



Note on the approval by the Board of Directors of SNN, namely the approval by the General Meeting of Shareholders of the Report of analysis on the measure ordered by the Court of Auditors in section II.11 of Decision no. 5/June 28th, 2018

I. General aspects/competence. Context of the necessity of a decision of the Ordinary General Meeting of Shareholders on the measure ordered by the Court of Auditors in section II.11 of Decision no. 5/June 28th, 2018

Following the audit carried out by the Court of Accounts of Romania - Department IV on the theme "Control of the status, evolution and the manner of administration of the public and private patrimony of the state, as well as the legality of the income generation and expense incurring over the period 2015-2017 at Nuclearelectrica S.A. National Company", the public external auditors noted as a deviation in the Audit Report no. 5445 as of May 4th, 2018: *"The non-compliance with the legal provisions on the substantiation of the indicators of the income and expense budgets, as well as the remuneration of the members of the management of SNN SA, namely: - the level of the indicators established in correlation with the management strategy of the Board of Directors and the management plan of the managers was not taken into account upon the substantiation of the income and expense budgets; - the granting the variable component of the remuneration of the members of the board of directors and of the Chief Executive Officer was made in the conditions of non-fulfillment of the performance indicators established by the administration plan/management plan."*

This deviation was criticized by the company for reasons of groundlessness and illegality by the filed objections, however, by Decision no. 5/June 8th, 2018, the Court of Auditors established as incumbent upon the management of SNN to order measures and to follow up the legality in terms of:

1. *substantiation of the income budget according to the specific performance criteria and the quantified objectives on ... the profit increase, the turnover, as well as the increase of the labor productivity, stipulated in the contracts of mandate, established in correlation with the management strategy of the Board of Directors and of the managers' management plan"*
2. *granting the variable component of the remuneration to the members of the board of directors and the Chief Executive Officer in compliance with the applicable legal provisions.*
3. *extension of the verifications on the mandate / administration agreements run over the period 2015-2017, in order to identify other cases of granted remunerated expenses (including the variable component) in the conditions of the non-fulfillment of the performance indicators established by the Administration Plan / Management Plan, for the identified cases (including the one presented in the Audit Report) **and measures of establishment on each individual agreement shall be ordered:***
 - (i) *the quantum of the variable component depending on the level of achievement of the objectives and the degree of fulfillment of the performance indicators established by the Administration Plan/ Management Plan,*
 - (ii) *of the difference between the amount thus calculated and the quantum of the variable component actually recorded in accounting,*
 - (iii) *presentation of the differences established on each agreement in the Board of Directors and*

in the General Meeting of Shareholders, which will decide accordingly:

- a) *establishment of the extent of the damage caused following the payments made for such expenses,*
- b) *registration of the set amounts in accounting,*
- c) *the recovery thereof, including the unrealized benefits, within the terms of the law, as well as the correction of the results registered in accounting.*

SNN filed a Complaint against the aforementioned **Decision**, in virtue of art. 204 et seq. (Subsection 8) of the Regulation of the Court of Auditors.

The Challenge Settlement Board ordered by Resolution no. 29 / July 31st, 2018 - registered with SNN under no. 9825 / August 6th, 2018 - the rejection of the appeal.

Considering the illegality and groundlessness of the ordered measure, SNN filed at Bucharest Court of Appeal - the Administrative Division, an action for annulment as well as an action for suspension of the measure ordered by the Court of Auditors.

The action for suspension has the ruling date set on **November 23rd, 2018** and the action for annulment does not have yet a hearing date assigned by the law court.

Thus, SNN, in virtue of the legal provisions, has filed the following:

- (i) **annulment petition of the ordered measure** as unlawful, file no. 6481/2/2018, Bucharest Court of Appeal, in virtue of the provisions of art. 8 of Law no. 554 /December 2nd, 2004 of the administrative court in order to settle the matter on the merits;
- (ii) **the suspension petition of the enforcement of the measure until the final settlement of the petition for annulment** of the administrative deed, file no. 7061/2/2018, Bucharest Court of Appeal, in virtue of the provisions of art. 14 and 15 of Law no. 554/December 2nd, 2004 of the administrative court, with the first hearing date set by the law court on **November 16th, 2018**.

II. Proposals

The deadline set for the implementation of the measures ordered by the Court of Auditors by the aforementioned Decision is **December 31st, 2018**. Whereas the measure ordered in section II.11 of the Decision of the Court of Auditors no. 5 /June 8th, 2018 implies a decision being made within the General Meeting of Shareholders, as well as the fact that SNN considers that the measure ordered in section II.11 of the Decision of the Court of Auditors no. 5 / June 8th, 2018 is unlawful and unenforceable, requesting to the administrative court both the annulment and the suspension of the measure, *we submit to the approval of the Board of Directors and to the approval of the General Meeting of Shareholders the analysis Report on the measure ordered by the Court of Auditors in section II.11 of Decision no. 5/June 28th, 2018, enclosed to this Note.*

Chief Executive Officer

Cosmin Ghita

Deputy General Manager

Dan Laurentiu Tudor

Chief Financial Officer

Adrian Dumitriu

Manager of the Legal and Corporate Affair Division

Laura Constantin

Analysis Report on the measure ordered in section II.11 in the Decision of the Court of Auditors no. 5/June 28th, 2018

The deviation retained in the Decision refers to the following: *"The non-compliance with the legal provisions on the substantiation of the indicators of the income and expense budgets, as well as the remuneration of the members of the management of SNN SA, namely: - the level of the indicators established in correlation with the management strategy of the Board of Directors and the management plan of the managers was not taken into account upon the substantiation of the income and expense budgets; - the granting of the variable component of the remuneration of the members of the board of directors and of the Chief Executive Officer was made in the conditions of the non-fulfillment of the performance indicators established by the administrative plan/management plan."*

We consider that there is no deviation from the legality and regularity in terms of the granting the variable component of the remuneration of the members of the board of directors and the Managers with a contract of mandate, in the sense that they have been properly and legally granted, in compliance with the contractual provisions, internal corporate decisions, and the applicable legal framework, as we shall prove in the following considerations.

The Decision of the Court of Auditors indicates the following breaches:

- Breach of the performance indicators set by Table no. 27 in the Management Plan approved by the Decision of the Board of Directors no. 18 /July 3rd, 2013;
- Breach of section 5.3.2 in Table 27 in the Administration Plan approved by the Resolution of the Extraordinary General Meeting of Shareholders no. 19/July 24th, 2013;
- Breach of art. 4 and art. 18 in the Management Contract no. 1/August 1st, 2013;
- Breach of art. 4 and art. 15 in the Contract of Mandate no. 8/August 26th, 2013;
- Breach of art. 36 paragraph 4 and 5 and art. 37 paragraph 2 of 4 in the Government Emergency Ordinance no. 109/2011 on the corporate governance of public undertakings;
- Breach of art. 36 paragraph 4 and 5 and art. 37 paragraph 4 in Law no. 111/2016 for the approval of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public undertakings;
- Breach of the provisions of art. 1, art. 5 paragraph 1 and art. 7 in the Government Ordinance no. 119/1999, republished, on the internal control and the preventive financial control.

- 1. As regards the breach of section 5.3.2 in Table 27 in the Administration Plan approved by the Resolution of the Extraordinary General Meeting of Shareholders no. 19/July 24th, 2013 and the breach of art. 4 and art. 18 in the Management Contract no. 1/August 1st, 2013;**

Preliminarily, we underline the following aspects:

- From the perspective of the definition of the notation of "legality" (art. 2 letter n) of Law no. 94/1992 - *"the characteristic of an operation to comply with all the legal provisions applicable thereto, in force on the of performance date thereof"*), this so-called breach cannot be included in the category of legal provisions, it cannot be retained as a deviation from legality and, therefore, cannot give rise to a damage recovery measure in virtue of the provisions of art. 33 paragraph 3 in Law no 94/1992;
- From the perspective of the definition of the notation of "regularity" (art. 2 letter. q) of Law no. 94/1992 - *"the characteristic of an operation to comply, in all aspects, with the overall procedural and methodological principles and rules applicable to the category of operations that it belongs to"*), the management plan and the management agreement cannot, in any case, be included in the category of principles, procedural and methodological rules, and, therefore, this so-called breach

cannot be retained as a deviation from legality and, therefore, cannot give rise to a damage recovery measure in virtue of the provisions of art. 33 paragraph 3 in Law no 94/1992;

- Both the Decision and the Resolution issued by the Court of Auditors completely disregard the provisions of the administration plan, the management plan, the management agreement and the contract of mandate, the applicable legal framework and the fact that there are internal corporate decisions updating the indicators in the two plans and, consequently, to relate to the level of the indicators initially stipulated in the plan and to state that they have not been fulfilled although this level has been reviewed by resolution of the General Meeting of Shareholders/decisions of the Board of Directors, proves at least bad faith of the external public auditors, who insisted on maintaining this deviation and on ordering a measure despite all the arguments, pieces of evidence and explanations presented by SNN.

By Resolution of the Extraordinary General Meeting of Shareholders of SNN no. 19 /July 24th, 2013, the Administration Plan for the members of the Board of Directors was approved. Thus, the directors selected as a result of the application of the selection procedure stipulated by Government Emergency Ordinance no. 109/2011, were bound to draw up an administration plan and to submit it to the approval of the shareholders. Pursuant to the provisions of art. 30 in the Government Emergency Ordinance no. 109/2011, in the form on the administration plan approval date, "*Within 90 days of the appointment date thereof, the board of directors/the supervisory board prepares and submits to the approval of the general meeting of shareholders, the administration plan, comprising the administration strategy over the term of office, in order to fulfill the performance objectives and criteria set out by the contracts of mandate.*" Thus, the members of the Board submitted to the approval of the shareholders an administration plan that included a series of performance indicators, indicators that were included in the administration contracts of the members of the Board.

Section 5.3.2 in the Administration Plan stipulates the following: "*Table 27 presents the performance indicators for the members of the Board of Directors, in order to monitor the fulfillment of the objectives: (...)*". Thus, this provision refers to Table 27 of the plan, wherein the performance indicators for the members of the Board of Directors were presented for the term of the mandate, i.e. 2013-2017: annual turnover, annual operating profit, outstanding payments, accomplishment of the annual value plan for investments, installed power use rate (cumulatively since the beginning of the year), no operating event exceeding Level 1 on the International Nuclear Event Scale, on the degradation of the defense barriers in terms of depth, site impact or exterior impact.

The Decision of the Court of Auditors claims that the allocation of the variable component should have been related to the indicators initially established in the administration plan, rather than to the reviewed indicators included in the management agreement, although the same corporate body, i.e. the general meeting of shareholders, decided in this respect, based on the arguments presented in detail to the shareholders.

We consider that the interpretation of the external public auditors is deeply wrong, as:

- (i) Section 5.3 of the Administration plan expressly stipulates the amendment of the administration plan in terms of the level of the performance indicators ("*Should circumstances or events beyond the control of SNN require it, the Administration Plan shall be amended / modified /supplemented in terms of the level of the performance indicators accordingly*");
- (ii) On page 95 in the Administration Plan, it is expressly set out that the indicators presented become part of the management agreement of each member of the Board ("*The indicators presented above are also part of the structure of the management agreement of each member of the Board of Directors*");
- (iii) The shareholders approved a form of the management agreement for the directors by the Resolution of the General Meeting of Shareholders no. 19/July 24th, 2013 which included - as Annex 1 - the level of the performance indicators for each year and Annex 1.1 - the level of the performance indicators and criteria and quarterly breakdown for the current year; at the same time, the form of the management agreement (including the Management Agreement no. 1 / August 1st, 2013 indicated in the Decision as being breached) expressly stipulated the following: art. 4 "*In order to fulfill the scope of this Management Agreement, the Director shall perform all necessary actions for the management of the assets of the Company for the best interest thereof,*

for the fulfilment of the scope of business and shall exercise the attributions established therefor by the Articles of Incorporation and by this Management Agreement, in order to fulfill the performance objectives and criteria set out in Annex 1 hereto, along with the other members of the Board of Directors, and/or yearly reviewed, as applicable, within 30 days of the date of approval/rectification of the income and expense budget." Likewise, art. 9 stipulates the following: *"The director undertakes, along with the other directors, to implement the administration plan and the resolutions of the General Meeting of Shareholders, in order to accomplish the objectives and performance criteria set out in Annex 1 to this Management Agreement. The performance criteria and objectives apply throughout the director's term of office, the values performance indicators being subsequently updated on a yearly basis, in compliance with the provisions of the income and expense budget."* Art. 18 the last paragraph in the Management Agreement stipulated the following: *"On a yearly basis, the updated target values of the performance indicators, as well as the distribution thereof per quarter, are enclosed to the Administration Plan.";*

- (iv) Over the period 2015 - 2017, by Resolutions of the General Meeting of Shareholders, in compliance with the aforementioned contractual provisions, after the approval of the income and expense budgets, updates of Annexes 1 and 1.1 to the management agreements were approved; thus, the same corporate body having initially approved the plan and form of the management agreement and having set the rule according to which the indicators shall be reviewed on a yearly basis, in correlation with the budget, finally approved these updates as well;
- (v) We cannot agree with the point of view of the Court of Auditors that the administration plan should have been reviewed, since even the original plan clearly states that these indicators become part of the agreement and that they shall be reviewed on a yearly basis after the approval of the income and expense budget;
- (vi) At the same time, considering that the calculation of the variable component based on the degree of fulfillment of the indicators to be related to the level of the indicators in the management plan meant ignoring the provisions of the plan which established that these indicators become part of the agreement and that they shall be reviewed on a yearly basis after the approval of the budget, ignoring and breaching the subsequent resolutions of the general Meeting of Shareholders having amended the agreement and the level of the indicators in correlation with the budget for each year, 2015, 2016 and 2017, as well as ignoring and breaching the provisions of the management agreement.

Consequently, we consider that there is no deviation from legality and regularity, the variable component that was granted to the members of the Board of Directors being correctly calculated and paid, in compliance with the contractual obligations of SNN and in keeping with the resolutions of the general Meeting of Shareholders whereby the levels of the performance indicators were amended on a yearly basis. We consider that no calculation could be made in relation to the levels in the administration plan, since there were resolutions of the subsequent general Meeting of Shareholders, valid and binding for the company that updated and amended these levels, addenda to the management agreements being concluded. At the same time, internal Notes were drawn up, based whereon the variable components were calculated and assigned to the members of the Board of Directors over the period 2015 - 2017, along with the reports of the independent financial auditor validating the calculation method and the retained reasoning.

2. As regards the breach of the performance indicators set by Table no. 27 in the Management Plan approved by the Decision of the Board of Directors no. 18 /July 3rd, 2013 and the breach of art. 4 and art. 15 in the Contract of Mandate no. 8/August 26th, 2013;

Preliminarily, we underline the following aspects:

- From the perspective of the definition of the notation of "legality" (art. 2 letter n) of Law no. 94/1992 - *"the characteristic of an operation to comply with all the legal provisions applicable thereto, in force on the of performance date thereof"*), this so-called breach cannot be included in the category of legal provisions, it cannot be retained as a deviation from legality and, therefore, cannot give rise to a damage recovery measure in virtue of the provisions of art. 33 paragraph 3 in Law no 94/1992;

- From the perspective of the definition of the notation of “regularity” (art. 2 letter. q) of Law no. 94/1992 - *“the characteristic of an operation to comply, in all aspects, with the overall procedural and methodological principles and rules applicable to the category of operations that it belongs to”*), the management plan and the contract of mandate cannot, in any case, be included in the category of principles, procedural and methodological rules, therefore, this so-called breach cannot be retained as a deviation from legality and, therefore, cannot give rise to a damage recovery measure in virtue of the provisions of art. 33 paragraph 3 in Law no 94/1992;
- Both the Decision and the Resolution issued by the Court of Auditors completely disregard the provisions of the administration plan, the management plan, the management agreement and the contract of mandate, the applicable legal framework and the fact that there are internal corporate decisions updating the indicators in the two plans and, consequently, to relate to the level of the indicators initially stipulated in the plan and to state that they have not been fulfilled although this level has been reviewed by resolution of the General Meeting of Shareholders/decisions of the Board of Directors, proves at least bad faith of the external public auditors, who insisted on maintaining this deviation and on ordering a measure despite all the arguments, pieces of evidence and explanations presented by SNN.

By the Resolution of the Board of Directors no. 18 /July 3rd, 2013, the Management Plan for the selected Chief Executive Officer was approved, following the application of the selection procedure stipulated by the Government Emergency Ordinance no. 109/2011. Art. 36 in the Government Emergency Ordinance no. 109/2011 stipulates the following: *“(1) Within 90 days from the appointment, the managers/members of the board of directors prepare and submit to the board of directors, respectively the supervisory board, a management plan for the duration of the term of office and for the first year of mandate, including the management strategy in order to fulfill the performance objectives and criteria set out in the contracts of mandate. The management plan needs to be correlated and develop the administration plan of the board of directors. (2) The management plan is subject to the approval of the board of directors, respectively the supervisory board.”*

The management plan approved by the Resolution of the Ordinary General Meeting of Shareholders no. 19 /July 24th, 2013, as well as the management plan approved by the Decision of the Board of Directors no. 18 /July 3rd, 2013 envisaged the implementation of the strategy of the company and the fulfillment of the performance objectives and criteria for an average period of time, namely the period 2013-2017, and a series of valid estimates at such time, validated and approved by the shareholders. As indicated in the approved administration plan, the purpose thereof was to describe the management strategy of the company over the term of the mandate, in order to fulfill the performance objectives and indicators set by the contract of mandate (page 4 in the Administration Plan).

The similar provisions in the management agreements were also taken over in the managers' contracts of mandate, approved by decisions of the Board of Directors (art. 4 - *“In order to fulfill the scope of this Contract of Mandate, the Manager shall perform all the necessary actions for the management, organization and coordination of the economic activity of the company, along with the other directors, in order to fulfill the performance objectives and criteria set out in Annex 1 to this contract of mandate, and/or reviewed on a yearly basis, as applicable, within 30 days of the date of approval/rectification of the income and expense budget”*, art. 9 - *“The Manager undertakes, along with the other Managers, to whom the Board of Directors delegated the management of the company, to implement the management plan and the decisions of the Board of Directors and the General Meeting of Shareholders in order to fulfill the performance objectives and criteria, set in Annex 1 to this Contract of Mandate). **The performance criteria and objectives apply throughout the Manager's term of office, the values performance indicators being subsequently updated on a yearly basis, in compliance with the provisions of the income and expense budget.**”* art. 15 the last paragraph - *“On a yearly basis, the updated target values of the performance indicators, as well as the distribution thereof per quarter, are enclosed to the management plan.”*;

It is stated in the Decision and Resolution that the granting of the variable component should have been related to the indicators initially established in the management plan and not to the reviewed indicators included in the management agreement, although the same corporate body, respectively the board of

directors, decided in this respect.

We consider that the interpretation of the external public auditors is deeply wrong, as:

- (i) On page 80 in the management Plan, section 5.3, it is expressly stipulated that **"If circumstances or events beyond control of SNN require this, the Management Plan shall be amended / modified / supplemented in terms of the level of the performance indicators accordingly."**;
- (ii) The provisions of the administration plan/management plan related to the performance indicators and the fact that they shall be reviewed have been taken over in the management agreements approved within the company and concluded with the managers appointed in virtue of the provisions of the Government Emergency Ordinance no. 109/2011;
- (iii) The Board of Directors approved a form of the management agreement for the Managers, which included as Annex 1 - the level of the performance indicators for each year and Annex 1.1 - the level of the performance indicators and criteria and quarterly breakdown for the current year; at the same time, the form of the management agreement (including the Management Agreement/contract of mandate no. 8/ August 26th, 2013 indicated in the Decision as being breached) expressly stipulated the following: art. 4 - *"In order to fulfill the scope of this Contract of Mandate, the Manager shall perform all the necessary actions for the management, organization and coordination of the economic activity of the company, along with the other directors, in order to fulfill the performance objectives and criteria set out in Annex 1 to this contract of mandate, and/or reviewed on a yearly basis, as applicable, within 30 days of the date of approval/rectification of the income and expense budget"*, art. 9 - *"The Manager undertakes, along with the other Managers, to whom the Board of Directors delegated the management of the company, to implement the management plan and the decisions of the Board of Directors and the General Meeting of Shareholders in order to fulfill the performance objectives and criteria, set in Annex 1 to this Contract of Mandate). **The performance criteria and objectives apply throughout the Manager's term of office, the values performance indicators being subsequently updated on a yearly basis, in compliance with the provisions of the income and expense budget"***, art. 15 the last paragraph - *"On a yearly basis, the updated target values of the performance indicators, as well as the distribution thereof per quarter, are enclosed to the management plan"*.
- (vii) Over the period 2015 - 2017, by Decisions of the Board of Directors, in compliance with the aforementioned contractual provisions, after the approval of the income and expense budgets, updates of Annexes 1 and 1.1 to the contracts of mandate were approved; thus, the same corporate body having initially approved the management plan and form of the contract of mandate and having set the rule according to which the indicators shall be reviewed on a yearly basis, in correlation with the budget, finally approved these updates as well;
- (viii) We cannot agree with the point of view of the Court of Auditors that the management plan should have been reviewed, since even the plan clearly states that these indicators become part of the agreement and that they shall be reviewed on a yearly basis after the approval of the income and expense budget;
- (ix) At the same time, considering that the calculation of the variable component based on the degree of fulfillment of the indicators to be related to the level of the indicators in the administration/management plan meant ignoring the provisions of the plan which established that these indicators become part of the agreement and that they shall be reviewed on a yearly basis after the approval of the budget, as well as ignoring and breaching the subsequent decisions of the board of directors having amended the agreement and the level of the indicators in correlation with the budget for each year, 2015, 2016 and 2017.

Consequently, we consider that there is no deviation from legality and regularity, the variable component that was granted to the Chief Executive Officer and the managers with a contract of mandate being correctly calculated and paid, in compliance with the contractual obligations of SNN and in keeping with the decisions of the board of directors whereby the levels of the performance indicators were amended on a yearly basis. We consider that no calculation could be made in relation to the levels in the management plan, since there were subsequent decisions of the Board of Directors, valid and binding for the company that updated and

amended these levels, addenda to the contracts of mandate being concluded. At the same time, we mention that internal Notes were drawn up, based whereon the variable components were calculated and assigned to the Chief Executive Officer and the other Managers with contract of mandate over the period 2015 - 2017, along with the reports of the independent financial auditor validating the calculation method and the retained reasoning.

Via the report in sections 1 and 2 above, we have the following logical and legal succession of the state of facts:

- The shareholders approve a management plan for the directors, with a series of performance indicators to be reviewed and becoming part of the management agreement, according to the provisions in the plan;
- The Board of Directors approves a management plan for managers, with a series of performance indicators to be reviewed and becoming part of the contract of mandate, according to the provisions in the plan;
- The shareholders approve a management agreement comprising the performance indicators in the administration plan and the fact that they shall be updated on a yearly basis, in compliance with the provisions of the income and expense budget; thus, the management agreement represents the agreement of the parties setting the rules in terms of the legal relationship between the company (shareholders) and the directors;
- The Board of Directors approves a management agreement comprising the performance indicators in the management plan and the fact that they shall be updated on a yearly basis, in compliance with the provisions of the income and expense budget; thus, the management agreement represents the agreement of the parties setting the rules in terms of the legal relationship between the company (represented by the Board of Directors) and the managers;
- On a yearly basis, in virtue of the contractual provisions stipulating that the performance indicators are updated in compliance with the provisions of the income and expense budget, they were updated solely in virtue of the resolutions of the General Meeting of Shareholders and the decisions of the Board of Directors, the corporate bodies relevant in order to approve this update;
- Art. 18 the last paragraph in the Management Agreement stipulated the following: ***"The updated target values of performance indicators, as well as the distribution thereof per quarter, are enclosed to the Administration Plan on a yearly basis."***; therefore, along with the update of the performance indicators included in the agreement, based on approval of the General Meeting of Shareholders, they automatically became an annex to the administration plan; thus, the approvals of the General Meeting of Shareholders for the review of the performance indicators in the agreement, initially taken over from the administration plan, represent implicit approvals of the amendment in the administration plan;
- art. 15 the last paragraph in the management agreements stipulated the following: ***"The updated target values of performance indicators, as well as the distribution thereof per quarter, are enclosed to the management plan on a yearly basis"***; therefore, along with the update of the performance indicators included in the agreement, based on approval of the Board of Directors, they automatically became an annex to the management plan; thus, the approvals of the Board of Directors for the review of the performance indicators in the agreement, initially taken over from the management plan, represent implicit approvals of the amendment in the management plan.

Claiming the fact that the performance indicators in the administration plan /management plan were not fulfilled, although there are subsequent approvals of the relevant corporate bodies amending these indicators and implicitly amending the administration plan /management plan, is a situation wherein the presented documents and arguments are completely ignored. We cannot relate to a level of the performance indicators initially set in 2013, although they were legally updated, with all the necessary approvals, over the following years, the agreement of the parties being expressed in the contracts initially concluded and by the amendments brought thereto.

The opinion in the audit Report and in the Decision according to which *"... the profit indicator has not been fulfilled at the level approved by the administration/management Plan"* is not supported and is not truthful, as the following clearly result from the submitted documents and from the provisions of the aforementioned

contracts:

- On a yearly basis, in virtue of the contractual provisions, the indicators in the administration/management plan were updated based on the income and expense budgets, in virtue of the necessary corporate approvals (General Meeting of Shareholders and/or Board of Directors), the reviewed indicators becoming annexes to the administration/management plan (as clearly specified in the clauses above);
- The indicators have been achieved at the level in the administration / management plan, updated by resolution of the General Meeting of Shareholders and/or decisions of the Board of Directors, the achievement thereof being also confirmed by the financial auditor by the reports drawn up upon the payment of the variable components;
- It cannot be argued in any case that the payments were made without the fulfillment of the indicators, since these indicators were included in administration/management agreements, they had been approved by the General Meeting of Shareholders and/or the Board of Directors and the fulfillment thereof was certified by the financial auditor;
- The update of the performance indicators was expressly allowed in management agreements approved by shareholders, in the management agreements approved by the Board of Directors, in the administration plan and the management plan;
- The text of art. 30 and art. 36 in the Government Emergency Ordinance no. 109/2011 refers to the administration plan, respectively the management plan, as being the documents including the management strategy over the term of the mandate, in order to fulfill the performance objectives and criteria set in the contracts of mandate; thus, these criteria were established and updated both by the contract /addenda to the contract, based on the necessary corporate approvals and, on in virtue of the contractual provisions invoked above, became an annex to the administration/management plan;
- There is no text of law forbidding the update of the performance indicators in the administration/management plan.

Thus, in virtue of the resolution of the shareholders and the decision of the Board of Directors, the performance indicators of the directors and manager were updated on a yearly basis, in compliance with the provisions of the income and expense budget. The Government Emergency Ordinance no. 109/2011 contains no provision establishing an interdiction in this respect. In 2015, along with the approval of the income and expense budget, by the Decision of the Ordinary General Meeting of Shareholders no. 7 /September 14th, 2015, the annexes to the management agreement were updated, the directors' performance indicators being amended. Thus, by Note no. 9345 /August 7th, 2015 presented to the shareholders, it is clear that, following the approval of the Income and Expense Budget per 2015, the annexes to the management agreement shall also be updated. Similarly, the review of the performance indicators of the Managers was approved by decision of the Board of Directors, addenda to the management agreements being concluded in this respect. The procedure was the same in 2016 and in 2017, all the relevant documents in this respect being presented within the control of the Court of Auditors.

Another statement of the external public auditors is that the variable components of the indemnity were granted and paid, respectively, provided that: the profit indicator was not achieved at the level approved by the administration/management plan.

This statement **is not true** and despite the fact that the auditors have been provided with the Resolutions of the Ordinary General Meetings of the Shareholders for the approval of the income and expense Budget (for each year), as well as the Resolutions of the Ordinary General Meetings of the Shareholders of SNN no. 7 /September 14th, 2015, no. 3 /April 25th, 2016 and no. 1 /March 29th, 2017 amending annexes 1 and 1.1 to administration and management agreements on the update of the level of the performance indicators and criteria according to the provisions of BVC, these documents were not taken into account by the audit team. The variable component is based on the level of indicators in the administration/management plan, as they were updated on a yearly basis by Resolutions of the General Meeting of Shareholders and Decisions of the Board of Directors. We specify that no shareholder challenged the Resolutions of the General Meeting of Shareholders and/or the Decisions of the Board of Directors, these decisions being legal and valid, producing the related legal effects.

Thus, the General Meeting of Shareholders of SNN (where the Romanian State is a majority shareholder, with over 80% - also conferring thereto the capacity of shareholder actually controlling the company) and the Board of Directors ordered the update of the level of the performance indicators and criteria for the directors of the Company and the Managers, respectively, indicators that the public auditors consider to be unfulfilled, as the auditors relate to the initial indicators, not the reviewed ones.

Furthermore, the addenda envisaging the update of the level of the performance indicators and criteria for the years 2015, 2016 and 2017, in compliance with the income and expense budget for the years of 2015, 2016 and 2017, were signed by the representative of the Romanian state, namely the Ministry of Energy, in the capacity thereof of majority shareholder.

Thus, keeping in the Report the conclusion that the granting and payment of the variable components of the indemnity was made in the circumstances in which the profit indicator was not achieved at the level approved by the management plan denotes that the external public auditors either:

- completely ignored the existence of the Resolutions of the Ordinary General Meeting of Shareholders of SNN no. 7 /September 14th, 2015, no. 3 /April 25th, 2016 and no. 1 / March 29th, 2017, as well as the Decisions of the Board of Directors whereby the performance indicators in the administration/management plan were updated, as well as the addenda to the corresponding administration/ management agreements;
- did not consider valid the Resolutions of the aforementioned Ordinary General Meetings of the Shareholders of SNN or the decisions of the Board of Directors that updated the performance indicators in the administration/management plan, therefore the addenda to the corresponding administration/management agreements either, denoting the exceeding of the competences that they have were empowered with according to the law. From our perspective, only the law court may decide that a Resolution of the General Meeting of Shareholders and/or a decision of the Board of Directors is/are illegal/unlawful, based on applicable legal procedures.

3. As regards the breach of art. 36 paragraph 4 and 5 and art. 37 paragraph 2 of 4 in the Government Emergency Ordinance no. 109/2011 on the corporate governance of public undertakings. As regards the breach of art. 36 paragraph 4 and 5 and art. 37 paragraph 4 in Law no. 111/2016 for the approval of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public undertakings

We consider that, although the Decision and Resolution indicate that the provisions of art. 36 paragraph 4 and 5 in the Government Emergency Ordinance no. 109/2011 have been breached, the entire article should be analyzed, in order to avoid an erroneous interpretation, as it was actually made by the external public auditors in the Decision and Resolution contemplated by this analysis.

Thus, art. 36 in the Government Emergency Ordinance no. 109/2011, in the form valid on June 5th, 2016, sets out the following: *"Art. 36 (1) Within 90 days from the appointment, the managers /members of the board of directors prepare and submit to the board of directors, respectively the supervisory board, a management plan for the duration of the term of office and for the first year of mandate, including the management strategy in order to fulfill the performance objectives and criteria set out in the contracts of mandate. The management plan needs to be correlated and develop the administration plan of the board of directors. (2) The management plan is subject to the approval of the board of directors, respectively the supervisory board. 3. If applicable, the board of directors or, as applicable, the supervisory board may request the supplementing or review of the management plan, if it does not stipulate the measures for the fulfillment of the objectives comprised in the contract of mandate and does not include the forecast results providing the assessment of the performance indicators set in the agreement. (4) If the reviewed management plan is not approved by the board of directors or, as applicable, by the supervisory board, it shall immediately proceed, but not later than 60 days, to the appointment of new managers, respectively members of the board of directors. The term of office of the managers and of the members of the board of directors rightfully terminates on the date of the appointment of the new managers, respectively of the new members of the board of directors. In this case, the managers, respectively the members of the board of directors are not entitled to liquidated damages. (5) The assessment of the activity of the managers by the board of directors or, as applicable, the members of the board of directors by the members of the supervisory board shall envisage both the performance of the contract of mandate and of the management plan."*

Thus, although the external public auditors quote in a truncated manner art. 36, in order to induce the idea that the reviewed management plan had to be approved by the board of directors, we consider that art. 36 refers to the situation where the managers/members of the board of directors selected in virtue of the provisions of the Government Emergency Ordinance no. 109/2011 elaborate a management plan and the board of directors requests the supplementing and review of the plan and if this reviewed plan is not approved by the board, then the term of office of the managers terminates. Or, the factual situation analyzed by external public auditors is not circumscribed to this text of law, SNN not being in the situation where the management plan has been rejected by the board and the board has requested the supplementing and/or amendment thereof.

At the same time, art. 36 in the Government Emergency Ordinance no. 109/2011 was amended by Law no. 111/2016 on June 5th, 2016, reading as follows: "*Within 60 days of the appointment, the managers or members of the Board of Directors prepare and submit to the Board of Directors or Supervisory Board a proposal for the management component of the management plan for the term of the mandate, in order to achieve the financial and non-financial performance indicators. (2) The board of directors or the supervisory board may request the supplementing or review of the management component of the administration plan, if it does not stipulate the measures for the fulfillment of the objectives comprised in the letter of expectations and does not include the forecast results providing the assessment of the financial and non-financial performance indicators. (3) The approval of the management component and the administration plan entirely by the Board of Directors is carried out within maximum 20 days of the date of the lapse of the term set out in paragraph (1). (4) After the approval of the administration plan by the board of directors or the supervisory board, the management component or, as applicable, the approved financial and non-financial performance indicators represent an annex to the contract of mandate concluded with the managers or the members of the board of directors. (5) The assessment of the activity of the managers or the board of directors, as applicable, is made, on a yearly basis, by the board of directors or the supervisory board and envisages both the performance of the contract of mandate and the management component of the administration plan. The assessment report is published on the website of the tutelary public authority on May 31st of the year following the one for which the assessment is made. The data that, according to the law, are confidential or secret, are exempt from publishing. (6) The managers may be revoked by the board of directors, in the conditions set out in the contract of mandate, if the revocation occurs without fair cause, the manager in question is entitled to the payment of liquidated damages, according to the contract of mandate. For the designation of the new managers, the provisions of art. 35 are applied accordingly. (7) If, for imputable reasons, the managers do not fulfill the performance indicators established by the contracts of mandate, the board of directors dismisses them and decides, within the term stipulated in art. 64th paragraph (2), the initiation of the selection procedure for the designation of new managers, in compliance with the provisions of art. 35. The revoked managers can no longer stand for similar positions for 5 years after the date on which the resolution remains final.*"

Again, we are in the same situation as the aforementioned one and, for the same reasons, we consider that there is no deviation from legality as, in reference to the reality of the state of facts, it does not exist. Moreover, Law no. 111/2016 does not include the articles indicated in the Decision as being breached, but these are the articles of the Government Emergency Ordinance no. 109/2011. Furthermore, Law no. 111/2016 expressly and clearly stipulates, in art. II, the following: "*The contracts of mandate of the members of the board of directors and of the managers, respectively of the members of the supervisory board and the board of directors, remain subject to the applicable law on the conclusion date thereof, if the parties do not agree to the amendment thereof, according to this law.*" Thus, the management agreements concluded by SNN with the members of the Board of Directors and the contracts of mandate concluded by SNN with the managers, are subject to the law in force on the conclusion date thereof, the parties not agreeing on the amendment thereof in the sense of the applicability of the amendments brought by Law no. 111/2016. At the same time, these new provisions are going to be applicable to the following directors and managers who shall be selected in virtue of the Government Emergency Ordinance no. 109/2011.

In reference to the state of fact described by the audit team and taking into account the legal provisions invoked above, we consider that these provisions are not applicable to the state of fact and, moreover, the

envisaged breach does not result in any way from the audit report.

The same reasoning is also valid for art. 37 in the Government Emergency Ordinance no. 109/2011, which had the following form until June 5th, 2016: *"(1) The remuneration of the members of the board of directors or, as applicable, of the members of the supervisory board, shall be determined by the general Meeting of Shareholders in the structure and limits stipulated in paragraph (3) and (4). (2) **The remuneration of members of the board of directors or, as applicable, of the members of the supervisory board is made up of a monthly fixed indemnity and a variable component consisting of a share in the net profits of the company, a pension scheme or another form of remuneration based on the performance indicators.** (3) The monthly fixed indemnity of the non-executive members cannot exceed the average over the last 12 months of the monthly gross average earnings in the branch where the company operates, communicated by the National Institute of Statistics prior to the appointment. (4) **The monthly fixed indemnity of the executive members cannot exceed 6 times the average of the monthly gross monthly earnings in the branch where the company operates, over the last 12 months, according to the National Institute of Statistics prior to the appointment.** (5) The level of the variable component is determined according to well-grounded recommendations, formulated against a comparative study on the conditions of remuneration for similar positions in companies in the same field, with majority or full state-owned capital in Romania and other European countries, by the nomination committee or, as applicable, by the human resources recruiting experts whose services were contracted in order to make the selection procedure of the members of the board of directors/supervisory board. (6) The general Meeting of Shareholders shall ensure, when establishing the monthly fixed indemnity of each member of the board of directors or, as applicable, of each member of the supervisory board, determined according to paragraphs (3) and (4), that it is justified in relation to specific duties, attributions within the advisory committees, the number of meetings, the performance objectives and criteria set in the contract of mandate."*

The external public auditors claim that the provisions of art. 37 paragraph 2 and 4 in the Government Emergency Ordinance no. 109/2011 have been breached, but they fail to detail in the report or the decision or the resolution the manner in which SNN would have breached these legal provisions. Thus, art. 37 paragraph 2 stipulates that the remuneration of the members of the board of directors is made up of a monthly fixed indemnity and a variable component consisting of a share in the net profits of the company, a pension scheme or another form of remuneration based on the performance indicators and art. 37 paragraph 4 stipulates that the monthly fixed indemnity of the executive members cannot exceed 6 times the average of the monthly gross monthly earnings in the branch where the company operates, over the last 12 months, according to NIS prior to the appointment. As resulting from the form of the management agreement signed within SNN, enclosed hereto, art. 37 paragraph 2 in the Government Emergency Ordinance no. 109/2011, has been complied with by SNN, the remuneration of the members of the board having this structure. At the same time, in reference to the non-compliance with the provisions of art. 37 paragraph 4, no state of fact to circumscribe to this text of law is described in the report; however, we specify, however, that SNN complied with these legal provisions. Taking into account the fact that the administrative deeds do not deal with this matter in any way other than by the fact that these legal provisions have been breached, we consider that the description of the state of fact is missing and that there is no deviation from legality, the provisions of art. 2 letter n) and art. 33 paragraph 3 in Law no. 94/1992 being breached, as well as the provisions of section 181 in the Regulation.

Another breach indicated in the Decision refers to art. 37 paragraph 4 in Law no. 111/2016; again, the auditors are in a confusion, this article not existing in Law no. 111/2016. It was probably the intention of the auditors to refer to section 33 of Law no. 111/2016 amending art. 37, including paragraph 4 stipulating the following: *"(4) The variable component of the remuneration of the members of the board of directors or of the supervisory board shall be reviewed on a yearly basis, depending on the level of fulfillment of the objectives comprised in the administration plan and the degree of fulfillment of the financial and non-financial performance indicators approved by the general meeting of shareholders, enclosed to the contract of mandate"*. Although, as explained above, this provision does not apply to the management agreements concluded by SNN, as Law no. 111/2016 expressly and clearly stipulates in art. II, the following: *"The contracts of mandate of the members of the board of directors and of the managers, respectively of the members of the supervisory board and the board of directors, remain subject to the applicable law on the*

conclusion date thereof, if the parties do not agree to the amendment thereof, according to this law." Thus, the management agreements concluded by SNN with the members of the Board of Directors and the contracts of mandate concluded by SNN with the managers are subject to the applicable law on the conclusion date thereof, the parties not having the possibility to amend them in the sense of the applicability of the amendments brought by Law no. 111/2016. At the same time, these new provisions are going to be applicable to the following directors and managers who shall be selected in virtue of the Government Emergency Ordinance no. 109/2011. Nevertheless, even if we were to consider these provisions as being applicable, we do not understand how they were breached by SNN, and the manner in which this text of law was infringed not being clearly presented in the administrative deeds.

4. As regards the breach of the provisions of art. 1, art. 5 paragraph 1 and art. 7 in the Government Ordinance no. 119/1999, republished, on the internal control and the preventive financial control

Although there is no logical link between the ascertained state of fact and the legal texts invoked as not being considered in the Audit Report and in the Decision, it is argued that SNN would have breached the provisions of art. 1, art. 5 and art. 7 in the Government Ordinance no. 119/1999.

Art. 1 in the Government Ordinance no. 119/1999 stipulates the following: *"Purpose of the Ordinance - This ordinance regulates the internal / managerial control, including the preventive financial control of public entities, on the use of public funds and the management of public patrimony with efficiency, effectiveness and economy."* When the breach of a legal provision or the failure to consider a legal provision are invoked, the link between the legal text invoked and the state of fact actually described must be logically proved. Thus, naturally, a breach or omission to consider a legal provision should refer to the breach or omission to consider a particular conduct/obligation that the invoked text of law would have set for SNN. Or, as obviously resulting from the text above, SNN could not have infringed the provisions of the Government Ordinance no. 119/1999 setting the purpose of this legislative act, this norm not being one that establishes any obligation or conduct, but is a rule of law setting the purpose of the legislative act invoked above.

The auditors considered that the undersigned breached the provisions of art. 5 paragraph 1 in the Government Ordinance no.119/1999 on internal control and preventive financial control. Art. 5 in the Government Ordinance no. 119/1999 stipulates the following: *"Good financial management - the people managing public funds or public patrimony are bound to achieve good financial management by providing the legality, regularity, economy, efficiency and effectiveness in the use of public funds and in the management of public patrimony."* The audit report does not specify in what manner SNN has breached this legal provision by the described factual situation.

This provision is not applicable because:

- as aforementioned, SNN has fully complied with the contractual obligations thereof undertaken towards the directors and managers;
- SNN has fully complied with the resolutions of the general Meeting of Shareholders and the decisions of the board of directors;
- There was no deviation from legality and regularity, for the reasons indicated in this action.

From the definitions of the terms in art. 2 letters h), i) and j) in the Government Ordinance no. 119/1999, it results that the economy represents minimizing the cost of the resources allocated to achieve the expected results of an activity, while maintaining the appropriate quality of these results; effectiveness is the degree of achievement of the scheduled objectives for each activity and the relationship between the projected effect and the actual outcome of the concerned activity; and efficiency means maximizing the results of an activity in relation to the used resources.

It also considers the auditors to have breached the good financial management, which means:

- providing the **legality**, as defined in art. 2 letter o) as being *"the characteristic of an operation to comply with all the applicable legal provisions, in force on the performance date thereof"*

and

- providing the **regularity**, defined in art. 2 letter v) as being *"the characteristic of an operation to comply, in all aspects, with the procedural and methodological principles and rules applicable to the category of operations that it belongs to"*.

We consider that the legal provisions invoked as being breached have nothing to do with the so-called deviation from legality. The provision of art. 1 defines the purpose of the Government Ordinance no. 119/1999 and art. 5 regulates the obligation of performance of a good management by providing the legality, regularity...etc.

It results from the analysis of these provisions that the legality of an operation, according to the definition in the Government Ordinance no. 119/1999, means compliance with all applicable legal provisions in force on the performance date thereof. Consequently, in the absence of a legal ground prohibiting the performed operations, they are legal.

Another article invoked as being breached is art. 7 in the Government Ordinance no. 119/1999, establishing the content of the preventive financial control, respectively: *"The preventive financial control consists in the systematic verification of the projects of operations thereby contemplated, pursuant to art. 6 in terms of the: a) legality and regularity; b) compliance with the limits of the budget credits or commitment credits, as applicable, set by law"*. Again, we are in the position of invoking a breach of a text of law that does not establish a certain conduct for SNN, but sets the definition of the preventive financial control. Consequently, in the litigations with the Court of Auditors, we requested the law courts to remove this breach as well, as this is by no means a deviation from legality.

5. The administrative deeds have been issued by the breach of the provisions of section 77 paragraph 1, 85 letter l) section 1, section 87, section 88, section 181 letters a) and b), section 223 in the Regulation

The administrative deeds issued by the Court of Auditors within an audit must also comply with the rules set out by its own Regulation. Thus, we believe that the following provisions were breached by the manner in which they were substantiated, de facto and de jure:

- a) the provisions of section 77 in the Regulation, according to which the audit procedures are applied in the course of the audit, according to the professional judgment of the auditors, *"in order to obtain sufficient and proper evidence to provide a reasonable basis for expressing the conclusions of the verification action"*.
- b) The provisions of section 85 letter l) section 1 in the Regulation stipulates that, in the Audit Report, the document underlying the issue of the administrative deed - Decision, *"for each deficiency ascertained as a result of the audit, the following shall be mandatorily recorded: 1. Detailed, as complete as possible and clear description of the error/ deviation from legality and regularity (...) in virtue of data, documents and other relevant evidence, as well as the causes and circumstances that led to the occurrence of such deficiency. (...)"*.
- c) The provisions of section 87 in the Regulation specify the following: *"As part of the audit report, the general conclusion of the external public auditors consists of a clear and explicit presentation of the position of the audit team on the overall objective of the audit."*
- d) The provisions of section 88 in the Regulation specify the following: *"In case of acknowledgment of errors/deviations from the legality and regularity having determined or not having determined the occurrence of damages, of facts for which there are indications that they have been committed in violation of the criminal law or of cases of non-compliance with the principles of economy, efficiency and effectiveness, they shall be clearly and concisely exposed in the audit report and shall be supported by relevant evidence."*
- e) The provisions of section 181 letters a and b in the Regulation establish the following: *"The following are concretely entered in the decision: a) errors / deviations from legality and regularity and, as applicable, instances of non-compliance with the principles of economy, efficiency and*

*effectiveness in the use of public funds and in the management of public and private patrimony of the state/administrative-territorial units ascertained as a result of the verification actions of the Court of Auditors both at the entity subject to verification and at the entities subordinated/coordinated/under authority or other entities having received public funds by the budget of the verified entity, even though these last categories of entities were not comprised in the activity program of the Court of Auditors. For each error/deviation, the breached legislative acts shall be briefly indicated; **b) the measures adopted by the verified entity** or other involved entities (those referred to in section 177-179, as well as the entities not included in the program, but for which the public funds that they benefited from were verified and the deficiencies were recorded in the inspection report) **must implement them, in order to remove the deficiencies found by the audit team, to determine the extent of the damage and to order measures for the recovery thereof** or, applicable, to increase the economy, efficiency and effectiveness in the use of public funds or in the management of the public and private patrimony of the state and of the administrative-territorial units;*

- f) The provisions of section 223 letters a and b in the Regulation establish the following: *"The resolutions adopted by the challenge settlement boards, drafted by the secretary of the session, are compulsorily motivated and the reasoning must contain the following: a) factual reasons, namely:*
- (i) presentation of the arguments and reasoning having determined the contestation settlement board to fully or partially accept the challenge or reject it;*
 - (ii) the reproduction of each contested measure and of the evidence/documents on which such measure was based;*
 - (iii) the reasons for the challenge filed by the manager of the verified entity;*
 - (iv) the documents thereby submitted in support of the challenge;*
 - (v) the reasons why the documents submitted by the manager of the verified entity were accepted or, on the contrary, were not taken into account by the board, as they were not relevant;*
- b) de jure reasons - specification of the legal provisions that the challenge settlement board has taken into account and on which the adopted solution is substantiated, in the sense of the total or partial admission of the challenge or the rejection thereof;"*

We consider that, within the control exercised at SNN, the conclusions of the report, as well as the deviations noted in the Decision and in the Resolution, were not based on sufficient and reasonable evidence for the following reasons:

- the external public auditors wrongly considered that SNN had breached the legal provisions applicable to the elaboration and substantiation of the income and expense budgets for the years 2015, 2016 and 2017, ignoring the explanations, arguments and documents submitted by SNN within the audit (see in detail the previously detailed aspects);
- the external public auditors wrongly considered that the payment of the variable component for the directors and managers should have been made in reference to the indicators in the administration/management plan and not to the reviewed indicators validly approved by resolutions of the General Meeting of Shareholders/ decisions of the Board of Directors, although the administration / management plan, the concluded contracts and the applicable legal framework expressly allowed for this update (see in detail the previously detailed aspects);
- the external public auditors mentioned that SNN would have breached a number of legal provisions, which, however, have nothing to do with the state of fact;
- the external public auditors mistakenly included, in the notion of "regularity", the provisions of the administration plan/management plan, the provisions of the management agreements /contracts of mandate.

At the same time, the Decision, an administrative deed issued in virtue of the Audit Report, should have complies with these rigors and a detailed, full and clear description of the deviations from legality and regularity, based on clear documents and evidence. Or, in the case of SNN audit, there are a multitude of confusions, erroneous interpretations, truncated descriptions, incorrect quotations of texts of law, inconsistencies between states of fact and the invoked texts of law, etc. All these situations are described in detail throughout this Note, and therefore we shall not further detail these arguments in this section.

The erroneous or very general indication of some legal texts as a legal basis, without such legislative provisions including such an interdiction, is equivalent to the lack of indication of the legal basis, entailing the nullity of the administrative deed.

It cannot be argued that it is permissible to have no explicit and relevant legal reasoning in the administrative deeds contemplated by this petition, provided that:

- (i) The Court of Auditors performs an audit of the management of public and private patrimony;
- (ii) Upon the audit performance, the Court auditors are entitled to ascertain deviations from legality;
- (iii) The decisions of these authorities are subject to judicial control, via the administrative court.

Both within the Decision and in the Resolution, the public auditors do not provide additional details, but merely identically take over the conclusions expressed in the Audit Report. Or, from the perspective of the reasoning of the administrative deed, the Resolution, which is an act of a jurisdictional nature, issued in the solution of the first preliminary stage of challenging the administrative deed, must contain the reasoned and detailed answer to all the arguments brought by the audited entity.

6. The administrative deeds have been issued by the breach of the provisions of art. 33 paragraph 3 of the Law no. 94/1992, there being no damage - considering the fact that there is in fact no deviation from legality and regularity

The text that we consider breached, namely art. 33 paragraph 3 in Law no. 94/1992, and that the external public auditors related to, in order to justify the damage recovery measure, has the following content: *"In situations where deviations from the legality and regularity are found, **having determined the occurrence of damage**, this state of fact is communicated to this management of the audited public entity. The establishment the extent of the damage and the ordering of the measures for the recovery thereof becomes an obligation of the management of the audited entity."*

Thus, the law-maker expressly stipulated the obligation to recover the damage only if an illegal operation is ascertained.

Since, as proved above, there is no breach of the applicable legal provisions, the obligation imposed on SNN to recover the damage represents a breach of the provisions of art. 33 paragraph 3 in Law no 94/1992.

In the view of the external public auditors, the damage **is presumed and implicit**, without concrete evidence of the elements making up this damage being provided.

It is incumbent upon SNN to assess *ex post* the consequences of an operation in relation to the findings of the Court of Auditors and the recovery of the damage is an obligation pursuant to art. 33 paragraph 3 in Law 94/1992.

In this context, by accepting the conclusions of the Court of Auditors, assuming that there is a breach of any provision and it would be considered that the implicit nature of the damage exists, it would result in a limitation of the general principle of tort civil liability (*neminem laedere*), which cannot be accepted in the absence of an express legal provision in this respect.

Neither can it be proved that the alleged unlawful deed is imputable to people having been at fault when committing it, the arguments previously presented in order to support the non-existence of the illicit deed also, implicitly, proving the innocence.

In relation to the competences of the Court of Auditors, it had to verify, first of all, whether there is any prohibitive rule that the company has breached and only then establish the possible unlawfulness of the payments.

As long as there are no elements required to meet a contractual or tort civil liability that would confer to SNN the legal right to request the recovery of justified payments, it is impossible for us to understand the

real manner in which SNN could implement this measure. An unjustified payment should be based either on a non-existence of the obligation to make a payment (whereupon we do not find ourselves, since there were validly concluded contracts, valid resolution of the shareholders, valid decisions of the board), or a situation where the director/manager has not fulfilled the contractual obligations thereof (again we are not in this situation, nor does the Audit Report include this reference). Thus, as long as there are no unjustified payments, there can be no recovery action, as there is no legal mechanism to justify this intercession. In conclusion, from a legal standpoint, there are no grounds for SNN to consider that these were undue payments and should therefore be recovered.

The necessary steps on the measure ordered by the Court of Auditors in section II.11 of Decision no. 5/June 28th, 2018

The deadline set for the implementation of the measures ordered by the Court of Auditors by the aforementioned Decision is **December 31st, 2018**. The measure ordered in section II.11 in the Decision of the Court of Auditors no. 5 /June 8th, 2018 is rather clear, in the sense that it is imposed on the company to make a decision within the General Meeting of Shareholders (and the Board of Directors).

SNN has verified all the contracts of mandate/management agreements running over the period 2015 - 2017 and, based on the arguments presented in detail in section II above, found that there are no remuneration expenses granted in the absence of the performance indicators established in the contracts of mandate/management agreements concluded between the company and the directors/managers. If the calculation of the degree of accomplishment of the performance indicators would be based on the interpretation (incorrectly, according to SNN) of the Court of Auditors, according to which the calculation should be related to the indicators in the initial administration Plan/management Plan, unreviewed, the differences on each separate contract are set out in the Annex to this Note.

According to the measure of the Court of Auditors, the General Meeting of Shareholders has to decide on the existence of the damage and on the measures to be taken by the company for the recovery of this damage.

In order to manage the risk, until a final solution of the relevant law courts is obtained, SNN shall undertake a series of pre-litigious measures and, subsequently, with the preservation of the rights of the company, if applicable, litigious steps. SNN shall inform shareholders about this issue and shall request to the shareholders to decide as necessary.

The values presented in the Annex to this Note are calculated in virtue of the reasoning of the Court of Auditors. If the calculation of the achievement of the performance indicators would be based on the interpretations (incorrect, according to SNN) of the Court of Auditors, according to which the calculation should be related to the indicators in the initial administration Plan/ management Plan, unreviewed, a net difference would result, estimated for the variable component over the period 2015 - 2017, granted to the members of the Board of Directors and the managers with a contract of mandate, amounting to approximately RON 2.1 million. Additionally, following the submission of the corrective statements for this period, an estimated amount of RON 1.6 million should be recovered from the General Consolidated State Budget, representing individual social contributions, income tax and social contributions of the employer. As already indicated herein before, in order to avoid any risk for the company, pre-litigious and then litigious measures shall be initiated against *all the people in charge* (shareholders and/or, as applicable, members of the Board of Directors) having adopted the Resolutions of the General Meeting of Shareholders/the Decisions of the Board of Directors underlying the update of the performance indicators of directors/managers with contracts of mandate, as well as *against the SNN directors and managers with a contract of mandate* having collected these amounts over the period 2015 - 2017.

In conclusion, SNN considers that, in reference to the measure ordered by the Court of Auditors in section II.11 in Decision no. 5/2018, there are in fact no deviations from legality and regularity, issues ascertained in virtue of the arguments presented above and, therefore, there is no damage to the company subject to recovery but, nevertheless, in order to avoid any risk for the company, pre-litigious and subsequently

litigious measures shall be initiated against *all the people in charge* (shareholders and/or, as applicable, members of the Board of Directors) having adopted the Resolutions of the General Meeting of Shareholders/the Decisions of the Board of Directors underlying the update of the performance indicators of the directors/managers with contracts of mandate, as well as *against the SNN directors and managers with a contract of mandate* having collected these amounts over the period 2015 - 2017. In the event of such disputes, given the position of SNN, it shall also be attempted to obtain from those relevant law courts a suspension of the settlement of such claims in damages, until the administrative courts vested with the settlement of the petitions for annulment of SNN and the suspension of the decision, respectively the resolution of the Court of Auditors, are finally settled.

Chief Executive Officer

Cosmin Ghita

Deputy General Manager

Dan Laurentiu Tudor

Chief Financial Officer

Adrian Dumitriu

Manager of the Legal and Corporate Affair Division

Laura Constantin

Head of the Administrative Department

Codrut Tudor

Situation

on the differences between the amount of the variable component granted under the administration / mandate contracts in the form approved by the General Assembly of Shareholders / Board of Directors and the amount of the variable component calculated according to the degree of fulfillment of the indicators established in the Administration / Management Plan for the period 2015-2017

- RON -

Company's management		Total period 2015 - 2017			
		Differences * (gross amounts)	Individual contributions + Income tax	Differences (net amounts)	Company contributions (employer)
0		1	2	3=1-2	4
Members of the Board of Directors	Administration agreement no. 1/01.08.2013	143,835	42,344	101,491	31,428
	Administration agreement no. 3/01.08.2013	143,835	42,344	101,491	31,428
	Administration agreement no. 6/01.08.2013	143,835	42,344	101,491	31,428
	Administration agreement no. 7/01.08.2013	143,835	42,344	101,491	31,428
	Administration agreement no. 10/23.12.2013	143,835	42,344	101,491	31,428
	Administration agreement no. 12/10.11.2014	17,907	5,272	12,635	3,913
	Administration agreement no. 13/29.04.2015	123,512	36,362	87,150	26,987
	Total BoD members	860,594	253,354	607,240	188,040
Managers with mandate contract	Mandate contract no. 8/26.08.2013	840,759	251,051	589,708	191,028
	Mandate contract no. 9/26.08.2013	312,557	93,329	219,228	71,016
	Mandate contract no. 11/04.02.2014	996,966	319,315	677,651	230,700

	Total managers with mandate contract	2,150,282	663,695	1,486,587	492,744
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*Differences (gross amounts) - represent the gross differences between the amount of the variable component granted on the basis of the administration / mandate contracts in the form approved by the General Assembly of Shareholders / Board of Directors and the amount of the variable component calculated according to the degree of fulfillment of the indicators established in the Administration / Management Plan.