EUROPEAN
COMMISSION

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COMMISSION DECISION

of 9.12.2016

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

Only the texts in Italian and French 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 (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity[1], and in particular, Article 17 thereof,

Whereas:

(1) Article 17 of Regulation (EC) No 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (hereinafter the "Electricity Regulation") provides the possibility for Member State authorities to exempt new electricity interconnectors from Article 16(6) of the Electricity Regulation and Articles 9, 32 and 37(6) and (10) of Directive 2009/72/EC concerning common rules for the internal market in electricity (hereinafter the "Electricity Directive")[2], provided that certain conditions are fulfilled.

(2) Article 17(7) of the Electricity Regulation provides for the Commission to be notified of the decision by the national authorities on an exemption request and its Article 17(8) provides for the Commission to approve the exemption or to take a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption.

1. Procedure

(3) On 8 June 2015, Piemonte Savoia S.r.l (hereinafter "the Promoter") submitted an exemption application to the Italian Ministry of Economic Development "Ministero dello Sviluppo Economico", (hereinafter "MSE") and on 22 January 2016 to the French Energy Regulator, "Commission de Régulation de l'Energie", hereinafter "CRE" in accordance with Article 17 of the Electricity Regulation.

(4) According to the relevant Italian legislation Decree Law n° 93/2011, MSE is the relevant body to grant such an exemption while the national regulatory authority, Autorità per l'elettricità, il gas e il sistema idrico (AEEGSI), is requested to issue a qualified opinion.

(5) In April 2016 AEEGSI adopted an opinion that was presented to the CRE for approval.

(6) On 12 May 2016 the CRE adopted a decision in which it approved the opinion of the AEEGSI.

[1] OJ L 211, 14.08.2009 p. 15.
[2] OJ L 211, 14.08.2009 p. 55.

(7) No exemption has been requested or is granted on the French side of the interconnector.

(8) On 20 July 2016 the MSE adopted a decree in which it followed the opinion of the AEEGSI and granted an exemption to Piemonte Savoia S.r.l from Article 9 of Directive 2009/72/EC and from Article 16(6) of the Electricity Regulation on the Italian side of the interconnectors.

(9) The exemption on the Italian side of the interconnector is granted for a period of 10 years, starting from the beginning of the commercial operations of the new interconnector.

(10) The Italian exemption decision was notified to the European Commission on 26 July 2016, while the French decision was notified on 4 August 2016 (hereinafter "the Exemption Decisions"). The Italian Decision was complemented by the Opinion of AEEGSI (the "AEEGSI Opinion") while the French regulator did not adopt its own opinion but referred back to the AEEGSI Opinion in its decision.

(11) On 11 August 2016, the Commission published a notice on its website informing the public of the notifications of the Italian and French Exemption Decisions and inviting third parties to send their observations within two weeks. The Commission has received no observations from third parties.

(12) On 27 September 2016, the Commission services addressed to MSE a request for additional information, in order to allow for a full assessment of the Exemption Decision. MSE replied on 12 October 2016. The request resulted in the extension of the procedural deadline for the taking of the Commission exemption decision addressed to the Italian authorities by a period of two months from the receipt of the complete information, until 13 December 2016, in accordance with Article 17(8) of the Electricity Regulation.

2. The project

(13) The exemption is requested for one of the two cables of a project of a new 1200 MW interconnection "Piossasco (IT) – Grand'Ile (FR)".

(14) More precisely the project concerns a 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 which will connect the substation of Piossasco of Turin, Italy and Grand-Ile, in France, crossing the border along the Fréjus motorway tunnel.

2.1. The Promoter

(15) In France, the sections of both bipolar lines will be owned and operated by RTE, the French Transmission System Operator ("TSO").

(16) In Italy, one of the two sections will be owned by Terna, the Italian Transmission System Operator. For this section, no exemption is requested. The other section (hereinafter "the Interconnector") will be owned by the company Piemonte Savoia S.r.l, the Promoter and Applicant requesting an exemption under Article 17 of the Electricity Regulation. Both Italian sections will be operated by Terna Rete Italia, the responsible entity within the Terna Group, in charge of the operation, maintenance and development of the Italian national grid.

(17) The Interconnector will be planned, constructed and operated under the Italian legal framework set out by Article 32 of the Italian Law of 23 July 2009, n. 99 (Law 99/09).

(18) The Italian Law 99/09 was designed to promote the participation of private investors in the tendering procedure for new interconnectors and consequently in the financing of the infrastructures needed to achieve a better integration of the Italian market. In accordance with Article 32 of Law 99/09, Terna gave MSE and AEEGSI notification of a list of possible infrastructures to be built and arranged a tender procedure for the selection of entities which intended to finance the identified infrastructures. The participation to tendering procedures is limited to end customers. Law 99/09 foresees that the commitment of the Assignees to provide support in the financing of the interconnectors is subject to the obtainment of a specific exemption under the Italian Ministerial Decree of 21 October 2005. Law 99/09 also stipulates that the Assignees shall sign a contract with Terna for the planning, construction and operation of the interconnector. This contract will enter into force once the exemption is granted.

(19) Terna identified a share (i.e one of the two lines) of the Piossasco-Grand'Ile interconnection capacity as possible project to be financed according to Article 32 of Law 99/09. The shareholders of the Interconnector (hereinafter the "Assignees") were selected during a tender procedure launched by Terna in 2009-2010.

(20) The Promoter has a specific mandate from the entities ("the Assignees") selected by Terna S.p.A for the financing of the described interconnection with France to obtain the requested exemption, on the basis of Article 32 of Law 99/09. The exemption is requested in the interest of the Assignees.

(21) The Assignees are 38 industrial customers operating in the field of production and processing of steel, chemical and paper. According to the information provided by Piemonte Savoia S.r.l, in its exemption application, most of them are not active in any branch of the electricity supply chain, while those few that perform some activity within the industry (mainly for self-consumption or optimization of supplies), have negligible market shares both in the Italian and French electricity markets.

(22) In December 2013, a Memorandum of Understanding was signed by Terna and the trade associations of the end customers which defined the major mutual commitments. Under this agreement, the Assignees have the right to constitute an "ad hoc" company in order to finance the project. To this end, two vehicle companies were set up:

- "Terna Interconnector", jointly owned by Terna S.p.A (65%), Terna Rete Italia (5%) and Transenergia (30%), is responsible for the tender procedure regarding the civil construction works and the tender contract.
- "Piemonte Savoia", set up to manage the exemption procedure on behalf of the Assignees and which will transfer the ownership of the interconnector to the Assignees once the exemption is granted.

(23) It is foreseen that the Promoter will be sold to the Assignees before the exemption enters into force.

(24) By application of Article 32 of the Law 99/09, the Assignees have committed to confer, through the Promoter a mandate to Terna Interconnector s.r.l for the building and the operation of the interconnection on the Italian side.

2.2. Technical and operational description

(25) The main technical characteristics of the Piossasco-Grand'Ile interconnection is summarized in the following table:

(26) Table: Technical characteristics of the project[3]

HVDC configuration	2 independent bipolar circuits with VSC technology
Nominal capacity of the entire connection	1200 MW
Nominal capacity of each single hub	600 MW
Transport capacity of each single hub	Bi-directional: from 0 to 600 MW for each individual hub
Nominal voltage for each individual hub (between hub and earth) for each branch	+/- 320 kV (without polarity reversal)
Maximum operating voltage	+/- 340 kV
Nominal DC current	950 A
Cable technology	Cross-Linked Polyethylene (XLPE)
Length	About 190 km (13 km within the Fréjus tunnel and safety tunnel)
Life expectancy of the infrastructure	40 years

(27) According to the information provided by Piemonte Savoia S.r.l, in its exemption application, the construction period is four years from 2016 to 2019. The new interconnector is expected to start commercial operations at the end of 2019.

2.3. Financial and commercial operations

(28) As regards capital costs, according to the Applicant, the construction of the Interconnector has a total estimated cost of 415 million euros. The Applicant foresees to finance this investment partly through loans (60%) and partly through own equity capital.

3. Description of the notified decision

(29) In the decision notified to the Commission, the MSE granted an Exemption to Piemonte Savoia S.r.l, from Article 9 of Directive 2009/72/EC (unbundling provisions) and from Article 16(6) of the Electricity Regulation (tariffs provisions) for a period of 10 years from the date that the interconnector commences commercial operation, subject to conditions.

(30) According to the decision, the interconnector has an exemption from the obligation to implement ownership unbundling for 10 years, and an exemption from the use of revenues resulting from the allocation of interconnection capacity for the same period of 10 years.

(31) The exemption is granted under the following conditions:

[3] AEEGSI's Opinion, page 7

(a) The notified Exemption Decision expires if either two years after the date the Exemption Decision is adopted by the Commission the construction of the Interconnector has not started or the Interconnector has not become operational after five years. However, the notified Exemption Decision also states that it continues to apply if the Commission decides, pursuant to subparagraph 5 of paragraph 8 of Article 15 of the Electricity Regulation that any delay is due to major obstacles beyond the control of Piemonte Savoia S.r.l.

(b) The interconnector shall be operated by Terna based on a "Technical Operation contract" to be signed by Piemonte Savoia S.r.l, and Terna in accordance with Article 36(9) of Legislative Decree n. 93 of June 1st 2011, and to be approved by the Italian Authority.

(c) The commercial arrangements for the transfer of revenues by Terna to Piemonte Savoia S.r.l, representing seven twelfths of the congestion rents corresponding to the Italian side, shall be defined in a commercial contract and shall be approved by the Italian Authority.

(d) Prior to the entry into service of the interconnector, the share capital of Piemonte Savoia S.r.l. shall be transferred to the Assignees, therefore Terna shall not have any direct or indirect stake in the company. Any change in the composition of Piemonte Savoia S.r.l.'s share capital, including any change in the share of the Assignees, shall be communicated to the Regulators for their evaluation.

(e) If, directly or indirectly, an undertaking acquires joint or sole control over or merges with Piemonte Savoia S.r.l, the latter must notify it to each of the relevant national authorities concerned, which shall assess whether the conditions under which the exemption was granted are still met.

(f) The ownership of the interconnector will be transferred to Terna S.p.A. after the expiry date of the exemption. The value of the asset shall not exceed the residual book value with re-evaluation and be determined on the basis of efficient costs.

4. Assessment of conformity with the criteria set out in Article 17 of the Electricity Regulation

(32) Pursuant to Article 17(1) of the Electricity Regulation, new direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC under the following conditions:

(a) the investment must enhance competition in electricity supply;

(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;

(c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;

(d) charges are levied on users of that interconnector;

(e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and

(f) the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

(33) Pursuant to Article 17(2) of the Electricity Regulation, Article 17(1) may also apply in exceptional cases to alternative current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternative current interconnector.

4.1. Article 17(1)(a): the investment must enhance competition in electricity supply

(34) Article 17 of the Electricity Regulation requires that the investment must enhance competition in electricity supply (Article 17(1)(a)) and that the exemption is not detrimental to competition (Article 17(1)(a)). While these two requirements are not identical, they imply that the project must be pro-competitive and thus create benefits for consumers.

(35) As stated in the Decision, the Interconnector enhances competition as the new capacity would be available to all market participants and would be allocated according to the EU rules for cross border capacity allocation.

(36) The enhancement of competition is also due to the fact that none of the stakeholders of the Interconnector has so far a significant presence in the electricity markets of both Italy and France.

(37) The positive effects of this project in the integration of the internal energy market led to its identification as a Project of Common Interest (PCI) according to Regulation (EU) 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest [4].

(38) Moreover, the Ten-Year Network Development Plan 2014[5] of ENTSO-E underlines that the interconnection between France and Italy would promote the market integration between the two countries as well as the use of the most efficient generation capacity. It would also increase possible mutual support for both countries, and contribute to the integration of renewable energy sources in the European interconnected system by improving cross border exchanges.

(39) As detailed in the Decision, the most impacted zone as result of the new infrastructure is the North bidding zone of Italy, which is the relevant market for the Exemption. The Interconnector would increase the reserve margins of both markets Italy (North Italy) and France, and the diversification of electricity sources, which has been identified by the AEEGSI in its opinion as one of the most effective strategies for ensuring both affordable prices in the long run and security of supply under emergency conditions.

(40) On the basis of the above, the Commission concludes the investment would enhance competition.

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4 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2016_019_R_0001&from=EN

5 https://www.entsoe.eu/major-projects/ten-year-network-development-plan/tyndp-2014/Documents/TYNDP%202014_FINAL.pdf

4.2. Article 17(1)(b): the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted

(41) The risk attached to the investment must be such that the investment would not take place unless an exemption is granted. This can be assessed in particular on the basis of the projected revenue streams and risks related to this projected income, as well as construction and operational risks.

4.2.1. Revenue streams

(42) The AEEGSI's Opinion does not include any explicit description of expected revenue streams.

(43) The Commission considers that the higher revenues could only be justified based on a different risk profile of the project compared to what would normally be allowed under the regulated regime.

4.2.2. Risks related to the projected income

(44) In the case of this particular investment, there are a number of reasons revenues could differ from those projected: According to the applicant, the project presents various risks linked to the conditions of the electricity market and the technical characteristics of the infrastructure itself.

(45) As regards market conditions, the Applicant underlines that the uncertainty derives from the real value of the Italy-France spread that will occur in the coming years and which is the only source of income for Piemonte Savoia.

(46) In its Opinion the AEEGSI underlines that from an economic perspective, the risks concerns the volume of revenues which depend only on the future value of cross border capacity which in turn will be linked to the actual prices in the two countries involved.

(47) The AEEGSI adds that changes in the market conditions may affect operation and maintenance contracts, insurance and personnel costs. Other risks are associated to the performance, reliability and maintenance of the line.

(48) AEEGSI also indicates the possible increase of the Italian taxation rates which could also reduce the profitability of the investment.

(49) The IRR of the Assignees of around 4% has been assessed by AEEGSI as appropriate for this type of investment. In view of the Commission, this IRR is considered reasonable compared to the IRR for other similar investment projects. The Commission shares the view of the AEEGSI who has judged that even if the market conditions were to be particularly favourable for the investor and the price differential between the two markets were to be higher, it is reasonable to believe that this would not lead to a disproportionate return for the Applicant. In view of the exemption period of only 10 years, the Commission sees this as an appropriate justification for not imposing any capping of revenues to the Applicant.

4.2.3. Constructions and operational risks

(50) As regards the technical characteristics of the infrastructure itself, the Applicant underlines the construction difficulties on the Italian side which involve investments which are significantly greater on the Italian side than on the French side of the interconnector.

(51) The AEEGSI explains in its Opinion that from a technological perspective, as underlined by the Applicant, the HVDC cables used for the Interconnector have higher unit costs than HVAC ones. This is mainly due to the fact that direct current lines need AC/DC convertor stations which constitute substantial additional fixed costs.

(52) In addition, there are uncertainties associated with the amount of the investment until the end of the constructions works, in particular due to the morphology of the Italian territory. The cable must be laid under a mountain motorway made up for more than a third of viaducts and tunnels. This implies several construction difficulties that cannot be estimated with certainty in advance. These construction difficulties imposed by the terrain also greatly exceed the situation of a "typical" overland HVDC line.

4.2.4. Commission assessment of the risk criterion

(53) According to the Commission, there are two main risks for sunk costs[6]: the risk of non-use of the investment and the risk of a change in costs and/or revenues in the future. This has been reflected in the approach of the Commission in previous exemption decisions.

(54) The Commission also recognises, as is the case for this project, that risks may originate from changes in flows caused by changes elsewhere in the system. In the present case, the use of the planned interconnector will depend on relative prices in Italy and France and on network developments by the French and Italian TSOs.

(55) Two specific aspects have to be taken into consideration:

- The lower the risk, the higher the likelihood for the project in question to enjoy an unchallenged position;

- The level of risk would tend to be lower where an integrated energy company builds a new piece of infrastructure.

(56) However, in the present case neither reason applies (directly or indirectly). Indeed, regarding the first aspect, there is already an alternative interconnection operational between France and Italy.

(57) Regarding the second aspect, the Assignees are industrial customers who do not have their core bussiness in the energy field. They will not have full control over the use of the infrastructure. Indeed, they are not integrated energy companies which will control the use of the network.

(58) As a general rule, project promoters are required to test market demand before they can obtain an exemption, as this is a crucial element to evaluate the riskiness of a project and to assess to what extent the planned project enhances competition.[7] Moreover, Article 17(4) of the Electricity Regulation explicitly requires that the national regulatory authorities while assessing the need for an exemption, should take into account the results of the capacity allocation procedure. The absence of such a test

[6] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions –, http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf, paragraph 41.

[7] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions –, http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf Box 3: Testing of market demand

is however not a major shortcoming in the submission presented as all the available capacity will be marketed under normal regulatory rules and no exemption from third party access is granted.

(59) On the basis of the above, the Commission concludes that the risks attached to the investment in the two interconnectors are sufficient to justify the granted exemption from Article 16(6) of the Electricity Regulation.

4.3. Article 17(1)(c): the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built

(60) The present exemption is requested by Piemonte Savoia S.r.l for the benefit of the Assignees who are the shareholders of the Interconnector. The Assignees are 38 industrial customers operating in the field of production and processing of steel, chemical and paper.

(61) Therefore, legal unbundling from existing TSOs is fulfilled as the Assignees are separate and independent legal entities from Terna, the system operator in whose systems the interconnector will be built.

(62) It follows that the Assignees who will own the interconnector are separate in their legal form from existing TSOs within the meaning of Article 17(1)(c) of the Electricity Regulation.

4.4. Article 17(1)(d): charges are levied on users of the interconnectors

(63) The capacity of the Interconnector will be allocated through ordinary Union law rules on cross border capacity allocation resulting from the network codes. The users will therefore pay the value of the capacity determined in accordnace with explicit and implicit auctions used to allocate the capacity.

(64) The interconnectors will be subject to regulated tariff setting as no exemption from the tariff setting provisions has been granted. Thus, charges will be levied on users of the interconnectors.

4.5. Article 17(1)(e): No part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector

(65) According to its exemption application, the capital costs will be financed by loans and own capital equity. The Assignees are completely independent from the TSO, Terna. There is no framework for any cashflows to the Assignees from regulated transmission charges.

(66) The Applicant has declared that no part of the Interconnector's costs will be recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.

(67) Costs incurred by Piemonte Savoia before its transfer to the Assignees will be refunded to Terna Interconnector by the Assignees.

(68) The AEEGSI in its Opinion has considered that this criteria is fulfilled.

(69) The Commission concludes that no part of the capital or operating costs of the interconnectors has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnectors. Therefore, the requirement of Article 17(1)(e) of the Electricity Regulation is met.

4.6. Article 17(1)(f): the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked

4.6.1. Detriment to competition

(70) This criterion has a different approach to the criterion set out in Article 17(1)(a) of the Electricity Regulation as discussed in section 4.1 above, because it focuses on the possible negative effects of the exemption rather than the competitive effect of the investment itself. The concern is therefore on possible effects of granting an exemption on other competing projects, whether regulated, exempted or submitted for exemption. The potential detriment to competition is two-fold: Firstly, it is necessary to ensure that competing infrastructure projects are able to compete on a fair basis with the beneficiary of the exemption (e.g. on the availability of connection agreements etc.). Secondly, a negative impact on competing projects from the exemption could undermine the potential for competition more generally in the internal electricity market (as increased interconnection will generally enhance competition).

(71) In relation to competing interconnector projects, there are no other pending projects to develop new interconnections between Italy and France or reinforce existing ones based on a report from the French regulator[8], although this has not been commented on in the AEEGSI's Opinion.

4.6.2. Effective functioning of the internal market

(72) The effective functioning of the market could be undermined if the exemption hindered the overall optimisation of the energy network, for example by scheduling flows on the interconnector regardless of implications for congestion or production costs in other parts of the network.

(73) The regulated access to the interconnectors has as a consequence that its use takes fully into account the price situation in both markets and any congestion in other network elements.

(74) As stated in the AEEGSI's Opinion, the Interconnector does not seem detrimental to the proper market functioning mainly because "the new capacity will be available to all market participants as from the beginning of operation [and] transmission rights will be allocated in a transparent and non-discriminatory manner". Indeed, this is correct as the exemption request does not concern capacity allocation.

(75) The interconnector will be fully integrated with wider capacity allocation and congestion management methods developed to ensure the effective operation of the internal electricity market.

4.6.3. Efficient functioning of the regulated system

(76) The construction of a new infrastructure may require the expansion or reinforcement of the existing regulated infrastructure due to substantially increased energy flows. It is therefore necessary to consider how the exemption influences the costs of operating the regulated system if, for example, the users of the regulated system could be faced with substantially increased higher network tariffs.

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8 Report from the Commission de Régulation de l'Energie: "Les interconnexions électriques et gazières en France - Un outil au service de la construction d’un marché européen intégré", 15th June 2016: http://www.cre.fr/documents/publications/rapports-thematiques/les-interconnexions-electriques-et-gazieres-en-france

(77) In the present case, the Commission understands that upgrades are not required as a result of the connection of the Interconnector.

(78) Therefore, the Commission comes to the conclusion that the granted exemption from Article 16(6) of the Electricity Regulation is not to the detriment of the efficient functioning of the regulated system.

(79) As regards the role of Terna with respect to the interconnector, the AEEGSI in its Opinion underlines that it will operate the Interconnector under its direct responsibility. Therefore, the Assignees will not have any role in the management and allocation of the interconnection capacity. In any case, the AEEGSI undertakes to check that the Commercial and Technical Operation contracts contain adequate measures ensuring that the risk of access to commercially sensitive information is avoided.

4.6.4. Commission assessment of detrimental impacts of exemption

(80) Based on the analysis above, the Commission concludes that granting an exemption to the interconnector as set out in the Joint Opinions will not be to the detriment of competition or the effective functioning of the internal market in electricity or the efficient functioning of the regulated system to which the interconnector is linked.

4.7. Exemption from Article 9 of the Electricity Directive – Unbundling

(81) The MSE based on AEEGSI's Opinion envisages granting an exemption to the Applicant from Article 9 of Directive 2009/72/EC (on unbundling).

(82) The Commission notes that Article 9(1)(a) of the Electricity Directive requires that each undertaking which owns a transmission system acts as a transmission system operator. This means that undertakings owning transmission systems must themselves take responsibility for ensuring that all the functions and obligations of transmission system operator are carried out.

(83) As declared by the Applicant, the Assignees will be the owners of the Interconnector, while Terna (TRI) will be responsible for its management and operation. Consequently, the exemption from Article 9(1)(a) is needed to allow the Assignees to own the Interconnector while not acting as a TSO.

(84) Furthermore, undertakings which are active in generation or supply may according to Article 9(1)(b) of the Electricity Directive not exercise control or exercise any right over a transmission system operator or over a transmission system.

(85) In the case at hand, the project promoters i.e the Assignees would own the transmission assets and therefore exercise a right over the transmission system, even in so far as the role of the TSO is fulfilled by the TSO Terna. As indicated by the Applicant in the exemption request, the Assignees are industrial customers which for the very large majority do not hold any direct or indirect control over electricity generation and/or supply assets in France or Italy. A small number of these Assignees have a limited electricity self-generation activity (the Assignee with the highest sale of electricity to the market sells 591 GWh, the others selling between 0 and 219 GWh[9], while the total electricity consumed in Italy was approximately 295 000 GWh in 2015[10]).

[9] Annexe 8 of the Technical and economic report annexed to the application for exemption submitted by the Applicant p.140.

[10] http://www.autorita.energia.it/it/dati/bilancio_en.htm

(86) As underlined by AEEGSI in its Opinion, the Assignees have no ability and no incentive to foreclose competitors in the energy markets even if they were in a position to influence the commercial operation of the Interconnector carried out by Terna. In any event, the Technical and Operational Contract between the Assignees and the TSO for the operation of the Interconnector will contain, as a condition of the exemption, a clause that forbids disclosure of any technically or commercially sensitive information related to the operation of the Interconnector to the Assignees.

(87) After the end of the exemption period, ownership of the assets (of the Interconnector) will be transferred to the Italian TSO, Terna.

(88) In light of the above, the Commission shares the view of the AEEGSI that the exemption from Article 9 should be granted, provided the Applicant complies with the conditions laid down in the Opinion.

5. Conclusion

The Commission is of the view that the Piemonte-Savoia project meets the criteria set down in Article 17(1) of the Electricity Regulation and that an exemption can be granted to the Piemonte Savoia S.r.l from Article 16(6) of the Electricity Regulation and Article 9 of the Electricity Directive, provided the Applicant complies with the conditions set out in the Opinion of the AEEGSI.

HAS ADOPTED THIS DECISION:

Article 1

The European Commission agrees to the exemption decisions notified by the French and Italian authorities as regards the request for an 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.

Article 2

In line with Article 17(8) of Regulation (EC) No 714/2009, the Commission's approval of the exemption decisions shall expire two years after the date of adoption of the present Decision in the event that construction of the interconnector has not yet started by that date, and five years after the date of adoption of the present Decision if the interconnector has not become operational by that date, unless the Commission decides on the basis of a reasoned request by the notifying authorities that any delay is due to major obstacles beyond the control of Piemonte Savoia S.r.l.

Article 3

This Decision is addressed to the Ministero dello Sviluppo Economico and to the Commission de Régulation de l'Energie.

Done at Brussels, 9.12.2016

For the Commission
Karmenu VELLA
Member of the Commission