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COMMISSION OPINION

of 3.10.2023

**pursuant to Article 3a of Regulation (EC) No 715/2009 - the Kingdom of Netherlands -
Certification of the Nederlandse Aardolie Maatschappij B.V. as gas storage system
operator for UGS Grijpskerk**

(ONLY THE DUTCH TEXT IS AUTHENTIC)

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I. PROCEDURE

On 12 June 2023, the Commission received from the Authority for Consumers and Markets (hereafter: the “ACM”), a notification of the preliminary decision concerning the certification of the Dutch Aardolie Maatschappij B.V as gas storage system operator for UGS Grijpskerk. Upon request from the Commission, the notification was followed by clarifications from ACM. On 5 July 2023 ACM notified the Commission a revised version of the preliminary decision.

Pursuant to Article 3a of Regulation (EC) 715/2009¹ (hereafter "Gas Regulation"), the Commission is required to examine the notified draft decision and to deliver an opinion within 25 working days to the certifying authority as to its compatibility with Article 3a of Gas Regulation.

II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

The Dutch Aardolie Maatschappij B.V (hereafter: the “NAM”) is operating two gas storages: Grijpskerk (23,85 TWh) and Norg (59,3 TWh) which are part of the Groningen structure.

NAM’s core business is exploring and producing oil and gas, both onshore and offshore in the Netherlands. NAM supplies 75% of the natural gas required by Dutch households and businesses.

NAM is the legal person that performs the storage function and is responsible for the management of the UGS Grijpskerk. It has stored gas in UGS Grijpskerk since 1997. It holds a storage permit and is the applicant for the agreement of the UGS Grijpskerk storage plan (to which the Secretary of State for Economic Affairs and Climate Policy has agreed). According to NAM, UGS Grijpskerk plays an essential role in the energy supply at a time when the gas produced and imported on a daily basis cannot meet demand. GasTerra B.V. is the exclusive user of UGS Grijpskerk. NAM and GasTerra signed in 2022 an UGS Service Agreement. The phasing-out of the operations of GasTerra is expected by 31 December 2026.

UGS Grijpskerk is included in the Dutch State’s filling obligations under the Regulation (EU) 2017/1938 on security of gas supply.

¹ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005. OJ L 211, 14.8.2009, p. 36.

Ownership, supply or other commercial relationships

The shares of NAM are 50% owned by Shell Nederland B.V. (which is 100% owned by Shell plc) and 50% by ExxonMobil Holding Company Holland LLC (which is 100% owned by ExxonMobil Corp.) Shell Nederland B.V. is also a statutory director of NAM.

The shareholders of NAM are also shareholders of GasTerra, which is the exclusive user of UGS Grijpskerk. As a result, ACM comes to the conclusion that the shareholders of NAM have an explicit interest in filling and using UGS Grijpskerk and therefore do not pose a risk to the security of gas supply.

ACM has also analysed the way control is exercised over NAM and UGS Grijpskerk in order to identify any potential risk for the security of energy supply or the essential security interests of the European Union or of a Member State.

ACM identifies the persons who in their respective capacities have the power to take final decisions on UGS Grijpskerk and came to the conclusion that no negative incentives for filing UGS Grijpskerk arises from their acts.

UGS Grijpskerk is covered by the Groningen concession, in which EBN B.V. is the legal successor of the State mines, based on the Cooperation Agreement. By the Cooperation Agreement was created the Groningen Maatschap (partnership), in which EBN participates with 40% and NAM with 60% of shares. The management of Maatschap is entrusted to the Board of Governors which draws up for each calendar year the plan for the exploration and extraction of gas and takes decisions regarding the storage of gas in UGS Grijpskerk and selling of gas.

ACM comes to the conclusion that EBN's control over NAM and UGS Grijpskerk does not pose any risk of gas supply for the European Union. The Ministry of Economic Affairs and Climate Policy holds 100% shares in EBN.

Rights and obligations of the Union or of the Kingdom of Netherlands with respect to a third country

ACM notes that neither the Authority, nor NAM are aware of any risks to the security of supply at national, regional or Union level, arising, inter alia, from the Union's rights and obligations towards a third country under international law and the Kingdom of Netherlands in respect to a third country. ACM and NAM are not aware of such rights and obligations that affect the activities of UGS Grijpskerk.

Other specific facts and circumstances

ACM reported no specific facts or circumstances that need to be mentioned in addition to the information already provided above and that could jeopardise the security of gas supply.

Draft decision from the certifying authority

From the above, ACM concludes that NAM may be certified as a storage system operator for the gas storage facility UGS Grijpskerk under Article 3a of the Gas Regulation.

III. COMMENTS

Pursuant to Article 3a of the Gas Regulation, Member States shall ensure that each storage system operator, including any storage system operator controlled by a transmission system operator, is certified in accordance with the procedure laid down in the Gas Regulation, either by the national regulatory authority or by another competent authority designated by the Member State concerned.

In considering the potential implications to the security of supply in the Union, the certifying authority needs to take into consideration a series of risks, as set out in Article 3a (a) – (d) of the Gas Regulation. In particular, any ownership, supply or other commercial relationships with respect to third countries that could negatively affect the incentives and ability to fill underground storage facilities should be exhaustively analysed by the certifying authority.

The draft decision on certification for NAM was granted by ACM. ACM is the national regulatory authority - Authority for Consumers and Markets. By letter of 5 December 2022, the Minister for Climate and Energy requested ACM to assume the certification task referred to in Article 3a of the Gas regulation. Therefore, ACM fulfils the conditions of Article 3a(1) of the Gas Regulation and has the competence to issue the decision on certification.

The Commission shares ACM's opinion that there is no risk of security of gas supply arising from ownership or control of the storage facility UGS Grijpskerk. The Commission takes note of the statements of ACM that UGS Grijpskerk is not subject (directly or indirectly) to any obligation or commitment towards third countries. Moreover, considering the aforementioned about ownership and control of NAM, and taking into account the referred statements of ACM, the Commission has no knowledge of any rights or obligations of the Union or the Kingdom of the Netherlands with respect to a third country that would present a concern in terms of risk to the security of energy supply. According to the information available, the ownership of the sole client of UGS Grijpskerk, GasTerra B.V., does not raise any concerns regarding the security of supply.

Against the background of the information provided in the preliminary decision notified by the ACM as regards the certification of NAM as storage operator for UGS Grijpskerk, after having taken into account the following:

The ownership of NAM and other commercial relationships do not affect negatively the incentives and the ability of NAM to fill the underground gas storage facility UGS Grijpskerk. ACM has verified the ownership and control over NAM and found no evidence of risks to the security of gas supply at national, regional or Union level;

There is no identified risk to the security of supply stemming from obligations or commitments which the Union would have towards third countries;

There is no identified risk to the security of supply stemming from obligations or commitments which the Kingdom of the Netherlands would have towards third countries; and

There are no specific facts and circumstances which would indicate further risks could negatively affect the incentives and the ability of NAM to fill the underground gas storage facility UGS Grijpskerk,

the Commission considers that there is no risk as regards security of gas supply stemming from the ownership of NAM, its obligations towards third countries or other specific facts and circumstances.

IV. CONCLUSION

Pursuant to Article 3a(6) of the Gas Regulation, ACM shall communicate the final certification decision to the Commission.

Pursuant to Article 3a(10) of the Gas Regulation, ACM shall continuously monitor NAM as regards compliance with the certification requirements set out in paragraphs 1 to 4 of Article 3(a). In case ACM acquires any knowledge about a planned change in rights or in influence over NAM that could lead to non-compliance with the requirements of paragraphs 1 to 3 of Article 3(a), it shall open a certification procedure to reassess compliance.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* Member State regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* Member State authorities responsible for the transposition of EU legislation, on the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained therein to be confidential. ACM is invited to inform the Commission within five working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 3.10.2023

For the Commission
Kadri SIMSON
Member of the Commission