

DIRECTORATE

No. _____ / ____ .11.2020

NOTE

Regarding the amendment of certain provisions from the Articles of association

I. Generalities

In terms of attributions of the Supervisory Board the common law, namely article 153⁶ and following of the Company Law 31/1990, republished, with later amendments and additions, establishes the main attributions of such administration body are the appointment and recalling of directorate members, control on the management, checking-up the compliance of managerial operations as well as reporting activities to the shareholders' general assembly¹. It is also provided the supervisory board cannot be transferred company governance attributions but, to the extent in which the Articles of association has got express provisions in this respect², the possibility is included to establish on the board's behalf the attribution to agree with certain kinds of operations. The provisions of article 21 of the Articles of association currently mirror the structure of attributions intended by the company law.

On the other hand the Supervisory Board's attribution to exercise control over the manner in which the Directorate manages the Company means continuous supervision of Company activities and correlative responsibility for it. It is obvious that without proper managerial instruments this essential mission of the Board could not be performed. One of these managerial instruments is constituted by the committees the Supervisory Board is entitled to establish within the governing body in order to deal with determining topics resulting from legal obligations (such as the audit of financial statements, the issuer capacity on the capital market, etc.) and the specific Company activities. In this respect article 153¹⁰ of the Company Law 31/1990, republished, with later amendments and additions expressly provides the Board's right to constitute consultative committees. At the same time the articles of association provide in article 22 para (3) as follows: "The Supervisory Board in exercising its essential control attributions on the manner in which the Directorate leads the Company, and verification of activities performed in the name and on behalf of the Company is entitled and has the duty to establish in its relations with the Directorate and the Company the control, verification and reporting modes which it considers necessary to carry out such attributions". Thus the board's constituting of committees which it deems necessary to perform its obligations is only but part of the required means this body can use in view of achieving its legal and statutory attributions.

Taking into consideration the Company's capacity of transmission and system operator defined according to Law 123/2012 and the Company liability with respect to the safety of the National

¹Article 153⁹ paragraph (1) of Company Law 31/1990, republished, with later amendments & additions

²Article 21 para (3) of the Company's Articles of association provides the kinds of operations which cannot be carried out unless the Supervisory's board agreement has been given.

Power System, a Supervisory Board committee constituted to deal with energy security is doubtless justified and necessary. The Energy Security Committee (of the Supervisory board) was established within the Supervisory Board as far back as 2013 (when the two-tiered administration system was implemented in the Company).

II. Justification

In terms of the specific capital market legislation, when applying certain community law regulations Law 24/2017 *on the issuers of financial instruments and market operations* has undergone amendments and additions by the enforcement of Law 158/2020³. Thus among other amendments new rules are established to report and approve significant issuer transactions with affiliated parties. As far as the Supervisory Board's attributions are concerned, paragraph (8) of article 92⁴ from Law 24/2017 provides as follows: **"Significant transactions with affiliated parties are approved by the issuer's board of administration or of supervision** in accordance with procedures that prevents an affiliated party to take advantage of its position and provide adequate protection to the issuer's and shareholders' interests that are not affiliated parties, including the minority shareholders. The affiliated party cannot participate to the approval, namely to the vote on the significant transaction involving such affiliated party, pending nullity, by court ruling, of the decision taken by trespassing this interdiction". The regulation provides that *significant transactions* mean any transfer of resources, services or obligations regardless whether this means paying a price or not, with individual or cumulated value representing more than 5% of the issuer's net assets, according to the latest individual financial reports published⁴, *affiliated parties* being those defined as such in the international accounting standards adopted in accordance with Regulation (EC) 1.606/2002⁵. Taking into account the above, it is necessary to **add the provisions of article 21 from the Company's Articles of association when applying the new regulation specific for the capital market.**

As against the Company capacity of public enterprise, to remove any doubt about the right of the Supervisory board to constitute consultative committees entrusted with investigations and with elaborating recommendations to the board⁶ in domains relevant for Company activities and necessary for the Board to perform its legal and statutory attributions, we propose to **expressly take over in the Articles of association the common law provisions applicable to the two-tier administration system.**

III. Proposals

Compared to the above, pursuant to art. 113 letter m) of the Company Law and art. 14 para. (2) letter n) of the Company's Articles of Association, we propose to the Shareholders' Extraordinary General Assembly:

³ Law 158/2020 to amend, add and cancel certain norms, as well as to establish measures for the application of Regulation (EU) 2017/2402 of 12 December 2017 of the European Parliament and Council establishing a general framework to provide security and constitute a specific framework for simple, transparent and standardised security and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU, as well as Regulations (EC) 1.060/2009 and (EU) 648/2012

⁴ Article 91² let. g) of Law 24/2017 on the issuers of financial instruments and market operations

⁵ IAS 24 from Regulation (EC) 1126/2008 of the Commission of 3 November 2008 on adopting certain international accounting standards in accordance with Regulation (EC) 1606/2002 of the European Parliament and Council.

⁶ Article 153¹⁰ paragraph (1) of the Company Law 31/1990, republished, with later amendments & additions

1. to approve the following amendments to the Articles of Association:

1.1 Art. 20 is amended by supplementing with a new paragraph, paragraph 16, with the following wording: “**(16)** The Supervisory Board may set up advisory committees, consisting of at least 2 board members, charged with conducting investigations and elaborating recommendations for the board. The establishment of the Audit Committee and the Nomination and Remuneration Committee is mandatory.”

1.2 The title of Art. 21 is amended by supplementing with a new paragraph, paragraph 5, with the following wording: “**(5)** The Supervisory Board approves the transactions of the Company with the affiliated parties in the cases and conditions provided by law.”

2. to empower the Chairman of the Company’s Directorate to sign in the form provided by law the updated Articles of Association, corresponding to the amendments approved by the Shareholders’ Extraordinary General Assembly.

DIRECTORATE

Cătălin NIȚU

**Executive Director General
Directorate Chairman**

Ovidiu ANGHEL

Andreea Mihaela MIU

Marius Viorel STANCIU

Corneliu Bogdan MARCU

Directorate Member

Directorate Member

Directorate Member

Directorate Member