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Project Title:	Development of the objectives of the INOGATE Programme in Romania
Report Type:	Final Report
Submitted on:	July 2001
Countries included:	Romania
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Scope of project:	<p>The overall objective was to create a legal and regulatory environment conducive to private sector investment in oil and gas transport projects. The specific objectives were:</p> <ul style="list-style-type: none">◆ Analysis of the legal and regulatory framework for oil and gas import, export and transit in Romania◆ Development of the legal and regulatory framework for oil and gas import, export and transit to enable investments to be made which will meet the objectives of the INOGATE Programme for the development of the Caspian Sea oil and gas◆ To identify the technical, financial and management requirements and constraints for the implementation of the Multimodal Oil Transport System, capable to carry 10 mil tons of oil per year. <p>Project activities included the following:</p> <ul style="list-style-type: none">◆ Review of existing legislation / regulations◆ Drafting of proposals for new/amended legislation/regulations◆ Consultation with stakeholders◆ Final proposals for legislative/regulation
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**Development of the Objectives of the
INOGATE Programme in Romania**

FINAL REPORT

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Project Title:	DEVELOPMENT OF THE OBJECTIVES OF THE INOGATE PROGRAMME IN ROMANIA	
Project Number:	SUB-PROJECT: RO 9805.01.01-02	
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TABLE OF CONTENTS

<u>1- PROJECT SYNOPSIS</u>	page 3
<u>2- SUMMARY OF PROJECT PROGRESS SINCE THE START OF THE PROJECT</u>	page 4
<u>3- PROJECT PROGRESS IN FINAL PROJECT PERIOD</u>	page 6
<i>Table 3.1 Project Progress Report</i>	page 8
<u>4- OVERALL REPORT ON THE TOTAL PERIOD</u>	page 9
4.1 TASK 1 – REVIEW OF EXISTING LEGISLATION	page 9
4.2 TASK 2 – DRAFTING OF LEGISLATION	page 11
4.3 TASK 3 – CONSULTATION	page 12
4.4 TASK 4 – DRAFTING OF FINAL REPORT	page 14
4.4.1 RECAPITULATION OF FINAL PROPOSALS	page 14
4.4.1.A The ownership of land by foreign persons	page 14
4.4.1.B The refusal to provide hydrocarbon transportation services for reason of performance of public services	page 14
4.4.1.C The legal regime of hydrocarbon pipelines	page 14
4.4.1.D The control of the Common Conveyer and the Natural Gas Conveyer over future pipelines and the operation of an interstate hydrocarbon pipeline	page 15
4.4.1.E The appeal procedure for the refusal of petroleum transportation services	page 15
4.4.1.F The capacity of the Natural Gas Conveyer to trade	page 15
4.4.1.G The Model Natural Gas Transit Agreement by the ANRGN	page 16
4.4.1.H The definition of “secondary office”	page 16
4.4.1.I The court jurisdiction over issues of use of the property of third persons by a natural gas concessionaire	page 16
4.4.1.J The Umbrella Agreement Authorised Competent Entity	page 16
4.4.1.K The proposed draft Methodological Norms on the Establishment of Interstate Hydrocarbon Transportation Systems in Romania	page 18
4.4.2 THE STAKEHOLDERS’ RESPONSE TO THE CONTRACTOR’S PROPOSALS	page 18
<i>Table 4.5 Performance Output</i>	page 19
<i>Table 4.6 Output Performance Summary</i>	page 20
<u>5- LESSONS LEARNED AND RECOMMENDATIONS</u>	page 21

ANNEXES

A	Table of legislation examined by the Contractor
B	Table of legislation forming the object of consultation
C	List of invitations to the Project Workshop
D	List of participants in the Project Workshop
E	Draft Methodological Norms on the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (revised)
F	Signed Documents for the Establishment of the Constanta - Omisalj Oil Pipeline Project

1- PROJECT SYNOPSIS

Project Title:	DEVELOPMENT OF THE OBJECTIVES OF THE INOGATE PROGRAMME IN ROMANIA
Project Number:	RO 9805.01.01-02
Country:	ROMANIA

Project objectives:

The overall objective is to create a legal and regulatory environment conducive to private sector investments in oil and gas transport projects. The specific objectives are:

- analysis of the legal and regulatory framework for oil and gas import, export and transit in Romania;
- development of the legal and regulatory framework for oil and gas import, export and transit to enable investments to be made which will meet the objectives of the INOGATE Programme for the development of Caspian Sea oil and gas.

Planned output:

1. Findings of the legislative analysis, including the identification of the problem areas, with an indication of severity, and an explanation of proposed changes to the legislative and regulatory framework.
2. Draft legislative and regulatory texts, including a presentation of guidelines and rationale of the drafting exercise; reference to sources; and a presentation of the proposed texts and their integration in the legal framework.
3. Proposal on content and implementation, containing agreements between stakeholders on the content of proposed legislative framework, and an action plan and timetable for implementation of the said framework.
4. Report on the principal findings of bilateral consultation, as well as a report on the Workshop and its findings; and an account of the changes made between the completion of Task 1 and Task 3.
5. Draft Final Report, containing the final drafts of legislation and the proposed action plan and timetable for implementation. To ensure a smooth follow-up, the Report will also include the Contractor's observations of difficulties encountered in completing the project.
6. Final Report, the final version of the above as approved by the Steering Committee.

Planned input:

313 man-days of EU experts, 195 man-days of local experts
(following the re-allocation approved by the Implementing Authority on 17/05/2001).

Project activities:

- Review of existing legislation/regulations;
- Drafting of proposals for new/amended legislation/regulations
- Consultation with stakeholders;
- Final proposals for legislation/regulation.

Project start date:

6th January 2001

Project duration:

6 months

2- SUMMARY OF PROJECT PROGRESS SINCE THE START OF THE PROJECT

The implementation of the Project began on 06/01/2001 with Task 1 which consisted in the collection and translation of the Romanian legislation and the administrative regulations having an effect on the establishment and operation of interstate hydrocarbon transportation systems (pipelines or others) and their assessment on the basis of the provisions and principles of the institutional systems of the Energy Charter Treaty and the INOGATE Umbrella Agreement. The texts collected, translated and assessed were more than 45 amounting to 400+ pages and included:

- legislation pertaining to the hydrocarbon sector and its regulation;
- legislation on the protection and promotion of investments;
- legislation on the protection of the environment;
- legislation on issues affecting interstate hydrocarbon transportation projects (such as public property and expropriation);
- legislation on tariffs, customs duties and excises;
- international agreements to which Romania is party.

During the course of the Project, additional texts were processed in order to provide a complete and up-to-date evaluation of the Romanian legislation and administrative practice.

Due to the volume of the texts, the implementation of Task 1 lasted 13 weeks instead of the planned 11, without, however, delaying the overall implementation of the Project since other Tasks were pursued in parallel.

Task 2, namely the drafting of legislation on the basis of the findings of Task 1, followed and the Contractor chose to follow a pragmatic approach: the expert input did not focus exclusively on "legal considerations" (i.e. on the comparison between the international commitments of Romania under the Energy Charter Treaty and the INOGATE Umbrella Agreement with the existing provisions of the Romanian legislation - in any case, the "violations" were limited in number and scope) but also extended to "market considerations", that is, the legal and institutional requirements that increase the security and confidence of prospective investors. In other words, the Contractor's input was not only the identification of legal provisions which had to be amended due to the international commitments of Romania, but also which legislative modifications and additions were advisable in order to provide for a clear and consistent legal environment in order to reduce non-financial risks and attract investments.

The implementation of Task 2 was delayed for 3 weeks due, in part, to the late completion of Task 1 but principally to the need to have extensive consultations with the hydrocarbon sector actors in an effort to identify issues of interest to them on the basis of their everyday regulatory and commercial activities. To that end, a questionnaire was elaborated and delivered, allowing the Contractor valuable insight to the problems and challenges faced in practice and needing to be addressed.

As noted, Task 3, which involved consultations with a large number of stakeholders (ministries, regulatory authorities, state-owned enterprises, international financial institutions) formed the backbone of the Project and its eventual success and extended almost throughout the Project's duration, lasting 21 weeks rather than the originally planned 7 weeks. This made the Project highly interactive and is considered by the Contractor to have been the only way of achieving the objectives of the Project within the limited Project duration while leading to practicable, tangible and, most importantly, generally accepted proposals. Task 3 culminated in the 2-day Project Workshop which provided the forum for a very open discussion among a large number of key officials and

stakeholders and resulted in several important, innovative and unanimously supported proposals for the amendment of Romanian legislation.

Task 3, following the decision of the Steering Committee for the postponement of the Workshop by 3 weeks, extended up to the day-before-last of the Project, leaving a nominal duration of one day for Task 4, namely the submission of the draft Final Report. However, due to the exhaustive consultations and the widespread acceptance of the Contractor's proposals by the key stakeholders and the Implementing Authority, the originally planned 3 weeks for the review and commentary of the Contractor's proposals by the Implementing Authority was no longer necessary and, therefore, the implementation and success of the Project was not negatively affected.

The Project had another, albeit indirect, successful output: largely thanks to the Contractor's proposals under the present Project and his direct expert input under another INOGATE Project, a series of agreements signaling the commencement of the Constanta - Omisalj Oil Pipeline project were signed between the competent state authorities and commercial entities of the three states involved, Romania, Federal Republic of Yugoslavia and Croatia.

All in all, the Project met and exceeded all its planned objectives and gained the officially-expressed appreciation of all the stakeholders. What remains is for the proposals borne from the Project to be adopted and implemented and for the practical applications of these proposals (such as the aforementioned Constanta - Omisalj Oil Pipeline project) to proceed without delay through the provision of the necessary technical assistance.

3- PROJECT PROGRESS IN ÔÇÅ FINAL PROJECT PERIOD

The final Project period, originally scheduled to last one month and cover the submission of the draft Final Report and its amendment on the basis of the comments of the Implementing Authority, in effect lasted only one day (27 June 2001) due to the following reasons:

- the rescheduling of the Project's Workshop, which was originally arranged for 5 - 6 June 2001 but was postponed after the Meeting of the Steering Committee in mid-May 2001 for 25 - 26 June 2001;
- the interpretation of the Project's Service Contract by the CFCU according to which the Project ends 6 months after the signature of the Contract, (that is, on 28 June 2001) whereas the Contractor had clearly and repeatedly indicated in the various Task Reports that he considered the Project Completion date to be 6 July 2001 (that is, 6 months after the start of project implementation) and the Implementing Authority had not expressed any objection;
- the non-approval by the CFCU of the extension of the Project duration by 3 weeks as requested by the Contractor and approved by the Implementing Authority.

However, despite its short duration, the final phase of the Project reserved a very significant development which has been, to a very large extent, a direct result of the work done under the Project and of the Contractor's expert input.

A number of documents which signal the beginning of the Constanta - Omisalj Oil Pipeline project (which is a development of the Constanta - Trieste Oil Pipeline project actively supported by Romania during the last few years) were signed between state and commercial entities from the three states involved (Romania, Federal Republic of Yugoslavia, Croatia). As the following press release of the European Delegation in Romania indicates:

The European Commission Delegation in Romania announces the signature of a series of documents¹ regarding the establishment of the Constanþa – Omisalj Oil Pipeline project, related to the European Union's INOGATE programme.

The principal objectives of INOGATE Programme are to:

- *help attract investments and financing from private and public sources into the rehabilitation and extension of the oil and gas transmission networks;*
- *facilitate the creation of multiple pipelines from East to West ;*
- *establish the appropriate institutional framework for these operations.*

The establishment of the Constanþa – Omisalj Oil Pipeline project will contribute to the above-mentioned objectives. It would enhance significantly the development of the regional co-operation among the participant countries and their integration into the world economy, being also compatible with the objectives of the Stability Pact and EU policy on the security of energy.

The documents for the Constanþa – Omisalj Oil Pipeline project have been signed in a Trilateral Meeting held in Belgrade on 28 - 29 June 2001. The meeting was attended by representatives of the Governments of Romania, The Federal Republic of Yugoslavia, Republic of Croatia and the following companies: SNP

¹ The above-mentioned documents are as follows: a draft interstate Protocol to the INOGATE (Interstate Oil and Gas Transport to Europe) Umbrella Agreement, a Memorandum of Co-operation between the companies involved in the project and a Concluding Statement.

PETROM SA (Romania), CONPET SA (Romania), S.C. OILTERMINAL S.A. (Romania), NIS Petroleum Industry of Serbia (F.R. Yugoslavia) and JADRANSKI NAFTOVOD (Republic of Croatia).

The signature represents a direct result of the recently concluded European Union's PHARE Project "Development of the Objectives of the INOGATE Programme in Romania". This programme assessed all aspects of Romanian legislation affecting interstate hydrocarbon transportation projects, and made proposals which would render the establishment and operation of such systems in Romania more sound institutionally and attractive for investments.

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The above concrete result vindicates the approach of the Contractor who wished to have an approach based not only on legal considerations but also on "market considerations", i.e. the legal and institutional requirements that increase the security and confidence of prospective investors. Moreover, the Contractor paid special attention to the efficient coordination of the government and administrative mechanisms in order to provide a "one-stop shop" facility to prospective investors by streamlining and accelerating the internal procedures while providing reliable and uniform government and administrative handling of all issues related to the establishment and operation of interstate hydrocarbon transportation projects in Romania.

This approach within the present Project, as well as direct expert input by the Contractor to the aforementioned parties in the framework of other INOGATE Projects have resulted in a specific, major hydrocarbon transportation project to commence its process of establishment and operation to the benefit of all parties involved.

TABLE 3.1: PROJECT PROGRESS REPORT

Not available

4 - OVERALL REPORT ON THE TOTAL PROJECT

4.1 TASK 1 – REVIEW OF EXISTING LEGISLATION

Task 1 consisted of the following activities:

- the inventory of international and national primary and secondary legislation concerning hydrocarbon imports and transit, as well as related areas of legislation;
- the review of existing Romanian legislation and regulations concerning hydrocarbon imports and transit in the light of the institutional systems and the provisions of the Energy Charter Treaty and its associated draft Protocols, on one hand, and the INOGATE Umbrella Agreement, on the other;
- the identification of problem areas, both in terms of legislative provisions and actual administrative implementation, negatively affecting hydrocarbon import and transit and their corresponding investments;
- the initial proposed legislative amendments and initiatives required to overcome the problems identified.

The implementation of the Project began on 06/01/2001. The texts collected, translated and assessed were more than 45 amounting to 400+ pages and included:

- legislation pertaining to the hydrocarbon sector and its regulation;
- legislation on the protection and promotion of investments;
- legislation on the protection of the environment;
- legislation on issues affecting interstate hydrocarbon transportation projects (such as public property and expropriation);
- legislation on tariffs, customs duties and excises;
- international agreements to which Romania is party.

During the course of the Project, additional texts were processed in order to provide a complete and up-to-date evaluation of the Romanian legislation and administrative practice.

Due to the volume of the texts, the implementation of Task 1 lasted 13 weeks instead of the planned 11, without, however, delaying the overall implementation of the Project since other Tasks were pursued in parallel.

Task 1 was concluded with a Report which:

- briefly presented and discussed the benchmarks against which the Romanian legislation was assessed, that is the INOGATE Umbrella Agreement and the Energy Charter Treaty as well as their associated texts; the Report indicated the similarities and the differences between the two institutional systems and highlighted the requirements that these two institutional systems place upon the legislative orders of their states-parties, thus allowing for the comparison with the Romanian legislation and the subsequent identification of problem areas;
- contained an inventory of all legislative acts that the Contractor's legal experts had reviewed and a commentary on texts and issues of importance, in order to assess the degree of conformity of the Romanian legislation to the requirements of the two aforementioned international institutional systems.

On the basis of the examination of the current Romanian legislative texts referred to above, the Contractor was of the opinion that the Romanian legislation is overall in line with the requirements set by the Energy Charter Treaty institutional system.

The areas of incompatibility with the Energy Charter Treaty provisions were found to be essentially the following:

- the prohibition of ownership of land within the Romanian territory by foreign natural or legal persons;
- the apparent maintenance of the petroleum concessionaire's obligations even in the case of unilateral amendment of the concession contract by the Romanian state;
- the refusal of providing transportation services for reasons of "public service", as allowed by the current legislation, may be contrary to the related requirements of the Energy Charter Treaty;
- the lack of obligation of the common conveyer to provide for the creation of additional capacity may be a violation of related provisions of the Energy Charter Treaty;
- depending on the final wording of the draft Model Intergovernmental Agreement on Transit and the degree of compliance with it that will be required, the (remote) possibility that the private ownership of pipelines currently falling under the classification of "main" (state-owned) pipelines will have to be allowed by the Romanian legislation.

However, in spite of the fact that, with the few exceptions noted above, there is no pressing requirement for the significant amendment of the Romanian legislation in order to conform to the requirements of the Energy Charter Treaty, the Contractor identified areas of legislation which are in need of improvement, in terms of clarity, systematic approach and efficiency. For example:

- the current regime of "main" pipelines is confusing and probably deterring to investors;
- the current regime on the national system of petroleum operations poses some problems, especially concerning the possibility of common operation of an interstate pipeline by a single entity;
- the expropriation process currently provided by the Romanian legislation allows for a total of 130 days of administrative procedures plus and unknown number of months in the case the courts are involved: a more streamlined procedure would be desirable, at least for the case of critical projects, such as major pipelines.

The Contractor proposed that the consultation process which was the next major phase of the Project should direct its attention, apart from rectifying the few remaining provisions of Romanian Law that are contrary to the provisions of the Energy Charter Treaty in a strict legal sense, to the improvement of the practical efficiency of the legislation governing hydrocarbon transportation and related project establishment and operation.

To that end, and following initial contacts with the key stakeholders, the Contractor proposed to expand the interactive character of the Project and seek the opinion of the stakeholders through a questionnaire which would indicate which areas and items of legislative improvement the stakeholders consider necessary or desirable. In that sense, the final proposals would have the maximum degree of relevance, as they would be the product of the active and early participation of the entities which will be called to implement them.

The Contractor also noted that the recent invigoration of the Constanta - Omisalj Oil Pipeline project was a first-rate opportunity to identify the actual problems in practice that such a project would have to face and overcome, being in a sense a pilot for the development and fine-tuning of the Romanian legal environment regarding hydrocarbon transportation and the related projects.

4.2 TASK 2 - DRAFTING OF LEGISLATION

Task 2, namely the drafting of legislation on the basis of the findings of Task 1, followed and the Contractor chose to follow a pragmatic approach: the expert input did not focus exclusively on "legal considerations" (i.e. on the comparison between the international commitments of Romania under the Energy Charter Treaty and the INOGATE Umbrella Agreement with the existing provisions of the Romanian legislation - in any case, the "violations" were limited in number and scope) but also extended to "market considerations", that is, the legal and institutional requirements that increase the security and confidence of prospective investors. In other words, the Contractor's input was not only the identification of legal provisions which had to be amended due to the international commitments of Romania, but also which legislative modifications and additions were advisable in order to provide for a clear and consistent legal environment in order to reduce non-financial risks and attract investments. The INOGATE Umbrella Agreement institutional system addresses exactly this kind of benchmarks, aiming to fulfill the requirements of the states, investors, contractors, and users involved in such a project in a balanced, clear and efficient way. In other words, the "legal" benchmarks reflect amendments which are imposed from the top down (i.e. international Law) and are mandatory whereas the "market" benchmarks refer to elements which are considered by market conditions (i.e. investors, international financial institutions, etc.) but are facultative. It is noted here that "market" benchmarks would also include various forms of investment incentives (such as tax and customs duties exemptions), but the Contractor limited himself to purely institutional issues, such as legislative provisions which offer adequate guarantees, are sufficiently clear and enforceable, and correspond to international and EU standards.

The Contractor's approach in proposing the changes deemed necessary was:

- *Minimalist*, in the sense that the changes were formulated in a way limiting their possible repercussions to already existing legislation to the maximum possible degree, in order not to create undue disturbance in the Romanian legal order;
- *Integrated*, in the sense that the changes proposed took into account the existing legislation and blend in harmony with existing Laws;
- *Realistic*, in the sense that the capacity of the Romanian legislative and administrative mechanism, as well as the prevailing economic, social and political conditions were taken into account;
- *Modular*, in that where major changes are proposed, a step-by-step approach, both in terms of content and of time of implementation, were presented to allow for the smooth transition into the new regime.

Particular care was paid to the rationalisation of the pre-investment phase of an interstate hydrocarbon transportation system, i.e. the phase where the intentions of prospective partners (both on a state and on a commercial level) are explored, the feasibility of a project is assessed and the institutional and contractual framework of the project is worked out. At this sensitive stage, where the risk of the investor is greatest (since there are no guarantees that the project will progress), the Romanian State should move effectively and decisively to streamline the procedures by which it collectively handles such opportunities. This streamlining of the initial phase encompasses:

- the co-ordination of all Ministries and other government agencies, autonomous and regulatory authorities and state-controlled enterprises involved in a proposed project;
- the existence of a procedure of consultation between the above entities under the established initiative of the Ministry of Industry and Resources in order to eliminate duplication of effort or, opposite, delays in response due to unclear delimitation of competence;

- the strengthening of the negotiating power and ability of the Romanian State as a direct result of efficient use of the expertise available at its disposal;
- the offer to investors of a "one-stop shop" procedure by which foreign investors or states interested in the establishment of an interstate hydrocarbon transportation system are informed about the government agency and the procedure they should follow.

The Contractor underlined that the existence of an established procedure for the assessment and further development of proposed projects of interstate hydrocarbon transportation could offer an important comparative advantage to Romania over other states which could host competitive projects. Moreover, such a co-ordinated response and support on the part of the State will indirectly but certainly assist Romanian enterprises (state-owned or private, which are active in relevant sectors to benefit from the swift and efficient establishment of a major project, such as an interstate hydrocarbon transportation system.

The implementation of Task 2 was delayed for 3 weeks due, in part, to the late completion of Task 1 but principally to the need to have extensive consultations with the hydrocarbon sector stakeholders in an effort to identify issues of interest to them on the basis of their everyday regulatory and commercial activities.

4.3 TASK 3 – CONSULTATION

Task 3, which involved consultations with a large number of stakeholders (ministries, regulatory authorities, state-owned enterprises, international financial institutions) formed the backbone of the Project and its eventual success and extended almost throughout the Project's duration, lasting 21 weeks rather than the originally planned 7 weeks. This made the Project highly interactive and is considered by the Contractor to have been the only way of achieving the objectives of the Project within the limited Project duration while leading to practicable, tangible and, most importantly, generally accepted proposals.

The Contractor's missions to Bucharest were regular, involving 10 EU experts in 28 visits of a duration ranging from a single day to more than a week in a stretch. It is characteristic of the emphasis placed on close and regular contact with the stakeholders that the Project Manager, Thomas LAMNIDES spent a total of 56 days in Bucharest in a period of 6 months and the EU Experts Manager, Konstantinos MARKOULAKIS spent 36 days on-site during the same period. This intense consultation exercise familiarised the Contractor with the views of all the stakeholders and allowed the initial, informal discussion of ideas and proposals prior to their formal elaboration and submission. In that way, the Contractor could move with more accuracy and confidence regarding the formulation of realistic and acceptable proposals while having the opportunity to present to the stakeholders over repeated meetings the rationale and guidelines of the Contractor's approach. It must be noted that several stakeholders commented approvingly on this unconventional degree of interaction between an EU Contractor and the Beneficiary and the Contractor feels that the success of the Project depended, to a large extent, to the close professional relations developed in a short time between the Contractor and the stakeholders.

Task 3 culminated in the 2-day Project Workshop which provided the forum for a very open discussion among a large number of key officials and stakeholders and resulted in several important, innovative and unanimously supported proposals for the amendment of Romanian legislation.

The Project's Workshop was held in Bucharest on Monday 25 and Tuesday 26, 2001, in order to present and discuss with the major stakeholders the Contractor's findings and proposals in view of the submission of the Project's Final Report.

The Workshop had been originally scheduled for June 5 and 6, 2001, but, following consultations with the Steering Committee, was moved to the later dates.

The Workshop was attended by a large number of representatives of the key stakeholders (see annexed List of Invitations and List of Attendees).

The Contractor designed the Workshop in a way limiting the presentations to an absolute minimum and devoting most of the available time to an open discussion of the issues of interest to the Project.

To that end, a bi-lingual 85-page book titled "INTRODUCTION TO THE INOGATE UMBRELLA AGREEMENT INSTITUTIONAL SYSTEM – Collection of essays and texts" was printed especially for the Project and distributed to the Workshop participants in order to familiarise them with all aspects and utilities of the INOGATE Umbrella Agreement; moreover, copies of the 280-page book titled "FINANCING OF OIL AND GAS PROJECTS – INOGATE REFERENCE BOOK" prepared in the framework of the INOGATE Programme were also distributed to the participants to facilitate future implementation of the INOGATE Programme in Romania. Finally, a Workshop Dossier including a the initial draft of the proposed Law on the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (in both English and Romanian) as well as writing material and the list of participants was also distributed at the Workshop.

It must also be mentioned that parts of the Task 2 Report referring to the identification and assessment of problem areas had been distributed to the stakeholders before the Workshop according to the instructions of the Implementing Authority.

The discussion centred around two issues: on one hand, the points of interest that the Contractor has identified in the Romanian legislation which require some sort of amendment or clarification and, on the other hand, the discussion of the draft Law on the Establishment of Interstate Hydrocarbon Transportation Systems in Romania proposed by the Contractor.

The Project's Workshop was an unqualified success.

Twenty-two of the top officials of the key stakeholders along with fifteen EU and Romanian experts of the Contractor had a two-day lively and open discussion on a wide range of issues affecting the establishment of interstate pipelines in Romania and the related challenges that such a prospect brings.

The participants approved the proposals of the Contractor and showed great interest in using these proposals in order to modify the national legislation in order to create a more stable, secure and efficient legal environment for the required investments.

The Contractor submitted the Task 3 Report presenting in adequate detail the points made by the stakeholders during the Workshop. By the time of submission of Task 3 Report, the Contractor had received from the Legislation, Management and Contentious Division of the Ministry of Industry and Resources as well as from the President of the National Agency for Mineral Resources the written approval of the Contractor's proposals as well as praise for the Contractor's successful efforts in the project.

4.4 TASK 4 – DRAFTING OF FINAL REPORT

Task 3, following the decision of the Steering Committee for the postponement of the Workshop by 3 weeks, extended up to the day-before-last of the Project, leaving a nominal duration of one day for Task 4, namely the submission of the draft Final Report. However, due to the exhaustive consultations and the widespread acceptance of the Contractor's proposals by the key stakeholders and the Implementing Authority, the originally planned 3 weeks for the review and commentary of the Contractor's proposals by the Implementing Authority was no longer necessary and, therefore, the implementation and success of the Project was not negatively affected.

The present Final Report, apart from its administrative aspects as dictated by the Guidelines on Administrative Reporting of the European Commission, serves another, more substantial purpose: the crystallisation of the proposals jointly formulated by the Contractor and the stakeholders regarding the improvement of the Romanian legislation in a way conducive to investments for the establishment of interstate hydrocarbon transportation systems in Romania.

This Report will present the issues raised during the Project and the Workshop and the final positions and formulations adopted by the Contractor and the stakeholders on each issue.

4.4.1 RECAPITULATION OF THE FINAL PROPOSALS

4.4.1.A THE OWNERSHIP OF LAND BY FOREIGN PERSONS

The Contractor proposed, as a measure of immediate application which could increase investor confidence and security the incorporation of a provision with the following wording

Any Romanian legal entity, regardless of the origin and distribution of its share capital and the nationality of its shareholders, may acquire ownership of land that is necessary for the fulfillment of its statutory objectives and the carrying out of its legitimate activities.

be adopted either as an amendment of the Law 54/98 on the Acquisition of Land or of the Law on Direct Investments (the existing Law 241/98 or the draft law currently under elaboration) or of both.

The stakeholders had no objection to the proposal of the Contractor.

4.4.1.B THE REFUSAL TO PROVIDE HYDROCARBON TRANSPORTATION SERVICES FOR REASON OF PERFORMANCE OF PUBLIC SERVICES

The discussion of the issue at the Workshop revealed that the competent Romanian authorities are well aware of the potential danger of abuse of the invocation of performance of public services and stated unequivocally that no such abuse will be allowed to happen.

4.4.1.C THE LEGAL REGIME OF HYDROCARBON PIPELINES

The discussion at the Workshop clearly indicated that this issue is not urgent but its parameters have been adequately discussed and, in the remote case where the Energy Charter Treaty draft Agreements finally impose the possibility of private ownership of hydrocarbon pipelines. The prospect of adapting the Romanian legislation to that effect will be examined at that time.

4.4.1.D THE CONTROL OF THE COMMON CONVEYER AND THE NATURAL GAS CONVEYER OVER FUTURE PIPELINES

This is one of the most pertinent issues as regards the INOGATE Umbrella Agreement, which strongly favors the concept of common pipeline operation. The stakeholders agreed that the present regime is not clear on the issue, although they saw no legal impediment in the possibility of control over future pipelines by entities other than the Common Conveyer and the Natural Gas Conveyer.

It is noteworthy that the new draft Petroleum Law will contain related provisions which apparently have been influenced by the Contractor's proposals.

4.4.1.E THE APPEAL PROCEDURE FOR THE REFUSAL OF PETROLEUM TRANSPORTATION SERVICES

The Contractor proposed the amendment of Article 36 of the Petroleum Law, by adding letter l) as follows:

l) settles disputes between the common conveyer and the applicant, in respect to the common conveyer's refusal to provide services of petroleum transportation.

and the amendment of Article 64³ par. 2 of the Government Decision no. 1265/1996 on Methodological Norms for the application of the Petroleum Law no. 134/1995 (as amended by Government Decision 1363/2000) to read as follows:

Any refusal of the common conveyer to provide services of petroleum transportation shall be duly justified and promptly communicated in writing to the applicant and the National Agency of Mineral Resources. The applicant may appeal the refusal before the National Agency of Mineral Resources, which shall issue its decision on the dispute within 30 days. Also the National Agency of Mineral Resources may scrutinise by own initiative the cases of refusal of services by the common conveyer. The decision of the National Agency of Mineral Resources may be appealed before the administrative division of the Court of Appeals, by either the Common Conveyer or the applicant, according to Civil Procedure Code. The unjustified refusal of the common conveyer for provision of services of petroleum transportation shall entail its civil liability.

The stakeholders had no objection to that proposal.

4.4.1.F THE CAPACITY OF THE NATURAL GAS CONVEYER TO TRADE

The discussion of the issue at the Workshop revealed that the capacity of the Conveyer to trade natural gas was ancillary to its main transport operations and regarded the cases of the payment of transport fees in kind and of the trading of natural gas if the related transport fees were not duly paid. Therefore, the issue was considered as not requiring any urgent amendment or intervention.

4.4.1.G THE MODEL NATURAL GAS TRANSIT AGREEMENT BY THE ANRGN

The ANRGN will wait for the related developments in the forum of the Energy Charter Treaty in order to adopt similar model agreements. The ANRGN, according to its statement, has scheduled the issuance of the model agreement to take place during 2001, providing guidelines and leaving the negotiations of specific aspects and provisions to the contracting parties.

4.4.1.H THE DEFINITION OF "SECONDARY OFFICE"

The Contractor proposed that, for reason of clarity, the following provision amend art. 58, par. 7, of Ordinance 60/2000 as currently in force:

The applicant which does not have a permanent office in Romania may legally establish and maintain, in accordance with the Trading Companies Law 31/90, a secondary office – agency, representation or other similar offices – for the entire duration of the authorization and/or license.

The stakeholders had no objection to this proposal, apart from the ANRGN which considered the amendment as redundant in view of the provisions of Art. 44 of Law 31/1990.

4.4.1.I THE COURT JURISDICTION OVER THE ISSUES OF USE OF THE PROPERTY OF THIRD PERSONS BY A NATURAL GAS CONCESSIONAIRE

The Contractor proposed that, for reason of clarity, the following provision amend art. 76, par. 2, of Ordinance 60/2000 as currently in force:

If the agreement provided in par. (1) between the concessionaire and the owner or, as the case may be, the holder of the activity provided in art. 70 letter d), at the request of the concessionaire the common court shall issue a decision which is executive for the rights provided in par. (1).

The stakeholders had no objection to this proposal.

4.4.1.J THE INOGATE UMBRELLA AGREEMENT AUTHORISED COMPETENT ENTITY

The stakeholders agreed with the Contractor's proposal to nominate the Ministry of Industry and Resources as the Authorised Competent Entity of Romania for oil and natural gas for the purposes of the INOGATE Umbrella Agreement.

The related texts drafted by the Contractor are as follows:

**GOVERNMENT DECISION No __ ON THE NOMINATION OF THE
MINISTRY OF INDUSTRY AND RESOURCES AS THE AUTHORISED
COMPETENT ENTITY FOR THE PURPOSES OF THE INOGATE
UMBRELLA AGREEMENT ON THE INSTITUTIONAL FRAMEWORK FOR
THE ESTABLISHMENT OF INTERSTATE OIL AND GAS
TRANSPORTATION SYSTEMS**

**ISSUER:
PUBLISHED:**

The Romanian Government hereby decides:

SOLE ARTICLE

- 1. The Ministry of Industry and Resources is nominated as the Authorised Competent Entity representing both petroleum and natural gas sectors for the purposes of the INOGATE Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation System.***
- 2. The General Directorate for Oil and Gas of the Ministry of Industry and Resources shall handle contacts with the Depositary of the Agreement, other signatory States and parties interested in the implementation of the Agreement and the establishment of interstate hydrocarbon transportation systems in the territory of Romania.***
- 3. The Ministry of Industry and Resources shall submit to the Government a yearly report on the discharge of the tasks mentioned herein.***

Signatures - countersignatures

and the text of the notification of the appointment of the Authorised Competent Entity to the INOGATE Umbrella Agreement Depositary would be as follows:

Ministry of Foreign Affairs of Romania

***To the Depositary
of the INOGATE Umbrella Agreement on the Institutional Framework for
the Establishment of Interstate Oil and Gas Transportation Systems
Ministry of Foreign Affairs of the Republic of Ukraine
Kiev***

NOTIFICATION UNDER ART. 13.1

Pursuant to the provisions of Article 13, par. 1 of the INOGATE Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation Systems signed and ratified by Romania, we hereby inform the Depositary and the States-Parties that the Authorised Competent Entity for both oil and natural gas sectors shall be the Ministry for Industry and Resources.

The Minister of Foreign Affairs

4.4.1.K THE PROPOSED DRAFT METHODOLOGICAL NORMS ON THE ESTABLISHMENT OF INTERSTATE HYDROCARBON TRANSPORTATION SYSTEMS IN ROMANIA

Apart from the above focused proposed amendments of the Romanian legislation, the Contractor addressed the issue of the establishment of pipeline projects in Romania from a more practical, business-oriented perspective. The central idea is the creation of a procedure which will establish a "one-stop-shop" approach for the commencement of projects of that kind: in other words, the main aim of the proposed text is to determine a contact point between the whole Romanian government and administration, on one hand, and prospective investors, on the other, in order to expedite and facilitate communications and decision-making. The Contractor underlines that a country possessing a clear-cut procedure for handling such projects will have a definite comparative advantage vis-à-vis other neighboring (therefore competitive) states in the attraction of foreign investments of the magnitude required for such large infrastructure projects. Moreover, the proposed draft Law addresses several issues of interest to foreign investors.

Several participants to the Workshop noted that, systematically speaking, the provisions of the proposed draft Law should be incorporated in the new draft Petroleum Law currently under final elaboration. However, the problem is that the draft Petroleum Law should be finalised by mid-July at the latest, leaving no time for the comprehensive examination and commentary on the Contractor's proposals by the appropriate authorities. In response, the Contractor proposed to incorporate in the new draft Petroleum Law an article stating that the Ministry of Industry and Resources shall elaborate the Methodological Norms for the Establishment of Interstate Hydrocarbon Transportation Systems in Romania; in that way, the draft Petroleum Law shall not be delayed and the appropriate authorities shall have enough time to elaborate the wording of the provisions related to said projects. The Contractor's proposal met with the general approval of the participants.

The Contractor's proposal in its new guise as draft Methodological Norms appears in annex, incorporation also the comments made by the stakeholders during and after the Workshop.

4.4.2 THE STAKEHOLDERS' RESPONSE TO THE CONTRACTOR'S PROPOSALS

As mentioned before, the Contractor's proposals met with the almost complete and unanimous approval of the stakeholders, as indicated in the previous section. As indicated in correspondence with the Ministry of Industry and Resources, the Contractor's proposals will be included in the Ministry's draft Laws for the amendment and completion of the Petroleum Law 134/1995 and of the Government Order 60/2000, both scheduled to take place during 2001. Moreover, the proposals regarding the provision of security guarantees to financing institutions and the common operation of an interstate pipeline by a single entity were seen as important novelties in the Romanian legislation able to attract foreign investments.

More importantly, the Project's Workshop allowed the stakeholders to clear, mainly among themselves, their views on many practical aspects as well as more strategic options regarding hydrocarbon transportation and related projects. It is noteworthy that the Ministry of Industry and Resources considered the discussions during the Workshop as "valuable for clarifying issues of interest" and that the Project was distinguished by its unconventional approach and very close co-operation of the Contractor with the stakeholders by means of regular visits and discussions throughout the Project.

The NAMR and the ANRGN also highly praised the Contractor's input and the overall Project in writing.

4.5 PERFORMANCE OUTPUT CHART

Not available

4.6 OUTPUT PERFORMANCE SUMMARY

Not available

5 - LESSONS LEARNED AND RECOMMENDATIONS

- I. This Project reaffirmed the lesson already learned by the Contractor in other INOGATE Projects, namely that **the success of the Project does not only depend on the quality of the Contractor's expert input but also –and perhaps principally- to the degree and quality of the Contractor's co-operation with the beneficiaries.** Indeed, the importance of having a large part of the expert input provided on-site cannot be overemphasized: it is of great assistance because it allows the Contractor to be immersed in the environment which he is called to propose amendments for, because it speeds up the exchange of views and proposals, and because it creates personal bonds which are valuable for the quality of the final output of the project.
- II. The Project would have greatly benefited from a modest extension (no more than one month) or, even better, from an initial duration of around 9 months. The Contractor had to make an all-out effort to achieve the required results within the very limiting time-frame of 6 months. Frankly, the Contractor feels that only his experience with other INOGATE Projects and his familiarity with related issues enabled him to complete the tasks on time and produce more than amendments proposed on the basis of a desk study. It is also fortunate that the Romanian legislation proved to be in-line with the international standards to a large degree, otherwise the volume of the Contractor's input and the time required would have been even greater. In view of his experience in that field, the Contractor believes that **legislative amendment projects should have a duration of no less than 9 months and ideally should last a year.**
- III. The example of the Constanta – Omisalj Oil Pipeline project highlights **the importance of theory and practice being closely linked.** In the present Project, the general approach of the Contractor as regards the legislative amendments was of direct influence to the progress of a particular application of this approach in the form of a major interstate pipeline. In the opposite sense, the ongoing progress of the pipeline project allowed the Contractor to have a first-hand view of the shortcomings of the Romanian legislation and practice and form his proposals accordingly.
- IV. **The dynamic evolution of the Constanta – Omisalj Oil Pipeline project must be maintained through EU support, mainly in the form of technical assistance made available the soonest possible.** The projected pipeline shall feed Romanian and Croatian needs, shall be a significant asset to the rebuilding of Yugoslavian economy, shall promote regional development and stability and shall be a major success of the EU technical assistance programmes such as INOGATE and PHARE. The Contractor is aware that the states involved (Romania, Croatia and Yugoslavia) are covered by different technical assistance programmes, namely PHARE and OBNOVA, making a single project applicable to all three states difficult for administrative reasons. However, the Contractor stresses that the required technical assistance to the particular project must be provided through a single project and a single Contractor, as already done under the INOGATE Programme, in order to allow for consistent, synchronised implementation. In view of the above, the Contractor proposes that the three states involved and the European Commission agree on the following scheme: the terms of reference and the budget of the follow-up project shall be drawn up by PHARE and the two OBNOVA states shall relinquish their part of the project's budget in favor of its addition to the PHARE funds available for Romania, in order to be used in the particular technical assistance project benefiting all three states. This solution appears to be the swiftest arrangement. A second solution, which is apparently more time-consuming and depends on various extraneous factors, is the granting of the administrative and financial capacity to the INOGATE Programme to directly implement such a project. In any case, the Contractor again underlines that the Constanta – Omisalj Oil Pipeline project should proceed as quickly as possible with EU technical assistance.

ANNEX A: TABLE OF LEGISLATION EXAMINED BY THE CONTRACTOR

TEXT TYPE and No	SUBJECT	COMMENTS
<i>Legislation pertaining to the hydrocarbon sector and its regulation</i>		
Law 134/95	on Petroleum	The definition and legal regime of "main" pipelines requires a review, as it causes problems of interpretation and application in connection with the Public Property Law 213/1998
Government Decision 1265/1996	on Methodological Norms for the application of the Petroleum Law 134/95 (as amended by Government Decision 1363/2000)	Comprehensive regime of operation handled by a common conveyer but posing possible problems of compatibility with commonly operated interstate pipeline projects favored by the INOGATE Umbrella Agreement. Possible incompatibilities with the Energy Charter Treaty on issues of refusal to provide transportation services and of creation of additional capacity
Order 23/1999	for the enforcement of the Technical Instructions regarding the standard content and the manner of drafting the Petroleum Book	
Emergency Ordinance 271/2000	regarding the regime of transportation, trade and recovery of crude oil, gasoline, condensed gas and liquid ethane	
Emergency Ordinance 216/2000	regarding the regulation of the legal status of main pipelines and installations, equipment and accessories related to the National Crude Oil, Condensed Oil and Ethane Gas Transport System	Pipelines and installations of the National Black Oil, Condensed Oil and Ethane Gas Transport System transferred to CONPET SA PLOIESTI remain the public property of the State and shall form the object of a petroleum concession agreement handled by the National Agency for Mineral Resources
Emergency Ordinance 15/2001	regarding the regulation of the legal status of tanks, oil and oil products transport pipelines, pumping stations and other related installations and equipment	Oil and oil products pipelines and installations transferred to OIL TERMINAL CONSTANTA SA remain the public property of the State and shall form the object of a petroleum concession agreement handled by the National Agency for Mineral Resources

TEXT TYPE and No	SUBJECT	COMMENTS
Order 697/1999	regarding the approval of Labour Protection Norms for the pipeline transport of natural gas	
Ordinance 60/2000	regarding the regulation of natural gas activities	
Emergency Ordinance 44/2000	regarding the amendment and completion of Government Ordinance 60/2000 regarding the regulation of natural gas activities	
Government Decision 784/2000	regarding the approval of the Regulation for the granting of licenses and authorisations in the natural gas sector	
Law 1/01	regarding the approval of Government Ordinance 67/2000 for the ratification of the Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation Systems signed in Kiev on 22 July 1999	
Government Decision 1369/1996	for the ratification of the Agreement between the Romanian Government and the Russian Federation Government regarding the Increase of the Capacity of Gas Transit Pipelines in the Romanian Territory in Order to Increase the Natural Gas Supply from the Russian Federation to Third Countries and to Romania signed in Moscow on 25 October 1996	
Government Decision 589/1999	for the ratification of the Agreement between the Romanian Government and the Ministerial Cabinet of the Ukraine regarding the Collaboration for the Construction and Exploitation of the Gas Pipeline from Hurst (Ukraine) to Satu Mare (Romania) signed in Bucharest on 19 February 1999	
Government Decision 19/2001	on the organisation and operation of the Ministry of Industry and Resources	

TEXT TYPE and No	SUBJECT	COMMENTS
Emergency Ordinance 300/2000	regarding the establishment, organisation and operation of the National Natural Gas Regulatory Authority (ANRGN) and Emergency Ordinance 29/1998 regarding the establishment, organisation and operation of the National Energy Regulatory Authority (ANRE) as approved by Law 99/00	
Ordinance 88/2000	for the amendment of Ordinance 41/2000 regarding the establishment, organisation and operation of the National Natural Gas Regulatory Authority (ANRGN)	
Ordinance 41/2000	regarding the establishment, organisation and operation of the National Natural Gas Regulatory Authority (ANRGN)	
Emergency Ordinance 29/1998	regarding the establishment, organisation and operation of the National Energy Regulatory Authority (ANRE)	
Government Decision 334/2000	regarding the reorganisation of the National Natural Gas Company ROMGAZ SA	ROMGAZ is split in separate companies having specific areas of activity: TRANSGAZ, EXPROGAZ, DISTRIGAZ NORD, DISTRIGAZ SUD, DEPOGAZ. TRANSGAZ operated the National Natural Gas Transportation Pipelines (SNT) and ensures non-discriminatory access
Government Decision 368/1999	regarding the Reorganisation of the National Agency for Mineral Resources (NAMR)	
Emergency Ordinance 63/1998	concerning the Electrical and Thermal Energy	

TEXT TYPE and No	SUBJECT	COMMENTS
<i>Legislation on the promotion and protection of investments</i>		
Emergency Ordinance 92/1997	for the stimulation of direct investments	Incentives for investors have been partly cancelled
Constitution of Romania	Article 41 referring to the protection of private property	Foreign persons may not acquire land
Law 54/98	on Land Acquisition	Foreign persons may not acquire land
Law 219/98	on Concessions	Possibly excessively onerous provisions for the investor in the case of unilateral amendment of concession terms by the State
Government Decision 216/1999	regarding the Methodological Norms for the application of Law 219/98 on Concessions	
Model Concession Contract	contained in Government Decision 216/1999	
<i>Legislation on the protection of the environment</i>		
Law 137/95	on the Protection of the Environment (republished)	
Law 98/1992	for the ratification of the Convention on the Protection of the Black Sea Against Pollution signed in Bucharest on 21 April 1992	
<i>Legislation on issues affecting major international hydrocarbon transport projects</i>		
Law 33/1994	on Expropriation of Real Estate for a Public Interest Purpose	Time-consuming procedures
Law 213/98	on Public Property and its Legal Status	Affirms that hydrocarbon pipelines are part of the public domain of state property - see comments on Law 134/95
Law 84/92	on Free Trade Zones	

TEXT TYPE and No	SUBJECT	COMMENTS
<i>Legislation on tariffs, customs duties and excises</i>		
Government Decision 161/2001	on the amendment of par. 2 of article 1 of Government Decision 240/1997 on the establishment of maximal prices, tariffs and markups for certain products and services regulated according to the Competition Law 21/96, the tax on oil and gas from the domestic production and the method of regulating the expenses necessary for the achievement, development and modernisation of production for the respective products and for the approval of the list of products from the industry of coal, ferrous, non-ferrous, radioactive, rare and non-metallic minerals subsidised from the state budget in 2001	
Emergency Ordinance 44/2001	on the amending of the Emergency Ordinance 27/2000 on the regime of the products subject to excise	
Government Decision 170/2000	on the amendment of par. 2 of article 1 of Government Decision 240/1997 on the establishment of maximal prices, tariffs and markups for certain products and services regulated according to the Competition Law 21/96, the tax on oil and gas from the domestic production and the method of regulating the expenses necessary for the achievement, development and modernisation of production for the respective products	
Emergency Ordinance 252/2000	on the amending of the Emergency Ordinance 27/2000 on the regime of the products subject to excise	
Emergency Ordinance 27/2000	On the regime of the products subject to excise	
Emergency Ordinance 1/2000	on the amendment of the article 5 of the Government Ordinance 26/1993 on the Romanian customs system for export operations	
Emergency Ordinance 17/2000	on the Value Added Tax	

TEXT TYPE and No	SUBJECT	COMMENTS
Order 725/2000	on the approval of the Regulations regarding the value add tax for the machines, equipment and services purchases by the titleholders of petroleum agreements, foreign legal entities, as well as goods and services directly financed by grants or non-returnable loans, including donations from individuals	
Government Decision 42/1999	on the amendment of par. 2 of article 1 of Government Decision 240/1997 on the establishment of maximal prices, tariffs and markups for certain products and services regulated according to the Competition Law 21/96, the tax on oil and gas from the domestic production and the method of regulating the expenses necessary for the achievement, development and modernisation of production for the respective products	
Government Decision 460/1998	on the amendment of par. 2 of article 1 of Government Decision 240/1997 on the establishment of maximal prices, tariffs and markups for certain products and services regulated according to the Competition Law 21/96, the tax on oil and gas from the domestic production and the method of regulating the expenses necessary for the achievement, development and modernisation of production for the respective products	
Government Decision 240/1997	on the establishment of maximal prices, tariffs and markups for certain products and services regulated according to the Competition Law 21/96, the tax on oil and gas from the domestic production and the method of regulating the expenses necessary for the achievement, development and modernisation of production for the respective products	
Law 141/1997	On the Romanian Customs Code	
Government Ordinance 44/1994	on the amendment of the article 5 of the Government Ordinance 26/1993 on the Romanian customs system for export operations	
Government Ordinance 26/1993	on the Romanian customs system for import operations	

ANNEX B: TABLE OF LEGISLATION FORMING THE OBJECT OF CONSULTATION

ISSUE	LEGISLATIVE ACT	ART.	COMMENT / PROPOSAL
Foreign persons may not own land in Romania	Constitution Land Acquisition Law 54/98 Direct Investments Law 241/98	41(2) 3	<ul style="list-style-type: none"> • Contrary to the national treatment principle of the ECT • Small impact in practice • PROPOSAL: to reinforce by legislative provision the existing Constitutional Court jurisprudence that companies established in Romania may own land regardless of their ownership structure • PROPOSAL: to note the contradiction with the ECT and invite the future amendment of the provisions, especially in view of future EU membership of Romania
Refusal of transportation services of oil for reason of performance of public services	Gov. Decision 1265/1996 as amended by Gov. Decision 1363/2000	64^3, par. 1d	<ul style="list-style-type: none"> • The definition of “public services” is not clear and may lead to ECT violations • The Contractor has requested feedback from the stakeholders regarding their interpretation of the term • PROPOSAL: to discuss the issue at the workshop and, if necessary, propose a definition compatible with the ECT and amend the existing GD accordingly
Refusal of access to the SNT in case of hindrance to the provision of public services	Ordinance 60/2000 as amended by Ordinance 44/2000	27(1)c	<ul style="list-style-type: none"> • The definition of “public services” is not clear and may lead to ECT violations • The Contractor has requested feedback from the stakeholders regarding their interpretation of the term • PROPOSAL: to discuss the issue at the workshop and, if necessary, propose a definition compatible with the ECT and amend the existing GO accordingly
Hydrocarbon pipelines belong to the public domain state property	Petroleum Law 134/95 and Public Property Law 213/98	8	<ul style="list-style-type: none"> • PROPOSAL: to discuss the issue of ownership of pipelines (especially future) at the workshop • PROPOSAL: the Contractor will include a self-contained chapter on the legal regime of pipelines on the proposed draft Law on the Establishment of Interstate Transportation Systems in Romania

ISSUE	LEGISLATIVE ACT	ART.	COMMENT / PROPOSAL
Do the Common Conveyer of the national system of petroleum transportation and the Natural Gas Conveyer of the SNT control the exploitation of future pipelines?	Gov. Decision 1265/1996 as amended by Gov. Decision 1363/2000 Ordinance 60/2000 as amended by Ordinance 44/2000	64 9	<ul style="list-style-type: none"> • The Contractor has requested feedback from the stakeholders regarding their interpretation of the provisions • PROPOSAL: to discuss the issue at the workshop
Can the operation of the Romanian portion of an interstate oil pipeline be assigned to an entity other than the Common Conveyer?	Gov. Decision 1265/1996 as amended by Gov. Decision 1363/2000	64	<ul style="list-style-type: none"> • PROPOSAL: The issue must be addressed by the draft Law for the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (see text of the Report)
Appeal for the refusal of transportation services to the NAMR	Gov. Decision 1265/1996 as amended by Gov. Decision 1363/2000	64 ^{^3} , par. 2	<ul style="list-style-type: none"> • The possibility of a second-level appeal to the courts against the NAMR decision must be provided
The NG Conveyer may trade natural gas	Ordinance 60/2000 as amended by Ordinance 44/2000	12	<ul style="list-style-type: none"> • The unbundling of NG transportation services from the actual trade of NG (as in the case of oil) is an international trend • PROPOSAL: to discuss the issue at the workshop and, if agreed, to introduce provisions ensuring the independence of the NG Conveyer following the wording of GD 1265/1996
Model NG Transit Agreement issued by the ANRGN	Ordinance 60/2000 as amended by Ordinance 44/2000	15	<ul style="list-style-type: none"> • The Contractor has requested from the ANRGN information regarding the state of progress of drafting the Model • The provisions of the Model Agreement must correspond to the provisions of the ECT institutional system
Definition of “secondary office”	Ordinance 60/2000 as amended by Ordinance 44/2000	58(7)	<ul style="list-style-type: none"> • PROPOSAL: Amendment of the article to incorporate the definition contained in Trading Companies Law 31/1990
Court jurisdiction over disputes between the NG concessionaire and third persons over the latter’s property use	Ordinance 60/2000 as amended by Ordinance 44/2000	76	<ul style="list-style-type: none"> • PROPOSAL: Amendment of the article to refer the dispute to the common courts

ISSUE	LEGISLATIVE ACT	ART.	COMMENT / PROPOSAL
Lengthy expropriation procedures	Law 33/1994 on Expropriation of Real Estate for a Public Interest Purpose		<ul style="list-style-type: none"> PROPOSAL: Priority to the administrative and court handling of project-related expropriations should be provided by the draft Law for the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (see text of the Report)
Lack of an appointed authority to co-ordinate the negotiations between the state and prospective pipeline investors/operators			<ul style="list-style-type: none"> PROPOSAL: The issue must be addressed by the draft Law for the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (see text of the Report)
Lack of a uniform procedure for the initial planning and negotiation of hydrocarbon transportation projects			<ul style="list-style-type: none"> PROPOSAL: The issue must be addressed by the draft Law for the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (see text of the Report)
Possibility of assignment of the petroleum concession contract to financing institutions			<ul style="list-style-type: none"> PROPOSAL: The issue must be addressed by the draft Law for the Establishment of Interstate Hydrocarbon Transportation Systems in Romania (see text of the Report)

ANNEX C: LIST OF INVITED STAKEHOLDER REPRESENTATIVES

Nr.		NAME	DEPARTMENT	TITLE
<u>STAKEHOLDERS</u>				
1	MINISTRY OF INDUSTRY AND RESOURCES (12)	Andrei GRIGORESCU		State Secretary
2		Mihai BERINDE		State Secretary
3		Iulian IANCU		State Secretary
4		Steluta GOANTA	European Affairs Directorate	Deputy General Director
5		Cristian ISTODORESCU	Cooperation Investments General Division	General Director
6		Stelian BANATEANU	Chemistry Division	Director
7		Rodica DUMITRIU	Legal General Division	General Director
8		Valeria RIMNICEANU	European Affairs Directorate	Counsellor
9		Corneliu CONDREA	Oil & Gas General Division	Counsellor
10		Liviu STOICAN	Oil & Gas General Division	Expert
11		Georgeta LIVANU	Quality, Environmental Protection Division	Counsellor
12		Lucia PLATICA	Legislation, Management and Contentious Division	Expert
13	MINISTRY OF JUSTICE (1)	Cristina MANDA	Division for Programs & Prognoses	Director
14	MINISTRY OF FOREIGN AFFAIRS (2)	Cristian COLTEANU		State Secretary
15		Monica MATEI	International Cooperation Division	Counsellor

Nr.		NAME	DEPARTMENT	TITLE
16	MINISTRY OF PUBLIC FINANCES (3)	Ruxanda RADULESCU	CFCU	General Director
17		Cornelia PETREANU	Politics and Fiscal Legislation Division	General Director
18		Valentina MATEI	European Integration and Legislative Harmonization Division	Counsellor
19	WORLD BANK MISSION IN ROMANIA (1)	Arabela NEGULESCU		Deputy Chief
20	MINISTRY OF WATER AND ENVIRONMENTAL PROTECTION (1)	Ioan JELEV		State Secretary
21	MINISTRY OF PUBLIC WORKS, TRANSPORTATION AND HOUSES (1)	Virginia TANASE	General Division for European Integration	General Director
22	DELEGATION OF THE EUROPEAN COMMISSION IN ROMANIA (1)	Valeriu BINIG		Task Manager Energy
23	NATIONAL AGENCY FOR MINERAL RESOURCES (5)	Maria Iuliana STRATULAT		President
24		Florina SORA		Technical Coordinator UIP
25		Mihai Silviu GERMAN		Director
26		Marian NEAGU		Director
27		Traian IVAN		Counsellor
28	NATIONAL NATURAL GAS REGULATORY AUTHORITY (3)	Radu GHEORGHE		President
29		Ana DUMITRU		Chief of Legal Office
30		Felicia OPREA		Head of Department
31	ROMANIAN CHAMBER OF DEPUTIES (1)	Antal ISTVAN	Commission of Industry and Services	President

Nr.		NAME	DEPARTMENT	TITLE
32	ROMANIAN SENATE (1)	Doru Laurian BADULESCU		Quaestor of the Senate
33	OIL TERMINAL CONSTANTA S.A. (3)	Gheorghe NEGREANU		General Manager
34		Doru LUTAC		Deputy General Manager
35		Paula Maria LUCHIAN	Management Development Division	Director
36	CONPET S.A. (2)	Constantin ZIDARU		President
37		Viorel GURGU		Project Director
38	PETROM S.A. (3)	Ioan POPA		General Manager
39		Florin CIOCANEA	PETROM INTERNATIONAL S.A.	General Manager
40		Gheorghe SUPEALA	Strategy Planning Division	Director
41	TRANSGAZ S.A. (3)	Gabriel COCONEA		General Manager
42		Elena ROSU	Juridical Department	Director
43		Gabriela MARES	International Cooperation	Director
<u>CONTRACTOR</u>				
44	CONTRACTOR (16)	Thomas LAMNIDES	Markatos-Lamnides Athens Law Firm	Project Manager
45		Konstantinos MARKOULAKIS	Markatos-Lamnides Athens Law Firm	EU Experts Manager
46		Dimitrios MARKATOS	Markatos-Lamnides Athens Law Firm	Legal Expert
47		Panayiotis GLAVINIS	Markatos-Lamnides Athens Law Firm	Legal Expert
48		Yiannis PALASSAKIS	Markatos-Lamnides Athens Law Firm	Legal Expert
49		Yiannis KYRNASSIOS	Markatos-Lamnides Athens Law Firm	Legal Expert
50		Michael MYRIANTHIS	Hellenic Petroleum	ECT Expert
51		Michael SPYRIDIS	INDEURCOG	Financial Expert
52		Apostolos GOULAS	University of Thessaloniki	Expert

Nr.		NAME	DEPARTMENT	TITLE
53		Ernest POPOVICI	Musat & Asociatii	Romanian Expert Manager
54		Florentin TUCA	Musat & Asociatii	Legal Expert
55		Dragos VILAU	Musat & Asociatii	Legal Expert
56		Horatiu DUMITRU	Musat & Asociatii	Legal Expert
57		Iuliana BOBARU	Musat & Asociatii	Legal Expert
58		Roxana ANTON	Markatos-Lamnides Athens Law Firm	Executive Workshop Organizer
59		Ionut PURICA	Concordia Petroliera	Financial Expert

ANNEX D: LIST OF WORKSHOP PARTICIPANTS

Nr.		NAME	DEPARTMENT	TITLE
STAKEHOLDERS				
1	MINISTRY OF INDUSTRY AND RESOURCES (7)	Steluta GOANTA	European Affairs Directorate	Deputy General Director
2		Rodica DUMITRIU	Legal General Division	General Director
3		Valeria RIMNICEANU	European Affairs Directorate	Counsellor
4		Corneliu CONDREA	Oil & Gas General Division	Counsellor
5		Liviu STOICAN	Oil & Gas General Division	Expert
6		Georgeta LIVANU	Quality, Environmental Protection Division	Counsellor
7		Lucia PLATICA	Legislation, Management and Contentious Division	Expert
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ANNEX E: DRAFT METHODOLOGICAL NORMS ON THE ESTABLISHMENT OF INTERSTATE HYDROCARBON TRANSPORTATION SYSTEMS IN ROMANIA

CHAPTER I - SCOPE AND DEFINITIONS

Article 1 SCOPE OF THE METHODOLOGICAL NORMS

1. The aim of the present Methodological Norms is the development of interstate hydrocarbon transportation systems crossing the Romanian territory and the related attraction of foreign investments due to its strategic importance through:
 - the efficient co-ordination of state agencies and autonomous authorities involved in Interstate Hydrocarbon Transportation System projects;
 - the facilitation and rationalisation of the pre-investment stage of establishment of Interstate Hydrocarbon Transportation System projects in Romania;
 - the observance of Romania's international obligations in the energy sector, especially the Energy Charter Treaty and the INOGATE Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation Systems;
 - the addressing of specific issues of interest to investors and international financial institutions.
2. The present Methodological Norms cover the establishment and operation of Interstate Hydrocarbon Transportation System, as defined below, and does not affect existing legislative provisions referring to domestic hydrocarbon transportation systems.

Article 2 DEFINITIONS

1. For the purposes of the present Methodological Norms,
 - *Commercial Agreement for the Establishment of an Interstate Hydrocarbon Transportation System* means any agreement or contract concluded on a commercial level between the legal entities involved in the System and covering the establishment, construction, rehabilitation, operation, maintenance and financing of the System; for the avoidance of doubt, the term includes agreements where the State is party and is acting as *fiscus* and not as *imperium*;
 - *Concession Agreement* means the Agreement between the Romanian State and the Concessionaire regarding the concession of land and/or installations for the purposes of establishment and operation of the Interstate Hydrocarbon Transportation System, concluded in accordance with the provisions of Law 219/98 on Concessions as in force at the time and the specific provisions contained in the present Methodological Norms;
 - *Concessionaire* means the legal person, established in Romania or abroad, who is the titleholder of a Concession Agreement concluded for the purposes of establishment and operation of the Interstate Hydrocarbon Transportation System;
 - *INOGATE Umbrella Agreement* means the INOGATE Umbrella Agreement on the Institutional Framework for the Establishment of Interstate Oil and Gas Transportation Systems, signed in Kiev on 22 July 1999 and ratified by Law 1/2001;
 - *Interstate Agreement for the Establishment of an Interstate Hydrocarbon Transportation System* means an agreement concluded between the Project Participating States along the guidelines provided by the Energy Charter Conference Model Intergovernmental Agreement on the Transit of Hydrocarbons and the Project Protocols of the INOGATE Umbrella Agreement;
 - *Interstate Hydrocarbon Transportation System* or *System* means an integrated system of transportation (such as pipeline, railway transportation, maritime transportation etc or any combination thereof) of crude oil or natural gas or their processed products under co-ordinated operation extending over the territory of Romania and at least one other State;

- *Project* means the concept and planning for the establishment of an Interstate Hydrocarbon Transportation System;
- *Project Participating States* means the States the territory of which is crossed by the Interstate Hydrocarbon Transportation System.

CHAPTER II – THE PROJECT

Article 3 THE AUTHORISED COMPETENT ENTITY

1. The Ministry of Industry and Resources is nominated as the Authorised Competent Entity representing both petroleum and natural gas sectors for the purposes of the INOGATE Umbrella Agreement.
2. The Ministry for Industry and Resources, after consulting the Advisory Committee, shall nominate the representatives in the Interstate Committee and the Emergency Committee provided by the INOGATE Umbrella Agreement.
3. The Ministry of Industry and Resources shall be the central co-ordinator of initial contacts and negotiations between the Romanian State and other States or investors interested in the establishment of a Interstate Hydrocarbon Transportation System.

Article 4 THE ADVISORY COMMITTEE

1. Proposals for the establishment of an Interstate Hydrocarbon Transportation System shall be subject to the initial evaluation and assessment by an Advisory Committee consisting of representatives of:
 - the Ministry of Industry and Resources;
 - the Ministry of Foreign Affairs;
 - the Ministry of Public Works and Transportation;
 - the Ministry of Justice;
 - the Ministry of Public Finances;
 - the Ministry of Environment;
 - the National Agency of Mineral Resources;
 - the National Natural Gas Regulation Authority;
 - state-owned enterprises with technical, financial, institutional and operational expertise related to the transportation of hydrocarbons.
2. Each entity represented in the Advisory Committee shall designate its representative to the Minister of Industry and Resources within one month from the entry into force of the present Methodological Norms and shall duly and timely inform the Minister of Industry and Resources about the replacement or substitution of its representative.
3. The Advisory Committee shall be chaired by the representative of the Ministry of Industry and Resources, who will convene the meetings of the Committee when circumstances require.
4. The secretarial support of the Advisory Committee and its associated costs shall be undertaken by the Ministry of Industry and Resources.
5. The tasks of the Advisory Committee shall be:
 - to proceed with the initial assessment of the technical, financial, legal and political parameters of proposed Interstate Hydrocarbon Transportation System projects;
 - to provide expert advice to the Romanian Government regarding the parameters of the proposed projects and the handling of negotiations with foreign partners, public or private legal persons;

- to provide a forum for the exchange of views and the co-ordination of action of the state and autonomous authorities and other state-controlled entities involved in a proposed Project;
- to provide its expert opinion regarding the desirability and prospects of each particular proposed Project, in order for a proposed Project to proceed to the next stage of elaboration and development.

Article 5

THE CREATION OF A TECHNICAL WORKING GROUP FOR THE PROJECT

1. In the case where the Ministry of Industry and Resources, after taking the opinion of the Advisory Committee into account, considers a proposed Project as meriting further elaboration and development, it will create a Technical Working Group for the particular Project, consisting of representatives of:
 - the Ministry of Industry and Resources;
 - the National Agency for Mineral Resources, if the particular Project regards petroleum transportation, or the National Natural Gas Regulation Authority, if the particular Project regards natural gas transportation;
 - state-owned enterprises involved in the particular Project;
 - private Romanian enterprises involved in the particular Project;
 - advisors whose expertise is considered necessary for the successful functioning of the Technical Working Group.
2. The Technical Working Group shall contact and co-operate with counterpart groups or entities nominated by the other Project Participating States partners in the proposed Project and shall elaborate or assign the elaboration of the proposed projects studies and documentation enumerated in Article 7.
3. The Technical Working Group shall appoint, by means of direct selection or tender, a project company which will develop and implement the Project on a commercial level.

Article 6

THE INTERSTATE AGREEMENT FOR THE ESTABLISHMENT OF THE PROJECT

1. The Working Group, in co-operation with its counterparts in the other Project Participating States, shall elaborate a draft Interstate Agreement for the establishment of the Project according to international Law and practice based, among others, on the model texts provided by the Energy Charter Treaty and the INOGATE Umbrella Agreement.

Article 7

THE STUDIES AND DOCUMENTATION OF A PROJECT

1. The Technical Working Group shall elaborate:
 - the institutional framework of the proposed Project, including the draft interstate agreement for the establishment of the proposed Project and the contractual structure of the proposed Project;
 - the technical specifications of the proposed Project;
 - the feasibility study of the proposed Project;
 - the environmental impact study;
 - the promotional activities for the attraction of investors and future users of the Interstate Hydrocarbon Transportation System;
 - the tender documentation for the selection of advisors, contractors and suppliers of the Project and the Interstate Hydrocarbon Transportation System;
 - any other study or documentation necessary for the establishment of the Project.
2. The aforementioned studies and documentation or parts of them can be elaborated with the assistance of specialised advisors engaged on the basis of terms of reference jointly determined by the entities represented in the Technical Group.

CHAPTER III – THE ESTABLISHMENT OF THE INTERSTATE HYDROCARBON TRANSPORTATION SYSTEM

Article 8 THE CONCESSION OF LAND AND EXISTING INSTALLATIONS

1. The following bodies have the quality of a *concessor* (grantor) in the name of the state, county, town or village:
 - the ministries or other specialised bodies of the central public administration, for the assets that are public or private property of the state or for the activities and public services of national interest;
 - county councils, local councils or public institutions of local interest for the assets that are public or private property of the county, town or village, or for the activities or public services of local interest.
2. Any Romanian or foreign natural or legal person may have the quality of a Concessionaire.
3. The concession of the lands that represent public or private property of the State shall be carried out by way of a public tender or direct negotiation, in accordance to the provisions of the Law 219/98 on Concession.
4. Existing pipelines and related installations which belong the public domain of state property may be the objects of a concession, under the provisions of the laws in force.

Article 9 PROTECTION OF THE ENVIRONMENT

1. The Concessionaire or the Operator of the Interstate Hydrocarbon Transportation System shall apply for an environmental authorisation (regarding both the establishment and the operation of the Interstate Hydrocarbon Transportation System within the territory of Romania), as the law in force provides.
2. The environmental authorisation shall be issued without obtaining other approvals or authorisations stipulated in the Law 137/1995 on Environmental Protection.
3. The Central Authority for the Protection of the Environment shall issue the authorisation for the establishment and operation of the Interstate Hydrocarbon Transportation System.
4. The term of the environmental authorisation is maximum 5 years.
5. The environmental authorization shall not be issued if the Interstate Hydrocarbon Transportation System does not provide for the elimination of negative effects on the environment, according to the standards and regulations in force.
6. The environmental authorisation may be revised, if new elements, unknown on the date of issue, occur, as well as in case of renewal of such authorisations when may be required redrafting of the report regarding the impact over the environment.
7. The environmental authorisation shall be suspended for non-compliance with its provisions and shall be revoked if within 6 months the elements or events causing the suspension will not have been eliminated.

Article 10 TECHNICAL STANDARDS

1. The Interstate Hydrocarbon Transportation System shall conform to international technical standards of construction, operation, safety and environmental protection.

Article 11
GRANTING OF SECURITY TO FINANCING INSTITUTIONS

1. The Concessionaire shall be entitled to assign the Concession Agreement to a financing institution or group of financing institutions as security for their grant of loans for the purpose of establishment of the Interstate Hydrocarbon Transportation System.

Article 12
**THE EXPROPRIATION OF REAL ESTATE FOR THE PURPOSES OF THE INTERSTATE
HYDROCARBON TRANSPORTATION SYSTEM**

1. The administrative and court authorities handling cases of expropriation related to the establishment of an Interstate Hydrocarbon Transportation System will grant absolute priority to these cases upon request of the Ministry of Industry and Resources.

**CHAPTER IV – THE OPERATION OF THE INTERSTATE HYDROCARBON
TRANSPORTATION SYSTEM**

Article 13
THE OPERATION OF THE INTERSTATE HYDROCARBON TRANSPORTATION SYSTEM

1. The operation of the portion of the Interstate Hydrocarbon Transportation System lying within Romanian territory may be assigned to a common entity established or nominated by the Project Participating States or partners to operate the whole System.

CHAPTER V – FINAL PROVISIONS

Article 14
INTERNATIONAL ARBITRATION

1. Unless otherwise agreed in the Interstate and the Commercial Agreements for the Establishment and Operation of the Interstate Hydrocarbon Transportation System, any dispute between the Romanian State and the Concessionaire that have not been resolved amicably within a period determined in the Concession Agreement or any related Commercial Agreement for the Establishment of the System shall be resolved by international arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC). Claims submitted to arbitration shall be considered to arise out of a commercial relationship or transaction for the purposes of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958). Unless the parties to the dispute agree otherwise, the arbitration shall be held in Romania.
2. Unless otherwise agreed in the Interstate and the Commercial Agreements for the Establishment and Operation of the Interstate Hydrocarbon Transportation System, the arbitration tribunal shall decide in accordance with the contracts and agreements in question and with the applicable rules and principles governing the transactions in question. In the absence of the foregoing, the arbitration tribunal shall apply the relevant usages of the international oil and natural gas industry and the international construction industry, generally followed in the sector of infrastructure projects development.
3. Arbitration awards shall be final and binding between the parties to the dispute. Subject only to the provisions of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), such arbitral awards are immediately enforceable within the territory of Romania.

Article 15
FINAL PROVISIONS

1. The provisions of the present Methodological Norms supersede and prevail over any contrary provisions of existing Methodological Norms.
2. The present Methodological Norms shall enter into force on the date of their publication in the Official Monitor.

**ANNEX F: SIGNED DOCUMENTS FOR THE ESTABLISHMENT OF THE CONSTANTA – OMISALIJ
OIL PIPELINE PROJECT**