

# GAS REGULATION

## Norway



# Gas Regulation

Consulting editors

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*Dentons*

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Quick reference guide enabling side-by-side comparison of local insights, including into the domestic gas market, government policy and regulatory authorities; regulation of natural gas and unconventional gas production; regulation of natural gas pipeline transportation and storage, distribution, sales and trading; LNG regulation; mergers and competition, including price restrictions; international considerations, including foreign participation, treaties and other multinational agreements, and cross-border sales and deliveries; transactions between affiliates; and recent trends.

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## DOMESTIC SECTOR OVERVIEW

### State of the market

Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

The Norwegian gas sector comprises large offshore production facilities, and almost all dry gas produced is exported to Europe through a network of pipelines approximately 8,800 km long.

The onshore gas processing plants located at Kårstø, Kollsnes and Nyhamna are integrated with the offshore pipeline network and receive rich gas from the fields on the Norwegian continental shelf (NCS). Dry gas is separated from the rich gas for onward pipeline transport to receiving terminals in Europe. There are four receiving terminals for Norwegian gas in continental Europe (two in Germany, one in Belgium and one in France) and a further two in the United Kingdom.

By 1 January 2022, a total of 94 fields were producing on the NCS while five new fields came on stream during 2021. Norwegian gas exports maintained a high level in 2021, and Norway exported approximately 114 billion Sm<sup>3</sup> gas, mainly to other countries in Europe.

The Norwegian Petroleum Directorate reported that 18 new discoveries were made during 2021, in which several included gas resources. Most of the discoveries are relatively small and will to a large extent be developed as satellites to existing fields.

In 2021, the total investment on the NCS was approximately 147 billion Norwegian kroner (exploration excluded), which is a slight decrease compared with 2020. The authorities received a total of eight plans for development and operations of fields during 2021, which is very positive in ensuring a high level of investment in the years to come.

In addition, the significant increase in gas and oil prices during the first four months of 2022, and the preliminary tax reliefs for new development plans being submitted to the authorities by 31 December 2022 and approved by the authorities by 31 December 2023, also indicate a continuing high level of investment in the upcoming years.

The wholly state-owned company Gassco is the operator for the integrated system for transporting gas from the NCS to other European countries. This role includes the overall responsibility for running the system on behalf of the owners of the transport system. The transport system, Gassled, is owned by various oil and gas companies, as well as private investment funds. Equinor (formerly Statoil) is the technical service provider for Gassco with respect to the Kårstø and Kollsnes processing terminals, as well as for most of the gas pipeline and platform infrastructure system.

Norway is the world's third-largest natural gas exporter and an important supplier of natural gas to other European countries. Gas from the NCS covers approximately 25 per cent of European gas consumption. The largest export quantities go to Belgium, France, Germany and the United Kingdom, where Norwegian gas accounts for between 20 and 40 per cent of the total gas consumption. The producing companies on the NCS also have gas sales agreements with buyers in other European countries.

In addition, the Snøhvit LNG Export Terminal (located on Melkøya Island in the municipality of Hammerfest) in the Barents Sea delivers LNG to markets in Asia, America and Europe.

An insignificant share of the gas produced on the NCS is used for domestic energy consumption. There are currently no gas transmission networks in Norway, and only two onshore gas distribution systems falling within the scope of the Third Gas Market Directive 2009/73/EC (the Third Gas Directive). One is located in the area of Jæren and Ryfylke (operated by Lyse Neo AS), and the other is located at Haugalandet (operated by Gasnor AS). The gas pipeline system at Haugalandet is 120km long, while the system at Jæren and Ryfylke comprises 620km of pipelines. The main part of the gas in both systems is purchased by industrial customers.

**Consumption**

What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

Norway is among the world's largest per capita hydropower producers, and a large part of the country's total electricity consumption comes from domestic hydropower. This means that the domestic need for gas is limited, with no gas being imported to Norway and only approximately 5 per cent of Norwegian gas production being used for domestic consumption.

Law stated - 01 January 2022

**Government policy**

What is the government's policy for the domestic natural gas sector and which bodies set it?

The policy of the domestic natural gas sector is set by Parliament and the government, while the overall responsibility to execute the resource management for upstream gas activities is vested in the Ministry of Petroleum and Energy (MPE). The Norwegian petroleum industry is based on a principle of sustainable development that strives to facilitate long-term profitable production benefiting the country as a whole. As part of this principle, the government also focuses on increased recovery from producing fields, and increased exploration in both mature and unexplored areas.

Only conventional natural gas is produced in Norway. The potential exploration and production of onshore oil and gas resources is generally governed by Act No. 21 of 4 May 1973 on Exploration and Exploitation of Onshore Petroleum Resources .

A petroleum fund has been established to ensure that the revenue from petroleum activities (including the natural gas sector) will be available for future generations. By 1 May 2022, the fund was valued at approximately 11.7 trillion Norwegian kroner. All activities shall comply with comprehensive safety regulations and high environmental standards (zero-pollution policy).

The government has announced its goal to increase the use of natural gas in the domestic market; however, access to cheap energy produced from Norwegian hydropower implies that it will take many years to achieve a substantial increase in the domestic consumption of natural gas.

Law stated - 01 January 2022

**Regulatory authorities**

Which authorities make regulatory policies and decisions in respect of the production, transmission, distribution and supply of natural gas?

The MPE is overall responsible for the resource management of the upstream gas sector. Other important government bodies in the upstream sector include the Ministry of Finance, the Ministry of Labour and Social Inclusion, the Ministry of Climate and Environment and the Ministry of Trade, Industry and Fisheries. These are the main government bodies responsible for petroleum activities on the NCS.

In addition, the state-owned company Gassco was established in 2001. Gassco is the operator for the integrated

system for transporting gas from the NCS to other European countries. This role confers overall responsibility for running the infrastructure on behalf of the owners. Frame conditions for the company are determined by the government. The company exercises its operator responsibility pursuant to the Petroleum Act No. 72 of 29 November 1996 and through agreements with the transport system owners.

Gassco acts as a neutral and non-discriminatory system operator. It determines whether the conditions for access are met, reserves booked capacity and allocates capacity in accordance with the principles and requirements in the Petroleum Act and regulations. If Gassco makes decisions governed by the Public Administration Act, such decisions may be appealed to the MPE.

An insignificant share of the gas produced on the NCS is used for domestic energy consumption. As a consequence, Norway has no onshore transmission network and a very limited onshore distribution network to serve domestic end users.

Norway has adopted the Third Gas Directive and must, as a general rule, comply with the European Commission requirements applicable to authorities and regulatory bodies with a role in the production, transmission, distribution and supply of natural gas. The Directive is implemented through various amendments to the Natural Gas Act and the Natural Gas Regulation, effective 1 November 2019. The Norwegian Energy Regulatory Authority is the national regulator for the electricity and downstream gas market.

*Law stated - 01 January 2022*

## REGULATION OF NATURAL GAS PRODUCTION

### Ownership and organisation

What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

Pursuant to the Petroleum Act and the analogous Act No. 21 of 4 May 1973 on Exploration and Exploitation of Onshore Petroleum Resources (the Onshore Act), the state has a proprietary right to all petroleum deposits and the exclusive right to resource management. The Ministry of Petroleum and Energy (MPE) is, however, empowered to grant licences pertaining to the exploration and production of petroleum.

The granted licences contain criteria the licensees must comply with and are given for a limited period within a predefined area. The licensees obtain ownership in the petroleum produced equal to their relative share in the production licence once the petroleum has passed the well head. Petroleum deposits are defined to include all liquid and gaseous hydrocarbons.

The state participates in petroleum activities on the Norwegian continental shelf (NCS) through the state's direct financial interest (SDFI). The participating interest held by the SDFI in production licences, transportation pipelines and specific land-based plants are managed by the state-owned limited company, Petoro AS (Petoro).

Petoro is a licensee in selected licences and participates on equal terms and conditions as other licensees. There are no limitations on the maximum participating interest to be reserved to the SDFI, but Petoro's share will normally be less than 50 per cent. Petoro does not hold operatorships.

The government's value from natural gas production is derived through the SDFI's direct ownership in production licences and dividends from the state's 67 per cent ownership in Equinor. Value is also derived through tax, as corporate income tax at a rate of 22 per cent is levied on income from gas extractions, processing and transportation by pipeline. The tax basis is the gross income less the costs incurred in acquiring, securing and maintaining the income, including operation costs, depreciations and financing costs.

In addition to corporate income tax, income from petroleum activities is also subject to a special tax. The current rate



of the special tax is 56 per cent.

To ensure income from sales of natural gas is not reduced for tax purposes by different trading activities, companies are under an obligation to report the terms in all sales agreements that are entered into. For tax purposes, the companies can ask the tax authorities for a preliminary statement regarding the pricing in intra-group sales of gas. A preliminary statement is binding for the company.

*Law stated - 01 January 2022*

## **Regulatory framework**

Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

The main statute providing the legal framework relevant for petroleum activities on the NCS is the Petroleum Act, which governs subsea activities and onshore activities that form an integrated part of the offshore petroleum production.

Detailed rules and adaptations are set out in the Petroleum Regulation No. 653 of 27 June 1997. Access to third-party infrastructure is also subject to other government regulations. To date, no onshore exploration and production activities have been conducted in Norway.

Petroleum activities on the NCS are regulated by a licensing system administered by the MPE and the Norwegian Petroleum Directorate, and there are two distinct licences that may be granted by the MPE: exploration licences and production licences. In addition, a specific licence to install and operate pipelines is also granted by the MPE.

The exploration licence is not exclusive, and does not give a preferential right if a subsequent production licence is granted. A production licence is, on the other hand, exclusive, meaning licensees are given a sole right to conduct surveys, exploration and production within the geographical area defined by the production licence.

The award of a production licence is, pursuant to the Hydrocarbons Licensing Directive 94/22/EC, made on impartial, objective and non-discriminatory criteria whereby the applicant's technical expertise, financial strength, geological understanding and experience on the NCS, or similar areas, will be weighted.

Exploration and production licences are awarded separately, and an exploration licence will not necessarily be awarded prior to a production licence. Exploration licences are granted for a period of three calendar years, unless otherwise specifically stipulated in the licence.

Production licences are granted for an initial period of up to 10 years, and if the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When licensees have fulfilled the mandatory work obligations set out in a production licence, the production licence may be further extended. The possible extension period is, as a general rule, up to 30 years, but may under specific circumstances be up to 50 years.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licensing round (called 'awards') in predefined areas. Areas not regarded as mature, on the other hand, are subject to ordinary licensing rounds, which traditionally have been held every second year. Applicants that are prequalified as upstream petroleum companies can apply individually or as a group. Companies being awarded a production licence must enter into a joint venture, which is normally established through a decision made by the MPE on the date that the production licence is awarded.

The joint venture is governed by a standard joint operating agreement (JOA) and accounting agreement stipulating detailed rules pertaining to, among other things, the role of the management committee and the operator, and the licensees' rights and obligations. The award of a production licence is conditional upon the companies' signature to the JOA and the accounting agreement.

If the licensees decide to develop the petroleum deposit, a plan for development and operation (PDO) must be submitted to the MPE for approval, as provided under section 4-2 of the Petroleum Act. The MPE also approves the

production schedule stipulated by the licensees.

In addition to ordinary awards, licences on the NCS can also be obtained through a transfer of assets. These transactions require the consent of both the MPE and the Ministry of Finance (MoF) (section 10-12 of the Petroleum Act and section 10 of the Petroleum Taxation Act No. 35 of 13 June 1975).

The MPE, the MoF, the Ministry of Labour and Social Inclusion, the Ministry of Climate and Environment and the Ministry of Trade, Industry and Fisheries are the main government bodies responsible for petroleum activities on the NCS.

The MoF has overall responsibility for ensuring that the state collects taxes and fees (corporate tax, special tax, carbon dioxide tax and nitrogen oxide tax) from petroleum activities. The Petroleum Taxation Office is part of the Norwegian Tax Administration, and reports to the MoF. Its primary task is to ensure the correct levy and payment of taxes and fees adopted by Parliament.

Other important authorities include the Petroleum Safety Authority, which sits under the Ministry of Labour and Social Inclusion and has the regulatory responsibility for technical and operational safety, including emergency preparedness and a safe working environment for petroleum activities. The Norwegian Environment Agency is the administrative body responsible for all environmental issues related to petroleum activities, including granting requested permissions to pollute. Finally, the Norwegian Coastal Administration, which sits under the Ministry of Trade, Industry and Fisheries, is responsible for the state's emergency preparedness in the event of pollution (oil spills).

Decisions of subordinate bodies may be appealed to the relevant ministry in charge. Further, decisions made by the ministries as a first instance may be appealed to the King in Council (ie, the government). Administrative decisions may also, to the extent all administrative rights of appeal have been exhausted, be appealed to ordinary courts. In that case, the court may normally only assess the procedure and application of law, and not the administrative authority's application of discretion.

The regulator has various legal tools to ensure compliance with its decisions, which include the following.

- In the event of non-compliance with regulator decisions, an order may be issued in or pursuant to the Petroleum Act, and the specific regulator that has issued the order may stipulate a current fine for each day that passes after expiry of the time limit set for implementation of the order, until it has been complied with. Notice of a fine shall be given by registered letter or by another equally reliable method. An order to pay a fine is regarded as grounds for enforcement of distraint.
- In the event of serious or repeated violations of the Petroleum Act, regulations issued pursuant thereto, stipulated conditions or orders, the government may revoke a licence granted pursuant to the Petroleum Act.
- Wilful or negligent violation of provisions or decisions issued in or pursuant to the Petroleum Act are punishable by fines or imprisonment for up to three months. In particularly aggravating circumstances, imprisonment for up to two years may be imposed. These provisions do not apply if the violation is subject to a more severe penalty under any other statutory provision.
- As part of the overall assessments when awarding a production licence, the authorities may take into account whether the applicant has shown any form of inadequate efficiency or inadequate responsibility as a licensee. Although not a sanction, the awareness that potential non-compliance with the authorities' decisions may be decisive when competing for an award of a production licence is also likely to contribute to a high degree of compliance with the authorities' decisions.

*Law stated - 01 January 2022*

## Unconventional gas production

## Are there different rules for, or any restrictions on, unconventional natural gas production (including fracking)?

There is no unconventional natural gas exploration and production in Norway. The potential exploration and production of onshore oil and gas resources is generally governed by the Onshore Act.

The Onshore Act provides that the right to petroleum under the surface of Norwegian soil, and such part of the seabed subject to private land rights, lies with the Norwegian state. In this regard, 'petroleum' includes mineral oils, related hydrocarbons and gases that exist in natural form under the soil. The government has the authority to grant Norwegian and foreign companies the right to explore and produce unconventional gas.

The Onshore Act further provides that the government can include supplementary regulations for the exploration and production of unconventional gas, but so far no such regulations have been prepared.

*Law stated - 01 January 2022*

## Required security and guarantees

### Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

The MPE has the authority to request participants to provide security to ensure the fulfilment of all obligations undertaken and liability incurred while conducting petroleum activities. The Petroleum Act does not limit the MPE to request a specific form of security.

Traditionally, security has been requested in the form of a parent company guarantee at the time the company is becoming a new licensee on the NCS. The guarantee is unlimited and is based on a standard agreement to be entered into by the ultimate parent of all licensees on the NCS forming part of a company group.

The MPE has the authority to request adjustments to the security already provided or additional security at any time. This may, for instance, be done prior to upcoming activities increasing the risk of incurring liability, typically in connection with the MPE's approval of a PDO.

A guarantee or equivalent security to ensure fulfilment of all regulatory requirements is required in respect of an application for injection and storage of CO<sub>2</sub> in a subsea reservoir on the NCS. The financial guarantee shall be valid and effective when injection starts.

*Law stated - 01 January 2022*

## REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE

### Ownership and infrastructure

Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

The majority of the transportation system on the Norwegian continental shelf (NCS) (ie, the pipelines and terminals) for Norwegian gas is owned by Gassled, an unincorporated joint venture established on 1 January 2003 comprising oil and gas companies on the NCS and various investment funds. The state is the majority owner, holding a share of 46.7 per cent in Gassled through the wholly state-owned company Petoro, which administers the state's direct financial interest.

Gassled includes rich and dry gas facilities (including onshore processing facilities and specific storage facilities

located abroad) that are either used by both the owners and others, or are planned for such use. Gassled is operated by an independent system operator, Gassco, a limited company wholly owned by the state (established in 2001). Gassco is responsible for running the infrastructure on behalf of the owners. The cost of operating the transport system is met by its users through tariff payments. The capital element in these tariffs also covers investments made by the owners.

Gassco studies and advises the authorities on transport solutions. It contributes to the holistic development of Norwegian gas infrastructure. Its operations are run on a non-profit basis.

Since most of the gas produced from the NCS is exported, only a few onshore gas storage facilities are located in Norway.

*Law stated - 01 January 2022*

## **Regulatory framework**

Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

If the licensees decide to develop a petroleum deposit, a plan for development and operation (PDO) must be submitted to the Ministry of Petroleum and Energy (MPE) for approval (section 4-2 of the Petroleum Act). The MPE's approval of a PDO will normally contain a permission for the construction, placing, operation and use of offshore and onshore pipelines and installations (including LNG facilities governed by the Petroleum Act), but such approval may also be granted following a separate and specific application to install and operate the pipeline pursuant to section 4-3 of the Petroleum Act (licence to install and operate).

When new offshore pipelines are to be constructed for connection to onshore facilities (domestically or abroad), an application for a specific licence to install and operate is normally required. An impact assessment must be completed prior to any such laying of gas pipelines from offshore installations to onshore locations in Norway or abroad.

Gas pipelines and specific processing facilities are operated by Gassco acting as an independent system operator with limited regulatory power. The MPE (in accordance with instructions from the government and policies issued by Parliament) determines the regulatory policies related to transmission, distribution and supply of natural gas. The Norwegian Energy Regulatory Authority is the independent national regulator for the downstream gas market.

Norway has a limited onshore distribution network and onshore gas storage facilities; however, the requirements in the Third Gas Market Directive 2009/73/EC (the Third Gas Directive) as implemented in the Natural Gas Act and the Natural Gas Regulation will, unless specific derogations are provided, apply to onshore transportation pipelines. Currently two gas distribution system operators must comply with the requirements in the directive.

Norway has, however, through amendments to the Natural Gas Act, exercised all EU member states' discretionary right, in article 26, fourth paragraph of the Third Gas Market Directive, not to apply the requirements of legal and functional unbundling of a distribution system operator that has fewer than 100,000 connected customers (this applies for an unlimited period). Norway's specific time-limited exemptions from the Third Gas Directive (see articles 24, 31 and 32) are only applicable for the gas distribution network located in the municipality of Jæren and Ryfylke. If a future gas distribution network is established in Hordaland, the same exemption may be applicable.

Decisions of subordinate bodies may be appealed to the relevant ministry in charge. Further, decisions made by the ministries as a first instance may be appealed to the King in Council (ie, the government). Administrative decisions may also, to the extent all administrative rights of appeal have been exhausted, be appealed to ordinary courts. In such case, the court may normally only assess the procedure and application of law, and not the administrative authority's application of discretion.

**Land rights**

How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

The state has the proprietary right to subsea petroleum deposits and the exclusive right to resource management. The right to build infrastructure in terms of pipelines or structures on the NCS is hence subject to licences and approvals issued by the MPE.

Pursuant to article 79 of the United Nations Convention on the Law of the Sea, all states are entitled to lay submarine cables and pipelines on the continental shelf. Further terms and conditions are set out in bilateral treaties.

Onshore land rights can be obtained through private acquisition or expropriation. These methods are also applicable for obtaining land rights to construct gas distribution infrastructure.

Law stated - 01 January 2022

**Access**

How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

Players' access to the gas transportation system on the NCS is governed by section 4-9 of the Petroleum Act and Chapter 9 of the Petroleum Regulation, the latter implementing the regulated access regime in the European Commission (EC) Gas Directive. According to the rules, natural gas undertakings and eligible customers who have a duly substantiated, reasonable need for transportation or processing of natural gas shall have access to the upstream pipeline networks subject to certain criteria:

- spare capacity must be available in the transportation system;
- the shipper must demonstrate a duly substantiated reasonable need for transport;
- the shipper's gas must comply with certain technical specifications (quality and pressure); and
- the shipper must demonstrate sufficient finances or provide a guarantee.

The gas transportation system on the NCS is a natural monopoly, with significant infrastructure investments. Tariffs for gas transport are regulated through separate regulations stipulated by the MPE, ensuring profits are extracted in the fields rather than in the transport system (see the Tariff Regulation No. 1724 of 20 December 2002). Available capacity is launched for long-term and medium-term bookings twice a year, while short-term bookings can be made on a daily basis.

The access regime is operated and managed by Gassco, which acts as a neutral and non-discriminatory system operator. Gassco determines whether the conditions for access are met, reserve booked capacity and allocate capacity in accordance with the principles and requirements in the Petroleum Act and regulations.

In accordance with the EC Gas Directive, the Norwegian access regime comprises a primary and a secondary market. Agreements in the primary market are entered into in accordance with a standard agreement drawn up by the operator and approved by the MPE (standard terms and conditions for transportation of gas in Gassled). The agreement also includes provisions related to different gas qualities, including the consequences of delivering 'off-spec gas' in the

system.

An agreement in the primary market includes the right to use spare capacity in upstream pipeline networks entered into by a natural gas undertaking or eligible customer with the owner of the upstream pipeline network acting in his or her capacity as owner, or with the operator acting on behalf of the owner in his or her capacity as owner. An agreement in the secondary market means an agreement for the transfer of rights to use capacity in upstream pipeline networks other than contracts in the primary market.

While the principle for tariffs in the primary market is governed by the Petroleum Act and regulations, the tariff in the secondary market shall be the market clearing price and is not directly controlled by the MPE.

Tariffs in the primary market cover the right the user has to capacity in the upstream pipeline network, irrespective of whether that capacity is actually used. The tariff consists of a capital element and an operating element.

The secondary market is immature, and third-party access requests have, to date, been predominantly related to the primary market. The authorities are also empowered with legal tools to handle inappropriate pricing in the secondary market under the Price Policy Act No. 66 of 11 June 1993 and the Competition Act No. 12 of 5 March 2004.

*Law stated - 01 January 2022*

### **Interconnection and expansion**

Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Customers and natural gas suppliers are not empowered with the right to require a pipeline or storage facility owner, or operator, to expand its facilities. They may, however, through a demonstrated need for access to capacity related to new developments, etc, encourage Gassco to propose plans for expanding the capacity in existing facilities. Moreover, Gassco shall at all times consider the necessity of expanding the transport facilities.

Before any conclusions are made with respect to expanding the facilities, approval from the MPE must be obtained. The costs related to the expansion shall be carried by the third-party users of the facilities (ie, the shippers) through their payment of tariffs.

In new field developments, the authorities put considerable emphasis on exploring various transport solutions to ensure the best possible resource management. In many instances, it is prudent to construct pipelines that are somewhat larger than is initially necessary, thereby allowing gas from potential new gas fields to be transported in the already existing pipeline system.

In the downstream sector, the Third Gas Directive and section 7-2 of the Norwegian Gas Regulation provide that if the system operator expands its facilities to accommodate new customers, it may request an investment contribution from the new third-party users of the distribution network.

However, for one of the two areas in Norway with established onshore distribution infrastructure, the system operator is granted a derogation from, among other things, the above-mentioned investment contribution from new users for a period of up to a maximum of 20 years (to be reassessed every fifth year if the derogation shall be continued (see article 49 of the Third Gas Directive and section 5-2 of the Natural Gas Regulation).

*Law stated - 01 January 2022*

## Processing

Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Facilities used for the processing of natural gas that fall within the scope of the Petroleum Act will either be governed by the PDO of the field or require a separate plan for installation and operation to be approved by the MPE.

Players' access to the system for gas transportation and the processing system on the NCS is governed by section 4-9 of the Petroleum Act and Chapter 9 of the Petroleum Regulation, the latter implementing the regulated access regime in the Second Gas Market Directive 2003/55/EC (the Second Gas Directive).

*Law stated - 01 January 2022*

## Contracts

Describe the contractual regime for transportation and storage.

All shippers requesting transportation capacity in the facilities owned by Gassled must enter into a standard agreement (standard terms and conditions for transportation of gas in Gassled) with Gassco. In addition to transportation, Gassled also offers gas processing services, which must be booked and paid for separately by the shippers. Gassco is the operator of the gas processing plants at Kårstø and Kollsnes, located on the west coast of Norway.

Because a limited amount of Norwegian gas is used domestically, only a few gas storage facilities have been established. Access to storage facilities used in the upstream sector is to be conducted in accordance with the applicable rules in the Second Gas Directive as implemented in Chapter 9 of the Norwegian Petroleum Regulation.

In accordance with the Second Gas Directive, the Norwegian access regime comprises a primary and a secondary market. Agreements in the primary market are entered into in accordance with a standard agreement drawn up by the operator and approved by the MPE (standard terms and conditions for the transportation of gas in Gassled). The agreement also includes provisions related to different gas qualities, including the consequences of delivering off-spec gas in the system.

An agreement in the primary market includes the right to use spare capacity in upstream pipeline networks entered into by a natural gas undertaking or eligible customer with the owner of the upstream pipeline network acting in his or her capacity as owner, or with the operator acting on behalf of the owner in his or her capacity as owner. An agreement in the secondary market means an agreement for the transfer of rights to use capacity in upstream pipeline networks other than contracts in the primary market.

*Law stated - 01 January 2022*

## REGULATION OF NATURAL GAS DISTRIBUTION

### Ownership

Describe in general the ownership of natural gas distribution networks.

The right to own and distribute natural gas will, as a starting point, be subject to a concession granted under the Natural Gas Act and the Natural Gas Regulation. The concession period is granted for a period of up to 30 years, but the concession period may at the authorities' discretion be prolonged. Contrary to upstream oil and gas activities, the Norwegian state does not hold a direct ownership in the natural gas distribution network.

Only a small amount of gas is consumed nationally. The gas distribution networks governed by Third Gas Market Directive 2009/73/EC (the Third Gas Directive) are privately owned, with one located in the area of Jæren and Ryfylke (operated by Lyse Neo AS) and the other located at Haugalandet (operated by Gasnor AS). The gas pipeline system at Haugalandet is 120km long, while the system at Jæren and Ryfylke comprises 620 km of pipelines, and the main part of the gas in both systems is purchased by industrial customers. Onshore land rights can be obtained through private acquisition or expropriation. These methods are also applicable for obtaining land rights to construct gas distribution infrastructure.

*Law stated - 01 January 2022*

## **Regulatory framework**

Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

The operation of a distribution network is governed by the Natural Gas Act and the Natural Gas Regulation. The provisions are based on those of the Third Gas Directive, which entered into force in Norwegian law on 1 November 2019. Construction of facilities meant for transmission, LNG facilities and other facilities used for the distribution of natural gas are subject to a concession granted by the Ministry of Petroleum and Energy (MPE). Small-scale facilities are exempted.

The concession may be subject to certain criteria as set out in section 2-4 of the Natural Gas Regulation, including the concessionaire's organisation and competence, technical requirements and choice of route of the distribution network. The MPE may also make the concession conditional upon the performance of public services pertaining to security, including security of supply, regularity of service, the quality and price of the transportation services and protection of the environment. In terms of safety issues related to the distribution network, the Directorate for Civil Protection is the responsible authority.

Moreover, the construction and operation of a distribution network is normally subject to an impact assessment pursuant to the Planning and Building Act No. 71 of 27 June 2008, as further detailed in the Impact Assessment Regulation No. 1726 of 19 December 2014, with the local municipalities being the responsible authority. The Act further requires local building permissions for all constructions.

The gas pipeline network in the geographical area of Jæren and Ryfylke has obtained a preliminary exemption (to be evaluated every fifth year and by all means ending in year 2037) from the requirements in articles 24 (designation of distribution system operator), 31 (unbundling of accounts) and 32 (third-party access) of the Third Gas Directive. Since the onshore gas distribution network is insignificant, Norway also utilised the right under article 26, fourth paragraph of the directive not to introduce legal and functional unbundling for gas distribution operators with fewer than 100,000 connected customers (which is a number that is not likely to be reached in the upcoming decades).

Decisions of subordinate bodies may be appealed to the relevant ministry. Further, first-instance decisions made by the ministries may be appealed to the King in Council (ie, the government). Administrative decisions may also, to the extent all administrative rights of appeal have been exhausted, be appealed to ordinary courts. In such cases, the court may normally only assess the procedure and application of law, and not the administrative authority's application of discretion.

*Law stated - 01 January 2022*



## Access and pricing

How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

The Natural Gas Act and the Natural Gas Regulation provide the framework for obtaining access to the onshore natural gas distribution system. The main principle is that natural gas undertakings and qualified customers shall have access to the system, in line with the requirements in the Third Gas Directive.

For one specific area in Norway (the gas pipeline distribution network at Jæren and Ryfylke), the system operator is granted a derogation from, among other things, the applicable downstream provisions related to third-party access for a period of up to 20 years, to be evaluated every fifth year (see section 5-2 of the Natural Gas Regulation).

All rates and terms introduced for distribution services will be governed by the restrictions set out in the Price Policy Act and the Competition Act.

Detailed regulations regarding third-party access to distribution networks and provisions governing rates and terms for distribution services are expected to be implemented as soon as the downstream infrastructure has become more mature.

*Law stated - 01 January 2022*

## System/service expansion and limitation

May the regulator require a distributor to expand its system to accommodate new customers?  
May the regulator require the distributor to limit service to existing customers so that new customers can be served?

Norway has implemented the Third Gas Directive, and the applicable rules on third-party access will, unless a specific derogation is obtained, be applicable under Norwegian law.

The system operator may refuse third-party access if no capacity is available. The Third Gas Directive and section 7-2 of the Norwegian Gas Regulation provide that if the system operator expands its facilities to accommodate new customers, it may request an investment contribution from the new third-party users of the distribution network; however, for one of the two areas in Norway with established onshore distribution infrastructure, the system operator is granted a derogation from, among other things, the above-mentioned third-party access regime for a period of up to a maximum of 20 years (to be reassessed every fifth year if the derogation is to be continued).

*Law stated - 01 January 2022*

## Contracts

Describe the contractual regime in relation to natural gas distribution.

Norway has not established a fully functioning downstream gas market with an integrated pipeline network; hence, the immature market for natural gas distribution means that no standard contractual regime has yet been developed.

*Law stated - 01 January 2022*

## REGULATION OF NATURAL GAS SALES AND TRADING

### Ownership and organisation

What is the ownership and organisational structure for the supply and trading of natural gas?

In the upstream sector, licensees obtain ownership of the produced gas equal to their relative share in the production licence. Further, licensees are responsible for marketing and selling their own gas. With regard to the state's equity (through the state's direct financial interest) in produced gas, this is both marketed and sold by Equinor, together with its own gas.

The transportation network is owned by Gassled, and to the extent any third party uses a pipeline or transport-related facility, a predefined tariff is paid. The pipeline infrastructure from the Norwegian continental shelf (NCS) has landing points in the United Kingdom and on the continent. In addition to gas being transported through pipelines, LNG is also transported by LNG ships from the Snøhvit plant (Melkøya) in the Barents Sea to markets in Asia, America and Europe.

Only two distribution systems are established in Norway, and one is located in the area of Jæren and Ryfylke (operated and owned by Lyse Neo AS), and the other is located at Haugalandet (operated and owned by Gasnor AS).

*Law stated - 01 January 2022*

### Government oversight

To what extent are natural gas supply and trading activities subject to government oversight?

What authorisations are required to engage in wholesale trading of gas?

Licensees producing and transporting gas from the NCS are required to report to the Ministry of Petroleum and Energy (MPE) on a quarterly basis the volumes sold and the main terms of conditions in their gas sales agreements. The obligation to report includes both internal and external gas sales.

An insignificant share of the gas produced on the NCS is used for domestic energy consumption, and only a limited distribution network to serve end users is in place on the west coast of Norway. The construction and operation of facilities for onshore transportation of natural gas to natural gas undertakings in other regions may only take place after being granted a licence by the MPE. The implementation of the Third Gas Market Directive 2009/73/EC (the Third Gas Directive) into Norwegian law implies that potential wholesale trading of gas must, unless a derogation is provided, also be in compliance with the requirements in this Directive.

The Norwegian Energy Regulatory Authority (NVE-RME) is a national independent regulatory authority for the electricity market and downstream (onshore) gas market in Norway. NVE-RME's director general acts as regulator. NVE-RME has no ownership or economic interests in the electricity industry or downstream gas market. NVE-RME is an independent legal entity with its own budget set by the government and has the authority to act in the scope of its competences. A new Energy Regulation Department was established in 2013 to prepare for the implementation of the Third Energy Market Package.

A Norwegian Energy Appeals Board was established with effect from 1 November 2019, handling complains related to certain decisions within the electricity and downstream gas sectors taken by NVE-RME. So far, the Energy Appeals Board has only decided on cases related to the electricity sector.

*Law stated - 01 January 2022*

## Trading processes

### How are physical and financial trades of natural gas typically completed?

Physical trading of natural gas is typically completed bilaterally. The gas producers trade their share of the gas on an individual basis. Historically, all upstream gas sales were completed by entering into long-term contracts with take-or-pay obligations for the buyer. New gas sale contracts entered into with long-term take-or-pay obligations now tend to have a shorter duration. The new contracts also often have a more market-oriented price formula than before (ie, not only oil indexed). Contracts based on spot gas prices are taking an increasing share of the market and are arguably the most used contract form in new gas sales contracts on the NCS.

Shippers on the gas infrastructure from the NCS to continental Europe must accept the standard terms and conditions issued by Gassco for transportation of gas in Gassled.

Norwegian gas sellers frequently use their own terms and conditions when entering into gas sales agreements with continental buyers. Standard short-term contracts include, among other things, the European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Natural Gas. Standard agreements related to the liquid trading points, such as the National Balancing Point in the United Kingdom, the Zeebrugge Hub in Belgium, the Title Transfer Facility in the Netherlands and Gaspool/NCG in Germany, are increasingly relevant to Norwegian gas sellers.

The legislation for completing financial trades of natural gas is in place, but the market is still in its start-up phase. One of several standards is the International Swaps and Derivatives Associations Master Agreement.

*Law stated - 01 January 2022*

## Available services and products

### Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Buyers of natural gas from producers are offered a bundled product through the Norwegian transportation system owned by Gassled.

The requirements in the Third Gas Directive are, unless specific derogations have been granted, applicable to wholesale and retail buyers of natural gas. Norway has only two minor local onshore distribution systems and has consequently not developed an integrated onshore distribution network. Potential retail buyers may, however, procure gas from all available providers.

*Law stated - 01 January 2022*

## REGULATION OF LNG

### Ownership and organisation

#### What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?

In the upstream sector, only companies granted a licence under the Petroleum Act will be entitled to own and operate an LNG facility. The ownership is organised as a joint venture, and the various licensees become owners of the LNG.

Equinor sells LNG owned by the state (through the state's direct financial interest) together with its own LNG.

Norway has only a limited number of LNG facilities, and the only full-scale facility with liquefaction, receiving, regasification and export facilities is the Snøhvit facility (Melkøya) located in the Barents Sea. Tjeldbergodden air gas plant has a smaller fractionation and LNG facility.

In the downstream sector, companies granted a concession in accordance with the Natural Gas Act and the Natural Gas Regulation have the ownership of LNG facilities, but the requirement to obtain a concession does not apply to small-scale LNG-facilities.

The government previously stated that all the existing downstream LNG facilities are categorised as small-scale, and outside the scope of the Third Gas Market Directive 2009/73/EC. The directive's rules related to, among other things, legal and functional unbundling will therefore not apply to the existing downstream LNG facilities.

*Law stated - 01 January 2022*

## **Regulatory framework**

Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

LNG facilities forming an integrated part of the offshore petroleum production or transportation are subject to the licensing system set out in the Petroleum Act. The Ministry of Petroleum and Energy (MPE) may on specified conditions grant a specific licence to install and to operate LNG facilities when the right to install and to operate does not follow from an approved plan for development and operation.

Construction of LNG facilities and other facilities used for distribution of natural gas are subject to a concession granted by the MPE. Small-scale LNG facilities are, however, exempted from the requirement to obtain a concession, and the Norwegian authorities have stated that all existing downstream LNG facilities are defined as small-scale.

The concession may be subject to certain criteria as set out in section 2-4 of the Natural Gas Regulation, including the concessionaire's organisation and competence, technical requirements and choice of route of the distribution network. The MPE may also make the concession conditional upon the performance of public services pertaining to security, including security of supply, regularity of service, the quality and price of the transportation services and protection of the environment. In terms of safety issues related to the distribution network, the Directorate for Civil Protection is the responsible authority.

Moreover, the construction and operation of a distribution network is normally subject to an impact assessment pursuant to the Planning and Building Act No. 71 of 27 June 2008, as further detailed in the Impact Assessment Regulation No. 1726 of 19 December 2014, with the local municipalities being the responsible authority. The Act further requires local building permissions for all construction.

*Law stated - 01 January 2022*

## **Pricing**

Describe any regulation of the prices and terms of service in the LNG sector.

Third-party access to LNG facilities falling within the scope of the Petroleum Act is governed by the Regulation No. 1625 on Others' Use of Facilities of 20 December 2005. A party requesting access to an LNG facility owned by another party shall, on objective and non-discriminatory terms and conditions, be entitled to use the facility.

Access is obtained through negotiations and is based on the principle that profits from production are primarily earned

by the producing field and not in the transportation system. If the parties are unable to reach a mutual agreement, the dispute may be brought before the MPE for a decision.

All rates and terms introduced for third-party access to LNG facilities not governed by the Petroleum Act will fall within the scope of the restrictions set out in the Price Policy Act and the Competition Act. The same applies to small-scale LNG-facilities in the downstream sector.

*Law stated - 01 January 2022*

## MERGERS AND COMPETITION

### Competition authorities

Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

The Norwegian Competition Authority (NCA) enforces competition law in Norway, including ensuring compliance with the competition rules in markets in the natural gas sector. The Ministry of Trade, Industry and Fisheries provides the framework for the NCA's activities, and shapes the competition policy on a more general level through guidelines and delegated legislation.

Decisions by the NCA may be appealed to an autonomous appeal body, and the decisions of the appeal body are in turn subject to judicial review directly before the court of appeal.

Some hardcore infringements of the Competition Act, such as participation in cartels, are criminalised, and Økokrim, the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, may investigate and prosecute individuals for participation in such violations.

*Law stated - 01 January 2022*

### Competition standards

What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

Undertakings operating in Norway are obliged to comply with two sets of competition legislation: the competition rules in the Competition Act and the competition rules applicable to undertakings under the European Economic Area (EEA) Agreement. The competition rules in the Norwegian Competition Act are based on the competition rules of the EEA Agreement, which in turn are harmonised with articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

The NCA has powers under sections 10 and 11 of the Competition Act to take action concerning agreements that may restrict competition and the abuse of a dominant position, in either case where there may be an effect on trade in Norway. The NCA will normally apply sections 10 and 11 in a manner consistent with EU law.

Articles 53 and 54 of the EEA Agreement prohibit certain agreements that may restrict competition and abuse of a dominant position respectively. The application of the provisions on competition in the EEA Agreement shall be aligned with the EU courts' interpretation of articles 101 and 102 TFEU.

Further, should the European Free Trade Association Surveillance Authority (ESA) or the European Commission (EC) initiate the investigation of an infringement of the competition rules under the EEA Agreement, the NCA is prohibited from making decisions conflicting with those of the ESA or the EC.

*Law stated - 01 January 2022*

## Enforcement

What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

The NCA has broad powers to investigate an alleged infringement of the Competition Act. The Act prohibits agreements restricting competition and abuse of a dominant position. The NCA may impose administrative decisions and fines on undertakings found to have infringed the competition provisions.

Individuals breaching the competition provisions may be punished through fines or imprisonment. Individuals may, however, not be punished for infringements of the Competition Act section 11 (abuse of dominance). Abuse of dominance may thus only be sanctioned through fines imposed on undertakings.

The NCA has also established a leniency programme, under which full or partial immunity from fines may be granted to undertakings that notify the NCA of the existence of anticompetitive agreements.

The NCA also has the authority to formally end an investigation of a cartel after reaching a settlement with the undertakings under investigation.

The ESA has similar powers to enforce the competition provisions under the EEA Agreement.

*Law stated - 01 January 2022*

## Merger control

Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

In the upstream sector, all transactions are subject to the consent of both the Ministry of Petroleum and Energy and the Ministry of Finance. Transactions include both transfers of licences and the assignment of shares giving decisive control of a company holding a participating interest in one or several licences on the Norwegian continental shelf.

Moreover, Chapter 4 of the Competition Act establishes a general merger control system that is also applicable to mergers and acquisitions in the gas sector. The term 'merger', used in this context, includes a broader range of corporate transactions compared with what the term usually refers to.

The merger review system requires the parties to a merger to submit a pre-merger notification to the NCA if the merger is above the filing thresholds. Mergers are subject to a filing obligation when more than one of the parties have an annual turnover exceeding 100 million Norwegian kroner in Norway, and the parties have an aggregate turnover exceeding 1 billion Norwegian kroner in Norway. The NCA must, within fixed time limits, notify the parties and determine whether the notified concentration is likely to significantly impede effective competition, in particular as the result of the creation or strengthening of a dominant position. The NCA may clear or prohibit the merger, or approve the merger subject to conditions as proposed by the parties.

*Law stated - 01 January 2022*

## Price restrictions

In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

No restrictions apply.

*Law stated - 01 January 2022*

### **Corporate governance regulations**

Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

Except for common restrictions on the acquisition of shares, there are no particular restrictions on the acquisition of shares in gas utilities.

There are no specific corporate governance regulations or rules regarding the transfer of assets applying to gas utilities. Companies are not obliged to follow the common Norwegian corporate governance regulations; however, if listed companies derogate from common corporate governance regulations, an explanation needs to be filed.

*Law stated - 01 January 2022*

## **INTERNATIONAL**

### **Foreign participation**

Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

In the upstream sector, there are different requirements depending on whether an exploration or production licence has been granted. The Ministry of Petroleum and Energy (MPE) may grant an exploration licence to a body corporate, irrespective of whether the company is domiciled or registered, or both, in Norway. Exploration licences may also be granted to physical persons domiciled in a state within the European Economic Area (EEA).

Production licences may, on the other hand, and as a starting point, only be granted to a body corporate established in conformity with Norwegian legislation and registered in the Norwegian Register of Business Enterprises. Pursuant to the EEA Agreement, companies applying for a production licence may also be established in an EEA state. In addition, production licences may be granted to a physical person domiciled in an EEA state.

Moreover, pursuant to the Petroleum Act, a licensee is, as a general rule, obliged to have an organisation based in Norway capable of handling its petroleum activities on the Norwegian continental shelf in a prudent manner that safeguards good resource management, health, safety and the environment. To ensure compliance with these requirements, the MPE may, to the extent deemed necessary in relation to the scope of the licensee's activity, set special requirements regarding the licensee's organisation in Norway. The MPE may also, if indicated by the consideration for prudent resource management, or health, safety and the environment, order the licensee to use specific bases.

In practice, more or less all companies being awarded a production licence have been domiciled in Norway and registered as a company with limited liability within a reasonable period of time following the award.

In the downstream sector, a concession under the Natural Gas Act is granted to a company registered in the Norwegian Business Register, but companies incorporated in an EEA state or physical persons domiciled in an EEA state may also be granted a concession.

*Law stated - 01 January 2022*

## International agreements

### To what extent is regulatory policy affected by treaties or other multinational agreements?

As a party to the EEA Agreement, Norway is largely affected by legislation enacted by the European Union and the EEA; hence, statutes and regulations on a national level cannot be inconsistent with the rules of, among other things, non-discrimination and the four freedoms (ie, free movement of goods, capital, services and persons).

Two of the most important directives that further elaborate on the basic rules of the European Union and the EEA, and which have been implemented by Norway, are the Hydrocarbons Licensing Directive 94/22/EC and the Third Gas Market Directive 2009/73/EC (the Third Gas Directive), which repealed and replaced the Second Gas Market Directive 2003/55/EC. The legislation implementing the Third Gas Directive into Norwegian law entered into force on 1 November 2019.

An example of an important regulation is Commission Regulation (EU) No. 984/2013, which supplements Regulation (EC) No. 715/2009. The regulations set out transparent, efficient and non-discriminatory rules for access to gas infrastructure for all network users.

Important international treaties are the Convention for the Protection of the Marine Environment of the North-East Atlantic and the United Nations Convention on the Law of the Sea, which are both applicable under Norwegian law.

*Law stated - 01 January 2022*

## Cross-border sales and deliveries

### What rules apply to cross-border sales or deliveries of natural gas?

All cross-border sales must be conducted under a production licence with an approved plan for development and operation, and the MPE must have approved the production profile for the field in question. The activities on the gas receiving terminals located on the territory of foreign states are governed by the Petroleum Act and specific bilateral agreements between Norway and the state where the terminal is located.

*Law stated - 01 January 2022*

## TRANSACTIONS BETWEEN AFFILIATES

### Restrictions

#### What restrictions exist on transactions between a natural gas utility and its affiliates?

According to common restrictions set out in both the Public Limited Liability Companies Act and the Limited Liability Companies Act (sections 3-8 and 3-9), the transaction agreement shall be based on commercial terms and shall be in writing (the arm's-length principle). Further, the agreement has to be approved by the general meeting if the amount of the transaction exceeds certain thresholds.

*Law stated - 01 January 2022*

### Enforcement

#### Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

The arm's-length principle is enforced by the tax authorities. Non-compliance may lead to surtax or criminal sanctions



against the company or its officers, or both. In addition, civil claims may be imposed on the board and management of the company.

*Law stated - 01 January 2022*

## UPDATE AND TRENDS

### Gas sector-specific regulation

Describe recent trends and developments in the regulation of the domestic natural gas sector.

#### **Strong focus on CO<sub>2</sub> capture, transportation and storage**

A specific regulation related to the transportation and storage of CO<sub>2</sub> on the Norwegian continental shelf (NCS) came into effect on 5 December 2014, and Chapter 4a of the Petroleum Regulation also includes detailed rules applicable to the storage of CO<sub>2</sub> on the NCS.

Norway has long experience of utilising carbon capture and storage (CCS) techniques. Since 1996, CO<sub>2</sub> from natural gas production on the NCS has been captured and reinjected into sub-seabed formations. The CCS projects on the Sleipner, Gudrun and Snøhvit fields are the only CCS projects currently in operation in Europe and the only projects in the offshore industry.

In addition, the Technology Centre Mongstad (TCM) is the world's largest facility for testing and improving CO<sub>2</sub> capture technologies, and is a vital part of the government's work on CCS. TCM has been operating since 2012, providing an arena for targeted development, testing and qualification of CO<sub>2</sub> capture technologies on an industrial scale.

The execution of a new full-scale CCS project in Norway is in progress. In 2018, the government decided to fund front-end engineering and design studies of CO<sub>2</sub> capture at two sites in Norway. A solution for full-scale CCS that facilitates the further development of CCS in both Norway and Europe has also been introduced. The project named Longship has, for the first phase, encompassed carbon capture from Norcem's cement factory in Brevik, while the second potential capture site, Fortum Oslo's Varme district heating facility, may be included at a later stage provided that the company obtains sufficient self-funding and funding from the European Union or other sources.

On 14 December 2020, Parliament approved the use of the significant state aid necessary to enable this groundbreaking project to be executed, and the government has laid out its plans for Longship in a white paper, which was debated and adopted by Parliament on 21 January 2021.

Northern Lights, which is a collaboration between Equinor, Shell and Total, is responsible for the CO<sub>2</sub> transportation and storage part of the Longship project. Northern Lights constitute the largest part of the Longship project and comprises ships for the transportation of liquid CO<sub>2</sub>, a reception terminal in Øygarden and a pipeline to an offshore well where CO<sub>2</sub> will be injected into a storage formation 2,600 metres under the seabed. In March 2021, the government approved the plan for the development and operation of Northern Lights.

The Longship project will be the first ever cross-border, open-source CO<sub>2</sub> transport and storage infrastructure network and offers European industrial companies the opportunity to store their CO<sub>2</sub> permanently underground. Phase one of the project is expected to be completed in 2025, with a capacity of up to 1.5 million tonnes of CO<sub>2</sub> per year.

The overall investment and running costs for the project were originally estimated to be approximately 25 billion Norwegian kroner, of which the state will contribute approximately 17 billion Norwegian kroner. It remains to be seen whether it is possible to finalise this important project within budget and within the time-schedule.

On 5 April 2022, the Ministry of Petroleum and Energy (MPE) announced that the companies Equinor ASA, Vår Energi AS and Horisont Energy AS were awarded exploration licences to store CO<sub>2</sub> in specific areas on the NCS. This is the second time that acreage has been awarded for CO<sub>2</sub> storage pursuant to the CO<sub>2</sub> Storage Regulations. The first

awards were through the Longship project in 2019, and the joint venture is now well under way with its work to develop infrastructure for the storage part of Longship. The MPE emphasised that this award shows that CO<sub>2</sub> storage is relevant for traditional energy companies, as well as new players, in an offshore activity that requires different business models than traditional oil and gas projects.

### **Third-party access to gas infrastructure**

Access to the gas transportation network (Gassled) is governed by the Tariff Regulation of 20 December 2002. Third-party access to other offshore infrastructure is governed by Regulation No. 1625 on Others' Use of Facilities (the TPA Regulation).

The Tariff Regulation provides rules on regulated access with set tariffs, while access to infrastructure under the TPA Regulation is based on negotiated terms within set criteria. The aim of both regulations is to ensure efficient use of existing infrastructure on the NCS, and the overriding principle is that only the owner shall be entitled to maximise profit through production, and not in the transportation network and other infrastructure. The increased use of third-party facilities on the NCS is likely to give rise to more disputes related to the specific tariff level and other applicable terms and conditions under the TPA Regulation.

Access to onshore distribution network and onshore storage facilities is governed by the Natural Gas Act and the Natural Gas Regulation, with amendments to both, effective from 1 November 2019, implementing the applicable rules on third-party access in the Third Gas Market Directive 2009/73/EC. For one specific area in Norway (the gas pipeline distribution network at Jæren and Ryfylke), the system operator has been granted a derogation from, among other things, the applicable downstream provisions related to third-party access for a period of up to 20 years (to be evaluated every fifth year).

*Law stated - 01 January 2022*

### **Other regulatory developments of particular relevance to the gas sector**

Describe any other recent regulatory trends and developments of particular interest to those operating in the domestic natural gas sector.

### **Important changes in petroleum taxation for the upstream sector**

Owing to the covid-19 pandemic, temporary special tax reliefs have been introduced. The right to obtain an immediate deduction of the investment costs and an additional 24 per cent uplift also apply to the deduction of costs incurred in acquiring operating assets covered by defined plans for the development and operation of fields or plans for installation and operation, provided that an application is filed before 1 January 2023 and approved by the MPE before 1 January 2024.

The cash refund rules were expanded by temporary rules in 2020. The temporary rules apply to most projects for which the project plan is submitted to the MPE by 1 January 2023 and finally approved by the MPE by 1 January 2024. To benefit from the temporary cash refund rules, it is expected that a record number of field development plans will be submitted to the MPE in 2022.

In addition, in April 2022, the government proposed to change the current petroleum tax system to a cash flow-based tax for the special tax. This implies that all costs, including investments, will be deductible in the year they occur rather than through depreciations. Deductions for uplifts and financial costs will be excluded from the special tax. Regarding the corporate tax base, investments shall be depreciated over six years as in the current tax regime.

The abolishment of the cash reimbursement of the loss position has been proposed. The special tax rate will effectively be increased to 71.8 per cent, as the calculated corporate tax will be deducted from the special tax base;

hence, companies will not receive the full tax values of their taxable expenses as they are today. The tax values of the losses in the special tax base will be refunded annually, while any losses in the ordinary corporate tax base must be carried forward.

To strengthen borrowing opportunities, companies are allowed to pledge their refund claims in respect of the special tax value losses.

### **New gas pipeline – Polarled**

The Polarled pipeline has a total length of 482km and ties the Aasta Hansteen field in the Norwegian Sea to the Nyhamna gas processing facility in north-west Norway. Polarled is the first offshore pipeline crossing the Arctic Circle and is designed for a transport capacity of approximately 70 million cubic metres of gas per day.

The pipeline expands the existing gas transport network on the NCS and facilitates for phasing in resources available in existing and future Norwegian Sea discoveries. Gassco is the operator of the Polarled pipeline, which received its first gas volumes when the Aasta Hansteen field came on stream in December 2018. Several new fields are expected to be connected to the pipeline during the years to come.

### **Petroleum activities in the ice edge zone (Barents Sea)**

The state has undertaken not to permit petroleum activities in the 'ice edge zone' in the Barents Sea.

Until now, the ice edge zone has been defined as the area where the average period of ocean ice during April is 30 per cent, but the government presented a new definition on 24 April 2020 where the borderline is set to the area where the average period of ice during April is only 15 per cent.

The Norwegian petroleum industry appreciates that none of the production licences awarded in the 23rd licensing round (south-east Barents Sea) cross the borderline of the new 'ice edge'. Petroleum activities may, therefore, still be permitted in those production licences, which is an issue closely linked to the high-profile claim from environmental groups against the Norwegian state.

### **Digitalisation contributing to increased cost-cutting**

After the significant drop in oil prices in 2014, various cost-cutting measures have been implemented to ensure that it is still profitable to conduct petroleum activities on the NCS. The Norwegian oil and gas industry has a good track record in implementing new technology.

A recent trend contributing to lower costs is an operator-driven digitalisation initiative with more data sharing, information sharing through digital cloud-based solutions replicating real-life scenarios with virtual 3D simulations of operations, data analytics for condition-based maintenance of equipment and artificial intelligence involving machine learning to better understand and interpret data for more effective decision making.

One of the projects on the NCS benefitting from this digitalisation trend is the major Johan Sverdrup field development, where commencement of production for phase one development took place in the second half of 2019, while offshore installation work for phase two development was completed in March 2022. The operator Equinor has developed digital twins of the field's four platforms, providing a unique overview of all parts of the platforms and enabling more realistic surveillance and training, which in turn contributes to more efficient and safe operations.

The Norwegian industry's increased focus on digitalisation in all phases of petroleum activities is expected to be one of the most important factors contributing to the NCS strengthening its competitiveness in the years to come.

## **Environmental lawsuit related to the award of production licences in the 23rd licensing round**

On 22 December 2020, the Norwegian Supreme Court set by all judges (plenary) gave its judgment in the much-anticipated climate lawsuit against the Norwegian state, where the specific risk at stake was that the award of production licences in the 23rd licensing round could be declared invalid (null and void). The case was heard between the state, represented by the MPE, Greenpeace Nordic, Nature Youth Norway and other environmental organisations. The Supreme Court found that the granting of production licences in the 23rd licensing round was valid.

The main legal question discussed was whether article 112 of the Constitution, in particular its first paragraph, gives material rights to private persons, and if so, what the contents of this right is. The provision states:

Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles.

The Supreme Court conducted a thorough interpretation of article 112. In the majority's view, the wording did not provide a clear answer to the question of whether this provision gives material rights to individuals; however, the former article 110(b), which was replaced by article 112, and the preparatory works indicated that the main element of article 112 was Parliament's duty to implement adequate and necessary measures to combat and mitigate climate change.

Article 112 may, however, provide rights for individuals to be tried before the courts when it comes to environmental issues that are not discussed and governed by applicable legislation. The Supreme Court also stated that if Parliament has not been involved in an administrative decision, article 112 may serve as a relevant factor for the interpretation to be conducted.

Where Parliament has been involved, and has implemented measures through legislation, etc, the Supreme Court found that article 112 will function as a 'legal safety net'. The majority found that a precondition for the courts to set aside a legislative decision must be that Parliament had grossly set aside its obligations pursuant to article 112. The threshold is consequently very high.

The Supreme Court did not find that the threshold was reached when Parliament decided to open the south-east Barents Sea for petroleum activities, and added that the award of production licences in the 23rd licensing round was directly interlinked with the previous decision by Parliament to open the applicable areas for petroleum activities. Several measures had been implemented to combat the effects of emissions, including, among other things, duties on CO<sub>2</sub> emissions, the European Union's quota system, measures relating to carbon capture and storage, etc. In conclusion, the majority found that Parliament had clearly not grossly set aside its duties under article 112.





Other legal issues were also included in the scope of the case. Most notable was the question of whether the 23rd licensing round infringed the right to life under article 2 of the European Convention on Human Rights (ECHR) and article 93 of the Constitution or the right to respect for private and family life (see article 8 of the ECHR and article 102 of the Constitution). The court unanimously found that these rights were not breached.

Finally, the Supreme Court thoroughly discussed whether the decision from 2013 to open the south-east Barents Sea area for petroleum activities suffered from procedural errors, leading to the subsequent administrative decision to award licences being declared invalid (null and void). The majority did not find that the opening of the south-east Barents Sea in 2013 was in breach of article 112 of the Constitution or other Norwegian or international legal sources, and the award of production licences in the 23rd licensing round was therefore declared valid.

The Supreme Court's judgment has been brought before the European Court of Justice. It therefore remains to be seen whether the final chapter has been reached in this climate lawsuit. In any case, we will assume that the Norwegian authorities will ensure that adequate environmental impact assessments will be provided if new areas are opened for petroleum activities in the future and for all upcoming awards of production licences on the NCS.

*Law stated - 01 January 2022*

## Jurisdictions

	<b>Austria</b>	Schima Mayer Starlinger
	<b>Brazil</b>	Campos Mello Advogados
	<b>Colombia</b>	Figueroa Sierra & Asociados Abogados
	<b>Denmark</b>	Bech-Bruun
	<b>European Union</b>	Reed Smith LLP
	<b>Faroe Islands</b>	Bech-Bruun
	<b>Germany</b>	Luther Rechtsanwaltsgesellschaft
	<b>Greenland</b>	Bech-Bruun
	<b>India</b>	Clarus Law Associates
	<b>Iraq</b>	Al Hadeel Al Hasan Law
	<b>Italy</b>	CMS Italy
	<b>Japan</b>	TMI Associates
	<b>Nigeria</b>	ENR Advisory
	<b>Norway</b>	Kvale Advokatfirma
	<b>Oman</b>	Al Busaidy Mansoor Jamal & Co
	<b>Poland</b>	Banasik Woźniak i Wspólnicy Kancelaria Radców Prawnych Sp. P.
	<b>Thailand</b>	Chandler MHM Limited
	<b>Turkey</b>	Kesikli Law Firm
	<b>United Kingdom</b>	Dentons