



EUROPEAN COMMISSION

Brussels, 21.9.2011
SEC(2011) 1095 final

COMMISSION STAFF WORKING PAPER

**on certification of Transmission System Operators of networks for electricity and
natural gas in the European Union**

1. BACKGROUND

- (1) Pursuant to Article 10 of Directive 2009/72/EC¹ (hereafter Electricity Directive) and Article 10 of Directive 2009/73/EC² (hereafter Gas Directive) in combination with the provisions of Article 3 of Regulation 714/2009³ (hereafter Electricity Regulation) and Article 3 of Regulation 715/2009⁴ (hereafter Gas Regulation), a Transmission System Operator (hereafter TSO) can only be approved and designated as a TSO following a certification procedure. The certification procedure as laid down in the above mentioned provisions is applicable to all TSOs for their initial certification and subsequently at any time when a reassessment of a TSO's compliance with the unbundling rules is required.
- (2) The aim of the certification procedure is to verify whether the applicant TSO complies with the unbundling provisions of the Directives i.e. Article 10(2) or Article 11, and Article 9 of the Electricity and Gas Directives. The reference to Article 9 implies that within the certification procedure it needs to be established which person or persons exercise(s) control over the applicant TSO and whether the legal provisions on the assignment of tasks of a TSO depending on the chosen unbundling model have been respected. As regards the concept of control, the Directives make a reference to the EU Merger Regulation⁵ (recital 13 Electricity Directive and recital 10 Gas Directive) and this concept should therefore be interpreted accordingly.
- (3) The Directives require a national regulatory authority (hereafter the NRA) to adopt a preliminary certification decision within four months after the notification from the TSO (hereafter the preliminary decision). The NRA is then required pursuant to Article 10(3) Electricity and Gas Directive to notify without delay the preliminary decision as well as all the relevant information with respect to that decision to the Commission for its examination and opinion. Once the Commission has delivered its opinion, the Directives oblige the NRA to take utmost account of the Commission's opinion in its final certification decision (hereafter the final decision).
- (4) The Directives entrust the Commission with the task to examine any notification and deliver to the NRA, within two months from receiving the notification, an opinion on the preliminary decision. The Commission can request an opinion on the preliminary decision from ACER, in which case the deadline is extended by two months. If the

¹ 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.

² 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 211/94 of 14.8.2009.

³ 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.

⁴ 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 211/36 of 14.8.2009.

⁵ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24/1 of 29.1.2004.

Commission does not issue an opinion, the preliminary decision is deemed to be approved tacitly by the Commission.

- (5) In case of notification of the certification of a TSO under Article 9(10) of Electricity Directive or Gas Directive, instead of issuing an opinion, the Commission shall take a decision relating to the certification (hereafter the Commission certification decision). The NRA shall comply with the Commission certification decision.
- (6) In order to carry out their assessment under the certification procedure, national regulators and the Commission are entitled to request from TSOs and/or production/supply companies any information necessary to fulfil the tasks that NRAs and the Commission have been assigned with in the context of the certification. Regulatory authorities and the Commission are bound by confidentiality obligations pursuant to Article 10(8) Electricity and Gas Directives.

2. OBJECTIVES OF THE STAFF WORKING DOCUMENT

- (7) The purpose of this document is to provide practical guidance on how the Commission will treat and assess notifications by NRAs of preliminary certification decisions. It explains the general legal framework applicable to such notifications and the information to be provided by the NRAs to the Commission. This document therefore aims at enhancing the efficiency of the notification process for NRAs and the Commission and aims to ensure a high degree of transparency and predictability of the review process for all stakeholders.
- (8) In order to assist the Member States in the transposition and implementation of the Electricity and Gas Directives the Commission issued a Staff Working Paper⁶ explaining the Commission's interpretation of the unbundling provisions. Also the European Regulators' Group for Electricity and Gas (ERGEG) made preparatory work to advise the TSOs on the certification procedure⁷.
- (9) The Commission's experience in assisting Member States and the NRAs with the transposition process has revealed that a number of issues regarding the certification procedure are not sufficiently clear to the NRAs, other national authorities and the market participants. Against this background, this document will seek to explain in particular the information which is required by the Commission in the process.
- (10) This document reflects the views of the Commission services at the time of publication and will be applied as from the date of publication for pending and future notifications. The specific features of an individual notification may however require an adaptation of or deviation from this document, depending on the case at issue. Moreover, this document is not meant to provide an exhaustive interpretation of the various assessment criteria.

⁶http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/2010_01_21_the_unbundling_regime.pdf

⁷ Paper "Advice on the certification procedure for Transmission System Operators, ERGEG advice" Ref: E10-URB-27-04

- (11) This document is built upon the experience to date of the Commission's Directorate General for Energy (hereafter DG Energy) in the transposition of the Third Energy Package. It does not alter any rights or obligations which arise in particular from Article 10 Electricity and Gas Directives or from Article 3 Electricity and Gas Regulations or in general from any other provisions of the Third Energy Package. The document is therefore without prejudice to the Commission's ability to adopt binding Guidelines in line with Article 3(5) of Electricity and Gas Regulations setting out details of the procedure to be followed for the application of Article 3(1) and 3(2) of these Regulations.
- (12) The document does not provide guidance on the application of the EU competition rules to projects covered by the certification procedure. The Commission's opinions and decisions in the certification procedure are without prejudice to the application of the EU competition rules.
- (13) The structure of the paper is the following; first general practicalities of the notification process are explained, second, the information and the supporting documents necessary for this assessment are described by means of a questionnaire which addresses specific issues of the three unbundling models.

3. PRACTICALITIES FOR THE NOTIFICATION PROCESS

- (14) The certification procedure imposes strict legal deadlines on the NRAs and the Commission.
- (15) This poses a challenge in terms of documents registration and management, language of submissions, and in respect of efficient communication between NRAs and the Commission and with ACER.
- (16) In order to facilitate the process of notification, ensure efficient administrative procedures and enable the Commission to base its opinions on a complete file the following explanations are given.

Submission of documents/information to the Commission

- (17) In order for the Commission to issue an opinion or a decision in the certification procedure it is necessary that it receives full access to the text of the preliminary decision of the NRAs and to all documents that NRAs relied on for their assessment.
- (18) The Commission recommends that, in order to structure the information flow, the NRAs attach to its preliminary decision, a Questionnaire filled in with information specific to the unbundling model chosen, together with the supporting documents.
- (19) Additional information/documents that are not explicitly requested by the Questionnaire shall be submitted in case a NRA considers these information/documents relevant for the assessment of the certification request. In this case, the NRA should list these additional information/documents, provide a brief description of its content and explain why it considers additional information/documents relevant for the assessment of the individual certification request.

- (20) A duly completed questionnaire together with supporting documents and any additional information/documents is necessary to ensure that the Commission receives all information needed for its assessment. It also ensures consistency as regards the information that the Commission will use as a basis for its opinion/decision.
- (21) Moreover, if the Commission considers that some documents/information that it requires for its certification decision can only be provided by the TSO in question, the production or supply companies, it may decide to issue a request for information directly to these undertakings. The Commission may require any information necessary to fulfil the tasks that it has been assigned with in the context of the certification. Information is necessary, in particular, if it might enable the Commission to verify the compliance of a given TSO with the unbundling provisions of the Directives. The Commission enjoys a wide margin of appreciation in this respect but is bound by the principle of proportionality.
- (22) The certification procedure does not foresee the possibility of stopping or interrupting the deadline for the Commission to adopt an opinion or decision. Therefore, the requested information will need to be submitted sufficiently in advance of the legal deadline foreseen by the certification procedure in order for the Commission to take them into account for its certification opinion/decision.

Preparation of notifications

- (23) In order to facilitate the process of certification it is recommended that NRAs discuss their intended notifications with DG Energy prior to officially requesting the Commission to examine the notification. DG Energy considers this preparatory stage as an important part of the review process since it gives the NRAs and the Commission services the opportunity to informally discuss an intended notification and in particular the scope of the information to be submitted. Such preparatory discussions will also enable NRAs to send to TSOs targeted requests for information and will therefore limit the administrative burden for TSOs. They will furthermore facilitate planning of the notification.
- (24) In terms of timing, such preparatory discussion should preferably be initiated as soon as possible after opening of a certification procedure by the NRAs but at least six weeks before the notification to the Commission. The preparatory discussions shall ideally be initiated with a submission of a draft completed questionnaire and a brief description of the compliance/lack of compliance of the TSO with the requirements of Article 9 Electricity and Gas Directives, where possible in English.
- (25) The extent and format of the preparatory contacts will depend on the complexity of the certification in question. However, in any event it is recommended that a preparatory meeting between the NRA and DG Energy is held at least three weeks before submitting the notification on a basis of a draft questionnaire.

Cooperation with ACER

- (26) The Commission is entitled to request an opinion from the Agency for Cooperation of Energy Regulators (hereafter ACER) on the preliminary decision by the NRA. Such a request extends the certification procedure with the Commission by additional

two months. The relevant provisions in the Directives and Regulations do not specify in which cases the Commission might request ACER's opinion. The Commission has wide discretion in this respect. When making a request for ACER's opinion, the DG Energy will consider ACER's particular competences and expertise as specified in Regulation No 713/2009⁸.

- (27) In case the Commission requests ACER's opinion, it will do so by means of a letter addressed to the Director of ACER. The letter will contain as enclosures the preliminary decision and the Questionnaire submitted by the NRA. It will also specify when the deadline for Commission's opinion or decision expires. The Commission will request ACER to submit its opinion on the preliminary decision or on a specific issue related to this decision, at least three weeks before this deadline.

Transparency of Commission's opinion/decision

- (28) In order to ensure transparency of the certification process, the Commission will publish the non-confidential version of its opinions/decisions in the original language as well as in English on its website. Prior to publication, the Commission will request the NRA to which the opinion/decision is addressed to indicate whether or not the opinion/decision contains confidential information.

Registration of notifications

- (29) Notifications as well as all supporting documents shall be submitted to the registration system set-up by the Commission for the purpose of the certification procedure.

Languages

- (30) In accordance with Article 2 Regulation No 1⁹, documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the EU may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language. It follows that notifications can be submitted in all official languages of the EU. The Commission opinion/decision will be issued in the original language of the notification. NRAs may waive their right to receive the opinion/decision in the original language of the certification and opt for another language (English for instance).
- (31) In view of the strict legal deadlines within which the Commission is required to issue a certification opinion/decision for reasons of administrative efficiency, where possible NRAs should accompany the preliminary decision and the completed questionnaire with an English working translation. In addition, in order to prepare translations, NRAs should provide a list of documents attached to the application for certification in English and as soon as possible, also before the formal notification, transfer to the Commission all relevant supporting documents.

⁸ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L/1 of 14.8.2009.

⁹ EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, OJ L 17, 6.10.1958, p. 385, consolidated version of 1.1.2007.

- (32) The NRAs are also requested to inform the Commission in course of the pre-notification contacts, about the language of the notification, the approximate number of pages of the preliminary decision and the approximate number of pages of the completed questionnaire as well as the number of pages of supporting documents.
- (33) It is further requested that the supporting documents attached to the notification where possible clearly indicate sections which have been identified as relevant by the NRA for issuing the preliminary opinion.

Confidentiality rules

- (34) Articles 10 of the Electricity and Gas Directives require that the Commission and the NRAs preserve the confidentiality of the received information.
- (35) In order to protect confidential information and allow for an efficient processing of documents, the NRAs are requested to mark any information which is confidential clearly when submitting the notification and supporting documents to the Commission. The Questionnaire which the NRAs are recommended to fill-in contains a dedicated question on the confidentiality of documents.

4. NOTIFICATION QUESTIONNAIRES

- (36) The below Questionnaire aims to describe the information which is necessary for the Commission for its assessment of the preliminary decisions in the certification procedure. The questions are based solely on the existing provisions of the Electricity and Gas Directives as well as the Merger Regulation to which both Directives refer. In addition, the Questionnaire summarise views of DG Energy expressed in other Staff Working Documents and interpretative notes as regards the unbundling provisions.¹⁰
- (37) The Questionnaire contains three separate groups of questions for each of the three unbundling models introduced by the Electricity and Gas Directives, namely the Ownership unbundling (OU), the Independent System Operator (ISO) and Independent Transmission Operator (ITO) model.

Future review

- (38) DG Energy intends to engage in a dialog with NRAs and other stakeholders on the experience with the notification process and experience gained through the application of the questionnaires. Where appropriate this Commission Staff working document may be revised to reflect changes to legislative, interpretative and administrative measures and any experience gained in applying the questionnaires over time. In view of this experience the Commission may reassess the need for binding Guidance issued in accordance with Article 3(5) of the Electricity and Gas Regulations.

¹⁰ Notes for the implementation of the Electricity Directive 2009/72/EC and the Gas Directive 2009/73/EC, http://ec.europa.eu/energy/gas_electricity/interpretative_notes/interpretative_note_en.htm.

QUESTIONNAIRE – Certification of TSOs

General information:

Please give the following contact data:

1. name and address of undertaking to be certified as TSO;

--

2. internet address of the website of the TSO

--

3. name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person in the TSO;

--

4. address of the National Regulatory Authority to which Commission decision shall be delivered.

--

5. name, telephone number and e-mail address of a contact person at the National Regulatory Authority.

--

Please fill the following forms:

FORM OU when the TSO is requested to be certified as ownership unbundled TSO

FORM ISO when the TSO is requested to be certified as Independent System Operator

FORM ITO when the TSO is requested to be certified as Independent Transmission Operator

No form applies for notifications under Article 9(10). The required information for such notifications is to be discussed case-by-case with the Commission, prior notification

FORM OU

Ownership of the transmission system by the TSO – Article 9(1a) and 9(5)

(39) Regarding the ownership of the transmission system present the analysis:

- (a) specifying all transmission systems owned by the TSO in the Member State concerned (also those under construction or not constructed before 3 of September 2009), including interconnectors and separated transmission networks.
- (b) specifying transmission systems, which the TSO owns (fully or partially) in other Member States of the EU
- (c) indicating all other owners of the given transmission system specifying the shares of each owners, in case the TSO owns the transmission system only partially

a:

b:

c:

(40) Inform if the TSO leases or rents any transmission systems from or to any other parties.

(41) In case the TSO is a joint venture that belongs to two or more undertakings which own transmission systems in different Member States inform if all parts of this joint venture are TSO approved under an ISO or ITO model. Please name these companies and indicate the TSO status (article 9(5)).

Control and ownership over the TSO – Article 9(1)b, c and d, 9(2), 9(3) and 9(7)

(42) Article 9(1)-(3) of Electricity and Gas Directives requires that the TSO is not controlled by any person involved in the production or supply of gas and electricity. In order to establish the ownership and control over the TSO it is required to establish list of all undertakings belonging to the same group¹¹. Therefore the following information is requested:

- (a) List of all undertakings or persons controlling the TSOs, directly or indirectly;

¹¹ See the concept of control in the Commission Regulation 804/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings OJ L33/1 of 30.4.2004

- (b) List of all undertakings active in any reportable market that are controlled, directly or indirectly:
 - by these parties;
 - by the TSO.
- (c) List all companies performing any of the functions of generation or supply in case the same person directly or indirectly exercises control or any right over the TSO and such companies.

For each entry listed above in points (a)-(c) the nature and means of control should be specified (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de-jure control, sole control or joint control)¹².

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings. Please include the relevant legal provisions and indicate which information is confidential.

a:

b:

c:

- (43) In case a public body is exercising the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives, the unbundling provisions require ensuring independence between the public body exercising those rights over transmission and over generation, production or supply activities. Therefore in case one or different central, regional or local governmental bodies (e.g. Ministries) exercise those rights, it is necessary to introduce mechanisms ensuring such independence. In this respect please answer the following questions:

- (a) Please describe briefly if public bodies directly or indirectly exercise control or any right over transmission, production and supply
- (b) in case the central, regional or local governmental bodies exercises those rights for undertakings involved in transmission systems, generation, production and supply, please:
 - describe in details which part of the governmental bodies exercises those rights over which undertakings.
 - describe briefly the constitutional (legal, financial) interdependences between those parts of the governmental bodies

¹² For further information please see the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95/1, 16.4.2008

- describe briefly how it is ensured that the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives respectively in respect to transmission systems are exercised independently from generation, production or supply activities

a:

b:

- (44) In case the TSO was part of a vertically integrated undertaking in line with Article 9(7) it needs to be ensured that no commercially sensitive information is transferred to the production, generation or supply undertakings and that the TSOs staff is not being transferred to those undertakings. In view of this provisions please describe briefly procedures which ensure that no commercially sensitive information is being transferred to the production, generation or supply undertakings. Please submit the relevant provisions

Tasks of the TSO - Article 12 of the Electricity Directive and Article 13 of the Gas Directive

- (45) The TSO is required to operate the network in line with the Article 12 of the Electricity Directive and Article 13 of the Gas Directive. Please:
- (a) describe briefly all tasks the TSO fulfils and conclude on compliance with Article 12 (electricity) or Article 13 (gas). Submit all relevant parts of all relevant regulatory provisions (laws, network codes, agreements between companies, statutes) showing that the TSO has the full responsibility to fulfil the above listed tasks and clearly mark the relevant parts supporting the analysis
 - (b) show on the basis of applicable regulation that the NRA concerned is equipped with powers, including ability to impose dissuasive fines which it is able to apply when the TSO is not fulfilling or not fully fulfilling the tasks and obligations specified in Article 12 of the Electricity Directive and 13 of the Gas Directive

a:

b:

FORM ISO

Control and ownership over the TSO – Article 9(1)b, c and d, 9(2), 9(3) and 9(7)

- (1) Article 9(1)-(3) of Electricity and Gas Directives requires that the TSO is not controlled by any person involved in the production or supply of gas and electricity. In order to establish the ownership and control over the TSO it is required to establish list of all undertakings belonging to the same group¹³. Therefore the following information is requested:
- (a) List of all undertakings or persons controlling the TSOs, directly or indirectly;
 - (b) List of all undertakings active in any reportable market that are controlled, directly or indirectly:
 - by these parties;
 - by the TSO.
 - (c) List all companies performing any of the functions of generation or supply in case the same person directly or indirectly exercises control or any right over the TSO and such companies.

For each entry listed above in points (a)-(c) the nature and means of control should be specified (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de-jure control, sole control or joint control)¹⁴.

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings. Please include the relevant legal provisions and indicate which information is confidential.

a: b: c:

- (2) In case a public body is exercising the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives, the unbundling provisions require ensuring independence between the public body exercising those rights over transmission and over generation, production or supply activities. Therefore in case one or different central, regional or local governmental bodies (e.g. Ministries)

¹³ See the concept of control in the Commission Regulation 804/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings OJ L133/1 of 30.4.2004

¹⁴ For further information please see the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95/1, 16.4.2008

exercise those rights, it is necessary to introduce mechanisms ensuring such independence. In this respect please answer the following questions:

- (a) Please describe briefly if public bodies directly or indirectly exercises control or any right over transmission, production and supply
- (b) in case the central, regional or local governmental bodies exercises those rights for undertakings involved in transmission systems, generation, production and supply, please:
 - describe in details which part of the governmental bodies exercises those rights over which undertakings.
 - describe briefly the constitutional (legal, financial) interdependences between those parts of the governmental bodies
 - describe briefly how it is ensured that the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives respectively in respect to transmission systems are exercised independently from generation, production or supply activities

a:

b:

- (3) In case the TSO was part of a vertically integrated undertaking in line with Article 9(7) it needs to be ensured that no commercially sensitive information is transferred to the production, generation or supply undertakings and that the TSOs staff is not being transferred to those undertakings. In view of this provisions please describe briefly procedures which ensure that no commercially sensitive information is being transferred to the production, generation or supply undertakings. Please submit the relevant provisions

Eligibility of the TSO in the ISO model - Article 13(2)b-c and e and 13(5) of the Electricity Directive and Article 14(2)b-c and e and 14(5) of the Gas Directive

- (4) A TSO in an ISO model is required by the means of Article 13(2)b-c of Electricity Directive and 14(2)b-c of the Gas Directive to have at its disposal human, technical, financial and physical resources to fulfil its tasks and need to comply with a 10-year network development plan monitored by the NRA. Please:
 - (a) describe briefly and conclude on the abilities of the TSO to have at its disposal all human, technical and physical resources necessary to fulfil its tasks.
 - (b) please confirm that the TSO has the minimum financial resources required to fulfil its mission, for the replacement of existing assets and for future investment projects. Please describe briefly how the financial resources have been analysed and if independent audit has been done certifying the minimum

financial resources of the TSO. Please confirm that consistency has been ensured between the statements of the ISO and the financial analysis of the independent auditor.

- (c) confirm that the TSO declared to the NRA to comply with a ten-year network development plan monitored by the regulatory authority.

a:
b:
c:
d:

- (5) Furthermore subject to Articles 13(2)e of the Electricity Directive and Article 14(2)e of the Gas Directive the candidate operator has to demonstrate its ability to comply with its obligations under Regulations No 714/2009 for electricity and No 715/2009 for gas including the cooperation of transmission system operators at European and regional level. Please confirm that the ISO participates to ENTSO-E or –G and state the list of regional initiatives the ISO intends to participate.

- (6) In line with Article 13(5) of Electricity Directive and 14(5) of the Gas Directive, the transmission system owner shall provide to the ISO all the relevant cooperation and support, including all relevant information, necessary for the fulfilment of ISOs tasks, finance or allow third-party financing for all investments decided by the ISO and approved by the NRA, provide for the coverage of liability for the network assets related to the TSO tasks as well as provide guarantees to facilitate financing of network investments. To show that the owner will fulfil these tasks in an ISO model please describe briefly the coordination and information exchange mechanisms between ISO and the owner of the network. Describe in details all facts relevant to establish the fulfilment of the above mentioned tasks in particular those related to:

- (a) cooperation and information disclosure
- (b) financing agreements for investments and draft model financing agreements for investments with third parties
- (c) all relevant liability coverage arrangements
- (d) investment guarantees

a:
b:
c:
d:

Tasks of the TSO in ISO model - Articles 12 and 13(2)d of the Electricity Directive and Articles 13 and 14(2)d of the Gas Directive

- (7) The TSO, is required to operate the network in line with the Article 12 of the Electricity Directive and Article 13 of the Gas Directive. Describe briefly all tasks the TSO fulfils and conclude on compliance with Article 12 (electricity) or Article 13 (gas). Refer clearly and precisely to all relevant parts of all relevant regulatory provisions (laws, network codes, agreements between companies, statutes) showing that the TSO has the full responsibility to fulfil the above listed tasks

--

- (8) Articles 13(2)d of the Electricity Directive and Articles 14(2)d of the Gas Directive require that each operator shall act as a transmission system operator. It should be responsible for granting and managing third-party access, collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism, operating, maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning, for planning (including authorisation procedure), construction and commissioning of the new infrastructure. In order to show that the ISO is able to fulfil all those tasks, please provide the Commission with the following information:

- (a) Describe briefly how it is ensured that the provisions of Articles 13(2)d of the Electricity Directive and Articles 14(2)d of the Gas Directive are met. Support your analysis by references to all relevant parts of all relevant regulatory provisions (laws, network codes, agreements between companies, statutes) showing that the ISO has the full responsibility to fulfil the above listed tasks.
- (b) Describe briefly the procedure between the ISO and the owner to establish tariffs

a:

b:

- (9) Show on the basis of applicable regulation that the NRA concerned is equipped with powers, including ability to impose dissuasive fines which it is able to apply when the TSO is not fulfilling or not fully fulfilling its tasks and obligations specified in the Electricity and Gas Directive

--

FORM ITO

Eligibility of TSO in the ITO model - Articles 17(1), 17(4)-(5) and 18(4), 18(6)-(7) and 18(9), 19 and 20 of the Electricity Directive and Gas Directives

- (1) A TSO in an ITO model is required by the means of Article 17(1) of Electricity and Gas Directives respectively to have at its disposal human, technical, financial and physical resources to fulfil its tasks. In order to show that the TSO satisfies these conditions, based on the information available from the TSO, please describe briefly the human, technical, and physical resources showing that the TSO complies with Article 17(1) in particular showing:
- (a) that the personnel necessary to fulfil its obligations (including all corporate tasks) is directly employed by the TSO and that the personnel is not leased from any other parts of the vertically integrated undertaking
 - (b) that the TSO has the minimum financial resources required to fulfil its mission, for the replacement of exiting asset and for future investment project. Describe briefly how this has been proved and if independent audit using financial standards, has been conducted.

a:

b:

- (2) In line with Articles 17(4) and 17(5) of both Directives the TSO in a ITO model shall have corporate identity and communication, branding, physical premises, IT systems and equipments, security access system, IT consultants or external contractors, accounts consultants and auditors separate to those of the vertically integrated undertaking (VIU). To show that this is the case, please:
- (a) provide description of a separate communication, branding and corporate identity strategy including logos of the TSO and the VIU
 - (b) please conclude on full unbundling of physical premises, IT systems and equipments, security access systems, IT consultants or external contractors, accounts consultants and auditors and existence of internal guidelines that prevent that any consultants or auditors are being shared by the VIU and the TSO. Please describe briefly how this has been examined by the NRA and if independent auditors where involved in this examination

a:

b:

- (3) In line with the Articles 18(1) of both Directives the TSO need to be equipped with powers to raise money on the capital market an din line with the Articles 18(4) of both Directives the overall management structure and the corporate statutes of the TSO shall ensure its effective independence in the day to day activities and the

management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan. Please describe briefly how it is ensured that Articles 18(1) and 18(4) are fulfilled and refer to those parts of the statutes which are relevant to confirm these statements

(4) Article 18(6) and 18(7) of both Directives require that any commercial and financial relations between the TSO and the VIU shall be based on market terms. The TSO shall keep records of such relations and submit to NRA for approval all commercial and financial agreements with the VIU. Please:

- (a) Describe briefly how and conclude that the commercial and financial relations comply with market conditions (e.g. are based on non-discriminatory, and competitive tender procedure).
- (b) Describe briefly the arrangements for the TSO seeking NRA approval on keeping records of all such financial and commercial agreements

a:

b:

(5) In line with Article 18(9) of both Directives the VIU shall refrain from any action impeding or prejudicing the TSO and shall not require the TSO to seek permission from the VIU in fulfilling its tasks. Please confirm that the VIU committed that it will refrain from any action impeding or prejudicing the TSO in fulfilling its tasks

(6) The TSO in an ITO model shall have a Supervisory Body in line with Articles 20 of Electricity and Gas Directive respectively. Supervisory Body of the TSO shall take decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator (subject to the conditions of Article 19 of both Directives). All changes in this respect as specified in Article 19(2) of Electricity and Gas Directives respectively shall be notified to the NRAs and become binding when NRAs do not oppose within three weeks.

- (a) Please describe briefly, referring to all relevant parts of the TSO statutes, how the provisions of Articles 19 and 20 are fulfilled.
- (b) Please inform that a commitment has been issued by the Supervisory Body that all changes specified in Article 19(2) of Electricity and Gas Directives respectively will be notified to the NRAs and become binding when NRAs do not oppose within three weeks
- (c) Please confirm that the NRA examined the persons responsible for the management and/or members of the administrative bodies of the TSO for the last three years before appointment in the TSO and confirm compliance of the

TSO with the provisions of Article 19(3) subject to the condition in Article 19(8)

- (d) Please inform if the persons responsible for the management and/or members of the administrative bodies of the TSO comply with the provisions of Articles 19(4)-(7) of both Directives. Please inform how this has been examined by the NRA.

a:

b:

c:

d:

- (7) The TSO in an ITO model is required to set a compliance programme Electricity and Gas Directives respectively and appoint a compliance officer in line with the provisions of Article 21 of both Directives respectively. Please:

- (a) Describe briefly the compliance programme
- (b) provide the name of the compliance officer and description of employment conditions (conditions governing the mandate) of the compliance officer.
- (c) conclude if the compliance officer:
- is fully independence from the VIU
 - has no personal or parental involvement with the VIU management
 - has no professional position responsibility or interest, directly or indirectly, in or with any part of the VIU or its controlling shareholders

a:

b:

c:

Tasks of the TSO - Article 12 and 17(2), 18(1)-(2), 18(5) and 18(8) of the Electricity Directive and Article 13 and 17(2) of the Gas Directive

- (8) The TSO in the ITO model is required, on top of the tasks specified in the Article 12 of the Electricity Directive and Article 13 of the Gas Directive to fulfil tasks described in Article 17(2) of the Electricity and Gas Directives respectively. In fulfilling these tasks the TSO, in line with Article 18 (5) of the Directives shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in generation or supply. Please:

- (a) specify all tasks the TSO fulfils and submit all relevant parts of all relevant regulatory provisions (laws, network codes, agreements between companies, statutes) showing that the TSO has the full responsibility to fulfil the tasks listed in Article 17(2) and Article 18(1), 18(2) of the Electricity and Gas Directives respectively.
- (b) show on the basis of applicable regulation that the NRA concerned is equipped with powers, including ability to impose dissuasive fines which it is able to apply when the TSO is not fulfilling or not fully fulfilling the tasks and obligations specified in Article 17(2) of the Electricity and Gas Directives respectively

a:

b:

- (9) In line with Article 18(8) of both Directives, the TSO shall inform the NRA of the financial resources, available for future investment projects and/or for the replacement of existing assets. Please describe briefly how this will be ensured

- (10) Article 17 (1) Gas and Electricity states that a TSO may, render services to the vertically integrated undertaking as long as the services do not discriminate between system users, is available to all system users on the same terms and conditions and do not restrict, distort or prevent competition in production (generation in E directive) or supply, and the terms and conditions of the provision of those services are approved by the regulatory authority. Please describe briefly how these provisions will be met by the TSO

- (11) Show on the basis of applicable regulation that the NRA concerned is equipped with powers, including ability to impose dissuasive fines which it is able to apply when the TSO is not fulfilling or not fully fulfilling its tasks and obligations specified in the Electricity and Gas Directive