



Brussels, 20.12.2022
C(2022) 9691 final

COMMISSION DECISION

of 20.12.2022

amending Decision C(2014) 9904 final as regards the period of validity of the exemption granted to the ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors from certain provisions of Regulation (EU) 2019/943 of the European Parliament and of the Council and Directive (EU) 2019/944 of the European Parliament and of the Council

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity¹, and in particular Article 63(8) thereof,

Whereas:

1. Introduction

(1) The project under consideration concerns two underground alternating current interconnectors, the ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’, of 125 MW of nominal capacity each, both linking the Slovenian and Italian networks. The ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors are both to 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.) (‘the promoters’).

2. Procedure

(2) On 8 January 2013, the promoters submitted an application for exemption pursuant to Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council² to the Slovenian Energy Regulator (Javna agencija Republike Slovenije za energijo) (‘AGEN-RS’). On 24 June 2013, they submitted another application to the Ministry of Economic Development of the Italian Republic (Ministero dello Sviluppo Economico) (‘MISE’).

(3) In accordance with the applicable Italian legislation at the time of submitting the application³, MISE was the competent body to grant such an exemption while the National Regulatory Authority for Electricity, Gas and Water (then Autorità per

¹ OJ L 158, 14.6.2019, p. 54.

² Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L211, 14.8.2009, p. 15).

³ Decree Law n° 93/2011

l'energia elettrica, il gas e il sistema idrico ('AEEGSI'), now Autorità di Regolazione per Energia Reti e Ambiente-'ARERA'), was requested to issue a qualified opinion.

- (4) Further to their assessment of the exemption applications, AGEN-RS and AEEGSI adopted two joint opinions on 16 December 2013, the Joint Opinion of the Energy Regulators on the 'Redipuglia-Vrtojba' Exemption Application⁴ and the Joint Opinion of the Energy Regulators on the 'Dekani-Zaule' Exemption Application⁵ (the 'Joint Opinions') setting out the authorities' assessment of the exemption requests in accordance with the applicable legal framework.
- (5) On 11 August 2014, MISE adopted two decrees (N. 290/ML/4/2014 for the 'Dekani-Zaule' interconnector and N. 290/ML/5/2014 for the 'Redipuglia Vrtojba' interconnector) that granted exemptions from Article 16(6) of Regulation (EC) No 714/2009 with regard to the use of congestion revenues ('the Italian Exemption Decisions').
- (6) On 20 October 2014, AGEN-RS adopted decision No 143-1/2013-8/106 for the 'Dekani-Zaule' interconnector and decision No 143-2/2013-43/106 for the 'Redipuglia-Vrtojba' interconnector, granting exemptions from Article 16(6) of Regulation (EC) No 714/2009 as regards to the use of congestion revenues and from Article 9 of Directive 2009/72/EC of the European Parliament and of the Council⁶ as regards ownership unbundling ('the Slovenian Exemption Decisions').
- (7) The Italian Exemption Decisions were notified to the Commission on 28 August 2014. The Slovenian Exemption Decisions were notified to the Commission on 30 October 2014 (the "Exemption Decisions").
- (8) By Commission Decision C(2014) 9904 final⁷, the Commission approved an exemption for the 'Redipuglia-Vrtojba' and 'Dekani-Zaule' interconnectors project 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 Regulation (EC) 714/2009 and Article 9 of Directive 2009/72/EC.
- (9) The exemptions were granted by the Exemption Decisions for the 'Dekani-Zaule' interconnector for a period of 10 years starting from the beginning of the commercial operations, and for the 'Redipuglia-Vrtojba' interconnector for a period of 16 years, starting from the beginning of the commercial operations.
- (10) The provisions of Article 2 of Decision C(2014) 9904 final make the Commission's approval of the exemption granted to the project conditional on the start of the construction of the interconnectors within 2 years from adoption of that Decision and on the interconnectors becoming operational within 5 years from the adoption of that

⁴ <http://www.autorita.energia.it/allegati/docs/13/630-13allb.pdf>

⁵ <http://www.autorita.energia.it/allegati/docs/13/630-13alla.pdf>

⁶ 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, 14.8.2009, p. 55).

⁷ Commission Decision C(2014) 9904 final of 17 December 2014, on 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.

Decision, in line with Article 17(8), fifth subparagraph, of Regulation (EC) 714/2009 (now Article 63(8), fifth subparagraph, of Regulation (EU) 2019/943).

- (11) A request from the promoters to extend the date by which the construction of the interconnectors had to start ('construction start deadline') from 17 December 2016 to 17 December 2018 was received by AGEN-RS on 17 October 2016 and by MISE on 15 November 2016. No modification was requested regarding the date on which the interconnectors are to become operational ('operational deadline').
- (12) MISE's assessment of the promoters' request was notified to the Commission on 16 December 2016 and AGEN-RS's assessment was notified to the Commission on 23 December 2016, in accordance with Article 17 of Regulation (EC) 714/2009.
- (13) By Commission Decision C(2017) 1209 final⁸, the Commission approved the extension of the exemption by two years from 17 December 2016 to 17 December 2018 for the 'Redipuglia-Vrtojba' and 'Dekani-Zaule' interconnectors in accordance with Article 17 of Regulation (EC) 714/2009.
- (14) On 26 July 2018, AGEN-RS and MISE received a further request by the promoters to postpone the construction start date from 17 December 2018 to 31 December 2020 and to postpone the operational date from 17 December 2019 to 30 June 2022.
- (15) AGEN-RS's assessment of the promoters' request was notified to the Commission on 19 November 2018 while MISE's assessment of the request was notified to the Commission on 5 December 2018, in accordance with Article 17 of Regulation (EC) 714/2009.
- (16) By Commission Decision C(2019) 698 final⁹, the Commission approved the extension of the exemption by a further two years, from 17 December 2018 to 31 December 2020, for the 'Redipuglia-Vrtojba' and 'Dekani-Zaule' interconnectors project pursuant to Article 17 of Regulation (EC) 714/2009.
- (17) On 3 June 2020, the promoters sent a further request to AGEN-RS and MISE to postpone the construction start deadline and operational deadline and amend the exemption conditions of the 'Redipuglia-Vrtojba' interconnector to assure the feasibility of the investment.
- (18) On 28 July 2020, AGEN-RS notified to the Commission its assessment on the promoters' request, in accordance with Article 63(7) of Regulation (EU) 2019/943. On 20 November 2020, MISE notified to the Commission in accordance with Article 63(7) of Regulation 2019/943 its decision on the promoters' request.

⁸ Commission Decision C(2017) 1209 final of 16 February 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.

⁹ Commission Decision C(2019) 698 final of 28 January 2019, 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.

- (19) By Commission Decision C(2021) 557 final¹⁰, the Commission approved the extension of the exemption, from 31 December 2020 to 30 June 2022, for the ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors project, pursuant to Article 63(8) of Regulation (EU) 2019/943.
- (20) On 30 May 2022, the promoters sent a request to AGEN-RS and ARERA to further extend the construction start deadline and the operational deadline of both interconnectors laid down by Article 2 of Decision C(2014) 9904, and further extended by Article 1 of Decision C(2021) 557. Furthermore, the promoters requested a revision of the Net Transfer Capacity (‘NTC’) for the ‘Dekani-Zaule’ interconnection.
- (21) On the Italian side, as of 26 December 2021, ARERA is responsible for decisions about granting an exemption and on modifying an exemption granted pursuant to Article 63 of Regulation (EU) 2019/943, following the entry into force of Legislative Decree No. 210¹¹.
- (22) Before the expiration date of the exemption, on 29 June 2022, ARERA notified the Commission, in accordance with Article 63(7) of Regulation (EU) 2019/943, its assessment on the promoters' request for the extension of the validity of the exemptions granted to ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors. On 2 August 2022, the Commission was notified by AGEN-RS of the request for the extension of the validity of the exemption granted to ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors.
- (23) On 4 August 2022, the Commission asked AGEN-RS to provide further information in order to be able to fully assess and understand the request for the extension of the validity of the exemptions. AGEN-RS provided such information on 30 September 2022.
- (24) On 18 November 2022, the Commission published a notice on its website informing the public of the notifications and inviting third parties to send their observations by 2 December 2022. The Commission did not receive any observations in response.

3. Promoters' Request

- (25) In April 2019, the promoters obtained the last necessary building permits, concluding the permit procedures in Italy and Slovenia for the ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors. The expiration date of the first permits granted by the Slovenian authorities to the ‘Dekani-Zaule’ interconnector is February 2024, whereas for the ‘Redipuglia-Vrtojba’ interconnector it is January 2023. The promoters stress out that once expired, the permits granted by the Slovenian authorities cannot be extended.

¹⁰ Commission Decision C(2021) 557 final of 28 January 2021, 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 63 of Regulation (EU) 2019/943 for two electricity interconnectors between Italy and Slovenia.

¹¹ See Article 26 of Legislative Decree 8 November 2021, no. 210

- (26) Because of delays in the reinforcements of the internal network operated by the Slovenian Transmission System Operator ('TSO')¹², the construction works have not yet started. Such reinforcements are necessary to guarantee a positive NTC of the new interconnectors and enable the promoters to go ahead with the construction of both projects. The Slovenian TSO have forecasted the completion of the reinforcements by the end of 2023.
- (27) On the basis of the further considerations found in Section 3.1. and, because of the delays on the internal network reinforcements, the promoters request to extend:
- (a) the construction start deadline of the 'Redipuglia-Vrtojba' interconnector, from 30 June 2022 to 29 February 2024, and the operational deadline date, from 31 December 2023 to 31 August 2025;
 - (b) the construction start deadline of the 'Dekani-Zaule' interconnector, from 30 June 2022 to 29 February 2024, and the operational deadline, from 31 December 2023 to 31 August 2025.

3.1. Grounds put forward by the promoters

- (28) The main considerations of the promoters are the following:
- (a) the internal network reinforcements in Slovenia have not been completed. That still represents a constraint for the construction of the interconnectors, which is beyond the control of the promoters;
 - (b) the development of the interconnections would improve the electricity interconnection between Italy and Slovenia, the security of the system and competition, as well as support the achievement of the Union objectives. Moreover, the interconnections were positively included in the Year Network Development Plan 2020 cost-benefit analysis;
 - (c) in the current context of the Russia-Ukraine conflict, supporting investment in infrastructure and the participation of private investors will be increasingly important due to their contribution to competition on the energy markets, the improvement of the adequacy and safety of the interconnected systems.
- (29) The promoters justify the duration of the prolongation requested on the basis of the time needed for the completion of the internal network reinforcements by the TSOs, for the TSOs to update the calculation of the NTC values, for the National Regulatory Authorities (NRAs) to provide the feedback on updated calculations, and for the promoters to carry out the preliminary activities to enable the start of the construction work.

4. Assessment

¹² Reconstruction of the 110kV Divača – Gorica transmission line, Construction of a new 110 kV transmission line Divača-Koper.

4.1. Assessment by AGEN-RS and ARERA

Assessment of the request for extension of the construction start deadline and the operational deadline

- (30) AGEN-RS considers that the delays in the internal network reinforcements in the Slovenian system stemmed from the completion of two specific internal 110-kv lines in Slovenia (between Divača – Gorica, and between Divača-Koper). The two lines have a decisive impact on the NTC of both ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors. Their completion would pave the way to the economic feasibility of the two projects and consequently allow the start of the construction of the lines. AGEN-RS informs that there has been progress regarding the two lines, as all construction permits have been obtained, and the construction of the two internal lines could thus be completed by the end of 2023.
- (31) ARERA considers that the request is justified by significant delays and uncertainty in the construction of the planned internal network reinforcements by the TSOs and by recent evolutions on the electricity systems in the area, namely a major power plant is to remain in operation, which might significantly affect the NTC available to the interconnectors.
- (32) Therefore, ARERA and AGEN-RS agree to the extension of the deadlines of the Exemption Decisions, as requested by the promoters.

4.2. Assessment by the Commission

- (33) It appears from the information received that the economic viability of the projects depends on the NTC of both interconnectors. The NTC value establishes how much capacity will be available on the two lines for the promoters to be able to exploit it. To date two of the expected grid reinforcements have not yet been completed¹³. The Commission therefore considers that the delays to the internal network reinforcements and ensuing uncertainty on NTC values constitute a major obstacle for the construction of the ‘Redipuglia-Vrtojba’ and ‘Dekani-Zaule’ interconnectors.
- (34) The reinforcements in the transmission grid depend on the work to be carried out by the competent system operators in Slovenia and Italy, and not by the project promoters.
- (35) The delays in the internal network reinforcements hindered the adoption of the final investment decision, since they impact the NTC and thus the profitability of the two projects. In turn, those delays also affect the start of construction and operation of the interconnectors.
- (36) The Commission thus considers that the delays in the internal network reinforcements constitute major obstacles beyond the control of the promoters.

¹³ Reconstruction of the 110kV Divača – Gorica transmission line, Construction of a new 110 kV transmission line Divača-Koper.

(37) Those obstacles are however expected to be removed by the end of 2023 with the construction of two specific internal 110-kv interconnectors in Slovenia from the Slovenian TSO ELES. Thus, in accordance with the views of ARERA and AGEN-RS, the Commission considers that the promoters' request should be accepted.

4.2.1. Duration of the extension

(38) The objectives of Regulation (EU) 2019/943 require exemptions from the application of the regulatory regime, granted pursuant to Article 63 of that Regulation, to have a clear end date. That date must be no later than what is strictly necessary.

(39) 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 could therefore impede the development of alternative infrastructures. Exemptions should thus be provided for limited periods of time and should, in particular, not last beyond what is strictly necessary. Therefore, the precise construction start deadline and operational deadline must be foreseeable with a reasonable degree of certainty.

(40) Regarding the request for the extension of the validity of the exemption, the Commission takes into consideration the following aspects:

- (a) the Slovenian permits for 'Dekani – Zaule' interconnector will expire in February 2024 with no possibility of further extension;
- (b) the Slovenian permits for 'Redipuglia-Vrtojba' interconnector will expire in January 2023 with no possibility of further extension;
- (c) the time needed for the TSOs to update the calculation of the NTC value and for the NRAs to provide the feedback on updated calculations;
- (d) the time needed for the promoters to carry out the preliminary activities for the start of construction work.

(41) The Commission considers that an extension of the validity of the exemption until 29 February 2024 is reasonable to enable the 'Dekani – Zaule' and 'Redipuglia-Vrtojba' interconnectors to start construction works.

(42) On the basis of Decision C(2014) 9904 final, access to both interconnectors will be fully regulated, and the new capacity will be available to all market participants from the beginning of operation, granting beneficial effects to the two interconnected areas in terms of competition.

(43) The projects would increase cross-border capacity at the border between Italy and Slovenia, thereby increasing security of supply in the Union.

(44) The Commission did not receive any comments from stakeholders to the notice published on its website on 18 November 2022 and understands that there are no alternative similar interconnection projects planned in the area subject to the exemption.

(45) The Commission therefore considers that the two interconnectors would be beneficial to competition in Italy and Slovenia, will not be detrimental to the

functioning of the Union markets and will support security of supply, in accordance with the principle of solidarity.

5. Conclusion

- (46) The Commission takes the view that, on the basis of the information received, the delay in the construction and operation of the ‘Dekani – Zaule’ and ‘Redipuglia-Vrtojba’ interconnectors results from major obstacles beyond the control of the promoters. Therefore, the Commission finds it justified to amend Decision C(2014)9904 final by extending, to 29 February 2024 the construction start deadline of the ‘Redipuglia-Vrtojba’ interconnector and of the ‘Dekani-Zaule’ interconnector, and by extending, to 31 August 2025, their operational deadline.
- (47) If the investment decision is not taken within the given period and the construction does not start, the Commission’s approval of the Exemption Decisions should lose its effect.

HAS ADOPTED THIS DECISION:

Article 1

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

“Article 2

Pursuant to Article 63(8) of Regulation (EU) No 2019/943, 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 29 February 2024 and in the event that the interconnector has not become operational by 31 August 2025.

Pursuant to Article 63(8) of Regulation (EU) No 2019/943, 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 29 February 2024 and in the event that the interconnector has not become operational by 31 August 2025.”

Article 2

This Decision is addressed to Autorità di Regolazione per Energia Reti e Ambiente (ARERA), Corso di Porta Vittoria, 27 - 20122 Milano (Italy) and Javna Agencija Republike Slovenije za Energijo (AGEN-RS), Javna Agencija Republike Slovenije Za Energijo Strossmayerjeva Ulica, 30 2000 Maribor (Slovenia) .

Done at Brussels, 20.12.2022

For the Commission
Kadri SIMSON
Member of the Commission

