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Dear Honourable Members, *Dear Ana, dear Elmar,*

*I would like to thank you for your letter of 12 July 2018 regarding foreign direct investment in the European energy sector.*

*The Commission is aware of and is following developments in relation to the bid by the China Three Gorges Corporation to increase its stake and acquire a majority stake in EDP. Needless to say, such a transaction would have to comply with all relevant Union legislation, as set out in further detail below.*

*On a general note, the Commission is mindful of the significance of foreign direct investment in strategic sectors of the European economy. Under the current legal framework, the Commission has limited instruments to intervene in such cases and cannot assess individual cases of foreign direct investment and their potential risks in relation to security or public order at European level. National security and public order assessments are the prerogative of Member States.*

*In our Energy Security Strategy published in 2014, we stated that "it is necessary to launch a wider debate on the protection of strategic energy infrastructure such as gas and electricity transmission systems which are providing a crucial service for all consumers. This debate should address the control of strategic infrastructure by non-EU entities, notably by state-companies, national banks or sovereign funds from key supplier countries, which aim at penetrating the EU energy market or hampering diversification rather than the development of the EU network and infrastructure.*

*./..*

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*Respect of existing EU legislation has to be guaranteed for any acquisition by non-EU buyers of strategic infrastructure".*

*The Commission has addressed this important matter by proposing in September 2017 a Regulation for a framework on screening of foreign direct investment (COM(2017)487). This proposal foresees a common assessment framework and envisages a cooperation mechanism under which Member States and the Commission may provide comments and opinions on foreign direct investments that are likely to affect security or public order. The final decision on the respective transaction would be reserved for the Member State in which the investment takes place. The Commission counts on the support of the European Parliament in order to ensure that this proposal is adopted as rapidly as possible.*

*In the meantime, the transaction in question will be considered under EU competition rules.<sup>1</sup> To the extent that the transaction would have a Union dimension, it would be subject to merger control proceedings. In this case, the Commission would have to verify if the transaction gives rise to any competition concerns.*

*If the transaction affects the shareholders of a transmission system operator, such as the Portuguese transmission system operator REN, national regulatory authorities may open proceedings to ensure compliance by the transmission system operator with the requirements of the Electricity and Gas Directives, notably on the separation of activities of energy transmission from production and supply (so-called "unbundling" Article 9 of Directives 2009/72/EC and 2009/73/EC). Furthermore, under these Directives, national regulatory authorities are also required to assess a possible risk for security of supply in case an individual from a third country acquires control in a transmission system operator.*

*Finally, according to Union legislation on the security of gas supply (Regulation (EU) 2017/1938 of 25 October 2017), Member States have to conduct risk assessments and take into account all relevant risks (including the control of infrastructure relevant for security of supply by a third-country entity). Such risks have to be addressed by adequate mitigating measures.*

*Yours faithfully,*



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<sup>1</sup> Cf. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).