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**COMMISSION OPINION**

**of 15.11.2023**

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

(ONLY THE DUTCH TEXT IS AUTHENTIC)

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## I. PROCEDURE

On 31 August 2023, the Commission received from the Authority for Consumers and Markets (hereafter: the “ACM”), a notification of the preliminary decision concerning the certification of EnergyStock B.V. as gas storage system operator for UGS Zuidwending.

Pursuant to Article 3a of Regulation (EC) 715/2009<sup>1</sup> (hereafter "Gas Regulation"), as amended by Regulation (EU) 2022/1032<sup>2</sup>, 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

In UGS Zuidwending gas has been stored in salt caverns in Veendam since 2011. EnergyStock operates a fast cycle or multi-cycle gas storage. The gas storage is not used to absorb seasonal fluctuations in gas consumption and demand, but to absorb short-term differences between supply and demand so that network users can manage their (daily) balance positions. In that context, it is necessary that gas can be produced quickly from UGS Zuidwending, but also that UGS Zuidwending can be filled quickly. The gas storage facility is not used for production purposes or exclusively by the transmission system operator to carry out its statutory tasks.

EnergyStock holds (together with other entities) the storage permit for UGS Zuidwending.<sup>3</sup> In addition, the *Operational Service Level Agreement* between EnergyStock and N.V. Nederlandse Gasunie (hereinafter: “Gasunie”) shows that EnergyStock has commercial management over UGS Zuidwending, while Gasunie has technical management over UGS Zuidwending. EnergyStock performs the storage function of UGS Zuidwending and is responsible for the management of UGS Zuidwending.

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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.

<sup>2</sup> 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.

<sup>3</sup> The other holders of the storage permit are: Akzo Nobel Salt B.V., N.V. Nederlandse Gasunie and Nuon Zuidwending B.V. ACM/IN/777653, transfer storage permit – ET EM 9199857.

### *Ownership, supply, or other commercial relationships*

EnergyStock has commercial management over UGS Zuidwending and rents land for this purpose or owns land to operate UGS Zuidwending.

The shares of EnergyStock are 100% owned by Gasunie. The Dutch State, represented by the Ministry of Finance, holds 100% of the shares in Gasunie. ACM concluded that the shareholders of EnergyStock do not pose a risk to security of supply within the European Union.

ACM assessed the activities of the persons exercising control over UGS Zuidwending and concluded that they pose no risks to the security of supply.

By maintaining a large and diverse customer base, no user of UGS Zuidwending has currently such a large share to negatively affect the filling, use, extraction and/or maintenance of UGS Zuidwending. Therefore, ACM does not see any reason that the users of UGS Zuidwending pose a risk to the security of supply.

Therefore, ACM concludes that EnergyStock's commercial relations show no negative effect on the filling, use or extraction of gas from UGS Zuidwending and therefore do not pose a risk to the security of gas supply.

### *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 EnergyStock 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 rights and obligations of the Kingdom of Netherlands in respect to a third country. ACM and EnergyStock are not aware of such rights and obligations that affect the activities of UGS Zuidwending.

### *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 EnergyStock may be certified as a storage system operator for the gas storage facility UGS Zuidwending 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 EnergyStock 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 Zuidwending. The Commission takes note of the statements of ACM that, to its knowledge, UGS Zuidwending is not subject (directly or indirectly) to any obligation or commitment towards third countries. Moreover, considering the aforementioned about ownership and control of EnergyStock, 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 affect UGS Zuidwending's activities and present a concern in terms of risk to the security of energy supply. UGS Zuidwending has a large and diverse customer base, and no risk for the filling, use, extraction and/or maintenance of UGS Zuidwending was identified.

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

- The ownership and control of EnergyStock and its commercial relationships do not affect negatively the incentives and the ability of EnergyStock to fill the underground gas storage facility UGS Zuidwending. ACM has verified the ownership and control over EnergyStock 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 EnergyStock to fill the underground gas storage facility UGS Zuidwending,

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

#### **IV. CONCLUSION**

Pursuant to Article 3a(7) 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 EnergyStock 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 EnergyStock 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, 15.11.2023

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