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COMMISSION OPINION

of 26.5.2023

**pursuant to Article 3a of Regulation (EC) No 715/2009 - Croatia - Certification of
Podzemno Skladište Plina Ltd. as gas storage system operator**

(Only the Croatian text is authentic)

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I. PROCEDURE

On 14 February 2023, the Commission received a notification from the Croatian Energy Regulatory Agency (Hrvatska Energetska Regulatorna Agencija, hereafter “HERA”)¹, of a preliminary decision concerning the certification of Podzemno Skladište Plina Ltd. (hereafter “PSP”) as storage system operator for gas.

Pursuant to Article 3a of Regulation (EC) 715/2009² (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 SITUATION OF THE STORAGE SYSTEM OPERATOR

PSP is the only gas storage system operator in Croatia within the meaning of the Gas Market Act. PSP carries out the energy activity of gas storage under the Energy Activity Permit No 080679079-0424/08/1/13-11/18 of 21 January 2019, issued by HERA.

PSP sole activity is the storage of gas: injection of gas into the storage facility, the storage of gas in the operating volume of the storage facility and the withdrawal of gas from storage facilities, including ancillary services.

The storage of natural gas by of PSP is carried out as a regulated energy activity, available to energy operators at the regulated price adopted by HERA and under regulated access conditions.

The procedure for reservation and use of storage capacity, the rights and duties of storage operators and users and other essential activities are governed by the Rules for the use of storage facilities adopted by PSP with the agreement of HERA.

Therefore, governmental interventions are possible. For instance, on 3 June 2022 the Croatian Government adopted a Decision on the security of gas stocks by which it ordered a public limited company³ to secure gas volumes of 270 830 000 m³ and to inject the amount of gas in question into the storage facility.

¹ Ares(2023) 1095831

² 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.

³ Hrvatska elektroprivreda

PSP is required to report to the Ministry on filling levels during the charging season on a monthly basis. In the event that the gas storage facility is not filled with the appropriate dynamics, PSP is obliged to notify the Ministry thereof, and to propose to initiate a procedure for the transfer of unused capacity and a voluntary transfer of the storage facilities to users of the underground storage.

PSP owns and operates the Okoli storage facility which is intended to balance the gas system through seasonal injection and withdrawal cycles during the storage period (starting at 6 p.m. on 1 April of the current year and running until 6 p.m. on 1 April of the following year).

The duration of each cycle is determined by the Rules on the use of storage facilities, such that the injection cycle runs from 1 April to 30 September of the current storage year (± 30 days) and the withdrawal cycle from 1 October to 31 March of the current storage year (± 30 days). At the end of each injection and withdrawal cycle, the required storage time shall be provided and hydrodynamic measurements shall be made at certain wells.

According to PSP's overview of stored quantities of gas, on 1 November 2022 the working volume of Okoli storage facility was 4,772475 TWh-GCV, with 97% occupancy.

Ownership, supply or other commercial relationships

The owner of PSP is Plinacro d.o.o, a limited liability company for the transport of natural gas (hereinafter "Plinacro") which is entirely owned by the Republic of Croatia.

On 30 January 2009, Plinacro acquired, with the consent of the Croatian Government, the ownership of PSP. By acquiring ownership, Plinacro took over the management of the PSP, thereby fully decoupling the energy activities of transporting and storage of gas from the energy activities of gas production and trading, in accordance with the requirements of independence laid down in the Gas Market Act.

Pursuant to the relevant provisions of the Companies Act and in accordance with the founding declarations, the management and control bodies of SPP are the Council of Administration, the Assembly and the Supervisory Committee.

The conditions of independence of each member of the management of PSP are established pursuant to the relevant provisions of the Companies Act and in accordance with the founding declarations, and they are verified. The members do not act at the same time as a member of the supervisory board or in the management of other energy entities engaged in energy production and/or trading and/or supply of electricity and/or gas.

PSP has contracted capacities with a limited number of entities. HERA has not found that those commercial relations could adversely affect the capacity of the storage system operator to fill the gas storage facility.

HERA identified that PSP has no ownership/business interests in other companies.

HERA is of the opinion that there is no risk of security of gas supply arising from ownership or control of the storage facility.

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

On 12 January 2023 HERA requested the Ministry of Economy and Sustainable Development, as the authority responsible for monitoring security of supply issues in the Republic of Croatia under the Gas Market Act, to inform HERA about the existence of rights and obligations under Article 3a(3)(b) and (c) of Regulation (EU) 2022/1032 and, if they exist, to assess the potential impact of such rights and obligations on the risk to security of energy supply at regional or Union level, including the risk that could negatively affect the storage system operator underground PSP to fill the gas storage facility.

On 24 January 2023, the Ministry informed HERA that Croatia currently has no international agreements with third countries, nor is it planned to sign gas storage contracts with non-EU countries. Consequently, the Ministry expressed the view that there were no rights and obligations with regard to third countries that PSP could have.

Other specific facts and circumstances

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

III. PRELIMINARY DECISION OF THE NATIONAL REGULATORY AUTHORITY

HERA has come to the preliminary conclusion that PSP complies with the provisions laid down in Article 3a of the Gas Regulation and that the risk to gas security of supply at national, regional or Union level that would arise from ownership, supply or other commercial relationships of PSP is non-existent. In its preliminary decision HERA considered the following factors:

- The ownership that could negatively affect the incentives and the ability of PSP to fill the underground gas storage facility;
- 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 Member States concerned with respect to a third country arising under agreements concluded by the Member States concerned with one or more third countries, in so far as those agreements comply with Union law;
- Any specific facts and circumstances that could negatively affect the incentives and the ability of PSP to fill the underground gas storage facility.

Ownership, supply or other commercial relationships

HERA considers that the risk to the security of gas supply at national, regional or Union level that would arise from the ownership, supply or other commercial relationships of PSP is virtually non-existent.

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

HERA notes citing the exchange of letters with the Ministry of Economy and Sustainable Development that PSP is not subject (directly or indirectly) to any obligation or commitment

which Croatia would have towards third countries and did not report any 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

HERA reports no specific facts or circumstances that need to be mentioned in addition to the information already provided above that pose a risk to the security of gas supply.

IV. 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 Commission shares HERA's opinion that there is no risk of security of gas supply arising from ownership or control of the storage facility. The Commission takes note of the statements of the Croatian Ministry of Economy and Sustainable Development and of HERA that PSP is not subject (directly or indirectly) to any obligation or commitment which Croatia would have towards third countries. Moreover, considering the aforementioned about ownership and control of PSP, and taking into account the referred statements of the Croatian Ministry of Economy and Sustainable Development and of HERA, the Commission has no knowledge of any rights or obligations of the Union or Croatia with respect to a third country that would present a concern in terms of risk to the security of energy supply.

Against the background of the information provided in the preliminary decision notified by HERA as regards the certification of PSP, after having taken into account the following:

- The ownership of PSP and other commercial relationships do not affect negatively the incentives and the ability of PSP to fill the underground gas storage facility. The only shareholder is Pinalcro, owned entirely by the Croatian State;
- There is no risk of security of supply stemming from obligation or commitment which the Union would have towards third countries;
- There is no risk of security of supply stemming from obligation or commitment which Croatia would have towards third countries; and
- That there are no specific facts and circumstances which would indicate further risks could negatively affect the incentives and the ability of PSP 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 PSP, its obligations towards third countries or other specific facts and circumstances.

V. CONCLUSION

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

Pursuant to Article 3a(10) of the Gas Regulation, HERA shall continuously monitor PSP as regards compliance with the certification requirements set out in paragraphs 1 to 4 of Article 3(a). In case HERA has knowledge that a planned change in rights or in influence over PSP 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. HERA 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, 26.5.2023

For the Commission
Kadri SIMSON
Member of the Commission