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**COMMISSION OPINION**

**of 31.10.2023**

**pursuant to Article 3a of Regulation (EC) No 715/2009 - Republic of Slovakia -  
Certification of POZAGAS a.s. as gas storage system operator**

(ONLY THE SLOVAK TEXT IS AUTHENTIC)

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## **I. PROCEDURE**

On 16 May 2023, the Commission received a notification from the Office for the Regulation of Network Industries of the Republic of Slovakia (hereafter “the Authority”), of the draft decision concerning the certification of POZAGAS a.s. (hereafter “POZAGAS”) as storage system operator for gas.

Pursuant to Article 3a of Regulation (EC) 715/2009<sup>1</sup> (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 the Gas Regulation.

## **II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION**

POZAGAS is the operator of the underground natural gas storage facility Láb 4 (hereafter “Láb 4 UNGSF”) in the Republic of Slovakia.

Láb 4 UNGSF is a complex of eight depleted natural gas fields converted to serve as underground storage. It has the capacity to cover almost 10% of the annual consumption of natural gas in Republic of Slovakia and a working volume of 655 million m<sup>3</sup>. Láb 4 UNGSF has direct connection to the rapidly developing gas hub Virtual Trading Point Austria and it is in the proximity of natural gas transport routes through the Czech Republic and Austria. Láb 4 UNGSF offers the possibility of using, individually or in combination, three different systems (connected networks) to ensure the entry/exit of natural gas to/from the storage, namely the transit system of the Slovak Republic (in the direction of the Czech Republic and/or Ukraine) – Eustream a.s., the distribution system of the Slovak Republic – SPP – Distribúcia a.s., the transit system Austria – Gas Connect Austria GmbH.

The Authority assessed the documents and data submitted by POZAGAS (following letters of request for information No 5737/2023/BA and No 15197/2023/BA) and analysed the storage users for the years 2021 and 2022. It has come to the preliminary conclusion that POZAGAS complies with the provisions laid down in Article 3a of the Gas Regulation and that there aren't any risks to the gas security of supply at national, regional or Union level that would

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<sup>1</sup> 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.

arise from ownership, supply or other commercial relationships of POZAGAS. In its draft decision, the Authority considered the following factors:

- Ownership that could negatively affect the incentives and the ability of POZAGAS to fill the underground gas storage;
- The rights and obligations of the Union with respect to a third country arising under international law, including any agreement concluded with one or more third countries to which the Union is a party and which addresses the issue of the security of energy supply;
- The rights and obligations of the Republic of Slovakia with respect to a third country arising under agreements concluded by the Republic of Slovakia with one or more third countries, in so far as those agreements comply with Union law; or
- Any other specific facts and circumstances of the case.

#### *Ownership and management structure*

The Authority's verification includes a detailed analysis of the ownership and management structure of POZAGAS.

POZAGAS is a joint stock company. Its ownership is shared between NAFTA a.s. (65% in shares) and SPP Infrastruktúra a.s. (35%).

NAFTA a.s. is a public limited company and has the following shareholders: Czech Gas Holding Investment B.V. (40.45 %), SPP Infrastruktúra, a.s. (56.15%), and a number of minority shareholders (more than 4200 natural and legal persons representing 3.40 %). Czech Gas Holding Investment B.V. is a limited liability company, which has a single shareholder, EP Infrastruktúra.

SPP Infrastruktúra is a public limited company with two shareholders: Slovenský Plynárenský Priemysel (SPP) a.s. (51%) and Slovak Gas Holding B.V. (49%).

The Authority identifies as the only "ultimate beneficial owner" one natural person who is not performing a public function in the Slovak Republic. In accordance with the internal rules of the companies owning POZAGAS, and in accordance with the relevant Shareholders' Agreement, the ultimate beneficial owner has the control that indirectly confers him the right to nominate selected members of the bodies of POZAGAS, together with the right to appoint members. The Authority examined this natural person and has not identified any risks to the security of gas supply at national, regional, or Union level that could be linked to the beneficial owner.

According to the Authority's findings, the legal and natural persons directly or indirectly controlling or exercising any right over POZAGAS are not in position to jeopardise the security of energy supply in the Union.

The Authority found that POZAGAS does not operate other storage facility in the Slovak Republic, other Member State of the European Union or in other countries. POZAGAS does not have any shares in other storage companies.

The governance structure of POZAGAS is composed by a Board of Directors as the statutory body, and a Supervisory Board. The Authority stated that neither the members of the Board of

Directors, nor the members of the Supervisory Board pose any risks to the security of gas supply at national, regional or Union level pursuant to Article 3a(3) of the Gas Regulation.

*Rights and obligations of the Union and the Republic of Slovakia with respect to a third country*

The Authority noted that Láb 4 UNGSF is not subject, directly or indirectly, to any obligation or commitment which the Republic of Slovakia would have towards third countries and therefore that there is no risk of security of supply due to potential rights and obligations of the Union with respect to a third country.

*Other specific facts and circumstances*

The Authority reported no specific facts or circumstances that need to be mentioned in addition to the information already provided above and that could pose a risk to the security of supply.

*Draft decision of the certifying authority*

The Authority concluded that the certification procedure, initiated with the opening of the proceedings to POZAGAS on 13 January 2023, may be authorised 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 the certification of POZAGAS was granted by the Authority which is a state administrative body for the regulation of network industries with a nationwide competence. It exercises the competence of the national regulatory authority under the EU energy legislation. Therefore, the Authority fulfils the conditions of Article 3a(1) of the Gas Regulation and has the competence to issue the decision on certification.

The Commission takes note of the Authority's opinion that there is no risk for the security of supply arising from the ownership or control of the storage facility Láb 4 UNGSF and the information provided demonstrating the absence of a conflict of interest. The Commission also takes note of the Authority's statement that POZAGAS is not subject, directly or indirectly, to any obligation or commitment towards third countries. Moreover, considering the aforementioned about ownership and control of POZAGAS, and taking into account the referred statements of the Authority, the Commission has no knowledge of any rights or obligations of the Union or the Republic of Slovakia with respect to a third country that would present a concern in terms of risk to the security of energy supply.

Against the background provided in the preliminary decision notified by the Authority, and after having taken into account that:

- The ownership of POZAGAS and other commercial relationships do not affect negatively the incentives and the ability of POZAGAS to fill the underground gas storage facility. The Authority verified the shareholders and the members of the Board of Directors and the Supervisory Board against the Commercial Register and the other official documents submitted 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 Republic of Slovakia would have towards third countries; and
- There are no specific facts and circumstances which would indicate further risks that could negatively affect the incentives and the ability of POSAGAZ to fill the underground gas storage facility,

the Commission considers that there is no risk as regards security of gas supply stemming from the ownership of POZAGAS, from Republic of Slovakia and Union's obligations towards third countries or from other specific facts and circumstances.

#### **IV. CONCLUSION**

Pursuant to Article 3a(7) of the Gas Regulation, the Authority shall communicate the final decision to the Commission.

Pursuant to Article 3a(10) of the Gas Regulation, the Authority shall continuously monitor POZAGAS as regards compliance with the certification requirements set out in paragraphs 1 to 4 of Article 3a. In case the Authority acquires any knowledge about a planned change in rights or in influence over POZAGAS that could lead to non-compliance with the requirements of paragraphs 1 to 3 of Article 3a, 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 certifying 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. The Authority 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, 31.10.2023

*For the Commission*  
*Kadri SIMSON*  
*Member of the Commission*