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COMMISSION OPINION

of 10.7.2024

**pursuant to Article 3a of Regulation (EC) No 715/2009 - Latvia - Certification of
Conexus Baltic Grid as gas storage system operator for UGS Inčukalns**

(ONLY THE LATVIAN TEXT IS AUTHENTIC)

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I. PROCEDURE

On 29 November 2023, the Commission received from the Public Utilities Commission of Latvia (hereinafter: the “Regulator”), a notification of the draft decision concerning the certification of the public limited company Conexus Baltic Grid (hereinafter: “AS Conexus Baltic Grid”) as gas storage system operator for the underground gas storage facility Inčukalns (hereafter: “UGS Inčukalns”).

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 the Gas Regulation.

II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

According to the notified draft decision, AS Conexus Baltic Grid operates the Latvian gas transmission system and the UGS Inčukalns. The company was set up in 2016, when the vertically integrated gas undertaking JSC “Latvijas Gāze” was reorganised into two separate structural units.

By Decision no 112/2018, the Regulator certified AS Conexus Baltic Grid as the single natural gas transmission and storage system operator in accordance with the ownership unbundling model pursuant to Article 9 of Directive 2009/73/EC (hereinafter: “Gas Directive”)³. The Regulator approved AS Conexus Baltic Grid as natural gas transmission system operator under several conditions in order to comply with the independence requirements and the absence of conflicts of interest, as defined by the Gas Directive and the Energy Law by which Latvia transposed the Gas Directive.⁴ The Commission adopted, on the draft certification decision, the Opinion C (2018) 5060 pursuant to Article 3(1) of the Gas Regulation and Article 10(6) of Directive 2009/73/EC.⁵

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 Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC. OJ L 211, 14.08.2009, p. 94.

⁴ https://www.sprk.gov.lv/sites/default/files/cmaa_files/LemumsN112D28092018.pdf

⁵ https://energy.ec.europa.eu/system/files/2018-08/2018_141_lv_en_0.pdf

UGS Inčukalns is the only underground gas storage facility in the Baltic region. Pursuant to the Energy Law⁶, energy supply facilities of strategic importance (the underground part of the underground gas storage facilities) must be maintained in State property.

The infrastructure (buildings and engineering works) of Inčukalns is owned by AS Conexus Baltic Grid.

The Inčukalns UGS technological project foresees a maximum storage potential of 24.219 TWh of active natural gas, while the technical capacity for the 2023/2024 storage cycle is 22.6 TWh. The capacity available for storage is offered to system users for reservation in capacity auctions and allocated only in accordance with Regulator's decision, so that all the Inčukalns UGS capacity allocated to users of the system is also used to store stocks of system users.⁷ UGS Inčukalns is available to store gas for all Baltic States and Finland. AS Conexus Baltic Grid provides gas storage services to the Inčukalns UGS in accordance with the licence granted by the Regulator.⁸

A single market for natural gas, with the participation of three countries, started on 1 January 2020. It is originally a single entry/exit tariff area with two balancing zones, Finland and the single Estonia-Latvia balancing zone.

The supply of natural gas from the Russian Federation is prohibited from 1 January 2023. AS Conexus Baltic Grid, in cooperation with the Estonian transmission system operator, has drawn up a procedure for ensuring the prohibition of the supply of natural gas from the Russian Federation. This procedure was aligned with a Regulator Decision⁹ on the harmonisation of common rules for the use of the natural gas transmission system and provides that natural gas originating in a third country can only be transported to a third country for the purpose of transit through the uniform Estonian-Latvia balancing zone. Natural gas does not reach UGS Inčukalns but is transported immediately through the natural gas transmission system of AS Conexus Baltic Grid to the entry-exit point of Kiemen. AS Conexus Baltic Grid is regularly assessing whether any of the conditions referred to in Regulation No 833/2014 concerning restrictive measures in view of Russian Federation's actions destabilising the situation in Ukraine¹⁰ are met.

Ownership, supply, or other commercial relationships

The notified draft decision describes the shareholders of AS Conexus Baltic Grid as follows: the joint stock company AS Augstsprieguma tīkls (68,46%), MM Infrastructure Investments Europe Ltd. (29,06%), and other shareholders, natural and legal persons (2, 48%).

AS Augstsprieguma tīkls is an independent transmission system operator in Latvia, providing electric power transmission network services and ensuring the balancing and stability within the transmission network. Its shares are owned by the Republic of Latvia and held by the Ministry of Finance. In February 2023 the Ministry of Climate and Energy has been designated as shareholder by Government Regulation.¹¹

MM Infrastructure Investments Europe Ltd. (hereinafter: "MMIIE") is a company registered in the United Kingdom since 2019. MMIIE's is entirely owned by MM Capital

⁶ Article 20.

⁷ Operational data on the filling of the Inčukalns UGS are available on the AS Conexus Baltic Grid website- <https://www.conexus.lv/incukalna-pgk-sezonas-dati>.

⁸ No E31002.

⁹ No 18 of 2 March 2023.

¹⁰ Article 5p (1).

¹¹ Cabinet Regulation No 63 of 14 February 2023, amending Cabinet Regulation No 817 of 20 December 2022.

Infrastructure Fund I, L.P. (hereinafter: “MMCIF”). [REDACTED]
MMCIF is controlled by its general partner, MM Capital Partners Co., Ltd. (hereinafter: “MMCP”), established in Japan. [REDACTED]

MMCP’s main shareholder (90 %) is Marubeni Corporation, established in Japan, while the remaining shares of MMCP are held by Mizuho Bank, Ltd. (5 %) and Asset Management One Co., Ltd. (5 %). Marubeni Corporation operates as a holding company whose main business is the import and export of goods and services. Its shares are listed on the Tokyo Stock Exchange. The largest shareholders of Marubeni Corporation above 5 % threshold are: the Master Trust Bank of Japan, Ltd. (8.33 %) and Japan Trustee Services Bank Ltd. (6.35 %). [REDACTED]

From the information provided by AS Conexus Baltic Grid, the Regulator concludes that MMIEL is indirectly controlled and managed by Marubeni Corporation, established in Japan. According to publicly available information,¹² Marubeni Corporation operates in 68 countries worldwide and covers a wide range of business activities. Marubeni Corporation is a conglomerate that invests in information technology, real estate transactions, forest products, food, chemicals, minerals, finance, infrastructure, energy, construction, etc. Marubeni Corporation is the direct and indirect holder of shares in economic operators active in the production or sale of natural gas or electricity. The Regulator concludes that those operators are active in the electricity and natural gas markets, which are geographically separate from those in which AS Conexus Baltic Grid operates.

The Regulator notes that, given the size of its shareholding in AS Conexus Baltic Grid, MMIEL does not exercise decisive influence over AS Conexus Baltic Grid.

Regarding the management of AS Conexus Baltic Grid, the Regulator notes that the governing bodies are the shareholder’s meeting, board and board of directors. The Regulator explains in detail the applicable rules regarding voting rights, and prevention of conflicts of interest.

Following its in-depth assessment, and in conformity with Article 3a of the Gas Regulation, the Regulator concludes that it hasn’t identified any risk to the security of energy supply that might arise from the ownership, supply or other commercial relationships of AS Conexus Baltic Grid at national, regional or European Union level, which could have a negative impact on the storage system operator’s motivation and ability to fill UGS Inčukalns.

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

In its submission to the Regulator, AS Conexus Baltic Grid declares that there are no security of supply risks with regard to the UGS Inčukalns that could result from commitments entered into by the European Union or Latvia towards third countries.

The Regulator declares that it does not have knowledge, based on the documents and information as its disposal, that UGS Inčukalns is subject to the rights and obligations of Latvia or of the European Union vis-à-vis a third country under international law, including

¹² <https://www.marubeni.com/en>.

any agreement concluded with one or more third countries to which the European Union is a party, and which addresses the issue of security of energy supply.

Other specific facts and circumstances

In the light of Article 3a(3)(d) of Regulation 715/2009, AS Conexus Baltic Grid notes also that there are no specific facts or circumstances indicating risks that could negatively affect AS Conexus Baltic Grid's motivation and ability to fill the capacity of the Inčukalns UGS. The Regulator therefore decides that there are 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, the Regulator concludes that AS Conexus Baltic Grid fulfils the conditions for being certified as gas storage system operator.

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 paragraph 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 AS Conexus Baltic Grid as gas storage operator was made by the Regulator which is the certifying authority in the meaning of Article 3a (1) of the Gas Regulation.

After assessing the documentation accompanying the draft certification decision and the accompanying documentation received from the Regulator, the Commission shares the Regulator's opinion that there is no indication of existing risks for the security of gas supply arising from the ownership or control of AS Conexus Baltic Grid and of UGS Inčukalns. The Commission takes note of the statements of AS Conexus Baltic Grid and of the Regulator that UGS Inčukalns is not subject (directly or indirectly) to any obligation or commitment towards third countries. The Commission has no knowledge of any rights or obligations of the Union or of Latvia concerning UGS Inčukalns with respect to a third country that would 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 Regulator as regards the certification of AS Conexus Baltic Grid as storage operator for UGS Inčukalns, and after having taken into account the following:

- The ownership and control of AS Conexus Baltic Grid and its commercial relationships do not affect negatively the incentives and the ability of AS Conexus Baltic Grid to fill UGS Inčukalns. The Regulator has verified the ownership and control over AS Conexus Baltic Grid 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 Latvia 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 AS Conexus Baltic Grid to fill the gas storage facility UGS Inčukalns,

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

Pursuant to Article 3a (7) of the Gas Regulation, the Regulator shall issue the certification decision within 25 working days of receipt of the Commission's opinion. The Commission welcomes the communication of the certification decision by the Regulator.

Pursuant to Article 3a (10) of the Gas Regulation, the Regulator shall continuously monitor AS Conexus Baltic Grid as regards compliance with the certification requirements set out in paragraphs 1 to 4 of Article 3a. In case the Regulator acquires any knowledge about a planned change in rights or in influence over AS Conexus Baltic Grid that could lead to non-compliance with the requirements of Article 3a (1)– (3), 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. The Regulator 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, 10.7.2024

For the Commission
Kadri SIMSON
Member of the Commission