

# ENERGY AND WATER REGULATORY COMMISSION

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## DECISION

No. C - 4

Dated 22 June 2015

### THE ENERGY AND WATER REGULATORY COMMISSION

**at a closed session held on 22 June 2015, having examined an application, incoming reg. E-15-45-13/18.04.2013, submitted by Bulgartransgaz EAD for certification of an independent transmission operator, and a report, incoming reg. E-Дк-201/18.06.2015, established the following:**

An application, incoming reg. E-15-45-13/18.04.2013 had been registered in the State Energy and Water Regulatory Commission, currently named Energy and Water Regulatory Commission (EWRC, the Commission) submitted by Bulgartransgaz EAD (the Company), with UIC 175203478, for certifying the company as independent transmission operator, in order to comply with the independence requirements under article 81e and the following, in connection with §192 of Transitional and Final Provisions of the Energy Act, article 98 and the following, of Ordinance 3 dated 21 March 2013 on Licensing the Activities in Energy Sector (published SG, issue 33, dated 05 April 2013) and in compliance with paragraphs 4, 5 and 6 of article 10 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and article 3 of Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) 1775/2005 – Appendix 1.

Directive 2009/73/EC and Regulation (EC) 715/2009 contain provisions concerning the requirements and procedures for certification of gas transmission systems operators. These requirements have been transposed in the Bulgarian legislation through the Energy Act: article 21, paragraph 1, item 27, article 21, paragraph 3 and others, Chapter eight “a” (new - SG, issue 54/2012, in force as of 17 July 2012) “Transmission Networks Operators’ certification. Rules for investment. Independence of transmission system operators”. The procedure involving operators’ certification is also set out in Ordinance 3 of 21 March 2013 on licensing the activities in energy sector (published, SG, issue 33 dated 5.04.2013, OLAE).

Based on the certification application, by virtue of article 81a, paragraph 2 of Energy Act (EA) and article 94, paragraph 2, item 1 OLAE, a procedure had been opened for Bulgartransgaz EAD certification as an independent transmission operator.

By Order 3-E-134/28.05.2013 issued by the EWRC Chairperson, amended by Order 3-E-107/03.04.2014, working groups have been set to examine the file on the opened procedure involving Bulgartransgaz EAD application and to review from a formal standpoint the application and its appendices regarding the requirements compliance with EA and OLAE and assess accordingly its legal grounds, by consolidating the whole new and updated information in one

document with the required appendixes thereto – a Draft Decision and send the draft ITO Form and the Draft Decision to the European Commission.

With letters outgoing ref. E-15-45-13 of 20 Nov 2013, ref. E-15-45-13 of 9 April 2014, ref. E-15-45-13 of 26 June 2014 and ref. E-15-45-13 of 3 Feb 2015, EWRC had requested from Bulgartransgaz EAD to submit additional information, documents and reports that were received at the regulator with letters incoming ref. E-15-45-13 of 06 Dec 2013, ref. E-15-45-13 of 17 April 2014 and ref. E-15-45-13 of 1 July 2014, ref. E-15-45-13 of 6 Feb 2015 and ref. E-15-45-13 of 12 Feb 2015.

With Order 3-E-316/28.11.2013 a working group has been set with the task of studying the circumstances and analyse the performance on behalf of Bulgartransgaz EAD of the requirements of Section II „Independent Transmission Operator”, Chapter eight “a” of the Energy Act, including analysis of the new circumstances and written evidence of material significance for the certification procedure and, where needed, carry out an investigation on site as well.

In the course of the investigation the working group members requested Bulgartransgaz EAD to submit evidence on the requirements compliance set out in art. 81g, paragraph 4 and paragraph 10 in connection with paragraph 1 and paragraph 2 of the EA:

- report on Bulgartransgaz EAD employees, report on employees hired by the persons representing the company, including civil law contracts and other documents as may be considered relevant;
- information regarding the information technologies systems and equipment, as well as security systems concerning access thereto;
- information regarding contracts concluded between Bulgartransgaz EAD and external contractors or consultants related to IT systems or equipment and security access systems, consisting of indication of the persons with whom the contracts have been concluded, contract subject-matter and respective system or equipment;
- information regarding the legal, accountancy and IT services provided to Bulgartransgaz EAD – report on concluded contracts, specifying the counterparties thereto, contract subject-matter and the respective system or services.

The following has been verified in line with the order: Bulgartransgaz EAD’s activities concerning the fulfilment of the requirements set out in Section II „Independent gas transmission operator“, Chapter eight „a“ of the Energy Act, and namely article 81g, paragraph 4 in connection with paragraph 1 and paragraph 2 of the EA and article 81g, paragraph 10 in connection with paragraph 1 and paragraph 2 of the EA.

During the verification procedure EWRC working group was provided by Bulgartransgaz EAD with the related information and documents (these are enclosed to this Draft Decision).

The officials prepared a Protocol of Findings Г-3/16.12.2013 (Appendix 2 of the Draft Decision), delivered to the entity subject to verification with incoming ref. BTG 24-00-5677/17.12.2013.

Pursuant to article 81a, paragraph 5 in connection with article 78, paragraph 2, item 3 of EA, Bulgarian Energy Holding EAD (BEH EAD) and Bulgargaz EAD in their capacity as legal entities in the meaning of article § 1, item 3a, letter “b” of the Additional Provisions of EA, were asked to supply information and written evidence (reports, extracts from contracts and others) with EWRC letter outgoing ref. E-04-01-18/11.12.2013.

In reply to EWRC's letter outgoing ref. E-04-01-18/11.12.2013, with a letter incoming ref. E-04-01-18/13.12.2013 Bulgargaz EAD had supplied the relevant information (Appendix 3 to this Draft Decision).

In reply to EWRC's letter outgoing ref. E-04-01-18/11.12.2013, with a letter incoming ref. E-04-01-18/20.12.2013, BEH EAD had supplied the relevant information (Appendix 4 to this Draft Decision).

Resulting of the performed documents and on site investigation of Bulgartransgaz EAD activity, EWRC had notified the European Commission by a letter outgoing ref. E-15-45-13 of 14 Jan 2014, supplying additional information on the questions raised by the EC and the way the Draft Decision was expected to change.

In connection with the questions raised by the European Commission in letter incoming ref. E-15-45-13 of 28 March 2014 (Ref. Ares (2014)887990 - 24/03/2014), EWRC had requested information from Bulgartransgaz EAD with letter outgoing ref. E-15-45-13 of 09 April 2014 that was submitted by the gas transmission network operator with incoming ref. E-15-45-13 of 17 April 2014.

After the submitted by the company documents were examined and in connection with the drafting of Energy and Water Regulatory Commission's Draft Decision on Bulgartransgaz EAD certification as independent transmission operator (ITO) and by virtue of article 81a, paragraph 5 of EA, with a letter incoming ref. E-15-45-13 of 26 June 2014, EWRC had requested from the company to supply information and copies of all relevant updated documents that were to be submitted as appendixes to the Draft Decision and related to the certification process and prove the independence requirements compliance in line with EA, Directive 2009/73/EC and Regulation (EC)715/2009. The documents have reached EWRC with letter incoming ref. E-15-45-13 of 01 July 2014.

**Based on the study of all documents related to the case and following an analysis made, the Energy and Water Regulatory Commission has approved Draft Decision dated 20 Feb 2015 on Bulgartransgaz EAD certification as independent transmission operator (ITO) with a Decision under Protocol 28/20.02.2015, issue 7. The Draft Decision has been notified to the European Commission, together with all relevant information pursuant to Art.81a, para 4 of EA and Art.95, para 2 of OLAE.**

An opinion incoming ref. E-04-11-2 of 24 April 2015 of the European Commission (C(2015) 2754 final of 22.04.2015) has been filed at EWRC in line with the provisions of Article 3, paragraph 1 of Regulation (EC) 715/2009 and Article 10, paragraph 6 of Directive 2009/73/EO regarding the notified Draft Decision, where EC had made some remarks on the Draft Decision as follows:

1. Concerning the lendings Bulgartransgaz EAD granted to BEH EAD, EC noted its consent with the procedural approach adopted by EWRC and had no grounds to doubt about the conclusions of EWRC assessment of the conditions according to which Bulgartransgaz EAD had intended to credit BEH EAD prior to loans conclusion and that it had subsequently approved their conclusion based on the assessment that the loans were in line with market conditions and there was no risk for Bulgartransgaz EAD to fail to comply with its investment obligations as a result of lack of funding. Nevertheless, EC believed that the amount lent by Bulgartransgaz EAD to BEH EAD should have not been further increased, even if Directive 2009/73/EC does not prohibit lending by the independent transmission operator (ITO) to the vertically integrated undertaking (VIU), these loans could create a financial incentive for the ITO to prefer the VIU to other network users, as it is interested in receiving back the lent money plus an interest. In that context, EC noted that if the conditions were market-based, it was preferable VIU to raise its capital on the market.

2. In respect to the Bulgartransgaz EAD management stability in connection with the early dismissal of Management and Supervisory Boards members, EC underlined the significance of the stability in ITO management in the period when a material infrastructure development is to be carried out. In that context, EC commented that in order to allow the ITO model to be fully efficient in ensuring the independent network operation, particularly the Management Board members, should enjoy absolute discretion regarding network operation, taking utmost care of the transmission system operator's interests and not those of the vertically integrated undertaking. EC thus encourages EWRC to take into account these considerations when assessing any possible future early dismissal of members of the boards.

3. In respect to third party access, EC noted that the Draft Certification Decision showed that there were ongoing amendments of the rules granting third party access to the gas transmission network and urged EWRC to guarantee that the final rules would not include a requirement for the potential natural gas traders to proof the existence of valid supply and/or capacity agreement in the networks of neighbouring transmission system operators. This is required to ensure that VIU would not exercise any influence on the access of potential traders to ITO's transmission system through its own control over the transmission capacity along the neighbouring network.

In line with article 3, paragraph 2 of Regulation (EC) 715/2009, EWRC within two months as of the receipt of such an opinion is to approve the final Decision on the transmission operator's certification, taking the utmost account of that opinion. The regulatory authority Decision and the EC opinion shall be jointly published in the EU OJ.

**Based on the study of all documents collected under the file and following their analysis, having regard to the independent transmission operator certification criteria and the comments and remarks made by the European Commission on the notified Draft Certification Decision of 20.02.2015 in Opinion C(2015) 2754 final of 22.04.2015, the following facts and resulting conclusions were found and reflected herein, presented according to the relevant independence requirements as laid down in Directive 2009/73/EC, Regulation (EC) 715/2009 and the national legislation (EA and OLAE), as follows:**

The certification application for an independent transmission operator contains the documents required under article 98 and the following articles of OLAE.

By means of the submitted Certificate outgoing ref. 20150109145405 of 9 Jan 2015, issued by the Registry Agency, city of Sofia (Appendix 5), the Registry Agency certifies that circumstances and announced acts have been registered in the Trade Register under Bulgartransgaz EAD batch with UID 175203478 as of 10 May 2014 and according thereto Bulgartransgaz EAD is registered as single-member joint stock company having its seat and registered address in the Republic of Bulgaria, city of Sofia 1336, Sofia Region (the capital); Sofia Municipality, Lyulin district, residential area Lyulin – 2, 66 Pancho Vladigerov Blvd. The company has a two-tier management system: Management Board consisting of three persons and Supervisory Board consisting of three persons. Bulgartransgaz EAD is represented by the Management Board member and Executive Director Georgi Kirilov Gegov. The corporate subject matter of activity is: natural gas storage and transmission; maintenance, operation, management and development of gas transmission networks; maintenance, operation, management and development of underground gas storages; development of programmes and activities for compliance of the activities of natural gas transmission and storage with the requirements of the European energy law; development of a price policy for access to and transmission through the gas transmission networks, natural gas storage and connection to gas transmission networks; natural gas transactions administration and organisation of natural gas market balancing in compliance with the requirements of existing legislation; engineering, investment, production and service activity; imports of goods, machinery and equipment related to

corporate activities; centralised operating management, coordination and control on gas transmission networks operational regime.

In the submitted application Bulgartransgaz EAD had indicated the relevant registration numbers of licences issued in its name by EWRC: for natural gas transmission JI-214-06/29.11.2006, natural gas transit transmission JI-214-09/29.11.2006 and natural gas storage JI-214-10/29.11.2006. By virtue of EWRC Decision И1-JI-214/03.06.2013 the natural gas transit transmission licence issued to Bulgartransgaz EAD JI-214-09/29.11.2006 had been amended into a licence for the activity “natural gas transmission” based on § 193, paragraph 2 of the Transitional and Final Provisions of EA.

Bulgartransgaz EAD have submitted justified request for certification as an independent transmission operator of the gas transmission network in line with the independence requirements under EA, OLAE and Directive 2009/73/EC.

Bulgartransgaz EAD have supplied a description of the gas transmission system that includes high pressure gas pipelines, compressor stations, AGRS, GRS, GMS and other related technological equipment and consists of two separated gas transmission networks differentiated by the principle of their main purpose.

Bulgartransgaz EAD has enclosed to the certification application for an independent transmission operator evidence certifying applicant’s compliance with the certification criteria under EA and OLAE.

The law amending and supplementing the Energy Act (published SG, issue 54, 2012, in force as of 17 July 2012) introduces the requirements of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning the common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC of 13 July 2009 of the European Parliament and of the Council concerning the common rules for the internal market in natural gas and repealing Directive 2003/55/EC. Based on § 192 of the Transitional and Final Provisions of the Energy Act (TFP of EA) the owners of transmission networks shall within 6-month term as of the EA entry into force file an application for certification of gas transmission networks operators in line with the requirements of EA and OLAE.

Pursuant to article 81a of EA EWRC shall certify every transmission network operator by monitoring whether the obligatory operator’s independence requirements have been met.

**Pursuant to and executing its powers under article 21, paragraph 1, item 27 of EA on independence requirements compliance of gas transmission operators, EWRC carried out an investigation on the independence requirements compliance and has accepted the following:**

Out of the three regulated operators’ models the EU Member States can choose from, the Republic of Bulgaria has currently chosen the Independent Transmission Operator – ITO model under EA and the Motives accompanying the Law amending and supplementing the Energy Act (LASEA), where the transmission operator and the network assets are incorporated in an independent legal entity within the vertically integrated undertaking. The selection of this model was laid down in § 201 of the Transitional and Final Provisions (TFP) of EA.

**1. The requirement of article 81e, paragraph 1 of EA for the independent natural gas transmission network operator - part of a vertically integrated undertaking, to be a joint stock company with a two-tier management system, has been met.**

Evidence thereto is the submitted Certificate outgoing ref. 20150109145405 of 9 Jan 2015 of the Trade Register to the Registry Agency of the Republic of Bulgaria and it made clear that

Bulgartransgaz EAD has a two-tier management system – Management and Supervisory Boards. In line with the requirements of article 98, para 2, item 2 of OLAE, by a letter incoming ref. E-15-45-13/08.08.2013 the company has also submitted a certified copy of the Company's shareholders' register (Appendix 6), and by a letter incoming reg. E-15-45-13 of 13.08.2013 a copy of Bulgartransgaz EAD Statutes announced in the Trade Register on 15 Aug 2013 (Appendix 7).

As a holder of licences and carrying out activities related to transmission and storage of natural gas and with capital 100% owned by Bulgarian Energy Holding EAD, Bulgartransgaz EAD is part of a vertically integrated undertaking (VIU) that also includes:

- Bulgarian Energy Holding EAD in its capacity of a 100% owner of the capital of a natural gas energy undertakings group, which undertakings constitute its parts, including Bulgartransgaz EAD;

- Bulgargaz EAD, a holder of a licence and carrying out the activity of natural gas public provision whose capital is 100 % owned by Bulgarian Energy Holding EAD;

Bulgartransgaz EAD has no shareholding in companies of the VIU that carry out activities of natural gas supply or production.

**2. The requirement under article 81e, paragraph 2 of the EA (transposed from article 20, §1, sentence second of Directive 2009/73/EC) has been met and under it the Management Board of the independent transmission operator should be the competent authority that is the decision-making body for operator's day-to-day activities, network management and activities required for the development of the 10-year network development plan.**

In pursuance of the provisions of article 81d of EA and article 22 of Directive 2009/73/EC the transmission network operator has drafted a 2013-2022 10-Year Network Development Plan (Appendix 8 – 2013-2022 10-Year Network Development Plan together with all documents linked thereto concerning its approval by the Management Board and the consultations carried out by the company and EWRC). The plan has been developed in line with the legal requirement and it has been consulted with all stakeholders and complies with the forthcoming amendments in production, supplies, consumption and exchange with other countries. Investment plans for regional networks and networks in the territory of the European Union have been taken into consideration. Bulgartransgaz EAD 10-year network development plan provides for investments as well for natural gas storage facilities. The submission for approval of the Ten-Year Network Development Plan fulfils the requirement of article 81d of EA and article 22 of Directive 2009/73/EC presenting to stakeholders the main infrastructure for transmission which is planned for construction, expansion, reconstruction and modernisation over the next 10 years. The Programme contains all investments for which a decision has already been made and new investments that must be made in the next three years, as well as an implementation timeline of the investment projects.

EWRC found out that the decisions relating to network management and the activities required for the preparation of the Ten-Year Network Development Plan (TYNDP) have been made independently by the operator's Management Board without asking the permission of the vertically integrated undertaking or providing no possibility for it to influence the Management Board decision pursuant to article 81d, paragraph 2 of EA and article 20, § 1, sentence second of Directive 2009/73/EC.

The later is apparent from article 27, item 1 of the current Bulgartransgaz EAD Statutes as announced in the Trade Register on 15 Aug 2013 under which the Management Board is the decision-making body for the day-to-day activities of the gas transmission network operator,

network management and the activities required for the development of the TYNDP. Hypotheses concerning cases of Supervisory Board resolutions that should not be affected are presented separately, namely in art. 27, item. 2, 3 and the following of the Statutes, i.e. the Management Board power on the activities regarding the preparation of the TYNDP is exclusively their and is not related to the rights of the Supervisory Board.

As a confirmation of the above, the first TYNDP has been filed for approval in EWRC together with an excerpt of a copied Decision, item 1.1 under Protocol no. 144/15.12.2012 from Bulgartransgaz EAD Board of Directors meeting to approve the 2013-2022 Ten-Year Network Development Plan draft whereas the Supervisory Board has made no draft TYNDP related decision.

The same applies to the 2014-2023 Ten-Year Network Development Plan, approved with Decision under Protocol no.37/27.03.2014 from Bulgartransgaz EAD Management Board meeting (Appendix 9 - 2014-2023 Ten-Year Network Development Plan together with all documents linked thereto and its approval by the corporate Management Board and the consultations held).

The Energy Act and Bulgartransgaz EAD Statutes include provisions that ensure the independence of the transmission operator with regard to the vertically integrated undertaking with respect to the gas transmission network development, investment plans and scheduled repair activities approval.

The vertically integrated undertaking does not determine directly or indirectly operator's competitive behaviour with regard to its ongoing operations and the network management or with regard to the activities required for the preparation of the 10-Year Network Development Plan in line with article. 81i, para 2 of EA.

Pursuant to article 27, item 2 of Bulgartransgaz EAD Statutes, decisions with regard to assets, necessary for the operation, maintenance and development of the transmission network are made solely by the Management Board itself and independently from the vertically integrated undertaking. Decisions relating to network management and preparation of the corporate business plan fall also within the Management Board competence.

Scheduled investments, including network development plans are set out in the corporate Business Plan, developed for a period of five years. The Business Plan develops in detail the investment and the repair programme of the company accompanied by the respective forecast structure and volume of costs broken in years and a detailed explanation of the amount, the method of financing and the deadlines for all planned investments. The Business Plan includes also a rationale for the necessity of implementing every investment provided therein.

The Supervisory Board decides on issues relating to the Business Plan approval at the proposal of the Management Board (article 27 item 4 of Statute), only within their competence according to article 81f, paragraph 1 of EA and has no power to decide on issues involving assets, required for transmission network operation, maintenance or development.

The developed Business Plans for each licensed activity are subject to mandatory approval by the national regulatory authority. Business Plan updates for each licensed activity within their validity terms are carried out after a Decision adopted by the national regulatory authority at the proposal of the transmission operator.

**3. The independence requirement under article 81e, paragraph 3, paragraph 4, paragraph 5, paragraph 6 and paragraph 7 of EA (article 19 of Directive 2009/73/EC) has been met, namely independent transmission operator's Management Board members are nominated and dismissed by the Supervisory Board; the Supervisory Board immediately sends**

**to EWRC the decisions on appointment as well as information on conditions that deal with the term, its duration and termination, work conditions, including remunerations, respectively the decisions for premature termination of the term of office together with the motives thereto; decisions shall take effect if within three weeks as of the notice, but not shorter than the appeal deadline under paragraph 7, EWRC has raised no objections.**

These obligations are incorporated in the provision of article 25, paragraph 2 of the submitted company's Statute: Bulgartransgaz EAD Management Board members are designated and dismissed by the Supervisory Board and the Supervisory Board advises thereof EWRC by sending the decisions on the appointments and information on the terms and conditions regulating the term, its duration and termination, the work conditions, including remunerations, respectively decisions on premature termination together with the motives thereto. An obligation of notifying EWRC of decisions related to the appointment of independent operator's Management Board member is envisaged, as well as decisions on the premature dismissal of the independent operator's Management Board member following a receipt by the person subject to dismissal.

Regarding Management Board members with a letter incoming ref. E-15-45-3/ 28.02.2013 the company has notified EWRC of the appointed members of the Management Board. The Supervisory Board Chairman has notified SERWC of a change that took place concerning a member of the Management Board by a letter, incoming ref. E-15-45-28 of 25 Oct 2013.

With a letter incoming ref. E-15-45-26 of 16 Dec 2014 Bulgartransgaz EAD Supervisory Board Chairman has notified EWRC of the selection, respectively early dismissal of the company's Management Board members on the grounds of article 81e, paragraph 3 of EA. As it is clear from the decisions in re protocol NS 2 of 16.12.2014, item 1.1, item 1.2 and item 1.3 of Bulgartransgaz EAD Supervisory Board meeting, Evgeni Zhechev Popov, Antonia Georgieva Uzunova and Kiril Rumenov Temelkov have been dismissed as corporate Management Board members, and Tanya Trendafilova Zaharieva, Delyan Valentinov Dimitrov and Georgi Kirilov Gegov have been appointed accordingly. The term of office of the new Management Board members is till 28 March 2016 in line with a decision in re Protocol NS no.2 of 16.12.2014, item 1.5. As seen by the submitted letters on management and control contracts termination, relationships with the dismissed corporate management board members have been terminated on the grounds of a decision in re item 1.1 and item 1.2 of protocol NS no.2 of 16.12.2014 and article 8.1.3, sentence 2 of the management and control contracts. The argument for the management board members dismissal is the need of stepping up the realization of the interconnection projects of the Bulgarian gas transmission system with the gas transmission network of neighbouring countries and the modernization of the gas storage facility in Chiren. As it is clear from the data and evidence submitted in re article 98, paragraph 2 of OLAE on the appointed persons, the latter meet the requirements of the EA, hence with a decision in re protocol no.176 of 29.12.2014, item 1, EWRC had raised no objections to decisions in re Protocol NS no.2 of 16.12.2014, item 1.1, item 1.2 and item 1.3 of Bulgartransgaz EAD Supervisory Board meeting by virtue of which Evgeni Zhechev Popov, Antonia Georgieva Uzunova and Kiril Rumenov Temelkov have been prematurely dismissed as corporate Management Board members, and Tanya Trendafilova Zaharieva, Delyan Valentinov Dimitrov and Georgi Kirilov Gegov have been appointed accordingly.

The above is supported by the following documents submitted by the company:

Appendix 10: - A copy of Decision in re item 3 of Protocol no. 1/27.02.2012 of Bulgartransgaz EAD Supervisory Board meeting on the appointment of Bulgartransgaz EAD Management Board members;



Appendix 11 - Copy of Decision in re item 1 of Protocol no. 16/29.10.2013 of the company's Supervisory Board based on article 241, paragraph 2 of the Commercial Act, article 81e, paragraph 3 of the EA amends decision in re item 2.1 and item 2.2 of Protocol no.15/23.10.2013 of the Supervisory Board meeting of the company where item 2.1 Bulgartransgaz EAD Supervisory Board following receipt of the notices under article 237, paragraph 3 of the Commercial Act appoints Antonia Georgieva Uzunova as member of the company's Management Board;

Annex 12 - a copy of Decisions in re Protocol NS no.2 of 16.12.2014 Bulgartransgaz EAD Supervisory Board meeting on the selection of Bulgartransgaz EAD Management Board members;

Annex 13 - a copy of the Contract with Mrs. Tanya Trendafilova Zaharieva - Bulgartransgaz EAD Management Board member, governing the terms and conditions of the term of office, the duration and termination thereof, work conditions, including remunerations;

Annex 14 - a copy of the Contract with Mr. Delyan Valentinov Dimitrov - Bulgartransgaz EAD Management Board member, governing the terms and conditions of the term of office, the duration and termination thereof, work conditions, including remunerations;

Annex 15 - a copy of the Contract with Mr. Georgi Kirilov Gegov - Bulgartransgaz EAD Management Board member, governing the terms and conditions of the term of office, the duration and termination thereof, work conditions, including e remunerations;

Annex 16 – A decision in re Protocol no.176 of 29.12.2014, item 1 of EWRC.

**The requirement of article 81e, paragraph 5 of the EA has been met, namely: the members of the independent transmission operator's Management Board must have no professional position or responsibility, no economic interest or business relationship directly or indirectly with any part of the vertically integrated undertaking or its shareholders, holding a controlling shareholding; no interests or financial advantages directly or indirectly from any part of the vertically integrated undertaking; receive remuneration independent from the activities or results of the vertically integrated undertaking other than these of the transmission network operator.**

In support of the above declarations required by the national legislation have been submitted by the persons appointed in the company's Management Board, and namely declarations under article 98, paragraph 2 of OLAE:

Appendix 17 – Copy of declarations of Mrs Tanya Trendafilova Zahatieva – meeting the majority requirements of Bulgartransgaz EAD Management Board members;

Appendix 18 - Copy of declarations of Mr Delyan Valentinov Dimitrov - meeting the majority requirements of Bulgartransgaz EAD Management Board members;

Appendix 19 - Copy of declarations of Mr Georgi Kirilov Gegov - meeting the minority requirements of Bulgartransgaz EAD Management Board members.

EWRC confirmed that the requirement of the majority of Bulgartransgaz EAD Management Board members to be persons who within three years prior to their appointment have not had professional position or responsibility, no interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part thereof, other than the transmission network operator or its shareholders with controlling shareholding. The other members of the Management Board are persons, who for a period of at least 6 months prior to their appointment have not exercised any management or other similar activity in the vertically integrated undertaking in line with the provision of article 81e, paragraph 6 of EA.

Such requirements for the MB members are introduced in article 25, paragraph 4 of the corporate Statute.

In support of the above, declarations required by article 98, para 2, item 4 of OLAE have been submitted by the persons appointed for the company's Management Board, declarations under article 98, para 2, item 4 of OLAE, declarations under art. 234 of the Commercial Act and the corporate Statute:

Appendix 20 – Copy of Declarations of Mrs Tanya Trendafilova Zaharieva - meeting the majority requirements of Bulgartransgaz EAD Management Board members;

Appendix 21 - Copy of declarations of Mr Delyan Valentinov Dimitrov - meeting the majority requirements of Bulgartransgaz EAD Management Board members;

Appendix 22 - Copy of declarations of Mr Georgi Gegov - Bulgartransgaz EAD Management Board members' minority;

Bulgartransgaz EAD has submitted CVs of the Management Board members of the independent transmission network operator under article 98, para 2, item 3 of OLAE. In addition, with letter № E-15-45-13 of 12 Feb 2015 a declaration was submitted by the company's Executive Director to acknowledge that there were no persons who reported directly to the independent transmission network Management Board members on issues related to network operation, maintenance and development except the Executive Member of the Management Board.

Appendix 23 - CV of Mr. Georgi Kirilov Gegov - Management Board executive member;

Appendix 24 - CV of Mrs. Tanya Trendafilova Zaharieva - Management Board member;

Appendix 25 - CV of Mr. Delyan Valentinov Dimitrov - Management Board member;

Appendix 26 - A declaration of the company's Executive Director in support of the fact that there are no persons who report directly to the independent transmission network Management Board members on issues related to network operation, maintenance and development.

In light of the requirement in re article 81e, paragraph 6, EWRC has carried out an additional study to verify some declared circumstances and the following has been established thereupon:

Concerning Tanya Trendafilova Zaharieva it was established that over the last three years she held the position of a lawyer. As seen from the inquiry in the Trade Register at the Registry Agency she is currently not involved in the management and is not a capital shareholder of trade companies. There is no information indicating that Mrs. Zaharieva has taken any professional position or responsibility or was a shareholder, has had any interests or business relations with the vertically integrated undertaking or any other part thereof, three years prior to her appointment in the MB. Having regard to the above-mentioned, EWRC accepts that compliance with the requirements of article 81e, paragraph 5 and paragraph 6 of the EA has been confirmed.

As seen from a verification in the Trade Register to the Registry Agency, Delyan Valentinov Dimitrov was involved in the management of National company Industrial Zones EAD that do not carry out any activity competitive to the main activity of Bulgartransgaz EAD. There are no data about the person that prior to his appointment as member of the Management Board to have participated through shareholding or holding a professional position or responsibility with the vertically integrated undertaking or any part thereof. Therefore, ERWC accepts that compliance with the requirements of article 81e, paragraph 5 and 6 of EA has been attested.

Regarding Mr. Georgi Kirilov Gegov – Bulgartransgaz EAD Executive Director and a minority member of the company's Management Board, it should be noted that the same has been a sole capital owner of Euro Constructions EOOD which main business activity is not competitive to Bulgartransgaz EAD activity. Therefore, ERWC accepts that compliance with the requirements of article 81e, paragraph 5 and 6 of EA has been attested.

**4. The independence requirement in re article 81f, paragraph 2 and paragraph 3, in connection with article 81e, paragraph 3, paragraph 4, paragraph 5, paragraph 6, first sentence of EA (article 19 of Directive 2009/73/EC) has been met, namely the independent transmission operator Supervisory Board members have been appointed by the shareholders' general assembly meeting; the shareholders' general meeting decision takes effect in case within a term of up to three weeks as of the notification, EWRC raises no objections against the appointment of half minus one of the Supervisory Board members, based on the fact that the decisions take effect in case within three weeks as of the notification, but no less than the appeal term in re paragraph 7, EWRC has raised no objections; the Supervisory Board members hold no professional position or responsibility, interest or business relationship, directly or indirectly, with any part of the vertically integrated undertaking or its controlling shareholders; to hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking; to receive remuneration not depending on activities or results of the vertically integrated undertaking, other than those of the transmission system operator; the majority of the Supervisory Board members are persons who had had no professional position or responsibility, interest or business relationship with the vertically integrated undertaking or any part thereof other than those of the transmission system operator or with its controlling shareholders for a period of three years prior to their appointment.**

Bulgartransgaz EAD Supervisory Board members are appointed by shareholders' general assembly meeting in line with the requirements of the Bulgarian legislation. The appointment of the Supervisory Board members is in compliance with the selected by Bulgaria model of independent transmission operator as a part of a vertically integrated undertaking and the applicable Bulgarian legislation with regard to the formation and operation of the bodies of such an undertaking (as provided in the Commercial Act). Under article 221, item 4 of the Commercial Act, the General assembly meeting appoints and dismisses Supervisory Board members. Under article 81e, para.2 of the Energy Act the Supervisory Board members of the independent transmission operator are subject to appointment by the shareholders' general meeting, in this particular case by BEH EAD.

In line with article 242 of the Commercial Act the Supervisory Board cannot be involved in the company's management, but only represents it in the relationship with the Management Board. Article 236 of the Commercial Act regulates the possibility the corporate Statute to provide for the conclusion of certain transactions following the prior permission of the Supervisory Board. Such restrictions can be also determined by the Supervisory Board.

The Supervisory Board consists of 3 persons and EWRC had been notified of the appointment. The first appointment of the half minus one of the Supervisory Board members has been approved with EWRC Decision no. Cr-1 of 26.02.2013 (Appendix 27), together with documents thereto submitted by Bulgartransgaz EAD, including a copy of Decision in re item II.22.5 of Protocol no. 3-2013/25.01.2013 of Bulgarian Energy Holding EAD Board of Directors meeting on the appointment of Bulgartransgaz EAD Supervisory Board.

As to the next appointment and dismissal of company's Supervisory Board members, in line with decision under item II.8 of Protocol 47-2013/27.08.2013 of the Bulgarian Energy Holding Board of Directors in its capacity of a sole capital owner, exercising the general meeting rights, EWRC had raised no objections to the appointment of those persons and it was considered to be approved by the regulatory authority and the changes in Bulgartransgaz EAD Supervisory Board have been entered into the company's lot on 8 Oct 2013.

By a letter incoming ref. E-04-01-13 of 2.12.2014, the Executive director of Bulgarian Energy Holding EAD had notified EWRC of the appointment respectively the early dismissal of the corporate Supervisory Board members. As it is clear from decisions under protocol № 56-2014 of 28.11.2014, item I.1.1 and item I.1.2 of Bulgarian Energy Holding EAD Board of Directors' meeting, Yovka Vasileva Doychevska, Krasimir Georgiev Vitanov and Denitsa Yordanova Beyazova had been dismissed and Ilia Petrov Ivanov, Kiril Georgiev Georgiev and Vladimir Valchev Mitrushev have been appointed accordingly. The term of office of the new Supervisory Board members is by 28 March 2016, in line with decision under Protocol № 56-2014 of 28.11.2014, item I 1.3. Under the enclosed hereto draft control contracts, the term of office shall be terminated with the expiry of the contract or prematurely, if the laid down in the contract prerequisites exist. The respective letters about the management and control contracts termination have been submitted with prior notice.

Having regard to the provisions of article 81f, paragraph 2 and paragraph 3 of EA, EWRC has carried out an investigation of the independence requirements compliance of the Supervisory Board member Mr. Georgi Kirilov Gegov, for which investigation the latter had signed declarations enclosed hereto stating that he satisfied the requirements of article 81e, paragraphs 5 and 6 of EA. As it becomes clear from the submitted declarations and the curriculum vitae of the same person, he had hold a position as a Manager of Art Travel Group EOOD, a company which has not carried out activity, competitive to Bulgartransgaz EAD main activity. He had also been the Executive director of Sustainable Energy Development Agency and member of Sofia Municipal Council.

Considering the submitted data and evidence, with decision in re protocol 168 of 9 Dec 2014, item 1, ERWC had raised no objections to decision in re Protocol 56-2014 of 28 Nov 2014, item I.1.1 of Bulgarian Energy Holding EAD Board of Directors' meeting on the dismissal of the corporate SB members and decision in re item I.1.2 of Bulgarian Energy Holding EAD Board of Directors' meeting on the appointment of SB members, whereas the independence requirements apply to Kiril Georgiev Georgiev, representing the half minus one of the Supervisory Board members.

To evidence the above the following have been enclosed:

Appendix 28 - Copy of the Contract of Mr. Ilia Petrov Ivanov - member of Bulgartransgaz EAD Supervisory Board, regulating the terms and conditions for the term, its duration and termination, working conditions, including remuneration;

Appendix 29 - Copy of the Contract of Mr. Kiril Georgiev Georgiev - member of Bulgartransgaz EAD Supervisory Board, regulating the terms and conditions for the term, its duration and termination, working conditions, including remuneration;

Appendix 30 - Copy of the Contract of Mr. Vladimir Valchev Mitrushev - member of Bulgartransgaz EAD Supervisory Board, regulating the terms and conditions for the term, its duration and termination, working conditions, including remuneration;

Appendix 31 – copy of declarations of Mr Kiril Georgiev Georgiev – representing the half minus one of Bulgartransgaz EAD Supervisory Board members to acknowledge that he meets the requirements of article 81e, paragraph 5 and 6, sentence first of the EA;

Appendix 32 – A copy of Protocol 56-2014 of 28 Nov 2014, item I.1.1 and item I.1.2 of Bulgarian Energy Holding EAD Board of Directors' meeting;

Appendix 33 – A decision in re Protocol 168 of 29 Dec 2014, item 1 of EWRC.

Pursuant to Art.81a, paragraph 7 of EA, the transmission network operators' certification procedure and conditions are laid down in the ordinance under article 60 of EA – OLAE. The presentation of curriculum vitae and declarations by the persons appointed, inasmuch the Energy and Water Regulatory Commission has no power under the applicable Bulgarian legislation to investigate the

information included in the above mentioned documents, is provided for by OLAE as sufficient proof of the independence requirements compliance of the Supervisory and Management Board members. An inquiry into the Trade Register to the Registry Agency has been carried out (such data being public) of the circumstances declared in the declarations and data indicated in the CVs of the members of Bulgartransgaz EAD Management and Supervisory Boards. Concerning the circumstances declared by Bulgartransgaz EAD Management Board members in the declarations submitted thereby, it can be said the data as declared by these persons were confirmed by the check at the Trade Register. Regarding the circumstances declared by Bulgartransgaz EAD Supervisory Board member, representing the half minus one of the Supervisory Board members, in the declarations submitted thereby, it can be noted that data declared by him were confirmed by the check at the Trade Register.

The respective company's managing bodies members, subject to the independence requirements, had not performed professional functions nor held responsible position in any part of the vertically integrated undertaking, in charge of activities involving natural gas production and supply in the legally set term prior to their appointment, neither data showing their interest or business relationship with the vertically integrated undertaking or any part thereof could be found. Thus these persons are professionally independent according to the provisions of article 81e, para.5 and 6 of EA.

**Regarding the above, EWRC confirms that the requirements, set out in the Energy Act related to the professional independence of the Supervisory Board members and the Management Board members of Bulgartransgaz EAD, have been met.**

5. The powers of the general assembly meeting, of the Management Board and of the Supervisory Board of Bulgartransgaz EAD are allocated in line with the Commercial Act and are comprehensively set out in the company's Statute, the Rules regarding the work of the Supervisory Board (Appendix 34) and the Rules of procedure of Bulgartransgaz EAD Management Board, enclosed to a letter incoming ref. E-15-45-13/06.12.2013 (Appendix 35).

The sole capital owner's (Bulgarian Energy Holding EAD) powers are regulated in Art. 20 of the Statute of the company and they are adapted to the competence scope of the Shareholders General Meeting as provided by Art. 221 of the Commercial Act, and are thus differentiated from the powers of the Supervisory board and the Management Board of Bulgartransgaz EAD regulated in the Statute of the company and in the Rules of procedure of the company's bodies.

In line with article 20, paragraph 2, item 5, 6 and 11 of the corporate Statute, the sole capital owner appoints and dismisses the registered auditors of the company, other than the auditors of the vertically integrated undertaking, approves the annual financial statements following their certification by a registered auditor, decides on the profit allocation to replenish the Reserve Fund and the dividend payment. Item 13 indicates that without prejudice to the Supervisory Board decisions in re article 24 of the Statute, the sole capital owner provides to the ITO in due time sufficient financial resources for future investment projects and/or replacement of existing assets upon a justified and economically viable request from the company's Management Board.

Article 24, item 1 of the corporate Statute indicates as Supervisory Board powers the exercise of a general supervision and control over the activities of the Management Board. The particular powers of the Supervisory Board related to decision-making are specified in Art. 24, item 3 of the company's Statute, including decisions, which could significantly impact the values of the shareholders' assets, as well as issues, related to the approval of company's annual and long-term financial plans, or any changes with regard to these documents.

In this regard article 27, item 5 of the Statute must be taken into consideration, where the competences of the MB include company's investment policy and adoption of decisions to acquire, manage and dispose of and have other rights over real estates that are not of the exclusive competence of the sole owner or the SB and only following a decision approval by the SB in cases it is required by law or the Statute.

Pursuant to article 26, para. 3 of the Statute of Bulgartransgaz EAD, the internal management and representation rights distribution and scope are defined in the Management Board Rules of procedure. In the approved Rules the actions that the Management Board is authorized to perform are specified and they are differentiated from the actions that the Supervisory board of Bulgartransgaz EAD is authorized to perform.

Pursuant to Art. 6, para. 1, item 1 of the Rules of Procedure, the Management Board decides on issues with quantitative value exceeding 100 000 BGN exclusive of VAT up to a part equal to 0,05% of the overall net book value of the fixed assets of the company as of 31 December of the previous year, including bill of exchange obligations; in order to secure due payable amounts through incorporated mortgage or establish a pledge on fixed assets of the company; to assets pledged as collateral to third parties; to conclude litigation or out-of-court settlements, through which payable amounts due by the company are recognized or a receivable amounts of the company with regard to third parties is remitted; for transactions related to acquisition, management and disposal over fixed assets.

Resolutions concerning issues up to the above-specified quantitative value are adopted exclusively by the Management Board of Bulgartransgaz EAD.

Pursuant to Art. 6, para. 3, item. 1 of the Rules of procedures, in case the quantitative value of the issues under Art. 6, para. 1, item 1 exceeds 0,05% of the company's fixed assets overall net book value as of 31 December of the previous year or 884 774 BGN (in line with the financial statement for 2014), which is correlated with the goods and services public procurement award level threshold set out in Art. 45c, para. 2, item 6 of the Public Procurement Act (PPA) – up to 782 320 BGN excluding VAT, the Management Board shall adopt a decision with regard to the considered issues and shall suggest it for approval to the Supervisory Board (SB). Therefore, in the hypothesis of Art. 6, para. 3, item 1 of the Rules of procedure (the Rules), the decisions of the Management Board concerning loans, credits and settlements in case of disputes beyond the above mentioned limit, shall be enforceable only after a preliminary permission has been given by the Supervisory Board.

Another example in these regards is the provision of Art. 6, para.1, item 22 of the Rules, which stipulates that the Management Board (MB) adopts resolutions for initiation of public procurement proceedings with forecast value equal or greater than 100 000 BGN excluding VAT up to an amount less than the limits stipulated under Art. 45c, para. 2, item. 6 of PPA. Adopting decisions in re article 6, paragraph 1, item 22 on a public procurement start up to the indicated threshold are exclusively in the powers of the ITO MB and no decision approval of ITO SB is needed. In line with article 6, paragraph 1, item 22 of the Rules, in case the forecast value is equal or higher than the thresholds in re article 45a, paragraph 2, item 6 of PPA, the Management Board approves with a decision and proposes it for approval to the Supervisory Board the start of a specific public procurement procedure, i.e. the Management Board decisions for the start of a specific public procurement above the indicated threshold take effect only after the Supervisory Board approval.

Pursuant to Art. 81e of EA, ITO Supervisory Board adopts decisions, which may materially impact the transmission network operator's assets value, including decisions related to the annual financial plans approval, the indebtedness level of the transmission network operator and decisions that are

binding for the operator's shareholders general meeting in relation to the dividends amount to be distributed to shareholders.

With regard to the independence requirements compliance stipulated in Art.81e and Art. 81g, para. 3 of EA, when exercising the powers of the Supervisory Board under Art. 24, item 1, item 3 and item 5 of the Statute, in particular the estimation whether a certain matter could significantly impact the value of assets of Bulgartransgaz EAD shareholders, the following criteria are determined:

EA and Bulgartransgaz EAD Statute contain provisions reading that the Supervisory Board can adopt decisions, which may materially impact the transmission network operator's value of assets, including decision approval related to annual financial plans approval, the indebtedness level of the transmission network operator and decisions that are binding for the operator's shareholders general meeting in relation to the dividends amount to be distributed to shareholders.

In order to ensure the operating independence and activities performed by the independent transmission operator – Bulgartransgaz EAD and the adequate company's operation in compliance with the sole capital owner corporate policy, value thresholds must be determined, which may materially impact the transmission network operator's value of assets and depending thereon, decisions are made by the respective body of the company. In determining such value thresholds, the Management Board Rules stipulate and use objective criteria, and due to context similarities, the Regulation of procedure on exercising the rights of the state in commercial companies with state share in the capital and PPA have been taken into account.

The European legislation, in particular Directive 2004/18 EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, which have been entirely transposed in PPA, has adopted that public procurement with cost amounts over 782 320 BGN excluding VAT for supplies and services and to 9 779 000 BGN excluding VAT for construction are of significant public interest, and in compliance with the PPA principles of publicity, transparency, free and fair competition and non-admission of discrimination, it has determined that they shall be published in the Official Journal of the European Union.

Having regard to the above-mentioned, Art. 6, para.3, item.5 of the Bulgartransgaz EAD Management Board Rules of Procedure includes the MB power to adopt with a decision and to propose to the Supervisory Board for approval every decision concerning the start of a specific public procurement procedure with a forecast value equal to or higher than the limits in re article 45c, paragraph 2, item 6 of PPA|, namely over 782 320 BGN VAT excluded for goods and services and 9 779 000 BGN VAT excluded for construction.

The rights and competences of the Supervisory Board, indicated in the Bulgartransgaz EAD Supervisory Board Rules of Procedure, represent strict and comprehensive copy of the powers in re Art. 24 of the company's Statue, and its powers in connection with the sole capital owner competences according to EA.

Having regard to the above-mentioned and considering that the Supervisory Board powers are in compliance with the Bulgarian legislation on the corporate two-tier management system of Bulgartransgaz EAD and the fact that the Supervisory Board can submit for approval decisions that are binding for the sole capital owner, it can be concluded that the approved materiality threshold for certain transactions (exceeding 0,05% of the company's fixed assets overall net book value as of 31 December of the previous year or a total amount of 884 774 BGN in line with the financial statement for 2014), which require a Management Board decision approval by the Supervisory Board, that same

threshold is adequate and commensurate with the thresholds in values determined under PPA and the relevant values laid down in the European legislation in the field.

**To that effect, the requirement in re Art. 81g, para. 3 of EA (article 20 in connection with article 17, item 1 of Directive 2009/73/EC) has also been met, reading that without prejudice to the decisions of the Supervisory Board in accordance with Article 81f, paragraph 1 of EA, the independent transmission operator shall have the right to make decisions independently of the vertically integrated undertaking in relation to assets necessary for functioning, maintenance or development of the transmission network, and shall also have powers to propose decisions binding for the general meeting of shareholders on fund raising in the equity market through a loan or capital increase.**

**Despite all, EWRC has concluded that recommendations must be issued to Bulgartransgaz EAD, namely: to undertake measures of referring to the sole capital owner - BEH EAD to amend the Statute of the company with regard to the MB and SB powers aiming the independence requirements compliance in re art.81e and art. 81g, para. 3 of EA, related to materiality threshold that should be clearly determined in the Statute.**

**6. EWRC certifies that the independence requirement in re article 81g, paragraph 1 of the Energy Act (article 17, item 1 of Directive 2009/73/EC) has been met, reading that the independent transmission operator must have all human, technical, physical and financial resources required to fulfil its obligations of carrying out the activity of natural gas transmission.**

Regarding the compliance with this requirement to secure sufficient human resources in order to fulfil Bulgartransgaz EAD obligations, the company had submitted data on the independent transmission operator organizational structure (approved structure, functions and relations between separate divisions), on the education and qualification of the leased management personnel, on the number and qualification of the independent transmission operator personnel, on the concluded employment contracts (reference, analysis) in line with article 98, paragraph 2, item 7 of OLAE namely:

Appendix 36 - Description of Bulgartransgaz EAD organizational structure;

Appendix 37 – Updated information on personnel number and qualification and concluded employment contracts to 01.01.2015, supplied in addition with a letter incoming reg. E-15-45-13 of 06 Feb 2015.

It becomes clear from the submitted information that the company has the required number of qualified personnel both in the headquarters and in the operating regions and Chiren UGS.

In compliance with the requirement of article 98, paragraph 2, item 8 of OLAE, Bulgartransgaz EAD has also submitted a declaration by the Executive member of the Management Board stating that the company does not lease personnel from and to any other parts of the vertically integrated undertaking – Appendix 38.

Appendix 39 - Order BTG-92-04-10/16.01.2013 of Bulgartransgaz EAD Executive Director;

Appendix 40 - Employment Contract Template.

**6.1 With a view to an objective assessment of the above data EWRC officers carried out an on-site inspection and asked Bulgartransgaz EAD to submit additional evidence of the requirements compliance of article 81g, paragraphs 4 and 10 (The independent transmission operator and any other part of the vertically integrated undertaking, carrying out activity of natural gas supply or production, use independent IT systems or equipment, premises and security access**



systems as well as different consultants or external contractors for IT systems or equipment and security access systems) **in connection with paragraphs 1 and 2 of EA:** information on Bulgartransgaz EAD employees, information on persons hired by the persons representing the company, including by civil law contracts and other documents that they may consider relevant; information of IT systems and equipment and security access systems; information on contracts Bulgartransgaz EAD has concluded with external contractors or consultants for IT systems and equipment and security access systems, including determining the persons with whom they are signed, contract subject-matter and the relevant system or equipment; information on the legal, accounting and IT services used by Bulgartransgaz EAD – information on concluded contracts setting out the counterparties to the contracts, contract subject-matter and the relevant system or services.

Information and written evidence has been requested (information, excerpts from contracts and others) by Bulgarian Energy Holding EAD and Bulgargaz EAD in their capacity of legal entities in the meaning of article § 1, item 3a, letter „b” of the Additional Provisions of the EA, concerning:

- compliance with the requirements provided in Art. 81g, para. 4 in connection with para. 1 and para. 2 of EA, which stipulate that the independent transmission operator cannot lease personnel from/to any other parts of the vertically integrated undertaking – report on the employees of Bulgarian Energy Holding EAD and Bulgargaz EAD, report on the employees hired by the persons representing both companies, including by civil law contracts and other documents that they may consider relevant;

- compliance with the requirements provided in Art. 81g, para.10 in connection with para. 1 and para 2 of the EA, which stipulate that the independent transmission operator and any other part of the vertically integrated undertaking, carrying out the activities of electricity or natural gas supply or production shall use their own IT systems or equipment, premises and security access system as well as different contractors or consultants related to IT systems and equipment and security of access systems;

- information regarding the systems and equipment intended for information technologies as well as for the security systems of access thereto;

- information (report) regarding contracts concluded by both companies with Contractors or Consultants related to IT systems or equipment and security of access systems, specifying the persons signing the contracts, contract subject-matter and the respective system or equipment;

- information regarding the legal, accounting and information services provided to BEH EAD and Bulgargaz EAD – report on concluded contracts, specifying the contractors thereto, contract subject-matter and respective system or services.

Bulgargaz EAD has submitted the relevant information with letter incoming ref. E-04-01-18/13.12.2013. BEH EAD has also submitted the relevant information with letter incoming no. to E-04-01-18/20.12.2013.

Following the evidence analysis EWRC established as follows:

In line with article 17 of Directive 2009/73/EC, the personnel necessary for the gas transmission activity must be hired by the independent transmission operator that relates to the personnel necessary for the main activities of the operator, including network management and operation. In order to meet the requirements for ITO independence, leasing of personnel and contract conclusion for services with any other parts of the vertically integrated undertaking are strictly prohibited.

After examination of the information provided by Bulgartransgaz EAD, it can be assumed that the company is in possession of the required number of qualified employees for implementation of its basic activity of natural gas transmission. After examination of the documents provided by Bulgartransgaz EAD and the information from Bulgargaz EAD, it can be concluded that there are no

concluded effective contracts, including civil contracts, whereby Bulgartransgaz EAD hires or provides personnel from and to Bulgargaz EAD.

With regard to Bulgarian Energy Holding EAD, after review of the documents provided by the VIU, it was concluded that Bulgartransgaz EAD does not hire by or provide to BEH EAD personnel performing services related to the basic activity of the operator. It has been ascertained that BEH EAD has concluded a contract with Stoyan Tomov Tomov with subject „Consultation and expert advice with regard to the implementation of project „Construction of Bulgarian-Greek Interconnection Komotini-Stara Zagora” with duration until 31.12.2014. The contract is intended entirely to provide expert advice to ICGB AD – the project company involved in the project Interconnection Greece-Bulgaria, where BEH EAD has 50% shareholder’s participation, and after approval of the final investment decision on the project, the contractual relations of Stoyan Tomov will be transferred to ICGB AD. Bulgartransgaz EAD has concluded a civil contract with the same person /expired on 01.08.2013/ for providing “expert advice on the implementation of the project Construction of high-pressure gas pipelines to AGRS Silistra, Kozloduy, Oryahovo. Interconnection Bulgaria-Romania”. In view of the above, EWRC has considered that there is no contradiction with the legal requirements with respect to that person.

The above civil contract concluded between Bulgartransgaz EAD and Stoyan Tomov Tomov contains confidentiality clauses - Section IX “Confidentiality” and in support thereof, an extract from a civil contract № 1293/01.02.2013 has been enclosed, containing the confidentiality clause (Appendix 41), and a copy of a confidentiality declaration of Mr. Tomov of 01.02.2013 based on that contract (Appendix 42), submitted with letter incoming reg. E-15-45-13 of 17.04.2014, stating that he will not disclose any ITO information to the vertically integrated undertaking.

**Having regard to the above, EWRC confirms that the personnel requirement under Art. 81g, para 4** (The independent transmission operator shall appoint the necessary personnel, but shall not hire from and provide personnel to other parts of the vertically integrated undertaking), **in conjunction with para 1 of the EA** (The independent transmission operator of electricity or natural gas transmission network shall have available all human, technical, physical and financial resources required for implementation of its obligations to perform the electricity or natural gas transmission activity) **has been met.**

**6.2. ERWC certifies that the requirement under Art. 81g, para 1 and para 2 of EA regarding the technical and physical resources** has been met, as evidenced by the transmission network description, including high pressure gas pipelines, compressor stations, AGRS, GRS, GMS and other related technological equipment, and consists of two separate gas transmission networks, differentiated on the principle of their main purpose:

National gas transmission network (NGTN), gas transmission network the main purpose of which is natural gas transmission to consumers in Bulgaria connected thereto, comprising of about 1700 km main gas pipelines and high-pressure gas pipeline branches, three compressor stations – CS Kardam-1, CS Valchi Dol and CS Polski Senovets with total installed capacity of 49 MW, gas regulation stations, gas metering stations, electrochemical protection system, communications system, information system and other ancillary facilities. Its technical transmission capacity amounts to 7,4 bcm/ year and maximum working pressure 54 bar.

Gas transmission network for transit transmission (GTNTT), gas transmission network the main purpose of which is natural gas transit transmission, used also for transmission to customers in Bulgaria connected thereto, comprising 945 km gas pipelines and six compressor stations – CS Kardam-2, CS Provadia, CS Lozenets, CS Strandja, CS Ihtiman and CS Petrich, with total installed capacity of 214 MW, electrochemical protection system, cleaning equipment, communications system, information system and other ancillary facilities. It transports mainly

natural gas quantities from an entry point at the Bulgarian-Romanian border to Turkey, Greece and Macedonia. Its natural gas transit transmission technical capacity to all three directions amounts to 18,7 bcm/year and the maximum working pressure is 54 bar.

**6.3 EWRC acknowledges that the requirement under article 81g, paragraph 1 of EA has been met, the operator has the financial resources at its disposal required for implementation of the obligations to carry out the natural gas transmission activity.**

The above circumstance has been proved by the submitted certified copies of Annual Financial Statements of 2011, 2012, 2013 and 2014 and the submitted information of the estimated revenue and expenditure of the company for 2015 – 2018 that reflect the investments laid down in the Ten-Year Network Development Plan 2014 - 2023, submitted in line with article 98, paragraph 2, item 10 and item 11 of OLAE.

With EWRC Decision IJ-001 of 10.02.2005, natural gas transmission and storage prices have been approved in force as of 01.03.2005, as follows:

- Price for natural gas transmission through the gas transmission network - BGN 19.73/1000 m<sup>3</sup>, VAT excluded. The transmission tariff is a “postage stamp” type - i.e. the same for the whole territory of the country and not depending on distance.
- Price of natural gas storage - BGN 2.49/1000 m<sup>3</sup> per month, VAT excluded

**Financial result analysis**

The major part of the company revenue for the period under consideration comes from the licensed activities of natural gas transmission and storage.

The analysis of Bulgartransgaz EAD revenue and expenditure shows that the revenue from the licensed activities covers the costs incurred by the company. The company's financial results were good over the reporting period. The decrease in profits prior to taxes in 2013 compared to 2012 is mainly due to the rise in depreciation costs in connection with a revaluation of the long-term tangible assets as of 31.12.2012.

In the period 2011 – 2014 the company had been financially stable having sufficient liquidity and financial opportunities to ensure the performance of its licensed and investment activity.

Indicators	2011	2012	2013	2014	Change compared to the previous year
EBITDA - earnings before interest, taxes, depreciation and amortization	166 388	158 815	158 609	140 722	-11.28%
EBIT - earnings before interest and taxes	114 447	107 580	87 861	70 818	-19.40%
EBT - earnings before taxes	133 058	119 684	94 589	84 348	-10.83%

**Analysis of assets, liabilities and equity**

Bulgartransgaz EAD operates natural gas transmission and storage assets and the value of long-term tangible assets as of 31.12.2014 (in line with the annual financial statements) amounts to BGN 1662 469 thousand, and of the intangible assets - BGN 2 299 thousand. The rise in assets book value is a result of the permanent investments of the company in new long-term tangible assets and in

activities involving major repair works and modernization in order to increase the value of the existing ones.

Indicators	2011	2012	2013	2014	Change compared to the previous year
Real estates, machines, installations and equipment, including "Prepayments for assets"	1 069 736	1 647 304	1 653 954	1 662 469	0.51%
Long-term intangible assets	2 265	2 102	1 997	2 299	15.12%

The growth of equity as of 31.12.2012 is due to the increase in share capital, statutory reserves and revaluation reserve due to the revaluation of the long-term tangible assets. The increase in 2013 and 2014 is due to the increase in the company's statutory reserves.

Indicators	2011	2012	2013	2014	Change compared to the previous year
Equity	1 432 815	1 879 012	1 885 055	1 906 503	1.14%
Liabilities	83 811	147 133	137 080	172 093	25.54%

Total corporate liabilities increase chiefly due to the increase in the obligations for guarantees submitted by contractors under concluded contracts for the construction of construction sites included in the corporate investment programme – from BGN 935 thousand as at 31.12.2013 to BGN 34 256 thousand as of 31.12.2014.

The overall financial condition of the company in the reported period (2011 – 2014) remains very good because of the very good financial results and the reported good financial indicators:

Indicators	2011	2012	2013	2014
Funding ratio ((Equity + Long-term liabilities)/fixed assets)	1.38	1.20	1.19	1.08
Total liquidity ratio (Current assets/liabilities)	38.92	20.59	46.22	29.52
Financial autonomy ratio (Equity/(Long-term liabilities + current liabilities))	17.10	12.77	13.75	11.08

The funding ratio of long-term assets for all of the four years is more than 1, indicating that the company has available capital to invest in new long-term assets.

The values of total liquidity ratio for the four years are well above 1, so the company is well capable of repaying its current liabilities.

The financial autonomy ratio indicates the degree of financial independence from the use of foreign funds. Coefficient values over 1 indicate good financial autonomy.

The submitted by Bulgartransgaz EAD financial statements makes it clear that the company does not use foreign funds to fund the implementation of its investment programme, but exclusively its own moneys and grant funds for some of its projects.

### **Treatment of fuel gas provided in kind**

The financial statements give the natural gas value covering the technological needs of the cross-border gas transmission network in both revenue and expenditure part. The gas supplier issues monthly invoices of zero value for the provided natural gas which for customs` and accounting purposes is valued at the gas transmission network entry price.

EWRC has accepted that fuel gas revenue and expenditure was not to be considered for the financial analysis purposes, since the fuel gas covering the technological needs of the cross-border transmission is given in the revenue and the expenditure part of the financial statements with one and the same value, the two values thus eliminating themselves accordingly.

The accounting recording of the natural gas value provided to cover the compressor stations technological needs is in line with Rules for the use of gas transmission networks of Bulgartransgaz EAD approved with decision in re item 2 of Protocol 7 of 19.04.2013 of Bulgartransgaz EAD Management Board. In line with these Rules, in cases when in the access and transmission price setting (along either of the two gas transmission networks) it has been expressly determined that the prices do not include refund of fuel gas costs, then fuel gas should be provided by the network users with a transport contract along the respective network.

The required fuel gas quantity shall be provided by the users at the entry points of the respective gas transmission network depending on the actually transported quantities. The nominations for the fuel gas quantities shall be made separately from the other nominations for the entry points and the gas acceptance points. The connection of the two networks will enable the supply of fuel gas quantities, required for transmission through the transit network to the entry point of the national gas transmission network as well. Thus the user can provide fuel gas in the national gas transmission network, and carry out transmission through the transit network.

According to the Methodology for setting prices for natural gas access and transmission through the gas transmission networks owned by Bulgartransgaz EAD, approved by EWRC with Decision in re item 4 of Protocol 9 of 11.08.2014, the public consultation of which was on 15.07.2014, the costs for the natural gas transmission activity through the gas transmission network for transit transmission to exit cross-border points do not include the costs for fuel gas used in the compressor stations to carry out transmission and the costs of predetermined natural gas quantities for technological needs. Natural gas quantities required for these purposes shall be provided by network users and shall be handed over to the operator outside the set transmission price. In this case, according to the tariff model, the costs of the operator for natural gas, required for transmission technological needs (fuel gas) shall not be reimbursed by the access and transmission prices, therefore, every user undertakes to provide at the entry point the natural gas required for transmission of the agreed natural gas quantities.

According to the new tariff and contractual framework, such an obligation refers to all users of the gas transmission network for cross-border transmission to Turkey, Greece and Macedonia.

Considering the above, the provision of fuel gas quantities by the users is a compulsory condition for providing the services of natural gas transmission through the gas transmission network for transit transmission to exit cross-border points of that network. The practice of network users providing fuel gas is in accordance also with the provisions of article 21, § 2, b, ii of Regulation 312/2014 of EC of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks, which provides for a mechanism, by which network users supply gas, including gas in kind, to compensate for the gas which was used by the transmission system operator for system operation, such as fuel gas.

### Investment activities

The Ten-Year Network Development Plan presents information on the major infrastructure planned for construction, expansion, reconstruction and modernization over the next 10 years (2014-2023).

Considering the long-term time horizon of investments planning and the inclusion into the TYNDP of projects with no currently awarded final investment decision and also projects which development is linked to the implementation of other international gas sector projects, not realized by Bulgartransgaz EAD, for the purpose of greater clarity, projects are grouped in 3 main groups:

- Investments with a decision on their implementation in the time period 2014 – 2016;
- Investments which implementation depends on the development of international projects realised on the territory of the country;
- Projects for development of the gas transmission and storage infrastructure in the period 2014 – 2023, for which no investment decision has yet been taken but there are investment intentions on their implementation within the 10-year planned period.

In addition, the investment programme for projects with a final decision on their implementation, has been valued by years of realization in the medium term, as follows:

thousand BGN

<b>Medium-term investment plan of Bulgartransgaz EAD</b>			
<b>Program</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Total annual programs for Pre-Investment preparation and Investments:</b>	<b>109 214</b>	<b>121 708</b>	<b>113 000</b>
Annual programme for Pre-Investment preparation:	1 659	1 500	1 200
Annual Investments Programme:	107 555	120 208	111 800

Investments financing in the period 2014 – 2015 is planned to be chiefly by company's own funds, and no borrowed funds are expected. Grant funding is planned for some projects for which grant agreement has been entered into under the Kozloduy International Decommissioning Support Fund and the European Energy Programme for Recovery of the European Commission.

The distribution of funds for the realization of projects with grant funding (grant and own funds) over the period 2014 – 2015, is as follows:

thousand

BGN

<b>No</b>	<b>Sources of funding of the Programs for Pre-investment preparation and for Investments in Years</b>	<b>2014</b>	<b>2015</b>
1.	Own funds	3 322	7 191
2.	2.1. Under concluded contracts with Bulgartransgaz EAD and approved decisions of the EC under the EEPR Construction of high pressure gas pipeline from Dobrich to Silistra and one AGRS in the town of Silistra; 2.2. High pressure gas pipeline Chiren - Kozloduy - Oriyahovo	3 455	19 949

two AGRSs in the town of Kozloduy and the town of Oryahovo;		
2.3. Interconnection Bulgaria-Romania (Ruse-Giurgiu)		
<b>Total own and attracted funds:</b>	<b>6 777</b>	<b>27 140</b>

### **Financial - economic analysis of Bulgartransgaz EAD status for the period 2014 - 2018**

The Financial and economic analysis was elaborated based on the preliminary Annual financial statement 2014 and Business plan for the period 2015-2018, containing the estimated financial indicators of the company.

The Analysis excludes the technological needs natural gas value, provided for free by the network users, as for accounting and customs purposes it is recorded both as revenue and costs and does not impact the company's financial results. For the sake of clearer presentation of Bulgartransgaz EAD financial standing, the analysed data on the company's revenues and costs exclude the value of the natural gas for technological needs.

The company has no plans to use borrowing for the considered medium-term period 2014-2018, as it has the necessary financial resources to ensure the implementation of its investment program.

### **Estimated revenue**

Total revenues of Bulgartransgaz EAD during the period 2014-2018 show steady growth. In 2014 the largest share of the company's revenue resulted from natural gas transmission and storage, representing about 92.96% of the total revenue. The interest revenue is only 5.95% of them. The revenue share from licensing activities of Bulgartransgaz EAD is expected to grow and in 2018 to reach 97.50% of the total revenue.

The revenue of the company are estimated to increase from 242 171 thousand BGN at the beginning of the period (2014) to 409,982 thousand BGN at the end of the considered period (2018);

Expected revenue growth is due to:

- revenue increase from natural gas transmission through the transmission system due to the following factors:
  - revenue growth from natural gas cross-border transmission through the existing infrastructure due to the forecast increase in the dollar exchange rate by years; the growth of the expected larger transited natural gas quantities and the higher unit rate under the long-term contract for natural gas transit through the territory of Bulgaria in connection with the set indexation with the reported annual inflation in the European Union countries for the previous year. Revenue from cross-border natural gas transmission are expected to increase by 9.61% by the end of the considered period;
  - realization of revenue from transmission through new interconnections with the neighbouring countries - Romania, Greece, Serbia and Turkey in the period 2015-2018;
  - estimated increase of the natural gas quantities transmitted to customers in the country due to the expected higher natural gas consumption in the country,
- increase of the revenue from natural gas storage for the period 2014-2018 as a result of increase of the commercially stored natural gas quantities and new estimated price - storage revenue shall increase from 1,048 thousand BGN in 2014 to 38,100 thousand BGN at the end of the period;
- financial revenue from interests of the company are expected to increase according to the sums on deposits estimated for the period in commercial banks.

## Estimated costs

The total costs of the company during the period 2014-2018 increase due to:

- set indexation with expected annual inflation and the forecast growth of the minimum wage for the country according to the macroeconomic framework;
- increase of the technological costs of natural gas transmission and storage as a result of the planned for realization larger volumes transported/stored natural gas.

The total costs of Bulgartransgaz EAD during the considered period 2014-2018 increase and from 158 191 thousand BGN in 2014 reach 229 186 thousand BGN, which is due to:

- the assumed inflation rates, exchange rate and the minimum wage. The inflation rate amounts to 2.6% for each year in the forecast period (2015-2018). Bulgartransgaz EAD revenue and costs were calculated based on rising minimum wage, reaching 420 BGN at the end of the period (2018).
- increase of the technological costs of natural gas transmission and storage is expected.

Given that Bulgartransgaz EAD owns and operates assets of high value, fixed assets depreciation costs - 44.20% of the pre-reported operating costs for 2014 are with the largest share in the company's costs for transmission and storage activities.

Staff and social security contributions costs represent 30.11% of the operating costs of the company. The remaining 25.63% of the operating costs are costs for materials, external services, technological and other costs. The ratio of the costs by economic elements does not change significantly by the end of the considered period (2018): depreciation costs - 41.01% of the total costs; staff and social security contributions costs - 31.87% and other operating costs - 27.08%.

## Forecast assets and liabilities of the company

By 31.12.2014 the fixed assets hold the largest share of the assets' total value, which represent 82.19% of the assets, and the value of "Property, machinery, facilities and equipment" represents 97.93% of the fixed assets. The company intends to maintain this high share throughout the forecast period (2015 - 2018).

For the considered period the company retains the structure of the liabilities - 92% equity, 7% long-term liabilities, 1% current liabilities. The reserves from assets' revaluations hold the largest share in equity, forming about 51% of equity. The subscribed capital of the company accounts for about 40% of equity and the share of the financial result is about 9%.

The capital structure of the company (represented by the ratio of equity to long-term liabilities) remains unchanged throughout the period. The main source of Bulgartransgaz EAD long-term financing is its equity (share capital, reserves and financial result), with value nearly 12 times more than the value of the long-term liabilities (based on data from the annual financial statements 2014). The value of equity is expected to grow faster than that of the long-term liabilities and at the end of the considered period (2018) the ratio Equity/Long-term liabilities to reach the value 18.

Indicators	2014 (according to annual statement)	2015 (forecast)	2016 (forecast)	2017 (forecast)	2018 (forecast)
Equity	1 906 503	1 957 002	2 030 363	2 126 472	2 236 015
Long-term liabilities	161 624	127 820	131 488	128 622	118 704
Current liabilities	10 469	16 208	17 117	17 631	19 506
Equity/Long-term liabilities	11.80	15.31	15.44	16.53	18.84

The non-current liabilities of the company are the funding commitments, deferred tax liabilities and pension commitments. They are relatively constant over the period under consideration. During the



indicated period the company expects increase of the current liabilities (liabilities to suppliers, staff and retirement) due to business expansion.

Over the period covered in the business plan, the largest share of the company's receivables hold those from the group of related parties both long and short term. The company has taken measures for their collection by signing additional agreements between the parties.

### Expected financial results

Bulgartransgaz EAD envisages increase of its financial results over the period of the business plan and the values are presented in the table below:

<b>Indicators</b>	<b>2014 (according to annual statement)</b>	<b>2015 (forecast)</b>	<b>2016 (forecast)</b>	<b>2017 (forecast)</b>	<b>2018 (forecast)</b>
Total revenue	377,941	491,678	538,814	573,841	610,825
Total costs	(293,593)	(387,729)	(410,282)	(424,963)	(437,773)
<b>EBT - earnings before taxes</b>	84,348	110,348	134,931	155,918	180,796
Costs by economic elements + financial costs	(293,565)	(172,783)	(187,041)	(199,173)	(207,808)
<b>EBIT - earnings before interest and taxes</b>	70,818	103,948	128,531	148,878	173,052
Depreciation costs	(69,904)	(79,665)	(88,041)	(91,831)	(93,986)
<b>EBITDA - earnings before interest, taxes, depreciation and amortization</b>	140,722	183,614	216,572	240,709	267,038

In the period 2014 - 2018, financial indicators show that over the entire period the financial standing of the company remains very good. This has been supported also by the company's total liquidity values, the ability of the company to invest its own funds for the acquisition of non-current assets and the financial autonomy indicators values.

The values of the indicators that characterize the financial standing of the company for the period 2014 - 2018 are as follows:

<b>Indicators</b>	<b>2014 (annual statement)</b>	<b>2015 (forecast)</b>	<b>2016 (forecast)</b>	<b>2017 (forecast)</b>	<b>2018 (forecast)</b>
<b>Equity/Fixed assets</b>	1.08	1.09	1.12	1.19	1.29
<b>Total liquidity (Current assets/liabilities)</b>	29.52	19.35	21.04	27.90	32.68
<b>Financial autonomy (Equity/(Long-term liabilities + current liabilities))</b>	11.08	13.59	13.66	14.54	16.18

During the period 2014-2015, the ratio of total liquidity declines due to decrease in the current assets sum. In the period 2016-2018 the ratio of total liquidity shall steadily increase, indicating that the company improves its ability to pay its current liabilities.

The presented data makes it clear that the company has available funds to cover its current and non-current liabilities and the indicators of financial autonomy remain very good for the period. The degree of independence from creditors is very high and the current and non-current liabilities can be covered by own funds. The profitableness of the equity and assets during the period increase and retain its positive values.

The presented analysis shows that Bulgartransgaz EAD fulfils and is able to smoothly continue to fulfil its obligations arising from Art. 170 of the Energy Act on providing uniform management and

reliable functioning of the gas transmission network, natural gas transmission, as well as maintenance and development of the gas transmission network.

**Analysis of the connection of the two natural gas transmission networks in a common system and integration impact on the financial standing of Bulgartransgaz EAD**

Bulgartransgaz EAD plans an integration of the transit and national gas transmission networks into a common gas transmission network, for which Common rules have been developed considering the particularities of each network.

The company carried out activities related to restoration of the existing physical connections between the two gas transmission networks and providing a capability for using them for commercial purposes - gas transmission between the two gas transmission networks.

Gas metering station has been constructed at the existing physical connection between the national gas transmission network and the gas transmission network for transit transmission in the area of CS Ihtiman to enable commercial metering of the gas quantities passing from one network into the other.

In the area of CS Ihtiman at the existing physical connection between the national gas transmission network and the gas transmission network for transit transmission, in conformance with Construction permit № 69/22.10.2012 /enforceable as of 14.11.2012/ a metering station has been built next to valve AII 1 with two metering lines, providing the commercial metering of the natural gas quantities passing from the transit into the national gas transmission network and vice versa. In support of the above, a copy of the Construction permit of GMS Ihtiman (Appendix 43) has been submitted. A Protocol certifying the construction site usability/Protocol standard form № 16 under Ordinance № 3/31.07.2003 on the preparation of documents and reports during construction/ was signed and Permit to use the site № CT-05-19/09.01.2014 was issued by the Directorate for National Construction Supervision (DNCS) (Appendix 44).

It is clear that this connection between the transit and the national gas transmission networks ran into commercial operation as of 9 Jan 2014. Thus the connection at GMS Ihtiman is used for commercial purposes and the available capacity in the transit and national systems is offered on the market simultaneously within a single system with common rules.

A project was developed for reverse metering station at the technological connection between the national and transit gas transmission networks to recover the technological connection at CS Lozenets. According to the project roadmap, the connection is under construction. This connection point has not been put into operation so far and is not used for commercial purposes.

This will enable the respective connections to be used for commercial purposes; the available capacity in the national and the transit system can be used and offered on the market simultaneously within a single system with common rules.

The above assertions are confirmed as well by the analysis of Bulgartransgaz EAD TYNDP 2013-2022, which indicates 2014 as the year of the two networks connection, as shown in Table 1.2 – Capacities for long-term services of Bulgartransgaz EAD gas transmission networks after 2014.

It becomes clear from the table that inter zone connectivity will exist at GMS Ihtiman and GMS Lozenets (including by ITB) and the operator envisages to provide entry capacity, as follows: firm capacity – 1 mcm/day, interruptible capacity- 7 mcm/day; and respectively, exit capacity, as follows: firm capacity – up to 1 mcm/day, interruptible capacity- 7 mcm/day. The operator envisages to increase capacity after 2017 up to: entry capacity, as follows: firm capacity – 5 mcm/day, interruptible capacity- 4 mcm/day; and respectively, exit capacity, as follows: firm

capacity – up to 1 mcm/day, interruptible capacity- 8 mcm/day according to the data in Table 1.3 of TYNDP.

Bulgartransgaz EAD publishes information about the available capacity at entry point Negru Voda 2, 3 with a potential exit point of the gas transmission network for transit transmission GMS Ihtiman and about the available capacity at the entry point to the national gas transmission network GMS Ihtiman with the possibility of natural gas transmission to hand-over points at exit points of the national gas transmission network. In case of interest in transfer of quantities from the transit into the national gas transmission network and vice versa to the amount of the available capacity of the entry-exit point GMS Ihtiman for the relevant period, there are no obstacles to perform the transmission services.

For example, during the capacity allocation procedure for gas year 2014, an application was filed for booking capacity at entry point Negru Voda 2, 3 and exit point GMS Ihtiman by a participant in the procedure, alternatively to the nominated transmission capacity at entry point Negru Voda 1.

The national gas transmission network and the transit transmission network operate under the same maximum operating pressure of 54 bar. The particular conditions on providing pressure for carrying out natural gas transmission between the two networks shall be ensured by the operator and the difference in the current operating pressure of the two networks does not affect the capacity of the entry-exit point GMS Ihtiman.

Besides activities related to the physical connection between the national gas transmission network and the gas transmission network for transit transmission and ensuring commercial metering of the natural gas quantities, transported from one network to the other, Bulgartransgaz EAD has developed and submitted to EWRC Common Rules on the access to both networks, considering the particularities of each network, approved by Decision under item 2 of Protocol No 7/19.04.2013 of the company's Management Board. The Rules include Capacity allocation mechanism and Congestion management procedure, applicable to both gas transmission networks.

In addition to the Rules on the access to the gas transmission networks, Bulgartransgaz EAD has submitted to EWRC Transport contracts general terms and conditions for natural gas transmission through Bulgartransgaz EAD gas transmission networks and a standard form of the transport contracts. The full set of documents is applicable to both gas transmission networks and is intended to be enforced upon introduction of the entry-exit tariff model.

After a further study on the effective access to the gas transmission system, it was ascertained that pursuant to Art. 4, para 4 in connection with para 2 of the Rules on the access to the natural gas transmission and/or gas distribution networks and access to the natural gas storage facilities, approved by EWRC Decision No P-1 of 14.03.2013 (Rules on the access), any person entitled to access or network user shall apply for access or provided access correction by an application for access including information on the provided/booked transmission capacity through the transmission network of a neighbouring operator to an entry point of the national transmission network included in the transport contract through a neighbouring operator in favour of the applicant for a period and capacity corresponding to the nominated one at the entry point.

On the other hand, in the draft Rules for using Bulgartransgaz EAD gas transmission networks, submitted to EWRC on 22.04.2013 and published on the company website, in Section 5 Applying for access to NGTN and GTNTT, item 5.4 stipulates that within five working days before the of gas transmission starting date under the concluded transport contract with the Operator, the person applying for access should submit documents certifying provided/booked transmission capacity

through the transmission network of the neighbouring transmission operator to the specified entry point/s of the respective gas transmission networks or contract for delivery at the specified entry point/s of the gas transmission networks with a supplier who has provided/booked transmission capacity through the transmission network of the neighbouring operator, if any, and/or extracts from natural gas purchase and sale contracts with gas production companies connected to the gas transmission networks, if any.

**Having regard to the above and taking account of the opinion of the European Commission C (2015) 2754 final of 22.04.2015, EWRC, on the grounds of article 21, paragraph 1, item 13 of EA, had initiated a procedure for the review of the Rules on access to gas transmission and/or gas distribution networks and access to natural gas storage facilities.**

In line with the draft Rules amending the Rules on access to gas transmission and/or gas distribution networks and access to natural gas storage facilities approved by virtue of decision under Protocol No.120 of 09.06.2015, in re item 1 and published on EWRC website, the requirements of article 2 and article 4 have been amended in line with the EC notice. The amendment to these provisions ensures the possibility for a potential user to be granted access to the gas transmission network and to enter into a Transport Contract with the transmission network operator, whereas the obligation of the entity to present evidence for secured/booked capacity through the neighbouring network or for secured natural gas quantities arises immediately prior to the date of efficient implementation of the transmission nomination, and is not a compulsory requirement at the time of submitting the Application for Access. Thus the requirements of Regulation (EC) 715/2009 are met and the entry of new participants in the market is facilitated and an opportunity is given to potential users to book capacity in Bulgartransgaz EAD gas transmission network prior their entering into Supply Contracts or Transport Contracts through a neighbouring operator network.

**To this end, Bulgartransgaz EAD should amend accordingly its Rules on the use of natural gas transmission networks in line with the amendments and supplements to the Rules on access to gas transmission and/or gas distribution networks and access to natural gas storage facilities.**

Bulgartransgaz EAD, supported by the international consultant DNV KEMA, has developed an entry-exit tariff system applicable to both gas transmission networks, considered as an integrated network.

By its Decision under item 4 of Protocol No 109 of 11.08.2014, EWRC approved Methodology for setting the price for access and transmission of natural gas through the gas transmission networks, owned by Bulgartransgaz EAD, which draft was approved by the company Management Board by Decision under Protocol No 27/21.11.2013. By the new tariff system, for natural gas access and transmission prices shall be introduced and shall be applicable to the announced entry and exit points/zones of the networks, in compliance with the requirements of Regulation (EC) 715/2009 and the applicable documents. After the Methodology enters into force, the price setting approach for both networks will be the same and the respective prices will be based on the approved by EWRC allowed revenue, including operating costs, annual depreciation deductions and return on the net book value of the assets with which the company does or will operate, and the working capital necessary for the activities for a certain regulatory period and their fair allocation by entry and exit points/zones, based on the geographical costs allocation and the real assets. The Methodology is based on the matrix costs allocation approach, respectively the required revenue.

The developed cost allocation mechanism provides for considering both networks as a common system and the conclusions from the preliminary analysis show that the effective tariffs are at

adequate levels and the change of the model by networks' integration will have no negative impact on the company revenue and activities.

The entry into commercial operation of the physical connections between both networks in the area of CS Ihtiman and CS Lozenets will enable the physical transmission of natural gas quantities between both networks, which together with the implementation of the planned in the TYNDP interconnectivity (run into operation of the interconnections with Romania, Greece, Serbia and Turkey) is expected to result in significant increase of the commercial demand of natural gas transmission services, more efficient use of the available capacity and will in general improve the efficient networks' operation. From this perspective, the physical connection between both networks is expected to result in increase of the revenue from the licensed activity of “natural gas transmission” of Bulgartransgaz EAD.

By introducing the entry-exit model, considering the estimated transmission services demand and the value of assets operated by Bulgartransgaz EAD, as well as the forthcoming long-term investments, increase of the revenue from transmission activities is expected, without significant change of the unit values of the services, payable by the users.

When reviewing the integrated network, the individual components of the allowed revenue should be taken into account for the natural gas transmission activities through both networks in total, which would be equivalent to the algebraic sum of the respective components for each network when considering both networks separately. From this perspective, the consideration of the gas transmission infrastructure as an integrated system, compared to its consideration as two separate networks, would have no impact on the allowed revenue, approved by EWRC.

On the other hand, the Methodology provides for mechanisms, which protect against non-collection or over-collection of the revenue required for the transmission activity. The effective tariffs should be updated in order to take into account the allowed revenue and the rules for costs allocation of the entry-exit tariff system. In this respect, the change of the model by networks' integration will have no negative impact on the revenue and the activities of the company.

**Taking into consideration the new tariff methodology of the company, the connection between both networks will improve the use of the transmission capacities, which will have favourable effect on the licensed activity of natural gas transmission and its revenue.**

**The analysis of the company business plan for a five-year period shows improvement of the economic indicators of the company. In the period 2013 - 2017 the financial indicators, calculated on the basis of a total balance sheet structure, show that during the whole period subject to consideration, the financial standing of the company remains very good. This was supported also by the company total liquidity values, the ability of the company to invest its own funds for the acquisition of non-current assets and the financial autonomy indicators values.**

**7. EWRC assumed that compliance has been achieved with the requirements of Art. 81g, para 2, para 10 and para 12 of EA (Art. 17, item 1, b. a, item 2, item 5 and item 6 of Directive 2009/73/EC), namely that Bulgartransgaz EAD is an owner of the assets necessary for the natural gas transmission activity, including the transmission network and has its own identity, separate headquarters, personnel and uses independently the required equipment and legal, accounting and information services; uses independent systems or information technology equipment, premises and their access control systems and various consultants for systems or information technology equipment and its access control systems, and that the**

**operator is independently audited by an auditor other than the one of the VIU and the companies in it.**

**7.1. Regarding ownership of the gas transmission system assets,** in compliance with the requirements of the Bulgarian legislation – Art. 98, para 2, item 6 of OLAE, the company has enclosed a certified copy of the 2012 and 2013 Annual financial statement, together with an annual report on the activities and a report of the independent auditor, Statements of the available fixed assets for the activity “natural gas transmission”, included in Bulgartransgaz EAD balance sheet (Appendix 45), as well as updated as of 31.12.2013 Schedule of assets, including newly acquired assets, included in the balance sheet of the company, submitted by letter incoming ref. E-15-45-13/01.07.2014 (Appendix 51), certifying that Bulgartransgaz EAD is the owner of the assets by which it implements the licensed activity of natural gas transmission.

**7.2. Regarding the corporate services, including legal, accounting and IT services,** which, within the meaning of Art. 13 and Art. 17, item 2 of Directive 2009/73/EC, are considered as an element of or related to the natural gas transmission activity, the independent transmission operator has the obligation to maintain sufficient number of qualified employees to carry out its daily activities. Only if the operator has such employees, the independent transmission operator shall be allowed, under specific circumstances and in exceptional cases, to conclude contracts with third parties for providing legal, accounting and IT services. This autonomy requirement of the operator does not apply to activities, which have no direct impact on natural gas transmission /e.g. cleaning services or offices security services/.

EWRC has performed an inspection and analysis of Bulgartransgaz EAD’s compliance with the requirements of Art. 81g, para 10 in conjunction to para 1 and para 2 of EA, reading that the company, the vertically integrated undertaking and other parts of it, should use individual systems or information technology equipment, separate premises and their access control systems, as well as different external contractors or external consultants on information technology and their access control systems.

In this regard Bulgartransgaz EAD has submitted evidence under Art. 98, para 2, item 12, item 13 and item 14 of OLAE, such as a Report on IT unbundling No. BTG-24-00-1315 of 29.03.2013 with a description of the IT systems and equipment and the access control systems (Appendix 47).

Bulgartransgaz EAD has provided also a Statement of compliance with the requirements of Art. 81g, para 2 and para 12 of the EA, including a Statement of concluded contracts for legal and accounting services, as evidence that Penkov, Markov & Partners Law firm provides legal services to the company under Contract № 1329/21.03.2013 (Appendix 48). Contract № 1225/22.11.2012 has been concluded with Filipov & Partners OOD for provision of ongoing accounting and tax support and consultations.

In addition, the company states that in order to comply with these requirements of the EA, by Order № БТГ-92-04-14/21.01.2013 of the Executive Director of Bulgartransgaz EAD (Appendix 49), the participants in the conducted public procurements for provision of consulting services and activities referred to in Art. 81g, para 12 of the EA, **shall submit in their tender documents and before concluding a contract, declarations that they do not provide such consulting services to VIU or other parts of it.**

According to the information submitted by Bulgartransgaz EAD and the company requirements compliance Statement under Art. 81g, para 10 of EA, **with regard to IT and telecommunication unbundling from VIU and other parts of it,** after the unbundling and registration of Bulgartransgaz EAD and Bulgargaz EAD as individual commercial entities, they have formed their own organizational structures for IT services on the basis of their own and completely independent

resources – hardware, software and database experts and complete separation of the information systems has been implemented. The companies were situated in the same building, which required temporary use of shared communication resources - a telephone exchange and LAN network.

In order to avoid unauthorized access to information during shared use of communication resource, the workplaces of both companies have been configured in two different virtual networks VLANs with no connection between them and no access of one company to the workplace and/or information database of the other company.

In May 2011 Bulgargaz EAD changed its headquarters' address and registered address, thus the shared use of communication resources was terminated, and the process of complete unbundling of the communication and IT systems of the two companies has been completed. In confirmation thereof, a Commercial Register Statement of the Registry Agency dated 27.06.2014 (Appendix 50) has been provided, stating that the Headquarters of this company is different from that of Bulgartransgaz EAD.

As to BEH EAD – in 2008 it started gradually to implement its own IT resources and run into operation independent informational systems. The process of unbundling of these systems was completed finally in 2012. The facts related to the temporary use of shared communication resources are similar to the above described concerning Bulgargaz EAD. BEH EAD changed its headquarters' address in September 2012, thus the shared use was terminated and the process of complete unbundling of the communication and IT systems of the two companies was completed too. In confirmation thereof, a Commercial Register Statement of the Registry Agency dated 27.06.2014 (Appendix 51) has been provided, stating that the Headquarters of this company is different from that of Bulgartransgaz EAD.

Bulgartransgaz EAD has concluded the following contracts for external consulting and IT services:

- With Bonev Soft Auditing OOD for maintenance subscription of Ajour-L accounting software /No. 1257/27.12.2012/, accompanied by a signed confidentiality declaration with permanent legal effect, by which the Contractor undertakes not to disclose confidential information about the operator that has become known to him during contract execution.
- Contracts with Bulgartel EAD for providing: Internet access No. 1137/30.07.2012; electronic communication services No. 1383/10.05.2013; Internet access to Republika Training and Recreation Centre – Golden sands resort, No. 1401/04.06.2013;
- Contract No. 1246/10.12.2012 with Paraflow for Anti-Spam filter supply;
- Contract No.1268a/14.01.2013 with ProDesign 94 EOOD – contract for canteen specialized software;
- Contract No. 1476/19.09.2013 with Lirex BG OOD – contract for supply, configuration and installation of software and hardware for renovation of the telephone exchange;
- Contract No. 1486/23.09.2013 with Alphasys – Electronic system for investment and maintenance activities control/ – maintenance subscription contract.

Pursuant to Order No. БТГ-92-04-14/21.01.2013 of the Executive director (Appendix 52), a requirement has been introduced for all consultants or external contractors, who are parties under effective contracts for providing services related to IT systems or equipment and access control systems, to sign a confidentiality declaration, thus undertaking a long-term commitment for non-disclosure of confidential information.

By Order No. БТГ-92-04-13/21.01.2013 of the Executive director of Bulgartransgaz EAD, an internal rule has been introduced stating that when awarding public procurements all participants are compulsory to declare that they do not provide consulting services to VIU or any part of it, within the meaning of Art. 81g, para 10 and para 12 of the EA.

The following declarations of participants in consulting services public procurements have been submitted together with their tenders, stating that they do not provide these services to the vertically integrated undertaking or any part thereof: 7 pcs. declarations enclosed to tenders of

participants in public procurements, initiated by Bulgartransgaz EAD, submitted pursuant to Art. 81g, para 10 of EA, stating that the respective participant does not perform consulting services and is not a Contractor of activities related to IT systems or equipment and access control systems for the vertically integrated undertaking - Bulgarian Energy Holding EAD or any part of it, performing activities of supply and production of natural gas:

Appendix 53 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by CT Europe OOD, a participant in public procurement with subject “Renewal of Software subscription for Check Point Firewall for a two-year period”;

Appendix 54 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by Kontrax AD, a participant in public procurement with subject “Supply of portable computers”;

Appendix 55 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by Lirex BG OOD, a participant in public procurement with subject “Supply of computer equipment”;

Appendix 56 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by Lirex BG OOD, a participant in public procurement with subject “Supply, configuration and installation of hardware and software for a telephone exchange upgrade”;

Appendix 57 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by ISTA-Y.Pankov, a participant in public procurement with subject “Operation and maintenance of Information system WPS 32 for collection, archive and visualization of technological information of Bulgartransgaz EAD gas transmission system”;

Appendix 58 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by IBS-Bulgaria EOOD, a participant in public procurement with subject “Supply of software licenses”;

Appendix 59 - A copy of Declaration under Art. 81g, para 10 of the EA, submitted by Stone Computers AD, a participant in public procurement with subject “Supply and installation of disk arrays for the existing servers”.

The IT infrastructure ensuring the information systems and services operation and use is owned by Bulgartransgaz EAD and is independent from the infrastructure of BEH EAD and Bulgargaz EAD, and the equipment and software licenses are owned by the transmission operator.

The systems’ administration and maintenance is carried out by employees of Bulgartransgaz EAD. The company is in possession of its own mail server based on Lotus Domino, which is also administered and maintained by employees of the company. Internet access is provided by public telecommunication operators, licensed under the Electronic Communications Act and selected following conducted procurements under the Public Procurement Act.

Bulgartransgaz EAD is in possession of its own technological telecommunication network, located within the easement of the gas pipeline. It was constructed with fibre optic and copper cables and connects the technological facilities of the gas transmission system. The active equipment ensuring voice and data transmission is owned by the company. The experts of the company perform the maintenance of the equipment /active and passive/. For certain facilities without their own transmission infrastructure, Bulgartransgaz EAD uses hired lines of licensed public operators according to the Electronic Communications Act, BTK AD and Bulgartel EAD.

The company communication systems are fully independent and reserved, and have no direct connection with the communication systems of BEH EAD and Bulgargaz EAD. The communication with external areas, including BEH EAD and Bulgargaz EAD is performed through the networks of the public telecommunication operators.

A Compliance Statement of Bulgartransgaz EAD with regard to the requirements of Art. 81g, para 10 of EA, specifies that the company has built a local signal security system for the premises in the



building, an access control system, covering individual points of the HQ building with installed access control system at the entrance of HQ; video surveillance control system, and a local addressable fire alarm system for the Headquarters' building, which are independent from the VIU. Video surveillance control systems and security alarm systems were installed in the compressor stations as well. Nineteen contracts for security and security inspections have been listed as well.

After reviewing the contracts concluded by Bulgartransgaz EAD, the following was found out:

- The information provided by a Bulgargaz EAD letter, makes it clear that the company uses an integrated information system (software) series Ajour 7, on the basis of contractual relations with Bonev Soft Auditing OOD, i.e. services provided by the same legal entity, with which Bulgartransgaz EAD has concluded a contract. BEH EAD has also concluded a maintenance subscription contract with Bonev Soft Auditing OOD for using financial accounting software Ajour-L. In this regard it is assumed that all these three companies are using the same software, provided by a legal entity holding a license for the product.

In order to verify compliance with independence requirements in using that product, Bulgartransgaz EAD has provided a signed confidentiality declaration by Bonev Soft Auditing OOD (Appendix 60), by which the Contractor undertakes not to disclose confidential information about the operator, that has become known to him during contract execution. In addition, a copy of a letter from Bonev Soft Auditing OOD to the transmission operator (Appendix 61) was enclosed, in which the Contractor states that the maintenance under the contract will be performed by a team of Contractor's experts who will not perform maintenance subscription, data processing and service maintenance of the software of Ajour series of Bulgargaz EAD and BEH EAD, i.e. there will be different teams of employees for the companies of the VIU in order to keep information confidential.

A study found that the information system Ajour is software of finance, accounting, invoicing and analysis and it is standard and one of the most widespread accounting software in Bulgaria. According to the information published on the website of Bonev Soft Auditing OOD, currently more than 10,000 installations of Ajour operate in Bulgaria, used by more than 7900 users. The Information system Ajour operating in Bulgartransgaz EAD is an independent standard application not designed especially for Bulgartransgaz EAD and not tailored in a special way for the needs of the company.

Bulgartransgaz EAD corporate network is isolated from Internet and foreign corporate networks by a corporate firewall. The corporate network operates independently and is not connected neither to the corporate network of Bulgargaz EAD, nor to that of BEH EAD, nor any other corporate network. Therefore, Bulgartransgaz EAD information systems, including IS Ajour, are isolated, operate independently and are not integrated in any way with any informational systems introduced in Bulgargaz EAD or BEH EAD.

- Bulgargaz EAD has concluded Contract No.1383/10.05.2013 with Bulgartel EAD, effective until 1 June 2014 for technical maintenance of blade, storage and virtual infrastructure, Notes & Domino infrastructure, Cisco router 28xx – VoIP telephony and network routing and Bulgartransgaz EAD uses services provided by that company related to Internet access and electronic communication services. BEH EAD has also concluded a subscription contract with Bulgartel EAD for warranty maintenance of server and communication equipment. Although the Contractor is the same legal entity, it can be assumed that the requirement for independent use of separate systems or information technology equipment, external contractors regarding these systems and technologies and the access to them, has been complied with, as the subject-matters of the three contracts are not identical. In addition, the IT infrastructure ensuring the operation and use of the

information systems and services of the transmission operator is independent, as it is owned by Bulgartransgaz EAD; the equipment and the software licenses are owned by the transmission operator and the systems' administration and maintenance is carried out by employees of BTG EAD. The company is in possession of its own mail server based on Lotus Domino, which is also administered and maintained by employees of the company. The network is separated from the global network "Internet" by a protective barrier „Firewall“, and for that purpose a demilitarized zone has been employed, as indicated on the Diagram of the basic information systems of the company, described in the Compliance Statement of Bulgartransgaz EAD with regard to the requirements under Art. 81g, para 10 of EA.

- With regard to Contract No.1225/22.11.2012 concluded between Bulgartransgaz EAD and Filipov & Partners OOD for provision of current accounting and tax support and consultations, and considering that BEH EAD has also concluded a contract with them, it should be noted, that the same has already expired.

7.3 Verification of the compliance with the requirements of Art. 81g, para 12 the EA was performed, under which the independent transmission operator is independently audited by an auditor other than the one of the vertically integrated undertaking and its companies. The registered auditor of the company, who performed an independent financial audit of the financial statements for 2012 and 2013 is KPMG- Bulgaria OOD under Contract No.1269/16.01.2013 - different from the auditors that have audited Bulgargaz EAD and BEH EAD annual financial statements.

As evidence within the meaning of Art. 98, para 2, item 17 of OLAE, the company has submitted 1 declaration dated 01.10.2013 as part of participant tender documents for a public procurement, initiated by Bulgartransgaz EAD, pursuant to Art. 81g, para 10 of the EA, stating that the participant will not perform independent financial audit of the annual financial statements for 2013 of the vertically integrated undertaking BEH EAD and the companies within the holding structure (Appendix 62). Following the conducted public procurement award procedure, won by the participant KPMG - Bulgaria OOD, the specialized audit company has declared again that it will not carry out independent financial audit of the annual financial statements for 2013 of the vertically integrated undertaking and the companies in the holding structure, and in confirmation thereof a declaration has been submitted by the audit company under Art. 81g, para 12 of the EA dated 6 Feb 2014, as well as documents on the conduct of the public procurement and the decision on the selection and appointment of an auditor (Appendix 63).

**Considering the submitted documents and following verification, EWRC confirms that the independence requirements have been complied with and Bulgartransgaz EAD uses independently the necessary legal, accounting and IT services within the meaning of Art. 81g, para 2 in conjunction with Art. 81g, para 10 and para 12 of the EA, and that Bulgartransgaz EAD, Bulgarian Energy Holding EAD and Bulgargaz EAD use independent informational technology systems and equipment, premises and their access control systems, as well as different contractors or external consultants for these systems regarding their access.**

**8. EWRC confirms that the requirement under Art. 81g, para 9 of the EA (Art. 17, item 4 of Directive 2009/73/EC), namely that by its corporate identity, communications, branding and objects, the independent transmission operator does not create confusion regarding the separate identity of the vertically integrated undertaking or any part thereof.**

This is evidenced by a review of the documents presented in accordance with the requirements of Art. 98, para 2, item 9 of OLAE:

Appendix 64 - Images of Bulgartransgaz EAD, BEH EAD and Bulgargaz EAD logo;

Appendix 65 - Bulgartransgaz EAD Corporate identity program;

Appendix 66 - A copy of Decision under item 8.1 of Protocol No.144/15.12.2012 of a meeting of Bulgartransgaz EAD Board of Directors for approval of the graphic symbol (logo) of Bulgartransgaz EAD;

Appendix 67 - A copy of Decision under item 7 of Protocol No.150/18.01.2013 of a meeting of Bulgartransgaz EAD Board of Directors for approval of the Corporate identity program of Bulgartransgaz EAD;

The following findings and conclusions can be made after analysing the information enclosed:

Pursuant to Art. 11 of the Commercial Act, the company can be used only by the trader who has registered it. With reference to the process of Bulgartransgaz EAD certification as an independent gas transmission operator, in compliance with the requirements of the Third Energy Liberalization Package and the guidelines of the European Commission, in the autumn of 2012 the company has undertaken actions for creating a new corporate identity.

To this end, a Corporate identity program has been developed, adopted by Decision of Bulgartransgaz EAD Board of Directors under item 7 of Protocol No.150/18.01.2013, introducing a new corporate vision of Bulgartransgaz EAD, which EWRC acknowledged as different from the previous one and from those of the companies in the group of Bulgarian Energy Holding EAD.

The basic element of Bulgartransgaz EAD new corporate image is the new logo, integrated in the incoming and outgoing company correspondence. The logo embodies the idea of unity and connectivity of the gas transmission networks by stylized intertwined pipes, gives reference to the cycle of nature and applies the blue colour - a sign of security, stability and confidence. The name of the company is also implemented in the corporate logo, accentuating on the geographic location, where the company operates, as well as the company's main activity - natural gas transportation. The new logo of Bulgartransgaz EAD does not draw an analogy with the previous corporate symbol, respectively - with the logo of Bulgargaz EAD or BEH EAD.

According to the new corporate identity of Bulgartransgaz EAD, the font of the incoming and outgoing correspondence has been changed too – the previous Times New Roman has been replaced by Tahoma – functional font, complying with the graphic design requirements of the company, corresponding to the total concept of the Corporate identity program and used by none of the companies in the sector. This new standard applies to the document turnover of the company, as well as to all corporate materials, issued by the company.

Since September 2013 the Company's website also has a completely changed outlook according to the new Program. The structure of the information, graphic design and style of the website are completely different from those of the public supplier Bulgargaz EAD and from BEH EAD.

After entry into force of the corporate identity program in January 2013, the company has taken timely actions to register a European trademark and on 8 Aug 2013 it filed an application thereof in OHIM - Office for Harmonization in the Internal Market - Brands and designs, Alicante, Spain. The trade mark Bulgartransgaz /Булгартрансгаз/ in Latin and Cyrillic was registered under Ref. No.011719929/25.11.2013 and in confirmation thereof a Certificate for trade mark registration with a 9-level protection (Appendix 68) has been provided.

**9. With regard to the requirements compliance of Art. 81g, para 3 of the EA (Art. 18, item 1 of Directive 2009/73/EC) in conjunction with Art. 81f, para 1 (Art. 20 of the Directive),**

**Art. 81h (Art. 17, item 1 and Art. 18, item 9 of the Directive) and Art. 81i, para 2 (Art. 18, item 4 of the Directive), the following documents and information have been analysed:**

The vertically integrated undertaking shall not directly or indirectly determine the competitive behaviour of the operator with regard to its ongoing operations and network management, or the activities, necessary for preparation of the Ten-year network development plan (Art. 81i, para 2 of the EA).

Pursuant to Art. 81h of the EA and Art. 18, item 9 of the Directive, the vertically integrated undertaking shall not perform actions impeding or prejudicial to Bulgartransgaz EAD in implementation of its obligations under the EA and respectively Bulgartransgaz EAD shall not ask permission from the vertically integrated undertaking to implement its obligations under Section II, Chapter eight “a” of EA - that requirement was stipulated in Art. 20, para 3 of the Company Statute.

EA and Bulgartransgaz EAD Statute provide for independence guarantees of the transmission operator from the vertically integrated undertaking with regard to the gas transmission network development and the investment plans approval, as required by Art. 81g, para 3 and Art. 18, item 1 of the Directive.

Regarding the issue of the powers of Bulgartransgaz EAD Supervisory Board to prepare and approve Bulgartransgaz EAD Ten-year network development plan, it should be noted that as required by Art. 81i, para 2 of the EA and Art. 18, item 4 in conjunction with Art. 22 of the Directive, the VIU shall not directly or indirectly determine the competitive behaviour of the operator with regard to its ongoing operations and network management, or the activities, necessary for preparation of the Ten-year network development plan.

Under Art. 81e, para 2 of EA and the company Statute, the independent transmission operator Management Board is the competent authority adopting decisions related to the ongoing operations of the operator, network management and **the activities required for preparation of the Ten-year network development plan**. The decisions related to network management and the activities required for preparation of the Ten-year network development plan are made independently by the operator's Management Board, without asking permission or any other possibility for the vertically integrated undertaking to influence the Management Board decision.

Pursuant to Art. 27 of the company Statute, the Management Board adopts the decisions related to the ongoing operations of the gas transmission operator, network management and the activities, necessary for preparation of the Ten-year network development plan. Apparently, the cases, in which the Supervisory Board decisions should not be referred to, are presented in individual items, in particular Art. 27, items 2, 3 and the subsequent, i.e. the Management Board has exclusive powers on the activities, necessary for preparation of the Ten-year network development plan and are not bound to the powers of the Supervisory Board.

In confirmation of the above comes also the fact that the Ten-year plan was submitted for approval to EWRC together with a copy of Decision under item 1.1 of Protocol No.144/ 15.12.2012 of a Bulgartransgaz EAD Management Board meeting for the approval of draft 2013-2022 Ten-Year Network Development Plan, whereas the Supervisory Board had made no draft Plan related decision. The same refers also to the updated 2014-2023 Ten-Year Network Development Plan, submitted for approval to EWRC by Application incoming ref. E-15-45-7/30.04.2014. This Plan has been approved by Decision of Protocol No.37/27.03.2014 from a meeting of Bulgartransgaz EAD Management Board and Protocol No.40/29.04.2014 from a meeting of the company's Management Board for

approval of the Ten-year plan and laid down adjustment in respect of a gas pipeline branch to the town of Hisarya and the town of Sopot.

Sufficient evidence under Art. 81g, para 1 of EA has been presented as well that the transmission network operator has developed and consulted with all stakeholders the Ten-year plan and after consultation and reflection of the opinions received, has submitted it to EWRC within the statutory period, namely: Draft 2013-2022 Ten-year network development plan, published on the company web page within the statutory period of 30 days prior to its submission for approval to EWRC, with laid down additions and corrections in line with EWRC instructions provided by letter ref. E-15-45-18/25.03.2013, submitted for approval to EWRC on 13.06.2013; evidence of notification on 10 April 2014 of a public consultation of the draft updated 2014-2023 Ten-year plan on Bulgartransgaz EAD web page and a copy of an opinion from Black Sea Technology Company AD laid down in the updated 2014-2023 Ten-year plan, as it becomes clear from the projects' description on page 53 of the Plan.

Art. 27, item 2 of the company Statute stipulates, that without prejudice to the decisions of the supervisory authority under Art. 81f, para 1, the independent transmission operator shall be empowered to make decisions independently of the vertically integrated undertaking with respect to the assets required for the operation, maintenance or development of the transmission network and shall have powers to propose binding for the General Meeting decisions on funds raising on the capital market through borrowing or capital increase of the Statute, which constitutes the implementation of a basic requirement in relation to the powers of the Management Board.

The Business plan, developed for five years ahead, covers in detail the company investment and maintenance program with the respective forecast structure, amount of the costs broken in years and a detailed rationale of the size, method of funding and terms of all investments planned. The Business plan includes also a rationale for the necessity of implementing every investment provided therein.

The developed Business plans shall be subject to approval by Bulgartransgaz EAD Supervisory Board, according to Art. 24, item 3.2 of the company Statute, following a proposal by the Management Board (Art. 27, item 4 of the Statute) and afterwards shall be subject to approval by EWRC. Business plan updates within the effective period of the already approved Business plan shall be carried out by a Decision adopted by the national regulator at the proposal of the transmission operator.

The business plans approved in conformance with these conditions, including the network development plans, are subject to implementation by the transmission operator, without further rationale in front of the vertically integrated undertaking regarding the necessary financial resources and the planned investments implementation costs.

The Supervisory Board shall decide on issues related to the Business plan approval at the proposal of the Management Board, however only within its powers under Art. 81f, para 1 of the EA (Art. 20, para 1, first sentence of Directive 2009/73/EC) and shall have no powers to decide on issues involving the assets, required for transmission network operation, maintenance or development.

Pursuant to Art. 81f, para 1 of the EA and Art. 24, item 3.4 of Bulgartransgaz EAD Statute, the decisions regarding the size of dividends to be distributed between the shareholders of the independent transmission operator shall be made by the Supervisory Board of the operator. These decisions shall be binding for the vertically integrated undertaking and there is no possibility for it to

influence or amend the decisions of the Supervisory Board concerning the dividend size. The decisions of the Management Board concerning fund raising on the capital market via borrowing or capital increase shall also be binding for the vertically integrated undertaking – Art. 27, item 3 of the Statute and Art. 81g, para 3 of EA.

**Considering the above, EWRC confirms that the independence requirements have been met with regard to decision making by the independent transmission operator regardless of the vertically integrated undertaking with respect to the assets necessary for the operation, maintenance or development of the transmission network, as well as the powers to propose to the general meeting binding decisions on fund raising on the capital market via borrowing or capital increase, without prejudice to the decisions of the supervisory authority under Art. 81f, para 1, namely the decisions which could substantially impact the value of assets of the transmission system operator, including the decisions on the annual financial plans approval, the level of indebtedness of the transmission system operator and binding decisions for the general meeting of the operator on the size of dividends distributed to shareholders.**

**10. The provision of Art. 81g, para 5 of EA, namely the prohibition to supply services to ITO by other parts of the VIU performing activities of natural gas supply or production, was found implemented. This was proved after examination of the following documents and information:**

Bulgartransgaz EAD has provided evidence that the operator does not receive services from other parts of the vertically integrated undertaking performing the activities of natural gas supply and production (declarations from the company representatives, internal rules, Statute, etc.) pursuant to the requirement of Art. 98, para 2, item 15 and item 16 of OLAE:

Appendix 69 - a Declaration by the Executive Director stating that the operator does not receive services from any other part of the vertically integrated undertaking performing the activities of natural gas supply or production;

Appendix 70 – Information on all contracts and agreements concluded between Bulgartransgaz EAD and BEH EAD and between Bulgartransgaz EAD and Bulgargaz EAD, valid as of 14.04.2014. Concerning the implementation of the provisions of Art. 81g, para 5 of the EA, in letter outgoing ref. E-15-45-13/17.04.2014, Bulgartransgaz EAD indicated that the internal rules of the company do not provide for exceptions to this provision of the law and the stipulated prohibition.

Appendix 71 - Report № 93-01-377/21.03.2014 of the working group to the Executive Director of Bulgartransgaz EAD;

Appendix 72 - Report № 924-00-1128/21.03.2014 of the Bulgartransgaz EAD Executive Director to Bulgartransgaz EAD Management Board;

Appendix 73 - Opinion of the compliance officer of 21.03.2014;

Appendix 74 – A copy of extract from Protocol № 36/21.03.2014 of a meeting of Bulgartransgaz EAD Management Board.

After examining the information enclosed by the transmission system operator regarding the effective contracts and agreements concluded between Bulgartransgaz EAD, BEH EAD and Bulgargaz EAD the following has been ascertained:

Bulgartransgaz EAD does not receive services from the vertically integrated undertaking within the meaning of EA and Directive 2009/73/EC and does not provide services to the VIU.

The Company has not received and does not receive services from the other parts of the vertically integrated undertaking - Bulgargaz EAD. Regarding supplies - the purchase of goods, including natural gas needed by Bulgartransgaz EAD to implement its activities, the transmission system operator shall conduct transparent and market based procedures pursuant to the legislation in that field and EA. For example, following a public procurement with call for tenders, Bulgartransgaz EAD has concluded a contract for natural gas supply (№ 1625/21.03.2014) needed for transmission and storage technological needs. The procedure complies with the requirements of Art. 186, para 2 of EA, under which the transmission system operator shall procure the energy it uses to implement its activities under transparent, non-discriminatory and market based procedures. In compliance with this requirement, Bulgartransgaz EAD has published on its website a call to all interested parties to tender for natural gas supply, which contains the terms of supply, the requirements towards the participants and the draft contract, available on the company website in Section News/Archive. Within the specified term one offer, from Bulgargaz EAD, was received and examined in accordance with the preliminary announced terms and conditions. The tender of Bulgargaz EAD was ranked and the officials who have conducted the procedure offered to conclude a natural gas supply contract for technological needs with Bulgargaz EAD. By Decision of Protocol № 36/21.03.2014, Bulgartransgaz EAD Management Board has approved the ranking and instructed the Executive Director to conclude a supply contract with Bulgargaz EAD.

It should be noted that this procedure was conducted for the second time with subject - technological needs gas supply for 2014, as when the first procedure was announced in November 2013, no tenders have been received, so it was terminated and re-announced.

**Having regard to the above, the Commission considers it as been found that the ITO has not been provided with services by the VIU and other parts thereof and the natural gas supply for technological needs is in compliance with the effective legislation, in particular EA.**

**11. EWRC confirms that the requirements of Art. 81g, para 6 and para 7 of the EA (Art. 17, para 1 b, c of Directive 2009/73/EC) have been met, namely the independent transmission operator can provide services to the vertically integrated undertaking, provided that the provision of these services: does not discriminate the various system users; is available to all network users under the same terms and conditions; does not limit, distort or prevent competition in production or supply, and that EWRC should approve the terms and conditions for provision of the services.**

Following an analysis of the documents enclosed by the company (Appendix 75 - a copy of Decision of Bulgartransgaz EAD Management Board under item 1.2 of Protocol № 05/11.04.2013, approving Rules on the provision of services by the independent transmission operator to a vertically integrated undertaking and its parts, developed in compliance with Art. 81g, para 6 of EA; Appendix 76 - Rules on the provision of services by the independent transmission operator to the vertically integrated undertaking and its parts, developed in compliance with Art. 81g, para 6 of EA and the above mentioned Appendix 70 - Information on all contracts and agreements concluded between Bulgartransgaz EAD and BEH EAD, and between Bulgartransgaz EAD and Bulgargaz EAD), the following facts have been ascertained:

The Rules on the provision of services by the independent transmission operator to a vertically integrated undertaking, submitted by Bulgartransgaz EAD pursuant to Art. 81g, para 6 of EA, govern solely this legal option, i.e. the option of services provision by the independent transmission operator (ITO) to the VIU (except for those listed in item 1.3. of the Rules, namely: the regulated

services under the EA and the by-laws thereto; the services provided to the VIU in compliance with the Emergency Plan; other explicitly specified services which the ITO and VIU are not allowed to provide to each other). This is in accordance with Art. 81g, para 7 of EA, EWRC to approve the terms and conditions of providing the services under para 6.

Pursuant to item 1.4 of the provided by Bulgartransgaz EAD Rules on the provision of services by the independent transmission operator to a vertically integrated undertaking, these rules shall not apply to provision of services related to natural gas supply contracts for technological needs, in the event that these contracts are concluded at regulated prices, approved by EWRC or provided these contracts have been concluded at statutorily formed prices. In this regard, the conclusions set out in item 10 of the decision should be taken into account.

The statement enclosed describes contracts for services provided by Bulgartransgaz EAD to Bulgargaz EAD at regulated prices, namely Contracts № 1363/30.04.2013, № 1565/30.12.2013 and №1566/30.12.2013.

It is clear that Bulgartransgaz EAD does not provide services to Bulgargaz EAD at non-regulated prices. In strict compliance with the requirements of the Energy Act and of the Compliance program terms and conditions, the contracts and agreements concluded with Bulgargaz EAD and the contracts and agreements for provision of services by Bulgartransgaz EAD are at regulated prices and in compliance with the Emergency Plan approved by the Ministry of Economy, Energy and Tourism, currently the Ministry of Energy.

The Preventive Action Plan and the Emergency Plan adopted in compliance with the requirements of Regulation (EC) 994/2010 concerning measures to safeguard security of gas supply, by Orders ПД-16-1662/30.11.2012 and ПД -16-1663/30.11.2012 of the Minister of Economy, Energy and Tourism, do not govern the provision of services by Bulgartransgaz EAD to the vertically integrated undertaking.

Item 4.1. of the Emergency Plan provides for Bulgartransgaz EAD obligation to ensure storage capacity in the gas storage of 250 mcm cubic meters natural gas in total and these quantities shall be used solely for the purposes of the Plan - security of supply and covering the seasonal fluctuation in natural gas consumption. The costs for providing that capacity are calculated in the price for natural gas transmission approved by EWRC, thus being paid by all transmission network users. Under the same provision of the Emergency Plan, the public provider Bulgargaz EAD shall be in charge of providing at its own expense and maintaining these natural gas quantities in the gas storage. There is no information about any other relations between Bulgartransgaz EAD and Bulgargaz EAD with respect to implementation of the Emergency Plan, as well as implementation of the Preventive Action Plan.

Regarding the loan contract concluded with BEH EAD, where the loan was provided by Bulgartransgaz EAD to the VIU, EWRC agrees that the relations between the ITO and the VIU in this connection do not constitute service provision, but are relations under Art. 81i, para 3 of EA - commercial and financial relations, and as such have been referred to in item 13 of this decision concerning the verification of independence requirements compliance in relation to this particular criterion.

**Having regard to the above, EWRC assumes that the ITO does not provide services to the VIU or other parts thereof, apart from those regulated by the national regulatory authority and in strict compliance with the requirements of EA.**



**12. The transmission system operator has ensured compliance with the requirements of Art. 81g, para 8 of EA (Art. 16 of Directive 2009/73/EC), namely the independent transmission operator shall not disclose any information, that is a trade secret, to the other parts of the integrated undertaking, unless it is necessary for conclusion of a business transaction. In the event of purchase or sale transactions from related companies, the operators cannot misuse information - trade secrets acquired from third parties when providing or negotiating access to the system.**

This circumstance has been proved by the enclosed Order № БТГ-92-04-61/24.04.2014 of Bulgartransgaz EAD Executive Director (Appendix 77), issued pursuant to Art. 32, para 2 and para 3 of the company Statute and in line with the Compliance program, to ensure that discriminatory conduct by the ITO is excluded and the specific employees obligations to achieve this objective are listed and which Order is in conjunction with Art. 81g, para 8 of EA and under the requirements of Art. 16 of Directive 2009/73/EC.

The same Order has been used to qualify certain information as “trade secret” of Bulgartransgaz EAD regarding the VIU and parts thereof, and the terms and procedure of providing information in the respective cases.

As evidence in this regard, EWRC has admitted the compliance officer reports (the last quarterly report for the period 01.10.2014 – 31.12.2014 and annual report on the implementation of Bulgartransgaz EAD Compliance program) (Appendices 78 and 79), where in accordance with the obligation under Art. 81k, para 3, item 7, the Compliance officer has certified that Bulgartransgaz EAD complies with the requirements of Art. 81g, para 8 of the EA and Art. 16 of Directive 2009/73/EC, which qualifies the “trade secret” information and imposes protective measures against its unauthorized provision.

**13. Pursuant to Art. 81h of EA, the vertically integrated undertaking shall not perform actions impeding or prejudicing Bulgartransgaz EAD in implementing its obligations under EA and respectively Bulgartransgaz EAD shall not ask permission from the vertically integrated undertaking to implement its obligations under Section II, Chapter eight "a" of EA. This requirement was incorporated in Art. 20, para 3 of the company Statute.**

In accordance with Art. 81f, para 1 of EA, the vertically integrated undertaking shall in due time provide the independent transmission operator with sufficient financial resources for future investment projects and/or replacement of existing assets upon a reasonable and cost effective request by the operator, without prejudice to the decisions of the supervisory authority. EA and Bulgartransgaz EAD Statute include provisions that ensure the independence of the transmission operator from the vertically integrated undertaking with respect to the gas transmission network development, investment plans and scheduled repair activities approval.

The vertically integrated undertaking shall not directly or indirectly determine the competitive behaviour of the operator with regard to its ongoing operations and the network management, or the activities, necessary for preparation of the Ten-year network development plan (Art. 81i, para 2 of the EA).

Scheduled investments, including network development plans are set out in the corporate Business Plan, developed for a period of five years. The Business plan covers in detail the investment and maintenance program of the company with the respective forecast structure, amount of the costs broken in years and a detailed rationale of the size, method of funding and terms of all investments

planned. The Business plan includes also a rationale for the necessity of implementing each investment provided therein.

Pursuant to Bulgartransgaz EAD Statute, the decisions related to network management and preparation of the corporate business plan fall also within the Management Board competence.

The Supervisory Board shall decide on issues related to the Business plan approval at the proposal of the Management Board, however only within its competence under Art. 81f, para 1 of the EA and shall have no powers to decide on issues involving the assets, required for the transmission network operation, maintenance or development.

**EWRC confirms the requirement compliance of Art. 81i, para 3 of the EA (Art. 18, item 6 of Directive 2009/73/EC), namely, all commercial and financial relations between the vertically integrated undertaking and the independent transmission operator, including loans from the operator to the vertically integrated undertaking, shall be implemented under market conditions. In this regard and in compliance with Art. 81i, para 4 of the EA, Bulgartransgaz EAD has submitted for approval to EWRC all commercial and financial agreements with the vertically integrated undertaking.**

The following documents have been submitted to the Commission:

- a letter incoming ref. E-15-45-18/22.05.2013 from Bulgartransgaz EAD with an approval request of a loan contract at the amount of 100 000 000 (one hundred million) BGN or its equivalence in EUR (51 129 188, 12 EUR) for a period of 1 (one) year, concluded between the independent gas transmission operator Bulgartransgaz EAD in its capacity as a lender and the vertically integrated undertaking Bulgarian Energy Holding EAD in its capacity as a borrower.

By Decision under item 1 of Protocol No.154/28.10.2013, EWRC has approved the loan contract conclusion at the amount of 100 000 thousands BGN between Bulgartransgaz EAD and Bulgarian Energy Holding EAD. Some of the main grounds for approval are that Bulgartransgaz EAD is in possession of the required financial resources to grant the credit and the requested loan shall not impede the company execution of its investment projects laid down in the Ten-year network development plan and the transaction was made under market conditions and shall not affect the market development conditions. In order to assess the impact of the loan on Bulgartransgaz EAD activities with respect to implementation of investment projects and/or replacement of existing assets, a committee was set up by Order № БТГ 92-04-80/16.05.2013 of the Executive Director. The amount of the loan was set on the basis of prepared and approved market evaluation under Ordinance № H-9 of 14.08.2006 on the procedure of applying the market prices setting methods, done by an independent licensed appraiser. The transaction was carried out in accordance with the Rules for commercial and financial relations between the independent transmission operator and the vertically integrated undertaking.

Following EWRC decision, Contract № 1511/07.11.2013 has been concluded, under which Bulgartransgaz EAD granted BEH EAD a loan to the amount of 51 129 188,12 EUR at an interest rate of the loan annual EURIBOR plus 2.55 % per year.

Pursuant to item 4.4. of the Contract, the loan has been securitised by transferring the credit risk by means of security on future receivables - the dividend due by the lender to the borrower for implementation of the state budget of the Republic of Bulgaria for 2014.

- a letter incoming ref. E-15-45-2/04.03.2014 from Bulgartransgaz EAD with a request for approval of the proposed by BEH EAD amendment of loan Contract № 1511/07.11.2013 concluded between Bulgartransgaz EAD in its capacity as a lender and BEH EAD in its capacity as a borrower.

By a decision as item 1 of Protocol № 81/05.06.2014, EWRC has approved an addendum to the above contract, under which a grace period of 8 /eight/ months was established for principal payment, according to an updated repayment schedule and the interest rate on the loan increased to annual EURIBOR /as of 07.11.2013/ plus 2.65% per annum. The principal of the loan granted to the amount of the lender's liability for dividend is to become payable as the amount of the lender's liability for the dividend shall be deducted from the respective part of the principal of the loan granted to the borrower, thus meeting the requirement for securitization of the loan. Following an analysis, EWRC has assumed that Bulgartransgaz EAD is able to meet its obligations arising from the Energy Act and considering the provided justification, written statements by independent appraiser and the Compliance officer, as well as based on the good financial health of the company, the proposed amendment of clauses of loan Contract № 1511/07.11.2013, will not prevent the transmission system operator from performing its basic legal obligations related to network operation, maintenance and transmission, from implementing its investment projects laid down in the TYNDP and shall not affect the market development conditions.

The loan was fully repaid as of November 2014, i.e. the term of Contract No.1511 of 07.11.2013 and the Additional Agreement No.1 of 24.07.2014 has expired and the funds have been fully repaid by BEH EAD, including the accrued interests, as can be seen in the information supplied by Bulgartransgaz EAD.

- An Application incoming ref. E-3JIP-P-54 of 24.10.2014 from Bulgartransgaz EAD for approval of a loan contract conclusion, to the amount of 50,000,000 (fifty million) BGN for 1 (one) year period between Bulgartransgaz EAD, in its capacity as a lender and Bulgarian Energy Holding EAD, in its capacity as a borrower.

By a Decision under item 1 of Protocol No 144 of 31.10.2014, EWRC has approved the conclusion of a loan contract up to 50 000 thousand BGN between the two companies, under the parameters described in the submitted draft contract: loan interest rate - 4.25% per annum on the amount of the utilised principal, upon utilisation of tranches until reaching the limit and repayment of the principal - only once at the end of the loan period. The requirement for loan securitisation has been fulfilled and the contract stipulates that in case of an obligation arising for the lender to repay their liabilities to the borrower for the dividend due, the principal of the loan granted to the amount of the liability of the lender for the dividend shall become due and the amount of the liability of the lender for the dividend shall be deducted from the respective part of the principal of the loan granted to the borrower. The expected dividend for 2014 according to the company Business program and the current interim reports during the year, amounts to 40,805 thousand BGN, indicating that the loan is to a large extent securitised.

The draft contract provides for a safeguard mechanism based on which loan granting will not prevent the transmission operator from performing its duties, namely: "If financial resources are needed for the lender's Business program implementation, within the term of the contract, by an unilateral written notice, the lender may require the borrower to early repay, within 3 (three) days of the notice date, the entire utilised principal on the loan granted, together with the agreed interest. Upon receipt of the notice by the borrower under this Article, the entire utilised principal on the loan granted, together with the agreed interest, shall become due."

The draft contract includes another clause to safeguard the company interests, according to which “The Parties shall agree that upon conclusion of a contract for external funding by the lender for a period of up to 3 years and interest rate higher than the interest under Art. 1.1., item 1, the last one shall be changed to the amount corresponding to the interest of the contract of external funding of the lender and BEH EAD shall owe Bulgartransgaz EAD a recovery of the additional fees under the contract for external funding within a month of their payment by the lender.”

Considering the market assessment of 10.10.2014 done by the licensed appraiser Engineering service - Sofia OOD, under Ordinance No H-9 of 14 Aug 2006, a well-grounded conclusion can be made that the proposed interest rate of 4.25% for the transaction meets the market conditions and the conclusion of such a contract is economically appropriate for Bulgartransgaz EAD, expecting that the loan contract will have no negative impact on its main activities.

Pursuant to the provision of Art. 81i, para 3 of the EA, respectively Art. 18, para 6 of Directive 2009/73/EC, all commercial and financial relations between the vertically integrated undertaking (VIU) and the independent transmission operator (ITO), including loans provided by the ITO to the VIU, shall comply with market conditions. As the quoted texts of the EA and the Directive show, under certain restrictive conditions, the regulations shall allow loans’ granting to the vertically integrated undertaking by the operator.

Considering the above, EWRC has agreed that loan contract conclusion will be executed under market conditions and loan granting for the purposes specified by BEH EAD, namely implementation of investment activities inherent to the VIU, would not adversely affect gas market competition, market development conditions and would not cause discrimination against one or another market participant. Based on the reasoned statement provided by Bulgartransgaz EAD, the enclosed written materials by an independent appraiser and considering the company financial standing, the conclusion of the loan contract between Bulgartransgaz EAD as a lender and BEH EAD as a borrower will not prevent the gas transmission system operator from performing its basic legal obligations of network operation, maintenance and transmission, its investment projects implementation laid down in the TYNDP and would not adversely affect the market development conditions.

As it can be seen in the information additionally supplied by Bulgartransgaz EAD with letter incoming ref. E-04-11-2 of 19.05.2015, only part of the amount under Loan Agreement No.1804 of 07.11.2014 has been used in the size of BGN 26 000 thousand, the Agreement being strictly complied with, including the payment of the relevant interest based on the used principal.

No other Loan Agreements between Bulgartransgaz EAD and the VIU are available.

- a letter incoming ref. E-15-45-21/28.06.2013 from Bulgartransgaz EAD with a request for approval of the purchase of off-balance stock and commercial valuables located in Training and Recreation Centre Republika, by direct negotiation between Bulgartransgaz EAD and BEH EAD.

By Decision under item 12 of Protocol No.154/28.10.2013, EWRC has approved a contract conclusion for purchase and sale of movable assets to the amount of 126 726,89 BGN between Bulgartransgaz EAD and BEH EAD. As an argument supporting the Decision, it was pointed out that Bulgartransgaz EAD is in possession of the required financial resources to purchase the off-balance stock and commercial valuables and that the purchase will not impede the company to implement its investment projects laid down in the TYNDP and shall not affect the market development conditions.

The purchase of off-balance stock and commercial valuables located in the Centre was performed by direct negotiation between Bulgartransgaz EAD as owner of Training and Recreation Centre Republika and BEH EAD, at a price consistent with the market assessment prepared by a licensed appraiser ASA Consult EOOD, Plovdiv.

As to accommodation in Training and Recreation Centre Republika, it was found that the adopted and approved Rules of procedure for using Training and Recreation Centre Republika, the Centre can be used by both Bulgartransgaz EAD employees and their related persons and external parties. "Bulgartransgaz EAD workers and employees and their related persons" shall mean: company workers and employees and their family members (husband/wife and children) or their partners, including children in cohabitation; retired company workers and employees and their husband/wife or partner; close relatives of company workers and employees.

External parties shall be any other third parties, including workers and employees of the vertically integrated undertaking or any other part thereof, who can use the Training and Recreation Centre, provided it is not occupied by Bulgartransgaz EAD workers and employees and their related persons, at higher prices.

Therefore, the Training and Recreation facilities are used primarily by Bulgartransgaz EAD employees and their relationship, and in case of vacant rooms, they could be offered to external parties under equal market conditions, in an open and transparent way, and the conditions and prices for external parties, including employee of the vertically integrated undertaking or its other parts, are publicly available on the website of the gas transmission network operator.

**Having regard to the above and the observations of the European Commission in its opinion C(2015) 2754 final of 22.04.2015 to the notified draft Decision of 20.02.2015, EWRC has instructed Bulgartransgaz EAD not to increase the amount lent by the independent transmission operator to the vertically integrated undertaking, whereas it is advisable for VIU to raise its capital on the market.**

**14. EWRC has acknowledged compliance of the Compliance program submitted and approved by Bulgartransgaz EAD Management Board and Supervisory Board and its implementation under the requirements of Art. 81k of the EA (Art. 21 of Directive 2009/73/EC).**

Requirements compliance is proved by examination of the following documents, submitted in accordance with Art. 98, para 2, item 18 of OLAE:

Appendix 80 - Compliance program, in order to ensure that discriminatory conduct by the independent transmission system operator is excluded and to set specific obligations of the employees to achieve that objective;

Appendix 81 – Decision under item 2.1 of Protocol № 04/05.04.2014 from a Bulgartransgaz EAD Management Board meeting;

Appendix 82 – Decision under item 2. 1. of Protocol № 3/10.04.2013 from a Bulgartransgaz EAD Supervisory Board meeting;

Appendix 83 - Compliance officer Report regarding Compliance program № БТГ-24-00-1393/05.04.2013;

Appendix 84 - Report incoming ref. E-15-45-15/07.08.2013 of the Compliance officer to EWRC Chairman, as well as the aforementioned quarterly and annual reports on the Compliance program implementation.

In respect to the selected person - a Compliance officer, EWRC has carried out a study and took into consideration the documentary evidence provided by Bulgartransgaz EAD in accordance with Art. 81k, para 2 of the EA and Art. 98, para 2, items 19 and 20 of OLAE, as follows:

Appendix 85 - CV of the person selected as a Compliance officer;

Appendix 86 - a copy of Decision under item 11 of Protocol № 1/27.02.2013 from a meeting of Bulgartransgaz EAD Supervisory Board on the selection of a Compliance officer;

Appendix 87 - Declaration by Mrs. Elena Damyanova Gotseva - a Compliance officer to certify that she meets the requirements under Art. 81e, para 5 and 6 of EA and Bulgartransgaz EAD Statute.

Appendix 88 - copies of the Compliance officer contract and Bulgartransgaz EAD Statute.

After a review of the submitted by Bulgartransgaz EAD data and evidence on the compliance with the legal requirements concerning the person selected by the Supervisory Board as a Compliance officer and considering all his/her obligations and powers stipulated in EA and in accordance with Art. 21 of Directive 2009/73/EC and set out in the Compliance program, it has been found that the selected person Mrs. Elena Damyanova Gotseva meets the legal requirements and therefore EWRC has not objected her selection.

The company has developed and adopted and implements a Compliance program to ensure that discriminatory conduct by the independent transmission system operator shall be excluded and to set specific obligations of the employees to achieve that objective – Appendix enclosed to Application incoming ref. E-15-45-13/18.04.2013; the Program consists of the objectives set, Program action area, governance model applying in the transmission operator activity, requirements towards the relations with the vertically integrated undertaking and its parts, corporate identity, Rules on information provision and disclosure, commercially sensitive information, public information, binding rules for Bulgartransgaz EAD employees ensuring equal treatment and non-discrimination in performance of the obligations under the Energy Act, measures to exclude discriminatory conduct of the combined operator associated with the natural gas transmission and storage activities, training terms and conditions for employees to implement the Compliance program and employees informing about the Compliance Program. The Program also includes texts concerning the Compliance officer powers.

**The submitted Compliance program meets the legal requirements related to objectives, scope and content and it attributes the Compliance officer with the necessary legal powers, thus EWRC has assumed it should be approved.**

**In view of the above, the Energy and Water Regulatory Commission found out compliance of the applicant Bulgartransgaz EAD with the certification criteria under the Energy Act, transposed from Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and Art. 3 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks, having regard to and pursuant to Art. 21, para 1, item 27 and para 3, item 8, Art. 81a, para 1, 2 and 3, Art. 81k, para 1 and para 2 of the Energy Act, in conjunction with § 192 of the Transitional and Final Provisions of the Energy Act, and pursuant to Art. 98, para 1 and para 2, Art. 102, para 1 and para 2 of Ordinance No 3 of 21.03.2013 on licensing of the activities in the energy sector,**

**THE ENERGY AND WATER REGULATORY COMMISSION**

**HAS DECIDED TO:**

**I. 1. Certify Bulgartransgaz EAD as an Independent Transmission Operator, UIC 175203478, having its seat and registered address at: Republic of Bulgaria, city of Sofia 1336, Sofia district (capital); Sofia Municipality, Lyulin region, residential area Lyulin – 2, 66 Pancho Vladigerov Blvd.**

**2. Approve 2013-2022 Ten-year Networks Development Plan and the updated 2014-2023 Ten-year Networks Development Plan.**

**3. Approve Rules on the provision of services by the independent transmission operator to the vertically integrated undertaking.**

**4. Approve Bulgartransgaz EAD Compliance program.**

**5. Approve the appointment of Mrs. Elena Gotseva as a Compliance officer.**

**II. The Decision shall be notified to the European Commission and shall be published in Official Journal of the European Union, together with the European Commission Opinion.**

**The Decision is subject to appeal within 14 days before Sofia City Administrative Court.**

**CHAIRMAN:**

**Assoc. Prof. IVAN N. IVANOV, PhD**

**SECRETARY GENERAL:**

**NIKOLAY GEORGIEV**