisition of significant assets) – triggers a notification obligation, since these are economic sectors relevant to public security and order, including crisis management and services of general interest. The operation of critical energy infrastructure is listed among those particularly sensitive areas where the lower notification thresholds of section 4, para. 1 apply (the notification obligation is triggered by the acquisition of voting rights exceeding 10 per cent, 25 per cent and 50 per cent); furthermore, “energy” in general is listed among the critical infrastructures in Part 2 of the Annex (for these sectors, the notification obligation is triggered by the acquisition of voting rights exceeding 25 per cent and 50 per cent according to section 4, para. 2 of the Investment Control Act 2020). The notification obligation generally rests with the acquirer pursuant to section 6, para. 1 of the Investment Control Act 2020; the Austrian target company only has a subordinate obligation. The competent authority is the Federal Ministry for Digital and Economic Affairs (“BMDW”). Upon notification, the BMDW shall examine if there are any concerns against the acquisition owing to a reasonable suspicion of a threat to security or public order. If the authority identifies a possible threat during the approval process, the investment may be made subject to requirements and conditions, or if these are not sufficient to avert the possible threat, the authority may also prohibit the investment entirely.

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

The Austrian regulatory policy with regard to the oil and natural gas sector is highly influenced and affected by European law, in particular, by the relevant EU Directives and EU Regulations governing the energy sector in general and the natural gas sector in particular, with special focus to security of supply issues.

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.

In Austria, there are no specific dispute resolution procedures that apply in the oil sector.

In the gas sector, however, some compulsory dispute resolution provisions apply. According to section 132, para. 1 of the GWG 2011, where disputes arise between: (i) prospective system users and system operators regarding the legality of refusal of system access; (ii) prospective storage users and storage system operators regarding the legality of refusal of storage access; or (iii) suppliers regarding the legality of refusal to transfer entry capacity, the decision lies with the regulatory authority except in cases within the jurisdiction of the Cartel Court.

According to section 132, para. 2 of the GWG 2011 in all other disputes: (i) between prospective system users and system operators regarding the obligations arising from this relationship; (ii) between prospective storage users and storage system operators regarding the obligations arising from this relationship; (iii) between customers and the operator of the VTP; (iv) between an independent system operator pursuant to section 109 of the GWG 2011 and the owner of the transmission system according to section 111 of the GWG 2011; (v) between a vertically integrated undertaking and the ITO or TSO pursuant to section 112 of the GWG 2011; or (vi) regarding the financial settlement of imbalance charges, the courts have jurisdiction. An action by a prospective system user in dispute pursuant to (i) a prospective storage user, or (ii) an action in dispute under (iii) to (vi) cannot be brought until the official decision of the regulatory authority on the dispute settlement procedure has been served within the time period set in section 12, para. 4 of the E-Control Act. For as long as a procedure in accordance with (i) or (ii) is pending conclusion at the regulatory authority, no judicial proceedings may be opened in this same case. According to a decision of the Austrian Supreme Court this does not apply in case the parties have concluded an agreement to arbitrate. In this case it is not necessary to involve the regulatory authority before raising a claim. Furthermore, E-Control may act as a mediator for gas-related disputes arising between consumers and undertakings.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Austria on 31 July 1961. As of 24 June 1971, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States is in force in Austria.

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)?

There are no such difficulties in Austria.

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?

Currently, we are not aware of any instances of successful legal action against Austrian government authorities or State organs before domestic courts.

14 Updates

14.1 Have there been any new regulatory or policy initiatives in your jurisdiction directly in response to the recent rise in global oil and gas prices (such as price caps, subsidies or a new focus on local sources of energy)?

One measure that arose due to the massive increase in energy prices and the accompanying public pressure on politicians is the so-called “electricity-cost-brake” (*Stromkostenbremse*). At the beginning of September 2022, the Council of Ministers (the body of all government members and State secretaries) passed this measure to curb the massive increase in costs for household customers and low-income households. The electricity-cost-brake relieves a household of an average of about €500 per year. The Austrian federal government provides around €3–4 billion, depending on the development of energy prices. The electricity-cost-brake is expected to take effect on 1 December 2022 and will remain in place until 30 June 2024. With up to a basic consumption of 2,900 kWh of electricity per year, the energy price is to be set at a maximum of 10 cents/kWh (net) regardless of the number of household members. This means that households will only pay an energy price of about 10 cents/kWh (net) for their annual electricity consumption of up to 2,900 kWh. The difference will be compensated as a subsidy. Electricity consumption exceeding 2,900 kWh will be charged to households at the contractually agreed price and must thus be paid in full by the households.

In addition, on 19 December 2022, the EU Energy Ministers reached a deal to limit excessive gas prices, following months of debate over whether or not to implement a gas price cap on imports into Europe. Austria, represented by Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology (Leonore Gewessler), abstained from the vote. For most Austrian customers there is no direct impact. In 2023, even higher prices are to be expected.

14.2 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 (other than anything already discussed above).

In March 2022, the Austrian Parliament passed an amendment to the GWG 2011 introducing a strategic gas reserve (*strategische Gasreserve*) aiming to secure gas in storage units for the cold

winter period. The procurement and management of the strategic gas reserve have been entrusted to the Austrian Market Area and Distribution Area Manager, AGGM. AGGM has founded a subsidiary (i.e., ASGM Austrian Strategic Gas Storage Management GmbH) for the exclusive purpose of procuring the strategic gas reserve. The strategic gas reserve was procured via two tenders and has a volume of 20 TWh, since natural gas is still very popular in household heating and is also used to a considerable extent for district heating. Thermal power generation based on natural gas is also necessary as a backup for power shortages and the stabilisation of the network. As of 1 November 2022, the entire 20 TWh of gas of the strategic gas reserve will be available.

In addition, a further amendment to the GWG 2011 (i.e., section 104, para. 4 of the GWG 2011) made it possible for gas storage undertakings to administer the storage users fully or partially systematically unused and booked gas storage capacities (“use-it-or-lose-it principle”). Subsequently, storage undertakings must market the withdrawn capacities. This amendment to the law aims to ensure that these capacities are used for security or supply reasons. Moreover, this amendment introduced the possibility that storage undertakings lose their rights as storage undertakings if they violate certain obligations provided for in section 104a, para. 1 of the GWG 2011 (e.g., if they do not withdraw the systematic unused and booked capacity from the storage users according to the process described above or do not market this withdrawn capacity immediately). For example, this was executed against storage undertakings of the gas storage facility Haidach (“UGS Haidach”), which is situated in Austria. UGS Haidach is one of the largest natural gas storage facilities in Central Europe and can store up to 2.9 billion cubic metres of natural gas. Furthermore, it is now prescribed that each storage facility located in Austria shall be connected to the Austrian gas grid until the end of 2022. This also applies to UGS Haidach, which has so far only been connected to the German gas grid.

Furthermore, in June 2022, the National Parliament passed the Austrian Gas Diversification Act (*Gasdiversifizierungsgesetz 2022*) with the objective of facilitating the phase-out of Russian natural gas. This law aims to ensure natural gas diversification and the retrofitting of plants to alternatives using other energy sources. Therefore, a total of €100 million will be made available each year from 2022–2025 as compensation for the additional costs incurred. According to the explanatory notes of this law, this solely concerns costs incurred by companies, for example, for pipeline rights when transporting natural gas of non-Russian origin to Austria or when non-Russian natural gas is used, unless climate-friendly, renewable energy sources or district heating are replaced. In addition, this law promotes the retrofitting of energy production plants in the industrial and energy sector that enables alternative operations with energy sources other than natural gas. Details for the use of the funds, the procedure, etc., are to be laid down in guidelines yet to be issued.



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Schima Mayer Starlinger Attorneys at Law (sms.law) is an internationally oriented business law firm covering all aspects of business law with a focus on competition, corporate, employment and energy law.

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Energy-related matters regularly involve expertise in different areas of law such as competition law, financing, civil law, corporate law, real estate, etc. The highly qualified and acclaimed team of experts of sms.law is used to collaborate closely, combining the expertise needed to solve matters in an expedient and time-efficient manner. Whenever required, Thomas

Starlinger's team works closely with the competition law team of Christian Mayer, the financing and corporate law team of Stephan Schmalzl and the real estate team of Markus Dax.

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