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COMMISSION DECISION

of 16.2.2017

prolonging the exemption of Adria Link s.r.l. (Italy), Holding Slovenske Elektrarne d.o.o. (Slovenia) and E3 d.o.o. (Slovenia) under Article 17 of Regulation (EC) No 714/2009 for two electricity interconnectors between Italy and Slovenia

Only the texts in Italian and Slovenian 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 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 (hereinafter "Regulation No 714/2009" or "the Electricity Regulation")¹, and in particular Article 17.8 thereof,

Whereas:

1. Background

(1) The projects under consideration are two underground alternating current ("AC") interconnectors, both linking the Slovenian and Italian networks. The "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors will both be built and operated jointly by the Italian company Adria Link s.r.l., and the Slovenian companies Holding Slovenske Elektrarne d.o.o. (HSE d.o.o.) and Energetika, Ekologija, Ekonomija d.o.o. (E3 d.o.o.).

2. Procedure

(2) On 8 January 2013, Adria Link s.r.l. (Italy), Holding Slovenske Elektrarne d.o.o. (Slovenia) and E3 d.o.o. (Slovenia) (hereinafter: "the promoters") submitted two applications for an exemption to the Slovenian Energy Regulator (JAVNA AGENCIJA REPUBLIKA SLOVENIJA ZA ENERGIJO - hereinafter "AGEN-RS") and on 24 June 2013 to the Italian Ministry "Ministero dello Sviluppo Economico" (hereinafter "MSE"), in accordance with Article 17 of the Electricity Regulation.

(3) 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.

(4) Based on their assessment of the exemption applications, AGEN-RS and AEEGSI, on 16 December 2013, adopted two Joint opinions: "Joint Opinion of the Energy Regulators on the "Redipuglia-Vrtojba" Exemption Application"² and "Joint Opinion of the Energy Regulators on the "Dekani-Zaule" Exemption Application"³ (hereinafter "Joint Opinions") setting out the authorities assessment of the exemption requests applying to their respective jurisdictions.

¹ OJ L 211, 14.08.2009, p. 15.

² <http://www.autorita.energia.it/allegati/docs/13/630-13allb.pdf>

³ <http://www.autorita.energia.it/allegati/docs/13/630-13alla.pdf>

- (5) On 11 August 2014, MSE adopted two decrees (N. 290/ML/4/2014 for the Dekani-Zaule interconnector and N. 290/ML/5/2014 for the Redipuglia-Vrtojba interconnector) granting exemptions from Article 16 (6) of the Electricity Regulation (use of congestion revenues).
- (6) On 20 October 2014, AGEN-RS adopted two decisions (No 143-1/2013-8/106 for the Dekani-Zaule interconnector and No 143-2/2013-43/106 for the Redipuglia-Vrtojba interconnector) granting exemptions from Article 16 (6) of the Electricity Regulation (use of congestion revenues) and Article 9 (ownership unbundling) of 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 (hereinafter "the Electricity Directive")⁴.
- (7) The Italian Exemption Decisions were notified to the Commission on 28 August 2014 while the Slovenian Exemption Decisions were notified to the Commission on 30 October 2014.
- (8) By its Decision of 17 December 2014, the Commission approved subject to several amendments an exemption for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors pursuant to Article 17 of Regulation (EC) No 714/2009 from certain requirements on use of congestion revenues and ownership unbundling, as laid down in Article 16(6) of the Electricity Regulation and Article 9 of the Electricity Directive (hereinafter, "Commission Decision of 2014").
- (9) The exemptions were granted for a period of 10 years, starting from the beginning of the commercial operations, for the Dekani-Zaule interconnector, and for a period of 16 years, starting from the beginning of the commercial operations, for the Redipuglia-Vrtojba interconnector, respectively.
- (10) Article 2 of the Commission Decision of 2014 contains provisions making the Commission's approval of the exemption granted to the project conditional on the start of the construction of the interconnectors within two years from adoption of the Commission decision and on the interconnectors becoming operational within five years from adoption of the decision, in accordance with Article 17(8) of Regulation No 714/2009.
- (11) On 17 October 2016 AGEN-RS and on 15 November 2016 MSE received a request by the promoters to postpone the date by which the construction of the interconnectors had to start (hereinafter "construction deadline") from 17 December 2016 to 17 December 2018 (hereinafter, "Promoters' Request"). No modification was requested for the operation date which would remain 17 December 2019.
- (12) On 16 December 2016, MSE notified to the Commission in accordance with Article 17 of Regulation No 714/2009 its Decision on the Promoters' Request.
- (13) On 23 December 2016, AGEN-RS notified to the Commission in accordance with Article 17 of Regulation No 714/2009 its assessment on the Promoters' Request.
- (14) On 12 January 2017, the Commission published a notice on its website informing the public of the notifications and inviting third parties to send their observations within two weeks. The Commission did not receive any observations in response.

3. Assessment

3.1. Relevant legal provisions

⁴ OJ L 211, 14.8.2009, p. 55

(15) Article 2 of the Commission Decision of 2014 provides that the Commission's approval of the Exemption Decisions shall expire 2 years after the date of adoption of this Decision in the event that construction of the interconnector has not started by that date and 5 years after the date of adoption of this decision if the interconnector has not become operational by that date, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.

(16) The validity of the Commission's approval of an exemption can be prolonged provided that, based on an analysis by the National Regulatory Authorities (hereinafter, "NRAs") concluding that a prolongation is justified, the Commission decides, first, that any delay is due to major obstacles and, second, that those obstacles are beyond the control of the person to whom the exemption has been granted⁵.

3.2. Promoters' Request

(17) By means of the notified decision on the Promoters' Request, MSE proposes to extend by 2 years the start of the construction deadline for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors until 17 December 2018.

(18) By means of the notified decision on the Promoters' Request, AGEN-RS similarly proposes to extend by 2 years the start of the construction deadline for the "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors until 17 December 2018.

(19) The operation date for both interconnectors remains unchanged on 17 December 2019.

(20) The Commission Decision of 2014 was adopted on 17 December 2014. Therefore, without a modification to the exemption decision, the Commission's approval of the exemption would lose its effect considering that the construction of the interconnector has not started by 17 December 2016.

3.3. Grounds put forward by the promoters

(21) The construction has not yet started on the Slovenian side of "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors and the promoters mention the following reasons for the postponement of the construction deadline:

(22) The Slovenian legislation provides that the approval of a National Space Plan by the Government of the Republic of Slovenia is a precondition for obtaining a building permit for a structure of national importance. The request to start the National Space Plan process could only be submitted after the promoters had obtained an energy permit and promoters are not authorised to start construction works before obtaining a building permit. By the construction deadline on 17 December 2016 the final decision on the National Space Plan was not yet delivered by the Slovenian authorities.

(23) The promoters underline that, after the National Space Plan is approved, issuing the building permit and conducting expropriation procedures will also be carried out by the competent Slovenian authorities and in consequence will not be under the control of the promoters.

3.4. Assessment by the national authorities of the Promoters' Request

⁵ The Regulation does not expressly set out the procedure for such a decision on the prolongation of validity. It has been established by the Commission decision-making practice that, based on the principle of parallelism of forms, modifications (including prolongation) of exemption decisions should reflect the process followed for the granting of initial exemption decisions. Thus, the Commission's assessment of requests for prolongation shall be based on a prior assessment by the competent NRAs, to which the Commission may request amendments.

(24) MSE and AGEN-RS considered that the Promoters' Request is well grounded because the start of construction depends on the time frame laid down by the national legislation in Slovenia. Therefore, the delay in the start of construction is due to reasons beyond the control of the promoters.

3.5. Assessment by the Commission

(25) The Commission stresses that the objectives of Regulation No 714/2009 require that an exemption from the application of the regulatory regime, granted under Article 17 of the Regulation, has a clear end date and that this date is not later than what is strictly necessary.

(26) In particular, the advantages provided by an exemption may constitute a disincentive to the development of regulated infrastructure which would otherwise compete with the exempted project. Maintaining the validity of an exemption without the infrastructure being constructed may thus impede the development of alternative infrastructures. Consequently, exemptions should be provided for limited periods of time and should, in particular, not last beyond what is strictly necessary. It follows from this that the precise date by which the construction of the infrastructure starts and the date by which the infrastructure becomes operational must be foreseeable with a reasonable degree of certainty.

(27) The Commission takes the view that this condition is fulfilled now that the promoters have notified a narrow time period in which the construction of the interconnector will start and the interconnector will become operational, and that it is reasonably certain that no further postponements will take place. In particular, as the date for start of operations of the interconnector, starting point for the calculation of the exemption period, remains unchanged, the expectation of investors in potential other interconnectors which could compete with the project is impacted only to a limited extent.

4. Conclusions

(28) The Commission takes the view that sufficient grounds exist to postpone the latest date by which the construction of the interconnectors should have started until 17 December 2018, the latest date by which the interconnectors has to become operational remaining 17 December 2019, in order for the Commission's approval of the exemptions and consequently, the exemptions granted by the exemption decisions of MSE and AGEN-RS, to retain their effect.

HAS ADOPTED THIS DECISION:

Article 1

In Commission Decision C(2014) 9904 of 17 December 2014, Article 2 is replaced by the following:

"Article 2

In line with Article 17(8) of Regulation (EC) No 714/2009, the Commission's approval of the Exemption Decisions as regards the Dekani-Zaule interconnector shall lose its effects in the event that construction of that interconnector has not started by 17 December 2018 and in the event that the interconnector has not become operational by 17 December 2019, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.

In line with Article 17(8) of Regulation (EC) No 714/2009, the Commission's approval of the Exemption Decisions as regards the Redipuglia-Vrtojba interconnector shall lose its effects in the event that construction of that interconnector has not started by 17 December 2018 and in the event that the interconnector has not become operational by 17 December 2019, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters."

The Exemption Decisions by the Javna Agencija Republika Slovenija za Energijo No.143-1/2013-8/106 for Dekani-Zaule interconnector and No.143-2/2013-46/106 for Redipuglia-Vrtjba interconnector, and by the Ministero dello Sviluppo Economico N. 290/ML/4/2014 for the Dekani-Zaule interconnector and N. 290/ML/5/2014 for the Redipuglia-Vrtojba interconnector shall be amended accordingly.

Article 2

This Decision is addressed to:

1) the Direzione Generale per il mercato elettrico, le rinnovabili e l'efficienza energetica del Ministero dello Sviluppo Economico.

2) the Javna Agencija Republika Slovenija za Energijo

Done at Brussels, 16.2.2017

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission