

ROMANIAN COURT OF ACCOUNTS

COURT OF ACCOUNTS OF SIBIU

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DECISION No. 26

June 1, 2016

Considering the provisions of Law No. 94/1992 on the organization and functioning of the Court of Accounts, republished and of the Regulation on the organization and operation of activities specific to the Court of Accounts, as well as the materialization of the acts resulting from these activities, approved by Court of Accounts Decision No. 155/2014, examining the deficiencies registered in the Control Report No. 12443/May 6, 2016, concluded based on the action regarding “The control of the situation, evolution and administration methods of the private and public state patrimony, as well as the legality of the income and expenditures” by **S.N.G.N. Romgaz S.A. Medias**, as well as the objections to the findings of the above-mentioned control act:

THE FOLLOWING IS NOTED:

1. S.N.G.N. Romgaz S.A. did not allocate the disposal of tangible assets in progress related to exploration wells which did not test for extractable reserves and which were made from the development quota. The value of the expenditures made from the development quota not reported as income, representing disposal of tangible assets in progress related to exploration wells which did not test for extractable reserves, is RON 29,937,700.82. Because at least 50% share of this amount was not allocated, the dividends due to the shareholders were reduced by RON 14,968,851, out of which:

- The Minister of the Economy – RON 10,479,692 (70.01% of the shares)
- Fondul Proprietatea – RON 2,243,831 (14.99 % of the shares)
- Other natural or legal persons – RON 2,245,328 (15% of the shares)

The provisions of paragraph 1 of **Decision No. 4/July 5, 2004**, on the unitary implementation of certain provisions related to income tax and excises approved by **OMPF No. 1163 of August 2, 2004**, of Article 3 of **Decision No. 168/March 25, 1998** on the determination of the expenditures share necessary for the development and modernization of the oil and natural gas production, refinery, transmission and distribution and of Article 1 of the **Government Ordinance No. 64/August 30, 2001** on profit allocation to the national companies and trading companies with fully state-owned capital or with a majority state-owned capital, as well as to the autonomous authorities (irregularity presented at paragraph 3.1.2.1 of the Control Report).

2. Between 2013 – 2015, S.N.G.N. Romgaz S.A. supplied on the regulated market a gas quantity from the internal production required for covering the consumption of CPET (*households and heat producers, only for the natural gas quantity used to generate heat in cogeneration and heating plants for the consumption of the population*) larger by 8,087,054.923 MWH than the legal obligation, the delivery price for the regulated market being lower than the free market price.

The estimated value of the irregularity is of RON 177,910,320.58 (RON 148,258,600.48 + the corresponding VAT of RON 29,651,720.10). It was determined considering a regulated price for CPET valid on December 31, 2013, 2014 and 2015 and the minimum sales price for the free market for 2013, 2014 and 2015 – without storage expenditures.

Translation from the Romanian language

The provisions of **ANRE Order No.24/2013** for the approval of the Methodology for the allocation of natural gas obtained from domestic production required to cover the consumption on the regulated market, and Articles 1, 8,11, 13 17 (1), 19 (1)(2)(3) of **Order no. 161 of December 19, 2014** for the approval of the Methodology of allocation of natural gas obtained from domestic production required to cover the consumption of households and heat producers, only for the natural gas quantity used to generate heat in cogeneration and heating plants for the consumption of the population (irregularity presented at paragraph 3.1.4.1 of the Control Report) were not complied with.

3. In 2015, S.N.G.N. Romgaz S.A. unjustifiably settled the equivalent value of flight tickets included in the total cost of the holiday or medical treatment vouchers in resorts outside Romania, contrary to the provisions of Article 185, paragraph (1) and Annex 23 of the Collective Labor Agreement no. 21650/December 29, 2014, according to which: *“In case of holiday or medical treatment vouchers in resorts outside Romania, the settlement of the transportation costs is made for the distance until the airport or the country exit point”*.

The value of the irregularity established based on the verified sample was of RON **353.596** (irregularity presented at paragraph 3.1.4.3.1 of the Control Report).

4. During May 2, 2013 – May 2015, based on the Legal Assistance Contract dated May 2, 2015, consultancy and legal assistance services were illegally paid to Societatea Civila de Avocati “BOSTINA SI ASOCIATII”, without prior approval from the coordinating chief authorizing officer for S.N.G.N. Romgaz S.A. to perform the contract.

The value of the irregularity representing certain damage for the illegal payments related to the Legal Assistance Contract dated May 2, 2006, concluded between S.N.G.N. Romgaz S.A. and Societatea Civila de Avocati “BOSTINA SI ASOCIATII”, made during May 2, 2013 – May 2015 (the date of contract suspension) is in amount of RON **622,463.80**.

The following provisions were not complied:

- Article I, paragraph (1), paragraph (3) and Article XVII, paragraph (1) of the **Emergency Government Ordinance No. 26 of June 6, 2012**, regarding the measures for reducing public expenses, for strengthening the financial discipline and for amending and supplementing certain pieces of legislation
- Article 5, paragraph (1) of the **Government Ordinance No. 119/1999**, regarding the internal control and the preventive financial control, as amended (the irregularity is presented at paragraph 3.1.4.3.2 of the Control Report).

5. S.N.G.N. ROMGAZ S.A. accepted the payment of work statements for investments contracted with SC Foraj Sonde SA Craiova, incorrectly including direct shares of expenditures of the employer representing the contributions related to wages, in the estimate items “equipment” and “transportation”.

The value of the irregularity for the verified sample is of RON **1,057,886**.

The provisions of paragraph 1, Article 5 of the **Government Ordinance No. 119/1999** regarding the internal control and the preventive financial control, as amended, were not complied (the irregularity is presented in paragraph 3.1.4.3.3 of the Control Report).

6. SNGN Romgaz S.A. granted to its employees occupying managerial positions an incentive for regular overtime work, without proving the overtime with legal evidence documents from which the actual overtime work can result, an obligation of the employer according to paragraph (4) article 134 of the Collective Labor Agreement.

Translation from the Romanian language

The irregularity amount resulting from the sample under investigation is **RON 9,159,503** out of which: **RON 4,563,749** an incentive for managerial positions granted in 2013, **RON 2,777,118** an incentive for managerial positions granted during January 1-July 31, 2014 and **RON 1,818,636** representing amounts included in the salaries as incentive for regular overtime work during August 1-December 31, 2014.

The following provisions were not complied with:

- par. 4, Article 137 of the Collective Labor Agreement recorded with no. 8,400/February 28, 2012;
- Article 114 and Article 119 of Law no. 53 dated January 24, 2003 (Labor Code), as amended from time to time;
- par. 1, article 5 of Ordinance no. 119 dated August 31, 1999 regarding internal control and preventive financial control, as amended from time to time;

For the purpose of removing the deficiencies indicated above, and according to provisions of Law 94/1992, republished, and of the Regulation regarding the establishment and performance of specific activities of the Court of Accounts, and the materialization of acts resulting from these activities, approved by the Court of Accounts Decision no. 155/2014, the court of accounts director,

DECIDES

I. according to the provisions contained in Article 43 of Law no. 94/1992 republished, and of item 174 of the above-mentioned regulation,

the implementation of the following measures:

Removing the irregularities of the investigated financial-accounting and/or fiscal activity, according to provisions contained at Article 43 letter c) of Law 94/1992 as follows:

- a) to allocate the disposal of tangible assets in progress related to exploration wells which did not test for extractable reserves, by decreasing the development quota, against the result and its allocation in the 2016 financial statements, according to legal requirements.

Implementation term: January 27, 2017

DECIDES

II. according to the provisions contained in Article 33 par. (3) of Law no. 94/1992 republished and of item 174 of the above-mentioned regulation,

the implementation of the following measure to establish the prejudice and its recovery:

- a) Identification of natural gas volumes delivered to the regulated market in excess to the mandatory deliveries according to data communicated to DOPGN (Natural Gas Market Operator Department of SNTGN "Transgaz" S.A. Medias) for each client, establishment of the prejudice resulting from the difference between regulated market gas price and free market gas price regarding the gas volumes delivered in excess to the regulated market, and its recovery.

Translation from the Romanian language

Implementation term: January 27, 2017

- b) Establishment of the prejudice in connection with the equivalent value of flight ticket which were unjustifiably settled for the employees benefitting from holiday and medical treatment vouchers in resorts abroad, and its recovery in compliance with legal provisions.

Implementation term: January 27, 2017

- c) Establishment of the prejudice caused by illegal payments in connection with legal assistance contracts that were concluded failing to comply with legal provisions, and its recovery in accordance with legal provisions.

Implementation term: January 27, 2017

- d) Identification of all payment statements relating to investments where amounts representing direct expenses of the employer consisting in contributions to the social security fund, health insurance, unemployment fund, wages guarantee fund, risks and accidents fund, disabled persons fund and holidays and allowances fund were wrongfully accepted in estimate items "equipment" and "transportation", calculation, establishment of prejudice and its recovery in accordance with legal provisions.

Implementation term: January 27, 2017

- e) Identification of unjustified payments representing the incentive for regular overtime work, calculation and establishment of prejudice, and its recovery in accordance with legal provisions.

Implementation term: January 27, 2017

In addition to the measures presented above, please implement any other measures which you consider necessary for the remedy of irregularities found by the Court of Accounts as a result of its verification, including the involvement of the internal audit department for monitoring the measures specified in the decision.

On the specified terms you shall inform us on the measures implemented and on the results.

Upon expiry of terms provided in the decision for implementing the above-specified measures, the court of accounts may perform any verification without a prior notice.

In case the prejudice will not be recovered because the management failed to take and to monitor the measures specified by the Court of Accounts, the respective failure shall be considered a criminal offence and is sanctioned with imprisonment for a term of 3 months to 1 year or with a fine.

In case the above mentioned action was committed by negligence, the sanction is fining according to Article 64 of Law 92/1992 on the organization and operation of the Court of Accounts, as amended from time to time.

Translation from the Romanian language

The director of the verified enterprise is entitled to file/send to Sibiu Court of Accounts, having its headquarters in Sibiu, O. Goga Str. no. 1 B, a challenge against some measures contained in the decision or the terms for their implementation, within 15 calendar days from the decision communication date,

Challenge Settlement Committee of the Court of Accounts shall assess such possible challenge, according to provisions of item 213 of the regulation specified above.

Court of Accounts Director

Bobeş Viorel, PhD in Economics

Signature

Round stamp

Date of issuance: June 01, 2016