

To: **Bucharest Stock Exchange  
Financial Supervisory Authority**

Current report according to Article 99 of the Code of the Bucharest Stock Exchange, Title II, Issuers and Financial Instruments.

**Important events to be reported:**

## **Update on the regulatory developments with respect to the endorsement of the Resolutions approved by Fondul Proprietatea's Shareholders on 25 April 2013 regarding the amendment of the Fund's Constitutive Act and the Investment Management Agreement**

Franklin Templeton Investment Management Ltd. United Kingdom Bucharest Branch ("the Fund Manager"), in its capacity as sole administrator and fund manager of Fondul Proprietatea SA ("the Fund"), would like to inform shareholders that on 21 March 2014 it has received the Financial Supervisory Authority's ("FSA") Notice no. 80/19.03.2014 (enclosed herein) whereby FSA revoked its initial Notices no. 28 and 29 of 12 August 2013 (through which it has rejected most of the amendments approved on April 2013 by the Fund's shareholders to the Constitutive Act and the Addendum no. 3 to the Investment Management Agreement).

Following the revocation of the said Notices, FSA is expected to issue new decisions on the amendments to the Constitutive Act and the Addendum no. 3 to the Investment Management Agreement.

The Fund Manager will continue to update shareholders and investors of further material developments.

**Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, in its capacity of Sole Administrator of FONDUL PROPRIETATEA S.A.**

**Legal Representative  
Oana Valentina Truta**

**Report date:**

24 March 2014

**Name of the issuing entity:**

Fondul Proprietatea S.A.

**Registered office:**

78-80 Buzesti St.,  
7<sup>th</sup> floor, district 1,  
Bucharest, postal code 011017

**Phone/fax number:**

Tel.: + 40 21 200 9600

Fax: + 40 21 200 9631

**Sole Registration Code with the**

**Trade Register Office:**

18253260

**Order number in the**

**Trade Register:**

J40/21901/2005

**Subscribed share capital:**

RON 13,538,087,407

**Paid share capital:**

RON 13,172,832,785

**Regulated market on which the  
issued securities are traded:**

Bucharest Stock Exchange

**ROMANIA  
FINANCIAL SUPERVISORY AUTHORITY (FSA)**

**FINANCIAL INSTRUMENTS AND INVESTMENTS SECTOR (FIIS)**

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**COMPLAINTS AND INVESTORS PROTECTION DIRECTORATE  
COMPLAINTS AND NOTIFICATIONS OFFICE**

*Stamp of the Financial Supervisory Authority  
Outgoing number SI/OCI/155.2  
March 20<sup>th</sup>, 2014*

*Stamp of the SC Fondul Proprietatea SA  
Incoming no. 609  
March 21<sup>st</sup>, 2014*

*To,*  
**S.C. FONDUL PROPRIETATEA S.A.**  
Bucharest, 78-80 Buzesti Street, 7<sup>th</sup>  
floor, district 1, CP 011017

*To the attention of Ms. Oana Valentina TRUȚĂ – permanent representative of F. T.I.M.LU.K.  
– Sole Director of S. C. Fondul Proprietatea S.A.*

Following your notice registered by FSA under number B-74523/December 16<sup>th</sup>, 2013, please find attached the original counterpart of FSA Decision no. 80 / March 19<sup>th</sup>, 2014 regarding the settlement of the preliminary complaint filed against FSA Approvals no. 28-29/August 12<sup>th</sup>, 2013.

*Sincerely yours,*

**Oana STEFĂNOIU**  
**Head of Department**  
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*Stamp of the Head of Department of the FSA*

**DECISION NO. 80 / MARCH 19<sup>th</sup>, 2014**

on admitting the preliminary complaint filed by Fondul Proprietatea S.A. against FSA Approvals no. 28-29/August 12<sup>th</sup>, 2013, appendices included

The Financial Supervisory Authority (FSA), with office in 15 Splaiul Independentei, district 5, Bucharest, tax code 31588130, duly represented by its Chairman, under the provisions of art. 1 par. (1) and (2), art. 2 par. (1) letter a) and d) art. 6 par. (1) and (3), art. 7 par. (2) and art. 13 of Government Emergency Ordinance no. 93/2012 on the organization and operation of the Financial Supervisory Authority, approved as amended and supplemented by Law no. 113/2013, as further amended and supplemented, and under the provisions of art. 7 par. (1) of Contentious Administrative Law no. 554/2004, as further amended and supplemented,

The preliminary complaint filed by Fondul Proprietatea S.A. against FSA Approvals no. 28-29/August 12<sup>th</sup>, 2013, appendices included was reviewed.

Following the reviews the following was found:

By the notice registered with FSA-FIIS (Financial Supervisory Authority - Financial Instruments and Investments Sector) under no. A-18557/December 18<sup>th</sup>, 2013, Fondul Proprietatea S.A., by means of its legal representative, filed a preliminary complaint against FSA Approvals no. 28-29/August 12<sup>th</sup>, appendices included.

The preliminary complaint filed by Fondul Proprietatea S.A. includes two separate requests, namely:

- 1. the revoking of FSA Approvals no. 28-29/August 12<sup>th</sup>, 2013 from the perspective of their appendices;**
- 2. the issuance of approvals regarding all the amendments of the Memorandum of Incorporation of Fondul Proprietatea S.A., as approved by Resolutions no. 1-7 and no. 11-13/April 25<sup>th</sup>, 2013 of the Extraordinary General Shareholders' Meeting (EGSM), as well as regarding Addendum no. 3 to the administration agreement concluded on February 25<sup>th</sup>, 2010 between Fondul Proprietatea S.A. and Franklin Templeton Investment Management Limited UK - Bucharest Branch (FTIML), as approved under Resolution no. 3/April 25<sup>th</sup>, 2013 of the Annual General Shareholders' Meeting (AGSM).**

In fact,

1. The following was ordered by **FSA Approval no. 28/August 12<sup>th</sup>, 2013**:

*“Art. 1. The amendments of the Memorandum of Incorporation of S.C. Fondul Proprietatea S.A. are approved in compliance with the resolutions of the EGSM of April 25<sup>th</sup>, 2013, with the amendments provided for by the appendix, which is an integral part of this approval, as well as with the exception of the amendment set out in art. 7 par. (1) of the Memorandum of Incorporation.*

*Art. 2. FSA shall approve the amendment set out in art. 7 par. (1) of the Memorandum of Incorporation after the expiry of the term provided for by art. 208 par. (1) of Law no. 31/1990 on trading companies, republished, as further amended and supplemented.*

*Art. 3. S.C. Fondul Proprietatea S.A. is bound to subject to the approval of the following EGSM the Memorandum of Incorporation amended according to the appendix to this approval.”*

2. The following was ordered by **FSA Approval no. 29/August 12<sup>th</sup>, 2013:**

*“Art. 1 The amendments of the Administration Agreement concluded on February 25<sup>th</sup>, 2010 between S.C. Fondul Proprietatea S.A. and Franklin Templeton Investment Management LTD United Kingdom – Bucharest Branch are approved in compliance with Addendum no. 3/May 17<sup>th</sup>, 2013 concluded between the two parties, under Resolution no. 3/April 25<sup>th</sup>, 2013 of the AGSM, with the amendments provided for by the appendix, which is an integral part of this approval.*

*Art. 2. S. C. Fondul Proprietatea S.A. is bound to subject to the approval of the following AGSM Addendum no. 3/May 17<sup>th</sup>, 2013 according to the appendix to this approval.”*

Under resolution no. 60/November 5<sup>th</sup>, 2013 of the Parliament of Romania, published in the Official Journal of Romania, Part I, no. 680 of November 5<sup>th</sup>, 2013.

Following the review performed by the specialized directorate of FSA and the resolution adopted in the meeting of the FSA Council of March 17<sup>th</sup>, 2014,

**The Council of the Financial Supervisory Authority** has decided the issuance of the following individual instrument:

### **DECISION**

**Art. 1.** We hereby admit the preliminary complaint filed by Fondul Proprietatea S.A. against FSA Approvals no. 28/August 12<sup>th</sup>, 2013 and no. 29/August 12<sup>th</sup>, 2013, for the reasons provided for by the Appendix which is an integral part hereof.

**Art. 2.** We hereby revoke FSA Approvals no. 28/August 12<sup>th</sup>, 2013 and no. 29/August 12<sup>th</sup>, 2013.

**Art. 3.** This decision shall be enforced as of its communication to Fondul Proprietatea S.A. and if the claimant cannot be contacted, this decision shall be enforced on the date of its publication in the FSA Bulletin – in electronic format.

**Art. 4.** The specialized directorates of the Financial Instruments and Investments Sector shall be in charge with the communication of this decision and its publication in the FSA Bulletin

**Daniel DAIANU**  
**SENIOR VICE-CHAIRMAN**  
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*Stamp of the Council of the FSA*

**Following the review performed by the specialized directorate of the FSA, the FSA Council has found the following:**

The argumentation presented by the claimant for supporting the preliminary complaint it has filed includes two theses which can be structured as follows:

**A. The illegality of supplementing Approvals no. 28-29/August 12<sup>th</sup>, 2013 by Decision no. 997/November 6<sup>th</sup>, 2013**

The claimant invokes the illegality of the supplementation of Approvals no. 28-29/August 12<sup>th</sup>, 2013 by Decision no. 997/November 6<sup>th</sup>, 2013, arguing that FSA is not a competent body which can admit in part and replace (supplement, as claimed) an illegally issued individual administrative instrument.

Thus, the claimant believes that FSA has practically unduly taken on the role of a competent body supplementing, by a non-procedural artifice, the disputed approvals.

Referring to the justification of the Approvals, deemed as illegally included by Decision no. 997/November 6<sup>th</sup>, 2013, the claimant made the following notes:

Although it invokes the protection of the interests of the investors, the authority subrogates the decisions of the shareholders, although no violated legal obligations exist, but only grounds of expediency, with respect to which FSA has no authority.

An FSA Approval is required in case of the amendment of the documents submitted for registration purposes, according to art. 228 par. (3) of Regulation no. 15/2004, and they cannot be amended by the authority in an arbitrary manner only under grounds of expediency, such an attitude being also incompatible with and the principles of the capital market.

Art. 12 par. (1) and (2) of Law no. 247/2005 is also invoked incorrectly claiming that it is currently applicable in the sense that the Government is the one authorized to organize the tender for the appointment of the administrator of the Fund and not the Board of Nominees, as decided by the shareholders of the company. The legal regulation being enounced by taking into account the existence and need to regulate certain social relations, the disappearance of such circumstances entails the of the caducity respective legal regulation.

Therefore, the authority of the Government regarding the organization of the tender for the appointment of the Investment management company. related to the period when Fondul Proprietatea was set up – when the Romanian State was the majority stakeholder of the newly incorporated company. Currently, the invoked text has ceased to be effective following the organization of the tender and the conclusion of the administration agreement with Franklin Templeton Investment Management Limited.

**B. FSA Approvals no. 28-29/August 12<sup>th</sup>, 2013 are illegal as they affect the prerogatives of the shareholders regarding the exercise of their right upon the shares held in Fondul Proprietatea S.A.**

The claimant claims that the amendments subject to approval were censured directly by means of the two appendices which, on the one hand, include amendments different than those adopted by the shareholders of Fondul Proprietatea S.A. in the A.G.O.A/A.G.EA, and, on the other hand, ignore a part of the proposed amendments, the authority insisting for the former content to be maintained.

Under these conditions, the appendices to the disputed Approvals impose limitations of the ownership of the shareholders of Fondul Proprietatea regarding the owned shares, which deprive of effect the resolutions taken by them within the General Shareholders' Meetings, contrary to the provisions of art. 44 par. (1) and art. 136 par. (5) of the Romanian Constitution which sets out the protection of the ownership and the state's obligation to guarantee the private property inviolability. The interference with the will of the shareholders also violates the fundamental principles set out in the European regulations provided for by the case law of the European courts, which prevails (the European

Convention on Human Rights, the case law of the ECHR and the CJEU and the Treaty on the functioning of the European Union - TFEU).

The FSA's approval issuance right is limited by the provisions of art 15 par. (3)<sup>1</sup> of Regulation no. 4/2010 of the National Securities Commission (NSC) and it comes under the fundamental objectives given under art. 2 of the NSC's bylaw; the supervisory authority has not reported any legal provision in force violated by the amendments, the disputed approvals contradicting the objective regarding trust promotion on the financial instruments markets and the related investments. FSA has overcome its general supervising powers, the approvals in question, with their appendices, being issued without any legal grounds, in a discretionary manner, on grounds of expediency.

By quoting the legal doctrine, the claimant states that the principle of legality must be complied with to avoid abuse of power; the administration cannot do everything that is not explicitly prohibited; it must do only what it is explicitly allowed to do. The public authorities must act in compliance with the proportionality principle, the underlying principle of the European law, while the interference with the fundamental rights of the shareholders is an extremely serious consequence of the administrative act which is not accounted for by and is not justified from the point of view of the purpose of the administrative action. It is therefore assumed that there may be situations where public officials can act by abusing their power, not necessarily in violation of prohibitive regulations, but by simply disregarding fundamental public law principles, constitutional provisions or by assigning an interpretation resulting from political beliefs.

Law no. 297/2004 sets out in art. 2 par. (5) a series of explicit powers of the FSA which might interfere with the scope of the management bodies of the companies subject to supervision, without the authority being entitled to replace them. Such powers must be treated as exceptions to the obligation of respecting the ownership of the shareholders, otherwise they turn into an abuse/ abuse of power/ authority of the institution. By invoking the Judgment of the Court of Appeal of Bucharest no. 393/March 7<sup>th</sup>, 2005, which validated the prerogative of the NSC to convene the General Shareholders' Meeting, by delimiting it from the prerogative of replacing the chairman of the Board of Directors – which is incumbent on the shareholders, the claimant believes that NSC has exceeded its powers and has abusively substituted its will for that of the management bodies of the company, by virtually imposing the text of the amendments subject to the approval of the authority.

In support of the filed preliminary complaint, Fondul Proprietatea S.A. also invokes the European case law in this field (rulings of the CJEU and ECHR), which has repeatedly sanctioned similar interferences of the state in the operation of certain private companies, the courts holding that the state's keeping of golden shares in the companies negatively affects the freedom of movement of capital. The claimant believes that the interference of an authority of the Romanian state in the exercise of the exclusive rights of the shareholders, in a situation in which the state has not maintained, even formally, a special right, represents a conduct which is manifestly contrary to the Treaty of accession and to the Treaty on the functioning of the European Union, adding that Romania has taken on the entire community acquis, therefore all the rules on the "freedom of movement of capital", a concept which, according to Council Directive no. 88/361/EEC on the implementation of article 67 of the Treaty, includes, in particular, direct investments in the form of participation in a company by share ownership and the possibility of effectively participating in its administration and control and also in portfolio investments.

The existence of special rights in favor of state may have a deterrent effect on foreign direct investment and portfolio investment, such interference being likely to be sanctioned by the ECHR under art. 1 of Protocol no. 1 to the Convention (on the protection of property ownership, term which also includes the actions and rights deriving from their ownership).

For these reasons, the claimant believes it is not admissible for the amendments approved by the Fund's shareholders by an overwhelming majority<sup>2</sup> to end up depending on the will of the Romanian

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<sup>1</sup>Art. 15 (3) NSC is entitled to request the amendment of the documents, if they contradict the provisions of this regulation and/or of the legal provisions in force, or to refuse the authorization of the amendments set out in art. 14 if the requirements set out herein are not complied with.

<sup>2</sup> According to the minutes of the EGSM of Fondul Proprietatea S.A., the General Shareholders' Meeting was statutory and duly convened upon the first

State, by means of the approval of the FSA – not being approved, therefore refused in a discretionary manner, without any legal grounds. The FSA can only exercise its powers within their legal limits and without discriminating against Fondul Proprietatea by reference to any other similar company, without being entitled to substitute its will for that of the shareholders.

For the purpose of the aforementioned aspects, the claimant shall make specific comments regarding the grounds included in the appendices to Decision no. 997/November 6<sup>th</sup>, 2013.

The preliminary complaint is well founded.

**A.** With respect to the claimant's claims regarding the illegality of the supplementation of Approvals no. 28-29/August 12<sup>th</sup>, 2013 by Decision no. 997/November 6<sup>th</sup>, 2013

With respect to the grounds invoked by the claimant regarding the illegality of the supplementation of Approvals FSA no. 28 and 29/August 12<sup>th</sup>, 2013 by FSA Decision no. 997/November 6<sup>th</sup>, 2013, we want to make the following clarifications:

By FSA Approval no. 28/August 12<sup>th</sup>, 2013 the approval of the amendments to the Memorandum of Incorporation of Fondul Proprietatea SA was ordered, according to the Resolutions of the Extraordinary General Shareholders' Meeting of April 25<sup>th</sup>, 2013, as amended by the appendix to this individual instrument and with the exception of the amendment set out in art. 7 par. (1) of the Memorandum of Incorporation.

In fact, this individual instrument approved only , two of the requested amendments, as approved by the shareholders of Fondul Proprietatea S.A. during the EGSM of April 25<sup>th</sup>, 2013.

With respect to the other proposed amendments, a part of them were rejected in full, with the maintenance of the current provisions of the Memorandum of Incorporation, while others were accepted subject to their approval during the following EGSM, taking into account the FSA's changes set out in the appendix.

Furthermore, the approval of the amendment of art. 7 par. (1) of the Memorandum of Incorporation, on the decrease of the share capital following the cancellation of the redeemed shares, was delayed in order to comply with the two months' term set out in art. 208 par. (1) of Companies Law no. 31/1990.

Similarly, by FSA Approval no. 29/August 12<sup>th</sup>, 2013 some of the changes of the terms of the addendum to the administration agreement concluded between the Fund and the sole director were rejected, with the maintenance of the provisions in force, some of them have been accepted as approved by the shareholders during the AGSM of April 25<sup>th</sup>, 2013, while the rest were to be subjected to approval during the following AGSM of Fondul Proprietatea S.A. in the form presented in the appendix to the individual instrument (with the amendments proposed by the FSA).

By the notice registered with the FSA-FIIS under no. A-11484/September 12<sup>th</sup>, 2013, Fondul Proprietatea SA, by means of its legal representative, filed a preliminary complaint against FSA Approvals no. 28-29/August 12<sup>th</sup>, 2013, requesting the partial revoking of these individual acts, with respect to the amendments imposed by the FSA in the accompanying appendices, with the issuance of approvals for all proposed amendments.

After analyzing these individual acts during the preliminary administrative procedure, it appeared that the only legal references are the ones on the establishment, composition, powers, competences and general prerogatives of the FSA, the type of administrative deeds which may be issued by the FSA and the maintenance of the validity of the ones previously issued by the authorities which were included in the structure of the current financial supervisory authority, as well as the basis on which the amendments to the administration agreement were voted with a majority of 99/79559% of the validly cast votes, the amendments of the Fund's Memorandum of Incorporation must be subjected

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call, on April 25<sup>th</sup>, 2013, 151 shareholders being present or represented, shareholders holding 5,201,111,990 shares, representing 38.78 % of the paid-up share capital, and 5,043,782,001 voting rights, representing 38.29 % of the total voting rights.

- according to Resolution no. 3 of the AGSM of Fondul Proprietatea S.A., the General Shareholders' Meeting was duly convened upon its first call, on April 25<sup>th</sup>, 2013, 190 shareholders being present or represented, shareholders holding 5,240,644,356 shares, representing 39.07% of all the paid-up shares and 5,083,314,367 of the voting rights, representing 38.59 % of all the voting rights.

to the prior approval of the FSA<sup>3</sup>.

It was therefore noticed that FSA Approvals no. 28 and 29/August 12<sup>th</sup>, 2013 had not been substantiated *de facto* and *de jure* in relation to the amendments approved during the General Shareholders' Meeting and rejected or reworded by the FSA. The exception was the delay of the approval of the amendment of the Memorandum of Incorporation by the decrease of the share capital, motivated *de facto* and *de jure* in the preamble of the individual instrument, a note being made with respect to its publication in the Official Journal of Romania of Resolutions no. 1-7/April 25<sup>th</sup>, 2013 of the EGSM of Fondul Proprietatea S.A. and the need to comply with the two months' term set out in art. 208 par. (1) of the Companies Law.

Consequently, FSA Decision no. 997/November 6<sup>th</sup>, 2013 admitted in part the initial preliminary complaint filed by Fondul Proprietatea S.A. against FSA Approvals no. 28 and no. 29/August 12<sup>th</sup>, 2013, for the purpose of the supplementation of the respective individual acts with the appendix motivating their issuance and the issuance of their related appendices<sup>4</sup>.

FSA Decision no. 997/November 6<sup>th</sup>, 2013 was issued by taking into account that the lack of motivation of individual administrative instruments deprive the concerned or interested person of the opportunity to argue objectively a potential preliminary complaint, as they do not know the arguments on which the administrative decision was based, in order to be able to effectively dispute them or accept them in an informed manner.

The regulation, by Law no. 554/2004, of the preliminary administrative procedure is fully justified, as it establishes a quicker way to restore the lawfulness, aimed at protecting the issuing public authority which, by repairing any potential errors made when issuing the act, can avoid being sued as defendant, bearing additional costs or the payment of even greater damages and even the injury of its prestige by losing a public trial.

Only after completing this step – a preliminary condition for the admissibility of the contentious administrative action – preliminary procedure with the authority that issued the act, the person in question, if they still feels dissatisfied with the received response or if the authority to which they address refuse to answer, may file and record an contentious administrative action with the court within the terms set out in art. 11 of the law.

In this legislative context, the administrative authority shall have the option, after reviewing the preliminary complaint, to reassess the considerations which have led to issuance of the disputed individual act, including its compliance with the applicable legal provisions (check the if the act was based on substantial evidence) and after such review to adopt an appropriate solution, i.e. the amendment or revoking, in full or in part, of the disputed acts and measures, as appropriate, and not only the full revoking of the administrative act.

### **B. Regarding the punctual claims of the claimant regarding the illegal grounding of the Approvals disputed exclusively on grounds of expediency**

Given the very purpose of the preliminary administrative procedure, the solution of the public authority must particularly take into account the legal regulations applicable for the issuance of the disputed administrative acts, and the grounds of expediency can be taken into account strictly within the legal framework, in the sense that the freedom of discretion awarded to the public<sup>5</sup> authority consists in its ability to choose among several ways to achieve the purpose intended by the legislator upon the enactment of the legal regulations.

Thus, as a general observation, which we think is applicable in this case, administrative acts are issued under the law and for its enforcement, which entails, on the one hand, their *de jure* grounding on

<sup>3</sup> Art. I par. (2), art. 2 par. (1) letter a) and letter d), art. 3 letter a), art. 6 par. (1) and (3) and art. 27 of Government Emergency Ordinance no. 93/2012, art. 14 of NSC Regulation no. 4/2010 and H.P.R. no. 54/June 18<sup>th</sup>, 2013.

<sup>4</sup> The appendices to NSC approvals no. 28-29/August 12<sup>th</sup>, 2013 have been structured as a list containing only the admitted amendments, this being the reason why it was believed that the argumentation of the individual acts was not necessary.

<sup>5</sup> In this case, according to the provisions of art. 7 par. (2) of Government Emergency Ordinance no. 93/2012, "FSA is the only authority entitled to decide on the grounds of expediency, the assessments and quality reviews which underlie its acts."

upper level regulations and, on the other hand, the compliance with the legal acts hierarchy principle.

Otherwise, the contentious administrative court designated for the settlement of the action for annulment/plea of illegality of an administrative act is empowered to check the compliance of the administrative act under review with the regulations under which and for the enforcement of which it was issued, taking into account the principle of hierarchy and legal force of legislative acts, as set out in art. 1 par. (5) of the Constitution and art. 4 par. (3) of Law no. 24 of March 27<sup>th</sup>, 2000 on legislative technique regulations for drafting legislative acts.

If the provisions of the act issued for the enforcement of the law go beyond the provisions of the basic act, the aggrieved parties may appeal to the competent contentious administrative court for the annulment of those acts.

Regardless of its individual or legislative character, an administrative act must be issued by the public authority for the enforcement or organization of the enforcement of the law, subject to its annulment in court when found that it exceeds the framework outlined by the upper level legislative act. Such sanction (act annulment) appears even more predictable in the absence of a *de jure* grounding of an individual administrative act.

After the supplementation of FSA Approvals no. 28 and no. 28 and no. 29/August 12<sup>th</sup>, 2013 by mentioning the grounds on which these individual acts were issued, Fondul Proprietatea S.A. has reiterated, by means of the notice registered with the FSA-FIIS under no. A-18557/December 18<sup>th</sup>, 2013, the preliminary complaint against such approval and FSA Decision no. 997/November 6<sup>th</sup>, 2013, by which it punctually disputed the motivation provided by the FSA by this individual act (pages 10-26).

The petitioner's arguments generally refer to the lack of a counterpart in the primary and secondary legislation of the reasons invoked by the FSA, considering that they constitute an unjustified interference with the right of decision of the shareholders of Fondul Proprietatea S.A. and are based only on the authority's grounds of expediency.

The current legal framework does not establish a general obligation to motivate all individual administrative acts, this being explicitly set out only in some legislative acts, such as: GO no. 2/2001 requires as mandatory elements of the report on the committed offences the description of the offence and the reference to the legislative act defining and sanctioning the offenses, GO no. 92/2003 on the Code of Fiscal Procedure regarding the obligation to motivate the decisions for the enforcement and cancellation of the precautionary measures, Law no. 544/2001 on the access to public interest information, which requires the motivation of the refusal to disclose the requested information, etc. Even the bylaw of the NSC sets out in art. 9 par. (5) that "*The decisions and ordinances issued by the NSC must include the legal reasons based on which the respective measures were taken*", currently this legal regulation being applicable only for the decisions issued by the FSA, if we were to judge things in the light of the provisions of art. 6 par. (3)<sup>6</sup> and art. 28<sup>7</sup> of Government Emergency Ordinance no. 93/2012.

Both legal literature authors as well as the courts of any level have consistently argued that individual administrative acts must include the *de facto* and the *de jure* motivation of the measures taken by the issuer for the exercise of its powers, the absence of these essential items entailing the nullity of the act.

The reasoning of the courts, that emerges even from the judicial practice invoked by the claimant, is based on the provisions of art. 188 of Law no. 554/2004 art. 18<sup>8</sup> of Law no. 554/2004, which confirm the power of the contentious administrative courts to check the lawfulness of the

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<sup>6</sup> Art. 6 (3) The individual acts of the FSA are the authorizations, approvals and decisions.

<sup>7</sup> Art. 28 The provisions of this emergency ordinance shall be supplemented by the legislation regulating the activity of the authorities being dissolved, as appropriate, provided that they do not conflict with the provisions of this emergency ordinance.

<sup>8</sup> Art. 18

The solutions which the court can pronounce

(1) The court, while settling the case referred to by art. 8 par. (1), may, according to the case, cancel, in full or in part, the administrative act, force the public authority issue an administrative act or release a certificate or any other written instrument.

The court shall have jurisdiction, except for the situations set out by art. 1 par. (8), being entitled to rule on the lawfulness of the acts or the administrative operations on which the act referred to the court was issued. [...]

administrative acts and reach the natural conclusion according to which, in order to be able to actually exercise such power, the court must know the reasons for which the issuer of the act, during the exercise of its discretionary power, chose the solution disputed by the injured party and such injury must be intrinsic to the act. Motivation is one of the conditions of the lawfulness and validity of the administrative act and represents a guarantee against the arbitrary decision and abuse of power of the public authorities, being required especially for the acts by which rights or individual legal situations are suppressed.

Moreover, the Court of Appeal of Bucharest – Division VIII Contentious Administrative and Fiscal noted in case file no. 4291/87/2011, in which it ruled as court of second appeal, as follows: *“the trial court correctly noted the illegality of the disputed decision due to the failure to comply with the motivation requirement, the obligation to motivate the administrative act representing a requirement related to its lawfulness universally accepted at national and community level. The motivation of the administrative act constitutes a guarantee against arbitrary decisions and is necessary especially for those acts which amended or suppress rights or individual and subjective legal situations. The motivation of an administrative decision can not be limited to aspects related to the competence of the issuer or its legal grounds, but it must also include de facto items authorizing, on the one hand, the recipients to know and review the grounds of the decision and, on the other hand to make possible the exercise of the lawfulness review.”*

**In conclusion, the claims of the claimant are substantiated.**

**Daniel DAIANU**  
**SENIOR VICE-CHAIRMAN**  
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