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COMMISSION DECISION

of 25.4.2023

**on the exemption of Alpe Adria Energia S.r.l. under Article 63 of Regulation (EU)
943/2019 for an electricity interconnector between Italy and Austria**

Only the Italian and German texts are authentic

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/943¹ on the internal market for electricity and in particular Article 63 thereof,

Whereas:

- (1) Article 63(1) of Regulation (EU) 2019/943 provides the possibility for Member State authorities to exempt new electricity interconnectors from Article 19(2) and (3) of the Electricity Regulation and Articles 6 and 43, Article 59(7) and Article 60(1) of the Directive (EU) 2019/944² on common rules for the internal market for electricity provided certain conditions are fulfilled.
- (2) Article 63(7) of Regulation (EU) 2019/943 provides for the Commission to be notified of the decision by the national authorities on an exemption request and its Article 63(8) provides the possibility for the Commission requesting the notifying bodies to amend or withdraw the decision to grant an exemption.

1. Procedure

- (3) On 20 and 24 December 2019, the company Alpe Adria Energia S.r.l. (hereinafter, 'AAE' or 'the Applicant') submitted to the National Regulatory Authority in Austria, E-Control, and to the Italian Ministry (former *Ministero dello Sviluppo Economico* and current Ministero dell'Ambiente e della Sicurezza Energetica - hereinafter, 'MASE') an exemption application for the interconnection project Somplago (Italy) – Würmlach (Austria), requesting to exempt the project from EU rules on congestion rents and unbundling.
- (4) On 5 February 2020, the MASE, at the time body responsible for issuing exemption decisions in Italy, according to the national law (Article 39 of Italian Legislative Decree n° 93/2011³) forwarded the request to the National Regulatory Authority in Italy (Autorità di Regolazione per Energia Reti e Ambiente – hereinafter, 'ARERA'), to receive a qualified opinion.

¹ OJ L 158, 14.6.2019, p. 54–124

² OJ L 158, 14.6.2019, p. 125–199

³ <https://www.gazzettaufficiale.it/eli/id/2011/06/28/011G0136/sg>

- (5) Pursuant to Article 63(7) of Regulation (EU) 2019/943, the Italian and the Austrian National Regulatory Authorities (ARERA and E-Control) notified the European Commission and ACER the request for exemption with the letter of 14 February 2020.
- (6) In accordance with Article 63(4) of Regulation (EU) 2019/943, the concerned National Regulatory Authorities (hereinafter, ‘NRAs’) were requested to reach an agreement within six months from the date of reception of the exemption request by the last of the two concerned NRAs, i.e. 5 August 2020.
- (7) By Decision No. 26/2020 of 23 October 2020, ACER granted an extension of the period within which the concerned ‘NRAs’ need to reach an agreement pursuant to Article 63(4) of the Electricity Regulation. The period was extended until 5 February 2021 in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators.
- (8) On 5 February 2021, the Commission was notified by E-Control of the draft national decision on an exemption for the Somplago – Würmlach interconnector, based on the Joint Opinion of the concerned NRAs on the Somplago – Würmlach interconnector exemption application.
- (9) On the other hand, the MASE considered it appropriate to suspend the proceedings and to await the successful conclusion of the authorization procedure for the construction and operation of the interconnection project before submitting its own draft decision to the European Commission. This is because, under the Italian national law (Article 2 of the Decree 21 October 2005⁴), the exemption can be granted only once the authorization procedure is successfully completed.
- (10) On 24 February 2021, the Commission published a notice on its website informing the public of the notifications and inviting third parties to send their observations by 11 March 2021. The Commission did not receive any observations in response.
- (11) On 30 March 2021, the Commission addressed to MASE and E-Control a request for additional information, in order to allow for a full assessment and understanding of the exemption decree. The information was provided on 9 June 2021.
- (12) In the meantime, the national legislative framework in Italy has evolved. Article 26 of the Legislative Decree 8 November 2021, no. 210⁵ transferred to ARERA the competence to grant and modify exemptions pursuant to Article 63 of Regulation (EU) 2019/943.
- (13) On 22 April 2022, ARERA sent a reasoned letter to the Commission, notifying the draft decision on an exemption for the Somplago – Würmlach interconnector, based on the Joint Opinion of the concerned NRAs on the Somplago – Würmlach interconnector exemption application.
- (14) The Commission requested information from ARERA and E-Control on 8 July 2022 and on 19 January 2023 to allow for a full assessment and understanding of the joint

⁴ <https://www.gazzettaufficiale.it/eli/id/2005/11/03/05A10314/sg>

⁵ Attuazione della direttiva UE 2019/944, del Parlamento europeo e del Consiglio, del 5 giugno 2019, relative a norme comuni per il mercato interno dell’energia elettrica e che modifica la direttiva 2012/27/UE, nonché recante disposizioni per l’adeguamento della normativa nazionale alle disposizioni del regolamento UE 943/2019 sul mercato interno dell’energia elettrica e del regolamento UE 941/2019 sulla preparazione ai rischi nel settore dell’energia elettrica e che abroga la direttiva 2005/89/CE.

opinion on the exemption. The information was provided on 10 November 2022 and on 8 February 2023 respectively.

2. Description of the project and of the requested exemption

The project

- (15) The Somplago – Würmlach project between Italy and Austria is a 51 km 220 kV alternating current (AC) underground interconnection with a nominal capacity of 305 MVA. It will include a new electrical substation in Würmlach and a phase shifter transformer (PST).
- (16) The net transfer capacity (NTC) of an AC interconnector is only partly related to the nominal capacity of the line, since it mainly depends on the surrounding network (lines, generators, load) to which it is connected. This consideration makes the capacity attributable to an AC line only a variable parameter not totally controlled by the project promoters. While line in question will be built at 220 kV, its NTC can be much lower because of constraints in the surrounding networks.
- (17) AAE reports that to date there exist two interconnections between Austria and Italy: 220 kV Soverzene (IT) – Lienz (AT) and 132 kV Tarvisio (IT) – Arnoldstein (AT). AAE adds that other cross border interconnections are under development, such as the 132 kV interconnection between Prati di Vizze (IT) and Steinach (AT), the 220-kV interconnection between Nauders (AT) und Glorenza (IT), and the reconstruction and capacity increase of Lienz (AT) – Veneto Region (IT).
- (18) AAE clarifies that historical data on capacity allocation show congestions usually occur when Italy imports, while exports to Austria do not generally present congestions (i.e. the commercial flows are below the NTC). According the AAE own's evaluations, the project will increase the NTC on the border between Austria and Italy.
- (19) According to the notification, the project development is completed. In Italy, the MASE adopted the decree n. 239/EL-5/357/2022 of 7 March 2022⁶, which granted the authorization for the construction and operation for the entire length of the new interconnector; in Austria, instead, the Applicant must obtain the exemption before applying for any other authorization. The discrepancy of the authorization processes in the two countries is due to different regulatory requirements under the Italian and Austrian legislations respectively.
- (20) Main construction works have not started yet. While the Applicant originally expected that the start of the commercial operation of the interconnector would occur by the end of 2023, more recent estimates provided by the TSOs foresee that the project would not enter into operation before 2026, taking into consideration the necessary network upgrades to connect the interconnector to the system.

The promoters

- (21) AAE shareholders are:
 - Enel Produzione S.p.A. (hereinafter: ENEL P) with a share of 50% and

⁶ Available at <https://www.mite.gov.it/content/decreto-interministeriale-n-239-el-5-357-2022-del-7-marzo-2022>

- Alpen Adria Energy Line S.p.A. (hereinafter: AAEL) with the other 50% share. In particular, the shareholders of AAEL are the following smaller energy retailers and utilities:
 - Nuove Iniziative Energetiche Srl (hereinafter: NIE);
 - Secab Società Cooperativa (hereinafter: SSC);
 - ICQ Holding S.p.A (hereinafter: ICQ) and
 - Elektrizitätswerk Plocken GMBH (hereinafter: EP).

(22) The Transmission System Operators, APG in Austria and TERNA in Italy (hereinafter, ‘TSOs’), will be responsible for the management and operation of the interconnector, fully independently from the Applicant.

Project costs and revenues

(23) The total cost of the project is estimated at Euro ██████████.

(24) The following Table 1 provides an overview of the expected investment costs of the physical assets plus and other capital expenditures⁷.

(25) Table 1 - Investment costs provided by AAE

| | €MLN |
|-----------------------------|--------|
| Fixed assets | ██████ |
| Capitalised interest | ████ |
| VAT credit | ██████ |
| Cash | ████ |
| Total assets | ██████ |

(26) According to the Applicant, the technical solution selected and the chosen route have the advantage of reducing the impacts on local communities and on the environment but implies that the costs of the investment are particularly high. The promoters claim they also have to cover the costs towards local communities affected by the interconnector and that operating costs are quantified as ████████ of the CAPEX⁸.

(27) AAE’s original business plan assumes that the interconnector will be commissioned by the end of 2023. The Applicant quantified the expected revenues of the project, reported in terms on its Internal Rate of Return (IRR) in Table 2 and in terms of Net Present Value (NPV) in Table 3. Some conservative hypothesis are implemented as to take into consideration hedging strategies from auction participants, reductions of nominal capacity by the TSOs and outages.

(28) Table 2 – Internal Rate of Return (IRR) expressed in percentage

⁷ Joint Opinion, page 10

⁸ Joint Opinion, page 10

| Duration | -20% | Base case | +20% |
|-----------------|-------------|------------------|-------------|
| 7-years | ████ | ████ | ████ |
| 10-years | ████ | ████ | ████ |
| 16-years | ████ | ████ | ████ |

(29) Table 3 – Net Present Value (NPV) expressed in millions of Euros

| Duration | -20% | Base case | +20% |
|-----------------|-------------|------------------|-------------|
| 7-years | ████ | ████ | ████ |
| 10-years | ████ | ████ | ████ |
| 16-years | ████ | ████ | ████ |

(30) Assuming that the interconnector will be in operation by the end of 2023, AAE foresees a price differential between the bidding zone Italy North and the bidding zone Austria below █████ from 2023 to 2027 and an increase in the price differential above █████ from 2028 onwards.

Exemption request

(31) The Applicant requests exemption from the following provisions:

- (a) Article 16 (6) of Regulation (EC) 714/2009, replaced by Article 19 (2) and 19 (3) of Regulation (EU) 2019/943, regarding the congestion income;
- (b) Article 9 of Directive 2009/72/EC, replaced by Article 43 of the Directive (EU) 2019/944, regarding unbundling.

(32) The exemption is requested:

- (a) with reference to not less than 100% of the additional Net Transfer Capacity (hereinafter, ‘NTC’) on the border between Austria and Italy which will be attributable to the interconnector; and
- (b) for a period of not less than █████.

(33) The exemption from Article 19 (2) and 19 (3) of Regulation (EU) 2019/943 would entitle AAE to receive by the concerned TSOs the revenues resulting from the allocation procedures of the NTC of the interconnection for the duration of the exemption in order to recover the investment costs. If the project were to operate without an exemption and under the regulated regime, the TSOs would have to collect the congestion revenues and would have to use them exclusively for the priority objectives set in Article 19 of Regulation (EU) 2019/943, i.e. either for network investments to reduce interconnector congestion or to increase of cross-zonal capacity.

(34) The applicant also argues that without the exemption from unbundling rules, the applicant – as owner of the new interconnector not certified as TSO – would not be able to build and operate it. According to unbundling rules, undertakings active in generation or supply cannot own a transmission asset unless they are exempted. With

reference to the existing regulatory framework, only undertakings subject to unbundling and certification rules set by the Directive (EU) 2019/944 can operate an interconnector⁹. The exemption from unbundling rules would exceptionally entitle AAE to own a transmission asset, despite being an undertaking active in generation and supply. Furthermore, it would exceptionally allow the interconnector owner to separate the ownership from the operation of the interconnector the Italian and Austrian TSOs to take the responsibility for ensuring that all the functions and obligations of transmission system operator are carried out, whilst under the regulated regime the undertaking owning the interconnector shall also act as a transmission system operator. In this case, AAE will only build and own the interconnector, whereas its commercial operation will be carried out by separate entities, namely the national TSOs. This is also due to the applicable Italian legal regime, whereby only a single TSO is allowed to operate TSOs on the Italian territory, namely Terna S.p.A.. Terna S.p.A. is, in turn, subject to the unbundling and certification rules.

- (35) AAE is developing the project since 2004 and argues that no other project developer, either TSO or private, has been available to engage in this investment. According to AAE, therefore, the impact of the investment risk of a company fully under an unbundling regime cannot be modelled, as a counterfactual scenario of a commercial investor does not exist in this case.

3. Description of the notified decision

- (36) By the notified exemption decision, subject to further amendments pending a Commission decision, ARERA and E-Control granted the requested exemption from congestion income and unbundling requirements for 12 years, starting from the beginning of the commercial operations of the interconnector. The exemption should be granted under specific conditions, and summarised below.

3.1. Exemptions from congestion rents

3.1.1. *Limitation and duration of congestion rent exemptions*

- (37) The notified decision envisages that the additional capacities (NTCs) will be divided equally between Italy and Austria, and that the interconnector shall be exempted from congestion income requirements for 100 % of the capacity on the Italian side and 85 % of the capacity on the Austrian side. As a result, the congestion revenues of the not exempted 15 % of the capacity on the Austrian side should be allocated and collected by the Austrian TSO, APG and used for the purposes set out in Art. 19 Regulation (EU) 2019/943.
- (38) The NRAs argued that without such condition the exemption would be detrimental to the effective functioning of the internal market, since the Austrian network consumers would have to bear the costs of possible remedial actions by the Austrian TSO to

⁹ See Article 43(1) of the Directive (EU) 2019/944 on common rules for the internal market for electricity, OJ L 158, 14.6.2019, p. 125–199

address the additional congestion caused by the Austrian grid situation. The NRAs deemed appropriate 15% of the Austrian share of the annual congestion income for future efficiency improvements, calculation simplification and redispatching costs to guarantee cross-border capacities on the Austrian borders. The NRAs report that on the Italian side they do not foresee any structural congestions connected to the new interconnector which might lead to similar costs on the Italian side.

- (39) Based on the notified decision, the exemption from Art. 19 of Regulation 2019/943 should be granted for a period of 12 years starting from the beginning of the commercial operations of the interconnector.
- (40) According to the information of the project developers submitted to the NRAs, the project should be amortised at the end of [REDACTED] of the operation of the interconnector. The NRAs extended by one year the exemption period to give some safety to the project promoter, in case any major changes affecting the investment costs occur. For example, the NTC value of the interconnector might vary from what originally estimated by the TSOs for the purpose of the exemption, depending on the methodology used at the time of its entry into operation. The NTC value affect the economic viability of the project, since it establishes how much capacity will be available on the line for the promoters to be able to exploit it.
- (41) The notified decision foresees that if the actual incurred investment costs are lower than the planned investment costs, the positive effect has to be shared equally between the Applicant and the TSOs (50% assigned to the Applicant and 25% to be assigned to each TSO). The share of the TSOs should be considered by reducing the auction revenues transferred to the applicant by TSOs in equal amounts for the first five years after beginning of operation. The actual incurred investment costs should be proven by the applicant according their financial statement of the year of commissioning.
- (42) The NRAs explained that they will control at the end of the exemption period if any surplus regarding the project costs occurred. With regards to the percentages for the allocation of surplus costs, the NRAs applied a classic profit-sharing scheme for transmission tariffs which represents a mechanism to incentivize TSOs to reduce costs as much as possible. The NRAs clarified that the TSO will not keep the allocated sum, which will instead benefit electricity consumers through reduction of the transmission tariff.

3.2. Specific arrangements for congestion rents

- (43) Pursuant to the notified decision, the commercial arrangements governing the transfer of the congestion rents attributable to the Applicant shall be defined in a Commercial contract between the applicant and the TSOs. The Applicant is entitled to receive by the concerned TSOs, with reference to the exempted transmission capacity up to the end of the exemption period, the revenues resulting from the allocation procedures of the NTC of the interconnection.
- (44) The exemption foresees that the capacities calculated for the new interconnection will be added to the existing NTC on the bidding zone border between Austria and Italy North and allocated by the TSOs through the same joint allocation procedures based

on the existing regulatory framework¹⁰. In case the current capacity calculation regime changes, the new interconnector is not entitled to be guaranteed any adopted or comparable NTC in a new capacity calculation regime, except as otherwise provided for in Article 4 (10) of the Italian Decree of 21 October 2005 for the Italian part of the interconnection¹¹.

- (45) The NRAs report that the current capacity calculation methodologies – which determine the available cross border transmission capacity and the allocable congestion income – will undergo regular changes in the next years. Thus, at least for the purposes of the exemption decision, the NRAs relied on the NTC values of the new interconnector estimated by the TSOs¹², since at the time of the joint opinion it is extremely difficult to predict which methodology would be applied at the entry into operation of the interconnector (hereafter the estimated NTC).
- (46) Considering that the NTC made available by an AC Interconnector is dependent on the surrounding network (lines, generators, loads), it is extremely difficult to identify a specific value several years before commissioning. For this reason, the NRAs have decided that the NTC of the future merchant line will be determined according to the methodologies adopted for the entire interconnection capacity at the time of operation of the merchant itself (hereafter the actual NTC).
- (47) For the first five years of operation of the interconnector, the revenues the Applicant will receive will not be lower than those corresponding to the amount of the NTC as estimated by the TSOs and referred to in point 45 above, even if the actual NTC of the interconnector is lower than the values estimated in the exemption decision¹³. The provision would apply only to the Italian share of the overall congestion income (i.e. for half of the NTC)¹⁴. Given the financial approach, the provision does not interfere with the capacity calculation process. The NRAs note that higher capacity values would have a shortening effect on the exemption duration.

¹⁰ The existing regulatory framework is based on: Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197/24; Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation, OJ L 259/42; and Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, OJ L312/6.

¹¹ Decreto n. 21 ottobre 2005, in , in G.U. 3 Novembre 2005, n. 256. Pursuant to article 4 (10) of Italian Ministerial Decree 21 October 2005, in order to facilitate the construction of new interconnection lines, the transport capacity granted in exemption – on the Italian side - remains unchanged in its absolute values for the first five years of operation, and can be made available by the TSO to the Exemption holder also on interconnection lines other than the one subject to the exemption, provided that the latter is actually available in operation with the characteristics of reliability and continuity of similar lines that are part of the national transmission system.

¹² Joint Opinion, page 12

¹³ Joint opinion, page 13

¹⁴ The NRAs clarify that the Italian Decree [see Footnote **Error! Bookmark not defined.** of this decision] aims to give some financial certainty to the investor in order to mitigate a financial barrier to market integration and to facilitate the construction of interconnection capacity from private investors. The NRAs explained that this condition might apply only after the entry into operation of the line and if the specific circumstances mentioned in point 47 above occur. Moreover, the presence of this measure mitigates the uncertainty in the estimation of future revenues and it facilitates the task of providing a sufficient revenue stream to the promoter, that does not exceed what is necessary for the applicant to recover the costs of the investment.

3.2 Exemptions from unbundling requirements

3.2.1. Specific operational arrangements to ensure coordination between AAE and the TSOs

- (48) In the exemption request, AAE suggested that the interconnector be operated not by the owners, but by the TSOs. In relation from this exemption from Art. 43(1)(a) of Directive (EU) 2019/944, the NRAs argued that only if the TSOs agree, the latter can carry out the technical operation. The NRAs therefore required AAE to enter into a Technical Operation Contract with the TSOs, with the aim to determine who is responsible for the daily operation of the interconnector, including the opening and closing the switches, setting the transformer taps, maintenance. In any case the TSOs will keep the management of the commercial capacity of the interconnector (e.g. calculation, allocation etc.) together with the entire interconnection capacity on the border, the Technical Operation Contract will regulate the daily maintenance to ensure perfect operation of the interconnector. In order to limit potential negative effects resulting from the separation between ownership and operation of the TSO, the exemption sets as a condition that in Italy and Austria, the interconnector shall be operated under the general responsibility of AAE and according to the instructions provided by the TSOs. For ensure close cooperation between owners and operators, a specific Technical Operation contract shall be entered into between the Applicant and the TSOs (APG and TERNA) to enable the effective operation and maintenance of the interconnector. A copy of the Technical Operation contract shall be sent to ARERA for approval and to E-Control for information only.
- (49) Under the Technical Operation Contract, in order to prevent any potential risk of undue influence by AAE over the interconnector's commercial operation, the TSOs shall ensure confidentiality of commercial sensitive information obtained while carrying out their activities, unless this is necessary for AAE to perform its tasks (e.g. financing extraordinary maintenance of the infrastructure).
- (50) The exemption envisages that the infrastructure shall be built according to the TSOs technical standards (with special reference to primary and secondary electrical system standards, as well as any other interface between their system and the Applicant system). The Austrian TSO, APG shall define the specifications of the phase shifting transformer.

3.2.2. Shareholders, ownership and unbundling

- (51) The exemption requires the applicant to communicate without undue delay to ARERA and E-Control for their evaluation any change in the composition of the Applicant share capital. The NRAs shall assess whether the conditions under which the exemption was granted are still met.
- (52) According to the notified decision, following the expiry date of the exemption the ownership of the section of the new interconnector built on the Italian soil will be transferred to the TSO (TERNA SpA), whereas the ownership of the section of the interconnector built on the Austrian soil has to be offered for sale to APG.

4. Assessment of the exemption criteria of Article 63 of Regulation (EU) 2019/943

4.1. Legal basis

(53) Article 63(1) of Regulation (EU) 2019/943 states:

“1. New direct current interconnectors may, upon request, be exempted, for a limited period, from Article 19(2) and (3) of this Regulation and from Articles 6 and 43, Article 59(7) and Article 60(1) of Directive (EU) 2019/944 provided that the following conditions are met:

(a) the investment enhances competition in electricity supply;

(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;

(c) the interconnector is owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems that interconnector is to be built;

(d) charges are levied on users of that interconnector;

(e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council , no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and

(f) an exemption would not be to the detriment of competition or the effective functioning of the internal market for electricity, or the efficient functioning of the regulated system to which the interconnector is linked.”

(54) Article 63(2) of Regulation (EU) 2019/943 states:

“2. Paragraph 1 shall also apply, in exceptional cases, to alternating current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.”

(55) It is therefore necessary to assess whether the requirements set out in Article 63 of Regulation (EU) 2019/943 are met.

4.2. Competition in Electricity Supply

(56) Article 63(1)(a) of Regulation (EU) 2019/943 requires that the investment project enhances competition in electricity supply. Article 63(1)(f) of Regulation (EU) 2019/943 requires that the exemption is not detrimental to competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked. While these two requirements

are not identical, they imply that the project must be pro-competitive and thus create benefits for consumers¹⁵.

- (57) In their joint opinion the NRAs consider the condition of Article 63(1)(a) of Regulation (EU) 2019/943 fulfilled. The electrical border between Austria and Italy is one of the most congested in the European Union with significant price differentials¹⁶. Therefore, the NRAs concluded that the realisation of the interconnection would not only increase competition levels by increasing cross-border capacity, but it would also improve the diversification of electricity sources, trading opportunities, as well as system and market integration. The NRAs also consider that the project would improve price convergence and provide additional capacity on a bidding zone border where it is much needed.
- (58) Moreover, the joint opinion reports that - according to European Network of Transmission System Operators for Electricity (ENTSO-E)¹⁷ - the Somplago – Würmlach interconnection between Austria and Italy would contribute to increase the Italian cross-border capacity of about 300 MW thermal capacity in the medium-long term objectives. Furthermore, ENTSO-E's analysis show that the new project would contribute to the reduction of the price differentials between the Italian northern border and Austria and to the integration of renewables. ENTSO-E analysis also shows that the project would improve the adequacy margins, and reduce the number of congested hours and grid losses.
- (59) By setting the condition mentioned above in point 44, the TSOs will allocate capacity of the interconnector on the basis of the existing EU regulatory framework. In this manner, the draft decisions from the NRAs ensures that the additional interconnection capacity will be available to all market participants, will increase the liquidity of the wholesale electricity markets on both sides of the border and in central Europe more in general, improving price convergence¹⁸.
- (60) The Commission shares the view from the NRAs regarding the fulfilment of Article 63(1)(a) of Regulation (EU) 2019/943. The Somplago – Würmlach interconnector is considered to be non-discriminatory since the new capacity would be available to all market participants and would be allocated according to the EU rules for cross-border capacity allocation. The interconnector would also enhance competition in the Italian and Austrian electricity markets by adding new capacity and widening the potential supply and demand sources in a very congested area.

4.3. The level of risk

- (61) In line with Article 63 (1)(b) of Regulation (EU) 2019/943, the risk attached to the investment must be such that the investment would not take place unless the requested exemptions are granted. This can be assessed in particular on the basis of the projected revenue streams and related risks, as well as construction and operational risks.

¹⁵ Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions, of 6.5.2009, SEC(2009)642 final, paragraph 30.

¹⁶ Joint opinion, page 16.

¹⁷ <https://tyndp.entsoe.eu/tyndp2018/projects/projects/210>

¹⁸ Joint opinion, page 17.

- (62) The NRAs note that without the exemption from ownership unbundling, the promoter would not be allowed to collect congestion revenues, and without the exemption from congestion revenues, the TSOs would collect the revenues and would have to use them in accordance with Article 19 (2) of Regulation (EU) 2019/943.
- (63) The NRA's Joint Opinion concerning the exemption from the congestion rents is based on the Applicant's scenario assumptions with different combinations of Net Present Values (NPV), and Internal Revenue Rates (IRR).
- (64) The NRAs also note that TSOs, in this specific case, did not have sufficient interest and incentives to carry out the investment in question, even if the investment costs could have been recovered by the network tariffs. This is, according to the NRAs, because the additional interconnection capacity provided by this private initiative is limited and the project comparably small. The NTC of the interconnection Somplago – Würmlach is in the range of 90 to 155 MW at 220 kV according to the TSOs evaluations. Due to the risks linked to the very demanding permitting procedures of a project in the mountains and the necessary complex interactions with local administrations and communities, the TSO was not ready to carry out the investment.
- (65) The NRAs also note that future revenue streams are highly uncertain, as they are dependent on the NTC values, as explained in points 40 and 45-46 above, and on the price differential between the relevant bidding-zones. The latter is a function of several factors which are very difficult to predict with a certain level of accuracy, such as the cost of the current and future generation, the possible peak loads, the implementation of European network codes and Guidelines, or the future network development. Such a wide variety of factors makes it difficult to achieve a reliable and consistent forecast of the price dynamics, especially on long time horizons as those considered in the business plans.
- (66) Furthermore, construction, operational and regulatory risks could impact the projected market revenues and the project profitability.
- (67) From a construction perspective, there are uncertainties associated with the amount of the investment due to the geological characteristics of the Alpine territory, where the cable will be located as an underground cable and underground cables generally entail higher costs than overhead lines, having different physical, environmental and site-specific construction needs. Moreover, on the Austrian side the authorization for the operation of the interconnector is still pending as it cannot be granted before the adoption of a positive Commission's decision on the exemption request (see point 19 above).
- (68) From a technological perspective, uncertainties are due to the fact that the new interconnectors' transfer capacity may be constrained much below its rated capacity, as explained in points 16, 40 and 45-46 above.
- (69) Moreover, evolution of the regulatory context and of capacity calculation methodologies might also constitute a risk affecting the rated capacity of the interconnector.
- (70) Therefore, the NRAs conclude that the an exemption is needed to allow AAE as the only available investor to carry out the project, and that also an exemption from the congestion rents rules is needed, as the expected remuneration based on the regulated regime does not provide sufficient incentives for an investor to undertake the investment and that granting the exemption for a reasonable number of years:
- (a) will not lead to disproportionate returns to the Applicant;

- (b) could help to mitigate the risks mentioned above in points 61 and ff.;
 - (c) would provide additional NTC on a bidding zone border where it is much needed; and
 - (d) seems to be the only possible way to implement the project.
- (71) In previous exemption decisions¹⁹, the Commission has noted the existence of two main risks associated to new infrastructure: the risk of non-use of the investment and the risk of a change in costs and/or revenues in the future. Both risks could materialise in the case at hand.
- (72) The risk of non-use derives from the uncertainty as regards the NTC values, the price differential and the evolution of the regulatory context (see points 64, 65 and 69 above). Those would also have significant impact on the revenues, which therefore cannot be accurately estimated in advance.
- (73) Moreover, additional risks, including technological risks, as well as construction risks, such as the costs stemming from the construction of an underground line in the Alpine region, could negatively impact the costs of the project.
- (74) The amortisation period has been estimated by the Applicant to be 11 years. Given the uncertainties surrounding the project, the NRAs consider that the exemption should be granted for 12 years. This duration is reasonable taking into account the estimated costs, revenues and returns (see Tables 1, 2 and 3 above), the difficulty to make accurate estimates as explained above and the safeguards built in by the NRAs to avoid that the investor receives disproportionate excess revenues in case the amortisation period should be shorter.
- (75) Indeed, it is important for the justification of the exemption from congestion revenue rules that a number of safeguards have been put in place in case the actual revenues or returns over the exemption period diverge significantly from those of regulated infrastructures.
- (76) First, if at the end of the exemption period the actual incurred investment costs are lower than the planned investment costs, the TSOs can reduce accordingly the amount of congestion revenues to be allocated to the applicant (see point 41 above). The difference will benefit electricity consumers through reduction of the transmission tariff.
- (77) Secondly, the exemption on the use of congestion income on the Austrian side is only granted for 85% of the capacity of the interconnector. This means that the Austrian TSO would collect and keep 15% of the congestion income to cover the costs for remedial actions (see points 37 and 38 above).

¹⁹ See for example, Commission Decision C(2014) 9904 final of 17 December 2014 on the exemption of Adria Link s.r.l. (Italy) , Holding Slovenske Elektrarne d.o.o.(Slovenia) and E3 d.o.o. (Slovenia) under Article 17 of Regulation (EC) No. 714/2009 for two electricity interconnectors between Italy and Slovenia. Commission Decision C(2022) 9902 of 20 December 2022 on the exemption of Deutsche ReGas GmbH & Co. KGaA LNG Terminal in Lubmin (Germany) from certain provisions of Directive 2009/73/EC pursuant to Article 36 of that Directive. Commission Decision C (2022) 5947 of 11 August 2022 on the exemption of EemsEnergy Terminal B.V. from certain provisions of Directive 2009/73/EC pursuant to Article 36 of the Directive.

- (78) Finally, while the promoters are energy companies, they will not have full control over the use of the infrastructure as the capacity will be allocated by the TSOs on a non discriminatory basis.
- (79) In light of the above, the Commission considers the level of risk attached to the investment is such that the investment would not take place unless exemptions are granted from Article 19 of Regulation (EU) 2019/943 and Article 43 of the Directive (EU) 2019/944. At the same time the conditions attached to the exemption (see points 76 and 77 above) also ensure that the terms of the exemption are proportionate.

4.4. Ownership Structure

- (80) To avoid problems of tariffs cross-subsidisation²⁰, Article 63 (1) (c) of Regulation (EU) 2019/943 provides that the infrastructure must be owned by a natural or legal person, which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built.
- (81) As reported in the joint decision, the new interconnector will be built and owned by the applicant, whilst the TSOs will commercially operate the interconnector on the basis of a Technical Operation contract concluded between the applicant and the TSOs.
- (82) The promoters are a separate and independent legal entity from APG and Terna, the system operators in whose systems the interconnectors will be built.
- (83) It follows that the promoters are separate in their legal form from existing TSOs within the meaning of Article 63(1)(c) of Regulation (EU) 2019/943.

4.5. Charges

- (84) Article 63 (1) (d) of Regulation (EU) 2019/943 specifies that charges must be levied on users of the interconnector.
- (85) The capacity of the interconnector will be allocated in accordance to Union law rules on cross border capacity allocation. As stated in the joint opinion, users will pay for the value of the capacity determined in accordance with the Union framework. Therefore, the NRAs consider that this condition is fulfilled.
- (86) On the basis of the analysis above, the Commission concludes that the requirement of Article 63(1)(d) of Regulation (EU) 2019/943 is met.

4.6. No cross-financing from network charges

- (87) In accordance with Article 63 (1) (e) of Regulation (EU) 2019/943, no part of the capital or operating costs of the interconnector must have been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.

²⁰ Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions, Brussels of 6.5.2009, SEC(2009)642 final, paragraph 54.

- (88) According to its exemption application, the Applicant will finance the capital costs through loans and capital equity. The project is not an existing interconnector and no part of the operating costs has been recovered from any charges. The NRAs, who would be responsible for tariff setting in Italy and Austria, consider that this criterion is met.
- (89) The Commission concludes the requirement of Article 63(1)(e) of Regulation (EU) 2019/943 is met.

4.7. Impact on competition

- (90) Article 63 (1)(f) of Regulation (EU) 2019/94 requires that the exemption must not be to the detriment of competition.
- (91) This criterion is different than the one set out in Article 63(1)(a) of Regulation (EU) 2019/943 as discussed in section 4.2 above, because it focuses on the possible negative effects of the exemption rather than the competitive effect of the investment itself. The concern is therefore on possible effects of granting an exemption on other competing projects, whether regulated, exempted or submitted for exemption, as well as possible effects on the wholesale market for electricity.

Effects on competing projects

- (92) In relation to competing interconnector projects, there are at least two additional interconnector projects in development between Austria and Italy. According to the joint opinion, the other cross-border interconnections under development between Austria and Italy are the 132 kV interconnection between Prati di Vizzo (IT) and Steinach (AT), expected to be finished by 2023²¹, the 220-kV interconnection between Nauders (AT) and Glorenza (IT) expected to be commissioned in 2023, and the reconstruction and capacity increase of Lienz (AT) – Veneto Region (IT) with a planned commissioning date of 2024.
- (93) Beside the initiatives developed by the TSOs, the interconnector Arnoldstein(AT)-Tarvisio(IT) is the only merchant line in operation since 2013 under the exempted regime²² on the border between Italy and Austria. This line operates under exemption for a duration up to 16 years, unless an early recovery of the investment costs is achieved by the Interconnector. According to the NRAs, Arnoldstein-Tarvisio has almost recovered the investment costs, hence the exemption will probably expire before the entry into operation of the Somplago – Wurmlach interconnector. The NRAs explain that Prati di Vizzo - Steinach and Glorenza - Nauders interconnectors are under construction, and both projects feature some assets which are already commissioned. According to the NRAs, given their development stage, these two projects will not be affected in case an exemption is granted to the Somplago – Wurmlach interconnector. With regards to Lienz - Veneto Region, the NRAs argue that this is not a new interconnection, but rather a reinforcement of an existing line under the regulated regime. Therefore, the project will not be affected should an exemption be granted to Somplago – Wurmlach interconnector.

²¹ <https://www.argusmedia.com/en/news/2162518-italys-terna-starts-the-new-power-line-with-austria>

²² European Commission, Esenzione dalla disciplina del diritto di accesso dei terzi sulla nuova interconnessione elettrica Tarvisio (Italia) – Arnoldstein (Austria) emesso a favore di Eneco Valcanale s.r.l., ai sensi dell'art. 7(5) del Regolamento (EC) 1228/2003, 14/1/2011. Link: https://energy.ec.europa.eu/system/files/2015-01/2011_tarvisio_decision_it_0.pdf

- (94) The Commission also understands that by applying the condition mentioned at points 37 and 38 above, the congestion revenues collected for 15% of the capacity on the Austrian side will be retained by the Austrian TSO and used according to the priority objectives of Article 19 Regulation (EU) 2019/943.
- (95) In light of the above, the Commission concludes the interconnector will not undermine the position of competing projects. Some are already under development and their entry into operation is not affected by an exemption granted to Somplago – Wurmlach interconnector. Others have been in operation for a considerable period of time and they should recoup the investment costs before the entry into operation of the Somplago – Wurmlach interconnector.

Effects on the wholesale market for electricity

- (96) In order to assess the effect the Somplago – Würmlach interconnector, and in particular the exemption from congestion rent and unbundling rules might have on competition in the market for the wholesale supply of electricity, the NRAs notably considered the potential effects the interconnector – and in particular the additional NTC - could have on the dominant player of the relevant market.
- (97) According to the Joint Decision, the Italian electricity market belongs to the most competitive amongst electricity markets²³. According to the ARERA’s data, incumbent operator ENEL, which holds 50% of AAE, is no longer the top operator in thermoelectric generation at national level²⁴. The Joint decision indicates that none of the project’s shareholders is pivotal with respect to the wholesale supply of electricity in either relevant market areas. According to the NRAs, AAEL’s shareholders are small energy utilities and retailers, that can’t exercise any market power as they have – all together - a negligible share of the total generation capacity in the “Italy North” bidding zone”.
- (98) The NRAs also note that the Applicant has little incentives to limit artificially the availability of its interconnector. Firstly, the potential capacity which could be withheld or allocated with preference to AAE subsidiaries is very limited in comparison to the overall interconnection capacity on the Italy North border so the potential benefits to its shareholders would be negligible. Moreover, the Applicant would lose its remuneration from the congestion rents, as it is entitled to receive a share of the total congestion rents only in case its interconnector is available.
- (99) Therefore, the NRAs concluded that the interconnector will, on balance, improve and not limit the competition in the bidding zone of Italy North, due to the expected import capacity. The NRAs also added that competition in the bidding-zone Italy north would not be negatively affected by the new interconnector shareholders.
- (100) The NRAs consider that there will not be any material risk of access by the Applicant to any commercially sensitive information on capacity allocation and capacity usage by market players. In any case, the NRAs will ensure that the Commercial and Technical Operation contracts between the Applicant and the TSOs, mentioned in point 48 above, contain adequate measures to avoid any risk of access to commercially sensitive information which effectively reduced the risk to use the interconnector in favour of the supply business of the Applicant.

²³ https://www.mercatoelettrico.org/it/MenuBiblioteca/documenti/Gme_RelazioneAnnualeWeb_2019.pdf

²⁴ https://www.arera.it/allegati/relaz_ann/20/AnnualReport2020.pdf

- (101) In this context, the Commission notes in particular that the new capacity will be available to all market participants. No exemption from third party access provisions in favour of the applicant has been granted. Moreover, the role of the TSO in allocating the interconnector's capacity will not be fulfilled by AAE but by TERNA and APG, under a transparent contract. This limits the ability of TSOs to abuse the ownership of the interconnector, as it allows the NRAs to supervise the Applicants' and the TSOs behaviour and to detect any abusive calculation or allocation of capacities. Indeed, ENEL and other operators have no right and should not have the possibility to withhold any transmission capacities on the interconnector to favour their own supply business. The Commission recalls the importance of the obligation of the NRAs to ensure effective implementation of regulated network access requirements in this specific case.
- (102) As it can be expected that access will be fully and effectively regulated, it is not to be expected that the additional capacity strengthens the competitive position of market leaders in both Member States. On the contrary, the additional transmission capacity will allow generators and suppliers from both Member States to increasingly compete with each other.
- (103) As the new capacity would be available to all market participants from the beginning of operation, granting beneficial effects to the two interconnected areas, and as abusive behaviour by the applicants can be effectively excluded by regulatory oversight, the Commission concludes that the exemption does not negatively affect competition in the wholesale market for the supply of electricity.

4.8. Impact on the internal market and regulated systems

- (104) Article 63 (1) (f) of Regulation (EU) 2019/943 states that the exemption must not be detrimental to the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.
- (105) The effective functioning of the market could be undermined if the exemption hindered the overall optimisation of the energy network, for example by scheduling flows on the interconnector regardless of implications for congestion or production costs in other parts of the network.
- (106) In that regard, the Commission notes that the access to interconnectors is fully regulated under the existing legal framework. Under this framework, the TSOs will fully into account the price situation in both markets and any congestion in other network elements. Therefore, the physical use of the interconnector will be fully integrated with wider capacity allocation and congestion management methods developed to ensure the effective operation of the internal electricity market.
- (107) The construction of a new infrastructure may require the expansion or reinforcement of the existing regulated infrastructure due to substantially increased energy flows. It is therefore necessary to consider how the exemption influences the costs of operating the regulated system if, for example, the users of the regulated system could be faced with substantially increased higher network tariffs.
- (108) According to the information provided, the TSOs plan upgrades on both the Italian and Austrian internal grid systems, because of general needs in the area in terms of security of supply, decarbonisation and efficiency. These upgrades are not related to the specific needs of the Somplago - Wurlach interconnector. According to the NRAs, on the Italian side, no specific upgrades are foreseen in the internal networks in the area near Somplago, and no tariff increases are expected due to internal

reinforcements. On the Austrian side, the Austrian TSO plans to address the additional congestion caused by the Austrian grid situation. Therefore, the NRAs have foreseen as a condition on the Austrian side that 15 % of the auction income is collected by the Austrian TSO to cover costs for those remedial actions. These funds can also be seen as cost contribution to the general needed network development.

- (109) Based on the analysis above, the Commission concludes that granting an exemption to the interconnector as set out in the NRAs Joint Decision will not be to the detriment of competition or the effective functioning of the internal market in electricity or the efficient functioning of the regulated system to which the interconnector is linked.

4.9. Exceptional cost and risks for alternating current (AC) interconnectors

- (110) Article 63 (2) of Regulation (EU) 2019/943 specifies that exemptions may be granted in exceptional cases to alternating current interconnectors, provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.
- (111) It results from Article 63(1) and (2) of Regulation (EU) 2019/943 that AC interconnectors typically are not subject to the high costs and particular risks which justify an exemption for direct current interconnectors. Nevertheless, in exceptional circumstances, exemptions can also be granted to AC interconnectors.
- (112) It results from the decision-making practice of the Commission that these exceptional conditions are to be assessed on the basis of criteria similar to the general risk assessment. It is thus not required that additional types of risks are of relevance for the interconnector in question, as long as the total risk is exceptional for the investment in an AC interconnector.
- (113) In its previous decision on the interconnection Arnoldstein-Tarvisio²⁵, the Commission has established that the risk is particularly high on the basis of the following grounds:
- There is a significant need for interconnection capacities at the border in question, which has been established for a long time, but not been resolved on the basis of the regulated system, indicating the particular difficulty of the investment;
 - The use of the interconnector depends significantly on prior investments into and use of the linked national transmission networks, which are not under the control of the promoters;
 - The geographical and network conditions at the border make the investment particularly costly.
- (114) These criteria also apply in the present case. According to the NRAs joint opinion, the NTC value calculated by the TSO for 2020 on the bidding zone border Austria-Italy

²⁵ Commission request of 26 October 2010, SG-Greffe (2010) D/16980, http://ec.europa.eu/energy/infrastructure/exemptions/doc/doc/electricity/2011_tarvisio_decision_it.pdf and http://ec.europa.eu/energy/infrastructure/exemptions/doc/doc/electricity/2010_arnoldstein_travisio_decision_de.pdf.

North²⁶ demonstrates that this border is one of the most congested in the European Union. Although there are several future and existing interconnectors at this border, the NRAs report that, according to ENTSO-E's analysis, the Somplago-Wurmlach interconnector would reduce the number of congested hours and grid losses²⁷. The NRAs also explain that if private investors do not engage in this project, it is unlikely that the TSOs would invest in the project, given the very long and risky development phase.

- (115) As explained in points 16, 40 and 69 above, the NTC of the line and the related volume of revenues mainly depends on the power systems to which it is connected and on the existing regulatory regime for cross-zonal capacity allocation. Both elements are out of control of the project promoter.
- (116) Furthermore, the AC interconnector will be constructed underground through Alpine territory. Underground laying of cables is several times more expensive and often also more time-consuming than overhead construction. The decision to execute an interconnector as an underground connection in order to minimize the impact on the environment thus results in the costs of the interconnector being exceptionally high for an AC interconnector. Thus, as has also been established in the notified Exemption Decision, the risk and cost for the planned interconnector exceeds those of a normal AC interconnector.

4.10. Principle of solidarity

- (117) As set out in case T-883/16²⁸ by the General Court and confirmed by the Court of Justice in C-848/19 P²⁹, the Court of Justice of the EU concludes that the principle of energy solidarity entails a general obligation on the part of the European Union and the Member States, in the exercise of their respective competences, to take into account the interests of the other stakeholders. Notably, Member States shall endeavour, in the exercise of their powers in the field of energy policy, to avoid adopting measures likely to affect the interests of the EU and the Member States as regards security of supply, its economic and political viability, the diversification of supply or of sources of supply, and to do so to take account of their interdependence and de facto solidarity.
- (118) In their joint opinion, the NRAs do not explicitly assess compliance with this principle. However, given the limited size of the project and the fact that the project rather enhances security of supply in the Union, there is no reason to assume that the project could negatively affect the principle of energy solidarity. In fact, E-Control and ARERA are the NRAs of the most affected MS (Italy and Austria) and they support the project. In this regard, according to the information received, the project matches the Regional development plan (2017)³⁰, which will reinforce the cross-border transmission network between Italy and Austria supporting

²⁶ See Joint opinion, page 16.

²⁷ See Joint Opinion, page 17.

²⁸ Judgment of the General Court of 10 September 2019 in Case T-883/16 Poland v European Commission, points 72-73.

²⁹ Judgment of the Court of Justice of 15 July 2021 in Case C-848/19-P Germany v European Commission, point 71.

³⁰ https://docstore.entsoe.eu/Documents/TYNDP%20documents/TYNDP2018/rgip_CCS_Full.pdf

the completion of the EU internal energy market and the integration of renewable energy sources, not only in Italy and Austria but also in a wider regional context.

- (119) In addition, the national authorities note that the project is already part of the Ten Year Network Development Plan of ENTSO-E³¹, where it is positively assessed as an infrastructure that meets the main European targets in terms of security of supply, market integration and sustainability and where there were wide opportunities for consultation and for raising concerns.
- (120) Further, the European Commission has given the possibility to all interested stakeholders, including Member States, to comment on the requested exemption. No Member State has commented, and no stakeholder has argued that the exemption shall not be granted.
- (121) There is no indication that the planned project would negatively impact the security of supply and the economic or political viability of the EU or Member States. According to the Ten Year Network Development Plan of ENTSO-E the project contributes to security of supply the integration of Renewables energies as well as reduces the price spread between the connected market areas. These objectives are also Union policy objectives and generally coherent with the national policy objectives of Member States. Based on the above, the Commission considers the requirements set out by the General Court on the basis of Article 194 of the Treaty on the Functioning of the European Union to be met.

5. Conclusion

- (122) In light of what has been stated, notably taking into account the safeguards introduced to exclude that the Applicants abuse their ownership to the interconnector to their own benefit and that the exemption from congestion rent rules leads to disproportionate revenues, the Commission takes the view that, based on the information received, an exemption from Article 19(2) and 19(3) of Regulation (EU) 2019/943 and Article 43 of the Directive (EU) 2019/944 can be granted in accordance with Article 63 (8) Regulation (EU) 2019/943. The Commission should be informed about the final decisions pursuant to Article 63 (8) of Regulation (EU) 2019/943,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 63 of Regulation (EU) No 2019/943, the European Commission agrees to the exemption decisions notified to the Commission by the National Regulatory Authority of Austria ('E-Control') on 5 February 2021 and by the National Regulatory Authority of Italy ('ARERA') on 22 April 2022.

E-Control and ARERA shall include an assessment of compliance with the principle of energy solidarity in their respective draft decisions in order to safeguard full compliance with this principle.

³¹ <https://tyndp.entsoe.eu/tyndp2018/projects/projects/210>

Article 2

This Decision shall lose its effect:

- (a) two years from its adoption in the event that construction of the interconnector has not yet started;
- (b) five years from its adoption in the event that the interconnector has not become operational.

However, points (a) and (b) shall not apply where the Commission decides that any delay is due to major obstacles beyond control of Alpe Adria Energia S.r.l.

The notified exemption decision shall contain an expiry date and take proper account of this Article.

Article 3

This Decision is addressed to the National Regulatory Authority in Austria (E-Control, Rudolfsplatz 13a 1010 Wien, Austria), and the National Regulatory Authority in Italy (ARERA, Corso di Porta Vittoria, 27, 20122 Milan, Italy).

Done at Brussels, 25.4.2023

For the Commission
Kadri SIMSON
Member of the Commission