

**Opinion on the “Piemonte Savoia”
Exemption Application**

April 2016

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Preface

On 8 June 2015, the company Piemonte Savoia S.r.l. (with registered office in Rome - Italy) submitted to the Italian Ministry of Economic Development (reception date: 16 June 2015) the Exemption Application for a portion of the project of the new 1200 MW “Piossasco (IT) – Grand’Ile (F)” interconnection (hereinafter “**Piossasco - Grand’Ile interconnection**”).

The Applicant asked for the exemption from the provisions of:

- Article 16, paragraph 6, of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009;
- Article 9 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, if deemed necessary by the competent
- Authority.

The exemption is requested with reference to one of the two cables representing the Italian section of the Piossasco - Grand’Ile interconnection for a period of 10 years from the date of starting of commercial operations of the interconnection and would therefore apply to a share (corresponding to seven twelfths) of the congestion rents attributable to the Italian side¹ only .

In what follows, the term “Interconnector” or “new Interconnector” will be used to identify this portion of the project, which is the object of the exemption request.

Considering that:

- the Italian legislation assigns to the Ministry of Economic Development the responsibility of granting exemptions under a non-binding opinion of the Italian Regulatory Authority for Electricity Gas and Water (AEEGSI);
- the Ministry transmitted the Exemption Request to AEEGSI on 4 August 2015 (reception date: 10 August 2015);
- the whole project Piossasco – Grand’Ile interconnection lies across Italy and France;
- article 17(4) of Regulation 714/2009 requires that, in the case where the infrastructure in question is located in the territory of more than one country, an agreement shall be reached between the concerned National Regulatory Authorities of the interested countries and they shall inform ACER (Agency for the Cooperation of Energy Regulators).

The Italian Regulator informed the Ministry and the company Piemonte Savoia on the necessity to submit the Exemption Request also to the French Energy Regulatory Commission (CRE) which is the competent Authority

¹ The congestion rents attributed to the Italian side will represent half of the total congestions rents of the interconnection, the other half being attributed to the French side.

responsible for granting exemption decisions for the French territory. The company Piemonte Savoia sent the above request to CRE on 22 January 2016 (reception date: 28 January 2016).

In accordance with Article 17 of Regulation 714/2009, the concerned NRAs must reach an agreement on whether the Exemption should be granted within 6 months of the date of receipt of the Exemption request by the last of the two concerned NRAs. Accordingly, AEEGSI and CRE are required to reach an agreement on the exemption decision on whether to grant the exemption to Piemonte Savoia by 28 July 2016.

Article 17, paragraph 7 of Regulation 714/2009 also requires the concerned NRAs to transmit a copy of any exemption request to the Agency for the Cooperation of Energy Regulators (ACER) and the European Commission (EC). AEEGSI sent a copy of Piemonte Savoia's Exemption request to both ACER and the EC on 4 February 2016. CRE informed as well ACER and the EC by mail dated 8 February 2016.

Then, considering that the Piemonte-Savoia's Exemption application concerns the portion of the project located on the Italian territory, AEEGSI reviewed the information presented by the Applicant on the basis of the provisions of Regulation 714/2009 and Directive 2009/72/EC and kept informed the French Regulators on the results of its analysis.

This document represents the Opinion of Italian Regulator on the Piemonte-Savoia's Exemption application, based on the criteria of Article 17(1) of the Regulation 714/2009, and it is presented to CRE for its agreement.

The document is divided in three Parts:

- Part 1 provides a description of the project, according to the Exemption Application submitted by the company Piemonte Savoia and the information collected in the course of the assessment of this application until the date of the issuance of the present Opinion.
- Part 2 contains the assessment on the fulfillment of the criteria of Article 17(1) of Regulation 714/2009, supported by data and considerations.
- Part 3 contains the Opinion of AEEGSI on the Exemption application and the terms and conditions under which the exemption should be granted.

Part 1

The Project, facts and figures

In the following sections, an overview of the Project is provided, based on the information received from the company “Piemonte Savoia” (hereinafter “**the Applicant**”) in its Exemption application and on later explanations, with a special focus on the aspects which are relevant for the Exemption opinion.

1.1 The Project

1.1.1 Main technical features

The project is part of a new interconnection in direct current that will connect the electrical substations of Piossasco, in the province of Turin, and of Grande-Ile, in French territory, crossing the border along the Fréjus motorway tunnel.

The work consists of creating an ultra-high voltage direct current (HVDC) underground cable connection, with a total nominal capacity of 1200 MW divided into two bipolar lines of 600 MW nominal power.

In France the sections of both bipolar lines will be owned and managed by RTE (the French Transmission System Operator).

In Italy, one section will be owned by Terna (the Italian Transmission System Operator) while the Interconnector will be owned by the company Piemonte Savoia, which as a private investor requests the exemption under the terms of the Regulation 714/2009. Both the Italian sections will be operated by Terna Rete Italia².

The allocation of the total corresponding cross border capacity will be managed by the Joint Auction Office (JAO) and/or through Market Coupling according to the existing regulatory framework based on CACM guidelines and the future Forward Capacity Allocation network code.

In what follows we will refer to the sections owned and managed by the TSOs as public lines or sections.

The main electrical characteristics of the new Piossasco-Grand’Ile interconnection are summarized in the following table (Table 1):

² Terna Rete Italia (TRI) is responsible within the Terna Group (the Italian Transmission System Operator), for the operation, maintenance and development of the national electricity grid.

Table 1: Electrical characteristics of the project

HVDC Configuration	2 independent bipolar circuits with VSC technology
Nominal capacity of the entire connection	1200 MW
Nominal capacity of the each single hub	600 MW
Transport capacity for each single hub	Bi-directional: from 0 to 600 MW for each individual hub
Nominal voltage for each individual hub (between hub and earth) for each branch	± 320 kV (without polarity reversal)
Maximum operating voltage	± 340 kV
Nominal DC current	950 A
Cable technology	Cross Linked Polyethylene (XLPE)
Length (KM/Cable)	About 190 km (13 km within the Fréjus service and safety tunnel)
Life expectancy of the infrastructure	40 years

The cables between Grand'Île (France) and Piosasco (Italy) will follow the motorway route (A32 in Italy and A43 in France) for about 165 km (about 95 Km on the Italian side) and ordinary roads (provincial and municipal roads) for about 25 km and will pass through the service tunnel being built for the Fréjus tunnel.

1.1.2 Capacity

On the basis of the data provided in the technical and economic Report annexed to the application for the Exemption, the additional Net Transfer Capacity (NTC) between Italy and France will be 1200 MW during both winter and summer periods which corresponds approximately to an increase of 40% of the current NTC values on the French Italian border.

According to the information provided in the last Ten Years Network Development Plan drafted by ENTSOE, for the direction from Italy to France (which is not subject to the exemption request) the new interconnection will add 1000 MW both during winter and summer periods almost doubling the present NTC values.

1.1.3 Timing

The construction of the Interconnector includes various activities to be completed by 2019 which are strongly linked with the works for the construction of the public parts of the Piossasco-Grand'Île interconnection. Indeed, the Applicant underlined that although the two modules of the project will be subject to two distinct regimes, in the event of obtaining the Exemption for the private section, the respective modules are viewed functionally as a single project. Therefore, the assignment of the works and the subsequent construction phases of the project will be carried out jointly with regard to the private and public lines.

The construction period is planned over four years 2016-2019. The new Interconnector is expected to begin commercial operations at the end of 2019.

According to the information provided by the Applicant, the work on the Italian side can be catalogued in the following three macro-areas:

- civil and underground work, which regards the creation of conduits to house the cable along the motorway route of the interconnection and the civil work out of the motorway route of the interconnection;
- supply of the HVDC cable, consisting of the purchase of the HDVC cable from a supplier capable of guaranteeing an adequate product for this type of technology, and its installation, consisting of laying it along the route of the interconnection;
- HDVC station, which consist of building the HDVC station in Piossasco which will represent the connection between the Italian transmission grid and the new HVDC interconnection.

1.2 The shareholders of the project

In order to better understand who are the shareholders of the Interconnector, it is important to describe the legal Italian framework under which the construction of the Interconnector has been promoted.

One of the main objectives of the EU countries is the creation of a single electricity market. To contribute toward the above objective, article 32 of Law 99/09 includes provisions on the planning, construction and operation by Terna of one or more upgrades to the international interconnection infrastructures in the form of "interconnectors" as referred to in the Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 (replaced by Regulation 714/2009), in the presence of specific financing from third party investors.

Under this provision, Terna gave MSE and AEEGSI notification of a list of possible infrastructures to be built and arranged a tender procedure for the selection of entities which intended to provide support in the funding of these infrastructures. According to article 32 of Law 99/09, the participation to tendering procedures is limited to end customers (also grouped together in the form of consortia) which are:

- holders of consumption units each with an available withdrawal capacity of not less than 10 MW, characterized by an utilization factor -on average in the previous three years - of not less than 40% (excluding the fifteen days with the lowest electricity withdrawal on an annual basis);
- committed to make their withdrawals interruptible upon the direct control of Terna in case of critical network conditions.

In order to promote the participation of private investors in the tendering procedure, and consequently in the financing of the infrastructures needed to achieve better integration of the Italian electricity market, paragraph 3 of the aforementioned article 32 of Law 99/09 foresees that the commitment of the Assignees to provide support in the financing of the interconnectors is subject to the obtainment of a specific Exemption under the Italian Ministerial Decree of 21 October 2005.

Finally, Law 99/09 stipulates that the Assignees shall enter into a mandate contract with Terna for the planning, construction and operation of the selected interconnector. This contract goes into effect once the Exemption is granted.

Therefore, under the legal framework described above Terna identified a share of the Piosasco-Grand'Île interconnection capacity as a possible project to be financed according to the provisions of article 32 of Law 99/09.

The shareholders of the Interconnector (hereinafter the “**Assignees**”) were selected during a tender procedures launched by Terna in 2009/2010.

The selected Assignees are 38 industrial customers operating in the field of production and processing of steel, chemicals and paper. The Applicant states that most of them are not active in any branch of the electricity supply chain, while those few that perform some activity within the industry, mainly for self-consumption or optimization of supplies, have absolute negligible market shares both in the Italian and French electricity markets as illustrated in the Technical and Economic Report attached to the Exemption application.

In December 2013, a Memorandum of Understanding was signed by Terna and the trade associations of the end customers (Federacciai, Assocarta, Federchimica, Aitec/Cemento and Assovetro) which defined the major mutual commitments. Under this agreement, the Assignees were given the right to form an ad hoc company in order to finance the project. To this end

and with a view to making the transfer of the interconnector project to the Assignees more efficient, Terna incorporated the company Piemonte Savoia.

Indeed, two vehicle companies were set up:

- *Terna Interconnector*, jointly owned by Terna S.p.A.(65%), Terna Rete Italia (5%) and Transenergia³(30%), is responsible for the tender procedure regarding the civil construction works and the related tender contract⁴ on the basis of a specific mandate from the Assignees, in accordance with Article 32, paragraphs 1 and 3 of Law 99/09.
- *Piemonte Savoia*, set up to manage the Exemption procedure on behalf of the Assignees and to be transferred the ownership of the Interconnector once the exemption is granted.

Therefore, the company Piemonte Savoia acts in its own name and on behalf of the Assignees, given that the Exemption decision will only become effective on the condition that, prior to the entry into service of the Interconnector, the entire share capital of Piemonte Savoia will be passed to the Assignees and Terna will no longer have any direct or indirect stake in the company receiving the Exemption.

The following table shows the names and the shares of the company Piemonte Savoia which will be allocated to each Assignee:

Table 2: Piemonte Savoia's Shareholders (once the exemption is granted) .

Company Name	Share
ACCIAIERIA ARVEDI SPA	7,8%
ACCIAIERIE VENETE S.P.A.	8,6%
AIR LIQUIDE ITALIA PRODUZIONE S.R.L.	4,6%
ALFA ACCIAI SPA	5,4%
ALTAIR CHIMICA S.P.A	0,6%
BREDINA SRL	0,2%
CARTIERE MODESTO CARDELLA SPA	0,2%
CEMENTERIE ALDO BARBETTI SPA	0,6%
CEMENTIR ITALIA S.R.L.	2,2%
COLACEM S.P.A.	4,8%
CONSORZIO TOSCANA ENERGIA S.P.A.	0,6%
DALMINE S.P.A.	6,6%

³ Transenergia is a 50/50 Joint Venture of *Compagnia Italiana Energia Spa* (CIE Spa) and *Società Italiana Traforo Autostradale del Fréjus Spa* (SITAF Spa).

⁴ Terna Interconnector will assign to Terna Rete Italia by mean of a contract the following activities: 1) the organization and management of the tenders (and the related contracts) for the construction of the conversion station and for the supply and installation of the cable; 2) the operation of the Interconnector.

Company Name	Share
FERALPI SIDERURGIA SPA	0,6%
FERRIERE NORD S.P.A.	11,0%
INDUSTRIA CEMENTI GIOVANNI ROSSI SPA	2,2%
INFUN FOR S.P.A.	0,4%
INNSE CILINDRI S.R.L.	0,4%
KME BRASS ITALY S.R.L.	0,6%
LEALI STEEL S.P.A.	2,2%
LINDE GAS ITALIA S.R.L.	0,8%
LUCCHINI S.P.A.	2,2%
MARCEGAGLIA S.P.A.	2,6%
MEMC S.P.A.	0,8%
NLMK VERONA S.P.A.	3,2%
OLIFER-ACP SPA	1,4%
RUBIERA SPECIAL STEEL SPA	0,2%
SACCI SPA	2,0%
SAINT GOBAIN GLASS ITALIA S.P.A.	0,6%
SAINT-GOBAIN PPC ITALIA SPA	0,4%
SAINT-GOBAIN VETRI S.P.A.	1,8%
SAPIO PRODUZIONE IDROGENO OSSIGENO S.R.L.	1,0%
SIAD S.P.A.	3,2%
SOL GAS PRIMARI SRL	2,4%
SOLVAY S.A.	7,4%
STEFANA S.P.A.	5,6%
TRAVI E PROFILATI DI PALLANZENO	4,0%
VETRERIA COOPERATIVA PIEGARESE SCRL	0,6%
ZML INDUSTRIES SPA	0,2%

1.3 The financial model

The Applicant provided in the Exemption application a description of the business model and identified several risk factors associated to the Interconnector and related to the conditions of the electricity market and to the technical characteristics of the infrastructure itself. With reference to market conditions, one of the main risk is the uncertainty linked to the real value of the future Italy-France price spread that will represent a proxy of the only source of income for the company Piemonte Savoia (share of the congestion revenues on the French-Italian border).

In the following paragraphs the key variables used by the applicant within its business plan will be analysed.

1.3.1 Hypotheses and results according to the Applicant

AEEGSI believes that the key variables (in terms of their impact on the project's performance) concerning the Interconnector at issue are the following:

- 1) **PRICE DIFFERENTIALS:** Assuming the Interconnector will be in operation from 2019, the Applicant adopts a price differential of 9.68 €/MWh from 2019 to 2029 for the "Base Scenario".
- 2) **INVESTMENT COSTS:** In its Exemption request, the Applicant estimated the costs and made a financial analysis. The construction of the Interconnector entails an investment estimated at Euro 415 million. This investment will be partly funded through recourse to borrowing (60%) and partly through own equity capital (40%). In addition, Piemonte Savoia shall bear the licensing costs payable to SITAF S.p.A. for the transit of the line route along the motorway route in addition to its own operation costs, which amount in total to about Euro 4 million per year. The technical solution selected (HVDC with underground cable) and the chosen route (through the service tunnel being built for the Fréjus tunnel) have the advantage of reducing the environmental impact, both from the electromagnetic and visual point of view, but imply that the costs of the investment are particularly high. Investments costs can substantially affect the expected net return of an investment. The following table (Table 3) provides an overview of the cost components of the Interconnector, as well as their relative weight with respect to the total capital expenditures.

Table 3: Share of investment costs with respect to total capital expenditures

CAPEX	€MLN	%OVER TOTAL CAPEX
Civil an underground work	165	40%
Supply and installation of the HVDC cable	160	38%
AC/DC stations	90	22%
TOTAL	415	100%

1.3.2 Hypotheses and results according to AEEGSI

- 1) **PRICE DIFFERENTIALS:** Table 4 shows the historical values of the price differentials Italy-France as recorded in the last three years.

Table 4: Price differential North Italy-France (€/MWh)

Years	Average	Median	Min	Max
2013	18,35	15,59	-102,15	237,00
2014	15,72	14,53	-16,04	98,71
2015	14,23	12,00	-30,39	95,58

AEEGSI believes that the value adopted by the Applicant (9,68 €/MWh) could be realistic under the condition of having the Interconnector in full operation from 2019.

As already underlined, the value of the price differentials between Italy and France for the coming years is very difficult to evaluate in advance because many variables could have a positive or negative impact on it. For example, there are risks linked to the long time horizon considered in the business plan of the Interconnector, to the role of renewables, to the economic trends, etc. Furthermore, it should be noted that the congestion revenues originating from the capacity allocation procedures (which represent the only income for the Applicant) could be significantly lower than the actual price differential, as they are affected by the hedging strategies adopted by the auction participants and by the reimbursements that the TSO shall give to the capacity holders for the possible restrictions in their nomination rights due to curtailments.

Therefore, taking into account the above historical values and the risks associated to the evaluation of the future values, AEEGSI thinks that 9,68 €/MWh is a fair proxy to be used as a reference in the business plan.

Furthermore, according to internal simulations conducted by the NRA, the projection of price differentials provided by Savoia Piemonte do not seem to be overestimated given the marginal costs differential that can be deduced from the TYNDP analysis.

- 2) **INVESTMENT COSTS-** According to AEEGSI, the share and the amount of costs presented in the business plan are in line with the expected costs of projects with similar characteristics in terms of size, technology and route. According to the Exemption application, the morphology of the pertinent Italian territory entails higher costs in Italy than in France for the same length of cables.

Part 2

Exemption application analysis

The Applicant requested, on the Italian side, an Exemption from the provisions of Article 16, paragraph 6 of Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 and where deemed necessary of Article 9 of Directive 2009/72/EC for a period of 10 years from the date of starting of commercial operations of the new Interconnector. Terna would purchase the Interconnector at the end of the Exemption period.

In the following paragraphs, an analysis of the Project is provided, based on the information enclosed to the Exemption application and with a special focus on the aspects which are relevant for the Exemption opinion. In particular, this part is aimed at analysing if the criteria of Art. 17 of Regulation 714/2009⁵ are satisfied.

2 Criteria assessment

2.1 Eligibility of the requests

Article 17.1 of Regulation 714/2009 states: " *New direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC under the following specific conditions:*

- (a) The investment must enhance competition in electricity supply;*
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;*

⁵ Regulation (EC) N. 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 [O.J. L. 211, 14.8.2009, p. 15].

- (c) *the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;*
- (d) *charges are levied on users of that interconnector;*
- (e) *since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and*
- (f) *the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked”.*

As described in the previous chapter, the Applicant submitted an Exemption for a new interconnection in direct current. AEEGSI considers that, according to art. 17, paragraph 1, the request is eligible for an Exemption under the conditions listed above. It is important to remind that the compliance with the conditions shall be cumulative.

2.2 Competition

- (a) *The investment must enhance competition in electricity supply;*

As a general reference a new Interconnector is likely to increase competition in the internal market by increasing cross-border capacity and widening the potential supply sources of the connected markets.

As underlined in the TYNDP 2014⁶, the interconnection between France and Italy will promote the market integration between the two countries *“as well as the use of the most efficient generation capacity; it also increases possible mutual support of both countries. In addition, the project can contribute to RES integration in the European interconnected system by improving cross border exchanges. Such benefits are ensured within different future scenarios”.*

In particular, the Interconnector will contribute to reduce risks of energy not supplied mainly in Northern Italy.

⁶ https://www.entsoe.eu/major-projects/ten-year-network-development-plan/tyndp-2014/Documents/TYNDP%202014_FINAL.pdf

In particular the creation of this new Interconnector enhances competition for the following reasons:

- the new capacity will be available to all market participants, increasing the liquidity of the wholesale (forward, day ahead, intra day) electricity markets on both sides of the border;
- the transmission capacity will be allocated according to the rules in place for cross border capacity allocation set by the forthcoming guideline on Forward Capacity Allocation and Regulation (EU) 1222/2015. More precisely, long term physical transmission rights (yearly, monthly) will be allocated by explicit auctions held by JAO (Joint Allocation office), daily transmission capacity will be allocated through the market coupling and intra day transmission capacity will be allocated according to current rules at CSE regional level up to the go-live of the XBID project on the IT-FR border;
- the new capacity will be available to TSOs and balancing service providers, increasing liquidity, efficiency and integration on balancing markets. As a side-benefit, the Interconnector will improve operational reliability of both systems as well.

Furthermore, the enhancement of competition is also due to the fact that the Applicant states that none of the shareholders⁷ of the Interconnector (mainly industrial productive companies) has had so far a significant presence in the electricity markets of both in Italy and France.

The positive effects of this project led to its identification as a Project of Common Interest (PCI) according to the provisions of Regulation No. 347/2013⁸.

With reference to the impact that the new infrastructure will have on the Italian market, AEEGSI assumes that the most impacted zone will be the North bidding zone (the Italian market solves structural congestions by identifying several bidding zones, the North one being the relevant one for this Exemption procedure).

In the analysis provided by the Applicant, it is proved that the new interconnector will also increase the reserve margins of both countries. With reference to a given market (North Italy and France) and at a given time h , the reserve margin can be expressed as a percentage by using the following formula:

⁷ For a detailed description of shareholders activities in the Italian and French markets, please refer to paragraph 6.6 of the Technical and Economic Report (Annex 2) annexed to the Exemption application.

⁸ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

$$MR_h = \left[\frac{\text{Residual capacity}}{\text{Demand}} \right]_h$$

The Applicant used the results of the default scenario simulation for the peak winter and summer hours of market demand for North Italy and France and in the hypothesis “with the line” he obtained the following results:

	ΔMR North IT	ΔMR France
Winter peak	+4,11%	+0,96%
Summer peak	+4,08%	+1,33%

AEEGSI believes that the realization of a new cross-border infrastructure would increase the diversification of electricity sources that is one of the most effective strategies for ensuring both affordable prices in the long run and security of supply under emergency conditions.

Condition (a) is thus considered fulfilled.

2.3 Level of risk

(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;

The assessment of condition b) is linked to the exemption from the use of revenues. Piemonte Savoia requests an exemption from article 16(6) of the Regulation in order to keep seven twelfths of the Italian part of the revenues resulting from interconnection capacity allocation. Piemonte Savoia considers that this will allow it to recover construction, operation and maintenance costs, and provide a return that it considers adequate.

Given the cost of the project on the Italian side and the analysis conducted by NRA’s regarding price differentials, AEEGSI considers that granting exemption from article 16(6) of the Regulation would not lead to a disproportionate return.

Furthermore, Piemonte-Savoia will face significant financial uncertainties originating mainly from the following aspects:

- from a technological perspective, the applicant underlined that HVDC cables have higher unit costs than HVAC ones. This is mainly due to the fact that direct current lines need AC/DC convertor stations which represent substantial additional fixed costs;
- from an economic perspective, the risk concerns mainly the volume of revenues, which will depend only on the future value of cross

border capacity which in turn will be linked to the actual prices in the two countries/zones involved;

- there are also uncertainties associated with the amount of the investment until the end of the construction works. In particular, due to the morphology of the pertinent Italian territory, the cable must be laid under a mountain motorway made up for more than a third of viaducts and tunnels, this implies several construction difficulties that cannot be estimated with certainty in advance. Furthermore, changes in the market conditions may affect the amounts of Operation&Maintenance contracts, insurance, personnel costs, etc. A private investor, unlike the TSO, cannot have its operating costs paid by the remuneration components;
- other risks are associated with the performance, reliability and maintenance of the line;
- the possible increase of the Italian taxation rates that can reduce the profitability of the investment should also be taken into account.

The Applicant declared that if the Exemption is not granted, the Interconnector would not be developed. This possibility would negatively affect the whole “Piovasco-Grand’Ile interconnection”, since (as already underlined) the Interconnector is presented as part of a single connection project which includes both private and public lines.

AEEGSI thinks that granting the Exemption to Piemonte Savoia could not only mitigate the above listed risks for the private investor, but it could also prevent the regulated system (and consequently final customers) to bear all the costs for a project of such size and complexity (considering both the private and public lines).

Therefore, granting the exemption for a reasonable number of years – and safeguarding the third party access regime - seems to be the only possible way to implement the project.

Condition (b) is thus considered fulfilled.

2.4 Separation from existing System Operators

- (c) *the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;*

As explained in Part 1, paragraph 1.2, the Assignees will be the only shareholders of the company Piemonte Savoia (which owns the Interconnector), under the condition that the Exemption is obtained.

Information provided by the Applicant prove that the above Assignees are independent (as regards both their legal form and ownership structure) from the Italian Transmission System Operator Terna.

Condition (c) is thus considered fulfilled.

2.5 Charges

(d) charges must be levied on users of that interconnector;

As already described, the Interconnector capacity will be allocated according to the ordinary rules applicable at European level on cross-border capacity allocation. Therefore, users will pay the value of the capacity determined in accordance with the implicit and explicit auctions used to allocate the capacity.

Condition (d) is thus considered fulfilled.

(e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector;

The applicant declared that:

- no part of Interconnector's costs will be recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector;
- costs incurred by Piemonte Savoia before its transfer to the Assignees will be refunded to Terna Interconnector by the Assignees.

Condition (e) is thus considered fulfilled.

2.6 The exemption must not be detrimental to competition or the effective functioning of the internal market

(f) the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

The realization of the Interconnector does not seem detrimental to the proper market functioning mainly because (as explained above – point a) the

new capacity will be available to all market participants as from the beginning of operation and transmission rights will be allocated in a transparent and non-discriminatory manner. Indeed, as underlined above, the exemption application concerns only Article 16, paragraph 6 of Regulation (EC) No. 714/2009 and, where deemed necessary, Article 9 of Directive 2009/72/EC. Therefore, granting the exemption will not hinder the overall optimization of the energy network and will not affect the availability of the new capacity. Furthermore, the great involvement of both TSOs in the project assures the full compatibility of the project with the two interconnected systems.

Finally, the new Interconnector will be operated under the direct responsibility of the Italian TSO, therefore the Assignees (which are the ultimate beneficiaries of the Exemption) will not have any role in the management and allocation of the interconnection capacity. As a consequence, AEEGSI considers that there will not be any material risk of access by the Assignees to any commercially sensitive information on capacity allocation and capacity usage by market players. In any case, AEEGSI will check that the Commercial and Technical Operation contracts, mentioned in the following paragraph 3.2.3, contain adequate measures ensuring that the above risk of access to commercially sensitive information is avoided.

Condition *(f)* is thus considered fulfilled.

Part 3

Opinion of AEEGSI

Having regard to the assessment of the Exemption requests submitted by the company Piemonte Savoia, as presented in the previous parts of this document, AEEGSI's opinion is detailed in the following paragraphs.

3.1 As regards the French part of the Interconnector

As underlined above, the Applicant has not asked for an exemption for the French part of the interconnector.

No exemption is therefore to be granted by CRE.

3.2 As regards the Italian part of the Interconnector

3.2.1 Exemption request from the provisions of Article 16(6) of the Regulation 714/2009/EC

In order to enable the Applicant to realize the proposed investment by offsetting the level of risk associated to the project, AEEGSI is of the opinion that an Exemption from the provisions of Article 16(6) of the Regulation should be granted to the company Piemonte Savoia.

3.2.2 Exemption request from the provisions of Article 9 (unbundling) of the Directive 2009/72/EC

Article 9 of the Directive 2009/72/EC determines the requirements regarding TSO unbundling. The Directive allows derogations from the application of this article only for transmission systems which belonged to a vertically integrated undertaking on 3 September 2009. Thus, any new interconnector has to apply the rules on ownership unbundling unless an exemption from Article 9 of the Electricity Directive is granted in compliance with the Article 17 of the Regulation 714/2009.

According to Article 9(1)(a) of the Directive 2009/72/EC "*each undertaking which owns a transmission system acts as a transmission system operator*". This means that undertakings owning transmission systems shall directly carry out all the functions and obligations of transmission system operators.

The Applicant declared that the Assignees will be the owners of the Interconnector, while TRI (on behalf of Terna Interconnector⁹) will be responsible for its management and operation. As a consequence, Piemonte Savoia has to be granted an exemption from the Article 9 (1) (a) allowing it to own the Interconnector while not acting as a TSO.

Considering Article 9(1)(b), the aim is to avoid any possibility for the owners of an interconnector to influence the decisions of the development and management of the interconnector in favour of the interests they may have on the electricity supply or production. In the present case, the applicant declared that the Assignees will have no decision making rights with respect to the full scope of the Interconnector's operation, development and maintenance.

Moreover, as already underlined in paragraph 1.2 and as declared by the Applicant in its Exemption request, the selected Assignees are industrial customers which do not hold any direct or indirect control over generation and/or supply of electricity activities in any of the two countries concerned or, in any case, have a negligible market presence in any relevant energy market of both countries.

It could be assumed from the foregoing that even if, the Assignees were in a position to influence the scope of commercial operations carried out by TRI, *quod non*, the formers would have no ability (for the reason explained above) and no incentives to foreclose competitors in the energy markets due to their insignificant interests in any of the French and Italian electricity market. As a consequence, any such risk can be ruled out under the current conditions.

Notwithstanding the above, in order to prevent any potential risk of undue influence by the Assignees over the Interconnector's operation, the Technical Operation contract mentioned in paragraph 3.2.3, point ii, shall contain adequate measures ensuring compliance with article 16 of directive 72/2009 by the TRI. In addition, the aforementioned contract shall contain a clause that forbids the disclosure of any technical/commercially sensitive information related to the operation of the Interconnector to the Assignees, unless this is necessary for carrying out a specific task assigned to the former (e.g. financing extraordinary maintenance of the infrastructure, etc.).

During the exemption period, AEEGSI may take all the necessary measures to ensure that:

- the exemption from Article 9 is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is connected;

⁹ Please see paragraph 1.2 for further details.

- the operator of the interconnector complies with the tasks defined under Article 12 of Directive n°2009/72/EC.

The Applicant shall comply with the measures decided by AEEGSI.

In light of the foregoing, the exemption from the provisions of Article 9 of the Directive is considered to be necessary and therefore is to be granted.

3.2.3 Conditions associated to the exemption from the provisions of Article 9 (unbundling) of the Directive 2009/72/EC and Article 16.6 of the Regulation (EC) 714/2009

The exemption from Article 9 (unbundling) of the Directive 2009/72/EC and Article 16.6 of the Regulation (EC) 714/2009 should be granted for a period of 10 years, starting from the beginning of the commercial operations of the new Interconnector, under the following conditions:

- i. the exemption shall expire when, according to article 17, paragraph 8, of Regulation (EC) n°714/2009, the European Commission's approval of an exemption decision will expire, that is:
 - a. two years after the date the EC adopted its decision in the event that construction of the Interconnector has not yet started by that date;
 - b. five years after the date the EC adopted its decision in the event that the Interconnector has not become operational by that date.

Nevertheless, the exemption shall continue to be in force where the European Commission decides, pursuant to subparagraph 5 of paragraph 8 of Article 17, that any delay is due to major obstacles beyond the control of Piemonte Savoia.

- ii. In Italy the new Interconnector shall be operated under the responsibility of the TSO. To this purpose, a specific Technical Operation contract shall be entered between the Applicant and the TSO to enable the latter to effectively operate and maintain the new Interconnector under the same conditions as if it were the owner. The aforementioned Technical Operation contract will be drafted in accordance with the provisions of article 36(9) of Legislative Decree n. 93 of June 1st, 2011 as applied by the Italian Authority. A copy of the signed Technical Operation Contract shall be sent to the Italian Authority for its approval and to the French regulator for information.

- iii. The commercial arrangements governing the transfer of the revenues representing seven twelfths of the congestion rents attributable to the Italian side by the Italian TSO to the Applicant shall be defined in a Commercial contract to be signed by the Applicant and the TSO. A copy of the signed Commercial Contract shall be sent to the Italian Authority for its approval and to the French regulator for information.
- iv. Prior to the entry into service of the new Interconnector, the entire share capital of Piemonte Savoia shall be transferred to the Assignees identified in the table 2 of the present document and since then Terna shall not have any direct or indirect stake in the company. Any subsequent change in the composition of Piemonte Savoia's share capital (including any change in share of the original Assignees) shall be promptly communicated to the Regulators for their evaluation.
- v. If, directly or indirectly, an undertaking acquires joint or sole control over or merges with Piemonte Savoia, Piemonte Savoia must notify this change to each of the relevant national authorities concerned which must then assess (if deemed necessary in cooperation with a national competition authority) whether the conditions under which the exemption was granted are still met. The provision will be applied in accordance with Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) and the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01).
- vi. In accordance with article 36(10) of the Legislative Decree n. 93 of June 1st, 2011, which calls on the Italian Authority to establish appropriate measures aimed at favoring the unification of the national grid, following the expiry date of the Exemption the ownership of the new Interconnector built on the Italian soil will be transferred to Terna S.p.A. The value of the asset shall not exceed the residual book value with revaluation and be determined on the basis of efficient costs. Terna's regulatory asset base (RAB) will be amended accordingly.

3.3 Violation of the provisions of the present decision

Any infringement by Piemonte Savoia of the conditions set in the present exemption opinion, may result in a penalty imposed on Piemonte Savoia to be determined in accordance to national law and procedures.

Serious violation by Piemonte Savoia of the conditions set in the present Opinion may result in withdrawal by the relevant body in the Member State (the Ministry of Economic Development in Italy) of the exemptions provided by this Opinion.