

**ROMGAZ**



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



**To,**

**S.N.G.N. Romgaz S.A. ORDINARY GENERAL MEETING OF SHAREHOLDERS**

**Subject:** *Request for approval to procure external specialized legal consultancy, assistance and representation services for the recovery of amounts qualified as prejudice by the Romanian Court of Accounts – Sibiu Chamber of Accounts (CCS) further to the investigation performed in 2016, and authorizing the Board of Directors to coordinate procurement procedures for the external specialized legal consultancy, assistance and representation services*

**Preamble:**

- The provisions of GEO no. 26, of June 6, 2012 on measures for reducing public expenses, for strengthening the financial discipline and for amending and supplementing laws, providing:

**"Art. I**

- (1)** *Authorities and public institutions of the local and central public administration, irrespective of the financing and subordination manner, national companies, commercial companies, fully or majority state owned, as well as autonomous entities that have in their organizational structure own legal advisors are not allowed procure legal consultancy, assistance and /or representation services.*
- (2)** *In reasonably justified situations when legal consultancy, assistance and/or representation activities required by public authorities and institutions mentioned at paragraph (1) cannot be provided by their employees specialized in legal matters, such services may be purchased in compliance with the law, only with the approval of:*

Capital social: 385.422.400 lei  
CIF: RO 14056826  
Nr. Ord.reg.com/an : J32/392/2001  
RO08 RNCB 0231 0195 2533 0001 - BCR  
Mediaș

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- a) *the main credit authorizing entity for public authorities and institutions of the central public administration;*
- (3) *In reasonably justified situations when the legal consultancy, assistance and/or representation activities required by national companies, commercial companies, as well as autonomous entities mentioned at paragraph (1) cannot be provided by their employees specialized in legal matters, such services may be purchased in compliance with the law only with the approval and the authorization of the state representatives or of the administrative units from their management bodies:*

a) *the main coordinating credit authorizing entity for the entities where the state is full or majority shareholder; "*

- Enforcement of Decision no.26/June 01, 2016 issued by the Romanian Court of Accounts – Sibiu Chamber of Accounts, ruling against the Company a series of measures to be implemented, namely measures to recover amounts qualified by the auditors as prejudice, these amounts are to be recovered from SNGN Romgaz SA employees;
- Case file no. 2375/85/2016 filed with Sibiu Court for the annulment of Sibiu Chamber of Accounts Decision no.26/2016, and the current status of the litigation;
- Even if the Decision of Sibiu Chamber of Accounts is challenged in court, subject to Law 94/1992 on the organisation and functioning of the Court of Accounts, it is enforceable, and as long as it remains in force the obligation to implement the measures continues to be enforceable on the entity;
- Circumstances are shaped according to which the amounts qualified by CCS as prejudice cannot be amicably recovered, but only by court – the producers and suppliers involved do not recognise Romgaz claims, the drilling company involved does not recognise Romgaz claims, etc.

***Hereby, we request your approval for procuring external legal consultancy, assistance and representation services for the recovery of amounts qualified by the Romanian Court of Accounts - Sibiu Chamber of Accounts as prejudice after the investigation carried out in 2016.***

**Facts:**

External auditors of Sibiu Chamber of Accounts carried out in 2016 an investigation resulting in Decision 26/June 1, 2016 where the following was found:

1. *"Allocating write-offs representing the abandonment of unsuccessful investments on exploration wells, by decreasing the development quota, against the result and its allocation in the 2016 financial statements, according to legal requirements".*
2. *"Identifying gas quantities delivered on the regulated market in excess of the mandatory quantity according to the data communicated by DOPGN for every client, setting the size of the prejudice resulting from the difference between the regulated market sale price and the free market sale price in connection with the gas quantity delivered in excess on the regulated market and its recovery.*

3. *“Setting the size of the prejudice representing the equivalent value of flight tickets which were wrongly paid to the employees who benefitted from vacation and treatment allowances in foreign resorts and its recovery in accordance with the legal provisions”*
4. *“Setting the size of the prejudice created from unlawful payments in connection with legal assistance contracts concluded without complying with the legal provisions and its recovery in accordance with the legal provisions”*
5. *“Identifying all payment statements relating to investment works, whereby amounts representing employer’s direct contributions (representing contributions to the social security fund, healthcare, unemployment fund, wage guarantee fund, risk and accident fund, disabled persons fund, vacation and allowances fund) were wrongfully accepted at items “transportation” and “equipment” of the estimate, calculating, setting the size of the prejudice and its recovery according to the legal provisions.”*
6. *“Identifying unjustified payments representing bonus payment for systematic overtime, calculating, setting the size of the prejudice and its recovery according to the legal provisions.”*

By December 15, 2017, SNGN Romgaz SA must enforce the provisions contained in Decision 26/June 01, 2017, otherwise criminal consequences may occur according to article 64 of Law no. 94/1992.

In this case, SNGN Romgaz SA made use of all legal means to challenge Decision 26/June 01, 2017. It filed through administrative channels with the first court, Romanian Court of Accounts – Sibiu Chamber of Accounts, a challenge against the document issued by the auditors; the challenge was dismissed. Further, the Company filed with Sibiu County Court of Law a claim for the suspension of Decision 26/2016. The request was partially allowed; subsequently, based on the recourse filed by the Court of Accounts, Alba Iulia Court of Appeal allowed the recourse. In fact, Sibiu Chamber of Accounts Decision no. 26/2016 was suspended during November 28, 2016-March 15, 2017 in connection with irregularities specified at point 1 and 2.

In accordance with General Shareholders Meeting Resolution no. 7/August 11, 2016, the shareholders have approved the procurement of external legal consultancy, assistance and representation services for the litigation arising from the investigation made by the Romanian Court of Account in 2016. As such, case no. 2375/85/2016 was filed with Sibiu County Court of Law. The aforesaid GSM approval does not cover the litigation arising from the enforcement of Sibiu Chamber of Accounts Decision no. 26/2016.

In case the Company is unsuccessful in obtaining the annulment of the measures established by the Court of Accounts, it must enforce the measures set by the Court of Accounts, which means that for recovering the alleged prejudice a series of legal litigation-related proceedings must be carried for the enforcement of the Decision no. 26/2016.

The obligation to enforce Sibiu Chamber of Accounts Decision no. 26/2016 currently exists due to Alba Iulia Court of Appeal lifting the partial suspension measure in connection with Sibiu Chamber of Accounts Decision; Sibiu Chamber of Accounts Decision no. 26/2016 is enforceable according to Law 94/1992.

The proceedings to be carried out will significantly impact the Company, which must enforce the measures set by the Court of Accounts although, according to the Company's opinion, Sibiu Chamber of Accounts findings are groundless and the

assessment did not consider issues in fact and law and in reality. Although pertinent opinions were formulated and all diligences were made to eliminate from the finding report the deficiencies and irregularities the company considered unrealistic and unjust, the auditors maintained their view point which led to finding financial prejudice and to setting measures to recovery the prejudice qualified as legal default.

The enforcement of measures means the commencement of proceedings against:

- other natural gas producers;
- natural gas suppliers;
- regulator, namely ANRE (National Regulatory Authority) ;
- gas transmission company, namely SNTGN TRANSGAZ SA;
- its own employees.

In Romgaz opinion, this course of action is justified because the gas market players indicated above might have had specific implications, more specifically they did not accurately fulfill their legal obligations in relation to the gas market.

The consequence of this approach is the initiation of a legal proceeding with huge implications, a large number of defendants (producers, suppliers, regulating authority, gas transmission company only for the finding at point 2 in the Decision 26/2016). On the other hand, the initiation of proceedings against the Company's employees will result in filing approximately 900 litigation files (systematic overtime and equivalent value of flight tickets relating to paid holiday and treatment allowances). From a geographical perspective, the courts of law where these cases will be filed are dispersed, because of the material competence of the courts in the field of labor law.

At present, SNGN Romgaz SA has already initiated pre-trial proceedings by notifying ANRE, Transgaz, producers, suppliers and its own employees whereby it requests the return of amounts regarded by Sibiu Chamber of Accounts as prejudice.

The services to be procured are intended to support the body of legal counsellors of the company in achieving the above mentioned steps. We specify that ROMGAZ body of legal counsellors cannot represent the company in court for every default, as in the Audit Report and Decision No. 26/2016 alleged irregularities were recorded also in connection with legal counsellors acting in operation and management positions; therefore, there is a risk of suspicion that the files related to such legal proceedings might have been subjectively treated, although the company's legal counsellors had been acting with maximum diligence. Moreover, it would be unethical and immoral for a legal counsellor to be at law /to investigate/ be in charge with a file against his office colleague or his direct superior, or for a person acting as manager of the legal department to be at law with his subordinates. Also, it must be taken into account that the company's body of legal counsellors is loaded with a large number of litigations, and that they have to provide legal consultancy and assistance for the company's day to day activity.

Romgaz consultant for the appeal/annulment of CCS Decision No. 26/2016 (selected under the approval given by GMS Decision No. 7/2016) notified that he is not in position to represent Romgaz appropriately in relation to the misconduct under item 2 of CCS Decision No. 26/2016, because some of the producers/suppliers targeted by Romgaz legal proceedings are also his clients. Such approach would contravene with Decision no. 64/2011, art. 114, par. 1-3 of the National Association of the Romanian Bars providing that *"(1) The lawyer should neither be the adviser nor the representative or the defender of more than one client for the same case, where the clients' interests are in conflict or where there is a risk of such conflict of interests.*

*(2) The lawyer should refrain from dealing with all the cases of all clients involved, when there is a risk of conflict of interest, when the professional secret may be violated or the independence could be impaired;*

*(3) The lawyer shall not accept the case of a new client when the secret of information disclosed by a previous client may be affected or the lawyer's knowledge of such information would favour the new client."*

At the same time, we specify that S.N.G.N. ROMGAZ S.A. is admitted to trading since 2013 at the Bucharest Stock Exchange and London Stock Exchange, therefore procurement by the Company of services to support the activity of the body of legal counsellors in this case file would have a decisive role in defending Romgaz's interests in the best way possible, contributing to the possible avoidance of negative consequences of the CCS Decision No. 26/2016 if it remains into force, with major impact on the financial performance of Romgaz. In our opinion the need to procure legal services is evident as the amount under litigation is considerable (more than RON 140 million), and as mentioned above, all the efforts for annulment of the CCS Decision No. 26/2016 contribute to avoiding the negative impact on the society, and avoiding the negative perception of the shareholders related to the company.

The legal services to be acquired consist of consultancy, assistance and representation in all courts of justice, preparing and elaborating the actions and the defence, using all the ways of appeal, as well as any other acts required for the case until the final award.

To procure such services, S.N.G.N. ROMGAZ S.A. will consider and comply with the principles of Law 99/2016, article 2, on non-discrimination, equal treatment, mutual recognition, transparency, proportionality, assuming responsibility, as these services are exempted from application of procurement procedures provided under Law 99/2016.

Therefore, we hereby require the approval of procurement of external (specialised) services for legal consultancy, assistance and representation to defend the legitimate interests of Romgaz related to the legal proceedings for reimbursement of the alleged prejudice provided under CCS Decision No. 26/2016 as well as mandating the Board of Directors to coordinate the procurement procedures for external legal consultancy.

We specify that S.N.G.N. ROMGAZ S.A.'s Board of Directors endorsed favourably this request under the Decision No. 11/May 10, 2017.

Yours respectfully,

**S.N.G.N. ROMGAZ S.A.**  
**Chairman of the Board**  
**Dumitru CHISALITA**

