



**SOCIETATEA NAȚIONALĂ DE TRANSPORT  
GAZE NATURALE "TRANSGAZ" SA MEDIAȘ**

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## **REPORT**

### **on the procurement of legal consultancy, representation and assistance services for the investigations and/or litigations related to and/or with the involvement of the European Commission through DG Competition**

#### **Summary**

The Report has been approved by the board of administrators in the session no 21 from 29 June 2017, in order to be submitted for approval by the Extraordinary General Meeting of Shareholders.

The recent investigations performed by the European Commission and the involvement of SNTGN Transgaz SA ('Transgaz') in European strategic projects require European legal expertise in commercial, financial, construction and European regulation law supporting an efficient management of the projects and the legal compliance of their performance with the international law.

The important cross-border projects and the necessity to defend Transgaz's rights in the investigations performed by the European Commission require the ensuring of the prompt and urgent representation and assistance of Transgaz by a law firm having activity at the European level.

Since the procurement of legal services requires the prior approval of the General Meeting of the Shareholders of Transgaz and the compliance with the legal procedures for its convening, the interests and rights of Transgaz may be endangered in the conditions of the absence of the possibility to contract representation and legal assistance services in urgency cases.

#### **Proposal**

**We submit the following for your analysis and approval, based on Art. I (3) of GEO 26/2012 on certain measures to reduce public expenses and enhance financial discipline and amending and supplementing certain norms:**

- **The procurement of legal consultancy, representation and assistance services for the investigations and/or litigations related to and/or with the involvement of the European Commission through DG Competition.**

Considering the complexity and specificity of the European Commission procedures it is necessary to ensure a specialist legal expertise to minimise the risk of some adverse solutions for Transgaz SA, by defending our Company's interests by law firms specialized in competition law, and related European procedures and laws.

We mention the precedent created by European Commission Decision C(2017) 3835 by which the proceedings in case AT. 40335 were officially launched, having as aim possible limitations of the free flow of gas from Romania to neighbouring member states, including by the strategic use of (i) the transmission tariffs at the interconnection

points; (ii) underinvestment or relevant infrastructure projects; (iii) technical reasons not grounded as a pretext to prevent exports/justify delays in exports, all these being assumed breaching of Art. 102 of TFUE.

We remind at the same time the control performed between 13 June and 16 June 2017 to establish whether the rules set at Art. 101 of TFUE, in case AT.40483, were breached.

Considering the complexity of the two cases mentioned above and the possibility to extend the investigations performed by DG Competition regarding the activity of Transgaz, a company performing its activity in an extremely dynamic market of gas at the European level, we believe that it is absolutely necessary to procure legal consultancy, representation and assistance services and the contracting of these services with the law firms which, by their specialisation and size of activity, may be able to protect and defend the interests of Transgaz at the highest level of competence.

Regarding the initiation of the legal steps to procure legal services, according to Art. 37 (1) d) and (3) of Law 99/2016 on sectoral procurements ('Law 99/2016'), the provisions of Law 99/2016 are not applicable in the situation of the following legal services: (...)

- *'the assistance and representation of a client by a lawyer under Law 51/1995 within legal procedures in front of courts or national public authorities in Romania or in any other country or in front of courts of justice or international institutions';*
- *'the assistance and legal consultancy provided by a lawyer, in advance or to prepare any of the procedures foreseen above or where there are actual elements and a high probability that the case for which the legal assistance and consultancy are provided make the object of such procedures'.*

Therefore, the provisions of Law 99/2016 are not applicable to Transgaz in the case of concluding a legal assistance contract with a 'lawyer' in the meaning set under Law 51/1996 - a Romanian law firm or a law firm providing legal services in Romania, although the professional qualification originates in another Member State, when the contract concerns the assistance and representation of Transgaz in legal proceedings before international institutions or in view of the preparation of such proceedings or where there are actual indications and a high probability that the case in question will be subject to judicial proceedings before an international institution.

Reporting Law 99/2016 to Law 51/1996 requires the compliance of the term 'lawyer' with the Romanian laws in force, so, the legal assistance contract must be concluded with a Romanian law firm or a law firm providing legal services in Romania, although the professional qualification was obtained in another Member State.

By the way of regulation according to Art. 37 (3) b) and c) of Law 99/2016 the legislator recognizes the special nature of the legal services, by the possibility of contracting them without applying the procedures provided by the sectoral procurement law.

With regard to the lawyer's fees, Art. 127 of the Statute of the Lawyer's Profession, adopted by Resolution 64/2011 of the National Union of Romanian Bar Associations provides at paragraph (1) that 'for his/her professional activity the lawyer has the right to be paid the fee and to cover all expenses incurred in the interest of his/her client'. 'Fees shall be fixed in relation to the difficulty, extent or duration of the case' in accordance with the items in paragraph (3), thus:

- a) 'The time and amount of work required to execute the mandate received or the activity required by the client;
- b) the nature, novelty and difficulty of the case;
- c) the importance of the interests concerned;
- d) the fact that acceptance of the client's mandate prevents a lawyer from accepting another mandate from another person if that circumstance can be ascertained by the client without further investigation;
- e) the notoriety, titles, years of work, experience, reputation and specialization of the lawyer;
- f) cooperation with experts or other specialists, imposed by the nature, object, complexity and difficulty of the case;

- g) the benefits and results obtained for the client's profit as a result of the work done by the lawyer;
- h) the financial situation of the client;
- i) time constraints in which the lawyer is bound by the circumstances of the case to act in order to provide a good legal service.`

Considering the legal complexity of the legal cases and issues involving international entities such as the European Commission, and the potential negative consequences of them on the activity of Transgaz, it is necessary that all actions, documents, controls, support and defence be prepared/analysed/negotiated through a law firm the similar experience of which guarantees the professionalism and chances to diminish the negative impact on the activity of Transgaz.

#### **CHAIRMAN OF THE MEETING**

**VĂDUVA PETRU ION**