



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

COMMISSION OPINION

of **XXX**

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive
2009/72/EC - Greece - Certification of ADMIE S.A.**

COMMISSION OPINION

of **XXX**

pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive 2009/72/EC - Greece - Certification of ADMIE S.A.

I. PROCEDURE

On 10 August 2012, the Commission received a notification from the Greek regulatory authority for energy (hereafter, "RAE"), in accordance with Article 10(6) of Directive 2009/72/EC¹ (hereafter, "Electricity Directive"), of a draft decision on the certification of "ADMIE S.A." (hereafter, "ADMIE") as a Transmission System Operator (TSO) for electricity.

Pursuant to Article 3(1) Regulation (EC) No 714/2009² (hereafter, "Electricity 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 Electricity Directive.

II. DESCRIPTION OF THE NOTIFIED DECISION

ADMIE is the only transmission system operator for electricity in Greece and is operating the entire high-tension network. ADMIE has been established in February 2012 following the transposition of the Electricity Directive into Greek law (Law 4001/2011). This law provided for the creation of a new TSO through the spin-off of the transmission tasks which were performed by the Public Power Corporation (hereafter, "PPC") and the transmission tasks carried out by DESMIE, a company which combined certain transmission and market operator tasks. With the creation of ADMIE, DESMIE was dissolved and the market operator tasks were attributed to another new company, i.e. LAGIE, in view of clarifying roles and responsibilities in the Greek electricity market. ADMIE is 100% owned by PPC, the incumbent electricity company, which is active in production and supply of electricity, and which is in turn majority owned by the State.

In order to comply with the applicable rules on unbundling of transmission system operators, ADMIE has chosen the Independent Transmission Operator (hereafter, "ITO") model, referred to in Article 9(8)(b) Electricity Directive. This choice is available to ADMIE under the Greek legislation transposing the Electricity Directive, i.e. Law 4001/2011.

Article 9 Electricity Directive sets out rules on the unbundling of transmission systems and transmission system operators. Article 9(8)(b) therein provides that where on 3 September 2009 the transmission system belongs to a vertically integrated undertaking a Member State may decide not to apply paragraph 1, provided that the Member State concerned complies with the provisions of Chapter V, establishing requirements for independent transmission operators (Articles 17 to 23 Electricity Directive).

¹ 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 211/55 of 14.8.2009.

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 L 211/15 of 14.8.2009.

RAE has analysed whether and to what extent ADMIE complies with the unbundling rules of the ITO model as laid down in the Greek legislation transposing the Electricity Directive. RAE has come to the preliminary conclusion that ADMIE complies with these requirements.

III. COMMENTS

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

1. Choice of the ITO model

According to Article 9(8) Electricity Directive, the ITO model may be applied in cases where, on 3 September 2009, the transmission system belonged to a Vertically Integrated Undertaking (hereafter, "VIU"). The Commission agrees with RAE in the present case that the choice for the ITO model is legitimate, considering that the transmission system concerned did belong to a VIU on the relevant date.

2. Contracts for services provided to the ITO by other parts of the VIU

Article 17(1)(c) Electricity Directive provides for specific rules on the contracting of services between other parts of the VIU and the ITO. As the ITO should be autonomous and not dependent on other parts of the VIU, the contracting of services to the ITO by any other part of the VIU is prohibited by the Electricity Directive. In the draft decision, RAE accepts that the VIU provides support services for the software application concerning payroll administration for another 12 months. The reason for this is the level of complexity of the existing remuneration policies. The Commission considers that for this service, RAE should reassess its final decision, in order to ensure the independence and autonomy of the ITO, whether the transitional period could be shortened.

3. Independent auditing

According to Article 17(6) Electricity Directive, the accounts of the TSO shall be audited by an auditor other than the one auditing the VIU or any part thereof. From RAE's draft decision, together with the application made by ADMIE, it does not become sufficiently clear whether ADMIE and the VIU would continue to employ the same auditing company after certification.

The Commission considers, in view of Article 17(6) Electricity Directive, that, in order to avoid any conflicts of interest and to ensure an effective separation between the VIU and ADMIE, RAE should re-assess this issue and ensure through its final certification decision that ADMIE now and in the future chooses an auditing company which is different from the one employed by the VIU or any part thereof.

4. Independence of management

According to Article 19(3) *juncto* Article 19(8) Electricity Directive, the majority of the management cannot have exercised any professional position or have had any responsibility or business relationship, directly or indirectly, with any part of the VIU, or with its controlling shareholders other than the TSO, for a period of three years before their appointment. The Commission also notes that the independence criteria of Article 19(3) Electricity Directive not only apply to the majority of the management, but also to the persons directly reporting to them on matters related to the operation, maintenance or development of the network (see Article 19(8), third subparagraph).

Based on the information received, the Commission agrees with RAE that the independence requirements are met by the members of the Board of Directors. However, as the members of

the Management Team, who have to report to the Board of Directors, have not yet been appointed, the Commission asks RAE to verify in its final certification decision that also the members of the Management Team fulfil the independence requirements in accordance with the above mentioned principles.

IV. CONCLUSION

Pursuant to Article 3(2) Electricity Regulation, RAE shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of ADMIE, 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. RAE 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