



Brussels, 28.6.2022  
C(2022) 4656 final

**COMMISSION OPINION**

**of 28.6.2022**

**pursuant to Article 3 of the Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC – Greece and Bulgaria – Certification of ICGB AD as transmission system operator for gas**

# COMMISSION OPINION

of 28.6.2022

**pursuant to Article 3 of the Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC – Greece and Bulgaria – Certification of ICGB AD as transmission system operator for gas**

## I. PROCEDURE

On 26 May 2022, the Commission received a notification on behalf of the National Regulatory Authorities of the Republic of Bulgaria - Energy and Water Regulatory Commission (hereafter “EWRC”) and of the Hellenic Republic - Regulatory Authority for Energy (hereafter “RAE”), in accordance with Article 3 of Regulation (EC) No 715/2009<sup>1</sup> and Article 10(6) of Directive 2009/73/EC<sup>2</sup>, of a draft joint decision of EWRC and RAE for the certification of ICGB AD (hereafter “ICGB”) as an independent transmission operator (hereafter “ITO”) for gas.

ICGB is the operator of the gas transmission system Interconnector Greece-Bulgaria (hereafter “IGB”). IGB is designed to tie into the Trans-Adriatic Pipeline (TAP), which is part of the Southern Gas Corridor, transporting natural gas to Europe from Azerbaijan<sup>3</sup>, and the Greek system operated by the Hellenic Gas Transmission System Operator S.A. IGB is recognised as a project of common interest in the third (2017) Union list of common interest (PCI list)<sup>4</sup> and is a priority project in the context of the Central-East and South-East Europe energy Connectivity (CESEC) initiative.

On 8 August 2018 EWRC and RAE took a final decision on exempting ICGB from rules in Directive 2009/73/EC regarding third party access, tariff regulation and ownership unbundling (hereafter “exemption decision”). This exemption decision was subject to a Commission Decision of 25 July 2018 (C(2018) 5058 final). In subsequent amendments by EWRC and RAE to their joint exemption decision, the deadline for IGB becoming operational was set by them to be 1 July 2022.

The exemption decision of 8 August 2018 grants an exemption from the requirement to apply the ownership unbundling provisions of Article 9 of Directive 2009/73/EC for a period of 25 years starting from the date of commercial operation, conditional to ICGB applying the independent transmission operator (hereafter “ITO”) unbundling model in accordance with Chapter IV of Directive 2009/73/EC. According to the exemption decision ICGB is obliged to

<sup>1</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, 14.8.2009, p. 36.

<sup>2</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, 14.8.2009, p. 94.

<sup>3</sup> <https://www.tap-ag.com/>

<sup>4</sup> Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest. OJ L 90, 6.4.2018, p. 38.

meet all the requirements set out in Chapter IV of Directive 2009/73/EC, with the exception of the provisions of Article 22 of Directive 2009/73/EC.

Article 22 of Directive 2009/73/EC sets out requirements the TSO needs to meet related to network development and powers to make investment decisions. In its decision of 25 July 2018 the Commission agreed with EWRC and RAE that, in view of the other conditions imposed on ICGB under the exemption decision, compliance with Article 22 of Directive 2009/73/EC is not necessary.

Consequently, ICGB needs to be certified both by EWRC and by RAE, based on the ITO model, with the exception of Article 22 of Directive 2009/73/EC, in accordance with Article 10 of that Directive.

Pursuant to Article 3 of Regulation (EC) No 715/2009 and Article 10 of Directive 2009/73/EC, the Commission is required to examine the notified draft joint decision of EWRC and RAE and to deliver an opinion within two months as to its compatibility with Article 10 and Chapter IV of Directive 2009/73/EC.

## **II. DESCRIPTION OF THE NOTIFIED PRELIMINARY DECISION**

### **Ownership structure**

ICGB is owned by Bulgarian Energy Holding EAD (hereafter “BEH”) and the Greek company IGI Poseidon SA (hereafter “IGI”), each hold a 50% interest. IGI has two owners with each having a 50% share: the Greek company DEPA SA and Edison International NV. Edison International NV is a 100% subsidiary of the Italian company Edison S.p.A. Each of the two owners, and hence also ICGB, is part of a vertically integrated undertaking (hereafter, for one or both of the two vertically integrated undertakings, “VIU”):

- Next to ICGB, BEH also owns Bulgargaz EAD, a natural gas supplier, and Bulgartransgaz EAD, a gas TSO certified as an ITO<sup>5</sup>.
- Via the 50% ownership of IGI, ICGB belongs to a VIU consisting of Edison S.p.A., an electricity and gas supplier, which is part of the French EDF Group, IGI Poseidon S.A., a company responsible for the design, construction and operation of the planned Natural Gas Pipeline Greece-Italy (IGI Poseidon) as well as the planned Eastern Mediterranean Pipeline (EastMed), and DEPA International Projects S.A. (hereafter “DEPA”). DEPA is developing, constructing and/or managing interconnection infrastructure including those transporting natural gas<sup>6</sup>. It is owned by Hellenic Hydrocarbon Resources Management S.A., a state-owned company promoting the production of hydrocarbons like natural gas and providing services for hydrocarbon exploration and production projects<sup>7</sup>, and Hellenic Petroleum S.A., a management company with subsidiaries active in natural gas production and supply.

ICGB’s corporate governance is set out in its new draft Articles of Association. EWRC and RAE explain that the new Articles of Association should be approved by ICGB’s General

---

<sup>5</sup> The certification of Bulgartransgaz EAD was subject to a Commission Opinion of 22.4.2022 (C(2015)3858).

<sup>6</sup> <https://depa-int.gr/en/company-en/>

<sup>7</sup> <https://www.greekydrocarbons.gr>

Meeting of Shareholders and be officially entered into the Commercial Register of the Republic of Bulgaria before EWRC and RAE take their final certification decision.

ICGB has developed and will implement a Compliance Programme, which is to be monitored by a Compliance Officer with a full set of rights and obligations and who reports to the Supervisory Board and/or EWRC and RAE.

EWRC and RAE consider that the two-tier management system as described below, the rules and conditions in the exemption decision, the IGB Network Code and the IGB Tariff Code as well as the Compliance Programme ensure that the VIU does not directly or indirectly determine ICGB's competitive conduct as operator of the IGB pipeline and that as gas TSO ICGB will not discriminate against different persons or entities, nor restrict, distort or impede competition in production or supply, while taking into account that for 25 years ICGB is exempted from certain rules related to third party access and tariff regulation.

### **Assets, equipment, staff and identity of the ITO**

Article 17 of Directive 2009/73/EC provides that the gas TSO must have all the human, technical, physical and financial resources necessary for the performance of its duties under Directive 2009/73/EC and for carrying out the activity of natural gas transmission. EWRC and RAE consider that the independence requirements under Article 17 of Directive 2009/73/EC have been met.

EWRC and RAE explain that the fixed tangible assets (the IGB pipeline) shall be entered in the accounting books of ICGB after the completion of the construction, the final acceptance tests and the start of operation. At this point ICGB will acquire a Use Permit. EWRC and RAE assume that those long-term tangible assets, which are necessary for the activity of ICGB of gas transmission, are to be duly entered into the inventory book of the company immediately after acquisition of the Use Permit and full evidence that this has taken place is submitted to EWRC and RAE before adoption of the final certification decision.

EWRC and RAE confirm that the requirement that ICGB has the necessary financial resources for fulfilling its obligations as gas TSO are met and that the financial and economic standing of ICGB is relatively good: ICGB has had no difficulty in covering its long-term and short-term liabilities with its own funds and has enough free working capital to repay its current liabilities. EWRC and RAE are convinced that during the commercial operation ICGB will generate sufficient revenues from its gas transmission activities which will cover operating costs, repairs and investment programmes. To help ensure the predictability of the investment in the IGB pipeline and of its legal framework, Bulgaria and Greece concluded an Intergovernmental Agreement (IGA).

EWRC and RAE confirm that ICGB meets the requirement that it appoints the necessary staff and that it cannot hire and provide staff from and to other parts of the VIU. ICGB's organisation structure is considered as having an appropriate allocation of human resources for an ITO and as necessary for the functioning of ICGB after the date of commercial operation of the gas interconnector. While ICGB currently has 26 employees, it estimates that it will employ 69 members of staff. ICGB declared that it does not hire or provide staff from or to other parts of the VIU, except for two employees seconded from Edison S.p.A. However, these secondments will end with the date of commercial operation as will a related reimbursement agreement between ICGB and Edison Sp.A.

ICGB also hired specialists under service contracts, but EWRC and RAE explain that the majority of the activities are mainly related to the construction of IGB and not related to activities of gas transmission, management and allocation of capacity. Therefore, they are not relevant for assessing if ICGB acts independently during the operational phase of the IGB pipeline. A consultancy contract for supporting the conclusion of contracts for gas transmission and other related activities contains a clause that the contractor does not and will not, for the duration of the contract, render services to any other part of the VIU.

ICGB has submitted declarations that it does not receive services from other parts of the VIU. A service agreement between ICGB and IGI Poseidon S.A. exists, but since ICGB states that it is not active, EWRC and RAE have not analysed it.

EWRC and RAE observe that ICGB has created its own corporate identity, with its own brand as core element. The brand is registered as a European Trademark and differs significantly from the corporate identity associated with its shareholders. ICGB's website<sup>8</sup> does not reveal any similar feature with the sites of other parts of the VIU. Seat and head-office in Sofia are not shared with another part of the VIU. For the Greek office, EWRC and RAE explain that on 28 December 2021 ICGB concluded a private sublease agreement with DEPA for office space in Athens, hence ICGB uses the same premises as another part of the VIU. EWRC and RAE nevertheless consider the independence requirements under the ITO model as being met, since ICGB is required to take any necessary measures in order to avoid to create any confusion in respect of its premises and to maintain the separate identity of ICGB and since EWRC and RAE oblige ICGB to not renew the sublease agreement.

EWRC and RAE establish that ICGB's communication systems are completely independent from the communication systems of other parts of the VIU. ICGB does not use licenses and/or services of other parts of the VIU for its information systems, nor products which are the property of another part of the VIU. ICGB built its own organisational structure for IT services.

ICGB's Internal Rules for Administration of the Cycle of Public Procurements requires contractors after the certification of ICGB as an ITO to complete a declaration guaranteeing that they do not provide relevant services to any other part of the VIU. ICGB submitted declarations from existing contractors providing legal, accounting and IT services that they do not provide services to the VIU. The following services providers have not provided such a declaration: A1 Bulgaria EAD, SuperHosting.BG EOOD, VIP SOD EOOD, Buzeva & Partners Law Firm and one individual lawyer. EWRC and RAE provide the following information to show why it is not problematic that some service providers provide services to both ICGB and other parts of the VIU:

- A1 Bulgaria EAD is an enterprise providing public electronic communications networks or services to end users and cannot deny access to the communication services it offers.
- SuperHosting.BG EOOD is a domain registration and management service.
- VIP SOD EOOD is a company providing protection to property with electronic security systems and mobile patrols. All those services are considered as not related to the activity of gas transmission.

---

<sup>8</sup> <https://www.icgb.eu>

- Buzeva & Partners Law Firm provides legal services, next to ICGB, to BEH as well as to Bulgargaz EAD and Bulgartransgaz EAD, both 100% subsidiaries of BEH. However, the scope of the framework contract ICGB had concluded with Buzeva & Partners Law Firm is limited to proceedings related to two public procurements which had taken place before the date of commercial operation, hence before ICGB starts its gas transmission activity. The law firm declares that it undertakes to keep confidential and not to disclose or distribute information from those proceedings to other parts of the VIU.
- EWRC and RAE's draft joint decision does not include information on the contract with the individual lawyer.

EWRC and RAE conclude that ICGB uses completely independently the necessary corporate services, including legal, accounting and IT services, and that ICGB uses stand-alone information technology systems and equipment as well as premises which are clearly marked as distinct from those of other parts of the VIU.

As regards auditing services, EWRC and RAE explain that at present ICGB has not contracted for independent audit. ICGB plans to select an auditor to audit the Annual Financial Statements for 2022. For this process ICGB's above mentioned Internal Rules for Administration of the Cycle of Public Procurements with its relevant safeguards will apply. This will ensure that the accounts of ICGB and those of other parts of the VIU will not be audited by the same auditor.

ICGB prepared draft Rules for the Provision of Services by an Independent Transmission Operator to Vertically Integrated Undertakings, which regulate the provision of services by the ITO to other parts of the VIU. These Rules shall ensure that ICGB does not discriminate other users of the IGB pipeline to the benefit of users which are part of the VIU. Consequently, ICGB is only allowed to provide services to other parts of the VIU in exceptional cases, where this is necessary given the nature of the service and when such service cannot be provided by another market entity. The provision of services is carried out applying the Public Procurement Act with all terms and conditions being announced in advance publically. EWRC and RAE conclude that the presented draft Rules for the Provision of Services by an Independent Transmission Operator to Vertically Integrated Undertakings meet the legal requirements in terms of objectives, scope and content.

### **Independence of the ITO, its management and its staff**

EWRC and RAE conclude that the draft new Articles of Association of ICGB provide guarantees for the independence of ICGB from the VIU as regards the operation and development of the gas transmission network in accordance with the requirements of Article 18 of Directive 2009/73/EC. However, the draft new Articles of Association do not provide powers to the Management Board to propose decisions binding on the General Meeting of Shareholders regarding the raising of funds on the capital market. EWRC and RAE explain that this is in line with the regulatory framework of the IGB project as set out in the exemption decision. According to the exemption decision, Article 22 of Directive 2009/73/EC, which sets out requirements a TSO needs to meet related to network development and powers to make investment decisions, is not applied to ICGB. ICGB's business plan has comprehensively defined the necessary investment to implement the IGB pipeline. The necessary funding for the construction of the IGB pipeline has been provided in advance and is fully secured. The exemption decision sets out not only the financial model

aiming at successful implementation and operation of IGB, but also the mechanism, boundaries and conditions for possible new investments.

ICGB's draft new Articles of Association stipulate the introduction of the required two-tier management system: a Supervisory Board consisting of six members elected and dismissed by the General Meeting of Shareholders and a Management Board consisting of four members elected and dismissed by the Supervisory Board.

According to the draft new Articles of Association, the Supervisory Board will be responsible for decisions on:

- Issues that may significantly affect the value of the company's assets;
- New investments;
- The budget and any other annual financial plans, including the business plan applicable for after the date of commercial operation which shall be the business plan for the operation phase of the IGB pipeline;
- Issues related to the level of indebtedness of the company and the issuing of bonds;
- Dividends offered to shareholders;
- Concluding, terminating, substantially amending or waiving of any agreement involving payment liabilities or initiating or settling court or arbitration proceedings concerning amounts exceeding EUR 500,000 or which may have other significant negative impacts on ICGB;
- Concluding, terminating or significantly modifying or waiving of rights under any gas transportation contract concerning IGB in cases where the exemption is in force;
- Approving of the procedure for conducting an additional market test in accordance with the exemption.

ICGB has notified EWRC and RAE of the six nominees for the Supervisory Board. In accordance with Article 20(3) in connection with Article 19 of Directive 2009/73/EC, half of the members of the Supervisory Board minus one need to comply with the requirement that they have not exercised any professional position or responsibility, interest or business relationship, directly or indirectly, with any part of the VIU, or with its controlling shareholders, other than the ITO, for a period of three years before their appointment. Consequently EWRC and RAE checked if this requirement is met by two of the nominees and conclude that they meet it.

Pursuant to the draft new Articles of Association, the Management Board takes decisions, within the business plan after the date of operation, related to the management and the development of the IGB pipeline regarding ICGB's assets necessary for the operation, maintenance or development of the IGB independently from the shareholders who are part of the VIU.

Based on the information provided by ICGB, EWRC and RAE assessed if the four nominees for member of the Management Board comply with the independence requirements. They conclude that three of the four nominees, hence the required majority, comply with the requirement that they have not exercised any professional position or responsibility, interest or business relationship, directly or indirectly, with any part of the VIU, or with its controlling shareholders, other than the ITO, for a period of three years before their appointment.

For the fourth member of the Management Board, it would be sufficient that he or she has not exercised such a professional position or responsibility for a period of six months before the appointment to the Management Board. However, the nominee currently holds a professional position within the HELPE Group, a shareholder of DEPA and linked to Hellenic Petroleum S.A. EWRC and RAE consequently assert that the condition of independence is not clearly fulfilled in the case of this nominee. They are nevertheless of the opinion that a deviation from the usual requirement may be tolerated if the nominee relinquishes the position within the HELPE Group prior to the final certification decision is taken. EWRC and RAE justify their acceptance of this deviation with the need to not place impediments to the imminent operation of ICGB, taking into account the current energy crisis and the concerns for security of supply.

EWRC and RAE explain that the four nominees for the Management Board should be selected by the Supervisory Board and be officially entered in the Commercial Register of the Republic of Bulgaria before the final certification decision is taken.

As regards staff which reports directly to the Management Board on matters related to the operation, maintenance, or development of the network, EWRC and RAE conclude that there is no evidence that any of the six relevant persons has exercised any professional position or responsibility, interest or business relationship, directly or indirectly, with any part of the VIU, or with its controlling shareholders, other than the ITO, for a period of three years before their appointment.

ICGB has developed and submitted to EWRC and RAE a draft Compliance Programme setting out the measures taken to ensure non-discriminatory conduct and non-disclosure to shareholders of any sensitive information as well as setting rules on the status, rights and obligations of the Compliance Officer. EWRC and RAE consider that the Compliance Programme meets the legal requirements<sup>9</sup> in terms of objectives, scope and content and gives the Compliance Officer the necessary powers. However, they also consider that ICGB should amend the Compliance Programme to include DEPA as part of the VIU and submit the amended Compliance Programme for approval before the final certification decision. Furthermore, EWRC and RAE observe that no information has been provided on the person designated as Compliance Officer, but that a Compliance Officer must be appointed no later than one month after the approval of the Compliance Programme by EWRC and RAE. This approval will take place together with the adoption of the final certification decision.

## **Conclusion**

EWRC and RAE conclude that ICGB meets the relevant requirements for an ITO pursuant to Directive 2009/73/EC and therefore plan to:

- Certify ICGB as an ITO;
- Approve ICGB's Rules for the Provision of Services by an Independent Transmission Operator to Vertically Integrated Undertakings;
- Approve ICGB's Compliance Programme.

---

<sup>9</sup> Article 21 of Directive 2009/73/EC



### III. COMMENTS

Against the background of the information provided in the draft joint decision notified by EWRC and RAE, the Commission has the following comments.

As an overall comment, the Commission notes that EWRC and RAE in their draft joint decision state at several places that ICGB still has to fulfil certain requirements, e.g. that the draft new Articles of Association shall be adopted by ICGB's General Meeting of Shareholders and entered into the Commercial Register of the Republic of Bulgaria before EWRC and RAE take their final certification decision. Should any of such requirements not have been fulfilled at the time EWRC and RAE take their final certification decision, then the decision should be made conditional to the requirement being met within a clearly defined and reasonable deadline to be set in the final certification decision.

#### **Assets, equipment, staff and identity of the ITO**

The Commission agrees with EWRC and RAE that ICGB appears to be equipped with all financial, technical, physical and human resources necessary to fulfil its obligations and to carry out the activity of gas transmission as required by Article 17 of Directive 2009/73/EC.

The Commission notes that the IGB pipeline has been or will become a fixed tangible asset in the ownership of ICGB and that ICGB has the necessary financial resources to fulfil its obligation as gas TSO. As regards the necessary financial resources, ICGB is indeed in a different situation than other ITOs: The IGB pipeline is an interconnector requiring a certain necessary investment for which funding has been provided in advance and which is fully secured. It is therefore sufficient that ICGB is equipped with the necessary resources for operating such infrastructure. This specificity is reflected in the exemption decision which excludes Article 22 of Directive 2009/73/EC from the requirements ICGB as ITO needs to fulfil.

The Commission agrees with EWRC and RAE that ICGB employs, at the latest once the planned staff increase has taken place, a sufficient number of qualified staff members to handle day-to-day core activities. The final certification decision should include as condition that the required additional staff is recruited as planned. The Commission welcomes the clear rules for procurement including guarantees that external service providers do not provide relevant services to any other part of the VIU and notes that, with some exceptions, existing contractors comply with this requirement. The Commission finds the reason for those exceptions credible. For one lawyer, the draft joint certification decision of EWRC and RAE does not provide a justification for the exception. However, according to the supporting documents provided by EWRC and RAE this lawyer was contracted solely for representing ICGB related to getting access to a forestry road, hence it appears to be a similar case as Buzeva & Partners Law Firm: a specific task linked to the construction phase of the IGB pipeline.

The Commission notes that ICGB provided assurance that it does not receive services from other parts of the VIU. However, EWRC and RAE identified an existing service agreement between ICGB and IGI Poseidon S.A. The Commission disagrees with the approach taken by EWRC and RAE that no analysis is needed, since ICGB stated that the agreement is "not active", without providing further details. Since it cannot be excluded that this agreement is activated again, the final certification decision should set as condition that the agreement is

terminated. This should be possible, given that the agreement is not active and could anyway not be activated without infringing the unbundling rules for ITOs.

The Commission is of the opinion that overall ICGB fulfils the requirements in Article 17 of Directive 2009/73/EC related to avoiding confusion between the identity of ICGB and the identity other parts of the VIU. However, the Commission notes that ICGB has a sublease agreement with DEPA, hence with another part of the VIU. While EWRC and RAE consider this as acceptable since ICGB is required to take any necessary measures in order to avoid creating any confusion in respect of its premises and the separate identity of the operator, it is not made clear how this can be achieved in practice in case of such a sublease and a general reference that ICGB has to comply with the applicable legal requirements should not replace concrete and tangible conditions. EWRC and RAE state that ICGB shall bear the obligation to not renew the sublease agreement without providing further explanations as regards when this would end the hosting of ICGB on the premises of another part of the VIU. The Commission concludes that ICGB should be required to terminate the sublease agreement.

As regards the Rules for the Provision of Services by an ITO to VIUs, the Commission has a few comments:

- Article 11 appears to refer to the above described contracts with Bulgaria EAD, SuperHosting.BG EOOD and VIP SOD EOOD, but the relevance of mentioning those contracts in this context is unclear.
- The relevance of Article 16 is unclear. It should either be deleted or the “may” be replaced by “shall” to avoid that it is an opening to ICGB receiving services from other parts of the VIU.
- In Article 17, the purpose of the phrase “unless this is necessary for the conclusion of a commercial transaction” is unclear and appears to be rather wide, which could increase the risk that services provided by ICGB to other parts of the VIU discriminate between system users.
- Article 22 refers to a “procedure described below in this section”, but there is no further Article in section IV.
- §1(3) of the Final Provisions in its current form does not appear to clearly stipulate that any amendment to the Rules for the Provision of Services by an ITO to VIUs requires approval by EWRC and RAE.

### **Independence of the ITO, its management and its staff**

The Commission agrees with EWRC and RAE that, in principle, the draft new Articles of Association, once adopted and implemented, and the overall management structure and corporate status of ICGB provide for a decision-making structure and rules ensuring effective independence of ICGB as ITO.

However, the Commission disagrees with EWRC’s and RAE’s plan to tolerate that the fourth member of the Management Board would be appointed without fulfilling the requirement of having not exercised any professional position or responsibility, interest or business relationship, directly or indirectly, with any part of the VIU, or with its controlling shareholders, other than the ITO, for a period of six months before the appointment to the Management Board. The Commission does not find EWRC’s and RAE’s justification for such a deviation from the requirements under Article 19 of Directive 2009/73/EC convincing: It is

not evident why it should place impediments to the imminent operation of the IGB pipeline if this specific nominee is not appointed to the Management Board or if one of the four posts in the Management Board remains vacant for six months.

The Commission regrets that ICGB has not provided information about the nominee for the post as Compliance Officer and hence EWRC and RAE could not include an assessment if the nominee for this key role in ICGB would meet the requirements under Article 21 of Directive 2009/73/EC in their draft joint certification decision. As is the case for several other requirements not yet fulfilled by ICGB at the time the draft joint certification decision was finalised, EWRC's and RAE's final certification decision should be made conditional to the appointment of a Compliance Officer with sufficient independence and professional capacity, hence the appointment of a person who can be approved by EWRC and RAE in accordance with Article 21(2) of Directive 2009/73/EC.

### **Ongoing monitoring**

The Commission recalls the obligation set out in Article 10(4) of Directive 2009/73/EC for regulatory authorities to monitor the continued compliance of TSOs with the unbundling requirements of Directive 2009/73/EC.

The Commission invites EWRC and RAE to continue monitoring the case also after the adoption of the final certification decision in order to satisfy itself that no new facts emerge which would require a change of its assessment.

## **IV. CONCLUSION**

Pursuant to Article 3 Regulation (EC) No 715/2009, EWRC and RAE shall take utmost account of the above comments of the Commission when taking the final decision regarding the certification of ICGB, and when they do so, shall communicate their decision to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* Member State regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* Member State authorities responsible for the transposition of EU legislation, on 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 therein to be confidential. EWRC and RAE are invited to inform the Commission within five working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 28.6.2022

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

