

# **Recent Legal Developments in the Romanian Upstream Sector**

***New Royalties Scheme and Offshore Law***

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# 1. **New Royalties Scheme**

# Context

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- The changes to the royalties scheme provided by the Petroleum Law - on the agenda of the Government of Romania for over 3 years.
- Government's approach:
  - **draft law** to be submitted to the Parliament for approval; the initial draft was made available for public debate in Ministry of Energy's website on 23 October 2017;
  - a sole enactment covering the royalties for petroleum resources, but also the royalties for **mining and hydromineral resources**;
  - the draft law regulates separately the royalties for **onshore** fields and the royalties for **offshore** fields.

# Onshore Royalties

- Same percentage rates as in the current Petroleum Law, applied to the value of the gross production:

## CRUDE OIL / CONDENSATE

Royalty (%)	Gross Production (thousand tons/quarter)
<b>3.5%</b> for fields producing	under 10
<b>5%</b> for fields producing	between 10 and 20
<b>7%</b> for fields producing	between 20 and 100
<b>13.5%</b> for fields producing	over 100

## NATURAL GAS

Royalty (%)	Gross Production (million m <sup>3</sup> /quarter)
<b>3.5%</b> for fields producing	under 10
<b>7.5%</b> for fields producing	between 10 and 50
<b>9%</b> for fields producing	between 50 and 200
<b>13%</b> for fields producing	over 200

- The value of gross production is calculated based on the reference price set by NAMR.
- **New rule:** if the trading price is higher than the reference price, then the royalties will be calculated based on the **trading price**.

# Offshore Royalties – New rates

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- **Crude oil/condensate:**
  - Fixed Rate: **8%** for the total value of gross production
  - Variable Rate:
    - **4.5%** for volumes between 100.000 tons/quarter and 150.000 tons/quarter;
    - **5%** for volumes between 150.000 tons/quarter and 200.000 tons/quarter;
    - **5.5%** for volumes exceeding 200.000 tons/quarter.
  
- **Natural gas:**
  - Fixed Rate: **10%** for the total value of gross production
  - Variable Rate:
    - **2%** for volumes between 200 million m<sup>3</sup>/quarter and 250 million m<sup>3</sup>/quarter;
    - **2.5%** for volumes between 250 million m<sup>3</sup>/quarter and 300 million m<sup>3</sup>/quarter;
    - **3%** for volumes exceeding 300 million m<sup>3</sup>/quarter.

# Offshore Royalties – Application

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- If the same offshore field is operated from **two or more areas of the same block**, upon determination of the applicable rate with a view to calculate the royalty, the total gross production of the entire offshore field will be taken into consideration, irrespective of whether or not such production was traded in whole or in part.
- Gross production includes also all the volumes necessary for the **related activities**.
- The royalty will be calculated based on the **reference price** (the calculation based on the actual trading price does not seem to be applicable for offshore fields).
- The application of the variable rate needs to be further clarified/detailed.

# Reference Price

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- The reference prices will be determined by NAMR, based on a methodology to be approved by order of the President of NAMR, and will be based on (i) the quotation for **Brent crude oil** and (ii) the quotation for natural gas on the centralized market (**OPCOM**).
- At present, the reference price for **crude oil** is calculated in accordance with the methodology approved by NAMR Order no. 98/1998, and it is **based on the quotation for Suez Blend** on the Mediterranean Market (Platt's Oilgram Price Report).
- The current reference price for natural gas is approved by NAMR Order no. 21/2008, being **495 lei/1,000 m<sup>3</sup>**.

# Other Royalties for Petroleum Operations

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- The draft law maintains the current royalties for the other types of petroleum operations:
  - **10%** of the value of the gross income achieved from (i) the **transport and transiting** of petroleum through the National System for the Transport of Petroleum and (ii) the operations carried out through the **oil terminals** belonging to the State;
  - a percentage (to be further approved by Government Decision) from the value of the gross income achieved from the **transport of petroleum through transport systems** other than the National System for the Transport of Petroleum and the petroleum operations carried out through **oil terminals not belonging to the State**;
  - **3%** of the value of the gross income obtained from the operations of **underground storage of natural gas**.



# Other provisions

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- The titleholder is **exempt** from the payment of onshore/offshore royalties for:
  - natural gas which is extracted together with crude oil and which is not used or sold by the titleholder, being put at NAMR's disposal (free of charge);
  - natural gas which is reinjected into the reservoir for technological purposes;
  - the petroleum quantities which are purported to constitute the minimum safety stock.
- The royalties are **payable on a monthly basis**, being due on the **25<sup>th</sup> day of the following month**. The draft law also provides for the consequences of **failure to pay** the royalties (delay interest; obligation for NAMR to terminate for delays exceeding 6 months).
- The calculation of the royalties needs to be further clarified and also detailed in the **methodological norms** (e.g. application of the variable rates for offshore, application of the quarterly thresholds for onshore when the payment is made on a monthly basis).
- The draft law also allows the **updating of the royalties** by means of Government Decision (based on economic opportuneness analyses or based on the RON/EUR exchange rate).

# Petroleum agreements concluded in the past

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- For the petroleum agreements in force, the draft law provides that “*the titleholders [...] shall be subject to payment of **the royalties as such are provided in the concluded agreement** [...], except for the approval of regulations which are more favourable to the titleholders or are mandatory in the European Union*”.
- For new petroleum agreements, the draft law contains a stabilization provision for the royalties.
- Upon **the extension of the duration** of the petroleum agreements, the competent authority will apply the royalty rates in force upon the date of execution of the addendum.
- Possibility of **additional taxes** being imposed by law.

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# 2. Offshore Law

# Introduction

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- **Title:** “Law on certain measures necessary for the implementation of the petroleum operations by the titleholders of petroleum agreements regarding offshore petroleum blocks”.
- **Scope:** special law regulating certain aspects regarding the offshore petroleum projects and establishing derogations from certain enactments (e.g. general enactments whose application is not appropriate considering the particularities of the offshore petroleum operations).
- **Current status:** legislative procedure in front of the Senate; the Chamber of Deputies is the decisional chamber.

# Main provisions of the Offshore Law

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- **The competence for the issuance of the building permits:**
  - the Ministry of Energy will issue the **final act of authority (authorization deed)** regarding the works performed by the titleholders of offshore petroleum agreements, which:
    - will be issued in lieu of the building permit for the works performed in the inland maritime waters, the territorial sea, the contiguous zone, Romania's exclusive economic zone and the continental shelf of the Black Sea and
    - will represent building permit for the inland works performed;
  - the **endorsement issued by the NAMR** will be in lieu of the building permit for the works related to the wells.
- **Documents for the issuance of the building permits:** the draft law contains an exhaustive list of the documents (authorizations, permits, approvals etc.) necessary for the issuance of the final act of authority.

# Main provisions of the Offshore Law

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- **Operational aspects regarding the carrying out of the petroleum operations:**
  - the possibility for the titleholders of petroleum agreements for offshore blocks to carry out certain petroleum operations **outside their petroleum blocks**, for the purpose of bringing the hydrocarbons at sea border (subject to prior notification served to the titleholder of the affected petroleum block and provided that the petroleum operations carried out by the titleholders of such blocks are not negatively affected);
  - the establishment of a general prohibition to place or authorize permanent or temporary constructions inside the **pipelines safety area**;
  - the possibility for titleholders of offshore petroleum agreements to carry out **works** in the Romanian coastal area **all year round**;
  - the **specific deadlines** for the issuance of the final act of authority/NAMR's endorsement, and the **deadlines and validity periods** for various permits, approvals, certificates etc. required for during the permitting process;

# Main provisions of the Offshore Law

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- **Right of way:**

- the draft law regulates a right of way for the titleholders carrying out offshore petroleum operations on the **immovable assets** belonging to the public property or the private property of the State or of the administrative-territorial units;
- the exercising of such right is subject to a notification procedure provided in the draft law and triggers the payment of (i) **compensations** for the right of way in exchange for the limitations to the use of the immovable assets and (ii) **damages** for the losses generated by the exercising of the right of way.

- **Urban planning:**

- all works (up to the coastal terminals) will be made without the prior drawing-up, endorsement and approval of any territorial arrangement documentations and/or any urban planning documentations (even in the absence of a county territorial arrangement plan and of a general urban plan);
- the local authorities have the obligation to transpose into the territorial arrangement plans and the urban planning documents the protected areas and the safety areas generated by the works covered by the draft law.

# Main provisions of the Offshore Law

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- **Other provisions:**

- simpler, more adapted procedures for the fulfilment of the requirements provided by the legislation regarding historical monuments, archaeological sites and national cultural heritage;
- the regime applicable to the work schedule of the personnel carrying out offshore activities;
- stabilization provisions (fiscal matters and royalties) and exclusions from application of certain enactments; abrogation of the GEO no. 160/1999;
- obligation for the non-resident subcontractors of the titleholders to incorporate, within 30 days as of execution of the first contract, and to maintain, for the entire duration of the contract, a subsidiary or a branch in Romania.



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