



Romania's Shale Gas Strategy



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Policy Brief #1

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After a somewhat late start, the shale gas debate in Romania has picked up steam in 2012. There is currently a much higher degree of public awareness related to the topic of shale gas than say, a year ago. A “cascade of events” contributed to this outcome, culminating in early May of 2012 with the announcement of the intention to impose a moratorium on shale gas exploitation by the government of PM Victor Ponta. This article tracks the legislative process of the draft law proposing to ban the use of the hydraulic fracturing technique in Romania and discusses some of the obstacles to shale gas development in Romania. It ends with a recommendation for a document that could be Romania's National Strategy for Shale Gas or, if it is to have a wider scope – a Strategy for the Romanian Unconventional Resources.

The summer and fall of 2012 was a necessary pause for thought in Romania on the above mentioned topic, which took a back seat in the context of a very heated domestic political battle. Meanwhile, three important and much awaited reports on shale gas written for the European Commission came out this September:

1. *“Unconventional Gas: Potential Energy Market Impacts in the European Union”* written by the Joint Research Center for DG Energy.
2. *“Support to the identification of potential risks for the environment and human health arising from hydrocarbon operations involving hydraulic fracturing in Europe”*, written for DG Environment
3. *“Climate impact of potential shale gas production in the EU”*, written for DG Clima.

These are the reports that the Ponta cabinet did probably have in mind in May of 2012 when it said that the Romanian government was waiting for the studies conducted at European level to be made public before making a final decision regarding the future of shale gas development in Romania.

The Romanian shale gas moratorium

In a June 2012 interview, Alexandru Pătruți, former Director of the National Agency for Mineral Resources (NAMR), stated: *“What is important is that Romania should present its view on this matter. Prior to this cabinet [the Ponta cabinet] the Romanian government's view was to encourage exploration and, if it is possible, exploitation as well”*.¹

¹ “Mining companies pit their wits against market challenges”, *The Diplomat*, June 2012: <http://www.thediplomat.ro/articol.php?id=3495>

The idea of a moratorium on shale gas projects appeared in the aftermath of several street demonstrations opposing shale gas development in Romania that took place in February and March. It made its way into the program of the Ponta government (the short term one that applied during the 6 months preceding the December 2012 elections) under the Chapter regarding the Environmental protection, where one of the bullet points reads: *“The immediate imposition of a moratorium on shale gas exploitation until the studies concerning the environmental impact of hydraulic fracturing currently underway at the European level are finalized.”*²

To be noted the word “exploitation”, which implies that the moratorium would not target the *exploration* of such resources that would remain unhindered by national legislation and thus could be carried on. However, in February, a group of 10 MPs of the Romanian Social-Democratic Party (PSD) advanced a legislative proposal that would ban the use of hydraulic fracturing in Romania, a proposal rejected by the Romanian Senate this summer. The draft law, registered at the Senate as L228/2012³, was initiated by PSD MP Adrian Solomon and proposed banning hydraulic fracturing entirely in Romania (*onshore* as well as the Romanian Black Sea *offshore*) and cancelation of all the exclusive licenses granting the right for exploration and exploitation of such resources. In its initial form, the draft law proposed a penalty of 3 years in prison and a fine of 500,000,000 RON (approx. 111 million EUR⁴) for the unlawful use of hydraulic fracturing technology without disclosure of such intent to the competent authority. Subsequently, the Legal Council (*Consiliul Legislativ*) amended the text of the draft (amendments approved by the Senate’s Commission for Economy, Industry and Services) to correspond to the current provisions of the Penal Code. Thus, the amended draft law now stipulates a punishment of **either** imprisonment from 3 to 5 years **or** a fine (30,000 to 50,000 RON applicable to individuals and 1,500,000 to 2,000,000 RON applicable to legal entities) for violation of this law. Thus the draft law no longer has a cumulative punishment while the value of the proposed fine provides for a minimum and a maximum and has been overall reduced (compared to the initial form, now the fine could range from a minimum of approx. EUR 6,600 to a maximum of approx. EUR 11,000 for individuals and a min. of approx. EUR 333,000 to a max. of approx. EUR 444,000 for companies).

On June 15, 2012, the Government address to the Parliament formulated the government’s position regarding the Draft Law L228/2012 as “not supporting the initiative” (point No. 17 in the table contained in the Government address to the Parliament⁵). Further, on June 21, 2012, the Senate has rejected the proposal with 53 votes against, 11 in favor and 9 abstaining.⁶ The legislative proposal was sent afterwards to the Chamber of Deputies (the deciding body) where it was registered

² Government Program for 2012: <http://www.gov.ro/upload/articles/117011/programul-de-guvernare-2012.pdf>

Chapter 15 – Environmental protection, pg. 49: *“Instituirea imediata a unui moratoriu privind exploatarea gazelor de sist pana la finalizarea studiilor ce se afla in derularea la nivel european privind impactul asupra mediului prin procedeul de fractionare hidraulica”.*

³ For the entire documentation regarding the legislative process (or ‘circuit de avizare’, in Romanian) of this draft legislation, please see here: <http://senat.ro/Legis/Lista.aspx?cod=16591&pos=0&NR=L228&AN=2012>

⁴ Values in EURO are calculated at an assumed RON to EUR exchange rate of 4.5:1

⁵ <http://senat.ro/Legis/PDF/2012/12L228APV.pdf>

⁶ <http://senat.ro/VoturiPlenDetaliu.aspx?AppID=b7dcf488-5884-45e2-8757-b53a6f47da2c>

as P.L.x **278/26.06.2012** and where it currently remains.⁷ According to the Romanian Constitution, Art. 75 (Para 3), after the first Body (in this case, the Senate) expresses its point of view the project is sent to the other Chamber, which will make the final decision. Thus, it is the Chamber of Deputies that will have the final word on whether the project will be adopted into law or not.

The moratorium might have had to do as much with the desire not to raise the political temperature further during an election year, as it had with the intention to buy more time in order to increase the knowledge pool regarding the topic of unconventional hydrocarbons in Romania.

Other obstacles to shale gas development in Romania: low public confidence

A lack of communication on the part of the authorities (the government's communication with the general public has been limited to non-existent on the shale gas issue prior to the public outcry in February and March) is seen as one of the key impediments. Public discontent has been building for some time in Romania and peaked with unusual force for Romania in street violence last winter. Thus, the topic of shale gas had an unfortunate debut (with a focus on the concerns and negative aspects) completely missing out on the discussion about potential benefits (which have been hotly debated in other countries for at least 3 or 4 years now). Only after significant public and media attention had the government representatives started to take public positions with respect to this topic and started communicating with Romanians about what this new resource represents and the benefits as well as challenges associated with it. This underscores a predominantly reactive mindset on the part of the authorities, since communication only started after public criticism reached its peak. Against this disappointing background, one exception stands apart: the NAMR initiative to put together a working group in 2010 with academics from the Universities of Bucharest, Babeş-Bolyai in Cluj, Al.I.Cuza University in Iaşi, and GeoEcoMar-Bucharest to study Romania's shale gas potential based on data contained in geological archives.

Apart from the 6 months moratorium on shale gas exploitation (which expires at the end of 2012), currently there is no law in effect in Romania that forbids the use of hydraulic fracturing for unconventional hydrocarbon reservoirs. However, public opposition to shale gas projects remains an obstacle.

Bârlad – ground zero for Romanian shale gas opposition

March 22 and April 26 recorded what was the highest opposition to shale gas in Romania – two demonstrations that brought together several thousand people on the streets of Bârlad, a town in the vicinity of the perimeter held by American company Chevron – where the first exploratory well was planned to be drilled this year. Why

⁷ As of now the legislative process of this law in the Chamber of Deputies can be tracked here: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12558

did such an unprecedented backlash from the local community happen? While some degree of adversity was to be expected, since earlier in February a small scale Romanian anti-shale gas protest took place on the streets of London, following similar but larger opposition in Bulgaria, the scale of this street statement in Bârlad came somewhat of a surprise. So, naturally the question arises as to whether this opposition was an isolated phenomenon which should be interpreted in the context of a record heated election year in Romania or it is indicative of a deeper anti-shale gas sentiment in the Romanian society.

First, a look at several factors that have contributed to an escalation of the negative sentiment:

(I) Communication with the public

Absent high-quality information and data, as well as greater transparency on behalf of the authorities regarding a topic of key public interest, a project that could bring great benefits and hold a potential transformative effect on the Romanian economy became suddenly a subject of “political football”, could be delayed, or even scrapped altogether. Until the conflict reached the tv channels, no authority explained to the people directly in the proximity of the fields targeted by shale gas activity what this will mean for their local community, until after the protest ignited. To quote the CEO of Starbucks who recently gave an interview to CNN: “*the rules of engagement with citizenship have changed*”. Thus governments and private sector entities need to engage with civil society, need to open communication channels with the common citizen, need to explain the rationale behind the strategic decisions, and talk about benefits and risks and how the latter are being mitigated. With a few notable exceptions, nothing of the kind has happened. So, naturally, ordinary citizens, some of them truly concerned about the well-being of their families/households feel that shale gas is being forced on them. Hence, the NYMBY (Not In My Back Yard) reaction in Bârlad this spring.

In contrast, other governments understand to reach out and explain energy policies to the citizens. Take for instance, Timor-Leste, a country that appeared on the world map in 2002, after a 24-year-old conflict with Indonesia that left the nation in ruin. Its Secretary of State for Natural Resources, Alfredo Pires, oversees all aspects of hydrocarbon development and frequently tours the country with his staff to explain the government decisions in the energy sector and gather input from the citizens:

“As part of the EITI process, Pires holds information sessions throughout the country. He meets with various stakeholders to explain actions the government is taking and seeks feedback, citing one instance when his team traveled throughout the country for one straight month. “We engage quite frequently,” he said. (...) Pires has worked to augment previous efforts and introduce a transparency

mechanism to ensure that citizens are kept up-to-date on developments within the petroleum sector.”⁸

(II) Politics and local protests

The sudden opposition in Romania could be ascribed to a complete informational blackout since the topic of unconventional resources has been next to absent in the public and political discourse from 2008 until 2011 and has only recently entered into the attention of policymakers, the wider audience and the mainstream media.

To a certain extent, it was a spill over effect from the developments in Bulgaria and the call from the civil society there to Romanian NGOs to do the same thing here, which is actually what made the Romanian society sensitive to the details of this topic and aware of the related debate going on elsewhere in the world.

In a way, the private sector was blindsided on this issue, but the decision of such companies as Chevron not to further antagonize a population tested severely by the crisis and a range of other measures that left many in poverty, many more unemployed and a significant number underemployed was probably an appropriate response; A cautious approach in a highly charged political environment, with local elections taking place in June and parliamentary elections scheduled for December, and political parties not shy to score points on a topic that quickly became a “hot potato”.

Seen from this perspective, the decision of the Ponta government to place a moratorium on shale gas exploitation looks like an attempt to cool off spirits and to decouple a key question for Romania’s economy and environment from the dramatic overtones associated with election campaigns and populist discourse. An issue as important as this one needs cool heads and informed decision making.

(III) Hydraulic fracturing track record in Romania

Moreover, a most interesting statement from Romgaz went almost unnoticed in the turmoil of this summer’s domestic politics. And unjustly so. Because it dramatically changes the parameters of the public discussion on shale gas in Romania. Specifically, the company E&P Director, Gheorghe Radu stated that Romgaz had already produced, albeit accidentally, unconventional gas in Romania some 17 years ago:

“We had information that in Transylvania there are unconventional gas resources that can be brought to the market. Following the tests that Romgaz has conducted during 1994 and 1995 in a series of fields in Transylvania, we had some very good results at several important fields. We performed hydraulic fracturing with gel, and now we realize that these wells are having a debit even today. (...) Romgaz has made some tests with unconventional gas, but we had the technology of the

⁸ Foreign Policy, International print edition, May-June 2012:
http://www.foreignpolicy.com/timor/content/economics/this_is_what_reform_is_about.php

communist years. Before we were not sure that the perimeters in Transylvania contained unconventional gas. But after the revolution, we had access to American know-how. We drilled 20 wells and a quarter of them showed a good result. Romgaz produces gas from very tight and solid rocks with a shale content using an old technology. You can say that we have produced unconventional gas up till now accidentally.”⁹

On the other hand, the Romanian petroleum community (geologists, engineers, etc) states that hydraulic fracturing has been used in Romania for decades.¹⁰ Leading global companies in the oil & gas service industry such as Halliburton, Schlumberger, Honeywell, Weatherford (that possess the know-how on hydraulic fracturing techniques, well completions, drilling operations including horizontal drilling) have been present on the Romanian market after the fall of the communist regime. Thus their technical expertise was, in theory, accessible to the Romanian oil & gas companies. This Romanian experience with the technology needs to be shared with the public. To this extent, there are several studies that will come up on the market in the near future focusing on Romanian unconventional resources that are expected to shed light on and explain Romania’s experience with the technology.

A Shale Gas Roadmap for Romania

This last section concludes with a few policy recommendations formulated for what could be some of the next steps regarding this topic:

- **A viable long term policy for Romania’s energy resources (30 to 50 years timeframe)** – an exercise in forward planning of Romania’s future energy mix which will have to answer the question of what resources does Romania currently have (conventional and unconventional) and what place should shale gas occupy (if any) in the country’s future energy balance. This could represent an opportunity for a grand bargain between all the major political parties as well as a chance to set aside the political partisanship in order to agree on a few key points that would provide a non-ideological basis of consensus to define the backbone of the framework for the future development of Romania’s energy resources.

⁹ Claudia Pirvoiu, “UPDATE: Romgaz has discovered shale gas 17 years ago and could move to the exploitation phase after certain evaluations”, *HotNews.ro*, Monday, June 18, 2012, 11:00 am: <http://economie.hotnews.ro/stiri-energie-12553034-romgaz-efectueaza-lucrari-explorare-gazelor-sist-circa-17-ani.htm>

¹⁰ Interview with Alexandru Patruți (NARM) by Claudia Pirvoiu and Remus Puscariu: „A number of companies expressed their intention to explore and exploit shale gas / Hydraulic fracturing is a method utilised by the petroleum industry for decades in Romania”, *HotNews.ro*, Monday, April 2, 2012, 21:13: <http://economie.hotnews.ro/stiri-energie-11900515-interviu-video-alexandru-patruți-anrm-mai-multe-companii-manifestat-intentia-explora-exploata-gazele-sist-fisurarea-hidraulica-este-metoda-utilizata-industria-petroliera-zeci-ani-romania.htm>

▪ **The need for a “big picture document”:** a **Romanian National Shale Gas Strategy** or, even more broadly, a **National Strategy for the Unconventional Resources**, where anyone who is interested could find all the Romanian regulations and measures applicable to shale gas and all the state institutions and government agencies with responsibilities in this area. This would provide clarity on the current framework as well as point the areas that need regulatory revision and establish a clear line of command and institutional allocation of responsibility, as well as coordination in this area.

One of the things needed is to have a clear-cut procedural blueprint about who is responsible for what when it comes to shale gas: what institution grants which permits, and most importantly who monitors and oversees the adequate compliance with the existing environmental legislation (seismic activity, ground water quality and generally post-drilling water management). These aspects should be known **before** shale gas commercial production could begin, assuming that Romania will reach that stage. Indeed, Romania currently has a window of opportunity to have an in-depth look at these aspects and to devise a suitable framework to address any outstanding legal loopholes. Likewise, this strategy would take account of the ongoing discussion about the petroleum fiscal regime and whether or not it is appropriate to devise separate new tax provisions for unconventional hydrocarbons, and if yes – what should they be.

Actually, the recent three studies on shale gas written for the European Commission provide a solid and thorough assessment of the relevant EU legislation that applies to shale gas, a good starting point for any future national shale gas strategy. The study on potential risks for the environment and human health in fact did find some gaps and inadequacies in the European legislation. But because shale gas activities are covered by 18 EU Directives and only one Regulation (REACH), it will be mostly up to the Member States to decide how to implement these Directives given their degree of decision-making autonomy in this respect. *“This clearly leads to the possibility of different approaches being adopted, with potential differential treatment of environmental and human health impacts”*, states the report (pp.75). Consequently, a National Unconventional Hydrocarbons Strategy would clarify what is the Romanian take regarding the implementation of these Directives and whether they indicate a more “hands-on” or “hands-off” approach. For instance, there are a series of measures that are not always mandatory under the Directives (whether to conduct an Environmental Impact Assessment or a Strategic Environmental Assessment is a decision of the Member State). The Member State can decide whether to formulate or not additional definitions or require extra measures that are not specifically addressed by the applicable EU Directives. Thus, a Romanian Shale Gas Strategy would show what is missing and what new measures would be required on a number of policy levels for Romanian shale gas development to go forward in an environmentally sustainable way.

▪ **Clear and effective communication strategy** on the part of the authorities and companies involved in shale gas activities is a key requirement to turn around the currently negative public perception. Public consultation on this topic could bring further policy dividends. Perhaps, the Romanian public, if presented with well designed policies and persuasive arguments on this topic, may decide that shale gas is an opportunity worth pursuing.

That is why it is imperative first to have a 'situation analysis' document to describe in great detail what is the national legal framework in place today that would apply if shale gas projects were to commence immediately. Such a diagnostic analysis would reveal areas of weakness in need of further regulatory attention. As the German publication *Der Spiegel* noted, although on a completely different topic: "*the political machine won't start moving until after an accident has already occurred*". Regulations are mostly reactive rather than proactive. But we cannot afford this with shale gas because the stakes are so high, as is the desire to get it right. That is why the knowledge gaps identified by the report written for DG Environment are so important, because they provide a checklist against which governments can cross-reference their current national legislation – a rather easy method to spot the areas that require further attention and additional regulation. Should Romania decide to develop its unconventional resources, it does not mean that the oil and gas industry will have a free pass to pollute. It is up to Romania to set the appropriate comprehensive risk management framework to ensure that the impact on the environment and human health is kept to a minimum and communicate effectively its strategy to the public.

Perhaps, a glimpse of events to come is offered by the program of USL (the winning political alliance in this December's elections) for 2013-2016, where under the Energy chapter one can find the seeds of the future energy policy of the second Ponta government: diversification of energy sources and supply routes, reducing energy import dependency, encouraging investments and intensifying geological research to find new hydrocarbon reserves, working together with IOCs in joint petroleum projects, and promoting new technologies for extraction of methane from coal deposits (*hulă*). Moreover, after the elections, USL announced a new governmental structure, one that includes the creation of an Energy Ministry. All this indicates that next year will be a period of very important decisions to be made as well as high expectations placed on this new, key and long overdue institution.