

ERG Group

Guidelines for identifying and carrying out significant transactions



Introduction

The aim of this document is to establish the criteria for identifying significant transactions pursuant to Article 1 of the Corporate Governance Code outside the authority conferred on the Managing Director of ERG S.p.A., and to define the principles of conduct to be adopted in carrying out such transactions.

The above also applies to companies directly or indirectly controlled by ERG S.p.A., for which ERG S.p.A. exercises management and coordination activities, in accordance with Article 2497 et seq. of the Italian Civil Code.

ERG S.p.A. is committed to ensuring that the aforesaid companies formally adopt these guidelines.

The following principles and criteria fit into a regulatory framework (Articles 2381 and 2391 of the Italian Civil Code, Article 150 of the Consolidated Law on Finance) which covers, among other aspects, the identification of matters that are unable to be delegated by the Board of Directors and the ex ante and ex post disclosure obligation as regards transactions of major significance as well as any interests the directors may have in the execution of individual transactions.

Identifying the transactions

There are, generally speaking, three types of criteria for identifying / characterising significant corporate transactions:

- Quantitative criteria
- Qualitative criteria
- Criteria deriving from the specific nature of the parties involved

Transactions falling within the scope of application of at least one of the limitation criteria indicated below must be considered “significant transactions”, pursuant to Article 1 of the Corporate Governance Code, and as such excluded from the authority conferred on the Managing Director.

Quantitative criteria

Generally speaking, subject to the distinction made below, such criteria do not take into account the nature of the transaction and can lead to identification of value thresholds expressed in financial terms and dimensional thresholds expressed in terms of weight (thresholds beyond which the authority cannot be exercised and up to which the authority must be exercised).

For the purpose of applying such criteria, within the framework of company transactions a distinction is made for those transactions in respect of which “oil” contracts, intended to mean the contracts relating to the purchase of crude oil and the sale and purchase of oil products, are drawn up.

Such contracts should be considered significant transactions whenever the quantities involved exceed 2 million tons, as regards the purchase of crude oil, 1.5 million tons, as regards contracts for the sale of oil products and 350,000 tons as regards contracts for the purchase of oil products.

Without prejudice to the abovementioned distinction regarding “oil” contracts, significant transactions are considered to be any other type of transaction having a value in excess of Euro 100 million.

Where a transaction is set up between related parties (see below) the threshold of Euro 100 million is reduced to Euro 0.3 million.

Qualitative criteria

Such criteria derive exclusively from the nature of the transaction, in a juridical and descriptive sense, and make it significant regardless of its value.

In applying qualitative criteria, significant transactions are considered to be those concerning:

- Entry into a new business sector or withdrawal from a business sector;
- The formation of companies with third parties outside the Group;
- The acquisition and divestment of shareholdings;
- The acquisition and divestment of companies or business units;
- Atypical or unusual transactions, meaning those where the nature or object of the transaction, whilst it may be considered within the corporate purpose, contains new and/or critical aspects with respect to the normal course of corporate activity.

Criteria deriving from the specific nature of the parties involved.

Such criteria mainly concern transactions between ERG S.p.A. related parties (for the definition of related parties see IAS principle no. 24), particularly infra-group transactions.

Infra-group transactions for the purpose of these guidelines are those carried out by the Parent company or its subsidiaries with:

- a) companies which, directly or indirectly, namely even through trust companies (*società fiduciarie*) or due to third party intervention, are controlled by ERG S.p.A., pursuant to Article 2359, paragraphs 1 and 2, of the Italian Civil Code and Article 93 of the Consolidated Law on Finance;
- b) companies associated with ERG S.p.A. pursuant to Article 2359, paragraph 3, of the Italian Civil Code.

Execution of transactions

General rule of conduct

The significant transactions identified on the basis of one or more of the above-mentioned criteria, carried out by the Parent company or by its subsidiaries, must be examined in advance and approved by the ERG S.p.A. Board of Directors, which must be promptly provided with the cognitive elements necessary to fully understand all the implications arising from the execution of the transaction in question.

In case of transactions with related parties carried out by the Parent company or its subsidiaries, the applicable Principles of conduct shall be those defined by the ERG S.p.A. Board of Directors, it being understood in particular that, wherever required by the nature, value or other characteristics of the transaction, the ERG S.p.A. Board of Directors must make use of independent expert opinions regarding the economic conditions and the formal and/or technical correctness of the transaction.

Derogation criteria

The following transactions do not come within the scope of application of the aforesaid general rule and may therefore be carried out without prior examination by or approval from the Parent company's Board of Directors:

- regarding transactions with related parties other than infra-group transactions (and subject to the aforesaid threshold of Euro 0.3 million): those that can be described as typical or ordinary, meaning transactions whose nature or purpose is not unrelated to the company's typical business and whose characteristics and timing do not present any critical aspects; those to be concluded at standard terms and conditions, meaning transactions to be concluded at market values and in any case at the same terms and conditions also applied to third parties;
- regarding the infra-group transactions previously defined (and subject to the thresholds established above): those that can be described as typical or ordinary, meaning transactions whose nature or purpose is not unrelated to the typical business of both companies involved and whose characteristics and timing do not present any critical aspects; those to be concluded at standard terms and conditions, meaning transactions to be concluded at market values and in any case at the same terms and conditions also applied to third parties;
- regarding transactions carried out with third parties (and subject to the thresholds established above): those set up by subsidiaries within the scope of their respective typical businesses (such as, in particular, trading in crude oil and products, the stipulation of processing agreements, the drawing up of forward charter contracts, the purchase/sale of shareholdings in companies operating in the same sector of business or in similar and/or complementary sectors, the purchase/sale of companies or business units carrying on the same business or similar and/or complementary activities, the sale/purchase of immovable and movable

property, the drawing up of supply contracts for the execution of works and services), provided that the characteristics and timing of such transactions do not present new or critical aspects;

- regarding the contracts for the purchase of crude oil and sale and purchase of oil products, the renewals of “term” contracts entered into by ERG Raffinerie Mediterranee with Saudi Aramco and NOC and by ERG Petroli with ENI (in addition to the infra-group term contract between ERG Raffinerie Mediterranee and ERG Petroli), provided that they take place at terms and conditions substantially unchanged with respect to those currently in place.

Disclosure obligations

According to Article 2381 of the Italian Civil Code and Article 150, first paragraph of the Consolidated Law on Finance, the Managing Director of the Parent company must provide such Parent company’s Board of Directors and Board of Statutory Auditors with adequate information regarding transactions which are carried out in application of the aforesaid derogation criteria and which can be defined as significant transactions due to their characteristics and on the basis of the criteria identified in these guidelines.

Where these transactions are initiated by subsidiaries, the administrative bodies of same must promptly make available to the Managing Director of the Parent company all information necessary to allow him to fulfil his disclosure obligations as per the previous paragraph.

Again pursuant to Article 150, first paragraph, of the Consolidated Law on Finance, the directors of the Parent company must report on a timely basis to the Board of Statutory Auditors, according to the procedures laid down by the articles of association and at least once per quarter, regarding the activities performed and the most important economic, financial and equity-related transactions carried out by ERG S.p.A. or its subsidiaries; in particular, they report on any transactions in which they hold an interest either for their own account or on behalf of third parties.

Application of Article 2497-ter of the Italian Civil Code

In the event that the administrative bodies of the subsidiaries, whether or not they have received prior authorisation from the Parent company’s Board of Directors in compliance with these guidelines, resolve to carry out transactions which can in any way be considered influenced by the management and coordination activity performed by the Parent company, as defined in the ERG S.p.A. board resolution dated 18 March 2004, the aforementioned boards, in accordance with Article 2497-ter of the Italian Civil Code, must explain in detail the motives behind the decisions taken and give precise indication as to the reasons and interests evaluation of which affected such decisions.

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