



EUROPEAN COMMISSION

Brussels, **XXX**
[...] (2012) **XXX** draft

COMMISSION OPINION

of **XXX**

on

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of
Directive 2009/73/EC - Slovenia - Certification of Plinovodi, d.o.o.**

COMMISSION OPINION

of XXX

on

pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Slovenia - Certification of Plinovodi, d.o.o.

I. PROCEDURE

On 19 April 2012, the Commission received a notification from the Slovenian regulator for energy Energy Agency (hereafter, "the Energy Agency"), in accordance with Article 10(6) of Directive 2009/73/EC¹ (hereafter, "Gas Directive"), of a draft decision on the certification of "Plinovodi, d.o.o." (hereafter, "Plinovodi") as a Transmission System Operator (TSO) for gas.

Pursuant to Article 3(1) Regulation (EC) No 715/2009² (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 the Gas Directive.

II. DESCRIPTION OF THE NOTIFIED DECISION

Plinovodi is a transmission system operator for gas in Slovenia which owns and operates the transmission network in the Republic of Slovenia. Plinovodi transports gas to distribution companies and directly connected industrial consumers. The network is approximately 1054 kilometres long. The annual gas supply of all users of the transmission network is approx. 1bcm.

Plinovodi is wholly owned by Geoplin, d.o.o, the largest gas supplier in Slovenia with a market share on the supply market of approximately 70 %.

In order to comply with the applicable rules on unbundling of transmission system operators, Plinovodi has chosen the Independent Transmission Operator (ITO) model, referred to in Article 9(8)(b) Gas Directive. This choice is available to Plinovodi under the Slovenian legislation transposing the Gas Directive.

Article 9 Gas Directive sets out rules on the unbundling of transmission systems and transmission system operators. Article 9(8)(b) therein provides that where on 3 September 2009, the transmission system belongs to a vertically integrated undertaking a Member State may decide not to apply paragraph 1, provided that the Member State concerned complies with the provisions of Chapter IV, establishing requirements for independent transmission operators (Articles 17 to 23 Gas Directive).

The Energy Agency has come to the preliminary conclusion that Plinovodi complies with the requirements of the ITO model as laid down in the Slovenian legislation transposing the Gas

¹ 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.

² 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.

Directive. The Energy Agency has submitted its draft decision to the Commission requesting for an opinion.

III. COMMENTS

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

1. Choice of the ITO model

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 ("VIU"). The Commission agrees with the Energy Agency in the present case that the choice for the ITO model is legitimate for Plinovodi, considering that the transmission system concerned did belong to a VIU on the relevant date.

2. Contracts for services provided from the VIU to the ITO

Article 17(1)(c) Gas Directive provides for specific rules on the contracting of services between other parts of the VIU and the ITO. As the ITO should be autonomous and not dependent on other parts of the VIU, contracting of services to the ITO by any other part of the VIU is prohibited by the Gas Directive. As a preliminary remark the Commission considers that in view of the general prohibition of services provided to the ITO by other parts of the VIU, a derogation could only be envisaged in exceptional circumstances. Such derogation should be construed narrowly and should not go beyond what is strictly necessary to protect overriding interests, such as the security and the reliability of the transmission system. Only in exceptional cases, where the services concerned are strictly necessary to protect overriding interests as referred to above, and where no other service provider except for the VIU could provide these services to the ITO, now or in the foreseeable future, could a derogation possibly be considered justified. Such derogation should also in principle be of a transitional nature, limited in time. In addition it should be ensured that transactions between other parts of the VIU and the ITO occur at arms length in order to avoid cross subsidisation.

In the preliminary decision, the Energy Agency stated that Plinovodi has concluded lease contracts with Geoplin regarding some premises in which offices for providing supporting services are situated. The Energy Agency stated that these leased premises are situated in the building of the vertically integrated company. Even though this only concerns a small number of offices, which are appropriately separated and are only accessible for employees of Plinovodi, the Commission considers that such lease contracts cannot be maintained on a permanent basis. The Commission therefore invites the Energy Agency to ensure that these lease contracts are terminated following a transitory period, and to foresee appropriate reporting requirements for Plinovodi in this respect.

In addition, in the draft decision, the Energy Agency also referred to contracts with which Plinovodi is buying and selling balancing energy and energy for own use from Geoplin. The Energy Agency considered how the procurement of these contracts had been carried out - i.e. an invitation to provide offers was sent to only two companies - and that the contracts concerned expire at the end of 2012. The Energy Agency confirmed that in the future it would only approve such contracts if Plinovodi published invitations to tender which would allow more suppliers to take part in the tender procedure. The Commission agrees with the Energy Agency that the current service contracts provided by Geoplin to Plinovodi are of a transitory nature as they expire at the end of 2012. The Commission also agrees that any future service contracts must be awarded through an open, transparent and non-discriminatory tender procedure allowing for more than two bidders. The Commission considers that the Energy Agency, when approving such contracts in the future, must ensure that Plinovodi does not

accept offers from Geoplin which contain any preferential tariffs: these contracts must be awarded in a non-discriminatory manner, at arm's length.

3. Supervisory Body – powers

Chapter IV of the Gas Directive provides for a detailed division of powers between the various bodies of the ITO, including between the Management Board and the Supervisory Body. In the preliminary decision, the Energy Agency refers to the Slovenian Company Act which appears to allow a considerable influence of a supervisory board over the management as regards the day-to-day running of a company. The Commission agrees with the Energy Agency that the powers of the Supervisory Body as regards the day-to-day management and the development and implementation of the 10-year network development plan are carefully defined in Chapter IV of the Gas Directive, and that Plinovodi and its Supervisory Body must respect this division of competences laid down in the Gas Directive.

IV. CONCLUSION

Pursuant to Article 3(2) Gas Regulation, the Energy Agency shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of Plinovodi, 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 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. The Energy Agency 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