



EUROPEAN COMMISSION

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**COMMISSION OPINION**

of **XXX**

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of  
Directive 2009/73/EC - Italy - Certification of Snam Rete Gas S.p.A.**

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### I. PROCEDURE

On 7 June 2012, the Commission received a notification from the Italian national regulatory authority, Autorità per l'energia elettrica e il gas (hereafter "AEEG"), of a draft decision on the certification of the transmission system operator for gas Snam Rete Gas S.p.A. (hereafter "SRG").

Pursuant to Article 10 Directive 2009/73/EC<sup>1</sup> (hereafter "Gas Directive") and Article 3 Regulation (EC) No 715/2009<sup>2</sup> (hereafter "Gas Regulation") the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) and Article 9 of Directive 2009/73/EC.

### II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

SRG is one of three gas transmission system operators in Italy. It owns and operates 31.700 kilometres of high pressure gas pipelines, which is the large majority of the Italian gas transmission grid. SRG is a 100% daughter company of Snam S.p.A. (hereafter "Snam") which in turn is controlled by ENI S.p.A. (hereafter "ENI") (52,53%). ENI is Italy's largest gas company active in *inter alia* the production and supply of natural gas. Snam is a holding company for ENI's gas infrastructure related businesses, with daughter companies operating LNG, storage, transmission and distribution facilities.

In order to comply with the applicable rules on the unbundling of transmission system operators, SRG has applied for certification according to the Independent Transmission Operator ("ITO") model, referred to in Article 9(8)(b) Gas Directive. This choice is available to SRG under the Italian legislation transposing the Gas Directive.

AEEG has analysed whether and to what extent SRG complies with the unbundling rules of the ITO model as laid down in the Italian legislation transposing the Gas Directive. In its preliminary decision, AEEG has identified a number of conditions which need to be satisfied in order to ensure full compliance with these unbundling rules.

The Commission notes that as a consequence of the adoption by the Italian Parliament of Article 15 of Law n. 27 on 24 March 2012, which requires the mother company of SRG,

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<sup>1</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94 of 14.8.2009.

<sup>2</sup> 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.

Snam, to adopt the ownership unbundling regime as soon as possible but in any event not later than 25 September 2013, it is highly probable that by that date SRG will have developed into a fully ownership unbundled TSO. This law has been followed up by a Government Decree on 25 May 2012, which explains in more detail the exact steps Snam and ENI need to take in order to implement the ownership unbundling model.

### III. COMMENTS

On the basis of the present notification the Commission has the following comments on the draft decision.

According to Article 9(8) Gas Directive, the ITO model may be applied in cases where, on 3 September 2009, the transmission system belonged to a Vertically Integrated Undertaking (hereafter "VIU"). The Commission agrees with AEEG that in the present case the choice for the ITO model is legitimate, considering that the transmission system concerned did belong to a VIU on the relevant date.

As a consequence of the adoption by the Italian Parliament on 24 March 2012 of Article 15 of Law n. 27 and of the subsequent Government Decree of 25 May 2012, SRG will most likely be required to operate under the ITO model for a relatively short interim period only, awaiting full ownership unbundling of Snam, at the latest by 25 September 2013.

In its preliminary decision AEEG obliges SRG to satisfy a number of conditions, which are necessary to comply with the ITO model, by 24 September 2013. This is also the date upon which AEEG will reassess the unbundling status of SRG, be that as an ownership unbundled TSO or as an ITO. Hence, by 24 September 2013, SRG will either have to comply with the conditions attached to the preliminary ITO-certification decision by AEEG, or with the requirements attached to the ownership unbundling model of Article 9 Gas Directive.

According to AEEG an important number of structural measures with regard to the independence of the transmission business of SRG, in particular the establishment of an independent management of the TSO and the appointment of an independent compliance officer, are already in place. On two points AEEG notes<sup>3</sup> that there is room for a further strengthening of the independence of the management of SRG, and in its preliminary decision AEEG requests SRG to amend its statutes accordingly by 24 September 2013. The Commission underlines that it is essential that the independence of the transmission business

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<sup>3</sup> In the case of SRG, the Board of Directors consists of five persons, four of which together form the Supervisory Body. The fifth member of the Board of Directors of SRG is the CEO who does not form part of the Supervisory Body. All members satisfy the relevant independence criteria as laid down in article 19 and 20 of the Gas Directive. In order to create the necessary separation and distance between the CEO and the other members of the Board of Directors (in other words, between the management of the TSO and the Supervisory Body), the Board of Directors has formally delegated all its powers regarding the day to day activities of the company, the management of the transmission network as well as the activities for the preparation of the ten-year network development plan, to the CEO. The first point of concern to AEEG is with regard to the President of the Board of Directors, who is at same time a member of the Supervisory Body and, according to the statutes, represents SRG externally. This position gives the President of the Board the possibility of interfering in the day-to-day-business of the TSO. The second point raising concern refers to the power of the Board of Directors to at any time withdraw the management powers from the CEO. Such power would imply that the same persons who are members of the Supervisory Body have the possibility of interfering with tasks of the management of the TSO.

from the production and supply interests of ENI is ensured in full and as soon as possible, also during the interim period, irrespective of whether in the future Snam will be ownership unbundled or not. The Commission therefore invites AEEG to oblige SRG to amend its statutes as referred to in its preliminary decision, as soon as possible and not by 24 September 2013. This should be a condition for certification of SRG as an ITO.

Furthermore, the Commission considers that two other aspects of independent system operation as required under the ITO model should be further enhanced, as soon as possible, and not by 24 September 2013 only.

The first aspect relates to the contracting of services provided by other parts of the VIU to SRG. As one of the conditions attached to its preliminary decision, AEEG has requested SRG to terminate existing commercial relationships not later than 24 September 2013 and to, from that date onwards, acquire the services of the ended contracts through public tender procedures from which ENI and other parts of the VIU are excluded. The Commission welcomes this condition, but invites AEEG to also ensure that in the interim period until 24 September 2013 no new contractual arrangements are entered into under which other parts of the VIU provide service to SRG.

The second aspect concerns the effective separation of IT-services between ENI and SRG. In its preliminary decision AEEG prescribes the effective separation of IT-services between ENI and Snam, the holding company for ENI's infrastructure-related activities, by 31 December 2012. The Commission invites AEEG to ensure that the envisaged separation between ENI and Snam does in fact result in the impossibility of any interference by ENI in the IT-related services provided to SRG.

The Commission notes that in both of the above-mentioned points, which relate to the situation that will occur in the interim period until 24 September 2013, the compliance officer must play an important role in monitoring compliance with the abovementioned conditions.

#### **IV. CONCLUSION**

Pursuant to Article 3 Gas Regulation, AEEG shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of SRG, and when it does so, shall communicate this decision to the Commission.

The Commission's position on this particular notification 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, on 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 therein to be confidential. AEEG is invited to inform the Commission within five working days following receipt whether and why 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.

Done at Brussels,

*For the Commission*

*Member of the Commission*