Endorsed,
President of the Board of Directors
Alexandru Sandulescu

NOTE
Regarding the approval of the Analysis report for the causes that lead to making the payments amounting lei 1,035,140 (as compensation, trial costs and execution costs paid based on a final and irrevocable decision of the courts of law), according to the Romanian Court of Auditors no. 16/11.05.2015

I. General aspects/competence. The context of the necessity of the Ordinary Meeting of Shareholder's approval of the Analysis report regarding the clauses that lead to making the payments amounting lei 1,035,140 (as compensation, trial costs and execution costs paid based on a final and irrevocable decision of the courts of law), according to the Decision of the Romanian Court of Auditors no. 16/11.05.2015

During January 12th, 2015 – April 10th, 2015, the Romanian Court of Auditors – Department IV – conducted a verification action at the undersigned, themed *"Control regarding the situation, evolution and management of the public and private patrimony of the state as well as the lawfulness of making and income and costs during 2012-2014 for the National Company Nuclearelectrica S.A."*.

Following this verification action, the team of external public auditors drafted **the Control Report no. 4371 from 10.04.2015**. In this Report, among the ascertains of the control team of the Court of Auditors at point 3.1.7. the auditors stated as a deviation from the lawfulness and regulation *„the lack of follow-up of the recovery for the payments performed for the amount of lei 1,035,140 for compensations, trial costs, established by courts of law"*.

Against the Report, considering the provisions of the Regulation regarding the organization of the Court of Auditors specific activities, as well as the valuation of these deeds resulted from these activities ("the Regulation of the Court of Auditors" or "The Regulation"), The National Company Nuclearelectrica S.A. ("SNN") formulated **Objections (Annex 2)** registered at the Romanian Court of Auditors under no. 128495/27.04.2015 including regarding point 3.1.7 of the above mentioned Report.

The objections of the undersigned were not held by the Romanian Court of Auditors and, based on the respective previously mentioned Regulation, points 174 and the following – Sub-section 5, the Romanian Court of Auditors – Department IV – issued the **Decision no. 16/11.05.2015** to remove deficiencies stated and registered in the Control Report no. 4371 from 10.04.2015. At point II.9 of the Decision (page 18) are presented the following measures: "*reanalysis of the causes that lead to making the payments amounting lei 1,035,140 (as compensations /trial costs/execution costs), in order to identify the ones guilty of*

producing the damage registered following these payments, presentation and approval of the analysis result by the board of directors and General Meeting of the Shareholders, after which, their decision will apply, as the case may be, recovery measures will be ruled according to the law (including unperformed benefits), correcting the registered accounting results, determining the possible differences for the state budget including dividends for the sole associate and transferring them on legal destinations including corresponding accessories calculated until the payment date (for removing the deviations presented at point 7 of the Decision)".

Against the Decision stated above, respectively including the measures provided at point II.9 and regarding the deviation stated in the provision of the Decision at point 7, the undersigned drafted, based on art. 204 and the following (Sub-section 8) of the Regulation, **a Claim** registered at the Romanian Court of Auditors under no. 131202 from 29.05.2015. by the Address of the Romanian Court of Auditors – Department IV – no. IV/40.362/20.07.2015, registered at SNN under no. 8701/20.07.2015, was communicated to us the **Conclusion** no. 59 from 17.07.2015 ("the Conclusion") (Annex 5) of the Commission for solving the claims within the Romanian Court of Auditors, issued based on the provisions of art. 219, Sub-section 9 of the Regulation. According to this Conclusion, the Claim solving committee, based on the Control Report, the Decision and the claim of the Undersigned, "*analyzed the arguments presented in the Claim, the aspects presented in the Control Report, as well as the legal provisions applicable in this field, resulting that the arguments presented do not bring new elements which can amend the Decision no. 16/2015"*.

Against the management deeds of Conclusion, Decision and Report, on 07.08.2015, SNN drafted an action in the administrative legal department requesting the partial cancellation of these administrative deeds, including the suspension of their execution. The summons promoted by SNN against the administrative deeds issued by the Court of Auditors are ongoing registration on the dockets of the Appeal Court in Bucharest.

II. Proposals

The term established for implementing the measures provided by the Court of auditors by the Decision is 30.10.2015. Considering that the measure ruled by the Court of Auditors means the presentation and approval of the result of the analysis of causes which lead to the payment amounting lei 1,035,140 (as damages/trial costs/execution costs) by the General Meeting of the Shareholders, we submit to the approval of the General Ordinary Meeting of Shareholders of the Analysis Report regarding the causes that lead to making the payments amounting lei **1,035,140** (as compensation, trial costs and execution costs paid based on a final and irrevocable decision of the courts of law), according to the Decision of the Romanian Court of Auditors no. 16/11.05.2015 from the Annex to the hereby Note.

General Manager

Daniela Lulache

Financial Manager

Mihai Darie

Legal Department and Corporate Affairs Manager

Laura Constantin

ANALYSIS REPORT regarding the causes that lead to making the payments amounting lei 1,035,140 (as compensation, trial costs and execution costs paid based on a final and irrevocable decision of the courts of law), according to the Romanian Court of Auditors no. 16/11.05.2015

I. Analysis of situations generated the possible deviation from lawfulness and regulations stated by the Court of Auditors.

I.1 Regarding point 3.1.7 a) of the Control report by which the external public auditors stated that *"...by revoking, before the term, the 3 CA members, without establishing any fault, the entity paid according to art. 6 paragraph (2) of the concluded agreements, damages and trial costs amounting lei 87,638, plus the entity's contribution to the social security budgets, in the amount of lei 40,449, resulting a total amount of lei 128,087 for which it didn't initiate recovery measures."*

The situation *de facto* regarding the revocation of the three members of the Board of Directors

On 13.11.2008, following the appointment as members of the Board of Directors of SNN, based on the provisions of the Law no. 31/1990 regarding companies, management agreements were concluded with SNN administrators, and with Mrs. Aurica Gereanu and Mr. Teodor Minodor Chirica and Mr. Vlad Alexandru Velcu.

The term of the agreements was established until 22.11.2011. The management agreements had a standard format according to the Decision of the General Meeting of the Shareholders no. 7/13.11.2008 by which was approved the Management agreement for the members of the Board of Directors. In these agreements, art. 6 paragraph 2 expressly mentions that the company owes damages amounting 12 gross monthly allowances in case of administrator revocation without a real cause. This provision was included in the content of the management agreements as an application of the provisions of art. 137^1 paragraph 4 of the Law 31/1990 of the companies, stipulating that *"Administrators may be revoked any time by the general ordinary meeting of the shareholders. In case the revocation occurs without a real cause, the administrator has the right to pay damages"*.

At the beginning of 2009 occurred a series of amendments in the membership of the Board of Directors, respectively, during the first stage, Mr. Teodor Minodor Chirica was revoked from the position of member of the Board of Directors, by the decision of the General Ordinary Meeting of the Shareholders no. 2/26.01.2009. The vote mandate of the Romanian state representatives in the General Ordinary Meeting of the Shareholders was approved by the Order of the Minister of Economy no. 90/2009 issued on 24.01.2009, providing, at art. 2 paragraph (1) that "*State representatives in the General Meeting of the Shareholders from SNN S.A. have the mandate to appoint, in order to choose as member of the Board of Directors of the national company, Mr. Budulan Pompiliu, instead of Mr. Chirica Minodor Teodor*". Subsequently, Mrs. Aurica Gereanu and Mrs.Vlad Alexandru Velcu were revoked from the position of members of the SNN Board of Directors, by the General Ordinary Meeting of the Shareholders Decision

no. 3/13.02.2009. The vote mandate of the Romanian state representatives in the General Ordinary Meeting of the Shareholders was approved by the Order of the Minister of Economy no. 189/11.02.2009. it must be mentioned that both previously mentioned General Ordinary Meeting of the Shareholders decisions, as well as the Minutes corresponding to the General Ordinary Meeting of the Shareholders from 26.01.2009 and, respectively, 19.02.2009, do not consist in any mention regarding the reasons of the revoking decisions.

At the revocation date of the administrators Teodor Minodor Chirica, Aurica Gereanu and Vlad Alexandru Velcu from the administrator position, the Romanian State, through the Ministry of Economy and Fondul Proprietatea S.A. were the two shareholders of SNN (company managed in a unitary system), the Ministry of Economy being a majority shareholder, with a participation of approx. 92%, therefore the decisions within the SNN general meetings of shareholders were taken by the vote of the majority shareholder, the Romanian State.

Following the revocation without a real cause of the 3 members from the administrator position, the company was obliged, based on the final and irrevocable court decisions ruled in the trials described hereafter, to pay damages.

The short description of the litigations generated the assumed deviation from lawfulness and regulation stated by the Court of Auditors

(i) By civil decision (content) no. 15845/16.12.2009 ruled by the Court of Sector 1, Bucharest (first instance) in the file no. 11344/299/2009, SNN was obliged to pay, to the claimant Vlad Alexandru Velcu, the amount of lei 64,200, representing monies according to the management agreement from 13.11.2008, as well as lei 3,726.20, representing trial costs in the content phase. By the civil decision (appeal) no. 1530/18.11.2011 (irrevocable), ruled by the Bucharest Court of Law, in the file no. 54764/3/2010, the court of law rejected the appeal drafted by SNN as being ungrounded and obliged SNN to pay the amount of lei 4,960, as trial costs in appeal. We mention that the claimant Vlad Alexandru Velcu executed SNN, by legal executor.

(ii) Bu civil decision (content) no. 12804/06.07.2012 ruled by the Court of Sector 1, Bucharest, in solving the file no. 4052/299/2012, was admitted, in part, the action of the claimant Teodor Minodor Chirica and SNN was obliged to pay the amount of lei 802.92, representing monies according to the management agreement from 13.11.2008, as well as the amount of lei 61.05, as trial costs. By the Civil Decision (appeal) no. 3953/2013 (irrevocable), ruled by the Bucharest Court of Law, in solving the file no. 4052/299/2012, was accepted the appeal made by the claimant Teodor Minodor Chirica, SNN being obliged to pay the amount of lei 64,200, as damages, representing monies according to the management agreement from 13.11.2008, for the revocation without a real cause from the position of administrator in the SNN Board of Directors, as well as the amount of lei 2,577.26 content trial costs and lei 2,952.5 – trial costs for appeal. The claimant executed SNN by legal executor. Also, SNN transferred the amount of lei 40,449, representing the counter value of the contribution to the social security budget.

(iii) By the Civil Decision no. 12517/29.06.2012 ruled by the Court of Sector 1, Bucharest (first instance) in the file no. 3466/299/2012, SNN was obliged to pay, to the claimant Gereanu Aurica, the amount of lei 64,200, representing damages, as well as the amount of lei 5,380, representing trial costs in the content phase. By the civil Decision (appeal) no. 3611/30.10.2013 ruled in the file no. 3466/299/2012* of the Bucharest Court of Law, the appeal court admitted the SNN appeal (de facto, accepted the SNN request regarding the application of another calculation way for the amounts representing the mentioned damages), it changed, in part, the previously mentioned content decision and obliged SNN to pay to the claimant Gereanu Aurica the total amount of lei 804, representing damages – as damages, as well as the amount of lei 176.82 – as trial costs, and Gereanu Aurica was obliged to pay, to SNN, the amount of lei 1,444.46, representing trial costs. Considering the fact that the two receivables were compensated, finally the claimant Gereanu Aurica was obliged to pay to SNN only the difference of lei 463.64, as trial costs.

The analysis of the causes that lead to making the payments amounting lei 128,087 (damages and trial costs amounting lei 87,638 lei plus the contribution to the social security budgets amounting lei 40,449)

The revocation without ca real cause of the SNN administrators was, **according to the provisions of the Law no. 31/1990, a shareholders' provision deed, where the company was not involved and had no**

right of decision. The payment of damages to the revoked administrators is allowed by the provisions of art. 137^1 paragraph 4 of the Law no. 31/1990 according to which *"Administrators can be revoked at any moment by the general ordinary meeting of shareholders. In case the revocation occurs without a real cause, the administrator has the right to pay damages"*. According to the company's law, the board of directors is responsible before the company's shareholders and not vice-versa. **The company's shareholders are its owners, the ones making decision regarding the company's organization and operation. In fact, the company's shareholders, as its owners, can adopt, freely and sovereignly, decisions regarding the revocation of the board of directors, with or without a real cause,** the decision being exclusively theirs - and, in such situation, we cannot even talk about a prejudice.

Therefore, the shareholders assumed this indemnification obligation towards the administrators and evidently, at the moment of their revocation, the shareholders had the legal representation of the consequences of their decisions, taking these consequences upon themselves. The company's shareholders are its owners, the ones making decisions regarding the company's organization and operation. In fact, the company's shareholders, as its owners, can adopt, freely and sovereignly, decisions regarding the revocation of the board of directors, with or without a real cause**,** the decision being exclusively theirs - and, in such situation, we cannot even talk about a prejudice to the company, not being breached any legal provision by the administrators' revocation and, therefore, we cannot talk about a illicit deed to be taken responsibility for.

The Court of Auditors mentions that SNN should have taken measures to recover the prejudice but we underline the fact that such action in a court of law should be unacceptable by the court of law as long as there is no legal grounds for the company to draft an action to respond against its shareholders. There is no obligation of the shareholders towards the company to pay damages in case they decide the revocation of the members of the Board of Directors, for as long as it is the legal excusive right of the shareholders to revoke the administrators with or without a real cause.

Therefore, to recover the amounts paid by the company as damages for revoking three members of the Board of Directors there is no regress action if:

- **Their revocation before the expiration of the management agreement was decided by a decision of the general meeting of the shareholders** (where the vote mandate of the state representatives within SNN General Meeting of Shareholders was approved by an order of the minister);
- The revocation, regardless of a real cause, was, **according to the provisions of the Law no. 31/1990 of the companies, a shareholders' provision deed, where the company was not involved and had no right of decision**;
- The payment of damages to the revoked administrators is allowed by the provisions of art. 137^1 paragraph 4 of the Law no. 31/1990.

1.2 At point 3.1.7 b) of the Control report, the external public auditors stated *"The payment of lei 440,374, as damages, representing trial costs and execution costs, in the account of the entity's general manager, plus the amount of lei 111,893, representing the employer's contributions to the social security budgets"*

Short presentation of *de facto* situation

In fact, Teodor Minodor Chirica was revoked from the position of general manager of SNN by the Decision of the Board of Directors no. 2/26.01.2009, based on the Decision of the General Ordinary Assembly of the Shareholders no. 2/26.01.2009 and based on the Order of the Minister of Economy no. 90/2009 issued on 24.01.2009, without stating any reason for revoking. By the mandate agreement from 01.07.2008 concluded by Teodor Minodor Chirica with SNN, the latter undertook to cover for the said claimant, compensations (damages) in case of claimant's revocation without a real cause, from the position of general manager of SNN.

The short description of the litigations which generated the assumed deviation from the lawfulness and regulation

By the Civil Decision no. 13157/13.07.2012 (ruled by the Court of Law of Sector 1, Bucharest, in the content file no. 3850/299/2012), was accepted, in part, the action of the claimant Chirica Teodor Minodor and SNN was obliged to pay the amount of lei 80,292, as damages, as well as the amount of lei 4,037, as trial costs. By the Civil Decision no. 49A/12.03.2013 ruled by the Bucharest Court of Law in the appeal file no. 3850/299/2012, was accepted the appeal drafted by Teodor Minodor Chirica and, as a consequence, the previously mentioned decision was changed and SNN was obliged to pay the amount of lei 411.05, as damages, as well as the amount of lei 13,186.54, as trial costs and lei 5,849, appeal trial costs. By the Civil Decision no. 1756/09.10.2013 (irrevocable), ruled by the Bucharest Court of Appeal, in the appeal file no. 3850/299/2012, the SNN appeal was rejected as being ungrounded.

The causes analysis which lead to paying the amounts of lei 552,267 (damages and trial costs amounting lei 440,374 plus the contribution to the social security insurances amounting lei 111,893)

By the decision of the General Ordinary Assembly of the Shareholders no. 2/26.01.2009, the company's Board of Directors was authorized to perform the formalities regarding the termination of the general manager's mandate agreement concluded with Mr. Chirica Minodor Teodor. Moreover, in the order of the Ministry of Economy no. 90/24.01.2009 was expressly mentioned the fact that Mr. Chirica Minodor Teodor is cleared from the position of the general manager of the company.

Therefore, the origin of the revoking decision of the general manager consist in the shareholder's decision, before which the Board of Directors, as executive authority, responds and undertakes to comply all their decisions (which are not against the law).

And the revocation of Mr. Chirica from the position of General Manager, regardless of having or not a real cause, was, according to the Law no. 31/1990, a provision action of the shareholders, where the company did not have any saying or power of decision, the Board of Directors only exercising the shareholder's decision.

According to the company's law, the board of directors is responsible before the company's shareholders but not vice-versa, meaning that the shareholders are not responsible before the board of directors for the adopted decisions, because the company's shareholders are its owners, the ones making the decisions regarding the organization and operation of the company.

Going again over the arguments presented at the previous point, we show that if we, hypothetically, would accept that the shareholder's decision would have caused a damage to the company, the recovery of it is not possible to be performed by the company, through the board of directors and/or the general manager, from the company's shareholders, **because the Law no. 31/1990 does not accept any action right of the administrators or executive leadership against the company's shareholders**.

As we previously mentioned, in fact, the company's shareholders, as its owners, can freely and sovereignly adopt, decisions regarding the revocation of the leadership authorities, and, in such situation, there is no prejudice. In regards to the costs the shareholders assume, as a consequence of the revocation of the managers without a real cause, it represents no damage, but a consequence of the commonly exercising the shareholders' property right.

Art. 143^1 paragraph 4 of the Law no. 31/1990 establishes that *"The managers will be revoked at any moment by the board of directors. In case the revocation occurs without a real cause, **the said manager must pay damages**."*.

Therefore, considering the abovementioned, including the law giver allows the payment of damages in case o revoking without a real cause of the managers and, from that perspective, the amounts paid based on the concluded mandate agreements, based on the final and irrevocable court decisions and based on the legal provisions invoked above, it cannot be considered a prejudice.

The means of identification of the damages was mentioned as the mandate agreement concluded by Mr.Chirica with SNN approved by the Decision of the Board of Directors no. 8/03.07.2008. the revocation without a real cause is regulated by the Law no. 31/1990 and, therefore, when the shareholders decide in regards to it, they do not break the law, the contractual clauses being assumed by the company since the

beginning and being usual for this type of agreements, without breaching any legal provisions. We underline the fact that in the mandate agreement of the revoked General Manager it is mentioned expressly the right to damages in case of revocation without a real cause. We mention that the form of the mandate agreement concluded by Mr. Chirica with SNN was approved by the Decision of the Board of Directors no. 8/03.07.2008.

1.3 At point 3.1.7 c) of the Control report for the public external auditors mentioned as a default *"The payments for the estimated amount of lei 278,246, representing damages equal to the indexed, increased and re-updated salaries, as well as other rights, for dismissing an employee of SNN SA (plus the company's contribution to the social security budgets, amounting lei 76,542)."*

Short presentation of the *de facto* situation

Within the description of the breach from lawfulness and regulation from point. 3.1.7 letter c) the public auditors stated the payment of the estimative amount of lei 278,246, representing damages equal to the indexed, increased and re-updated salaries, as well as other rights, for dismissing an employee of SNN (Ivascu Tiberiu) plus the company's contribution to the social security budgets, amounting lei 76,542.

We mention that this litigation was generated by a *de facto* situation which was objective: in the spring of 2009, at the level of the company were incorporated a series of adviser /main adviser positions. In 2012, the Board of Directors ordered a re-organization by the annulment of certain adviser /main adviser positions, creating, in the same time, executive positions, and following this reorganization resulting a deduction of the flow chart by 6 positions and, also, the amendment of the flow chart and the SNN positions status. Each adviser received a notification by which he was informed about the possibility to apply for a contest for a newly created position. Tiberiu Ivascu, even though he initially applied for the contest, he no longer showed up nor he notified in any way the company about the reason for his absence. Under these conditions, Tiberiu Ivascu was fired and claimed this decision in a competent court.

The short description, of the litigations that generated the assumed breach from lawfulness and regulation

By the formulated claim, the claimant Tiberiu Ivascu requested the cancellation of the decision issued by SNN to terminate his individual work agreement no. 177/08.06.2012, the obligation of SNN to re-hire him (readmission) on the same job, that the claimant had before he was fired (main adviser in the General Inspection) and payment, by SNN, of certain damages, equalled to the indexed, increased and re-updated salaries and the other rights, which the claimant had benefited from, hadn't been fired. Subsequently, by an Additional request, the claimant criticised the issuance's lawfulness and grounds, by SNN, of the Decision no. 227/11.07.2012.

In fact, by the Decision of the Board of Directors of SNN no. 7/14.05.2012, was decided the cancellation of all adviser/main adviser positions within the Executive SNN, because these positions involved, in reality, certain executive activities.

The claimant Tiberiu Ivascu was fired from the position of main adviser within the General Inspection Department, based on art. 65 of the Labour Code, for reasons that have no connection to the employee. The undersigned organized a contest for the occupation of new specific executive positions, created after the cancellation of the previously mentioned adviser positions and the claimant Tiberiu Ivascu did not show up for the organized contest, entering medical leave. In this situation, the company postponed, by a decisions, the entering into force of the dismissal decision up to after the period of the individual labour agreement suspension, which occurred following the temporary labour incapacity of the claimant Tiberiu Ivascu.

In the first instance, the file no. 27102/3/2012, by legal decision no. 8429/02.10.2013, the Bucharest Court of Law rejected as ungrounded the action of the claimant. The appeal instance (Bucharest Court of Appeal), by decision no. 1574/13.03.2014 ruled in the appeal formulated by the claimant Tiberiu Ivascu, admitted the claimant's appeal and amended the attacked decision, therefore ruling the cancellation of the dismissal decisions issued by SNN, the reintegration of the claimant Tiberiu Ivascu on the position he had prior to his dismissal, the obligation of SNN to pay the claimant a damage equal to the indexed, increased and re-updated salaries, as well as the other rights that Tiberiu Ivascu would have benefited from since the

dismissal date and until the effective reintegration, the obligation of SNN to cover the trial costs amounting lei 5,729.42 by Tiberiu Ivascu.

In the first instance, the Bucharest Court of Law (in a panel made of 3 persons, 1 judge and 2 magistrate assistants), SNN won the appeal, at the Bucharest Court of Appeal (panel made of 3 persons), the appeal formulated by Ivascu being won by him.

The analysis of the causes that lead to making the payment amounting lei 278,246, representing damages equal to the indexed, increased and re-updated salaries, as well as other rights, for dismissing an employee of SNN (plus the company's contribution to the social security budgets, amounting lei 76,542)

We do not consider that such situation is imputable to someone, if, with Tiberiu Ivascu, being followed the exactly same procedure, were dismissed another 2 employees, one of them did not appeal the decision taken by the company but the other did it and, on the merits and also during the appeal, the company won, the case being similar to that of Tiberiu Ivascu.

It cannot be said that the company would be guilty in any litigation which the courts solve against it. This interpretation is not legal.

Therefore, for as long as there is no fault from the part of SNN regarding the analyzed case, there is no argument for which SNN should have to recover these amounts which were paid based on a final and irrevocable decision, according to the legal provisions.

In fact, the practice of the instances is not a unitary one. The instances have different and un-unitary approaches in similar cases, the proof being also the fact that SNN won this litigation in the first instance, three specialists in the field of labour law, respectively a judge and two legal assistances, appreciating that SNN proceeded correctly and legally. It cannot be considered that, within the full work attributions and, respectively, within the full administrator attribution, a measure to increase the efficiency of SNN's activity by reorganization, taken in good faith and by complying with the legal provisions, can cause a prejudice for as long as it should be proven a fault of the persons involved in making such decision.

Moreover, within another litigation regarding the same reorganization, SNN won. Therefore, in a similar case, the former adviser Mihai Marin, whose labour agreement was terminated in the same period as Tiberiu Ivascu's was, during the same reorganization process, challenged this measure (file no. 4945/105/2012). In this case, the merits instance –Prahova Court of Law (civil decision no. 118/17.01.2013), and the appeal one – Ploiesti Court of Appeal, rejected the claim drafted by Marin Mihai, respectively his appeal against the merits sentence, mentioning, among others, that the dismissal decision of Marin Mihai (with the same merits as the one of Ivascu Tiberiu) consists in the mentions provided as mandatory, contrary to the mentions of the claimant Marin Mihai, being indicated the reason of the dismissal as well as the period of the notice, and also, the fact the the syndicates notice was not necessary (as the claimed maintained, without any grounds), the fact that the closure of the position occupied by the claimant was argued by the fact that the adviser position he used to have, was no longer justified.

In supporting the abovementioned argument and after analyzing the line of reasoning of the courts of law that lead to the opposite solutions of the first and appeal instances.

Therefore, actually, based on the trial, the trial court (Bucharest Court of Law) mentioned the following aspects:

- The fact that Tiberiu Ivascu oculd not prove that SNN, on issuing the dismissal decisions was in a temporary work incapacity (in other words, he could not prove that he communicated to SNN he was in a medical leave), even though according to the CCM of SNN he had to notify the unit in 24 hours about the occurrence of such temporary work incapacity; he could not prove that he had any objective reason that could have stopped him from notifying SNN about the temporary work incapacity status – in such case, the company's fault does not exist – but the employee's, the court stated that the decision no. 177 for dismissal issued by SNN did not breach the provisions of art. 60 of the Labour Code (page 24 the decision of the Bucharest Court of Law);
- Because the conditions that a dismissal decision must comply with, regulated by art. 252 Labour Code, does not apply when the dismissal is ruled based on art. 65 of the Labour Code (as in the

case Ivascu), the dismissal decision issued by SNN is valid, it is not null (page 25 the Court's decision);

- The Court of law stated that the dismissal decision mentions the documents on which was based this measure against Ivascu and briefly indicates their content also, so that, from their corroboration, one can also see the reasons on which the measure was based;
- From the diagrams submitted to the file it results that the cancellation of the position held by Ivascu became effective (page 25 the Court's decision);
- The opportunity to cancel a department or a distinctive structure within the employment unit is a management measure which cannot be censored by the court of law (page 26 of the Court's decision);
- In this case it is mentioned the measure to reduce the adviser positions […] it was a management measure […] and was applied to many persons in this situation, not only to the claimer towards whom the employer showed a god will (page 26);
- Following the above mentioned, the Court states that the position occupied by the claimer was really and seriously cancelled by the undersigned (page 26);
- Considering the abovementioned, the Court of law states that the claimed decision is legal and grounded, reason for which will reject the request […] (page 26 of the Court's decision);
- The second decision issued by SNN – 227 – was issued only to extend the notice term, and therefore, does not represent an upright decision […] reason for which the claimer's presentations have no grounds, their issuing being requested by the law, which also implies the inclusion of the notice in the dismissal decision (page 26-27 of the Court's decision).

The appeal instance (Bucharest Court of Appeal) stated the following aspects:

- None of the two decision issued by SNN clearly showed the reasons which determined the dismissal of Ivascu, both only making references to a series of documents, the reasons of the dismissal being only deducted from the SNN decision, not being clearly and effectively mentioned (page 10 of the Court of Appeal decision);
- The cause of dismissal cannot be mistaken by with the reasons that lead to the dismissal, the cancellation of the position held by Ivascu being the cause of dismissal (page 10);
- None of the two decisions issued by SNN comply with the legal provisions regarding the indication of the notice period, leading to the absolute nullity of the decision (page 12 the decision of the Court of Appeal);
- The second decision issued by SNN is also affected by nullity because on its issuing date, SNN didn't have the quality of Ivascu's employer (page 13);
- The Court of appeal analyzed the cause under all aspects, examining, by default, the lawfulness of issuing the decisions (page 14).

II. The lack of lawful motivation of the breach from the lawfulness mentioned in the management documents issued by the Court of Auditors

Hereafter we will present the legal provisions invoked by the external public auditors in the content of the Report, the Decisions and Conclusions breached as well as the arguments for which we consider that, either these provisions are not applicable for this case, or, in reality, there is no breach of these legal provisions:

(i) <u>The provisions of art. 142 paragraph 1 and art. 144^1 paragraph 1 of the Law no. 31/1990</u>

The provisions of art. 142 paragraph 1 and art. 144^1 paragraph 1 of the Law no. 31/1990 refer to the general obligations of the members of the Board of Directors regarding the fulfilment of all deeds necessary and useful for complying with the company's object of activity and the fact that they will exercise the mandate prudently and with the measures of a good administrator. The external public

auditors did not detail in any report nor in the decision the way in which the administrators would have breached these obligations provided by the Law no. 31/1990. The lack of recovery of certain amounts paid based on decisions of final and irrevocable decisions following decision of corporate authorities with decision making authority within the company (general meeting of shareholders and the board of directors) cannot be considered in any way a breach of the obligations provided by the Law no. 31/1990 for administrators, provided above.

(ii) The provisions of art. 253, 254 and the following from the Labour Code

SNN did not breach the provisions of art. 253, 254 and the following from the Labour Code because we consider that there was no fault of any SNN employee for the cases described above, these situations being a consequence of the implementation of a court decision. The courts have a discretionary authority to judge. The amounts paid by the company, representing monies given based on irrevocable court civil decisions, cannot be qualified as "damages" to the company. These amounts were paid based on final and irrevocable court decisions, ruled by courts in solving certain litigations, therefore their payment was an obligation for the company, not an option.

(iii) provisions 2022 of the Civil code

SNN did not breach the provisions of art. 2022 of the Civil Code because this text provides the general principle applicable to mandate agreements with more proxies establishing the liable responsibility of the proxies towards the principal; again, we are in a situation in which SNN couldn't have breached this principle in the cases presented for as long as SNN is a principle before the members of the Board of Directors and this text refers to the responsibility of the proxies and not of the principal;

(iv) the provisions of art. 18 letter B paragraph 3 of the SNN Articles of Association

SNN did not breach the provisions of art. 18 letter B paragraph 3 of the SNN Articles of Association because this text establishes the company's responsibility before the general manager in case of an unjustified revocation of him from his positions, according to the law and mandate and management agreement, a responsibility which occurred already and which was stated by the court of law, SNN applying the final and irrevocable decisions of the court of law regarding this aspect;

(v) the provisions of art. 3, 5 and 7 of the G.O. no. 119/1999 regarding the internal and preventive financial control

SNN did not breach the provisions of art. 3, 5 and 7 of the G.O. no. 119/1999, because law breaches did not occur as determined by the Court of Auditors. Payments cannot be censored according to the provisions regarding the breach of lawfulness and regulation, because are based on final and irrevocable decisions that cannot be judged by any internal or external control authority. These payments complied with the legal provisions and did not breach the principle of operation regulation that comply with the assembly of the principles and procedural and methodological regulations applicable to the operation category that are part of. Therefore, SNN checked the final and irrevocable decisions out of two perspectives: the existence of executor titles and the amount to pay, that the undersigned had to, according to the courts of law

III. Inexistence of an illicit deed that can draw the civil responsibility

In all the three litigations, SNN acted in god faith, following to defend, before the courts of law, its rights and interests.
The mounts paid by the company, representing monies provided based on irrevocable court decisions, cannot be qualified as "*damages*" brought to the company because they were paid based on final and irrevocable decisions, ruled by a court of law in solving in certain litigations, therefore their payment was an obligation for the company, not an option.
According to art. 371^1 and following the former Civil procedure code, an obligation established by the decision of a court of law or by another title and which is not fulfilled willingly by the debtor, is made by execution, until the accomplishment of the right acknowledged as executive, payment of interests, penalties or other amounts, provided according to the law, as well as costs of execution. **The decisions**

ruled by the merits courts of law are executive and mandatory for SNN. We mention that in the hereby causes, the amounts SNN had to pay, detailed above, were established by the final and irrevocable decisions of a court of law. More than that, according to art. 287 paragraph 1 letter a) of the Criminal code, represent the contravention of not complying with the decisions of a court of law against the execution. Therefore, SNN had the legal obligation to execute the final and irrevocable court decisions mentioned above through which SNN was obliged by the court of law to pay compensations (damages).

Also, by executing the executive titles referred above the company did not suffer any damages according to the definition provided for the prejudice in the Regulation of the Court of Auditors.(damage = "a loss caused to the public or private patrimony of the state, of a territorial-management unit or their public entity, following an illicit deed.").

In regards to the damage, it is based on an illicit deed which is contrary to the law and social regulations and god manners, or, in the analyzed cases, we consider they cannot be seen as illicit deeds those complying with the legal applicable provisions, respectively with the provisions of the Law no. 31/1990 and the Labour Code.

We consider that SNN has no legal grounds for the recovery of the paid damages, for as long as their payment was made based on a final and irrevocable court decisions and based on the provisions of the Law no. 31/1990, of the Labour Code, of the Civil procedure code.

Whereas, as stated above, there is no breach of the legal provisions applicable by paying the damages established by the court of law, the obligation in case of SNN to recover the damage represents a breach of the provisions of art. 33 paragraph 3 of the Law no. 94/1992.

As a procedure, the implementation of the measure provided by the Court of Auditors can be transcribed in promoting an action for drawing the civil responsibility by SNN against responsible people. Or, under the conditions of involving responsibility, respectively the existence of a damage, of an illicit deed, of a cause report between illicit deed and damage and the guilt existence in performing the deed, these are not complied according to the conditions of the Court of Auditors for as long as the deeds that lead to paying the damages were according to the legal provisions, performed wither in the implementation of the decisions of the shareholders regarding the revocation of certain administrators and of the general manager, or in implementing the decision of a board of directors regarding reorganization.

In analyzing the un-lawfulness reasons of the administrative deeds we state that is relevant also the checking of fulfilling the condition regarding the existence of a prejudice because this is not proven by the simple fact of paying the damages. The checking of this condition is essential in relation to the fact that only in case of deviations from lawfulness, which determined the occurrence of damages can be established measures for their recovery, as provided by the provisions of the Law no. 94/1992 and the Regulation regarding the organization and development of activities specific to the Court of Auditors.

From the perspective of the invoked legal provisions, the damage appears to be uncertain, the external public auditors considered necessary to re-analyze and present the analysis to the board of directors and the general meeting of the shareholders.

From the administrative documents one can state that, in the vision of the external public auditors, the damage **is presumed and implicit**, without making a real proof of elements creating this prejudice.

In regards to the guilt conditions there is also no proof that the assumed illicit deed is imputable to the person identified by the Court of Auditors, them having any guilt in performing it, the previously presented arguments in supporting the lack of existence of the illicit deed also proving the lack of guilt.

IV. Conclusion

Considering those mentioned as well as the measure provided at point II.9 of the **Decision no. 16/11.05.2015**, we consider there are no breaches from lawfulness by paying certain damages based on certain final and irrevocable decisions of certain courts of law leading to taking some measures for the recovery of the amounts presented at point II.7 of the Decision.