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C(2022) 389 final

COMMISSION DECISION

of 19.1.2022

amending Decision C(2016) 8592 final as regards the period of validity of the exemption granted to Piemonte Savoia S.r.l from certain provisions of Regulation (EU) 2019/943 and Directive (EU) 2019/944 of the European Parliament and of the Council for an electricity interconnector between Italy and France

(Only Italian and French versions 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) 2019/943 of 5 June 2019 on the internal market for electricity¹ and in particular Article 63 (8) thereof,

Whereas:

- (1) On 22 September 2021 and on 1 November 2021 respectively, the Commission was notified the decisions of the French and Italian Authorities to prolong by eleven months the validity of the exemption under Article 17 of Regulation (EC) No. 714/2009² (now Article 63 of Regulation (EU) 2019/943) for part of the capacity of the electricity interconnector “Piemonte-Savoia S.r.l” between Italy and France granted under Commission Decision C(2016) 8592 final³.

1. Background and Procedure

- (2) The Piemonte-Savoia interconnector between Italy and France is a 190 km high voltage direct current (HVDC) underground cable connection with a nominal capacity of 1200 MW divided into two bipolar lines of 600 MW nominal value. It will connect the substation of Piossasco of Turin, Italy and Grand-Ile, in France, crossing the border along the Fréjus motorway tunnel. The project is in the final stages of development (currently at 90% as reported from the Italian Ministry of Ecological Transition - Ministero della Transizione Ecologica, MiTE) and was initially planned to become operational between the end of 2020 and June 2021.
- (3) By its Decision C(2016) 8592 final (‘the 2016 decision’), the Commission approved the granting of an exemption to Piemonte Savoia S.r.l (Italy) (“the applicant”) under Article 17 of Regulation (EC) No 714/2009 for one portion (350 MW) of the Italian section of the interconnector, currently owned by the company Piemonte Savoia S.r.l.

¹ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

² 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).

³ Commission Decision C(2016) 8592 final of 9 December 2016 on the exemption of Piemonte Savoia S.r.l (Italy) under Article 17 of Regulation (EC) No. 714/2009 for an electricity interconnector between Italy and France: https://ec.europa.eu/energy/sites/ener/files/documents/2016_piemonte-savoia_decision_en.pdf

The exemption is subject to the condition set out in the opinion of the Autorità per l'elettricità, il gas e il sistema idrico ('AEEGSI', now Autorità di Regolazione per Energia Reti e Ambiente – hereinafter, 'ARERA')⁴ on the exemption request.

- (4) The exemption was granted for a period of ten years from the date that the new Interconnector commences commercial operation, which means the time when the interconnector has been commissioned and is available for physical flow of electricity on the market.
- (5) In line with Article 17(8) of Regulation (EC) No 714/2009 (now Article 63(8) of Regulation (EU) 2019/943), Article 2 of the 2016 decision makes the validity of the exemption contained in the 2016 decision subject to two deadlines. It states that the Commission's approval of the exemption decisions granted to Piemonte Savoia S.r.l. was to expire:
 - 2 years after the date of adoption of the 2016 decision (i.e. on 9 December 2018) in the event that construction of the interconnector had not started by that date ('construction deadline'); and
 - 5 years after the date of adoption of the 2016 decision (i.e. on 9 December 2021) in the event that the interconnector had not become operational by that date ('operational deadline'),
- (6) On 3 August 2021 and 12 August 2021 respectively, the MiTE and the French Energy Regulatory Commission (Commission de Régulation de l'Énergie, CRE) received a request from Piemonte Savoia S.r.l. for an extension of the operational deadline from 9 December 2021 to 9 November 2022.
- (7) On 22 September 2021, CRE notified its Opinion on Piemonte Savoia S.r.l.'s request to the Commission pursuant to Article 63(8) of Regulation (EU) 2019/943. CRE is in favour of extending the operational deadline to 9 November 2022 as requested by Piemonte Savoia S.r.l.
- (8) On 1 November 2021, the MiTE notified the draft decree on Piemonte Savoia S.r.l.'s request to the Commission pursuant to Article 63(8) of Regulation (EU) 2019/943. The MiTE also agrees to extend to 9 November 2022 the deadline for and the entry into commercial operation of the Italy-France interconnector.
- (9) On 12 November 2021, the Commission published a notice on its website informing the public of the notification by the French and Italian Authorities and inviting third parties to send their observations by 26 November 2021. The Commission did not receive any observations in response.

2. The Piemonte Savoia S.r.l. request

- (10) Piemonte Savoia S.r.l. requests that the deadline for the interconnector to become operational be extended to 9 November 2022, in light of the unexpected events that have caused unavoidable delays in the construction of the Italy-France Interconnector that are beyond the control of the Piemonte Savoia S.r.l.

⁴ Commission Decision C(2016) 8592 final of 9 December 2016 on the exemption of Piemonte Savoia S.r.l (Italy) under Article 17 of Regulation (EC) No. 714/2009 for an electricity interconnector between Italy and France, paragraph 31.

2.1 Reasoning put forward by Piemonte Savoia S.r.l.

- (11) Piemonte Savoia S.r.l. states in its request that during the construction phases of the Italy-France Interconnector a series of unforeseen events occurred, which can be classified as force majeure due to their unpredictability and to the fact that they were beyond the control and responsibility of the applicant, and that have led to significant delays in the construction of the Italy-France interconnector.
- (12) First, Piemonte Savoia S.r.l. reports that the construction works were suspended for approximately five months due to a landslide event which occurred in April 2018 in a part of the SS335 national road. The SS335 is the only road transit, apart of the A32, to reach Bardonecchia and the state border. For the entire period during which the road SS335 was closed, the company holding the A32 – SITAF – didn't allow to open any work site limiting the vehicle traffic on the High Section of the A32 freeway till the alternative road to the Fréjus tunnel (the SS335) was finally restored. The SS335 was restored only in September 2018, five months after the landslide event occurred.
- (13) Second, Piemonte Savoia S.r.l. explains that the emergency measures introduced by the Italian and French governments to tackle the COVID-19 pandemic caused the interruption of construction works for a period of about 2 months (from mid-March 2020 to early May 2020). Piemonte Savoia S.r.l. reports that when the works restarted, they were significantly slowed due to remaining direct or indirect Covid-19 limitations, such as quarantine measures imposed on workers, as well as significant delays in the transport and delivery of people and materials to the worksite. The interruption of construction works occurred on the "cable part", on the Piossasco conversion station and with regards to the French section on the Grande Ile conversion station.
- (14) Third, Piemonte Savoia S.r.l. outlines that the combination of Covid-19 works suspensions and worksite constraints has led to 6 months of delay. As a matter of fact, due to the initial covid-19 works suspension, the activities related to the installation of the cables along the A32 motorway were necessarily rescheduled and they did not respect any longer the limitations imposed by Sitaf (Società Italiana per il Traforo Autostradale del Fréjus S.p.A.) to fulfil the traffic security requirements, taking also into account seasonal constraints. Therefore, it was not possible to perform all the activities due to pre-existing Sitaf constraints. For example, worksites requesting traffic lane interchanges in the freeway were not permitted during summer, according to the Works Regulations established by Sitaf. When the suspension due to Covid-19 occurred (April 2020), the envisaged works requiring a lane interchange had been necessarily rescheduled on the first period available, which was September 2020. So, an interruption of 2 months led to a total delay of 6 months (from March to September 2020) on the project schedule.
- (15) The applicant explains to have taken all possible actions to optimize the project schedule (reschedule of the activities, enforce of manpower) following the guidelines imposed by law and the safety protocols. These measures were applied for the Italian side of the work. The main aim was to find a compromise between, on the one hand, the safety of the workers and strict compliance with all safety protocols, and on the other hand, to maximize the performance in the execution of the works.
- (16) Piemonte Savoia S.r.l. states that the events of force majeure have led to an extension of the Interconnector construction time estimated at 11 months.

3. Assessment by notifying authorities of Piemonte Savoia S.r.l. request

- (17) CRE notes that the crisis linked to the COVID-19 outbreak and the landslide were major obstacles to the commissioning of the project, beyond Piemonte Savoia S.r.l.'s control. CRE is in favour of an 11-month extension, until 9 November 2022 of the operational deadline.
- (18) The MiTE agrees with the reasoning behind the favourable opinion of CRE and affirms that it corresponds in substance to the reasoning formulated in the request by the MiTE.

4. Assessment by the Commission

4.1 Relevant legal provisions

- (19) Pursuant to Article 63(8) of Regulation (EU) 2019/943, the validity of the Commission's approval of an exemption decision may be prolonged if, on the basis of a reasoned request by the notifying authorities, the Commission decides, first, that any delay is due to major obstacles and, second, that those obstacles are beyond the control of the person to whom the exemption has been granted⁵.
- (20) Article 2 of the 2016 decision states that the Commission's approval of the Exemption Decisions shall expire in the event that the infrastructure has not become operational by 9 December 2021, unless the Commission decides that any further delay is due to major obstacles beyond the control of Piemonte Savoia S.r.l.

4.1.1 The delay is due to a major obstacle which is beyond the control of the person to whom the exemption has been granted

- (21) The Commission considers that the COVID-19 pandemic constitutes a major uncertainty for the construction and the commercial operation date of the Piemonte Savoia Interconnector.
- (22) According to the information received, even though the applicant has made the possible efforts to mitigate the impact of the adverse events on the interconnector construction, the measures taken by the national governments in order to limit the spread of the pandemic have significantly impacted construction and operational readiness activities. They have caused restriction and delays on the transportation of people, goods and equipment to and from the construction sites, as well as restrictions in the timely availability at site because of quarantine requirements.
- (23) The Commission notes that the landslide, which occurred in April 2018 led to a suspension for 5 months of the works, since the applicant could not benefit of the

⁵ 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 NRAs, to which the Commission may request amendments. See for example, Commission Decision C(2015) 1852 final of 17 March 2015 prolonging the exemption of the Trans Adriatic Pipeline from certain requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9, 32, 41(6), (8) and (10) of Directive 2009/73/EC. Commission Decision C(2013) 2947 of 16.5.2013 on a prolongation of the effects of the exemption decision of NABUCCO Gas Pipeline International GmbH from third party access and tariff regulation granted under Directive 2003/55/EC.

transit on SS335 national road, which has been closed as considered unsafe following the landslide, nor of the only alternative road transit, since the applicant was denied the authorization to access the work site for the corresponding period from the company holding the highway.

- (24) According to the Commission's view, the seasonal and worksite constraints totalled up with the two events causing unforeseen delays (COVID-19 and the landslide) could have not been predicted within the project timeline. The construction works suspended due to Covid and the landslide during the unconstrained season were carried over to the next unconstrained season, with no possibility to regain the delay during the season when the restrictions envisaged by Sitaf Works Regulations applied. These restrictions significantly hindered the progress of work activities, as throughout the summer season for safety reasons they did not allow access to construction sites requiring traffic lane interchanges on the freeway, and thus shifting the timeline of construction activities to the earliest available time when these restrictions would not apply, i.e. September 2020. Therefore, the delays in the construction and operation of the Interconnector are due to major obstacles caused by the pandemic and the landslide event.
- (25) The duration and full impacts of the ongoing pandemic COVID-19 as well as the landslide were not foreseeable at the moment of the Commission's Decision C(2016) 8592 final.
- (26) Moreover, the pandemic, the Member States' measures tackling the pandemic and the landslide, which is a natural hazard, clearly go beyond Piemonte Savoia's control.
- (27) Consequently, the Commission takes the view that the change in the date by which the commercial operation has to take place is a delay beyond the control of the person to whom the exemption was granted, in this case Piemonte Savoia S.r.l., within the meaning of the eight paragraph of Article 63 of Regulation (EU) 2019/943.

4.1.2 *Duration of the extension*

- (28) The objectives of Regulation (EU) 2019/943 require exemptions from the application of the regulatory regime, granted under Article 63 of that Regulation, to have a clear end date. That date must be no later than what is strictly necessary.
- (29) In particular, the advantages provided by an exemption may constitute a disincentive to the development of regulated infrastructure which would otherwise compete with the exempted project. Consequently, exemptions should be granted for limited periods of time. It follows from this that it should be possible to foresee the date by which the construction of the infrastructure will start and the date by which the infrastructure will become operational with a reasonable degree of certainty.
- (30) Given the advanced stage of construction of the interconnector, a prolongation until 9 November 2022 is reasonable to enable the interconnector to enter into operation. Whereas the development and impact of the COVID-19 pandemic is not fully predictable, further prolongation would be justified only in case of a significant worsening of the situation or the occurrence of significant other, currently unexpected delays.
- (31) Moreover, as the date for start of operations of the interconnector - starting point for the calculation of the exemption period - is postponed only by 11 months, the expectation of investors in potential other interconnectors which could compete with the project is impacted only to a limited extent.

5. Conclusion

- (32) The Commission takes the view that, based on the information received, the delay is due to major obstacles beyond the control of Piemonte Savoia S.r.l. The operational deadline should therefore be extended to 9 November 2022, as requested by Piemonte Savoia S.r.l. This will give Piemonte Savoia S.r.l. enough time to finalise the construction of the electricity interconnector between France and Italy and to start its commercial operation, while at the same time having a limited impact on potential competing projects.

HAS ADOPTED THIS DECISION:

Article 1

In Commission Decision C(2016) 8592 final Article 2 is replaced by the following:

“In line with Article 63(8) of Regulation (EU) 2019/943, the Commission's approval of the Exemption Decisions shall expire on 9 November 2022 in the event that interconnector has not become operational by that date, unless the Commission decides that any further delay is due to major obstacles beyond the control of Piemonte Savoia S.r.l. ”

Article 2

This Decision is addressed to the Ministero della Transizione Ecologica and the Commission de Régulation de l'Énergie;

Done at Brussels, 19.1.2022

For the Commission
Kadri SIMSON
Member of the Commission