



Brussels, **XXX**
[...] (2013) **XXX** draft

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 Infrastrutture Trasporto Gas S.p.A.**

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I. PROCEDURE

On 18 June 2013, 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 Infrastrutture Trasporto Gas S.p.A. (hereafter, "ITG").

Pursuant to Article 10 Directive 2009/73/EC¹ (hereafter, "Gas Directive") and Article 3 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 Directive 2009/73/EC.

II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

ITG is one of three gas transmission system operators in Italy. It owns and operates a single 83 kilometres long high pressure gas pipeline connecting the offshore Rovigo LNG Terminal to Italy's main gas transmission grid which is operated by Snam Rete Gas. Entry and exit into and out of the ITG pipeline is directly linked to the acquisition of regasification rights in the LNG Terminal, ensuring that physical and contractual congestion in ITG cannot occur.

ITG is entirely owned by Edison S.p.A., which in turn is wholly owned, via various subsidiaries, by Electricité de France S.A. Both Edison S.p.A. and Electricité de France S.A. are companies active in the generation and/or supply of electricity and/or gas.

In order to comply with the applicable rules on the unbundling of transmission system operators, ITG 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 ITG under the Italian legislation transposing the Gas Directive.

AEEG has analysed whether and to what extent ITG 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.

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.

III. COMMENTS

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

1. Centralized treasury services

Article 17(1) Gas Directive determines *inter alia* that an ITO shall be equipped with all financial resources necessary for carrying out the activity of gas transmission. Article 17(1)(c) Gas Directive prohibits the ITO to receive services from the vertically integrated undertaking (hereafter "VIU"). In view of this general prohibition, derogations could only be envisaged in exceptional circumstances, 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.

In its assessment of the application of ITG, AEEG has found that a centralized treasury management system is currently in place between ITG and the VIU, with ITG receiving this service from the VIU. The agreement expires on 31 December 2013 and can yearly be renewed.

The Commission, in its opinion on the certification of the French gas TSO GRTgaz, considered that a contract for treasury services in principle does not comply with Article 17(1)(c) Gas Directive as it is a service contract from the VIU to the ITO, adding that it should be assessed by the regulatory authority whether or not the contract for treasury services concerned is acceptable with a view to ensuring that the autonomy of the ITO is respected.³

AEEG in its preliminary decision has assessed that the service agreement contains clauses that might undermine the TSO independence. Consequently, AEEG has imposed on ITG to terminate the above agreement with the VIU not later than 31 December 2013. The Commission agrees with AEEG that, given these findings, the agreement in its current form should not be prolonged after 31 December 2013.

2. Tasks of the TSO

Article 17(1) Gas Directive determines *inter alia* that an ITO shall be equipped with all human, technical, physical and financial resources necessary for carrying out the activity of gas transmission. Article 17(2) Gas Directive specifies that this activity includes a number of specific tasks listed in that provision and in Article 13 Gas Directive.

A number of tasks with regard to the ITG pipeline are carried out by Snam Rete Gas, notably tasks of an administrative-commercial nature. Whilst ITG carries out the physical operation and balancing of the pipeline, Snam Rete Gas is responsible for the commercial balancing as part of its general responsibility for the capacity allocation at the entry and exit points of the Italian network as a whole (including its interconnectors). This division of tasks is set by secondary Italian legislation, which for practical and efficiency reasons determines that the entire Italian transmission grid, including its interconnectors, is to be operated as a single entry-exit system by Snam Rete Gas, which is the owner of 96% of the system. In addition, ITG has outsourced, in part or completely, a small number of tasks of an ancillary nature to other third parties.

³ Commission Opinion of 25.11.2011 pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - France - Certification of GRTgaz, pages 4 and 5, http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/certification/2011_003_grt_en.pdf

In its draft decision, AEEG has analysed whether or not the division of tasks with Snam Rete Gas and the outsourcing of tasks to other third parties can be considered in compliance with the Italian legislation implementing the Gas Directive. Considering the limited size and specific nature of the ITG network (consisting of a single pipeline), its capacity management regime linking the regasification rights to the entry-exit-capacity of the pipeline and its close link to the operations of Snam Rete Gas, AEEG concludes that a situation exists in which it is not cost-efficient for ITG to carry out all of the activities of transmission operation by itself, nor is the independent operation of the network jeopardized.

The Commission agrees that, taking into account these circumstances and the fact that ITG is equipped with sufficient human resources to oversee the outsourced activities, in combination with the fact that none of the tasks which are related to ITG are carried out by the VIU or any other company active in the generation or supply of gas or electricity, the present situation constitutes an acceptable approach preserving the cost-efficient operation of the ITG pipeline, on the one hand, and ensuring a sufficient degree of autonomy and independence over the network, on the other.

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 ITG, 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