



Brussels, **XXX**
[...] (2014) **XXX** draft

COMMISSION OPINION

of **XXX**

pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Portugal - Certification of REN Rede Elétrica Nacional S.A. and REN Gasodutos S.A.

COMMISSION OPINION

of **XXX**

pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC and to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Portugal - Certification of REN Rede Elétrica Nacional S.A. and REN Gasodutos S.A.

I. PROCEDURE

On 13 March 2014, the Commission received a notification from the national regulatory authority in Portugal, the Entidade Reguladora dos Serviços Energéticos (hereafter, "ERSE"), in accordance with Article 10(6) of Directive 2009/72/EC¹ (hereafter, "Electricity Directive"), of a draft decision on the certification of "REN Rede Elétrica Nacional S.A." (hereafter, "REN Rede Elétrica Nacional") as a Transmission System Operator (TSO) for electricity.

On the same day the Commission also received a notification from ERSE in accordance with Article 10(6) of Directive 2009/73/EC (hereafter, "Gas Directive")², of a draft decision on the certification of "REN Gasodutos S.A." (hereafter, "REN Gasodutos") as a Transmission System Operator (TSO) for gas.

Pursuant to Article 3(1) Regulation (EC) No 714/2009³ (hereafter, "Electricity Regulation") and Article 3(1) Regulation (EC) No 715/2009⁴ (hereafter, "Gas Regulation"), the Commission is required to examine the notified draft decisions and deliver an opinion to the relevant national regulatory authority as to their compatibility with Article 10(2) and Article 9 of the Electricity Directive and Article 10(2) and Article 9 of the Gas Directive.

II. DESCRIPTION OF THE NOTIFIED DECISIONS

REN Rede Elétrica Nacional is the concessionaire for the continental Portuguese electricity transmission grid and on that basis has the exclusive rights and obligations related to exercising the electricity transmission activity in continental Portugal.

REN Gasodutos is the concessionaire of the continental Portuguese gas transmission grid. On the basis of the concession only REN Gasodutos exercises the gas transmission activity in continental Portugal.

REN Rede Elétrica Nacional and REN Gasodutos are fully owned by REN – Redes Energéticas Nacionais, SGPS, S.A. (hereafter, "REN SGPS"). REN SGPS in turn is owned by

¹ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55 of 14.8.2009 OJ L 211/55 of 14.8.2009.

² Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in gas and repealing Directive 2003/55/EC, OJ L 211/94 of 14.8.2009 OJ L 211/94 of 14.8.2009.

³ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211/15 of 14.8.2009.

⁴ 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 and repealing Regulation (EC) No 1775/2005, OJ L 211/36 of 14.8.2009

nine shareholders, which each hold between 1,2% and 25% of its shares. In addition, 18,9% of the shares in REN SGPS are traded on the stock market ('free float'). The participation in the capital of REN SGPS is limited by Portuguese law⁵ to a maximum of 25% per shareholder, which according to ERSE prevents any shareholder in REN SGPS to individually exercise control. This limitation does not apply to the state-owned Parpública SGPS, S.A and Caixa Geral de Depósitos whose shares however together represent only 11,1% of the capital of REN SGPS.

REN SGPS also fully owns a series of daughter companies which, in the field of energy, includes REN Trading, S.A.

Both REN Rede Elétrica Nacional and REN Gasodutos have applied for certification in accordance with the ownership unbundling model provided for in Article 9 of the Electricity and Gas Directives.

In its draft decisions ERSE analyses whether and to what extent REN Rede Elétrica Nacional and REN Gasodutos comply with the requirements of the ownership unbundling model as laid down in the Portuguese legislation transposing the Electricity and Gas Directives. ERSE considers that both REN Rede Elétrica Nacional and REN Gasodutos can be certified as transmission system operators under the ownership unbundling model.

ERSE has submitted its draft decisions to the Commission requesting for an opinion.

III. COMMENTS

On the basis of the present notifications the Commission has the following comments on the draft decisions.

1. OWNERSHIP OF THE NETWORK

Article 9(1)(a) of the Electricity and Gas Directives determines that in the ownership unbundling model each undertaking which owns a transmission system acts as a transmission system operator.

Both REN Rede Elétrica Nacional and REN Gasodutos operate, respectively, the continental Portuguese electricity and gas transmission grid on the basis of concessions⁶. In its draft decisions ERSE refers to a letter submitted to ERSE by the Secretary of State for Energy according to which the concessionaires, namely REN Rede Elétrica Nacional and REN Gasodutos, own the networks under the concessions. On the basis of this document, ERSE concludes that the conditions in Article 9(1)(a) of the Electricity and Gas Directives are met.

The Commission considers that in order to establish whether REN Rede Elétrica Nacional and REN Gasodutos can be considered to be the owners of the networks they operate, an in-depth assessment into their rights and obligations under the concessions needs to be carried out. In order to comply with the requirement of Article 9(1)(a) of the Electricity and Gas Directives it must be established that the rights of use and disposal of the concessionaires with regard to the network assets can be regarded as equivalent to those of an owner. This is particularly relevant in view of the fact that, according to the information provided by ERSE

⁵ Articles 2 and 3 of the Decree-Law 112/2012 of 23 May 2012.

⁶ The concessions were granted through the Decree-Law No 29/2006 of 15 February 2006, republished with amendments in annex to Decree-Law No 215-A/2012 of 8 October 2012 and through the Concession Contract signed on 15 June 2007, for the case of electricity, and through the Decree-Law No 140/2006 of 26 July 2006, republished with amendments in annex to Decree-Law No 231/2012 of 26 October 2012 and through the Concession Contract signed on 26 September 2006, for the case of gas.

accompanying its preliminary decisions, the terms of the concessions establish that the concessionaires cannot transfer the assets under the concession.

The Commission notes that such analysis is not included in ERSE's preliminary decision and therefore invites ERSE, prior to adopting its final certification decisions, to carry out such analysis, whereby the following elements in particular should be taken into account.

Firstly, it appears that the network assets feature on the balance sheets of REN Rede Elétrica Nacional and REN Gasodutos and that therefore they can be used by the TSOs as a guarantee in acquiring financing on the capital market. Secondly, it appears that the concessionaires are responsible for exercising all of the TSO tasks, which include the planning, construction, operation and maintenance of the entire infrastructure and the financing thereof. Finally, upon the expiry of the concessions, the State has to compensate the concessionaires with an amount equivalent to the corresponding book value of the concession assets.

If on the basis of its analysis ERSE concludes that the rights of the concessionaires with regard to the network assets can be considered as equivalent to those of an owner, the Commission takes the view that the operation of the networks on the basis of a concession is not an obstacle for the certification of the applicants under the ownership unbundling provisions.

2. PARTICIPATION OF COMPANIES FROM THIRD COUNTRIES

According to the information provided by ERSE, two major shareholders of REN SGPS are persons from third countries, i.e. State Grid International Development Limited, with a participation of 25% in REN SGPS's capital and ultimately fully owned by the Chinese state and Oman Oil Company S.O.A.C. (hereafter, "Oman Oil Company"), with a stake of 15% in REN SGPS' capital and fully owned by the Sultanate of Oman. It appears from ERSE's decision that neither of these companies exercises control over REN SGPS.

Consequently, the Commission concludes that given the current shareholder structure, the provisions laid down in Article 11 of the Electricity and Gas Directives do not apply at present.

3. EXERCISE OF CONTROL AND RIGHTS IN THE APPLICANTS

Article 9(1)(b)(i) of the Electricity and Gas Directives prohibits the same person or persons from directly or indirectly exercising control over an undertaking performing any of the functions of production or supply, and directly or indirectly exercising control or exercising any right over a transmission system operator or over a transmission system.

Among the shareholders in REN SGPS, State Grid International Development Limited from China (25%), Oman Oil Company (15%), Parpública SGPS, S.A. (hereafter, "Parpública", 9.9%) and Energias de Portugal S.A. (hereafter, "EDP", 5%), all perform the functions of generation, production or supply of electricity or gas or hold participations in companies that perform such activities.

State Grid International Development Limited

According to the draft decisions submitted by ERSE, the mother company of State Grid International Development Limited, (with a stake of 25% in REN SGPS), called State Grid Corporation of China, is also the owner of regional electricity companies in China and holds participations in energy transmission companies in the Philippines, Brazil and Australia. Given the fact that all these companies perform their activities in areas without any direct or indirect geographical link to the Portuguese network, ERSE concludes that there is no risk of conflict of interest or influence in the decisions of the TSOs. However, another Chinese state-

owned company, China Three Gorges Corporation, is a shareholder of EDP, Portugal's largest energy company, with a stake of 21.35%.

ERSE concludes that, as neither State Grid Corporation of China controls REN SGPS nor China Three Gorges Corporation controls EDP, Article 9(1)(b)(i) of the Electricity and Gas Directives is complied with.

The Commission agrees with ERSE that, given the geographic location of their activities, the participations of State Grid International Development Limited and its owner in companies which perform activities in the field of electricity or natural gas generation should not be regarded an obstacle for the certification of the applicants under the ownership unbundling provisions. Regarding the potential conflict that could arise with regard to China Three Gorges Corporation's participation in EDP, the Commission agrees with ERSE that given the fact that neither State Grid Corporation of China controls REN SGPS nor China Three Gorges Corporation controls EDP, the conditions of Article 9(1)(b)(i) of the Electricity and Gas Directives are met as far as these companies are concerned. The Commission underlines that it is for ERSE to monitor whether the circumstances on which the assessment is based remain unchanged.

Oman Oil Company

Oman Oil Company (15% shareholding in REN SGPS) holds participations in *inter alia* Oman Gas Company, MOL, Orient Power Company Limited and GS Electric, Power and Services, all active in the production or supply of electricity or natural gas. However, ERSE concludes that the conditions established in Article 9(1)(b)(i) of the Electricity and Gas Directives are met as those companies which are controlled by Oman Oil Company perform production or supply activities in areas with no connection to the Portuguese network⁷.

The Commission agrees with ERSE that Oman Oil Company's participation in Orient Power Company Limited and GS Electric, Power and Service should not be an obstacle for the certification as these companies perform their activities in areas with no connection to the Portuguese network. Regarding MOL, the Commission considers that the conditions established in Article 9(1)(b)(i) of the Electricity and Gas Directives are met insofar as Oman Oil's participation in MOL (7%) does not confer control over MOL.

Finally, regarding Oman Oil Company's participation in Oman Gas Company and in view of the possible increase of such participation⁸, as indicated in the information submitted by ERSE, the Commission invites ERSE to verify whether it can be assumed that there is no incentive for Oman Oil Company to influence the decision making in the Portuguese TSOs by favouring the interest of Oman Gas Company to the detriment of other network users.

Parpública

Parpública is a holding company for the management of a portfolio of exclusively public participations. It manages the Portuguese State's participation of 9.9% in REN SGPS. At the same time, it holds 7% of the shares in Galp Energia, Portugal's largest gas company. According to the information provided by ERSE, Parpública does not control REN SGPS or Galp Energia. The Commission concludes that Parpública's participation in Galp Energia is not in conflict with the conditions established in Article 9(1)(b)(i) of the Electricity and Gas Directives.

⁷ Orient Power Company Limited operates in Pakistan and GS Electric, Power and Services in South Korea.

⁸ According to the information submitted by ERSE, Oman Oil Company had a minority 20% shareholding in Oman Oil Gas but it envisaged acquiring the remaining 80%.

EDP

EDP holds 5% of REN SGPS' capital and at the same time produces and sells electricity and natural gas through various fully-owned daughter companies. In its preliminary decision, ERSE brings forward that EDP has no direct voting rights in the TSOs, only in the General Assembly of shareholders in REN SGPS. Moreover, EDP does not decide, directly or indirectly, on management matters related to the transmission network operators, nor does it have the right to appoint any member of the respective corporate bodies. On the basis of these arguments ERSE concludes that, provided that the governance model in REN SGPS remains unaltered, the conditions established in Article 9(1)(b)(i) of the Electricity and Gas Directives are met also with regard to EDP's participation in REN SGPS.

The Commission cannot follow this argumentation. The Commission notes that the aim of Article 9(1)(b)(i) of the Electricity and Gas Directives is to prevent parties with interests in the supply and/or production of electricity and/or natural gas to exercise influence over TSOs. Contrary to the other shareholders in REN SGPS as described in this Chapter, EDP exercises its activities in Portugal itself making use of the networks of REN SGPS. The fact that EDP's rights are limited and that it exercises its voting rights merely in the General Assembly of REN SGPS cannot be a sufficient argument for compliance with Article 9(1)(b)(i) of the Electricity and Gas Directives. Creating a separate administrative layer between the owners of a TSO and its management is not in itself sufficient to exclude that conflicted owners of a TSO could circumvent the unbundling rules by exercising their influence through an intermediate board.

The Commission recalls that, on the basis of Article 9(2) of the Electricity and Gas Directives it is possible for conflicting shareholders to hold rights in ownership unbundled TSOs as long as these rights do not entail a majority shareholding, the right to appoint board members or voting rights.⁹ The Commission notes that whilst the first two criteria appear to be satisfied, the third criterion is not. The Commission therefore invites ERSE to withhold certification until the participation of EDP is either transferred to a non-conflicted party or until the voting rights connected to it are limited so that only its passive financial rights in relation to its shareholding, in particular the right to receive dividends, would remain.

Caixa Geral de Depósitos and Free float

According to the information provided by ERSE, nine shareholders have stakes in REN SGPS and the remaining 18,9 % is free float on the stock exchange. The Commission notes that among the nine main shareholders, ERSE has not assessed, in its preliminary decision, whether Caixa Geral de Depósitos, a public bank fully owned by the Portuguese State, is active in the supply and/or generation of electricity and/or natural gas. The Commission invites ERSE to assess whether this shareholder meet the requirements of Article 9(1)(b)(i) of the Electricity and Gas Directives.

Also with regard to the free float, ERSE has not assessed compliance with Article 9(1)(b)(i). As participations in a listed undertaking may change continuously, the Commission considers that it can be sufficient to comply with the unbundling requirements to introduce mechanisms that enable ERSE to monitor on a regular basis and decide whether or not a shareholder meets the requirements of Article 9(1)(b)(i) of the Electricity and Gas Directives. The Commission

⁹ The Unbundling Regime, Interpretative Note of 22 January 2012, http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/2010_01_21_the_unbundling_regime.pdf, page 9

notes that such regimes have been put in place in Belgium and Italy. The Commission has commented on the measures taken with regard to the Spanish Electricity TSO Red Eléctrica¹⁰.

4. PARTICIPATION IN PRODUCTION AND SUPPLY ACTIVITIES

Article 9(1)(b)(ii) of the Electricity and Gas Directives prohibits the same person or persons from directly or indirectly exercising control over a transmission system operator or over a transmission system, and directly or indirectly exercising control or exercising any right over an undertaking performing any of the functions of production or supply.

As mentioned in Chapter II REN SGPS, is not only the mother company of both TSOs, but also of a number of other companies which are also active in the field of energy. Except for one, none of these companies carries out activities of production, generation or supply and that consequently the conditions established in Article 9(1)(b)(ii) of the Electricity and Gas Directives are respected.

REN Trading S.A. (hereafter, "REN Trading") is active in the supply of electricity. It is fully owned by REN SGPS and in charge of the management of two Power Purchase Agreements (hereafter, "PPAs")¹¹. REN Trading is responsible for the resale on the wholesale market of the electricity produced by the power plants covered by the PPAs and for paying the owners of the plants for this electricity according to the terms established in the PPAs.

ERSE considers that REN Trading cannot be regarded as a producer or seller of electricity for a number of reasons and that therefore the prohibition of Article 9(1)(b)(ii) of the Electricity and Gas Directives is respected. First of all, ERSE argues that REN Trading does not operate under commercial terms as it is directly regulated by ERSE and the net result of the management of the PPAs is passed on to tariffs. This neutral mechanism is meant to exclude the risk that REN Trading is favoured by the TSO. Secondly, REN Trading was solely created to meet the obligations established in the PPAs and its activity has therefore a temporary nature until the expiry of the PPAs in 2021 and 2024. Thirdly, ERSE considers that the weight of the power plants covered by the PPAs can be considered residual as they represented less than 1% of the installed capacity and less than 2% of the negotiated power in 2011, when considered in the framework of the Iberian Market of Electricity ('MIBEL').

Finally, ERSE has imposed some supplementary measures that reinforce the separation of REN Trading from the TSOs. These supplementary measures establish that members of REN Trading's supervisory and administrative bodies cannot be members of the TSOs' bodies or of companies which produce or sell electricity or natural gas. They cannot have any labour contract with the TSOs nor provide any type of service to the TSOs or to companies which produce or sell electricity or natural gas. Measures also prohibit sharing IT-systems, equipment, material installations or access security systems with the TSOs, and the use of joint services and the same consultants or external contractors. These measures must be complied with within the 6 months following the decisions on the certifications of the TSOs. Consequently, ERSE concludes that REN SGPS's control over REN Trading meets the conditions established in Article 9(1)(b)(ii) of the Electricity and Gas Directives.

The Commission welcomes the measures introduced by ERSE to reinforce the governance model in REN Trading. However, according to the information submitted, ERSE has developed an incentive scheme for REN Trading which could raise doubts. On the basis of

¹⁰ Commission Opinion pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Spain - Certification of Red Eléctrica de España, S.A.U. (electricity), page 4

¹¹ The PPAs cover the coal thermal power station of Pego and the CCGT of Turbogás and will end in 2021 and 2024 respectively.

this scheme REN Trading is entitled to receive an annual sum of up to 3 million euro which is calculated comparing the actual costs/incomes of the power plants with the ones that would have resulted from their optimal operation. ERSE has thereby sought to foster the optimal management of the plants by REN Trading. It is the Commission's view however that by introducing the incentive scheme REN SGPS may inherently have an incentive to favour, through REN Rede Eléctrica Nacional, REN Trading over other network users, notably by increasing their participation in the ancillary services market.

As a general principle, the Commission considers that no TSO should be directly or indirectly involved in generation activities, which includes the selling of electricity produced by power plants on the wholesale electricity market. In the present case however, a number of specific circumstances are of relevance. Most notably, it should be taken into account that REN Trading's activities are of a temporary nature until the expiry of the PPAs and they are confined to the management of these two contracts. In addition, REN Trading was created to comply with the contractual obligations which prohibit modifications to the contracts and the changing of the counterparts in the PPAs without the agreement of the financial institutions involved in the PPAs. Moreover, REN Trading does not operate under normal commercial terms, as evidenced by the fact that the incomes and costs of the management of the PPAs are passed on to tariffs, and its activity is subject to direct regulation by ERSE. Finally, the volumes of energy generated represents a small portion of the energy traded in MIBEL.

On this basis, the Commission takes the view in this particular case that a divestment of REN Trading might not be required, provided that a number of requirements are met. Should ERSE decide to grant certification to the TSO, it should include conditions in its decision to ensure those requirements are met. First, it should be ensured in the final decision that the oversight over REN Trading's activities is strengthened, most notably with regard to its provision of ancillary services in order to ensure a level playing field on that market. Second, it should also be ensured that the current system is not prolonged after the expiry of the PPAs. Finally, the possible certification should include a condition for the TSOs to report to ERSE any change of circumstances as regards REN Trading relevant for the above assessment and ERSE should ensure on-going monitoring in this respect.

5. INDEPENDENCE OF BOARD MEMBERS

Article 9(1)(c) and (d) of the Electricity and Gas Directives require that members of the management of the TSO and persons that have the right to appoint them, must fulfil certain requirements of independence. In particular, the same person or persons are not entitled to control or exercise any right over an undertaking performing any of the functions of production or supply and at the same time be or appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking. Moreover, the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any functions of production or supply and a transmission system operator or a transmission system.

According to the information provided by ERSE, each of the two TSOs is managed by a Board of Administration which currently is composed of the same members as the Executive Committee of REN SGPS. The Executive Committee of REN SGPS is in charge of the everyday running of REN SGPS, by delegation of the Board of Administration of REN SGPS, and its members are also appointed by the Board of Administration of REN SGPS among the latter's own members. The Board of Administration of REN SGPS is composed of 15 members and responsible for the overall management¹² of the holding. The current Chairman of the Board of Administration of REN SGPS is also the President of the Executive

¹² This includes approving the annual budget, the business plan and long-term development plans.

Committee. According to the information provided by ERSE, the current members of the Executive Committee of REN SGPS have not been appointed by the major shareholders in REN SGPS.

In summary, the current situation is such that the management of the TSOs is appointed by the Board of Administration of REN SGPS, some of whose members represent conflicting shareholders. Hence, the Commission deems it necessary to assess the compliance with the independence requirements of members of REN SGPS' Board of Administration. From the information submitted by ERSE, it furthermore appears that some of the provisions contained in the articles of association of REN SGPS¹³ are in conflict with Article 9(1)(c) of the Electricity and Gas Directives and appear to specifically allow for conflicting shareholders to appoint Board Members. The Commission invites ERSE to take the measures necessary to amend such provisions to ensure the compliance with Article 9(1)(c) of the Electricity and Gas Directives.

Among others, State Grid International Development Limited, Oman Oil Company and Parpública appoint members in the Board of Administration of REN SGPS. ERSE considers that the conditions established in Article 9(1)(c) of the Electricity and Gas Directives are reasonably met on the same grounds as for Article 9(1)(b)(i) of the Electricity and Gas Directives, namely that the companies controlled by State Grid International Development Limited and Oman Oil Company exercise their activities in areas with no connection to the Portuguese network. The case of Parpública is not assessed in ERSE's draft decisions.

The Commission agrees with ERSE that State Grid International Development Limited's rights of appointment should not be an obstacle to the certification insofar as the companies owned by State Grid Corporation of China perform production or supply activities in areas with no connection to the Portuguese network. Regarding the potential conflict that could arise with China Three Gorges Corporation's participation in EDP the Commission considers that provided that both companies, State Grid Corporation of China and China Three Gorges Corporation, are run independently from each other as separate economic entities, the latter's participation in EDP should not be an obstacle for the certification of the applicants under the ownership unbundling model. The Commission underlines that it is for ERSE to monitor whether the circumstances on which the assessment is based remain unchanged.

With regard to Parpública's right to appoint a member of the Board of Administration of REN SGPS, the Commission takes the view that it is not compliant with Article 9(1)(c) of the Electricity and Gas Directives given the fact that it exercises rights in Galp Energia¹⁴. The Commission therefore invites ERSE to ensure compliance with Article 9(1)(c) of the Electricity and Gas Directives, for example by ensuring measures are in place so that Parpública does not have either appointment rights with regard to the Board of Administrators in REN SGPS or voting rights in Galp Energia.

The Commission notes that the same could apply to Oman Oil Company given the fact that it exercises rights in MOL¹⁵. With regard to Oman Oil Company, the Commission invites ERSE to verify that no conflict of interest arises with regard to MOL's activities.

As a final remark, with regard to Article 9(1)(d) of the Electricity and Gas Directives, the Commission invites ERSE to verify that the Board Member of REN SGPS' Board of Administration appointed by Oman Oil Company is not at the same time a Board Member of Oman Gas Company.

¹³ Notably article 7-A.

¹⁴ According to the submitted information, Parpública holds a participation of 7% in Galp Energia

¹⁵ According to the submitted information, Oman Oil Company holds a participation of 7% in MOL.

IV. CONCLUSION

Pursuant to Article 3(2) of the Electricity and Gas Regulations, ERSE shall take utmost account of the above comments of the Commission when taking its final decisions regarding the certification of the Applicants, and when it does so, shall communicate these decisions to the Commission.

The Commission's position on these particular notifications is without prejudice to any position it may take *vis-à-vis* national regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* national authorities responsible for the transposition of EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. ERSE is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which it wishes to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels,

For the Commission

[...]

Member of the Commission