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COMMISSION OPINION

of 16.2.2024

**pursuant to Article 3a of Regulation (EC) No 715/2009 - Spain - Certification of
ENAGÁS TRANSPORTE S.A.U. as gas storage system operator for UGS Serrablo,
UGS Gaviota and UGS Yela**

(ONLY THE SPANISH TEXT IS AUTHENTIC)

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I. PROCEDURE

On 3 October 2023, the Commission received from the National Commission for Markets and Competition (hereinafter: the “CNMC”), a notification of the preliminary decision concerning the certification of ENAGÁS TRANSPORTE S.A.U. (hereinafter: “ENAGÁS TRANSPORTE”) as gas storage system operator for three underground storage facilities (hereinafter: “UGS”): UGS Serrablo, UGS Gaviota and UGS Yela.

Pursuant to Article 3a of Regulation (EC) 715/2009¹ (hereinafter "Gas Regulation"), as amended by Regulation (EU) 2022/1032², 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

ENAGÁS TRANSPORTE is a company of Spanish nationality, which owns the main gas transmission network in Spain and is subsidiary of ENAGÁS, S.A. (hereinafter: “ENAGÁS”)³. It carries out the regulated activity of underground gas storage and it owns three operational storage facilities located in Serrablo (Huesca), Gaviota (Bizkaia) and Yela (Guadalajara). The total available storage capacity is 33.348 GWh.

The National Energy Commission (hereinafter: “CNE”) certified ENAGÁS TRANSPORTE as Transmission System Operator (TSO) with ownership unbundling, by resolution of 26 July 2012⁴.

ENAGÁS GTS, S.A.U. (hereinafter: “ENAGÁS GTS”) is the subsidiary of ENAGÁS which performs the functions of the technical system manager and is responsible for the operation and technical management of the transport network, for ensuring the continuity and security of natural gas supply and for the proper coordination between access points, storage, transport and distribution. It is also responsible for allocating the storage capacity necessary for the fulfilment of the obligations by the obliged parties, for the specific purposes of maintaining minimum stocks of natural gas security.

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.

² Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage. OJ L 173, 30.6.2022, p. 17.

³ According to the thirty-first provision of Law 34/1998 on the hydrocarbons sector.

⁴ Issued following Commission’s Opinion C(2012)4171.

CNMC's tasks include, among others, overseeing and, where appropriate, certifying, the separation of transmission, regasification, distribution, storage and supply activities in the gas sector.⁵ Therefore, CNMC is the certifying authority in the meaning of Article 3a (1) of the Gas Regulation.

Ownership, supply, or other commercial relationships

ENAGÁS is the sole shareholder of ENAGÁS TRANSPORTE.

CNMC noted that sectoral legislation lays down legal limitations on the shareholding composition of ENAGÁS. Thus, no natural or legal person may participate, directly or indirectly, in the shareholding of the company with a participation of more than 5% or exercise political rights above 3%, and such shares may not be syndicated for any purpose. For their part, shareholders who carry out activities in the gas sector and those who directly or indirectly hold more than 5% of their share capital may not exercise political rights in excess of 1%. However, those limitations shall not apply to direct or indirect participation in the corporate public sector.

ENAGÁS is listed in the Spanish IBEX35 reference index and has a floating capital of 90 %, with 5 % owned by the Sociedad Estatal de Participaciones Industriales (hereinafter: "SEPI") and PARTLER PARTICIPACIONES, S.L. for the remaining 5 %.

According to public information available on the website of the National Securities Market Commission on 12 May 2023, the following significant shareholders were also included: BANK OF AMERICA CORPORATION (3.614 %); BlackRock INC. (4.022 %) and Mubadala INVESTMENT COMPANY PSJC (3.103 %).

According to the legal provisions, as reflected in its statutes, no natural or legal person may exercise control, directly or indirectly, over ENAGÁS. It results that none of the shareholders of ENAGÁS has the capacity to take or influence decisions regarding the storage activity carried out by ENAGÁS TRANSPORTE. Therefore, they cannot take decisions that may lead to a breach of the filling obligations. SEPI, which is a body governed by public law and is attached to the Ministry of Finance and the Civil Service, would not have any interest to negatively influence ENAGÁS TRANSPORTE in the sense of not filling the underground storage facilities it manages.

CNMC assessed the potential risks referred to in Article 3a of the Gas Regulation in relation to ownership, supply or other business relationships that could adversely affect the incentives and capacity of ENAGÁS TRANSPORTE to fill underground gas storage facilities and came to the conclusion that there are no incentives in relation to the ownership, nor risks that might affect the performance of the underground gas storage activity carried out by ENAGÁS TRANSPORTE and jeopardise the security of gas supply.

CNMC also reviewed the decision-making powers and the activities of the persons exercising control over and management of ENAGÁS TRANSPORTE and ENAGÁS, and found that they don't pose any risks to the security of supply.

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

Referring to correspondence with ENAGÁS TRANSPORTE, CNMC notes that the UGS facilities which ENAGÁS TRANSPORTE owns are not, directly or indirectly, subject to any obligation or commitment that the European Union or Spain has with third countries.

⁵ According to Article 7(3) of Law 3/2013 for setting up the National Commission on Markets and Competition.

CNMC did not identify any risk with respect to the rights and obligations of the Union vis-à-vis a third country under international law, including any agreement concluded with one or more third countries to which the Union is a party, and which address security of energy supply issues. CNMC reached the same conclusion regarding the rights and obligations of the Member State in respect of a third country under agreements concluded by the Member State concerned with one or more third countries.

Other specific facts and circumstances

CNMC 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 supply.

Draft decision from the certifying authority

From the above, CNCM concludes that ENAGÁS TRANSPORTE may be certified as gas storage system operator for UGS Serrablo, UGS Gaviota and UGS Yela.

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 (3) (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 ENAGÁS TRANSPORTE was granted by CNCM which is the certifying authority in the meaning of Article 3a (1) of the Gas Regulation.

The Commission takes note of the statements of CNCM that, to its knowledge, UGS Serrablo, UGS Gaviota and UGS Yela are not subject (directly or indirectly) to any obligation or commitment towards third countries. Moreover, considering the aforementioned about ownership and control of ENAGÁS TRANSPORTE, and taking into account the referred statements of CNCM, the Commission has no knowledge of any rights or obligations of the Union or of Spain with respect to a third country that would affect the above-mentioned storage facilities' activities and present a concern in terms of risk to the security of energy supply.

IV. CONCLUSION

Against the information provided in the preliminary decision notified by the CNCM as regards the certification of ENAGÁS TRANSPORTE as storage system operator for the above-mentioned storage facilities, and after having taken into account the following:

- The ownership and control of ENAGÁS TRANSPORTE and its commercial relationships do not affect negatively the incentives and the ability of ENAGÁS TRANSPORTE to fill the underground gas storage facilities. CNCM verified the

ownership and control over ENAGÁS TRANSPORTE 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 Spain 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 ENAGÁS TRANSPORTE to fill the gas storage facilities UGS Serrablo, UGS Gaviota and UGS Yela,

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

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

Pursuant to Article 3a (10) of the Gas Regulation, CNCM shall continuously monitor ENAGÁS TRANSPORTE as regards compliance with the certification requirements set out in paragraphs 1 to 4 of Article 3a. In case CNCM acquires any knowledge about a planned change in rights or in influence over ENAGÁS TRANSPORTE 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 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. CNCM 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, 16.2.2024

For the Commission
Kadri SIMSON
Member of the Commission