



NUCLEARELECTRICA

**Approved by the Board of Directors Resolution no. 125/07.11.2016.**

**Managing Director of the Board of Directors,**

**Alexandru Sandulescu**

**Note on approving the renewal of mandates for the Board of Directors of Nuclearelectrica S.A., approval of the fixed indemnity of the Board of Directors and on the form of the mandate agreement to be concluded by Nuclearelectrica S.A. with the Administrators whose mandates are renewed**

*Material related to paragraphs 3 – 12 on the agenda of the Ordinary Shareholders General Assembly on the 09<sup>th</sup> of December 2016*

**I. Overview/ authority**

The General Meeting of Shareholders of the Nuclearelectrica S.A. ("SNN") is competent to make decisions regarding the renewal of the mandates for the Board of Directors, namely the election of the directors.

The authority for the renewal of mandates/ election of Board members rests with the Ordinary General Assembly of Shareholders, according to the following legal and statutory provisions:

- (i) The provisions of art. 111 par. 2 letter b) of the Law no. 31/1990 concerning the companies, republished, as further amended and supplemented ("Law no. 31/1990"), according to which the Ordinary General Meeting of Shareholders is competent to decide on the election and revocation of the Board of Directors members;
- (ii) The provisions of art. 29 par. 1 of GEO no. 109/2011 regarding the corporate governance of public enterprises, as amended and supplemented ("GEO no. 109/2011"), according to which "The Board members are appointed by the General Meeting of Shareholders, on the proposal of the Board in operation or of the shareholders";
- (iii) The provisions of art. 13 par. 2 letter c) of the Articles of Incorporation of SNN, according to which the Ordinary General Meeting of Shareholders elects and dismisses the members of the Board of Directors;
- (iv) The provisions of art. 18 par. 1 of the Articles of Incorporation of SNN, according to which the Board members are elected for four years and can be re-elected;
- (v) The provisions of art. 28 par. 1 of GEO no. 109/2011 according to which the mandate of the Directors who have fulfilled their duties properly can be renewed as a result of

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- an evaluation process;
- (vi) The provisions of art. 29 par. 14 of GEO no. 109/2011, according to which in case the candidates proposed by the Board of Directors are managers appointed, the renewal of the mandate is referred to the General Meeting of Shareholders.

## II. Description

SNN is a unitary-system administered company, the Board of Directors consisting of 7 members, of which six are non-executive members, in accordance with the provisions of GEO 109/2011. The Board members were elected by the Ordinary General Meeting of Shareholders, and they can be re-elected or, in case of failure to meet the main objectives, they can be revoked by the Ordinary General Meeting of Shareholders.

Currently, the managers of the company are as follows:

Surname and Name	Age (years)	Qualification	Professional experience (years)	Position	Date of Appointment	Date of Mandate Expiry
Alexandru Sandulescu	57	PhD Engineer	32	Manager of the Board of Directors	25.04.2013 <sup>*)</sup> by Shareholders General Assembly no. 8/25.04.2013	<b>25.04.2017</b>
Alexandru Alexe	64	Engineer	39	Non-executive Administrator	25.04.2013 <sup>*)</sup> by Shareholders General Assembly no. 8/25.04.2013	<b>25.04.2017</b>
Daniela Lulache	49	Economist	23	Executive Director	25.04.2013 <sup>*)</sup> by Shareholders General Assembly no. 8/25.04.2013	<b>25.04.2017</b>
Carmen Radu	56	PhD Economist	37	Non-executive Director	25.04.2013 <sup>*)</sup> by Shareholders General Assembly no. 8/25.04.2013	<b>25.04.2017</b>
Dan Popescu	58	Engineer	33	Non-executive Administrator	25.04.2013 <sup>*)</sup> by Shareholders General Assembly no. 8/25.04.2013	<b>25.04.2017</b>
Sebastian Tcaciuc	41	Economist	16	Non-executive Administrator	23.12.2013 <sup>**)</sup> by Shareholders General Assembly no. 28/23.12.2013	<b>23.12.2017</b>
Nicolae Bogdan Codrut Stanescu	42	Engineer	20	Non-executive Administrator	29.04.2015 by Shareholders General Assembly no. 1/29.04.2015	<b>29.04.2017</b>

*<sup>\*)</sup>selected and appointed by GEO 109/2011; <sup>\*\*)</sup>appointed by cumulative voting on the proposal of the Proprietatea Fund*

In accordance with Art. 28 par. 7 and art. 29 par. 14 of GEO no. 109/2011, the members of the Board in operation may choose to renew the mandate.

Considering that:

- The present members of the Board of Directors fulfilled their mandate successfully and met the indicators of performance, issues that were found also by decisions of the shareholders,

- The mandates of 6 members of the Board of Directors expire on 25.04.2017, according to GEO no. 109/2011, the SNN Board members may act in accordance with the legal provisions in force, meaning submission for approval by the Ordinary General Meeting of Shareholders as regards the renewal of the Directors' mandates.

To support this proposal it is necessary to remember also that, in accordance with the international standards of good practice in the nuclear industry, the stability and continuity in the management of an operator of a nuclear plants a prerequisite for a smooth running of its business. According to the evaluation report of the last international mission in 2016, this issue was highlighted as a deficiency, drawing the attention on the negative impact in the operator performance, the lack of stability and continuity of the SNN management.

Acting in a diligent and careful manner, the SNN Board of Directors shall subject to the approval of the Ordinary General Assembly of the Shareholders the issue of Directors mandates renewal which expire on 25.04.2017 with a term of 5 months before the expiration of the mandates so that, if the shareholders will not agree to renew the mandates, there should be enough time to conduct a selection procedure, according to GEO no. 109/2011 by the public guardianship supervisory agency or by the Company, as determined by the shareholders on this issue.

We emphasize that the carrying out of a selection procedure requires a minimum of 5 months considering all the deadlines to be met, provided by GEO no. 109/2011. Moreover, art. 64<sup>4</sup> par. 3 of GEO no. 109/2011 provides expressly that the selection procedure for the Board members ends no later than 150 days after its start. Thus, it is important that the current members of the Board of Directors to raise this issue to the shareholders in a timely manner and not to wait for the mandates to expire on 25.04.2017. We believe that it is not in the interest of the company the mandates expire on 25.04.2017 and there should be the appointment of provisional administrators who can avoid taking major decisions, but who can be extremely important for the company. The appointment of provisional administrators can have negative consequences on the company activity.

Art. 28 par. (7) of the GEO 109/2011 provides as follows: "*The mandate of the directors is set by the Articles of Incorporation, and it may not exceed 4 years. The mandate of the directors who have properly fulfilled their duties **may be renewed following an evaluation process, if the Articles of Incorporation does not provide otherwise.** The mandate of the directors appointed following the cessation, under any form, of the initial Directors mandate coincides with the remainder of the mandate for the Director who has been replaced.*". Also, art. 18 par. (1) of the Articles of Incorporation of SNN specifies the following: "*The company is managed in a unitary system, the Executive Body of the company is the Board of Directors, consisting of 7 members and **the Members of the Board of Directors shall be elected for a term of 4 years and they can be re-elected***".

Art. 29 par. (14) of GEO no. 109/2011 establishes the following: "*If the candidates proposed by the Board of Directors are appointed, **the application for the mandate renewal is addressed to the General Meeting of Shareholders, in compliance with art. 28 par. (7) the candidate being obliged to submit an activity report for the period of mandate carried out***".

Thus, the candidate, when his/her mandate is renewed is required to prepare an individual activity report to be presented to the shareholders. In accordance with the provisions of Art. 1 par. 22 of the Methodological Norms for establishing the criteria selection, for the preparing of the short list of up to 5 candidates for each position, of their ranking, of the procedure on the final appointments and of other measures necessary to implement the provisions of the Emergency Government Ordinance no. 109/2011 regarding the corporate governance of the public enterprises approved by

the Government Decision no. 722/2016 ( "Methodological Norms GEO no. 109/2011") the Activity Report on the mandate renewal represents a "*document drawn up by each board member seeking renewal of the mandate, which includes in summary, at least: the public company relevant achievements during the mandate, obtained as a result of decisions taken and the fulfillment of the objectives and of the performance criteria, the contribution to reaching the public company objectives by participation in commissions, committees established at the Board level*". Thus, each candidate, when renewing the mandate, has compiled such a report that was approved by the Nomination and Remuneration Committee and will be reviewed and evaluated by the shareholders. In accordance with the Norms of GEO no. 109/2011 (Art. 1 par. 6, 11, 12, 22), the activity reports compiled by the candidates for the mandate renewal will be analyzed and evaluated by a selection committee, established by the supervisory agency; the evaluation of the activity of the members seeking the mandate renewal represents the systematic, rigorous and transparent assessment and the best practices of the council members seeking mandate renewal. The selection commission will prepare an evaluation report for each candidate when renewing the mandate, a report in summary containing at least the method to carry out the objectives and the performance criteria contained in the Mandate Agreement, the candidate profile matrix.

We mention that, starting from the time of appointment, the members of the Board of Directors drew up quarterly reports based on which they were evaluated by the shareholders, taking place in fact a process of assessment on which, moreover, was also subject the payment of the variable component of the remuneration, under the mandate agreements concluded with SNN. Moreover, achieving the performance indicators was confirmed also by the financial auditor, a confirmation based on which the payments related to the variable component of remuneration were made.

Also, in accordance with Art. 29 par. 11 of GEO no. 109/2011, the form of the mandate agreement to be concluded with the administrators and the fixed indemnity of the administrators are approved by the General Meeting of Shareholders which has on the agenda also the appointment of the board members. Since the renewal of the mandate equates to a new appointment, which will take effect at the expiry of the mandate, respectively on 25.04.2016, we believe that once approved the renewal of the mandates, the shareholders can approve also the form of the mandate agreement to be concluded by SNN with the administrators, and the fixed indemnity, as well. Regarding the fixed indemnity of the non-executive directors, according to Art. 37 par. 2 of GEO no. 109/2011, it cannot exceed twice the average for the past 12 months of the average monthly gross earning for the activity carried out according to the main object of activity recorded by the company, at class level, according to the activities classification in the national economy, communicated by the National Institute of Statistics prior to the appointment. Also, according to art. 37 par. 3 of GEO no. 109/2011, the fixed compensation of the executive directors cannot exceed 6 times the average for the past 12 months of the average monthly gross earnings for the activity carried out according to the main object of activity recorded by the company, at class level, based on the grade level classification of the national economy, communicated by the National Institute of Statistics prior to the appointment.

As for the form of the mandate agreement, it should also be subject to approval by shareholders on the date of appointment, respectively on the date of mandate renewal. The draft of the mandate agreement in Appendix 4 was prepared in accordance with Law no. 31/1990, the Civil Code, GEO no. 109/2011 and GD no. 722/2016.

One of the candidates for the mandate renewal is also an executive Director, being selected and appointed as General Manager, as per GEO provisions no. 109/2011. The managers may be appointed outside the Board or from among the administrators, who thus become executive administrators. In the case of SNN, the General Manager is also an executive administrator.

Given that the General Manager's mandate expires on 30.04.2017, where the shareholders will approve the renewal of the mandate of the Executive Director, the Managing Director mandate will be renewed for a period of 4 years, given that he/she met the performance indicators, as also confirmed by the financial auditor of the company. Like in the directors' care, the Managing Director will prepare an activity report on the mandate carried out. We mention that in the case of Directors, as well, their assessment was made quarterly, based on the reports prepared and approved by the Board of Directors. Moreover, the meeting of the performance indicators was confirmed by the financial auditor, confirmation based on which the payments related to the variable component of remuneration were made.

According to GEO provisions no. 109/2011 and to the GEO methodological norms no. 109. 2011, if the shareholders approve the renewal of the directors mandates, the stages successive to the General Meeting of Shareholders are mainly the following:

- (i) Signing the mandate agreements with the administrators whose mandates were renewed;
- (ii) Developing the letter of expectations, a working document by which the public supervisory agency, in consultation with any shareholders representing, individually or together, 5% of the share capital of the public enterprise, establishes the performance expected of the bodies of administration and management of the public enterprise;
- (iii) Developing a proposal for the management component of the management plan in order to achieve the financial and non-financial performance indicators, based on the letter of expectations developed by the public supervisory agency within 30 days of the appointment - art. 30 par. 1 of GEO no. 109/2011;
- (iv) Renewal of the Managing Director's mandate, based on the activity report on the mandate carried out and the signing of the mandate agreement with him/her;
- (v) Developing the management component of the management plan by the Directors, within 60 days of the appointment - art. 36 par. 1 of GEO no. 109/2011;
- (vi) Negotiation of the financial and non-financial performance indicators grounded on the management plan and on the letter of expectations – it will be made within 45 days from the date of communication to the supervisory agency; the term may be extended once by a maximum of 30 days at the request of any party involved - art. 30 par. 4 of GEO no. 109/2011;
- (vii) Approval of the management plan by the Board of Directors - Art. 30 par. 2 of GEO no. 109/2011;
- (viii) Convening the General Meeting of Shareholders for the negotiation and approval of the financial and non-financial performance indicators resulting from the management plan, for the approval of the variable remuneration and of the addendum to the mandate agreement to be signed (the convocation will be made within 5 days after the approval of the management plan by the council) - art. 29 par. 11 and art. 30 par. 3 of GEO no. 109/2011.

When renewing the mandates of the Board members, the following must be taken into account:

- (i) The fact that the Board members must have experience in companies performance improvement - art. 28 par. 1 of GEO no. 109/2011;
- (ii) The fact that at least two members of the Board of Directors should have a degree in economics or law and experience in economic, legal, accounting, auditing or finance at least 5 years - art. 28 par. 3 of GEO no. 109/2011;
- (iii) The fact that there may not be more than two members from among the civil servants or from among other staff categories in the public supervisory agency or from other

- authorities or public institutions - art. 28 par. 5 of GEO no. 109/2011;
- (iv) The fact that most members of the Board of Directors consists of executive and independent administrators, in the meaning of art. 138<sup>2</sup> of the Law no. 31/1990 - art. 28 par. 6 of GEO no. 109/2011.

According to the art.138<sup>2</sup> of the Law no. 31/1990, when appointing an independent administrator, the General Meeting of Shareholders shall consider the following criteria:

- a) not to be an executive of the company or of a company controlled by it and not to have had such a position in the last 5 years;
- b) not to have been an employee of the company or of a company controlled by the same or to have had such an employment relationship in the last 5 years;
- c) not to receive or have received from the company or from a company controlled by the same an additional remuneration or other advantages other than those corresponding to its capacity of non-executive director;
- d) not to be a significant shareholder of the Company;
- e) not to have or have had in the last year business relationship with the company or with a company controlled by the same, either personally or as a partner, shareholder, director, officer or employee of a company that has such a relationship with the company, if by their substantial nature, they are liable to affect the objectivity thereof;
- f) not to be or have been in the past 3 years a financial auditor or associate employee of the current financial auditor of the company or of a company controlled by it;
- g) to be director in another company in which a director of the company is a non-executive director;
- h) not to have been a non-executive director of the company for more than 3 mandates;
- i) not to have family relationships with a person in one of the categories mentioned in a) and d).

### III. Proposals

As for all mentioned above, we request the General Meeting of Shareholders:

1. The **approval** for the renewal of the current mandate of Mr. Alexandru Săndulescu as administrator of S.N. Nuclearelectrica S.A., starting on 25.04.2017, for a period of 4 years.
2. The **approval** for the renewal of the current mandate of Mr. Alexandru Alexe as administrator of S.N. Nuclearelectrica S.A., starting on 25.04.2017 for a period of 4 years.
3. The **approval** for the renewal of the current mandate of Mr. Nicolae Bogdan Codrut Stanescu acting as administrator of S.N. Nuclearelectrica S.A., starting on 25.04.2017 for a period of 4 years.
4. The **approval** for the renewal of the current mandate of Mr. Dan Popescu as administrator of S.N. Nuclearelectrica S.A., starting on 25.04.2017 for a period of 4 years.
5. The **approval** for the renewal of the current mandate of Mrs. Daniela Lulache acting as administrator of S.N. Nuclearelectrica S.A., starting on 25.04.2017 for a period of 4 years.
6. The **approval** for the renewal of the current mandate of Mrs. Carmen Radu acting as administrator of S.N. Nuclearelectrica S.A., starting on 25.04.2017 for a period of 4 years.

7. The **approval** of a fixed monthly allowance of the non-executive members of the Board of Directors, in the amount representing twice the average for the past 12 months of the average monthly gross earnings for the activity carried out according to the main object of activity recorded by the company, at class level, according to the classification of the activities in the national economy, communicated by the National Institute of Statistics prior to the appointment.
8. The **approval** of the fixed monthly allowance of the executive members of the Board of Directors, in the amount representing six times the average for the past 12 months of the average monthly gross earnings for the activity carried out according to the main object of activity recorded by the company, at class level, according to the activities classification in the national economy communicated by the National Institute of Statistics prior to the appointment.
9. The **approval** of the mandate agreement form to be signed by the company with the directors whose mandate was renewed.
10. The **approval** of authorizing a representative of the Ministry of Energy within the Assembly, to sign, in the name and on behalf of the Company, the mandate agreement which will enter into force on 25.04.2017.

**Appendix no. 1 – The CVs of the candidates for the mandate renewal**

**Appendix no. 2 – Reports of the activity of candidates for the mandate renewal**

**Appendix no. 3 – Form of the Mandate Agreement**

**General Manager,  
Daniela Lulache**

**Financial Manager,  
Mihai Darie**