

No. 49095/15.12.2023

TO:

S.N.G.N. ROMGAZ S.A. General Meeting of Shareholders

ENDORSED,
CHAIRMAN OF THE BOARD OF DIRECTORS,
Dan Dragoş DRĂGAN

**Request for approval
to decrease reserves with the amounts paid by S.N.G.N. Romgaz S.A. as dividends
pursuant to certain court decisions**

Brief history

During November 27, 2019 - January 31, 2020, the General Directorate of Public Finance Braşov, Fiscal Audit - Economic-Financial Inspection Department within the National Agency of Fiscal Administration (“ANAF”) carried out an economic-financial inspection at S.N.G.N. ROMGAZ S.A. (“Romgaz”/”Company”) in order to verify compliance with Article 43 of Government Emergency Ordinance No. 114/2018 (“GEO No. 114/2018”) on setting up measures in the field of public investment and fiscal-budgetary measures, amending and supplementing certain legislative acts and postponing certain deadlines for 2018 financial year.

Pursuant to Article 43, “Economic operators with full or majority state-owned capital which implement Government Ordinance No. 26/2013 on strengthening the financial discipline of certain economic operators in which the state or administrative-territorial units are the sole or majority shareholder or hold, directly or indirectly, a majority participating interest approved with supplements by Law No. 47/2014, as subsequently amended and supplemented, **distribute and transfer** pursuant to the law, within 60 days from the date of approval of 2018 financial statements, as dividends or payments to the state budget, for autonomous regiè, **35% of the amounts allocated to other reserves**, in accordance with Article 1, paragraph (1) letter g) of Government Ordinance No. 64/2001 on distribution of profit in national enterprises, national companies and commercial companies fully or majority owned by the state as well as in autonomous government-owned enterprises, approved with amendments by Law No. 769/2001, as subsequently amended and supplemented, **existing on December 31, 2018 in available cash accounts and bank accounts, and in accounts related to short term investments**, and which are not committed, on said date, to be used as own financing sources pursuant to procurement contracts”.

For the implementation of Article 43 of GEO No. 114/2018, pursuant to Resolution No.3/April 25, 2019 of the Ordinary General Meeting of Shareholders (“OGMS”), the distribution of RON 362,297,056 in form of dividends was approved, representing 35% of the existing reserves on

December 31, 2018, established pursuant to Article 1, paragraph (1), letter g) of Government Ordinance No. 64/2001 as subsequently amended.

As opposed to Company's interpretation, ANAF considered that Article 43 of GEO No. 114/2018 also applies to reserves that did not exist on December 31, 2018 but which were established in 2019 pursuant to OGMS Resolution No. 3/April 25, 2019.

Thus, ANAF issued the Economic-Financial Inspection Report No. SB 4/January 31, 2020 ("Inspection Report") and the Mandatory Order No. SB 4/January 31, 2020 („Order No. 4"). Based on these, ANAF established an obligation for Romgaz to pay dividends in the gross amount of RON 34,859,279, out of which RON 24,284,077 to the state budget through the Ministry of Energy and the amount of RON 10,568,202 to the other shareholders representing amounts due as a result of the redistribution of 35% of RON 106,264,550.88 allocated to other reserves in 2019 pursuant to OGMS Resolution No. 3/April 25, 2019. Furthermore, ANAF calculated late payment interests and penalties in amount of RON 1,580,893 for the period between June 25, 2019 and January 27, 2020, followed by Romgaz obligation to update these accessories until the actual payment of dividends. Moreover, it ordered the Company to inform the Ministry of Energy regarding the additional dividends due to it.

The deadline to fulfil the measures was March 18, 2020.

Romgaz informed the shareholders and stakeholders on the conclusions of the economic-financial inspection in the Current Report No. 6855/February 18, 2020 ("Current Report") sent to Bucharest Stock Exchange and published on Company's website.

As mentioned in the Current Report, the Company challenged the Inspection Report and Order No. 4. The Company made a prior complaint to the General Directorate of Public Finance Braşov and filed a complaint with Alba Iulia Court of Appeal.

As a result of the prior complaint, the Department for Solving Prior Complaints and Challenges within the Ministry of Public Finance decided to cancel the measure concerning the calculation of late payment interests and penalties and to replace such with penalty interests maintaining the other measures.

Following this decision, ANAF issued the Order of Measures No. SB 10/June 10, 2020 ("Order of Measures No. 10") pursuant to which the accessories for June 26, 2019 - January 27, 2020 were decreased to RON 938,430. The deadline to carry out payments and accessories pursuant to the Order of Measures No. 10 was July 23, 2020.

Whereas Romgaz did not agree with the measures established in the two orders, the Company did not implement the above mentioned measures, except to inform the Ministry of Energy, the other shareholders and stakeholders on the conclusions of the economic-financial inspection through the above mentioned Current Report and through Report no. 32106/October 13, 2020 sent to Company shareholders who took note of such in OGMS Resolution No. 13/November 25, 2020.

Current Situation

On September 15, 2020, ANAF issued Report No. SB 22 on monitoring the implementation of measures ordered in the two mandatory Orders.

Through Report No. SB 22/September 15, 2020, the economic-financial inspection team ordered the General Meeting of Shareholders to monitor the implementation of the above

mentioned measures and to inform the economic-financial inspection body regarding the complete fulfilment thereof.

The payment obligation towards the state budget of the dividends owed to the majority shareholder set by the economic-financial inspection body of RON 24,284,077 together with the accessories in amount of RON 938,430 were paid through the **compensation** made by the fiscal body pursuant to Article 167 and 168 of the Fiscal Procedure Code. Subsequently, as a result of the legislation issued during the COVID-19 pandemic regarding overdue payments towards the state budget, the Company recovered the equivalent value of accessories.

The compensation resulted from the conclusion on August 06, 2020 of a Receivable Assignment Agreement between Romgaz as Assignee and one of its clients as Assignor for the amount of RON 50.000.000 representing the value added tax to be recovered from ANAF.

In order to assign the tax receivable, on August 10, 2020 the Notice on assignment of the right to pay back/reimburse the amount of RON 50,000,000 and the Compensation Request No. 26138/August 19, 2020 were submitted to the fiscal body pursuant to which Romgaz requested the compensation of the amount of RON 50,000,000 with the current tax liabilities owed by Romgaz to the state budget, consisting of the value added tax and the tax on additional revenue obtained following deregulation of prices in the natural gas sector.

The Request for Compensation was settled by the Decision on Compensation of Fiscal Obligations ("Decision") issued by ANAF on October 31, 2020 communicated and registered with Romgaz on November 11, 2020.

According to the Decision, the fiscal body did not compensate the tax liabilities requested for compensation by Romgaz, however it compensated *ex-officio* amounts considered overdue representing dividends due to the majority shareholder in amount of RON 24,284,077 set in the Economic-Financial Inspection Report No. SB 4/January 31, 2020 and Mandatory Order No. SB 4/January 31, 2020, together with the accessories in amount of RON 938,430 set in the Order of Measures No. SB 10/June 10, 2020. The difference up to the amount of RON 50,000,000 was compensated with the current value added tax.

In File No. 112/57/2020, in which SNGN Romgaz was plaintiff against ANAF and the General Directorate of Public Finance Braşov, with the scope of cancelling the Mandatory Order No. SB 4/January 31, 2020, according to Court Decision No. 206/December 09, 2020 considered final pursuant to Ruling No. 4556/October 12, 2022 of the High Court of Cassation and Justice dismissed the action filed in court by SNGN Romgaz SA, which resulted in the obligation of the company to pay RON 24,284,077 representing dividends due to the Romanian State as shareholder as well as late payment interests and penalties.

As a result of Ruling No. 4556/October 12, 2022 of the High Court of Cassation and Justice, on August 18, 2021 **one of the minority shareholders** initiated the mediation procedure to obtain the percentage of dividends considered rightful, in gross amount of RON 296,182, proportional to the number of shares held.

In the civil matter filed against Romgaz, the minority shareholder requested the Company to be ordered to:

- pay RON 281,373 representing the equivalent value of additional net dividends due and not paid for 2018 pursuant to Article 43 of GEO No. 114/2018, and RON 97,173.01 representing the interest due calculated from the due date (June 24, 2019) until the date when the case file is promoted in court,
- continue to pay the interest on debt until the effective payment,

- pay the court fees.

Through the statement of defence and written conclusions Romgaz requested the dismissal of summons due to expiration of statute of limitations, and as ungrounded and illegal merits of the case.

The case was similar to case file no. 112/57/2020, in which Romgaz was plaintiff against ANAF and the General Directorate of Public Finance Braşov.

In the litigation between the minority shareholder and Romgaz, the court of first instance allowed on September 19, 2023 the claim filed by the shareholder and obligated the Company:

- to pay RON 281,373 representing the equivalent value of 2018 additional net dividends;
- to pay RON 97,173.01 representing legal penalty interest for June 24, 2019 - November 17, 2022;
- to continue payment of legal penalty interest on the amount of RON 281,373 starting with November 18, 2022 until the date of complete fulfilment of payment obligation;
- to pay RON 7,392 representing court fees.

The court of first instance showed that recitals of Court Decision no. 206/December 09, 2020, ruled for case file no. 112/57/2020 considered final by Ruling no. 4556/October 12, 2022 issued by the High Court of Cassation and Justice, are to be considered *res judicata* indicating that Romgaz wrongfully implemented the provisions of article 43 of EGO 114/2018, by reducing the basis of calculation to which the 35% has to be applied.

Civil court ruling of Sibiu Court of Law in the case file opened by the minority shareholder can be appealed, however, considering the arguments of the court of first instance contained in the grounds given for the ruling and the recitals of ruling given in case file no. 112/57/2020, the Company's Legal Office considered that introducing an appeal would have minimum chances to completely change the ruling of the court of first instance, namely a dismissal of the minority shareholder court action.

Moreover, an appeal would incur additional expenses for the Company, namely payment of legal penalty interest on the amount of RON 281,373 starting with starting with November 18, 2022 until the date of complete fulfilment of payment obligation, and of appeal-related court fees, namely payment of stamp duty required to file the appeal and of applicant's possible court fees incurred by the appeal.

Under these conditions, the Legal Office informed the Company's CEO through reports 111/November 07, 2023 and 112/ November 7, 2023 whereby it proposed not to introduce the appeal in this case file, aspect which implicitly leads to Romgaz having to pay RON 281,373 and legal penalty interest to be calculated until the payment date.

Proposals

Considering the information presented above regarding the economic-financial inspection regarding the implementation of article 43 of EGO no. 114/2018, we propose to the General Shareholders Meeting the following resolution draft:

- 1. Approval to decrease reserves by RON 24,580.259 representing gross dividends awarded by courts of law based on Government Emergency Ordinance no. 114/2018 on imposing measures in the field of public investment and fiscal-budgetary measures, amendments and supplements to certain legislative acts and postponing**

certain terms for 2018 financial year.

2. Taking note of the fact that the time limit to pay dividends to the other shareholders expired, as provided in GEO 114/2018 on imposing measures in the field of public investment and fiscal-budgetary measures, amendments and supplements to certain legislative acts and postponing certain terms for 2018 financial year.

CEO
Răzvan POPESCU

CFO
Gabriela TRÂNBÎȚAȘ

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Monica STAFIE