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Oil & Gas Regulation

2024

19th Edition

Contributing Editors:
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Ashurst LLP

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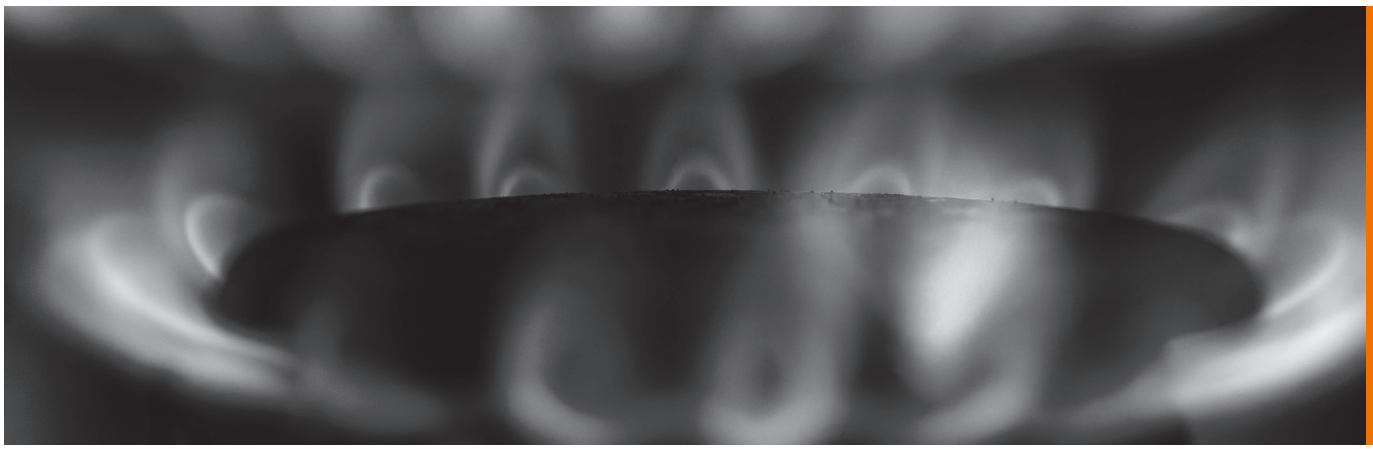

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1 Overview of Natural Gas Sector

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. It covers almost the annual Austrian natural gas consumption.

AGGM Austrian Gas Grid Management 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 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 Austrian energy consumption are diverse. In 2022, approximately 35 per cent oil, 21.3 per cent natural gas, 31.6 per cent renewable energies, 7.5 per cent coal and 2.2 per cent combustible waste were used. Imports account for the remaining 2.4 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 2022, Austria's gas production accounted for 4.4 per cent of the country's domestic demand. Approximately 80 per cent of Austria's gas is imported from Russia, creating a dependence that has deepened over the decades and cannot be immediately altered or rectified within a short timeframe. This situation is particularly precarious, especially considering the significant reduction in gas flow from Russia since mid-2022 due to the Russian-Ukrainian war. In response to this critical scenario, efforts have been intensified to diversify the gas supply portfolio and ensure adequate gas reserves in storage units for the impending cold winter period. These endeavours have yielded positive results, with Russian gas imports averaging 58 per cent in 2022. Nonetheless, the share of Russian natural gas in the Austrian supply is influenced by the demand of other counties. Should Austria's imports of Russian gas remain consistent and countries such as Italy or Slovenia exhibit reduced demand, a greater share of Russian gas will remain in the Austrian grid.

Non-Russian gas imports primarily comprise Norwegian gas, LNG, and, to a lesser extent, gas sourced from North Africa and Central Asia. The transportation of these imports predominantly takes place through routes passing through Germany and Italy.

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

Natural gas produced in Austria is mainly fed into the gas network at distribution level. As a result, from a physical standpoint, no molecules of natural gas produced in Austria are physically exported to other countries. However, given the tradability of natural gas at the VTP, there exists the potential for the virtual export of Austrian natural gas. Specific statistical data outlining the virtual export figures for Austrian domestic production is not available. Generally, the Market Area East (*Marktgebiet Ost*) serves as a transit hub facilitating substantial volumes of natural gas imports into Austria and subsequent exports into neighbouring countries.

2 Overview of Oil Sector

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

The exploration and production of oil in Austria are conducted by OMV, RAG, and ADX VIE GmbH, a subsidiary of the Australian ADX Energy Ltd. Within the country, there is only one oil refinery situated in Schwechat near Vienna, which is operated by OMV with a processing capacity of up to 9.6 Mtoe per year. Connected to the refinery via pipelines are two storage facilities – one in Vienna (*Lobau*) and the other in Upper Austria (*St. Valentin*) – covering a combined capacity of 3.3 million cubic meters of oil.

Austria serves as a transit country for oil through the Transalpine Pipeline ("**TAL**"), a 753 km-long pipeline running from Italy across Austria to Germany. In 2022, TAL transported a total of 37.2 Mtoe of crude oil. The ownership of TAL is currently held by a consortium of major oil companies, including OMV, Shell, Rosneft, ENI, C-BLUE B.V. (Gunvor), ExxonMobil, Mero, Phillips 66/Jet Tankstellen, and Total. In Austria, TAL is operated by Transalpine Ölleitung Ges.mbH.

A branch pipeline of TAL, the 420 km-long Adria-Wien Pipeline ("**AWP**"), diverges from TAL at Würmlach (Carinthia) and transports oil from the Italian oil terminal in Trieste through various Austrian provinces (Burgenland, Carinthia, Lower Austria, and Styria) to the oil refinery in Schwechat. A 14 km-long oil pipeline connects AWP to the oil storage facility (Erdöl-Lagergesellschaft mbH) in Lannach (Styria), where mandatory emergency reserves are stored. This setup ensures that the Schwechat refinery can be supplied with oil from Lannach in case of an emergency. The AWP is solely owned by OMV Refining & Marketing GmbH.

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

In 2022, 35 per cent of Austria's gross domestic consumption was covered by oil. In 2022, the consumption of heating oil increased by 8.2 per cent compared to the previous year. As a consequence of the COVID-19 pandemic, fuel consumption decreased. In 2022, the consumption of fuel has 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 2022, oil production in Austria accounted for 4.3 per cent of Austria's primary energy production. As of 2022, oil imports came from 11 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 Mineral Resources Act (*Mineralrohstoffgesetz*, "**MinroG**") provides the legal framework for the exploration and production

of oil and natural gas. 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 (*Umweltverträglichkeitsprüfunggesetz 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 have the right to file an appeal against a decision made by the BMF, both before the administrative courts and the Constitutional Court of Austria (*Verwaltungsgerichtshof*). A decision regarding an environmental impact assessment issued by the provincial government may be lodged with the Federal Administrative Court (*Bundesverwaltungsgericht*). As the last instance, it can also be brought before the Constitutional Court and/or the Supreme Administrative Court of Austria.

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 nonhydrocarbon-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 the respective 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 not participate in the exploration and the development of hydrocarbon reserves or engage in such ventures.

Nevertheless, 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.

During the period of transferring the rights to explore federally owned mineral resources and the search for and exploration of hydrocarbon-bearing geological structures designated for the storage of liquid or gaseous hydrocarbons, area interest must be paid. Additionally, for the duration of transferring the rights to extract federally owned mineral resources, which includes the right of appropriation for these mineral resources, both field and extraction interest must be paid. Furthermore, the exercise of the right to store liquid or gaseous hydrocarbons in hydrocarbon-bearing geological structures, or their parts, necessitates the payment of storage interest.

3.6 Are there any restrictions on the export of production?

In 2022, Austrian crude oil and natural gas exports were not restricted.

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) provides that the respective applicant must fulfil the technical and financial requirements initiating and managing the designated mining undertaking. However, the respective agreement concluded between the Republic of Austria and the respective applicant incorporates multiple provisions pertaining to 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 occurs in conjunction with the discontinuation of extraction in a mine, or the cessation of operations for a mining enterprise, an autonomous operating division, or a substantial portion thereof, provided that the planned abandonment is explicitly outlined 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 conjunction with the mining regulations outlined in the MinroG pertaining to underground gas storage activities, the marketing of gas storage capacities, including working volume, injection, and withdrawal rates, is subject to the provisions of 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?

At present, there are no specific regulations in place governing 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 will 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 above-mentioned 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**"), a pivotal element of the Austrian Heat Strategy, was submitted for appraisal on 14 June 2022, and its entry into force is eagerly awaited. The initial draft of the EWG outlined ambitious objectives, including the gradual phasing out of coal heating systems by 2035 and the complete decommissioning of all fossil-powered gas heating systems by 2040. However, the most recent revision has shifted its emphasis solely to the prohibition of fossil-powered central or decentralised heating systems in new constructions by 2024. This revised approach has encountered strong criticism from certain experts in the energy sector, who perceive it as a regressive step that hinders the achievement of climate neutrality in Austria by 2040.

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 end consumers 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 under 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, 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 (*Rohrleitungsgesetz*) 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 regarding 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, the access to oil and natural gas transportation pipelines under the MinroG is not governed by law; instead, it is subject to civil law agreements. Section 6 of the Pipeline Act stipulates that the licence holder is obligated to meet third-party transport requirements and may even be required to modify

the pipeline concept to accommodate such needs. However, this obligation is contingent upon the third-party needs being duly notified to the licence holder within a specific timeframe following a public notification before the commencement of pipeline construction. Third-party transports are conducted through negotiated agreements.

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 refer to 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 form 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 the regulatory authority for gas (i.e., E-Control). This licence is granted provided that the prerequisites pursuant to section 44 of the GWG 2011 are met. Moreover, the licence may be subject to additional provisions, conditions, or a stipulated time frame as necessary. Before commencing operations, a DSO is required to designate an individual as a technical director responsible for overseeing and managing the system's operation. Multiple technical directors may be appointed, provided that their specific areas of expertise are clearly defined. Additionally, the DSO has the option to appoint a managing director who is accountable to the regulatory authority for ensuring compliance with the provisions of the GWG 2011. The DSO is obligated to notify such appointments to E-Control.

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 are required to provide access to their facilities to prospective system users in a non-discriminatory manner, adhering to approved General Terms and Conditions and the system charges set by E-Control. As stipulated in section 59, para. 1 of the GWG 2011, the DSO is obliged to establish private-law contracts with final customers for connection to the gas distribution system and system utilisation within the area covered by their distribution system, governed by the General Terms and Conditions for the distribution network. Consequently, the GWG 2011 establishes a general obligation to connect (*allgemeine Anschlusspflicht*). The system user's facility must be connected to the DSO's system at a technically suitable point, taking into account 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 establishes a general obligation to connect customers to the grid. The DSO is exempt from that obligation if it cannot be reasonably expected, for economic reasons, to facilitate an individual connection while considering the interests of all customers. In cases where a mutual agreement on the applicability of the general obligation to connect cannot be reached between a DSO and a final customer, the provincial governor shall make a determination upon the application of either party.

As per section 34, para. 1 of the GWG 2011, the Market Area Manager, in collaboration with transmission system operators and the Distribution Area Manager, is required to develop a shared forecast of the capacity needs and utilisation of the market area's network for the next 10 years, based on various load-flow scenarios. This forecast is to be updated biennially. If the calculation, as per section 34, para. 2 of the GWG 2011, reveals a continual shortfall in capacity compared to the current demand and the demand forecast outlined in section 34, para. 1 of the GWG 2011, the Market Area Manager is obligated to coordinate measures capable of increasing capacity as needed. These measures must be promptly reported to E-Control. If these measures prove inadequate to meet capacity demands and there are persistent or frequent high actual load flows with no anticipated decrease, DSOs must assess appropriate network expansion measures and incorporate them into network development planning. In line with section 58, para. 1, item 1 of the GWG 2011, every DSO is obliged to develop its network according to the identified 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 set out 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 be based on 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 an ordinance, while (i), (iii), and (v) are subject to fixed rates, whereas (iv) a maximum 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)?

Since July 24, 2020, foreign direct investments may also fall under the purview of the Investment Control Act 2020 (*Investitionskontrollgesetz 2020*). The federal legislature has established a comprehensive legal framework to prohibit the acquisition or participation of foreign investors in Austrian companies, or to subject such transactions to specific conditions and requirements if the acquisition poses a potential threat to security or public order, including crisis management and services of general interest.

The Investment Control Act 2020 specifically addresses (partial or complete) acquisitions of Austrian companies by natural persons or legal entities from foreign countries, excluding those within the EU, EEA, or Switzerland. Control measures under the Investment Control Act 2020 are exclusively applied to acquisitions in critical infrastructure sectors, clearly defined within the legislation. Consequently, approval from the competent Federal Minister is required for foreign investments in these sectors if the transaction is deemed a potential threat to Austria's security or public order. An illustrative example is an investment in the Austrian energy infrastructure (please refer to question 12.1 for further details).

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 can be qualified as a free trade accessible to any interested party. As of July 6, 2023, approximately 82 gas suppliers are registered with 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 is responsible for maintaining, updating, and publishing a comprehensive list of gas traders. Gas traders and suppliers providing gas to consumers falling under the Consumer Protection Act (*Konsumentenschutzgesetz*) must ensure the availability of non-interruptible gas supply contract options.

As outlined in Section 121, paragraph 6 of the GWG 2011, gas traders entering into gas supply contracts exceeding one year in duration and involving the purchase of more than 250 million normal cubic meters per year from the EU or third countries must notify the regulatory authority. The regulatory authority maintains a record of such gas supply contracts.

Gas traders are further obligated to either join an existing balance group or register as a balance group representative, assuming responsibility for at least one of the three Austrian control areas. Agreements to this effect are to be concluded with the Clearing and Settlement Agent (AGCS) and the Market Area and Distribution Area Manager (AGGM).

In instances where a gas trader has been sanctioned for gross infringements under the GWG 2011 or further infringements are anticipated, or if measures have been taken or are imminent due to insolvency or excessive indebtedness, E-Control is empowered to prohibit such gas trader from conducting business in natural gas.

For gas trading undertakings with a seat or permanent establishment in Austria, compliance with the Austrian Trade Act 1994 (*Gewerbeordnung 1994*) necessitates the application for a trade licence. Additionally, gas traders are required to retain specific data related to financial or physical transactions for a period of five years, as per 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 trading is conducted on VTP. The VTP operates independently of physical entry/exit points, allowing buyers and sellers to engage in natural gas transactions without the necessity of capacity booking (please refer to question 4.1 for further clarification). Consequently, the trade of gas in the Market Area East is not confined to "bundled" products.

Contrastingly, in the Market Areas Tyrol and Vorarlberg, trading activities take place on the upstream German marketplace, specifically the Trading Hub Europe.

9 Liquefied Natural Gas

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

Presently, Austria lacks operational large-scale liquefaction or regasification terminals, primarily attributable to its status as a landlocked country. However, the country has taken steps to establish its presence in the LNG sector by constructing three LNG filling stations. These facilities are under the operational management of 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, a 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?

In the Austrian LNG sector, prices or conditions are not regulated by law.

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

At present, Austria has not enacted a specific regime for third-party access to LNG terminals.

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 regarding 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 considered when assessing possible anti-competitive conduct in Austria are set out in the Cartel Act 2005, the GWG 2011 and the E-Control 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 possesses investigative authority and is empowered to instruct market participants to adhere to the regulatory framework. As the national regulatory authority, E-Control holds additional and heightened investigative powers within the scope of REMIT. Violations of obligations under the GWG 2011, particularly those related to REMIT, may result in fines of up to €150,000 imposed by the district administrative authority.

Furthermore, the Cartel Court is vested with the authority to mandate market participants to desist from engaging in anti-competitive behaviour. In cases involving discrimination by a system operator, storage undertaking, or operator of the VTP, the Cartel Court may impose fines of up to 10 per cent of the undertaking's annual turnover in accordance with the Cartel Act 2005.

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 retains the regular prerogative to terminate the agreement in the event of mergers or other changes in control of the contracting party without prior approval from the federal government. This approval mechanism is not formally structured, as it is derived from a contract governed by civil

law. However, historical instances have demonstrated that the Federal Ministry of Finance can efficiently render decisions, depending on the nature of the issue.

In addition to this specific contractual requirement, any merger (or other form of concentration falling within the purview of the Austrian Cartel Act 2005) is subject to the general pre-merger notification obligation. The notification must be submitted to the Federal Competition Authority if the turnover thresholds specified under the Cartel Act 2005 are met (i.e., turnover in the year preceding the merger or concentration exceeds €300 million on the worldwide market, €30 million on the Austrian market, with at least two undertakings each exceeding €1 million, and €5 million on the worldwide market).

Implementation of the merger is prohibited until the Federal Competition Authority and the Federal Cartel Prosecutor have refrained from initiating an in-depth investigation within four weeks of notification. In the case of an in-depth investigation, approval by the Cartel Court is required for the merger or concentration to proceed, and disapproval can only occur within five months from the commencement of the in-depth investigation procedure. Approval is contingent on the absence of the creation or strengthening of a dominant market position through the implementation of the merger. Dominance is presumed if the combined market share of the undertakings reaches at least 30 per cent post-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 July 24, 2020, foreign direct investments may be subject to the Investment Control Act 2020. The federal legislature has established a comprehensive legal framework empowering the prohibition of acquisitions or participations by foreign investors in Austrian companies or imposing conditions and requirements if the acquisition poses a potential threat to 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 delineate economic sectors where foreign direct investments, exceeding certain quantitative or qualitative thresholds (such as co-ownership of the enterprise or acquisition of significant assets), trigger a notification obligation. These economic sectors are deemed relevant to public security and order, encompassing crisis management and services of general interest. Notably, the operation of critical energy infrastructure is identified as a particularly sensitive area, subject to lower notification thresholds under section 4, paragraph 1 (notification triggered by the acquisition of voting rights exceeding 10 per cent, 25 per cent, and 50 per cent). Additionally, "energy" in general is classified among critical infrastructures in Part 2 of the Annex, with notification obligations triggered by the acquisition of voting rights exceeding 25 per cent and 50 per cent according to section 4, paragraph 2 of the Investment Control Act 2020.

The primary responsibility for the notification obligation rests with the acquirer, as stipulated by section 6, paragraph 1 of the Investment Control Act 2020; the Austrian target company holds a subordinate obligation. The competent authority overseeing this process is the Federal Ministry for Labour and Economy ("**BMAW**"). Upon notification, the BMAW conducts an examination to ascertain any concerns regarding the acquisition, based on a reasonable suspicion of a threat to security or public order. If the authority identifies a potential threat during the approval process, the investment may be subject to specific requirements and conditions. If these measures are deemed insufficient to avert the potential threat, the authority may exercise its power to 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?

Austria's regulatory policy in the oil and natural gas sector is significantly shaped and impacted by European law, specifically by pertinent EU Directives and Regulations that govern the energy sector broadly and the natural gas sector specifically. There is a particular emphasis on addressing security of supply issues in alignment with European regulations.

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. Pursuant to section 132, para. 1 of the GWG 2011, if 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 regulatory authority, E-Control, will decide 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. During the pendency of a procedure in accordance with either (i) or (ii) before the regulatory authority, judicial proceedings in the same case are prohibited. However, as per a ruling by the Austrian Supreme Court, this prohibition does not extend to cases where the involved parties have entered into an

arbitration agreement. In such instances, involving the regulatory authority before initiating a claim is not a prerequisite.

Additionally, E-Control has the capability to serve as a mediator in disputes related to gas that may arise 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")?

Austria ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on July 31, 1961. Furthermore, as of June 24, 1971, Austria is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

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)?

Austria does not encounter any such difficulties.

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?

Up to the present, there are no documented cases wherein successful claims have been filed before Austrian courts against Austrian authorities or government bodies.

14 Updates

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

One measure implemented in response to the significant surge in energy prices and the resulting public pressure on politicians is the "electricity-cost-brake" (*Stromkostenbremse*). In early September 2022, the Council of Ministers (comprising all government members and state secretaries) introduced this measure to mitigate the considerable rise in costs for household customers and low-income households. The electricity-cost-brake provides an average relief of approximately €500 per year for households. The Austrian federal government allocates approximately €3–4 billion, contingent on the trajectory of energy prices. This measure was anticipated to come into effect on 1 December 2022, with validity until 30 June 2024.

For electricity consumption up to a basic level of 2,900 kWh per year, the energy price is capped at a maximum of 10 cents/kWh (net), irrespective of the household size. Consequently, households will only be charged around 10 cents/kWh (net) for annual electricity usage up to 2,900 kWh, with the difference compensated through a subsidy. Any electricity consumption exceeding 2,900 kWh will be billed to households at the agreed contractual rate, requiring full payment by the households.

Additionally, in December 2022, the Austrian Parliament enacted two laws with the objective of curbing the substantial profits of oil and gas companies in response to the sharp surge in energy prices resulting from the Russian-Ukrainian war, and to restrain the earnings of electricity producers. The Energy Crisis Contribution Act for Electricity (*Bundesgesetz* über *den Energiekrisenbeitrag-Strom*, "**EKBSG**") introduced the "Electricity-Energy-Crisis-Contribution". This contribution imposes a cap on the revenues of electricity producers with power plants exceeding 1 MW in capacity, limiting them to €140 per MWh. The Electricity-Energy-Crisis-Contribution corresponds to 90 per cent of the excess revenue from the sale of electricity generated between 1 December 2022 and 31 December 2023. The maximum revenue increases to €180 per MWh if investments in renewable energy are made in 2022 and 2023. It applies to the sale of domestically generated electricity from various sources, including wind energy, solar energy (both solar thermal and photovoltaic), geothermal energy, hydropower, waste, lignite, hard coal, petroleum products, peat, and biomass fuels, excluding biomethane.

Additionally, the Energy Crisis Contribution Act for Fossil Fuels (*Bundesgesetz* über *den Energiekrisenbeitrag-fossile Energieträger*, "**EKBFG**") introduced the "Fossil-FuelsEnergy-Crisis-Contribution". This contribution imposes a tax on the crisis-related profits of oil and gas companies in the latter half of 2022 and throughout 2023, with the average profit from the years 2018 to 2021 serving as the reference period. If the current profit exceeds this average by more than 20 per cent, a 40 per cent deduction will be applied.

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*) with the aim of securing stored gas for the cold winter period. The Austrian Market Area and Distribution Area Manager, AGGM, has been entrusted with the procurement and management of this strategic gas reserve. AGGM established a subsidiary, namely ASGM Austrian Strategic Gas Storage Management GmbH, exclusively for the purpose of acquiring the strategic gas reserve. The procurement involved two tenders, resulting in a volume of 20 TWh. Given the continued popularity of natural gas in household heating and its significant use in district heating, this reserve is essential. Additionally, natural gas-based thermal power generation serves as a backup during power shortages and contributes to network stabilisation. The entire 20 TWh of the strategic gas reserve will be available as of 1 November 2022.

Furthermore, an additional amendment to the GWG 2011, specifically section 104, para. 4, enables gas storage undertakings to systematically manage fully or partially unused and booked gas storage capacities, adhering to the "use-it-or-lose-it" principle. Subsequently, these storage undertakings must market the withdrawn capacities to ensure their utilisation for security or supply reasons. The amendment introduces the possibility of revoking the rights of storage undertakings if they violate specified obligations outlined in section 104a, para. 1 of the GWG 2011. For instance, this measure was implemented against storage undertakings of the gas storage facility Haidach ("**UGS Haidach**") in Austria; one of the largest natural gas storage facilities in Central Europe, capable of storing up to 2.9 billion cubic metres of natural gas. Moreover, it is now mandated

that every storage facility in Austria must be connected to the Austrian gas grid by the end of 2022, including UGS Haidach, which was previously connected only to the German gas grid.

In June 2022, the National Parliament passed the Austrian Gas Diversification Act (*Gasdiversifizierungsgesetz 2022*) to facilitate the phase-out of Russian natural gas. This legislation aims to diversify natural gas sources and retrofit plants to use alternative energy sources. A total of €100 million annually from 2022 to 2025 will be allocated as compensation for additional costs incurred. According to the explanatory notes, this pertains solely to costs borne by companies, such as pipeline rights when transporting non-Russian natural gas to Austria or when using non-Russian natural gas, unless replaced by climate-friendly, renewable energy sources or district heating. Additionally, the law promotes the retrofitting of energy production plants in the industrial and energy sector to enable alternative operations with energy sources other than natural gas. Guidelines for fund utilisation, procedures, etc., are yet to be issued.

Thomas Starlinger is a founding partner at Schima Mayer Starlinger Attorneys at Law and has more than 30 years of industry experience in the energy sector. He advises and represents domestic and foreign companies in all facets of energy law. In addition to regulatory and energy issues, these include arbitration proceedings, price revisions, and proceedings before national regulatory authorities and the EU Commission. Before moving into private practice, Thomas gained extensive industry experience through his appointments as: former Head of Legal at OMV's gas business; former CEO of AGGM Austrian Gas Grid Management AG; and former chair of the committee of legal affairs for the Association of Gas and District Heating Supply Companies. Throughout his career, he has acted as a legal adviser to energy producers, suppliers, network operators, and customers, which laid the groundwork for his unique understanding of the needs and challenges of businesses within this industry.

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After completing his legal education at the Faculty of Law of the University of Vienna and following his clerkship in the jurisdictional district of the Higher Regional Court of Vienna, he proceeded to work at Schima Mayer Starlinger Attorneys at Law, moving from paralegal to associate. Beyond his client work, Laurenz actively contributes to publications covering energy-related topics and participates in domestic events and platforms, speaking on current topics and developments in the Austrian energy market.

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