



Brussels, 16.5.2013  
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**COMMISSION OPINION**

**of 16.5.2013**

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of  
Directive 2009/73/EC - Belgium - Certification of Interconnector (UK) Limited**

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### I. PROCEDURE

On 22 March 2013 the Commission received a notification from the Belgian national regulatory Commission de Régulation de l'Électricité et du Gaz (hereafter "CREG"), in accordance with Article 10(6) of Directive 2009/73/EC<sup>1</sup> (hereafter, "Gas Directive"), of a draft decision on the certification of Interconnector (UK) Limited (hereafter "IUK").

Pursuant to Article 3(1) Regulation (EC) No 715/2009<sup>2</sup> (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.

On 30 January 2013 the Commission had received a draft decision on the certification of IUK from the national regulatory authority in the United Kingdom responsible for Great Britain, the Authority for Gas and Electricity Markets, (hereafter, "Ofgem"). On 26 March 2013, the Commission issued its Opinion on Ofgem's draft decision.<sup>3</sup> Differences in the transposition of the unbundling rules between the Belgian and the British implementing legislation mean that the framework to assess IUK's compliance with the unbundling rules also differs for both regulators. A result of this is that CREG's draft decision has brought additional information to the attention of the Commission. In the present Opinion, the Commission will limit itself to the additional elements that have come forward from CREG's analysis of IUK's compliance with the unbundling rules, whilst underlining that the comments made in its Opinion of 26 March 2013 are also valid for, and to be taken into utmost account by, CREG.

### II. DESCRIPTION OF THE NOTIFIED DECISION

IUK owns and operates a sub-sea gas pipeline and terminal facilities which provide a bidirectional link between the United Kingdom ("UK") and Continental European energy markets. IUK has applied to be certified under the ownership unbundling model of Article 9 Gas Directive, but only after a transitional period that runs until 3 March 2015 and that is needed to carry out the necessary structural changes. Both Ofgem and CREG accepted this proposal as an acceptable period in their preliminary decisions.

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<sup>1</sup> 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.

<sup>2</sup> 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 211/136 of 14.8.2009.

<sup>3</sup> Commission Opinion of 26.3.2013 on Ofgem's draft certification decision for I(UK), C(2013)1872

### III. COMMENTS

On the basis of the present notification, and in addition to the comments made on Ofgem's preliminary decision on IUK, the Commission has the following comments on CREG's draft decision.

#### Ownership of the assets

Article 9(1)(a) of the Gas Directive requires that each undertaking that owns a transmission network also acts as its operator. In the present case, the transmission system for which IUK has applied to be certified as operator consists of two terminals in Bacton (UK), the 235 kilometer long sub-sea pipeline and one terminal in Zeebrugge (Belgium).

The Bacton terminals and the pipeline are not owned directly by IUK, but leased from Interconnector leasing Company (hereafter, "ILC") a daughter company that is owned by IUK. In its Opinion on Danish TSO Energinet.dk<sup>4</sup> the Commission has taken the view that a structure, whereby a daughter company, that is under the full and exclusive control of the TSO, owns the network, but in which the TSO operates the network, is not an obstacle for certification. In the present case, it appears from CREG's preliminary decision that the full and exclusive control by IUK over ILC has not been demonstrated, inter alia because there is no evidence that the TSO tasks are carried out by IUK. On the basis of these facts, in its preliminary decisions CREG asks IUK to demonstrate that it does have full and exclusive control over ILC.

Also for the Zeebrugge terminal a lease construction is in place whereby IUK has a participation in the Interconnector Zeebrugge Terminal (hereafter "IZT"), the owner of the terminal. IUK is not the only shareholder in IZT and moreover, the maintenance of the terminal is not carried out by IUK. This appears to result in a situation whereby the TSO does not fully and exclusively control a fully-owned daughter company, and moreover is not carrying out all of the TSO-tasks. On the basis of these facts, in its preliminary decision CREG asks IUK for the reasons of maintaining the current organizational set-up. CREG moreover asks IUK to ensure that, by the date of 3 March 2015 when the transitional period ends, it does have full and exclusive control over IZT and that the TSO tasks are carried out by or under the full control and exclusive instruction of IUK.

The Commission underlines that it is a core principle of the ownership unbundling regime that ownership and operatorship and held by one and the same party, which hence has the appropriate incentives to operate the network in the most cost-efficient and independent manner. The Commission hence agrees with the CREG on the need to further clarify this matter. The Commission notes that it is necessary to ensure that the ownership structure is in line with the unbundling requirements by the end of the transitional period.

### IV. CONCLUSION

Pursuant to Article 3(2) Gas Regulation, CREG shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of IUK, 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

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<sup>4</sup> Commission Opinion of 9.1.2012 on DERA's draft certification decision for Energinet (electricity), C(2012) 87, p. 4.

EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. Ofgem 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, 16.5.2013

*For the Commission*  
*Siim Kallas*  
*Member of the Commission*

