



EUROPEAN COMMISSION

Brussels, **XXX**
[...] (2012) **XXX** draft

COMMISSION OPINION

of **XXX**

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of
Directive 2009/73/EC - Belgium - Certification of S.A. Fluxys Belgium**

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I. PROCEDURE

On 4 July 2012, the Commission received a notification from the Belgian regulator for energy (Commission de Régulation de l'Électricité et du Gaz, hereafter "CREG"), in accordance with Article 10(6) of Directive 2009/73/EC¹ (hereafter, "Gas Directive"), of a draft decision on the certification of S.A. Fluxys Belgium (hereafter, "Fluxys Belgium") as a Transmission System Operator (TSO) for gas.

Pursuant to Article 3(1) Regulation (EC) No 715/2009² (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 the Gas Directive³.

II. DESCRIPTION OF THE NOTIFIED DECISION

Fluxys Belgium is the only gas TSO in Belgium and owns and operates the natural gas transmission network on Belgian territory. Fluxys Belgium is owned by S.A. Fluxys (Fluxys Holding) (89.7%), a holding company, which in turn is owned for 80% by Publigaz and for 20% by Caisse de dépôt et placement du Québec (CDPQ). Publigaz is a Belgian communal holding company in the gas sector which includes Belgian intercommunal energy companies. CDPQ is a Canadian institutional investment fund. The remaining shares of Fluxys Belgium are quoted on the Brussels stock exchange (10.3%). The Belgian State has a special share in Fluxys Holding. Fluxys Holding has participations in gas networks in other Member States, including in BBL, I(UK), NEL and TENP, as well as in Switzerland.

Fluxys Belgium has applied for certification in accordance with the ownership unbundling model. The CREG has come to the preliminary conclusion that Fluxys Belgium complies with the provisions of the ownership unbundling model as laid down in Article 9 Gas Directive. The CREG attached two requirements to the certification. The first requirement relates to the acquisition by Fluxys Belgium of one of the pipelines it operates - the rTr pipeline - which it is currently leasing, and for which it can invoke a contractual purchase option in the course of 2014. The second condition relates to a clarification in the statutes of Fluxys Belgium and Fluxys Holding in relation to the independence of the board members.

The CREG has submitted its draft decision to the Commission requesting for an opinion.

¹ 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

² 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 211/36 of 14.8.2009

³ The case is registered as 026-2012-BE

III. COMMENTS

On the basis of the present notification the Commission has the following comments on the draft decision.

1. INDEPENDENCE OF BOARD MEMBERS

Article 9(1)(d) Gas Directive stipulates that the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system.

From the draft decision of the CREG it appears that currently one board member of Fluxys Belgium and Fluxys Holding is also a board member of the Vlaamse Energie Holding ("VEH"), while two other board members of Fluxys Belgium and Fluxys Holding are also board members of SOCOFE, the Walloon Energy Holding. Both VEH and SOCOFE have participations in undertakings which carry out production and supply activities.

The Commission notes that in the draft decision the CREG has asked for a modification of the statutes of Fluxys Belgium and Fluxys Holding, in order to clarify that board members of Fluxys Belgium and Fluxys Holding cannot at the same time be part of the board or of bodies legally representing an undertaking performing any of the functions of production or supply, nor directly or indirectly exercising any rights in such companies. The Commission supports this clarification in the statutes of Fluxys Belgium and Fluxys Holding. The Commission invites the CREG to assess in concrete terms what this clarification implies for the current board members of the two companies concerned and to include the assessment in the final certification decision.

2. PARTICIPATION IN AN LNG VESSEL

From the draft decision of the CREG it appears that Fluxys Belgium has a 100% daughter company, S.A. Fluxys & Co, which has a participation in a partnership that owns an LNG vessel. In its decision, the CREG makes reference to this participation, but does not explain to what extent it is compatible with Article 9(1)(b)(ii) Gas Directive. The Commission invites the CREG to analyse this participation more closely in view of the prohibition of Article 9(1)(b)(ii) Gas Directive, and to include the analysis in the final certification decision.

IV. CONCLUSION

Pursuant to Article 3(2) Gas Regulation, the CREG shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of Fluxys Belgium, 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 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. The CREG is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains

confidential information which it wishes to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels,

For the Commission

Member of the Commission