



SOCIETATEA NAȚIONALĂ DE TRANSPORT GAZE NATURALE "TRANSGAZ" SA



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Submitted for approval in the OGMS of 15/16 May 2019

REPORT

on the approval of the addendum to the contract of mandate signed with the non-executive members of the Transgaz Board of Administration including the revised indicators and the empowering of the representative of the Ministry of Economy in the GMS to sign the addenda to the contracts of mandate of the non-executive members of the Board of Administration of Transgaz on behalf of the Company.

SUMMARY

By Resolution 1/27.04.2017 of the Ordinary General Meeting of the Shareholders of TRANSGAZ the mandate of the administrators Mr Ion Sterian, Mr Petru Ion Văduva and Mr Bogdan George Iliescu was renewed, and by Resolution 13/28.12.2017 of the Ordinary General Meeting of the Shareholders of TRANSGAZ Mr Nicolae Minea and Mr Remus Gabriel Lăpușan were appointed administrators.

According to GEO 109/2011, as further amended, the mandatory receives a remuneration consisting of a fixed monthly allowance and a variable component.

The fixed monthly gross allowance due to the non-executive members of the Board of Administration cannot exceed twice the average value over the last 12 month of the monthly gross salary in the domain of the Mandator's activity, communicated by the National Institute of Statistics prior to the appointment of the Mandatory, and for the member of the Board of Administration also in the position of Director - General, executive administrator, the fixed monthly gross allowance cannot exceed 6 (six) times the average value over the last 12 month of the monthly gross salary in the domain of the company, communicated by the National Institute of Statistics prior to the appointment of the Mandatory.

In addition to the fixed monthly gross allowance the Mandatory is entitled to receive a variable annual component of the remuneration set based on the financial and non-financial performance indicators approved by Resolution 12/19.12.2017 of the Ordinary General Meeting of the Shareholders of TRANSGAZ, and revised according to Transgaz OGMS Resolution 2/06.03.2018.

PROPOSAL

In accordance with the provisions of Chapter IV, Article 15 (3) (d) of the updated Articles of Incorporation, we submit for approval to the General Meeting of Shareholders the following:

- the form of addendum to the contract of mandate concluded with the administrators (non-executive members), the annex of which includes the revised financial performance indicators;**
- the empowerment of a shareholder's representative to sign the Addendum to the Contract of Mandate of the administrators (non-executive members) on behalf of the Company.**

DETAILED CONTENT

According to the Contract of Mandate, the Mandatory receives a remuneration consisting of a fixed monthly remuneration and a variable component.

Over the duration of application of GEO 109/2011, as further amended, in the form in force at the date of approval of the contract of mandate, the fixed monthly gross allowance due to all non-executive members of the Board of Administration cannot exceed twice the average value over the last 12 month of the monthly gross salary in the domain of the Mandator's activity, communicated by the National Institute of Statistics prior to the appointment of the Mandatory, and for the member of the Board of Administration also in the position of Director - General, executive administrator, the fixed monthly gross allowance cannot exceed 6 (six) times the average value over the last 12 month of the monthly gross salary in the domain of the company, communicated by the National Institute of Statistics prior to the appointment of the Mandatory.

If the legal framework setting a certain maximum amount of fixed monthly allowance is amended and/or abrogated, the parties shall negotiate a new amount applicable to the fixed monthly gross allowance in accordance with the level of remuneration applicable for similar positions in companies in Romania and other European countries in the same field of activity, and shall conclude an addendum to the contract of mandate within 30 days.

The fixed remuneration will be paid to the Mandatory on the last working day of the month for which it is due.

In addition to the fixed monthly gross allowance the Mandatory is entitled to receive a variable annual component of the remuneration set based on the financial and non-financial performance indicators approved by Resolution 12/19.12.2017 of the Ordinary General Meeting of the Shareholders of TRANSGAZ.

In 2018 the revision of the financial performance indicators was proposed and approved by TRANSGAZ OGMS Resolution 2/06.03.2018.

In 2019, following legislative changes and modifications in the Company's new strategic lines of action, the values of some performance financial indicators, valid for the calculation of the variable component of the remuneration of the members of the Board of Administration underwent changes. The Nomination and Remuneration Committee proposes a new revision of some key financial performance indicators as follows:

Indicator		2019	2020	2021
EBITDA	Draft REB 2019	329 594	468 933	850 773
	Updated Administration Plan 2018	503 477	666 322	1 015 013
	Differences	- 173 883	- 197 389	- 164 240
Operating expenses except for the depreciation, balancing, construction and provision for the impairment of assets and for the risks and expenses	Draft REB 2019	1 070 891	1 095 239	1 136 843
	Updated Administration Plan 2018	933 300	948 385	968 346
	Differences	- 137 591	- 146 854	- 168 497

The rationale for the amendment of the value of some financial performance indicators:

In accordance with the provisions of Article 9 (1) (c) of GO 26/2013, as further amended and supplemented:

‘Upon the substantiation of the revenue and expense budgets, economic operators consider without limitation the following: ...

- c) the specific performance criteria and the quantified targets for reducing outstanding payments and claims, for reducing loss, for profit, turnover and labour productivity growth, provided for in the contracts of mandate, correlated with the management strategy of the Board of Administration/ Supervisory Committee and of the management plan of the directors/members of the management of the economic operators’;*

According to art. 62 (6) of Law 50/2019 on the State Budget for 2019, it is required that *‘upon the determination of the salary expenses, the necessity to comply with the level of the performance indicators resulted from the administration plans prepared pursuant to the applicable laws shall be considered.’*

The level of the indicators ‘Operating expenses (except for depreciation, balancing, construction and provisions for asset depreciation and for risks and expenses) and EBITDA under the 2019 Management Plan approved by OGMS Resolution 12/2017 and approved by OGMS Resolution 2/2018 was exceeded due to the following factors:

- Decrease of gas transmission revenue by Lei 38.034 thousand. The gas transmission activity is regulated by the National Energy Regulatory Activity (ANRE). According to the methodology for setting the regulated revenue, the TSO’s cost savings in a gas year and the additional revenue obtained in a gas year decrease the regulated revenue approved in the following gas years. In other words, the more efficient is the company in reducing costs, the lower will be the gas transmission revenue in the following gas years. For gas year 2018-2019 a total regulated revenue of Lei 882.982,99 thousand was approved by ANRE Order no. 98/2018, with a decrease of 7.48% (Lei 71.339,4 thousand) as compared to the revenue approved for 1 October 2017 – 30 September 2018. The regulated revenue approved for 1 October 2018 – 30 September 2019 contains negative adjustments amounting to Lei – 383.516,82 thousand, diminishing the gas transmission revenue– adjustments mainly determined due to the economic efficiency increase redistribution component in July 2011 – June 2012, amounting to Lei - 127.087,45 thousand and of the total revenue correction component amounting to Lei – 215.777 thousand.
- The increase in the tax expenses by **Lei 111.160** - upon the preparation of the Management Plan, and the calculation of the revised financial indicators was not substantiated for 2019-

2021:

- the monopoly tax (**Lei 67.001 thousand**) – according to Art. 51 of GEO 114/2018 on public investment measures, fiscal-budgetary actions, amendment and supplementation of normative acts and extension of deadlines, which establishes that *‘The deadline under Art. 6 of GO 5/2013 on the establishment of special measures for the taxation of natural monopoly activities in the electricity and gas sector, approved as amended and supplemented, is extended by 31 December 2021 included’.*
- the expense with the 2% monetary contribution applied to the turnover from the activities subject to the licence granted by ANRE (44,159 thousand lei): Order 18 / 25.02.2019 of the ANRE President on the approval of the Methodology for the calculation and establishment of the annual money contribution under Art. 2 (3¹) of GEO 33/2007 on the organization and functioning of ANRE, approved with amendments and supplementations by Law 160/2012, as introduced by GEO

114/2018, and amending Order 224/2018 of the ANRE President on the approval of the tariffs and monetary contributions levied by ANRE in 2019, stipulates the following:

- Art. 5 (1): 'The holders of the licences granted by ANRE in the electricity and / or natural gas domain shall pay annually to ANRE a monetary contribution equal to 2% of the turnover achieved in year n of the activities subject to the granted licence.'

- The expenses with the salaries of the personnel employed based on an individual labour contract are recording an increase by **Lei 11.093 thousand** in the REB 2019 proposal as compared to the amounts considered at the calculation of the revised financial indicators for 2019. This increase is determined by the provision of the amounts necessary for the granting of compensation under the Collective Labour Contract for voluntary redundancy, calculated for an additional number of 200 employees, including the contributions payable to the Health Insurance Fund, Social Health Insurance Fund;
- Increase of costs with taxes and fees by 9,845 thousand lei: for the calculation of the revised financial indicators, costs regarding taxes and fees were not substantiated for year 2019. These are mainly legal advisory costs for the investigations launched against Transgaz by the European Commission and for the disputes which may arise from the investigations in which Transgaz and the European Commission are parties.
- Increase in insurance premium expenses by Lei 3,526 thousand. Insurance policies, estimated additionally from 2019, are mainly needed to cover the damage caused to third parties by events occurring within the National Gas Transmission System, such as defects in pipelines on the route and in risk areas, lack of transmission service continuity, inappropriate quality of delivered gas (odorization, liquids), delays in completion of system access works, accidental pollution (mercaptan, pipeline fluids), coverage of possible sanctions set by the authorities, penalties resulting from non-fulfilment of the contractual clauses, court decisions unfavourable to our company and by which we are obliged to pay damages, etc.

According to Chapter IV, Art. 15 (3) (d) of the updated Articles of Incorporation, The Nomination and remuneration Advisory Committee submits for approval to the Ordinary General Meeting of the Shareholders the following:

- **the form of addendum to the contract of mandate concluded with the administrators (non-executive members), the annex of which includes the revised financial performance indicators, the consolidated version of the key performance indicators targets;**

- **the empowerment of a shareholder's representative to sign the Addendum to the Contract of Mandate of the administrators (non-executive members) on behalf of the Company.**

Enclosure: Template of Addendum to the Contract of Mandate including the key performance indicators revised and approved by BoA Resolution 16/09.04.2019.

CHAIRMAN OF THE BOARD OF ADMINISTRATION

REMUS GABRIEL LĂPUȘAN

Annex no.1

The new values of the amended performance financial indicators are illustrated in the table below:

Indicator		2019	2020	2021
EBITDA	Draft REB 2019	329 594	468 933	850 773
	Updated Administration Plan 2018	503 477	666 322	1 015 013
	Differences	- 173 883	- 197 389	- 164 240
Operating expenses except for the depreciation, balancing, construction and provision for the impairment of assets and for the risks and expenses	Draft REB 2019	1 070 891	1 095 239	1 136 843
	Updated Administration Plan 2018	933 300	948 385	968 346
	Differences	- 137 591	- 146 854	- 168 497

**Addendum no. ___ to
Contract of Mandate no. ___ dated ___**

Considering:

- **Company Law 31/1990** republished, as further amended and supplemented, hereinafter referred to as Law 31/1990;
- **Government Emergency Ordinance 109/2011** on the corporate governance of the public enterprises, as further amended and supplemented, hereinafter referred to as GEO 109/2011;
- Government Resolution 722/2016 on the approval of the methodological rules for the application of some provisions of GEO 109/2011, hereinafter referred to as GR 722/2016;
- Government Ordinance 26/2013 on strengthening financial discipline at the level of some economic operators where the state or administrative-territorial units are unique or majority shareholders or hold directly or indirectly a majority share, as further amended and supplemented;
- Art. 1913 and the subsequent articles, and Art. 2009 and the subsequent articles of Law 287/2009 on the Civil Code, as further amended and supplemented,

and:

By Resolution 12/19.12.2017 of the Ordinary General Meeting of the Shareholders of Transgaz S.A., according to GEO 109/2011 on the corporate governance of the public enterprises, as further amended and supplemented, the **key financial and non-financial performance indicators** were approved;

By Resolution no. _ /___ of the Ordinary General Meeting of the Shareholders of Transgaz S.A., according to GEO 109/2011 on the corporate governance of the public enterprises, as further amended and supplemented, the changing of the fixed remuneration and the setting of the variable component were approved.

General Meeting of the Shareholders of Transgaz S.A no. ___ dated___ decided that the Addendum to **Contract of Mandate** no. _ / ___, hereinafter referred to as the Contract of Mandate shall be signed by the representative of the shareholders _ _;

The National Gas Transmission Company Transgaz S.A., headquartered in Mediaș, 1 C. I. Motaș Square, Sibiu County, tel./fax. 0269 803333 / 0269 803334, e-mail:

cabinet@transgaz.ro, registered with the Trade Registry Office attached to Sibiu Court under number J32/301/2000, tax number RO/13068733, duly represented by __ identified with __, hereinafter referred to as the **Company** or the **Mandator**, as applicable,

and

Mr __, Romanian citizen, date of birth __, place of residence __, identity card __, issued by __ on __, PIN __, tel./fax. __, e-mail: __, as __, hereinafter referred to as **Mandatory**,

Individually referred to as the Party and collectively the Parties,

according to Art. 2 (11) of GEO 109/2011 and to Art. 12.1 of Contract of Mandate no. __ / __, hereinafter referred to as the contract of Mandate, have agreed to conclude the Addendum, hereinafter referred to the Addendum,

Art. 1. Scope of Addendum

1.1. The key performance indicators established in Annex 1 to Addendum__ to the Contract of Mandate shall be amended according to Annex 1 to this Addendum.

Art. 2. Final provisions

2.1. The Addendum shall enter into force at the date of its execution by the Parties.

2.2. The other provisions of the Contract shall remain unchanged.

The Addendum was concluded today, __, in 3 (three) counterparts, 2 (two) for the Mandator and 1 (one) for the Mandatory.

Mandator
S.N.T.G.N. TRANSGAZ S.A.

Mandatory

by __
empowered by Ordinary General Meeting
of the Shareholders Resolution no. _ of _

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