



Brussels, **XXX**  
[...] (2015) **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 - Bulgaria - ESO EAD**

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### I. PROCEDURE

On 8 April 2015 the Commission received a notification from the Bulgarian regulatory authority EWRC (hereafter, 'EWRC') of a draft decision on the certification of Electricity System Operator EAD (hereafter, 'ESO') as transmission system operator (hereafter, 'TSO') for electricity, in accordance with Article 10(6) of Directive 2009/72/EC<sup>1</sup> (hereafter "Electricity Directive").

Pursuant to Article 3(1) Regulation (EC) No 714/2009<sup>2</sup> (hereafter "Electricity Regulation") the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority.

### II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

ESO is the owner and operator of the entire Bulgarian electricity transmission grid. ESO is a 100% subsidiary of the Bulgarian Energy Holding EAD (hereafter, 'BEH'). The Holding is owned by the Bulgarian State through the Ministry of Economy, Energy and Tourism. BEH is the single shareholder for all subsidiaries in the group, which also includes the National Electricity Company ('NEK'), the country's largest electricity supplier and generator. ESO was established on 4 April 2007 as a subsidiary of NEK. On 4 February 2014, the unbundling of ESO from NEK was deemed to be completed and ESO applied for certification at EWRC.

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

EWRC has analysed whether and to what extent ESO complies with the unbundling rules of the ITO model. EWRC has come to the preliminary conclusion that ESO complies with these requirements. On this basis, EWRC has submitted its draft decision to the Commission requesting for an opinion.

### III. COMMENTS

On the basis of the notification and the additional information provided by EWRC the Commission has the following comments on the draft decision.

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<sup>1</sup> 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.

<sup>2</sup> 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.

## **1. Members of the Management Board and the Supervisory Body of ESO**

Articles 19 and 20 of the Electricity Directive contain independence requirements applicable to, inter alia, the management of the ITO and to at least half minus one members of the Supervisory Body of the ITO. In its preliminary decision, EWRC has assessed in detail the extent to which the relevant members of the Management Board and the Supervisory Board of ESO comply with those requirements on the basis of CVs as well as signed declarations of independence.

In its opinion<sup>3</sup> related to the certification of Bulgartransgaz as an ITO for the gas transmission systems in Bulgaria, the Commission raised concerns about the early dismissal of all of the members of the Management Board and the Supervisory Board. The Commission underlined the importance of a stable management. This is important in particular under the ITO-model whereby it is essential that the management and the long term development of the transmission system are carried out independently from the vertically integrated undertaking in accordance with the rules set in the Electricity and Gas Directives.

Like Bulgartransgaz, also ESO is a 100% daughter company of BEH. It appears from EWRC's preliminary decision that also with regard to ESO, the early dismissal of the entire Management Board and of one of the members of the Supervisory Board has taken place shortly before the application for certification by ESO. Whilst also in the present case procedurally the course of events appears to have taken place in accordance with the legal requirements, the Commission notes that it does not become entirely clear from the draft decision what the reasons for the dismissals were and to what extent they related to non-compliance with the independence requirements. Moreover, the Commission encourages EWRC again to assess any future early dismissals of board members taking into consideration the need for stable and independent management.

## **2. Independence requirements for the executive management and persons directly reporting to the management**

Article 19(8) Electricity Directive determines that the independence requirements in Article 19(3) and (4) to (7) of the Electricity Directive are applicable also to persons belonging to the executive management and to the persons directly reporting to them on matters related to the operation, maintenance and development of the system.

It appears from the notified draft decision of EWRC that in the case of ESO the group of people directly reporting to the executive management consists of one single person only. This person is at the same time one of the members of the Management Board. The Commission underlines that the Electricity Directive purposefully expands the application of the independence criteria beyond the board members to include executive management and people who report to management. The people responsible for carrying out the core activities of the TSO, namely maintenance, physical operation and development of the system would fall in this category. The Commission hence considers that at least the persons responsible for the dispatching and for the maintenance and development departments should comply with the independence criteria. The Commission encourages EWRC to assess in detail the roles and responsibilities of the main people responsible for the core tasks in ESO's organizational structure, in order to determine to whom the independence criteria of Article 19 Electricity Directive should apply and verify that these persons meet the requirements.

Finally, the Commission notes that the independence criteria laid down in the Articles 19(4) and (5) Electricity Directive apply not only to the management but to all TSO employees. The

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<sup>3</sup> Opinion C(2015) 2754 final

Commission notes that it does not become clear from EWRC's notified draft decision whether this requirement is met by the TSO employees.

#### IV. CONCLUSION

Pursuant to Article 3(2) Electricity Regulation, EWRC shall take utmost account of the above comments of 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's opinion is notably without prejudice to Commission procedures under European competition rules.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. EWRC 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*