



NUCLEARELECTRICA

**ENDORSED,
ALEXANDRU SANDULESCU
PRESIDENT OF THE BOARD OF
DIRECTORS**

NOTE

Regarding the approval of the liability against the persons who occupied the position of General Manager of the company during 2007-2011 and the approval of the initiation of the liability actions as per the provisions of art. 155 of the Law no. 31/199 in order to carry out the Resolution of the Court of Accounts no. 14/2012 for the application of the measures to capitalize the findings from the Court of Accounts Control Report number 4739/16.05.2012 regarding the Directors & Officers liability (D&O) type policies

1. General aspects/competence

As per art. 155 of the companies' Law no. 31/1990, republished with the subsequent amendments, the liability action against the managers for prejudices caused to the company through their breach of their responsibilities towards the company, pertains to the Ordinary General Meeting of Shareholders. The resolution regarding the liability against the managers is adopted within the Ordinary General Meeting of Shareholders by secret vote, as per art. 130, paragraph (2) of the law: "*the secret vote is mandatory (...) for resolutions regarding the liability of the members of the administration, management and control bodies of the company*".

2. Brief History

(1) During 8 January 2012 – 16 May 2012, the Court of Accounts of Romania – Division IV – performed a control audit at SN Nuclearelectrica SA ("SNN") with the subject "*The control regarding the situation, the evolution and the administration of the public and private patrimony during 2009-2011*". Following this verification audit, the Control report no. 4739/16.05.2012 was filled (the Control Report or the Report). The Report comprised the following aspect, among other findings, of control team of the Court of Accounts:

"Payments in the amount of 139.195 EURO (571.087 lei), representing the value of 2 insurance policies concluded for the administrators, including persons outside the company, without legal basis for their conclusion".

As a recommendation to the management of the company, the Report mentioned the recovery of the amount of 139.195 EURO (571.087 lei) including the legal interests calculated until the payment date, in the amount estimated at 58.252 lei.

Societatea Nationala NUCLEARELECTRICA S.A.

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Trade Registry number: J40/7403/1998, Sole registration code: 10874881,

Paid and subscribed capital: 3.012.210.410 lei

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- (2) Against this Control Report (in its final form, namely, after the conciliation with the representatives of the Court of Accounts), SNN filed Objections on 29.05.2012, registered at SNN under the number 5242/29.05.2012 and at the Court of Accounts of Romania under the number 97885/30.05.2012.
- (3) SNN's objections were not taken into consideration by the Court of Accounts of Romania and the Division IV of the Court of Accounts issued the Resolution no. 14/15.06.2012 (The Resolution) regarding the correction of the indentified difficiencies stated in the Control Report no. 4739/16.05.2012.
- (4) The Resolution no. 14/15.06.2012 provides at art. 10 the following: *“The management of SN Nuclearelectrica SA shall order measures to comply with the legislation regarding the conclusion of insurance policies as per the provisions of the Law no. 31/1990 regarding commercial entities, republished and ammended by the Law no. 441/2006, art. 153 index 12, (3), (4). Moreover, measures will be taken to extend the verifications on all the insurance policies concluded by the company during 2009-2011, in order to identify other insurance policies concluded without legal basis, to establish the extent of the potential prejudice, following the settlement of the D&O type insurance policies, concluded unlawfully on the basis of art. 17 (ammended) from SN Nuclearelectrica SA Articles of Incorporation, considering the fact that the ammendment of the above mentioned article was not discussed within the GMS meeting, for the persons who hold administrative and management positions within SN Nuclearelectrica SA as well as executive directors and administrators of SC Energonuclear SA, without mentioning the number and names of the ensured persons, to register the established amounts in the accounts of the company, to recover them (including the unachieved revenues, under the conditions of the law), as well as the correction of the registered accounting results (for the correction of the breach presented at item 9 of the current Resolution).*
- (5) Against the above mentioned Resolution (item 4), SNN filled an appeal, registered at SNN under the number 6562/04.07.2012 and respectively, at the Court of Accounts of Romania, under the number 99829/04.07.2012.
- (6) By the letter of the Court of Accounts of Romania – Division IV – no. IV/40.368/03.08.2012, registered at SNN under the no. 7729/07.08.2012, the Conclusion no. 89 dated 02.08.2012 (the Conclusion) of the Commission for the settlement of the appeals within the Court of Accounts of Romania was communicated to us. The appeal of SNN regarding the D&O type ensurance policies was rejected.
- (7) Against the above mentioned administrative documents, issued by the Court of Accounts of Romania (the Control Report no. 4739/ 16.05.2012, the Resolution no. 14/15.06.2012 and the Conclusion no. 89/02.08.2012), SNN filled the summoning to trial of the Court of Accounts of Romania, requesting the Court of Appeal of Bucharest to admit the Claim and, as a consequence, to order the partial annulement of the administrative documents issued by the Court of Accounts of Romania, as, partly, ungrounded and unlawfull.
- (8) The Court of Appeal of Bucharest, by the sentence no. 6332/07.11.2012, pronounced in the file no. 6561/2/2012 rejected the claim of SNN as ungrounded.
- (9) Against this sentence, SNN filled an appeal at ICCJ. By the resolution no. 2722/10.06.2014 (which was obtained by SNN from the file of the case, after the wording of the motivation by the panel of judges, in January 2015), SNN's claim was rejected.

3. The obligation to enforce the Resolution of the Court of Accounts no. 14/15.06.2012

Taking into account the presented history of the case as well as the provisions of the Law no. 94/1992 regarding the organization and operation of the Court of Accounts, republished with subsequent amendments as well as the Regulations of the Court of Accounts, SNN has the obligation to apply the measures established in the Resolution of the Court of Accounts no. 14/15.06.2012.

4. The situation which generated the prejudice. The liability of the responsible persons

The issues identified by the Court of Accounts refer to the insurance policies concluded during 2008-2011, namely: policy no. 2331878728 issued by AIG Romania for the period 01.12.2008-30.11.2009 and policy no. 23318728 issued by AIG Romania for the period 01.12.2009-30.11.2010. The policies were extended for subsequent periods of 1 year, until 31.05.2012.

Regarding the prejudice, the Control Report, the Resolution and the Conclusion which rejected the appeal filed by SNN, mention the following:

- (i) *Payments were made in the amount of 139.195 EURO (571.087 lei) representing the value of 2 insurance policies concluded for the administrators, including persons outside the company, without legal basis for their conclusion;*
- (ii) *External auditors recommend the recovery of the amount of 139.195 EURO (571.087 lei), including the interests calculated until the payment date, in the amount estimated until the date of the report at 58.252 lei.*
- (iii) *The consequence of the breach consists of the unjustified increase of the operating expenses with the amount of 471.538 lei, the decrease of the taxable profit with the same amount, the decrease of the profit tax with the amount of 75.446 lei, as well as additional payments in the amount of 571.087 lei.*

The Control Report mentions the following:

- *“only the General Manager of SN Nuclearelectrica SA must have a professional liability insurance, as per the Law no. 31/1990”;*
- *“the legislator does not oblige commercial entities to conclude D&O type insurance policies”;*
- *“the professional liability policy (which is mentioned in the Law 31/1990) offers protection to the insurant for prejudices caused to third parties following errors, omissions and negligences during the professional activity”;*
- *“the D&O type insurance (Directors’ & Officers’ Liability) offers protection for prejudices caused to the company/third parties”;*
- *“without mentioning the number and names of the persons, during 2009-2011, insurance policies were concluded for the administrators and managers of SN Nuclearelectrica SA, with a total insurance premium of 139.195 EURO (571.087 lei)...”.*

Among the unlawful aspects related to the insurance policies identified by the Court of Accounts, we mention:

- (i) The conclusion of the „D&O” policy exceeds the legal framework provided by the Law no. 31/1990. The sentence of the Court of Appeal assimilated the findings of the Court of Accounts in the sense that „the Directors & Officers Liability type insurance concluded by SNN is different from the professional liability insurance which is imposed by the Law no. 31/1990, namely *„the difference between the two types of policies consists in the fact that the professional liability policy offers protection to the insurant for prejudices caused to third parties following errors, omissions or negligences during the professional activity while the D&O type policy offers protection against the prejudices caused to the company/third parties”*.
- (ii) In the Minutes of Meeting of the General Meeting of Shareholders dated 05.12.2007 the ammendment to article 17 in the Articles of Incorporation of the company was not discussed;
- (iii) Persons outside the company were ensured;
- (iv) The ensured persons were not nominated.

The Report of the Court of Accounts holds accountable the persons involved in the ammendment of the Articles of Incorporation of SNN, namely, the representatives of the shareholders within the general meeting of shareholders who did not comply with their mandate and voted a different form of the Articles of Incorporation than the one subjected to the approval and the General Manager.

The main cause for SNN’s prejudice is the ammendment of the Articles of Incorporation by introducing the obligation of the Company to conclude D&O type policies.

Due to the fact that this provision was considered unlawfull by the courts of law (without ordering its annulment), the Company may sue the responsible persons, including the ones who approved this ammendment, as identified in the Report of the Court of Accounts.

Due to the fact that there is no contractual relationship between the Company and the representatives of the shareholders, the liability action against them can be persued only within a civil delictual liability trial.

In the case of SNN, the concrete surroundings in which the ammendments to the Articles of Incorporation were accepted in the meeting dated 05.12.2007 lead to the conclusion that the representatives of the shareholders within the General Meeting voted the ammendment of the Articles of Incorporation, exceeding the limit of their mandate. The exceeding of the mandate occurs regardless of their intent, namely wheather they intended to act outside the limits established in their mandate or wheather they neglected to verify the content of the Articles of Incorporation before signing it.

The analysis of the representation mandates revealed the fact that the mandate was awarded by the shareholders for the approval of the Articles of Incorporation in the form approved and submitted by the Board of Directors and not in the form included in the Resolution of the General Meeting of Shareholders dated 05.12.2007 which the representatives signed.

The General Manager who signed the Resolution of the shareholders no. 18/05.12.2007 is mentioned in the Report of the Court of Accounts as being among the persons who approved the ammendment of the Articles of Incorporation.

The liability of the general managers for the way in which the resolution so the general meeting of the shareholders are implemented is a full liability grounded on the mandate contract. Due to

the fact that the position of General Manager is remunerated, his guilt will be established within an in abstracto liability action, meaning that he will also be liable for the most simple of charges (including negligence in the supervision of the unit's personnel), the guilt being alledged in this case.

Despite the fact that the General Manager doesn't have in his scope the signing of the shareholders resolutions as well as the fact that the resolution would have been valid without his signature, nevertheless, the following aspects cannot be ignored:

- The Report of the Court of Accounts expressly mentions him as responsible;
- The General Manager was a member of the Board of Directors as well, which approved a draft of the Articles of Incorporation and, based on the obligations in his mandate contract, the General Manager must draw the attention of the shareholders' representatives that the draft proposed for signing is different than the one approved by the Board of Directors.

The recovery of the amounts established as prejudice can be performed legally through a summoning to trial of the shareholders' representatives on the charges of civil delictual liability, while the liability against the General Manager may be established within a liability action as per the Law no. 31/1990.

As per the special provisions of the law, the take over of the management and representation responsibilities by the managers from the Board of Directors is accompanied by a quasi-identical liability regime to that of the administrators.

We mention the fact that general managers in power during 2007-2011 may be liable to the extent to which they had the obligation to oversee and control the activity of the employees, to comply with the legal provisions, the provisions of the Articles of Incorporation and the resolutions of the shareholders.

Taking into consideration the above mentioned facts in the application of the measures ordered to the management of **SN Nuclearlectrica SA by the Resolution no. 14/2012 for the application of the measures to capitalize the findings in the Control Report of the Court of Accounts no. 4739/16.05.2012** with the subject „*The control regarding the situation, the evolution and the administration of the public and private patrimony during 2009-2011*”, we mention that fact that SNN will file a law suit to claim the settlement of the prejudice of SN Nuclearelectrica SA **in the estimated amount of 139.195 EURO (571.087 lei)** (to which is added the legal interest as unachieved revenue and the update with the inflation index) not only against the persons who occupied the position of General Manager of SNN during 2007-2011 but also against the representatives of the shareholders within the general meeting of shareholders dated 05.12.2007 and other persons identified as having a contribution to the prejudice ascertained by the Court of Accounts.

5. Proposals

Considering the above mentioned, we subject to the approval of the Ordinary General Meeting of Shareholders the following:

1. **The approval** of the liability against the persons who occupied the position of General Manager of the company during 2007-2011, with the application of the action ordered to the management of **SN Nuclearelectrica SA, by the Resolution no. 14/2012 for the application of the measures to capitalize the findings of the Court of Accounts Control Report number 4739/16.05.2012** with the subject: “*The control regarding the*

situation, the evolution and the administration of the public and private patrimony during 2009-2011”, in order to recover the prejudice ascertained by the Court of Accounts.

2. **The approval** of the initiation of the liability actions as per the provisions of art. 155 of the Law no. 31/1990 against the persons who occupied the position of General Manager of SNN during 2007-2011 in order to recover SN Nuclearelectrica’s prejudice **in the amount estimated** by the Court of Accounts at 139.195 EURO (571.087 lei) (to which is added the legal interest as unachieved revenue and the update with the inflation index), representing the value of 2 insurance premiums concluded for the administrators, including persons outside the company, without legal basis for their conclusion.
3. **The empowerment** of the General Manager to represent the company, to sign and promote the summoning before the qualified courts of law, on the basis of art. 155 of the Law no. 31/1990.

Daniela Lulache

CEO