

ROMGAZ



Societatea Națională de Gaze Naturale Romgaz S.A. - Mediaș - România

No. 17875/07.07.2016

Înregistrare

To:

The General Meeting of Shareholders

Referring to:

Approval of the procurement of external legal consultancy, assistance and representation services in connection with litigations arising out of the controls performed at the company by the Court of Accounts and by the European Commission, and mandating the Board of Directors of Romgaz S.A. to coordinate the public procurement procedure for external legal consultancy, assistance and representation services.

Whereas:

- The provisions of EGO No. 26 of June 6, 2012 on measures for reducing public expenses and strengthening the financial discipline and for amending some pieces of legislation providing that:

“Art. I

- (1) The central and local authorities and public institutions of the central and local public government, irrespective of how they are financed and subordinated, the national companies and commercial companies fully state owned or having the state as major shareholder, as well as the autonomous regies having own employees as legal advisors included in their organizational structure are not allowed to acquire legal consultancy, assistance and/or representation services.*
- (2) Provided that there are solid grounds to justify that legal consultancy, assistance and/or representation services required by the authorities or public institutions provided under paragraph (1) cannot be provided by the legal advisers employed by said entities, such services may be acquired under the law, only upon approval of:*
 - a) main credit release authority for the central and local authorities and public institutions of the central and local public government;*
- (3) In duly justified situations when legal consultancy, assistance and/or representation services required by the national companies and commercial companies fully state owned or having the state as major shareholder, as well as the autonomous regies provided under par. (1) cannot be provided by the legal advisers employed by said entities, such services can be acquired under the law only upon approval and authorization of the representatives of the state or of the regional governments in the governing bodies:*
 - a) by the main credit release authority, in case of companies fully state owned or having the state as major shareholder;”*

- Romgaz Board of Directors endorsed in Resolution no. 14 of June 23.2016 the request to procure external legal consultancy, assistance and representation services in connection with litigations arising out of the controls performed at the company by the Court of Accounts and by the European Commission;

Legal and Factual Situation:

1. During the past two months SNGN ROMGAZ SA was subject to controls performed by the Court of Accounts of Romania as well as by the European Commission accompanied by the Competition Council;
2. SNGN ROMGAZ SA does not share and does not agree with the final conclusions of the control performed by the Court of Accounts and the result of the control and verification performed by the European Commission is unknown and cannot be anticipated at this moment;
3. The fact that the Court of Accounts' findings require the company to evaluate the generated damage and to identify clients who possibly have benefited of gas volumes delivered by Romgaz in excess of volumes that the company should have supplied in accordance with the applicable law. According to the Court of Accounts' interpretations of the law, which we consider subjective and incorrect, such findings/resolution bind Romgaz to take steps for recovering large amounts of money from several commercial clients and partners. Such proceeding can only be achieved by means of litigation procedures (the amount of the alleged damage mentioned/estimated by the Court of Accounts exceeds RON 160 million). Concurrently, Romgaz will initiate and perform litigation procedures/legal proceedings requesting the court of law to annul of the Court of Accounts resolution on grounds of illegitimacy, in case the contestation filed by Romgaz through administrative channels is not accepted by higher bodies of the Court of Accounts.
4. If Romgaz does not obtain the annulment of the measures imposed by the Court of Accounts under administrative law contestation and the company still has to implement the measures prescribed in the Court of Accounts resolution, Romgaz will initiate and will make use of all available legal proceedings. Such legal proceedings entail or may entail also potential litigations or court or legal proceedings against bodies or authorities of the Romanian state which, in Romgaz opinion, may bear specific responsibility for this situation (ANRE, DOGPN, other suppliers, market competitors or possible information of the Competition Council etc. are considered).
These activities may significantly impact the company's activity, as the stake of these files is huge, because all these actions have to concur to re-establish the lawful and accurate situation in law and fact, namely the annulment of measures imposed by the Court of Accounts which, in the Company's opinion, do not have legal grounds and which according to the findings provided in the resolution may create important losses and damages to Romgaz patrimony.
5. The fact that according to European Commission Resolution No. AT40400-30.05.2016, there are suspicions hovering over Romgaz or Romgaz is suspected of having been part of an antitrust arrangement with other companies in Romania that are active on the en-gross gas market, agreement whereby the company might have possibly undertaken not to export natural gas or to obstruct or delay measures required to create the legal and technical operational framework for gas export, which represent breach of the T.F.E.U.;
6. Even though at present the resolution of the EC control is not known nor foreseeable, but considering its scope and EC's understanding of specific national mechanisms (as mentioned in the preamble to the above mentioned Resolution), even though Romgaz was not and is not part of any antitrust or anti-competitive arrangements, as referred in point 5 above, the Company is concerned about possible sanctions or certain conduct that could be

imposed at the end of the control. In connection with the natural gas export, we specify that an infringement procedure was initiated against Romania. Usually, sanctions imposed by the EC, as those of the Competition Council, are set as percentage of the companies' revenue, depending on the severity of the findings. The investigations are long and complex.

Bearing in mind that the two cases are different from the perspective of the authorities which performed the control, but especially from the perspective of the legal framework governing our approach in terms of proceedings and legal procedures (Romanian and European legal framework), it is our opinion that the collaboration with law firm(-s) should be reflected also in contracts for specialized legal consultancy and assistance services for different fields of expertise, and their scope being governed by the specific control that was performed, by the authorities performing the control and by the general and specific applicable legal framework.

Taking into account the following:

- the contested amounts are significant, having potential negative impact on the company, namely:
 - o potential direct impact on the profit, and
 - o possibility to generate unwanted/negative effects which may damage the rights and interest of the company, of the shareholders and of the Romanian state; and
 - o potential negative impact on the value of shares and of the company's market value; and
 - o a foreseeable big media exposure of the company, considering the strategic role of Romgaz in the national energy system

and

- the fields of expertise of these cases are very complex with high implications for which the company's legal advisors do not have the required level of expertise (especially the control performed by EC)

the company's management considers necessary and useful to collaborate with law firms specialized in such legal expertise which would support Romgaz legal advisers in the process of settling these potentially major litigation issues.

Also, we specify the fact that a potential litigation against measures or sanctions ordered/implemented by European bodies would generate an absolute new situation for the company, meaning that such litigation would have to be performed in front of international courts of law where an area of expertise is required for which the company's legal advisors certainly do not have the required skills due to objective reasons to ensure the company's representation.

With respect to the litigation to be performed in relationship to the Court of Account and to the adjacent litigations thereto we anticipate a highly complex administrative procedure relating to high amounts of money with a possible result that may negatively impact the Company. There is a considerable amount of time allotted to such complex litigation (analysis, synthesis, building the case, representation) and it is our assessment that assistance from an experienced law firm will contribute to ensuring that potential penetration gaps of our company's interest are deleted. Currently the headquarters' legal structure consists of seven legal advisors who are involved in the headquarters' current activity ensuring consultancy, assistance and representation in all area of interest (commercial, labour-related matter, civil, criminal, procurement, economic, regulations etc.). Their work load degree is very high. As indicated above, the opportunity to procure the above-referred legal services results also from the fact

that supporting the in-house body of legal advisors shall definitely result in having the company represented in the best conditions.

Moreover, the Court of Accounts resolution provides for the recovery of some amounts of money from the employees (please refer to the flight ticket settlement issue), settlement facility some legal advisors have benefitted of. In our opinion, this fact represents a decisive element in outlining the necessity and opportunity to procure this type of legal services because the collaboration with a law firm would eliminate any possible subjective interpretation of facts or provisions, as well as any potential concern in connection with eventual process-related consequences.

The same resolution of the Court of Accounts contains a measure (in our opinion, of high impact) in relation to the recovery of approximately RON 160 million representing, in the Court of Accounts' opinion, gas sold with disregard to the applicable legislation. The in-house body of legal advisors has a contrary opinion as compared to the findings of the inspectors, issue reflected in the administrative challenges to the resolution. Because the gas sale procedures as previously described was endorsed by the company's legal advisors, the necessity and opportunity to acquire such legal services is resulting, because the collaboration with a law firm would strengthen even more the company's position in relation to such findings and may result the annulment of such measures by the court of law.

In conclusion, there are two highly important and sensitive cases, with impact on the company and beyond, including theme for media coverage and it is our opinion that it would be very useful to be assisted at a level which the adverse party benefits of, meaning that the company's in-house legal advisors should be assisted by highly experienced law firms.

Therefore, please approve the request for the procurement of external legal consultancy, assistance and representation services related to the dispute arising from controls performed at the company by the Court of Accounts and by the European Commission, and to mandate Romgaz Board of Directors to coordinate the public acquisition procedure for external legal consultancy, assistance and representation services.

Remarks:

- External legal consultancy services shall be acquired in accordance with the procedure regulated in the applicable public acquisition law and only upon the prior notification and approval of Romgaz Board of Directors.
- The selection of the consultancy law firms will be made in accordance with the principles and under the legal framework of the European Union relating to public procurement (implicitly the Romanian law);
- With respect to the legal assistance, consultancy and representation contract relating to EC control, it will be concluded and will become effective only if EC will compel Romgaz to certain conduct or will apply sanctions or attach certain duties which Romgaz considers inappropriate or non-compliant with the law.

Yours respectfully,

Chairman of SNGN Romgaz S.A. Board of Directors
Aurora Negrut

