

Case AT 39816

Commitment Proposal

Non-Confidential Version

March 15, 2018

Proposals for Commitments
COMP/39.816 – Gazprom
COMMITMENTS UNDER ARTICLE 9 OF
COUNCIL REGULATION N°1/2003

- (1) The commitments offered by PJSC Gazprom and Gazprom export LLC (hereinafter "**Gazprom**" as defined below) (hereinafter "**Commitments**") aim at responding to the European Commission's (hereinafter "**Commission**") competition concerns.
- (2) Gazprom offers these Commitments in consideration that according to Article 9 of Council Regulation (EC) N°1/2003, the Commission shall confirm that there are no longer grounds for action by the Commission, without concluding whether or not there has been or still is an infringement under Article 102 TFEU and under Article 54 of the EEA Agreement. This proposal of Commitments therefore does not constitute an acknowledgement that Article 102 TFEU or Article 54 of the EEA Agreement or indeed any other substantive rule of EU competition law has been breached.
- (3) The Commitments below are made subject to the understanding that the implementation shall be strictly limited by the scope of these Commitments. The Commitments shall not provide Customers with the right to request contractual revisions not covered by these Commitments.

Section I - Definitions:

- (4) For the purpose of these Commitments, the following terms shall have the meaning indicated below:

Bulgargaz shall mean Bulgargaz EAD.

Bulgartransgaz shall mean Bulgartransgaz EAD.

Central and Eastern European Countries shall mean Estonia, Lithuania, Latvia, Poland, Slovakia, the Czech Republic, Hungary and Bulgaria.

Clause Restricting Resale shall mean any binding contractual stipulation that directly (explicitly) or indirectly (not containing a direct restriction but having a similar effect) limits (restricts or prohibits) the resale by a Customer of all or parts of the annual contract quantity taken from Gazprom according to the Contract on Gas Supply other than a limitation of a geographical area of resale falling under the definition of "Territorial Restriction Clause" below. An indicative list of groups of Clauses Restricting Resale is provided in Annex 1 hereto.

Commitment Decision shall mean the Commission's decision pursuant to Art. 9 Reg. 1/2003 in case AT.39816 reflecting the Commitments submitted hereby.

Commitment Decision Effective Date shall mean the date when the Commitment Decision adopted by the Commission is notified to Gazprom.

Commercial Secrets shall mean any scientific, technical, technological, industrial, financial, economic, legal and other information (including information representing industrial secrets (know-how)) which cannot be freely accessed on legal grounds under the laws of the Russian Federation.

Contract on Gas Supply shall mean an upstream contract between Gazprom as an external pipeline gas supplier and a Customer to whom Gazprom supplies natural gas at one or more Delivery Point(s) located at the border of or within the territories (including at virtual trading point(s)) of the respective Central and Eastern European Countries as applicable under the respective contract.

Customer shall mean any gas supplier and any industrial consumer active at the wholesale level in one or several of the Central and Eastern European Countries.

Damages shall mean claims for payments arising from the cancellation of the South Stream Project. Damages do not encompass any outstanding debt of Bulgarian Energy Holding EAD ("BEH"), any damages or any other claims arising from or in connection with the Facility Agreement between BEH and Gazprom EP International B.V. entered into on 3 June 2014.

Delivery Point shall mean the point at which the title, the legal responsibilities, costs and the risk of loss and damage relating to the natural gas shall pass from Gazprom to the Customer.

Eligible Customer shall mean a Customer from Latvia, Lithuania or Estonia who had a Contract on Gas Supply with Gazprom on 23 April 2015, (or a successor of such a Customer), or an Existing Customer.

Existing Customer shall mean a Customer who at the Commitment Decision Effective Date is Gazprom's contractual counterpart with respect to a Contract on Gas Supply or a successor of such a Customer.

Five CEE Countries shall mean Bulgaria, Estonia, Latvia, Lithuania and Poland.

Gazprom shall mean PJSC Gazprom and/or Gazprom export LLC being a gas supplier under a respective Contract on Gas Supply or any of its subsidiaries authorized by relevant Russian law to export natural gas from the territory of the Russian Federation.

Gazprom Export shall mean Gazprom export LLC being a gas supplier under a Contract on Gas Supply or any of its subsidiaries authorized by relevant Russian law to export natural gas from the territory of the Russian Federation.

Monitoring Trustee shall mean a legal or natural person entrusted with the duties and appointed pursuant to the procedure described in Section II.5 of these Commitments.

New Delivery Point(s) shall mean any of the Delivery Points listed below as Original Delivery Point(s) to which gas can be delivered pursuant to Section II.1.2 (Change of Delivery Points) of the Commitments.

Original Delivery Point(s) shall mean any of the following Delivery Points that are contractual Delivery Points under the relevant Contracts on Gas Supply:

- Estonia – Delivery Point Värskä located at the Estonian/Russian border (hereinafter "Värskä");
- Latvia - Delivery Point Izborsk located at the Estonian/Russian border (hereinafter "Izborsk")
- Lithuania - Delivery Point Kotlovka located at the Lithuanian/Belarusian border (hereinafter "Kotlovka");
- Poland – Delivery Point Kondratki (hereinafter "Kondratki") or Delivery Point Wysokoje (hereinafter "Wysokoje"), both located at the Polish/Belarusian border;
- Slovakia – Delivery Point Velké Kapušany located at the Slovak/Ukrainian border (hereinafter "Velké Kapušany");
- Hungary – Delivery Point Beregovo located at the Hungarian/Ukrainian border (hereinafter "Beregovo"); and
- Bulgaria – Delivery Point Negru Voda located at the Bulgarian/Romanian border (hereinafter "Negru Voda").

Party shall mean either Gazprom or the respective Customer under a Contract on Gas Supply.

Parties shall mean Gazprom and the respective Customer under a Contract on Gas Supply.

Price shall mean the purchase price of gas as agreed under a Contract on Gas Supply.

South Stream Project shall mean the pipeline project in its initial configuration to transport natural gas from the Russian Federation across the Black Sea to and through Bulgaria (with entry capacity in Bulgaria of 63 bcm/year) and further to/or through other Central European and Southern European countries.

Territorial Restriction Clause shall mean any binding contractual stipulation which limits the re-export or resale by a Customer of all or parts of the annual contract quantity taken from Gazprom according to the Contract on Gas Supply by directly (explicitly) or indirectly (having similar effect to a direct restriction) restricting or prohibiting the use of gas in other geographic areas than those for which the gas is supplied. An indicative list of groups of Territorial Restriction Clauses is provided in Annex 1 to these Commitments.

TSO shall mean a Transmission System Operator.

Section II - Commitments

1. Concerns on Market Segmentation

- (5) Gazprom undertakes that (i) it will not apply any Clause Restricting Resale or Territorial Restriction Clause and that (ii) it will not introduce any new Clause Restricting Resale or new Territorial Restriction Clause in any existing or new Contract on Gas Supply, including contracts of Gazprom on gas supply sold via auctions.
- (6) Gazprom undertakes to approach in writing, within 10 weeks from the Commitment Decision Effective Date, all Existing Customers with Contracts on Gas Supply, excluding contracts of Gazprom on gas supply sold via auctions, to inform them that Clauses Restricting Resale and/or Territorial Restriction Clauses, if any, are deemed null and void and that provisions of their Contracts on Gas Supply do not restrict the resale of gas purchased under the relevant Contract on Gas Supply.

1.1. Changes to the Bulgarian Gas System

- (7) With regard to the monitoring and metering mechanism stipulated in the Contract of 15 November 2012 between Gazprom Export and Bulgargaz, Gazprom:
 - a) undertakes to ensure (subject to the Bulgarian contractual counterparties' consent) the introduction of reasonably required changes to the contract of 15 November 2012 and to the contract for transportation of natural gas through the territory of the Republic of Bulgaria between Gazprom Export and Bulgartransgaz dated 27 April 1998 to the extent necessary to remove obstacles for Bulgartransgaz, if any, to (i) the conclusion of interconnection agreements at the interconnection points between the Republic of Bulgaria and other EU Member States and (ii) the adjustment of the current "allocation-as-measured" methodology at such points to the "allocation-as-nominated" methodology; and
 - b) undertakes to ensure (subject to the relevant contractual counterparties' consent), if required, the introduction of reasonably required changes to gas supply contracts to Greece

via Bulgaria that may have an impact on the realisation of the aims specified in paragraph (7) a) above; and

- c) undertakes not to require all interconnection agreements to be concluded by TSOs simultaneously;

subject to the following:

- (i) Bulgartransgaz ensures that no expenses (including but not limited to fuel gas) related to third-party gas transport will be allocated to Gazprom;
- (ii) Bulgartransgaz is able to fulfil all contractual obligations towards Gazprom, as amended pursuant to the present commitments;
- (iii) Bulgartransgaz shall be responsible for ensuring that the quality of natural gas redelivered after transportation through the territory of the Republic of Bulgaria is in compliance with the quality requirements of the downstream TSOs subject to Gazprom's delivery of natural gas in compliance with the quality specifications of the contract for transportation of natural gas through the territory of the Republic of Bulgaria between Gazprom Export and Bulgartransgaz dated 27 April 1998;
- (iv) Necessary changes to the supply contracts applicable at the relevant interconnection points are implemented, including a solution on gas quality ;
- (v) Gazprom is given the opportunity to make its views known and to comment on proposals and draft agreements in the process of the development of interconnection agreements to facilitate that the interconnection agreements are designed in a manner that takes account of Gazprom's legacy contracts with due regard to commercial interests of Gazprom. Should Gazprom demonstrate that its comments have been disregarded and that this leads to a situation in which essential elements of Gazprom's legacy contracts are affected in a manner not covered by the issues listed under paragraph (7) (i) to (iv) above and to an extent that causes the commercial basis for the contracts to be jeopardized, Gazprom may request the Commission to review the Commitments pursuant to paragraph (46) (ii) of these Commitments.

- (8) Gazprom is not required to agree to the implementation of any measures or changes to any agreements that exceed what is required to achieve the aims described at paragraph (7) a) above.

1.2. Changes of Delivery Points

- (9) Gazprom undertakes
 - to approach in writing, within 10 weeks from the Commitment Decision Effective Date, all Existing Customers with Contract(s) on Gas Supply with the delivery at the Original Delivery Point(s) with a duration of more than 18 months with a proposal to introduce in such Contracts on Gas Supply; and
 - to propose to include in prolongations of such Contract(s) on Gas Supply or in new Contract(s) on Gas Supply with a duration of more than 18 months with the delivery at the Original Delivery Point(s) with the Eligible Customers;

the changes as set out in paragraphs (10) to (17), while other terms and conditions of the relevant Contract(s) on Gas Supply, including the Price, remain unaffected.

- (10) **Requirements to request a change of Delivery Points:** For the pairs of Delivery Points listed in paragraph (15), the Eligible Customers shall be entitled to request a change of the Original Delivery Point(s), provided in a relevant Contract(s) on Gas Supply, to a New Delivery Point to the extent that such a New Delivery Point is located on the transmission routes used by Gazprom.

The Eligible Customer shall have the right to request a change to a New Delivery Point for all or parts of the gas quantities supplied by Gazprom under the relevant Contract on Gas Supply¹ (minimum requirements to the shifted quantities – 50 million cubic meters per year, minimum duration of supplies to New Delivery Point(s) – not less than 12 months).

The Eligible Customer shall submit to Gazprom a substantiated written request explaining why the Eligible Customer is not in a position to arrange transportation of gas from the Original Delivery Point(s) to the New Delivery Point(s) by itself.

If Gazprom stops using any of the New Delivery Points then another Delivery Point used by Gazprom at the border of or within the relevant Member State should be considered as the New Delivery Point(s). In this case, Gazprom undertakes to inform Eligible Customers in writing about the change of the New Delivery Point(s) at least 6 months prior to such a change. In such a case the corresponding Service Fees should stay unaffected.

- (11) **Lead-time:** The right to request a change of the Original Delivery Point(s) may be exercised immediately after commencement of deliveries to the Original Delivery Point(s) and at least 4 months prior to the intended commencement of the deliveries to the New Delivery Point(s).

- (12) **Right to refuse a change of Delivery Point(s):** Gazprom shall act in good faith in order to comply with the requests as defined in paragraph (10) above to the maximum extent possible subject to minimum requirements to the shifted quantities defined in paragraph (10). Gazprom may however reasonably partially or fully refuse a substantiated request of the Eligible Customer exclusively in case of lack of free firm transmission capacities:

- which are contracted by Gazprom within or outside the EU sufficient to fulfil the request of the Eligible Customer (including the duration of supplies to New Delivery Point(s)); or

- due to the inability to book or use the necessary firm transmission capacity required to bring the shifted volumes of natural gas to the New Delivery Point(s).

- (13) In case of a partial or full refusal to implement a change of the Original Delivery Point(s) requested by the Eligible Customer, Gazprom shall within six weeks after the receipt of the request send both a written refusal to the Eligible Customer and a reasoned and documented explanation to the Monitoring Trustee justifying the refusal. If Gazprom fails to respond to the Eligible Customer within six weeks from the date of the receipt of the request, the request shall be deemed to have been accepted by Gazprom.

The Monitoring Trustee shall make an assessment and shall either accept the refusal or give a non-binding recommendation within two weeks of the receipt of Gazprom's reasoned and documented

¹ For the Contract on Gas Supply between Gazprom Export and Bulgargaz, these gas quantities may extend to the entire contractual volumes and shall be deemed to be supplied at Negru Voda.

explanation. Gazprom shall make an assessment and either accept the non-binding recommendation of the Monitoring Trustee, if any, or reject it within four weeks of its receipt. If Gazprom refuses to adhere to this recommendation, the issue will be addressed to the Commission to assess whether Gazprom acts in compliance with these Commitments.

- (14) **i.Liability:** Gazprom shall not be liable (e.g. for damages, penalties, etc.) under the Contract(s) on Gas Supply for disruptions of supply at the New Delivery Point(s) in case of force majeure and/or maintenance works carried out by the relevant TSOs.

ii.Interpretation of contractual terms: In case the operational rules and technical specifications at the New Delivery Point (e.g. quality specifications, nomination and operational procedures, protocoling procedures, applicable units) are contrary to or limiting the terms and conditions set out in the Contract on Gas Supply with the respective Eligible Customer, Gazprom shall not be considered in breach of its contractual obligations for following such operational rules and technical specifications at the New Delivery Point.

- (15) **Service Fee:** Gazprom is entitled to charge the Eligible Customer the following Service Fees for the following changes of Delivery Points:

- (i) From Kondratki or Wysokoje to Kotlovka or Värška or Izborsk, or vice versa - 0.76 (zero point seventy six) Euro per MWh (megawatt-hour);
- (ii) From Velké Kapušany to Kotlovka or Värška or Izborsk, or vice versa - 1.52 (one point fifty two) Euro per MWh (megawatt-hour);
- (iii) From Beregovo to Negru Voda, or vice versa - 1.52 (one point fifty two) Euro per MWh (megawatt-hour);
- (iv) From Velké Kapušany to Negru Voda, or vice versa - 1.52 (one point fifty two) Euro per MWh (megawatt-hour).

The aforementioned fixed Service Fees will be indexed to inflation on April 1st of each year in accordance with the inflation rate in the European Union published by the European Central Bank.

The Service Fee fixed above in this paragraph (15) shall in any case cover the actual costs (transmission, balancing, etc.) to be incurred by Gazprom with regard to such change of the Original Delivery Point(s), subject to those costs being subsequently documented whereby if the applicable Service Fee is lower than the actual costs of Gazprom then the actual costs are to be used as corresponding Service Fee. Gazprom undertakes to use existing long-term capacity bookings under the transmission contracts to which Gazprom is a party at the moment of the relevant change of the Original Delivery Point(s) to the maximum extent possible without jeopardising other gas deliveries of Gazprom.

Without prejudice to paragraph (10), last subparagraph, the changes listed above are the only changes of Delivery Point(s) possible under the Commitments.

- (16) **Monitoring Trustee:** If the Eligible Customer disagrees with the level of Gazprom's actual costs and corresponding increase of the Service Fee, the Eligible Customer shall submit to the Monitoring Trustee a substantiated written request for the Monitoring Trustee to provide a recommendation on whether all or part of Gazprom's actual costs and relevant increase of the Service Fee are justified. The Monitoring Trustee shall provide a reasoned recommendation within two weeks from being approached by the Eligible Customer, based on data, information and submissions provided and made

available to the Monitoring Trustee by the Parties. Gazprom undertakes to reasonably evaluate the recommendation of the Monitoring Trustee and in case of disagreement to provide the Monitoring Trustee with its substantiated position within four weeks from the receipt of the Monitoring Trustee's recommendation. The Monitoring Trustee shall then issue a final recommendation within additional two weeks after receiving the information from Gazprom. Such final recommendation shall be binding on Gazprom. Should the Eligible Customer not accept the proposal made by the Monitoring Trustee within one week, Gazprom is entitled to refuse the change of the Original Delivery Point(s).

- (17) For avoidance of doubt, matters concerning the Price may not be referred to the Monitoring Trustee for determination.

2. Concerns on Prices

- (18) Gazprom undertakes to approach in writing, within 10 weeks of the Commitment Decision Effective Date, all Existing Customers with Delivery Point(s) located at the border of or in any of the Five CEE Countries, with a proposal to introduce in Contracts on Gas Supply with a total duration (original term of the contract) of at least 3 years; and to propose to include in prolongations of such contracts or in new Contracts on Gas Supply with a total duration of at least 3 years:

- (i) a price review mechanism as stipulated under paragraph (19); or
- (ii) changes as stipulated under paragraph (19) to the price review mechanism currently provided by the Contracts on Gas Supply in force.

Gazprom will also propose to include a price review mechanism as stipulated under paragraph (19) if it concludes new Contracts on Gas Supply with duration of at least 3 years with Delivery Point(s) located at the border of or in any of the Five CEE Countries.

- (19) Gazprom will propose to amend or introduce in the relevant Contracts on Gas Supply as defined in paragraph (18) the following provisions:

- (i) **The trigger part of the price review clause:**

"If at any time either Party shows that:

economic circumstances in the European gas markets beyond the control of the Parties have changed significantly as compared to what the Parties had reasonably expected when entering into the Contract or – after the first Contract Price Revision - at the time of the latest Contract Price Revision; **and/or**

the prevailing price level resulting from the Contract does not reflect the development of the European gas markets as reflected, inter alia, in the development of the average weighted import border prices in Germany, France and Italy and/or the development of the prices at the relevant generally accepted liquid gas hubs in Continental Europe (including, inter alia, TTF, NCG, etc.).

then such Party may request a Contract Price Revision by notifying the other Party in writing, substantiating its reasons for such a Contract Price Revision taking into account the characteristics of the natural gas supplied under the Contract".

- (ii) **The frequency and timing of the price review:**

The right of a Party to ask for a regular price review once in each two years based on the reasons and procedure under paragraph (19)(i);

and

The right of a Party to ask for an extraordinary price review once in each five years based on the reasons and procedure under paragraph (19)(i).

The first contract price revision (under the new mechanism) can be triggered at any time following the introduction or the amendment of the price review mechanism as stipulated under paragraph (19) and such a price revision shall be considered as a regular price revision in the meaning of the relevant Contract on Gas Supply.

(iii) Adjustment part of the price review clause:

"when reviewing the Contract Price provisions the Parties will take into account the price level in the competitive Continental Western European gas markets, inter alia, the average weighted import border prices in Germany, France and Italy and the price level at the relevant generally accepted liquid gas hubs in Continental Europe (including, inter alia, TTF, NCG, etc.) having due regard to all characteristics of the natural gas supplied under the Contract (such as but not limited to quantity, quality, continuity and flexibility)".

(iv) Arbitration part of the price review clause:

"If no agreement is reached within 120 days from the date of notifying substantiated request for a Contract Price Revision, either Party shall have the right to refer the dispute to arbitration as provided for in the relevant Contract on Gas Supply". The place of arbitration shall be within the EU.

When determining the new contract price, the arbitrator(s) shall be guided by the substantive guidance described under paragraph (19)(iii).

(v) Retroactive application of the new price

"The new price will apply retroactively from the date of the notification of the request for a price review unless the Parties of relevant Contract on Gas Supply have agreed otherwise".

3. Concerns on market foreclosure - Bulgaria

- (20) Gazprom confirms that the Bulgarian part of the South Stream Project is terminated.
- (21) Gazprom undertakes that neither Gazprom nor its subsidiaries will claim 70 million US dollars as stipulated in the Protocol between Gazprom and BEH signed on 27 August 2012 or any other Damages on the basis of the cancellation of the Bulgarian part of the South Stream project.

4. Duration and scope of commitment

- (22) Gazprom's Commitments will be applicable for a period of eight consecutive years as from the Commitment Decision Effective Date except the paragraph 21 hereof which will be applicable for a period of fifteen consecutive years as from the Commitment Decision Effective Date.

5. Monitoring provisions

5.1 Appointment procedure

- (23) Gazprom shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.
- (24) The Monitoring Trustee shall:
- (i) at the time of appointment, be independent of Gazprom and its affiliated undertakings and of any competitor or customer of Gazprom (and any other undertaking directly or indirectly controlled by or affiliated with any competitor or customer of Gazprom);
 - (ii) have experience in carrying out the tasks of a Monitoring Trustee and possess the necessary qualifications by education, experience and training to carry out its mandate described in this Section II.5 of the Commitments, for example have sufficient relevant experience as consultant or auditor; and
 - (iii) neither have nor become exposed to a conflict of interest.
- (25) The Monitoring Trustee shall be remunerated by Gazprom in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by Gazprom

- (26) No later than 2 weeks after the Commission Decision Effective Date, Gazprom shall submit the name or names of one or more natural or legal persons whom Gazprom proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph (24) and shall include:
- a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
 - b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks;

Approval or rejection by the Commission

- (27) The Commission shall have the discretion to approve or reject by a written decision the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Gazprom shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Gazprom shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one month of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Gazprom

- (28) If all the proposed Monitoring Trustees are rejected by a written decision, Gazprom shall submit the names of at least two more natural or legal persons within two weeks of being informed of the rejection, in accordance with paragraph (26) of these Commitments.

Monitoring Trustee nominated by the Commission

- (29) If all further proposed Monitoring Trustees are rejected by a written decision by the Commission, the Commission shall nominate a Monitoring Trustee, whom Gazprom shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

5.2 Functions of the Monitoring Trustee

- (30) The Monitoring Trustee shall assume its specified duties and obligations in order to ensure Gazprom's compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Gazprom, give any orders or instructions to the Monitoring Trustee in order to oversee Gazprom's compliance with the conditions and obligations attached to the Commitment Decision.
- (31) When providing recommendations in respect of the Service Fee that Gazprom may charge in case of a change of Original Delivery Point(s), as described in paragraph (16) of these Commitments, and in the list of duties and obligations of the Monitoring Trustee in paragraph (32) (vi) below, the Monitoring Trustee will act independently and not on behalf of, or pursuant to orders and instructions given by the Commission.

Duties and obligations of the Monitoring Trustee

- (32) The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor Gazprom's compliance with the obligations and conditions attached to the Commitment Decision.
 - (ii) propose to Gazprom such measures as the Monitoring Trustee considers necessary to ensure Gazprom's compliance with the conditions and obligations attached to the Commitment Decision;
 - (iii) act as a contact point for any requests by third parties in relation to the Commitments;
 - (iv) promptly report in writing to the Commission, sending Gazprom a copy at the same time (a non-confidential copy shall be provided in case the report contains business secrets of third parties), if it concludes on reasonable grounds that Gazprom is failing to comply with these Commitments, provided always that Gazprom has first been provided an opportunity to comment on any possible concerns of the Monitoring Trustee before reporting to the Commission;
 - (v) review the documents sent by Gazprom to the Existing Customers in implementation of the Commitments relating to changes to the relevant Contracts on Gas Supply in fulfilment of the Commitments that relate to changes of Delivery Points (see paragraph (9) of these Commitments) and to the price review mechanism (see paragraph (18) of these Commitments);

- (vi) make recommendations for Service Fees to be charged if Gazprom and the Existing Customer cannot agree on a Service Fee in case of a change of Delivery Points as specified in paragraph (16) of these Commitments;

assume any other functions assigned to the Monitoring Trustee under the conditions agreed with Gazprom.

Reporting obligations of the Monitoring Trustee

- (33) Within 60 days of the end of the timeframe within which Gazprom has to approach Existing Customers pursuant to paragraphs (6), (9) and (18), and after that point in time, within 30 days of the end of each calendar year or as otherwise agreed with the Commission, the Monitoring Trustee shall submit a written report to the Commission, sending Gazprom a copy at the same time.
- (34) The reports shall cover the Monitoring Trustee's fulfilment of its obligations under the mandate and the compliance of Gazprom with the Commitments. The reports shall cover in particular the following topics:
 - (i) any issues or problems which have arisen in the execution of the obligations as Monitoring Trustee, in particular any issues of non-compliance by Gazprom with the Commitments;
 - (ii) review and assessment of the progress of the implementation of the Commitments with respect to market segmentation, pricing and changes of Delivery Points and changes to the Bulgarian gas system, including all information received from Gazprom regarding the implementation of the Commitments (including information on acceptance or refusals of Existing Customers with respect of offers made by Gazprom to change Contracts on Gas Supply and cooperation from Bulgargaz, Bulgartransgaz and other relevant market participants relevant for gas supplies to Bulgaria);
 - (iii) whether the Monitoring Trustee has been approached by the Parties with respect to the determination of a Service Fee for a change of Delivery Points in case the Parties could not agree on the Service Fee between themselves; this shall by no means limit the Monitoring Trustee's independence in providing recommendations in respect of the Service Fee as described in paragraph (16);
 - (iv) any particular issues as set out in the work plan described in paragraph (32) above;
 - (v) estimated future timetable, including the date of next anticipated reporting;
 - (vi) a proposal for a detailed work plan described in paragraph (32) above in the first report as well as revisions in subsequent reports.
- (35) At any time, the Monitoring Trustee will provide to the Commission, at its request (or may, on the Monitoring Trustee's own initiative), a written or oral report on matters falling within the Monitoring Trustee's mandate provided always that Gazprom has first been provided an opportunity to comment on any possible concerns of the Monitoring Trustee before reporting to the Commission. The Monitoring Trustee shall send Gazprom simultaneously a copy of such additional written reports and shall inform Gazprom promptly of the content of any oral reports.

5.3 Duties and obligations of Gazprom

- (36) Gazprom shall provide and shall cause its advisors to provide the Monitoring Trustee with all co-operation, assistance and information, the Monitoring Trustee may reasonably require to perform its tasks. In particular, Gazprom will grant the Monitoring Trustee access to all correspondence with the Customers and to Contracts on Gas Supply covered by these Commitments (or amendments thereto) if and as required to properly verify the implementation of the Commitments. This includes the consent of Gazprom to provide to the Monitoring Trustee all necessary confidential information (e.g. with regard to capacity availability and bookings, whether in the EU or elsewhere) subject to due respect by the Monitoring Trustee of the confidentiality of such information. The method of access shall be chosen by the Monitoring Trustee and shall include access by post, email or fax. In case any documents contain Commercial Secrets, access to such documents should be provided to the Monitoring Trustee on Gazprom's premises without being mechanically copied.
- (37) Gazprom shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
- (38) Gazprom shall indemnify the Monitoring Trustee and its employees (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Gazprom for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee or its employees.
- (39) At the expense of Gazprom, the Monitoring Trustee may appoint advisors, subject to Gazprom's approval (this approval not to be unreasonably withheld or delayed), if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors.
- (40) Gazprom agrees that the Commission may share any information in its possession and which is proprietary to Gazprom with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the EU Merger Control Regulation and Article 28 of Regulation No. 1/2003 apply mutatis mutandis.
- (41) Gazprom agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition.

5.4 Replacement, discharge and reappointment of the Monitoring Trustee

- (42) If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, which the Monitoring Trustee shall disclose to Gazprom and to the Commission without delay:
- a) The Commission may, after hearing the Monitoring Trustee, require Gazprom to replace the Monitoring Trustee or
 - b) Gazprom, with the prior approval of the Commission, may replace the Monitoring Trustee.
- (43) If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to above.

- (44) Unless removed according to paragraph (42) of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented, or after the expiry of these Commitments.

Section III - Review Mechanisms

- (45) Pursuant to Article 9.2(a) of Council Regulation (EC) 1/2003 Gazprom may request the Commission to reopen the proceedings with a view to modifying these Commitments in case of an important change of facts on which the Commission's decision pursuant to Article 9(1) of that Regulation is based.
- (46) The Commission may further, in response to a reasoned request from Gazprom, review the Commitments
- (i) where it is to be expected that Gazprom is no longer a dominant market player in any or all CEE Countries. Circumstances leading to such a change in Gazprom's market position in any or all Central and Eastern European Countries may include, but are not limited to changes to the gas infrastructure in any or all Central and Eastern European Countries, a significant decrease in Gazprom's market shares in any or all Central and Eastern European countries or the change of the competitive structure of the markets of any or all Central and Eastern European Countries, including entry of new suppliers, increase of local production, etc. Gazprom may not request a review earlier than 2 years after the Commitment Decision Effective Date, unless such a request is made by Gazprom pursuant to Article 9.2(a) of Council Regulation (EC) 1/2003.
 - (ii) where Gazprom has demonstrated pursuant to paragraph (7)(v) that the interconnection agreements are designed in a manner that causes the commercial basis for Gazprom's legacy contracts to be jeopardized.

Signed on __ March 2018

For and on behalf of

PJSC Gazprom

Alexander Medvedev

Deputy Chairman of the Management Committee

Gazprom export LLC

Elena Burmistrova

General Director

ANNEX 1 Indicative List of the relevant groups of Clauses Restricting Resale and Territorial Restriction Clauses

Clauses Restricting Resale and Territorial Restriction Clauses encompass:

- Contractual restrictions incentivising the Customer not to resell or re-export the gas purchased from Gazprom, in particular:
 - o Profit-splitting mechanisms and rebate schemes rendering resale or re-export financially less attractive;
 - o Expansion clauses;
 - o Contractual stipulations which refer to the use of the gas delivered in a specific country.
- Monitoring mechanisms and information requirements concerning flows of gas unless they are technically necessary for the gas supply. This provision applies to the extent no specific provisions with respect to metering mechanisms and information requirements are included in the Commitments, and leaves the provisions under Section II.1.1 – **Changes to the Bulgarian Gas Grid** unaffected.