



## **REPORT OF THE BOARD OF DIRECTORS ON THE FIFTH ITEM OF THE ORDINARY SESSION**

### **Election of the members of the Board of Directors.**

Dear Shareholders,

You are requested to elect the members of the Board of Directors.

In this regard, we note that, according to the provisions of article 6.2, letter d) of the corporate Bylaws, the Minister of the Economy and Finance, in agreement with the Minister of Productive Activities (currently the Minister of Economic Development), is vested with the power to appoint a Director who is not entitled to vote (as well as, in the event the latter leaves his office before the end of his term, a substitute).

The other members of the Board of Directors, instead, are elected by a Shareholders' Meeting – pursuant to article 14.3 of the corporate Bylaws – on the basis of slates presented by the Shareholders and by the outgoing Board of Directors, on which the candidates must be numbered progressively.

We inform you in this regard that the outgoing Board of Directors has decided to refrain from presenting a slate of candidates of its own, since, among other things and taking into account the current ownership structure of the Company, it has not noticed any difficulty on the part of the Shareholders in preparing their own candidacies.

With regard to the procedures and deadlines for the preparation, filing, and publication of the slates by the Shareholders, you are reminded that the current legislation and article 14.3 of the corporate Bylaws establish as follows:

- a) the slates, together with the required documentation, must be filed, by the Shareholders, at the Company no later than twenty-five days before the date set for the Shareholder's Meeting during which the members of the Board of

Directors will be elected (i.e. by April 4, 2011). The filing of the slates and of the relevant documentation shall be made by hand delivery at the office of the Department of Corporate Affairs of Enel S.p.A. (Viale Regina Margherita No. 137 – 00198, Rome, from Monday to Friday from 9:00 am to 5:00 pm) or using the specific section of the Company's website ([www.enel.com](http://www.enel.com)) dedicated to the Meeting, or by fax at No. +39 06/83055028. The slates must be made available to the public by the Company at the Company's registered office, at the registered office of Borsa Italiana S.p.A. and on the Company's website at least twenty-one days before the date set for the Shareholders' Meeting (i.e. by April 8, 2011);

- b) each Shareholder may present, or participate in presenting, only one slate and each candidate may be presented on only one slate under pain of ineligibility;
- c) only those Shareholders who, alone or together with other Shareholders, own the minimum percentage of the share capital of the Company established by Consob with regulation (which is currently equal to at least the 0.5% of the share capital) are entitled to present slates;
- d) the ownership of the minimum percentage of the share capital of the Company required to submit the slates is determined according to the shares that are registered in the name of the shareholder on the date on which the slates are filed at the Company. The relevant certificate, released by an authorized intermediary, may be provided also after the filing of the slates but, in any case, no later than twenty-one days before the date of the Meeting (i.e. by April 8, 2011);
- e) the declarations of the individual candidates, in which they accept their candidacies and certify, under their own responsibility, the inexistence of any cause of ineligibility or incompatibility, as well as their satisfaction of the requirements specified by applicable law for their respective offices, must be filed at the Company together with each slate by the same deadline specified above for filing the slates (and therefore by April 4, 2011). With regard to this, you are reminded in particular:
  - that, since the Company controls Enel Factor S.p.A., a company registered in the general list of the financial intermediaries provided by article 106 of Legislative Decree No. 385 of September 1, 1993 (in accordance with the

text currently applicable, pending the implementation of the amendments made by Legislative Decree No. 141 of August 13, 2010) the candidates for the office of the Board of Directors must possess the requisites of honorableness specified by Decree No. 517 of December 30, 1998 of the Minister of the Treasury, the Budget, and Economic Planning for the representatives of entities which participate into the equity of financial intermediaries;

- that, in addition to the foregoing, article 147-*quinquies* of Legislative Decree No. 58 of February 24, 1998 requires that directors of listed companies possess the requisites of honorableness established for the statutory auditors of listed companies, which are currently defined by article 2 of Decree No. 162 of March 30, 2000 of the Ministry of Justice;
- that, according to the provisions of article 14.3, second paragraph, of the corporate Bylaws, each slate must include at least two candidates possessing the requirements of independence established by the law (that is to say, the requirements of independence that apply to the statutory auditors of listed companies, which are defined by article 148, paragraph 3, of Legislative Decree No. 58 of February 24, 1998), distinctly mentioning such candidates and listing one of them first on the slate;
- that according to article 144-*octies* of the Consob Resolution n. 11971 of May 14, 1999 and article 6 of the Self-regulation Code of listed companies, together with the slates, it must be filed at the Company an exhaustive information on the personal and professional characteristics of the candidates which shall be made available to the public by the Company at its registered office, at Borsa Italiana S.p.A.'s registered office and on the Company's website at least twenty-one days before the date set for the Shareholders' Meeting (i.e. by April 8, 2011). The Self-regulation Code of listed companies also recommends that this information is accompanied by a statement as to whether or not the candidates qualify as independent according to article 3 of the aforesaid Code;
- that, with Communication No. DEM/9017893 of February 26, 2009, Consob recommended to those shareholders who present a minority slate for the election of the Board of Directors to file, together with the slate, a statement

*“in which it is certified the lack of relationships of affiliation, also indirectly, as provided in articles 147-ter, paragraph 3, of Legislative Decree No. 58 of February 24, 1998 and in article 144-quinquies of Consob Resolution No. 11971 of May 14, 1999, with those shareholders who own, also on a jointly basis, a controlling or a relative majority stake, where they can be identified on the basis of the filings of the relevant shareholdings required by article 120 of the Consolidated Financial Act or on the basis of the publication of the shareholders’ agreements under article 122 of the same Act”*, specifying the significant relationships, if existing, with those shareholders who control or own a relative majority stake into the Company.

In this respect, please note that, on the basis of the communications made pursuant to article 120 of Legislative Decree No. 58 of February 24, 1998, the Company results to be subject to the *de facto* control of the Ministry of Economics and Finance, which, owing a shareholding equal to the 31.24% of the share capital, has enough voting rights to exercise a dominant influence in the ordinary Shareholders’ Meeting of the Company (it being understood that the aforesaid Ministry is not in any way involved in managing and coordinating the Company, in accordance with the provisions of article 19, paragraph 6 of Decree Law No. 78/2009, converted into Law No. 102/2009, which has clarified that the provisions of the Italian Civil Code regarding the management and coordination of companies do not apply to the Italian government);

- that, implementing the recommendations of article 1.C.3 of the Self-regulation Code of listed companies, on December 19, 2006, the Board of Directors adopted a specific policy regarding the maximum number of offices that its members may hold on the boards of directors and the boards of statutory auditors of other companies of significant size in order to ensure that the persons concerned have sufficient time to effectively perform the role they have on the Board of Directors of Enel S.p.A.. The document containing this policy may be consulted on the Company’s website ([www.enel.com](http://www.enel.com)), in section Group/ Governance/Board of Directors).

With regard to the preparation of the slates, we also note that, in the event Directors leave their office before the end of their term, article 14.5 of the corporate

Bylaws provides for a mechanism of mandatory cooptation, according to which, whenever possible, such Directors are to be replaced by candidates from the same slate who were not elected.

With regard to the mechanism for appointing the Directors elected by a slate vote, article 14.3 of the corporate Bylaws provides:

- that each person entitled to vote may vote for only one slate at the Shareholders' Meeting;
- that seven-tenths of the Directors to be elected (rounding down any fraction to the unit) shall be drawn from the slate that has obtained the most votes cast in the order in which they are listed on the slate;
- that the remaining Directors shall be drawn from the other slates, applying to this end the specific rules stated under letter b) of the aforesaid article 14.3;
- that for the purposes of identifying the Directors to be elected, candidates listed on the slates that have received a number of votes amounting to less than half of the percentage required for presenting the aforesaid slates are not taken into account.

In practice, this mechanism entitles minority shareholders to elect: (i) one Director, if the Board of Directors is composed of three members; (ii) two Directors, if the Board of Directors is composed of from four to six members; or (iii) three Directors, if the Board of Directors is composed of from seven to nine members.

You are reminded that article 147-ter, paragraph 3 of Legislative Decree No. 58 of February 24, 1998 requires that at least one of the members of the Board of Directors is drawn from the minority slate that receives the most votes and is not in any way connected, even indirectly, with the Shareholders who presented or voted for the slate that was first in terms of the number of votes received.

With regard to the foregoing, the Shareholders are requested to vote at the Shareholders' Meeting for one of the slates of candidates for the office of Director prepared, filed, and published in accordance with the provisions discussed above.

In the event no slate of candidates for the office of Director has been presented, pursuant to article 14.3, letter d) of the corporate Bylaws the Shareholders' Meeting will be requested to resolve according to the majorities provided for by the law, so

as to ensure in any case the presence of the necessary number of Directors possessing the requirements of independence established by the law.