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To the attention of: Camera Deputaților
Nicolae-Liviu DRAGNEA, Președintele Camerei Deputaților
Comisia pentru industrii și servicii
Iulian IANCU, Președinte

Cc : Toma-Florin PETCU, Ministrul Energiei
Mihai BUSUIOC, Secretar General al Guvernului
Niculae HAVRILEȚ, Președinte ANRE
Otilia Marina, ANRE
Kristof Kovacs, European Commission
Florian Ermacora, European Commission
Dennis Hesseling, ACER

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Subject:

Key elements of EU gas trading // clarification of the Austrian market model in relation to Draft OUG 64/2016 Energy re. Natural Gas Law 123/2012

Dear Sir or Madam,

In relation to the mentioned proposal for an amendment to the Energy and Gas Law Nr. 123/2012 we would like to follow up on our previous letter and provide you in the following with an overview on the key elements of EU gas trading.

I. Key Elements of EU Gas Trading

As mentioned in the ACER Gas Target Model and the Oxford Energy Institutes Paper on Gas Hubs, key components for the development of gas trading are (i) the fulfilment of the **needs of market participants** (producers, traders) in terms of trading and (ii) a **healthy market**, which means that the gas market should feature a certain competitiveness and resilience. The gas market should meet both factors within a

stable, institutionalized market model that is in line with EU law, feature sound framework conditions and is accepted by market participants.

The determining factors for the establishment of such a gas market are inter alia:

- **Number of active market participants:** Only with a substantial number of active participants (both national and international) trading can develop;
- **Traded products, traded volumes:** Significant transaction volumes in standardized products can create liquidity and provide sourcing opportunities;
- **Order book volumes and spreads:** Records show that on liquid hubs, the importance of trading on a trading venues like an exchange increases versus purely bilateral trading relations.
- **Supply sources, market concentration:** Only in a liberalized gas market, the market concentration will be significantly reduced over time and competition will increase; various supply sources are important factors for liquidity.

Achieving substantial results in these categories is a pre-condition for the establishment of a competitive and liquid gas hub / market that can deliver tangible results for domestic and industrial end-consumers. In such a market, independent energy exchanges play a key role by facilitating trading opportunities, mitigating counterparty risk and the provisions of transparent reference prices and price signals to all stakeholders.

It remains therefore of utmost importance for the creation of a liquid market place that producers and traders have the freedom to trade via their preferred arrangements (e.g. directly negotiated bilateral contracts (OTC) or standardized trading on exchanges or other venues). Furthermore, the provision of energy exchange services has to be open to all interested exchange services providers and competition should not be limited and deterred by the prescription of a marketing obligation that favours only one designed centralized gas market operator as foreseen by draft *OUG 64/2016*.

II. Features of the Austrian Gas Market Model

In the discussion it has been voiced that the Austrian gas market model features certain similarities in comparison with some of the proposals of draft Draft OUG 64/2016 (i.e. restriction to market gas via one designated centralized market operator). In this context, we would like to take the opportunity to briefly sketch out the Austrian market model and highlight the most important differences on this matter.



Entry- / Exit System: An Entry- / Exist System according to the EU Network Codes is operated by two gas Transportation System Operators.

Market Area Manager: The Market Area Manager is a one stop shop for the registration as Shipper (Balance Group Responsible Party –“BGRP”); the balancing of the Austrian Market Area East is done by the Market Area Manager on behalf and on account of an imbalanced shipper via the PEGAS gas exchange (of Powernext S.A), which has its seat in France. To enable balancing, the BGRPs are registered members of the gas exchange.

Operator of the Virtual Trading Point: Enables transfer of gas for transactions concluded on exchanges or other (bilateral) trading arrangements (OTC).

The Austrian gas market model does not foresee any limitation or obligation on producers or traders limiting their freedom to conclude gas transactions on a designated venue or by other means. Gas exchange services can be offered by all entities subject to fulfilment of the requirements of the Austrian Stock Exchange Act. Based on the knowledge of the Austrian Gas Market, we know that there are two exchange operators (PEGAS, CME) and at least seven brokers providing services for the Austrian market.

We remain at your disposal to support you with more detailed information as well as our experience and expertise in exchange based gas trading to further discuss the pertinent matter in detail.

Kind regards,

Egbert Laege

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Gottfried Steiner

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10 October 2017

Recent developments draft OUG 64/2016 Energy re. Natural Gas Law 123/2012

Dear Sir or Madam,

In relation to the recent developments regarding the proposed amendment to the Energy and **Gas Law Nr. 123/2012**, we would like to follow up on our previous statements.

With regard to the developments on the Romanian gas market it has come to our attention that the Parliament's Commission for Industries and Services has voted on a draft amendment to the above-mentioned law. We take the liberty to provide you with our comments to this draft for your consideration.



According to our information, the modified draft foresees the introduction of a **marketing obligation for 70%** on a designated platform (OPCOM).

We would like to express our conviction that this type of restrictions / obligations could pose an **infringement EU law** and is moreover bound to have a **disruptive impact** on every aspect of the Romanian - and adjacent gas markets.

With such a law entering into force, **the Romanian gas market would suffer severely**, since producers / gas traders would be deprived of their freedom of marketing gas via their preferred arrangements on a trading venue of their choice. In addition, the **competition between trading platform and gas exchanges** would be de facto eliminated. Likewise, the marketing obligation of certain gas quotas constitutes a market distortion as it hampers **cross-border trades and export**.

Against this background we would like to underline that the development of the Romanian gas market to come up to European level will not be possible, as such a law is

1. in contradiction with European gas trading practice and
2. against EU-law.

The infringement of EU-law is based on the following elements:

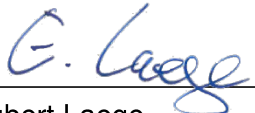
- The obligation to market 70% of the inland production on a designated platform (OPCOM) constitutes a **forbidden restriction on exports** within the meaning of Article 35 TFEU (cf. ECJ Case 118/86 Neertsvoederfabriek, 1987 [ECR] 3883, para 11) which is not justified by the grounds listed in Article 36 TFEU.
- Moreover, such marketing obligation seriously **restricts the freedom to provide services of energy exchanges from other EU Member States**, since it hinders them from providing their services in relation to the Romanian gas market and it creates a material obstacle to competition between operators of trading platforms / exchanges.
- At last, any **substantial marketing obligation** of the inland production via a designated trading venue may be considered as a violation of Article 106 para 1 TFEU, according to which Member States, when conferring special rights or obligations to undertakings, may not create a situation, in which an undertaking infringes Article 102 TFEU. (cf. ECJ Case C-41/90 Höfner and Elser, 1991 [ECR] I-1979).



In order to enhance the development of the Romanian gas market, the **full and complete implementation of the Third Energy Package** should be the utmost priority in order to create a stable regulatory framework and a level playing field for all stakeholders. The introduction of additional national, un-harmonised rules should therefore be kept at an absolute minimum. As the latest ACER reports clearly show, the gas network codes, where implemented, bring about a **positive impact for market functioning and liquidity**.

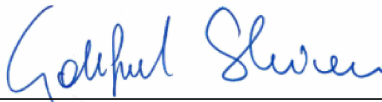
We remain at your disposal to support you with more detailed information as well as our experience and expertise in exchange based gas trading to further discuss this matter.

Kind regards,



Egbert Laege

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