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COMMISSION OPINION

of 28.5.2024

**pursuant to Article 51(1) of Regulation (EU) 2019/943 and Articles 52(6) and 53(6) of
Directive (EU) 2019/944 – Ireland – Certification of Greenlink Interconnector Limited
as transmission system operator for electricity**

(ONLY THE ENGLISH TEXT IS AUTHENTIC)

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I. PROCEDURE

On 19 January 2024, the Commission received an initial notification from the regulatory authority in Ireland, the Commission for Regulation of Utilities (hereafter “CRU”), of a preliminary decision concerning the certification of Greenlink Interconnector Limited (hereafter “GIL”) as transmission system operator for electricity (hereafter “TSO”).

Pursuant to Article 51 of Regulation (EU) 2019/943¹ (hereafter "Electricity Regulation") and Articles 52 and 53 of Directive (EU) 2019/944² (hereafter "Electricity Directive"), the Commission is required to examine the notified draft decision and to deliver an opinion to the relevant national regulatory authority as to its compatibility with Articles 43, 52 and 53 of the Electricity Directive.

II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

GIL is the owner and operator of the Greenlink interconnector (hereafter “Greenlink”) which is currently under construction. The project comprises an electricity interconnector between Ireland (County Wexford) and Great Britain (Pembrokeshire). The 504 MW subsea and underground high-voltage direct current (HVDC) system, two converter stations, a tail station in Ireland and onshore cables in Ireland and Wales are planned to become operational in 2024.

CRU has analysed whether GIL complies with the requirements of the ownership unbundling model, as laid down in the Irish legislation transposing the Electricity Directive.

As special purpose vehicle, GIL itself does not own or otherwise exercise control or have any rights over an undertaking performing any of the functions of generation or supply.

GIL is majority owned by Greenlink (Luxembourg) S.à.r.l. (hereafter “Greenlink Lux”) through several 100% subsidiaries. [REDACTED]

[REDACTED]

¹ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54.

² Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, OJ L 158, 14.6.2019, p. 125.

[REDACTED]

Therefore, the ultimate controller of GIL is Partners Group. Partners Group is a global private markets investment management firm managing investments amounting to around \$135 billion. Partners Group is domiciled in Switzerland and listed on the SIX Swiss Exchange. Partners Group is not controlled by any shareholder: Only four shareholders hold more than 5% of shares, with none more than 6.1%³.

Partners Group also indirectly controls undertakings generating or supplying energy, both within and outside Europe. Outside Europe Partners Group has interests in electricity generation in Colombia, Chile, Panama, Taiwan, Australia, the United States and India and in a natural gas producer in the United States. CRU has concluded that such ‘remote’ and non-EU connected assets do not give rise to conflicts of interest or create an incentive or ability for Partners Group to use its influence to favour those interests to the detriment of other network users. Those interests are therefore not considered relevant by CRU when deciding about the certification of GIL as TSO.

According to the draft certification decision by CRU, Partners Group controls the following undertakings generating or supplying energy:

- VSB Renewables which is based in Germany and owns renewable electricity generation [REDACTED] in Germany, France, Finland and Poland. [REDACTED]
- Biogeen which has [REDACTED] biogas and [REDACTED] biomethane plants located in Germany. [REDACTED]
- Gren Holdings (hereafter “Gren”) is a green energy company operating in the United Kingdom (hereafter “UK”), Finland, Estonia, Latvia and Lithuania. [REDACTED]

None of GIL’s Directors or other senior executives hold such or equivalent positions in an undertaking performing any of the functions of generation or supply⁴.

³ See page 83 of Partners Group’s annual report for 2023 (https://www.partnersgroup.com/~/_media/Files/P/Partnersgroup/Universal/shareholders/reports-and-presentations/2023/annual-report-2023.pdf)

⁴ At the time of notification of the preliminary certification decision one Director of GIL was also Director of an undertaking which is expected to be active in electricity generation. However, on 5 March 2024 CRU informed the Commission that in the meantime, as requested by CRU in its preliminary certification decision, this person resigned as Director of this undertaking.

Two of GIL's Directors are employees of Partners Group. However, each member of GIL's Board of Directors committed to complying with a Commercially Sensitive Information Exchange Protocol laying down internal processes to prevent disclosing confidential information that may be advantageous to any undertaking performing any of the functions of generation or supply.

CRU notes that the ability of GIL to influence electricity flows across Greenlink will be limited: Capacity on electricity interconnectors between Ireland and Great Britain will be allocated via arrangements as set out in the EU-UK Trade and Cooperation Agreement (hereafter "TCA"), replacing implicitly allocated capacity via the intraday market. Dispatch decisions in relation to Greenlink will be made by the Irish TSO EirGrid. Furthermore, Greenlink is subject to regulatory arrangements, in particular an interconnector availability target rewarding or penalising interconnector availability, which further reduces the risk that GIL acts discriminatorily towards generators or suppliers.

CRU concludes that the risks of discrimination and conflicts of interest from Partners Group's current portfolio is limited due to the combination of:

- the limited exposure of Partners Group's generation and supply assets to wholesale markets and those generation assets that are exposed to wholesale markets being of a relatively small scale and geographically distant from the transmission system operated by GIL;
- the limited control that GIL has over the operation of the interconnector as well as the current regulatory arrangements for the Greenlink interconnector; and
- existing governance controls on confidential information and conflicts of interest.

CRU therefore considers that it would be disproportionate to require Partners Group to divest the Greenlink asset or otherwise refuse to certify GIL as TSO.

Finally, given that Partners Group is registered in Switzerland, hence in a third country, CRU also undertook an assessment to ascertain that granting the certification would not put at risk the security of energy supply of Ireland or the EU, in accordance with the requirements set out in Article 53 of the Electricity Directive. Switzerland is part of the European Free Trade Association. On 15 December 2023, the European Commission announced that a Common Understanding was reached with representatives of Switzerland's Federal Council⁵ and that in this context negotiations on an electricity agreement should resume. CRU therefore concludes that certification of GIL should not put at risk the security of energy supply of Ireland or the EU.

On this basis, CRU submitted its preliminary certification decision to the Commission requesting an opinion.

III. COMMENTS

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

⁵ https://ec.europa.eu/commission/presscorner/detail/en/IP_23_6601

1. Generation and supply interests of Partners Group

Background to the Commission assessment

Article 43(1)(b)(i) of the Electricity Directive prohibits the same person(s) from directly or indirectly exercising control over an undertaking performing any of the functions of generation or supply, and directly or indirectly exercising control or exercising any right over a TSO or over a transmission system. Article 43(1)(b)(ii) of the Electricity Directive prohibits the same person(s) from directly or indirectly exercising control over a TSO or over a transmission system, and directly or indirectly exercising control or exercising any right over an undertaking performing any of the functions of generation or supply. The objective which the unbundling rules of the Electricity and Gas Directives⁶ pursue is the removal of any conflict of interest between, on the one hand, generators/producers and suppliers and, on the other hand, TSOs by requiring the structural separation between generation/supply and transport infrastructure, which excludes the possibility to use the infrastructure to influence competition.

The objective and purpose of the EU unbundling rules should be kept in mind in the certification of TSOs. As explained in the Staff Working Paper '*Ownership Unbundling: The Commission's practice in assessing a conflict of interest including in the case of financial investors*'⁷, a certification of a TSO should not be refused in cases where it can be clearly demonstrated that there is no incentive and ability for a shareholder in a TSO to influence the TSO's decision making in order to favour its generation, production and/or supply interests to the detriment of other network users and therefore prohibiting person(s) from investing in a TSO would be disproportionate. The Staff Working Paper assumed that such cases would mainly relate to globally active holding companies owning, *inter alia*, a TSO or to financial investors whose investment strategy typically involves investments in both renewable energy generation assets and grid transmission infrastructure with a view to benefiting from regulated income.

Assessment of a possible conflict of interest

One example mentioned in the above mentioned Staff Working Paper is a case where the holding company of an electricity TSO also controls generation interests on another continent. The Commission agrees with CRU that the generation and supply interests of Partners Group which are located on other continents do not pose a risk as regards a possible conflict of interest: Due to the geographical distance there exists neither a direct link nor does it seem likely that at any time in the future such a physical connection of the markets in question will be established. Therefore, there does not appear to be an incentive and ability for a shareholder in a TSO located in Ireland to influence the TSO's decision making in order to favour such generation or supply interests to the detriment of other network users.

Other examples mentioned in the Staff Working Paper are electricity TSOs whose controllers also own smaller generation assets in other countries, e.g. a waste incinerator or a combined heat and power plant mainly providing heat to a district heating system which also produce electricity and which operate in a regulated system. Gren operates CHP plants in Finland, Estonia, Latvia and Lithuania. With the exception of one plant, those plants sell the electricity

⁶ 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, 14.8.2009, p. 94.

⁷ SWD(2013) 177 final

on wholesale markets. However, those plants are geographically rather distant and also produce electricity solely as a byproduct of heat production.

Also the generation interests of VSB Renewables and Biogen are located in relative geographical distance and the produced electricity is sold for a fixed price either under a subsidy scheme or a PPA.

The Commission considers in case of the generation activities mentioned above that there appears to be no scope for a conflict of interest between those generation interests and the electricity transmission activities of GIL, nor a resulting risk of discrimination of other network users: electricity generation takes place in geographical distance and the produced electricity is sold for a fixed price either under a subsidy scheme or a PPA. In the one case where the electricity is sold on wholesale markets, it is produced solely as a byproduct of heat production.

The [REDACTED] of Gren in the UK are geographically close to Greenlink, but with in total [REDACTED] they are relatively small, electricity is only a byproduct and electricity is sold via a PPA.

In conclusion, the Commission therefore considers that it would be disproportionate to refuse certification of GIL due to the current interests of Partners Group in undertakings active in energy production or supply. However, CRU may need to reassess compliance with unbundling rules, in particular in case the subsidy regimes or the PPAs expire.

2. Application of Article 53 – Certification in relation to third countries

Pursuant to Article 53 of the Electricity Directive, CRU is to refuse certification unless it is demonstrated, on the basis of an assessment, that granting certification does not put at risk the security of supply of Ireland or the EU.

In the present case, the application of Article 53 is triggered due to the fact that Partners Group is registered in Switzerland, [REDACTED] in the UK and [REDACTED] in Guernsey.

Commission assessment

Both Switzerland and the UK are OECD members and – as also most EU Member States – members of the International Energy Agency (IEA), an organisation which has among its main tasks to increase the security of the energy supply of its members. Switzerland is part of the European Free Trade Association.

The energy chapter of the Trade and Cooperation Agreement between the EU and the UK of 31 December 2020⁸ aims at facilitating trade and investment between the EU and the UK and at supporting security of supply and environmental sustainability.

Guernsey is not a sovereign country, but as Crown Dependency a territory for which the UK has certain responsibilities. Via Jersey, Guernsey is closely linked with the French electricity grid by an interconnector from which it receives around 94% of its electricity supply⁹.

⁸ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part. OJ L 444, 31.12.2020, p. 14-1462.

⁹ <https://www.electricity.gg/electricity/electricity-in-guernsey/where-our-electricity-comes-from/>

Given the experience so far and the ongoing relations with those countries and territories, the Commission is of the opinion that there are no indications that the certification of GIL would put at risk the security of supply of Ireland or the EU.

3. Ongoing monitoring

The Commission recalls the obligation set out in Article 52(4) of the Electricity Directive for national regulatory authorities to monitor the continued compliance of TSOs with the unbundling requirements of Article 43 of the Electricity Directive.

Should CRU decide to certify GIL, the Commission invites CRU to continue monitoring the case also after the adoption of the final certification decision in order to satisfy itself that no new facts emerge which would justify a change of its assessment.

IV. CONCLUSION

Pursuant to Article 51 of the Electricity Regulation, CRU shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of GIL, and when it does so, shall communicate its decision to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* Member State regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* Member State 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. CRU is invited to inform the Commission within five working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 28.5.2024

For the Commission
Kadri SIMSON
Member of the Commission

