



*Translation from Romanian*

**INFORMATION NOTE for the Extraordinary General Assembly of the Shareholders of S.N. Nuclearelectrica S.A. (“SNN”) about the cancellation of the *Technical, economic and juridical study regarding the transformation of the area of exploitation and preparation of uranium ore and nuclear fuel production***

**I. Preamble**

Through the memorandum on “Some measures of reorganization of the area of exploitation and preparation and the preparation of uranium ore”, the Romanian Government approved, among other things, the selection (made by SNN, on the basis of a competitive procedure) of the consultancy services of a company specialized on technical-economic and juridical area and authorized by the National Registry Office for State Classified Information (ORNISS), to elaborate a technical-economic and juridical study related to the transformation of the sector of ore exploitation and preparation as well and fuel production (“The study”).

The necessity of this study appeared, after taking into consideration the following issues:

- The necessity to assure operative mineral resources for the safety of the national energy system on medium and long term;
- The necessity of achieving a price for the electrical energy produced in the competitive nuclear system, similar to that achieved by the regional and national market;
- The necessity to improve the financial results of SN Nuclearelectrica so as to please the shareholders who, as a result of the investments made by them, expect the increase of the company value (the increase of the market capitalization, the dividend yield, etc).

Having the purpose of performing the activities specified in the Memorandum, the shareholders of SNN approved, through the Decision of the Extraordinary General Assembly of the Shareholders no. 4 from 29 April 2014, item no. 5, the beginning of the selection procedure of the consultancy services of a specialized company, whose selection should be based on a competitive procedure. The company must be authorized by ORNISS and specialized in the technical-economic and juridical field and has to elaborate a “Technical-economic and juridical study related to the transformation of the sector of ore exploitation and preparation and nuclear fuel production”. The necessary sums for the funding of this acquisition are to be included in the income and expenditure budget of the year 2014, approved in accordance with the legal provisions.

**II. The development of the acquisition procedure**

**The conclusion of the Association Agreement with CNU**

In the context described by the above item 1, during the span of time between July-October 2014, SNN had a number of meetings and discussions with the Uranium National Company SA (“CNU”) in order to identify the best option for the study agreement, taking into consideration the fact that most information needed by the future consultancy company to do the study was classified as secret state information.

Furthermore, some pieces of it were ranked as State Secrets of Extraordinary Importance (SSID) and their disclosure could prejudice the national security and defense, being governed by Law no. 182/2002, as to the protection of the classified information and the Government Resolution no. 585/2002, as to the approval of the National Standards of the protection of the classified information.

Thus, it was found that, with the view to comply with the legal provisions regarding the protection of the classified information, it was necessary that the services of the study elaboration be contracted by both SNN and CNU, under the form of an association of contracting authorities on the basis of an Association Agreement which should regulate the obligations of the two companies during the development of the process of the study acquisition, as well as the actual execution of the agreement.

Under such circumstances and on the basis of CA Decision no. 11 from 14 August 2014, SNN together with CNU, concluded the Association Agreement no. 1153 on 02 October 2014, in which the following obligations of the parties were specified:

- The organization and the development of a common acquisition procedure to select the consultancy company which was to elaborate the study;
- Having the quality of associates, they have to sign off the agreement of acquisition resulted from the development of the acquisition procedure;
- The necessary financial resources for the execution of the acquisition agreement will be paid integrally by the SNN;
- Taking into account the rapport of the parties related to the development of the agreement, they will designate, each one, a representative who will be responsible for the development of the agreement. As for the relations with the third parties, mainly with the specialist who will be designated, the association will be represented by SNN;
- Each party undertakes to make available absolutely and without any restraints to the selected consultancy company all the information necessary to carry out the study elaboration in due time in compliance with the law in force regarding the protection of classified information;
- Each part undertakes to analyze and to express possible remarks regarding the introductory form of the study in due time, so that they could be communicated to the company which elaborates the study within seven days since their delivery;
- The inspection of the study final form will be signed by the representative of both parties;
- All the documents issued within and in connection with the agreement will be signed by the representative of both parties, having all the necessary approvals, as the case;
- The parties undertake to keep the confidentiality of the documents and the information which will exist between the two parties with the view to carry out the project;
- The Association Agreement lasts from the date when the two parties sign it off till the inspection of the study is made;
- After the inspection of the study made by the two associates, SNN will have all the intellectual rights of the study, as being the main party of the association and the party which pays all costs. CNU will have only the right to use the study, with to the previous written consent of CNN.

### **The actual acquisition and the selection of the winner**

The acquisition started as an exception to the GEO no. 34/2006, paragraph 12, letter a) (the agreement that was to be concluded being included in the category of the information which are state secrets, according to the legislation in force regarding the protection of the classified information), through a competitive procedure of negotiation with publication notice. Practically, on 10 October 2014, a notice was published (along with the required documentation) on both sites of SNN and CNU. At the same time, the notice was published in the Electronic System of Public Acquisition (SEAP), at the section "Advertising". Firstly, the deadline for the applications was 30 January 2015, but later, after receiving more requests coming from potential tenders to postpone the deadline, it was deferred to 21 April 2015. During this period, only one tender application was received from Ernst & Young SRL.

Following the commune evaluation of the submitted documents made by SNN-CNU, the company Ernst & Young SRL was accepted to the second phase of the procedure, through a Interim Report given by the General Manager of SNN on 03 July 2015 and by the General Manager of CNU on 31 July 2015. Further, on 09 July 2015, the bidder was asked to submit its preliminary technical and financial offer the latest on 31 July 2015.

Further, during the period between 01 August and 25 November 2015, the submitted offer was analyzed and more information about it was requested, and then direct negotiations with the bidder were carried out. Consequently, the final technical and financial offer was made on 20 November 2015, having a total cost of 293,000 EURO without the VAT, representing near 97.6% of the estimated cost of the acquisition (300,000 EURO). The final report of the procedure was approved by the General Manager of SNN on 26 November 2015 and by the General Manager of CNU on 02 December 2015.

### **The impossibility to conclude the acquisition agreement**

After the approval of the Procedure Report, during the span of time between January and February 2016, a number of details related to the agreement clauses were discussed, and on 22 March 2016, the final form of the agreement was sent to CNU to be approved before its conclusion. On the same day (22 March 2016) CNU transmitted to SNN their remarks regarding the agreement, their main objection referring to the article about the CNU right to use the Study. After the implementation of CNU remarks, the SNN representatives signed the agreement and then they sent it to CNU to be signed by them, too (29 March 2016).

On 06 April 2016, CNU sent to SNN their refusal to sign the acquisition agreement, on the grounds that, in their opinion, the terms and the requirements of the Romanian Government Memorandum approved in 2014 would have been modified as to the SNN cancellation of the agreement for the delivery of synthesizing powder concluded on April 2014. Thus, CNU considered that the provisions of article 3.2, point 1, thesis 1 of the Association Agreement between SNN and CNU were incidents according to which:

*“This association agreement may be terminated before the schedule:*

*-by the will of the parties;*

*-under the circumstances of the terms and requirements alteration in the Romanian Government Memorandum on 02 April 2014, and /or the alteration of the Resolution of the Extraordinary Assembly of the SNN Shareholders no 4 on 29 April 2014;*

*- the cancellation, for any reason, of the selection of consultancy company to elaborate the Study, followed by the decision to cancel the Study Agreement ( the conditions have to be fulfilled cumulatively in order for this agreement to become null and void)”.*

On 27 April 2016, SNN communicated their remarks to CNU, stating the fact that the cancellation of the synthesizing powder agreement because of CNU fault could not be regarded as an alteration of the memorandum and, consequently, in their opinion, the Association Agreement continued to produce its effects. On the same occasion, SNN reiterated the necessity of concluding timelessly the agreement with the consultancy company Ernst & Young SRL. However, CNU maintained their previous opinion and their position was sent to CNN with a reply address on 28 April 2016. On 06 May 2016, SNN contacted CNU again and backed up their first arguments in favor of the conclusion of the Study Agreement and, at the same time, drawing the attention to CNU that they would be directly responsible for the any damages requested by the company Ernst & Young SRL for the costs related to the offer preparation and, especially, those related to the obtaining of the national security license from ORNISS. CNU did not reply to this letter.

Consequently, SNN requested the company Ernst & Young to prolong the offer with at least 120 days since the day of the prolongation. This request was made on 28 August 2016 and the consultancy company replied they could not comply with it as:

- Ernst & Young took a lot of effort to receive the license from ORNISS as a result of a long accreditation process;
- Ernst & Young maintained, during all the period dedicated to development of the acquisition process, a security structure for the SNN project at significant costs which they could not recover;
- With the view of the agreement execution, Ernst & Young made huge efforts to identify appropriate places for the storage of classified information level SSID, paying the supportive expenditure.

In the above described circumstances, and in spite of SNN efforts, the company could not objectively conclude the acquisition agreement whose purpose was the study elaboration, on one hand, because of the persistent CNU refusal to co-sign (as an associated member) the agreement under discussion, and, on the other hand, due to the Ernst & Young SRL refusal to prolong the offer.

This situation was presented to the Board of Directors of the company on 02 September 2016, along with the steps that the company had to take during the following period, namely:

- (i) To send an informative letter to the Ministry of Energy regarding the SNN intention to cancel the acquisition procedure of the Study;
- (ii) To cancel the acquisition procedure of the Study because of the impossibility to conclude the acquisition agreement with the tender declared the winner, and to notify this thing to the consultant Ernst & Young;
- (iii) To inform the SNN shareholders about the decision to cancel the acquisition procedure of the Study;
- (iv) To inform ORNISS about the cancellation of the acquisition procedure of the Study.

On 07 September 2016, the company sent to the Ministry of Energy the notification no. 10231, in which they presented in detail the acquisition development, underlying the objective motives that led to the impossibility to conclude the agreement with the company Ernst & Young SRL. In the end, they suggested organizing an mediation meeting with all the third parties involved in the procedure, namely SNN, CNU and the consultant company, as a final solution to avoid the procedure cancellation.

Shortly after that, on 12 September 2016, the National Registry Office for State Classified Information (ORNISS) communicated to SNN the fact that the national security license, released for the consultancy company Ernst & Young with the view to take part in the assignment procedure of the classified agreement, had become null and void, and consequently, the consultancy company had returned the above mentioned license.

Under such circumstances, the acquisition procedure was cancelled with the Report no. 10927 on 29 September 2016, where it was mentioned that the cancellation had been approved only by the SNN, due to the fact that on 04 October, the CNU management returned the Report to SNN unsigned and claiming that the fault for its cancellation belonged exclusively to SNN. On 19 October 2016, SNN informed the consultancy company about the cancellation of the acquisition procedure as a result of the impossibility to conclude the agreement.

General Manager- Daniela Lulache