NOTICE TO MEMBERS

Subject: Petition No 0030/2023 by G. D. O. (Italian) on alleged violation of EU law in the procedures for the assessment of the project ‘Piombino FSRU and Connection to the National Gas Network’ and related infrastructures

1. Summary of petition

The petitioner airs doubts over the project and the construction of Lina, a LNG regasification vessel and related shore-side gas transfer works. The petitioner states that the project was approved by virtue of Commissarial Order No 140 of 25/10/2022 following a procedure derogating from the EIA rules (Directive 2011/92/EU) and the legislation on major accident risk (the ‘Seveso III’ Directive 2012/18/EU). The petitioner claims that two paragraphs of the relevant national law (Law No 91/2022) governing the above derogation procedure (Article 5(3) and the third sentence of Article 5(4)) could constitute a violation both in the case of derogations from the EIA being granted and of the procedure laid down for the granting of authorisation for Seveso III installations. According to the Commission Communication (2019/C 386/05), which provides Member States with operational guidance for applying the derogations provided for in Article 2(4) and (5) of Directive 2011/92/EU ‘such an exemption would therefore be granted on a case-by-case basis and would not apply to an entire category of projects’, whereas the law in question would seem to create a general category of works to be excluded from the EIA, without specific indications. The petitioner also points out that further consideration should be given to the types of projects eligible for derogations from the EIA and Seveso III legislation having been further extended under Article 9 of Decree Law No 144/2022. As regards the violation of the Seveso III Directive, reference is made to the fact that under Article 5 of Law No 91/2022, authorisation also covers fire-precaution authorisations under Legislative Decree No 105/2015, and that this passing mention of fire safety makes it appear that the application of these rules are limited to the measures set out in Law No 91/2022. The petitioner therefore calls on the EU institutions to intervene.
2. **Admissibility**

Declared admissible on 12 April 2023. Information requested from Commission under Rule 227(6).

3. **Commission reply**, received on 30 August 2023

Firstly, it is relevant to recall that the responsibility for the choice as to whether specific projects should be authorised lies on the Member States authorities, who have to ensure compliance with EU legislation in the relevant development consent procedures. Art. 2(4) of the Environmental Impact Assessment (EIA) Directive provides for the possibility for Member States to exempt a specific project from the provisions of the Directive in exceptional cases where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met. It further sets out the procedural steps to be taken when the exemption is used - if a Member State decides to exempt a project from the requirements under the Directive, it shall:

a) consider whether another form of assessment would be appropriate;

b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it; and

c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

It is up to each Member State to decide which type of project such an exemption may be applied to. The Commission has adopted a Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive – Articles 1(3), 2(4) and 2(5).1

Regarding the project referred to by the petitioner, the Piombino LNG regasification vessel and related shore-side gas transfer works, it should be noted that the respective conditions of Article 2(4) of the EIA Directive have been met. The need for this specific project as announced by the respective Italian authorities stemmed from the need to diversify sources of gas supply for national energy security following the war in Ukraine. According to the information made available to the public on-line, the authorities considered another form of assessment as well as applied the Italian Decree-Law No 50 of 17 May 2022 on a case-by-case basis to the project in question. The European Commission was informed about the exemption and the reasons justifying it before a consent has been granted.

Directive 2012/18/EU on control of major industrial accident (Seveso-III Directive) covers establishments where dangerous substances may be present (e.g. during processing or storage) in quantities exceeding certain threshold. Excluded from the Directive are certain industrial


2 [Commissario straordinario di governo per la realizzazione del rigassificatore di Piombino - Regione Toscana](https://www.regione.toscana.it)
activities which are subject to other legislation providing a similar level of protection (e.g. nuclear establishments, offshore platform, the pipelines, or the transport of dangerous substances).

Besides, the Major Accident Hazard Bureau (MAHB) from the JRC (Joint Research Centre) developed, together with Member States competent authorities, a report related to the good practices for the safety of Liquefied Petroleum Gas (LPG) and Liquefied Natural Gas (LNG) sites. This report highlight that it may be a national decision how to address their regulation and enforcement with regards to these floating gasification platforms, whether it comes under marine and transport of dangerous goods or under the Seveso-III Directive. These platforms, which are actually an extension of the transport of dangerous substances, are also likely to be designed and built outside the country in which they are to be located and this may require processes that assure that the design and construction have been carried out to minimise the risks of release and a major accident. This means that the Seveso-III Directive may not be the right vehicle since it assumes that everything is controlled within the territory of the Member States.

Furthermore, the petitioner also refers to a violation of the procedure for the granting of an authorisation for a Seveso-III establishment. However, there is not such a requirement for a permit granting in the Seveso-III Directive. It would stem from the Italian national legislation and does not constitute a breach of the Seveso-III Directive provisions.

**Conclusions**

No breach of EU law can be ascertained in the situation referred to by the petitioner, who is invited to refer the matter to the national authorities.