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COMMISSION OPINION

of 10.1.2024

**pursuant to Article 3a of Regulation (EC) No 715/2009 - Romania - Certification of
DEPOGAZ Ploiesti S.R.L. as gas storage system operator for UGS Balaceanca, UGS
Bilciuresti, UGS Ghercec, UGS Sarmisel and UGS Urziceni**

(ONLY THE ROMANIAN TEXT IS AUTHENTIC)

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I. PROCEDURE

On 15 September 2023, the Commission received from the National Energy Regulatory Authority of Romania (hereinafter: “ANRE”), a notification of the preliminary decision concerning the certification of DEPOGAZ Ploiesti S.R.L, subsidiary of S.N.G.N ROMGAZ S.A. (hereinafter: “DEPOGAZ”) as gas storage system operator for UGS Balaceanca, UGS Bilciuresti, UGS Ghercec, UGS Sarmisel and UGS Urziceni.

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

The underground natural gas storage capacity is ensured in Romania through six underground natural gas storage facilities with a total active capacity of 32.991 TWh per storage cycle, i.e. injection capacity of 269.470 GWh/d and extraction capacity of 344.100 GWh/d.

DEPOGAZ was established in 2018 as subsidiary of the National Gas Company ROMGAZ S.A., (hereinafter: “ROMGAZ”), following the separation of the storage activity. ROMGAZ is the sole shareholder.

DEPOGAZ operates five underground natural gas storage facilities with a cumulative activation capacity of 29.836 TWh per cycle or 90.4 % of total storage capacity in Romania. These are: UGS Balaceanca, UGS Bilciuresti, UGS Ghercec, UGS Sarmisel, and UGS Urziceni.

DEPOGAZ deposits serve for: the coverage of consumption peaks and fluctuating demand patterns; the operational recovery of the operating parameters of the transmission system (pressures, flows); the control of deliveries in extreme situations (source stops, accidents, etc.).

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.

DEPOGAZ is an independent operator of the underground natural gas storage system, thus ensuring compliance with the principles and measures laid down in the legislation in force.

The storage activity was separated from ROMGAZ since 1 April 2018 by an amendment to the Licence No 1942/2014 granted by ANRE, in order to change its holder and is carried out within a storage operator, a subsidiary, in which ROMGAZ is a sole shareholder.

By Order No 97/2021, ANRE approved the Regulation establishing the compliance programme and the designation of the compliance officer by natural gas storage operators forming part of a vertically integrated economic operator. The purpose of the Compliance Programme established by DEPOGAZ is to establish complementary rules to ensure the exclusion of any discriminatory behaviour in relations with market participants and to ensure the objective of independence of the company.

The Ministry of Energy designated ANRE as certifying authority for the certification of the storage system operators in Romania by letter of 12 May 2023.

When issuing the draft certification Decision, ANRE took into account, as provided for in details in the approval report, in particular the following aspects: the Compliance Programme of DEPOGAZ, drawn up in accordance with the applicable Regulation adopted by ANRE Order; the report of the designated compliance officer; the implementation of the Compliance Programme (annual report), including the measures ensuring the independence of DEPOGAZ as regards its legal form, organisation and decision making process in relation to the other non-storage activities, and also regarding the independence of the management of the company.

ANRE took note that the conditions are met to mitigate the risks for the security of gas supply, with risks arising mainly from the ownership, commercial relationships that could negatively affect the incentives and capacity of DEPOGAZ to fill the above-mentioned storage facilities. The Ministry of Energy provided a letter stating that no risks affecting the security of gas supply have been identified.

Ownership, supply, or other commercial relationships

According to the information provided by the National Trade Register Office, DEPOGAZ has as sole shareholder ROMGAZ. ROMGAZ is organised as a joint-stock company having as main shareholder the Romanian State through the Ministry of Energy (70%). Since 2013 ROMGAZ is listed at the stock exchange. The Central Depository communicated to ROMGAZ³ that, on 13 October 2023, its shareholders were legal persons (24,57%, with only one legal person with more than 5%), and natural persons (5,41%). In April 2022 ROMGAZ informed its shareholders that it received a voluntary notification due to change in shareholding structure/organigram regarding NN Group N.V. holdings which exceed the

³ Address of ROMGAZ to ANRE of 22 November 2023

threshold of 5%⁴ of the voting rights within S.N.G.N. Romgaz S.A.⁵ NN Group is an international financial services company, active in 11 countries.⁶

ANRE assessed that the shareholder of DEPOGAZ do not pose a risk to security of supply within the European Union. According to ANRE, DEPOGAZ has sufficient decision-making powers, independently of the vertically integrated operator, with respect to the operation, maintenance and development of the storage system. The compliance with the requirements to ensure a level playing field for all potential users of the system regarding access to and contracting of storage capacities were also checked.

ANRE concluded that DEPOGAZ' commercial relations show no negative effect on the filling, use or extraction of gas from the above-mentioned storage facilities and therefore do not pose a risk to the security of gas supply.

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

Following the letter received from the Ministry of Energy (No 13833/08.06.2023), ANRE concludes that there are no 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 rights and obligations of Romania in respect to a third country.

Other specific facts and circumstances

ANRE 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, ANRE concludes that DEPOGAZ may be certified as a storage system operator for the above-mentioned gas storage facilities.

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 DEPOGAZ was granted by ANRE. ANRE is the national regulatory authority. By letter of 13099 of 12 May 2023, the Ministry for Energy required ANRE to assume the certification task referred to in Article 3a of the Gas

⁴ 5,36%

⁵ <https://www.londonstockexchange.com/news-article/SNGR/voluntary-notification-holdings-over-5-nn-group/15407956> HYPERLINK "https://www.londonstockexchange.com/news-article/SNGR/voluntary-notification-holdings-over-5-nn-group/15407956"

⁶ <https://www.nn-group.com/home.htm>

Regulation. Therefore, ANRE fulfils the conditions of Article 3a (1) of the Gas Regulation and has the competence to issue the decision on certification.

The Commission shares ANRE's opinion that there is no risk of security of gas supply arising from ownership or control of the five storage facilities. The Commission takes note of the statements of ANRE that, to its knowledge, the above-mentioned storage facilities are not subject (directly or indirectly) to any obligation or commitment towards third countries. Moreover, considering the aforementioned about ownership and control of DEPOGAZ, and taking into account the referred statements of the Ministry of Energy and of ANRE, the Commission has no knowledge of any rights or obligations of the Union or of Romania with respect to a third country that would affect the respective gas storages activities and present a concern in terms of risk to the security of energy supply. No risk for the filling, use, extraction and/or maintenance of the gas storages was identified.

IV. CONCLUSION

Against the information provided in the draft decision notified by ANRE as regards the certification of DEPOGAZ as storage operator, after having taken into account the following:

- The ownership and control of DEPOGAZ and its commercial relationships do not affect negatively the incentives and the ability of DEPOGAZ to fill the underground gas storage facilities. ANRE has verified the ownership and control over DEPOGAZ 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 Romania 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 DEPOGAZ to fill the above-mentioned underground gas storage facilities,

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

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

Pursuant to Article 3a (10) of the Gas Regulation, ANRE shall continuously monitor DEPOGAZ as regards compliance with the certification requirements set out in paragraphs 1 to 4 of Article 3(a). In case ANRE acquires any knowledge about a planned change in rights or in influence over DEPOGAZ 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. ANRE 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, 10.1.2024

For the Commission
Kadri SIMSON
Member of the Commission