



## DELIBERATION NO. 2017-253

Deliberation of the Energy Regulatory Commission of 16 November 2017 establishing guidelines for new interconnector projects with the United Kingdom and deciding to transfer the exemption request submitted by AQUIND Ltd. to ACER

Participating in the meeting: Jean-François CARENCO, Chairman, Christine CHAUVET, Catherine EDWIGE, Hélène GASSIN, Jean-Laurent LASTELLE and Jean-Pierre SOTURA, Commissioners.

### 1. LEGAL CONTEXT

Pursuant to article L. 321-6 of the French Energy Code, the electricity transmission system operator, RTE, operates and maintains the public electricity transmission system in France. It is responsible for its development in order to connect producers, consumers, public distribution networks and other European countries' networks.

Under the terms of this article, RTE establishes a yearly investment programme that is submitted to the Energy Regulatory Commission (CRE) for approval.

In that respect, RTE's interconnection investment projects are submitted to the approval of CRE.

Furthermore, article 17 of Regulation (EC) No 714/2009<sup>1</sup> (the "Regulation") provides that national regulatory authorities ("NRAs") concerned by a direct current electricity interconnector project may jointly grant an exemption from part or all of the following European legislation provisions:

- article 16(6) of the Regulation, which governs how the revenue resulting from the allocation of interconnector capacity may be used;
- article 9 of directive 2009/72/CE<sup>2</sup> (the "Directive") which provides that the same person cannot exercise direct or indirect 'control' over a transmission system operator or transmission system and at the same time exercise direct or indirect 'control' over or have any right over an undertaking performing the functions of generation or supply;
- articles 32, 37(6) and 37(10) of the Directive which concern requirements to offer terms for third party access and regulatory approval of charging methodologies.

Paragraph 1 of article 17 of the Regulation specifies the conditions that must be met for a new interconnector to be granted an exemption from part or all of the aforementioned provisions.

Paragraph 4 of article 17 of the Regulation provides that, unless national provisions say otherwise, the exemption decision is taken on a case-by-case basis by NRAs of the concerned Member States within six months of the date of receipt of the exemption request by the last of the concerned NRAs.

Paragraph 5 of article 17 provides that the exemption decision is taken by the Agency for the Cooperation of Energy Regulators ("ACER"), where NRAs have not been able to reach an agreement within six months. NRAs may also choose to jointly request ACER to take the decision.

<sup>1</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

<sup>2</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

Within a period of two months from the day following receipt of notification of the exemption decision, the European Commission may take a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption.

The Regulation also requires NRAs to transmit a copy of every request for exemption to ACER and to the European Commission.

In France, CRE is the authority in charge of examining any exemption request for the construction of new electricity interconnectors.

## 2. EXEMPTION REQUEST SUBMITTED BY AQUIND

By letter dated 15 May 2017, completed by a letter dated 16 August 2017, AQUIND Limited ("AQUIND") submitted an exemption request to CRE and Ofgem, pursuant to article 17 of the Regulation, for the construction and the operation of a new 2000 MW electricity interconnector between France and Great-Britain.

Table below provides an overview of the main characteristics of this project:

<b>Developer</b>	AQUIND Limited
<b>Capacity</b>	2 GW (2000 MW)
<b>Length</b>	~ 300 km (including 190-230 km subsea)
<b>Connection points</b>	France – Barnabos substation Great-Britain - Lovedean substation
<b>Planned commission date</b>	4 <sup>th</sup> quarter 2022
<b>Project cost</b>	1430 million EUR

AQUIND requests a partial exemption from article 16(6) of the Regulation and from articles 9, 32, 37(6) and 37(10) of the Directive for a period of 25 years from the commissioning date.

Pursuant to paragraph 7 of article 17 of the Regulation, both CRE and Ofgem sent a copy of the exemption request to ACER and to the European Commission<sup>3</sup>.

## 3. CRE'S ANALYSIS IN RELATION WITH INTERCONNECTOR PROJECTS ON THE BORDER BETWEEN FRANCE AND THE UNITED-KINGDOM

The current context on the border between France and Great-Britain is characterised, on the one hand, by the plurality of interconnector projects and, on the other hand, by the vote of British citizens on 23 June 2016 in favour of the withdrawal of the United Kingdom from the European Union and the triggering of article 50 of the Treaty on European Union, on 29 March 2017.

### 3.1 Electricity interconnector projects between France and Great-Britain

The current electricity interconnector capacity between France and the United Kingdom is 2 GW.

By 2020, 2 additional GW are to be operational, bringing the total capacity between France and Great-Britain to 4 GW:

- the ElecLink project: this 1000 MW project is developed by a private company, ElecLink Limited<sup>4</sup> and has been granted a partial exemption from certain provisions of the European legislation in 2014<sup>5</sup>;
- the IFA2 project: this 1000 MW project is developed by RTE and NGIH. CRE adopted a decision on 2 February 2017<sup>6</sup> approving this project and defining the parameters of the applicable incentive regulation.

Three other projects are currently being considered on this border, with unequal maturity: project Aquind (2000 MW), which is covered by the present deliberation, project FAB (1400 MW) and project GridLink (1400 MW). The commissioning of all these projects would bring the interconnection capacity between France and Great-Britain to 8.8 GW.

<sup>3</sup> Letters from CRE dated 7 September 2017.

<sup>4</sup> ElecLink Limited is a 100% subsidiary of Groupe Eurotunnel.

<sup>5</sup> Joint Opinion by CRE and Ofgem of 28 August 2014

<sup>6</sup> <http://www.cre.fr/en/documents/deliberations/decision/electricity-interconnector-france-great-britain2>

<sup>6</sup> <http://www.cre.fr/en/documents/deliberations/decision/interconnector-ifa2-project>

### **3.2 British referendum of 23 June 2016**

After the vote of British citizens on 23 June 2016, the British government triggered article 50 of the Treaty on European Union on 29 March 2017, thus marking the beginning of the negotiations about the withdrawal of the United Kingdom (the "Brexit"). The stakeholders have two years to find a withdrawal agreement. This delay can be extended by unanimous consent of the parties.

The potential consequences of Brexit on the energy markets and, in particular, on the rules for access and use of interconnectors between the continent and the United Kingdom cannot be anticipated to this day. The regulatory and economic framework in which new interconnector projects will be developed is therefore highly uncertain, thus questioning the possibility to analyse with sufficient precision the benefits for the community of such projects.

Furthermore, Brexit and its potential consequences generally raise the question of the approach considered for determining the benefits of the project: to this day, CRE based its decisions on new interconnector projects by taking into account the benefits provided by these projects at the European level. In the context of Brexit, the question of the inclusion of the benefits for the United Kingdom in the calculation methodology could be reviewed in light of the ultimate status of the United Kingdom with regards to its participation to the internal energy market.

In this context, following studies conducted by its services, CRE considers that it is not in a position to decide whether any new interconnector project between France and the United Kingdom is beneficial to the European community before the withdrawal conditions of the United Kingdom from the European Union are clarified.

**CRE'S DECISION**

As part of its approval competences of investment projects, and pursuant to Article 17 of Regulation (EC) N° 714/2009, CRE is the competent authority to assess the notified exemption request for the construction of new electricity interconnection capacities between the public electricity transmission system in France and third countries. To this end, CRE bases its decision on interconnection projects by taking into account the benefits provided by such projects at the European level.

Taking into account the context of the withdrawal of the United Kingdom from the European Union, CRE considers that it is not in a position to decide whether any new interconnector project between France and the United Kingdom is beneficial to the European community before the withdrawal conditions of the United Kingdom from the European Union are clarified.

In the specific case of the exemption request notified by AQUIND, CRE will not be in a position to make a decision within six-month of the date of receipt of the exemption request by the last of the concerned NRAs. As a consequence, and pursuant to point 5 of Article 17 of the aforementioned regulation, it will be up to ACER to take a decision on this project.

The present deliberation shall be published on CRE's website, notified to ACER and forwarded to the European Commission and to Ofgem.

**Paris, 16 November 2017.**

**For the Energy Regulatory Commission,  
The Chairman,**

**Jean-François CARENCO**