



EUROPEAN  
COMMISSION

Brussels, 28.1.2021  
C(2021) 557 final

**COMMISSION DECISION**

**of 28.1.2021**

**amending Decision C(2014) 9904 final as regards the period of validity of the exemptions granted to the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors from certain provisions of Regulation (EU) 2019/943 and Directive (EU) 2019/944 of the European Parliament and of the Council pursuant to Article 63 of Regulation (EU) 2019/943**

(Only the Italian and Slovenian texts are authentic)

# COMMISSION DECISION

of 28.1.2021

**amending Decision C(2014) 9904 final as regards the period of validity of the exemptions granted to the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors from certain provisions of Regulation (EU) 2019/943 and Directive (EU) 2019/944 of the European Parliament and of the Council pursuant to Article 63 of Regulation (EU) 2019/943**

(Only the Italian and Slovenian texts are authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity<sup>1</sup>, and in particular Article 63(8) thereof,

Whereas:

1. Background

(1) The project under consideration concerns two underground alternating current interconnectors of 125 MW of nominal capacity each, both linking the Slovenian and Italian networks. The "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors will both be built and operated jointly by the Italian company Adria Link s.r.l., and the Slovenian companies Holding Slovenske Elektrarne d.o.o. (HSE d.o.o.) and Energetika, Ekologija, Ekonomija d.o.o. (E3 d.o.o.).

2. Procedure

(2) On 8 January 2013, Adria Link s.r.l. (Italy), Holding Slovenske Elektrarne d.o.o. (Slovenia) and E3 d.o.o. (Slovenia) ('the promoters') submitted two applications for an exemption to the Slovenian Energy Regulator (JAVNA AGENCIJA REPUBLIKE SLOVENIJE ZA ENERGIJO - 'AGEN-RS') and on 24 June 2013 to the Italian Ministry "Ministero dello Sviluppo Economico" ('MISE'), in accordance with Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council<sup>2</sup>.

(3) According to the relevant Italian legislation Decree Law n° 93/2011, MISE is the competent body to grant such an exemption while the national regulatory authority, Autorità per l'elettricità, il gas e il sistema idrico ('AEEGSI'), currently the Autorità di Regolazione per Energia Reti e Ambiente ('ARERA'), is requested to issue a qualified opinion.

---

<sup>1</sup> OJ L 158, 14.6.2019, p. 54.

<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 L211, 14.8.2009, p. 15).

- (4) Based on their assessment of the exemption applications, AGEN-RS and AEEGSI, on 16 December 2013, adopted two joint opinions: "Joint Opinion of the Energy Regulators on the "Redipuglia-Vrtojba" Exemption Application"<sup>3</sup> and "Joint Opinion of the Energy Regulators on the "Dekani-Zaule" Exemption Application"<sup>4</sup> ('Joint Opinions') setting out the authorities assessment of the exemption requests applying to their respective jurisdictions.
- (5) On 11 August 2014, MISE adopted two decrees (N. 290/ML/4/2014 for the "Dekani-Zaule" interconnector and N.290/ML/5/2014 for the "Redipuglia-Vrtojba" interconnector) granting exemptions from Article 16(6) of Regulation (EC) No 714/2009 (use of congestion revenues) ('the Italian Exemption Decisions').
- (6) On 20 October 2014, AGEN-RS adopted two decisions (No 143-1/2013-8/106 for the "Dekani-Zaule" interconnector and No 143-2/2013-43/106 for the "Redipuglia-Vrtojba" interconnector) ('the Slovenian Exemption Decisions') granting exemptions from Article 16(6) of the Regulation (EC) No 714/2009 (use of congestion revenues) and Article 9 (ownership unbundling) of Directive 2009/72/EC of the European Parliament and of the Council<sup>5</sup>.
- (7) The Italian Exemption Decisions were notified to the Commission on 28 August 2014 while the Slovenian Exemption Decisions were notified to the Commission on 30 October 2014.
- (8) By Decision of 17 December 2014<sup>6</sup>, the Commission approved exemptions for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors pursuant to Article 17 of Regulation (EC) No 714/2009 from certain requirements on use of congestion revenues and ownership unbundling, as laid down in Article 16(6) of Regulation (EC) 714/2009 and Article 9 of Directive 2009/72 ('Commission Decision of 2014').
- (9) The exemptions were granted for a period of 10 years, starting from the beginning of the commercial operations, for the "Dekani-Zaule" interconnector, and for a period of 16 years, starting from the beginning of the commercial operations, for the "Redipuglia-Vrtojba" interconnector, respectively.
- (10) Article 2 of the Commission Decision of 2014 contains provisions making the Commission's approval of the exemption granted to the project conditional on the start of the construction of the interconnectors within two years from adoption of the Commission Decision and on the interconnectors becoming operational within five years from adoption of the decision, in accordance with Article 17(8) of Regulation No 714/2009.
- (11) A request from the promoters to postpone the date by which the construction of the interconnectors had to start from 17 December 2016 to 17 December 2018 was received by AGEN-RS on 17 October 2016 and by MISE on 15 November 2016. No

---

<sup>3</sup> <http://www.autorita.energia.it/allegati/docs/13/630-13allb.pdf>

<sup>4</sup> <http://www.autorita.energia.it/allegati/docs/13/630-13alla.pdf>

<sup>5</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, 14.8.2009, p. 55).

<sup>6</sup> Commission Decision C(2014) 9904 final, 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.

modification was requested regarding the operation date, which would remain 17 December 2019.

- (12) The Italian authority's assessment of the promoters' request was notified to the Commission on 16 December 2016 and the Slovenian authority's assessment was notified to the Commission on 23 December 2016, in accordance with Article 17 of Regulation (EC) 714/2009.
- (13) By Decision of 16 February 2017<sup>7</sup>, the Commission approved the prolongation of the exemption from 17 December 2016 to 17 December 2018 for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors pursuant to Article 17 of Regulation (EC) 714/2009.
- (14) On 26 July 2018, AGEN-RS and MISE received a request by the promoters to postpone the date by which the construction of the interconnectors had to start from 17 December 2018 to 31 December 2020 and to postpone the operation date from 17 December 2019 to 30 June 2022.
- (15) The Slovenian authority's assessment of the promoters' request was notified to the Commission on 19 November 2018 while the Italian authority's assessment of the request was notified to the Commission on 5 December 2018, in accordance with Article 17 of Regulation (EC) 714/2009.
- (16) By Decision of 28 January 2019<sup>8</sup>, the Commission approved the prolongation of the exemption from 17 December 2018 to 31 December 2020 for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors pursuant to Article 17 of Regulation (EC) 714/2009.
- (17) On 3 June 2020, the promoters sent a request ('promoters' request') to AGEN-RS and MISE to postpone the date by which the construction and operation of the interconnectors had to start and amend the exemption conditions of "Redipuglia-Vrtojba" interconnector to assure the feasibility of the investment.
- (18) On 28 July 2020, AGEN-RS notified to the Commission in accordance with Article 63(7) of Regulation No 2019/943 its assessment on the promoters' request. The Commission requested from AGEN-RS the consent to an additional extension of the initial deadline to adopt its decision, in accordance with Article 63(8) of Regulation No 2019/943. The consent was granted by AGEN-RS on 10 November 2020.
- (19) On 20 November 2020, MISE notified to the Commission in accordance with Article 63(7) of the Regulation No 2019/943 its decision on the promoters' request and two directorate-level decrees, of 18 November 2020, concerning the extension of the deadlines for the construction and entry into service of the interconnectors.
- (20) On 23 November 2020, the Commission published a notice on its website informing the public of the notifications and inviting third parties to send their observations within two weeks. The Commission did not receive any observations in response.

---

<sup>7</sup> Commission Decision C(2017) 1209 final, prolonging 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.

<sup>8</sup> Commission Decision C(2019) 698 final, prolonging 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.

### 3. Assessment

#### 3.1. Relevant legal provisions

- (21) Article 2 of Commission Decision C(2014) 9904 final, as amended by Commission Decision C(2019) 698 final, provides that the Commission's approval of the exemption decisions shall lose its effects in the event that construction of that interconnector has not started by 31 December 2020 and in the event that the interconnector has not become operational by 30 June 2022, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.
- (22) The validity of the Commission's approval of an exemption can be prolonged provided that, based on an analysis by the national authorities concluding that a prolongation is justified, the Commission decides, first, that any delay is due to major obstacles and, second, that those obstacles are beyond control of the person to whom the exemption has been granted.
- (23) The Regulation does not expressly set out the procedure for such a decision on the prolongation of validity. It has been established by the Commission decision-making practice that, based on the principle of parallelism of forms, modifications (including prolongation) of Exemption Decisions should reflect the process followed for the granting of initial Exemption Decisions. Thus, the Commission's assessment of requests for prolongation shall be based on a prior assessment by the competent authorities, to which the Commission may request amendments.

#### 3.2. Promoters' request

- (24) In April 2019, the promoters obtained the last building permits, concluding the permitting procedures in Italy and Slovenia for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors. However, the construction of the interconnectors has not yet started and two of the six internal network reinforcements needed in Italy and Slovenia for the operation of the proposed interconnection have not yet been constructed by the Transmission System Operators ('TSOs').
- (25) In order to make the final investment decision and proceed with the construction, the promoters requested in May 2019 the real Net Transfer Capacity ('NTC') values for the interconnectors, which were communicated by the Italian and Slovenian TSOs in October 2019 and March 2020, respectively. Particularly for the "Redipuglia-Vrtojba" interconnector, in contrast with 120 MW NTC value initially identified in the Joint Opinions, the new expected NTC value is reduced to 70 MW.
- (26) The main consideration of the promoters are the following:
- due to the delays to the internal network reinforcements construction and new NTC values, which are out of the control of the promoters, at this stage it is not possible to start the construction according to the exemption deadlines;
  - although the NTC values may change, the last values reported by the TSOs would make the construction of the infrastructure economically impracticable;
  - the development of the projects would improve security of the system and competition, as well as support the achievement of the Union objectives. Moreover, they were positively included in the Year Network Development Plan 2018 cost-benefit analysis;

- in the current pandemic context, supporting investment in infrastructure and the participation of private investors will be increasingly important.
- (27) Based on this and, due to the delays on the internal network reinforcements, the promoters request:
- to postpone the date by which the construction of the "Redipuglia-Vrtojba" interconnector had to start, from 31 December 2020 to 31 December 2022, and the operation date, from 30 June 2022 to 30 June 2024;
  - to postpone the date by which the construction of the "Dekani-Zaule" interconnector had to start, from 31 December 2020 to 31 December 2023, and the operation date, from 30 June 2022 to 30 June 2025.
- (28) In addition, due to the reduced NTC values and new market conditions, the promoters request to amend the exemption conditions of the "Redipuglia-Vrtojba" interconnector in order to identify and apply one or more mechanisms to assure the feasibility of the investment (i.e. check cap&floor, exact and revaluated terminal value, cost reduction, etc.).

### 3.3. Assessment by the national authorities

#### AGEN-RS assessment

- (29) By means of the notified decision on the Promoters' Request, AGEN-RS proposes to postpone the date by which the construction of the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors had to start, as proposed by the applicants, and therefore postpone the date by which the construction of "Redipuglia-Vrtojba" interconnector had to start to 31 December 2022 and the operation date to 30 June 2024, and postpone the date by which the construction of the "Dekani-Zaule" interconnector had to start to 31 December 2023 and the operation date to 30 June 2025.
- (30) Regarding the request to amend the exemption conditions of the "Redipuglia-Vrtojba" interconnector to apply one or more mechanisms to assure the feasibility of the investment, AGEN-RS considers it as a request for the Commission to initiate an exemption procedure in accordance with Article 63(10)(a) of Regulation No 2019/943, due to significant changes of the facts on the basis of which the current Exemption Decision was adopted.

#### MISE assessment

- (31) Similarly, on 18 November 2020, the "Direzione Generale per il mercato elettrico, le rinnovabili e l'efficienza energetica" of MISE has approved a decree postponing the date by which the construction of the "Redipuglia-Vrtojba" interconnector had to start, from 31 December 2020 to 31 December 2022, and postponing the operation date, from 30 June 2022 to 30 June 2024. A second decree was approved postponing the date by which the construction of the "Dekani-Zaule" interconnector had to start, from 31 December 2020 to 31 December 2023, and postponing the operation date, from 30 June 2022 to 30 June 2025.
- (32) Accompanying the two directorate-level decrees, there is a specific assessment on the request to change the conditions of the exemption for the "Redipuglia-Vrtojba" interconnector, linked to the feasibility of the investment and the expected revenues. In

this assessment, MISE requests the European Commission to reopen an exemption procedure, in accordance with Article 63(10)(a) of Regulation No 2019/943, due to significant changes of the basis of which the Exemption Decision was adopted.

- (33) MISE highlights the significant reduction of NTC values and the new market conditions affecting the price spread considered in the Joint Opinions.

#### 3.4. Assessment by the Commission

##### Regarding the prolongation

- (34) The Commission takes the view that the delays in the internal network reinforcements construction, as well as the new NTC values, are major obstacles and out of the control of the promoters. Additional constraints may be added due to the current pandemic context.

- (35) For this reason, the Commission shares the view from MISE and AGEN-RS considering that the promoters' request is well grounded to postpone the date by which the construction and operation of the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors had to start.

- (36) The Commission considers that the development of the projects would improve security of the system and competition, as well as support the achievement of the Union energy objectives overall. However, as this is the third prolongation request and construction has not yet started, further postponement could hamper competition and the development of other interconnectors.

- (37) Thus, the Commission finds it sufficient to prolong the period for the start of construction and operation by 18 months, and therefore:

- to postpone the date by which the construction of the "Redipuglia-Vrtojba" interconnector had to start, from 31 December 2020 to 30 June 2022, and the operation date, from 30 June 2022 to 31 December 2023;
- to postpone the date by which the construction of the "Dekani-Zaule" interconnector had to start, from 31 December 2020 to 30 June 2022, and the operation date, from 30 June 2022 to 31 December 2023.

- (38) Taking into account that the promoters have obtained the last building permits, concluding the permitting procedures in Italy and Slovenia for the interconnectors, further prolongation would be justified only in case of occurrence of additional, currently unexpected, delays. If the investment decision is not taken within the given period and the construction does not start, the Exemption Decision should lose its effect.

##### Regarding the exemption conditions of "Redipuglia-Vrtojba" interconnector

- (39) According to the promoters, the new NTC values and market conditions make the investment economically impracticable and, at this stage, it is not possible to start the construction of "Redipuglia-Vrtojba" interconnector as set out in the Exemption Decision.

- (40) MISE and AGEN-RS consider that the promoters request for amending the exemption conditions of "Redipuglia-Vrtojba" interconnector in order to identify and apply the

necessary mechanisms to assure the feasibility of the investment constitutes significant changes on the basis of which the Exemption Decision was adopted, and request for the Commission to initiate an exemption procedure in accordance with Article 63(10)(a) of the Electricity Regulation.

- (41) However, based on the received information, the Commission does not share the view on reopening the Exemption Decision according to Article 63(10)(a) of Regulation No 2019/943. The proposed changes are not described in detail, and a variety of possible changes to the exemption conditions are set out in the request. It is not for the Commission to substitute the exemption request and the national regulatory authorities' assessment in exemption procedures by introducing ad hoc proposals for possible exemption solutions, which could also possibly put a burden on national network users via increased tariffs. Any such decision should be based on detailed legal and substantive analysis by the national authorities, which may decide to notify amended Exemption Decisions where they find this to be justified. If the national regulatory authorities decide to modify an Exemption Decision, they shall notify their decision to the Commission, together with all the relevant information, according to Article 63(9) of Regulation No 2019/943,

HAS ADOPTED THIS DECISION:

#### *Article 1*

In Commission Decision C(2014) 9904 of 17 December 2014, Article 2 is replaced by the following:

#### *“Article 2*

*Pursuant to Article 63(8) of Regulation (EU) No 2019/943, the Commission's approval of the Exemption Decisions as regards the Dekani-Zaule interconnector shall lose its effects in the event that construction of that interconnector has not started by 30 June 2022 and in the event that the interconnector has not become operational by 31 December 2023, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.*

*Pursuant to Article 63(8) of Regulation (EU) No 2019/943, the Commission's approval of the Exemption Decisions as regards the Redipuglia-Vrtojba interconnector shall lose its effects in the event that construction of that interconnector has not started by 30 June 2022 and in the event that the interconnector has not become operational by 31 December 2023, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.”*

#### *Article 2*

The Exemption Decisions by the Javna Agencija Republika Slovenia za Energijo No.143-1/2013-8/106 for “Dekani-Zaule” interconnector and No.143-2/2013-46/106 for “Redipuglia-Vrtjba” interconnector, and by the Ministero dello Sviluppo Economico N. 290/ML/4/2014 for the “Dekani-Zaule” interconnector and N. 290/ML/5/2014 for the “Redipuglia-Vrtojba” interconnector shall be amended accordingly.



*Article 3*

This Decision is addressed to:

- 1) the Ministero dello Sviluppo Economico (MISE).
- 2) the Javna Agencija Republike Slovenije za Energijo (AGEN-RS).

Done at Brussels, 28.1.2021

*For the Commission*  
*Kadri SIMSON*  
*Member of the Commission*