



Brussels, **XXX**  
[...] (2015) **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 – Finland (Åland) – Kraftnät Åland Ab**

## COMMISSION OPINION

of **XXX**

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive 2009/72/EC – Finland (Åland) – Kraftnät Åland Ab**

### **I. PROCEDURE**

On 7 July 2015 the Commission received a notification from the regulatory authority for electricity of Åland, Ålands elmarknadstillsynsmyndighet (hereafter "AE"), in accordance with Article 10(6) of Directive 2009/72/EC<sup>1</sup> (hereafter, "Electricity Directive"), of a draft decision on the certification of Kraftnät Åland Ab (hereafter "Kraftnät") as a transmission system operator (hereafter, "TSO") for electricity.

Pursuant to Article 3(1) Regulation (EC) No 714/2009<sup>2</sup> (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**

Kraftnät owns, maintains, operates and develops the electricity transmission system on the archipelago of Åland. Kraftnät is a limited company fully owned by the Government of Åland. It is the sole owner of the Åland electricity transmission system, consisting of a high-voltage network of 311 kilometers, with connections to the Swedish regional network and to mainland Finland.

Åland constitutes an autonomous region of Finland, with connections to transmission electricity grids in Finland and Sweden. It has a legal framework that is separate from the Finnish national legislation, including energy laws transposing the third energy package.

Kraftnät has applied for certification in accordance with the ownership unbundling model, referred to in Article 9(1) Electricity Directive. The model for ownership unbundling of TSOs is the only unbundling model foreseen in Åland's implementing legislation.

AE has come to the preliminary conclusion that Kraftnät will comply with the requirements of the ownership unbundling model as laid down in the legislation of Åland transposing the Electricity Directive under the following conditions:

the Åland Provincial Government, owner of Kraftnät, sells its holding of 240 shares in Ålands Vindenergi Andelslag before the end of December 2015,

---

<sup>1</sup> 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.

<sup>2</sup> 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.

the board member of Kraftnät who previously represented the municipality at the Ålands Vindenergi Andelslag and Ålands Elandelslag annual general meetings is released from this function.

On this basis, AE submitted its draft decision to the Commission.

### **III. COMMENTS**

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

#### **1. Ownership of Kraftnät by the Åland Provincial Government**

Article 9(1)b(ii) of the Electricity Directive requires that the same person or persons are not entitled directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply.

The draft decision of AE indicates that Kraftnät is wholly owned by the Åland Provincial Government. AE also notes that the Åland Provincial Government holds a participation of 240 shares in Ålands Vindenergi Andelslag.

Ålands Vindenergi Andelslag is a wind power cooperative on Åland with a total of 1 267 owners; at the end of 2014, the total number of shares in the cooperative was 5 717.

However, the Provincial Government adopted on 3 March 2015 a decision to offer all shares in Ålands Vindenergi Andelslag for sale. It appears from the draft decision of AE that the Provincial Government does not hold any other stakes in undertakings active in generation or supply of electricity.

In its draft decision, AE renders the certification of Kraftnät conditional upon the Provincial Government selling its participation in Ålands Vindenergi Andelslag by 31 December 2015. The Commission agrees with the necessity to have this condition imposed by AE to ensure compliance with the requirements of ownership unbundling pursuant to Article 9 of the Electricity Directive.

#### **2. Ownership of generation assets**

According to the information submitted, Kraftnät Åland owns a 25 MW gas turbine to ensure reserve power in the event of a supply interruption. The Commission recalls that the unbundling requirement pursuant to Article 9(1)b(ii) of the Electricity Directive and the obligation for a market-based procurement pursuant to Article 15(6) of the Electricity Directive apply, in principle, also to reserve energy. The Commission therefore requests AE to carry out an assessment of this issue in the Final Decision.

#### **3. Independence of the management of Kraftnät**

Article 9(1)c) of the Electricity Directive states that the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply. Furthermore, Article 9(1)d) of the Electricity Directive states 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 generation or supply and a transmission system operator or a transmission system.

In its draft decision, AE notes that three of the five board members of Kraftnät hold, directly or indirectly, one or more shares in the wind power cooperative Ålands Vindenergi Andelslag.

As regards the shareholdings of Kraftnät's board members in Ålands Vindenergi Andelslag, AE notes that each of the cooperative's 1 267 members has one vote, regardless of the number of shares held. AE considers that under these circumstances links that exist between the board members of Kraftnät and electricity producers or suppliers are of such marginal significance that they cannot be considered to represent an impediment to Kraftnät's certification as a TSO. The Commission agrees with this conclusion but nevertheless, the Commission encourages AE to ensure that, as part of the code of conduct applicable to board members, appropriate measures are put in place to avoid any conflict of interest or perceptions thereof for board members and relevant staff of Kraftnät.

One board member also currently represents his home municipality at the Ålands Vindenergi Andelslag annual general meeting and is a substitute at the annual general meeting of Ålands Elandelslag, an electricity supplier and distribution system operator on Åland. Ålands Elandelslag is organised as a cooperative owned by its customers, who are both individual consumers and some of the Åland municipalities. However, it appears from AE's draft decision that this board member has resigned from these positions with immediate effect. AE regards the agreement of Ålands Vindenergi Andelslag and Ålands Elandelslag to release the board member from the above-mentioned positions as a condition for the certification of Kraftnät. The Commission supports the inclusion of the condition to avoid any possible conflict of interest at the level of Kraftnät's management. However, the Commission notes that the actual release of the board member from his functions is required in order to comply with the unbundling rules and encourages AE to determine the earliest possible date at which this release could occur and reflect it in the condition for Kraftnät's certification.

#### IV. CONCLUSION

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