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**COMMISSION DECISION**

**of 25.11.2020**

**on the exemption of the Alexandroupolis Independent Natural Gas System LNG  
Terminal from the requirements regarding third party access and tariff regulation**

(Only the Greek version is authentic)

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## on the exemption of the Alexandroupolis Independent Natural Gas System LNG Terminal from the requirements regarding third party access and tariff regulation

(Only the Greek version is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ("Directive 2009/73/EC")<sup>1</sup>, and in particular Article 36 thereof,

Whereas:

### 1. BACKGROUND

- (1) Alexandroupolis Independent Natural Gas System (hereafter 'Alexandroupolis INGS') is a planned LNG terminal in Greece (EL) with an annual send out capacity of 5.5 billion cubic metres per year (hereafter 'bcm/yr'), equivalent to 66.3 TWh/a<sup>2</sup>. Alexandroupolis INGS is owned by Gastrade Societe Anonyme Construction and technical company of natural gas (hereafter 'Gastrade'). Current shareholders of Gastrade are Ms. Asimina-Eleni Copelouzou (60%), Gaslog Cyprus Development Limited (20%) and Public Gas Corporation S.A. (DEPA S.A.) (20%).

### 2. PROCEDURE

- (2) On 26 June 2018 updated by a supplementary application on 5 May 2020, Gastrade requested an exemption from unbundling, third-party access and tariffication based on Article 36 of Directive 2009/73/EC for a duration of at least 25 years from start of commercial operations.
- (3) A market test took place in two phases in 2018 and 2020. The details and results of the test are described in chapter 5.2. below.
- (4) Following the end of the market test on 24 March 2020, the Greek Energy Regulator, Ρυθμιστική Αρχή Ενέργειας (PAE)/Regulatory Authority for Energy (RAE), assessed the request and asked Gastrade to update its application. Finally, on 17 September 2020, RAE adopted its decision to approve the request for exemption under certain conditions set therein and notified this decision to the European Commission on 25 September 2020 (hereafter 'RAE decision').

### 3. DESCRIPTION OF THE PROJECT

- (5) The Alexandroupolis INGS project is a floating LNG Terminal in Northern Greece, in the area of Alexandroupolis. It comprises an offshore floating unit for the reception,

<sup>1</sup> OJ L 211, 14.09.2009, p. 94.

<sup>2</sup> For the conversion to TWh/year, a calorific value of 12.05kWh/m<sup>3</sup> was used.

storage and re-gasification of LNG stationed at a distance of approximately 10 kilometers from the shore (the FSRU), permanent offshore installations, and a system of a subsea and an onshore gas transmission pipeline (the Pipeline). It will have an LNG storage capacity of 150 000 to 170 000 cubic meters, equivalent to 630 000 cubic meters per hour (5.5 bcm/year) and a peak technical regasification and send-out capacity of 8.3 bcm/year.

- (6) The subsea and onshore sections of the gas transmission Pipeline of 24 km and 4 km respectively will transmit the gas from the floating unit to the National Natural Gas System of Greece ('NNGS'). The connection point of the pipeline will be the "Kipi-Komotini" branch of the NNGS, at a new entry point from which the natural gas from the floating unit will be transmitted to the NNGS.
- (7) In 2018 Gastrade SA applied to the national natural gas transition system operator DESFA an application for reservation of transmission capacity, requesting the creation of the new entry point with a capacity of 21.6 mNm<sup>3</sup>/d, of which 10.7 mNm<sup>3</sup>/d will be transmitted to Bulgaria via the IGB pipeline, 1.9 mNm<sup>3</sup>/d to be consumed in the NNGS part east of the Komotini node, while the remaining 9.0 mNm<sup>3</sup>/d will be directed to the Greek market, as allocated by the applicant. Based on the assessment of DESFA as foreseen in the NNGS 2020-2029 Ten Year Network Development Plan (TYNDP), Gastrade's request could not be fully accommodated. Several upgrades are necessary for this to take place. Other connections may take place in the future to transmit natural gas to other systems as the Trans Adriatic Pipeline (TAP) currently under construction.
- (8) The construction of the Alexandroupolis INGS is foreseen to start in the first quarter of 2021 and commercial operation as of 1 January 2023.

#### **4. THE NOTIFIED EXEMPTION DECISION**

- (9) RAE sets out in an annex to this decision the conditions for the exemption followed by a thorough analysis of the criteria for such an exemption taking into account Gastrade's application and the results of the market test.
- (10) RAE's decision grants a derogation from regulated third party access and tariff regulation for the Alexandroupolis INGS for 15 and 25 years respectively from start of commercial operation, subject to conditions. Regarding the request for an exemption from the unbundling rules, RAE does not assess the request as ownership unbundling requirements of Directive 2009/73/EC are not applicable to LNG system operators.
- (11) Regarding the exemption from third party access, the exemption covers only the part of the capacity that was booked through the market test<sup>3</sup> for a period of 15 years from the commercial operation and under following obligations:
  - Obligation to abide to the provisions of Regulation (EC) 715/2009<sup>4</sup>;
  - Obligation to issue a Terminal Access Code after approval by RAE with operational rules for access and use of the terminal including rules on capacity allocation and products; submission has to take place at the latest 12 months before commercial operation;

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<sup>3</sup> RAE decision, p. 60.

<sup>4</sup> Specifically Articles 15, 17, 19, 20 and 22 thereof, that are not in conflict with the exemption decision.

- Gastrade has to publish certain technical information about the terminal which does not entail company’s business secrets;
  - Obligation to offer on a regular basis the remaining available capacity through market- based arrangements, indicatively auctions or open season;
  - Any costs incurred by DESFA because of the operation of the terminal shall be borne by Gastrade.
- (12) Regarding the exemption from the tariffication rules, the exemption is granted for 25 years and for the total regasification capacity of the Alexandroupolis INGS under certain conditions. At the latest 12 months before the start of the commercial operation, Gastrade has to submit to RAE the tariff code (methodology) for the tariff of the Alexandroupolis INGS which should be stable for the entire period of the exemption. The tariff needs to be the same for the exempted and non-exempted part of the capacity. Further conditions include:
- [BUSINESS SECRET]
  - Gastrade has to submit a tariff code for approval to RAE, which shall be accompanied by a reproducible and parameterized tariff model that analyses the tariff methodology as well as the profit- sharing mechanism.
  - Gastrade has to define a bundled price that will reflect all services offered to the terminal users up to the delivery of natural gas at the entry point of the downstream transmission system.
  - Multipliers may be applied for the calculation of the tariff of short- term capacity products that shall not result in arbitrarily higher tariffs for these products.
  - Gastrade shall submit to RAE yearly information on its revenues enabling monitoring that the conditions are kept.
  - The tariff code shall be published on the company’s website before the date of any offer of capacity takes place.
- (13) In view of the Commission, RAE’s decision including its annex together will form the basis for the Commission to conduct its analysis on the exemption. Importantly, RAE’s decision sets out conditions that closely bind the exemption to certain deliverables from Gastrade.
- (14) RAE foresees that it can amend or revoke its exemption decision in case Gastrade does not comply with the requirements defined therein. Also, Gastrade has to take certain steps to prevent the establishment of a dominant position or to strengthen an existing dominant position in the Greek and Bulgarian gas markets.

## **5. COMMISSION'S ASSESSMENT OF THE EXEMPTION CRITERIA OF ARTICLE 36 OF DIRECTIVE 2009/73/EC**

### **5.1 General considerations**

- (15) Based on its assessment of the criteria listed in Article 36(1) of Directive 2009/73/EC and pursuant to Article 36(9) of that Directive, the Commission may decide to require the regulatory authority to amend or withdraw their decision to grant an exemption.
- (16) In accordance with Article 36(9) of Directive 2009/73/EC the Commission's approval of an exemption decision ceases to have effect two (in the event construction is not started) or five years (in the event operation has not started) after its adoption unless the Commission decides that any delay is due to major obstacles beyond control of the person to whom the exemption has been granted.
- (17) Alexandroupolis INGS is envisaged to start operations in the first quarter of 2023. Consequently, construction needs to start before and is planned to commence in the first quarter of 2021 after the final investment decision is taken<sup>5</sup>.

## 5.2 The market test and congestion management rules

- (18) Article 36(6) of Directive 2009/73/EC reads as follows:

*"Before granting an exemption, the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in points (a), (b) and (e) of paragraph 1, the regulatory authority shall take into account the results of that capacity allocation procedure."*

- (19) The purpose of that test is to evaluate the demand for capacity in the project from third parties with the aim to assess the likelihood that capacity finds buyers and to evaluate the appropriate size of the project. Alexandroupolis INGS conducted a first phase of the market test (expression of interest) from 30 October to 31 December 2018<sup>6</sup>. In total 20 companies requested capacity for up to 25 years in an aggregate amount of [BUSINESS SECRET]. The binding market test was launched 10 January 2020. Upon a request by Gastrade to extend the market test, RAE approved a prolongation. The binding market test ended 24 March 2020. The final allocation is shown in the table below<sup>7</sup>. [BUSINESS SECRET]

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<sup>5</sup> RAE decision, p. 11

<sup>6</sup> RAE decision, pp. 14-15

<sup>7</sup> RAE decision, p. 16

- (20) Based on the information provided, the market test meets the requirements under Article 36 (6) Directive 2009/73/EC.

### **5.3 "Major new gas infrastructure"**

- (21) Article 36(1) of Directive 2009/73/EC specifies that major new gas infrastructure, that is to say interconnectors, LNG and storage facilities, qualify for an exemption.
- (22) The exemption is requested for a floating LNG Terminal including LNG storage tanks and a pipeline connecting the floating LNG Terminal to the transmission system (see Chapter 3).
- (23) The Commission concludes that the Alexandroupolis INGS is a LNG facility in the meaning of Article 2(11) Directive 2009/73/EC and qualifies as a major new gas infrastructure within the meaning of Article 36(1) of that Directive.

### **5.4 "The investment must enhance security of supply"**

- (24) The Commission notes that in general, an investment which provides a new route or entry point to the relevant market and connects new upstream sources of gas from new suppliers to the market should increase the security of supply of that market. However, that has to be assessed on a case-by-case basis.
- (25) RAE presents the view that Alexandroupolis INGS enhances security of supply. Specifically in a situation of a complete supply cut from Russian gas on a peak demand day, the Alexandroupolis INGS can cover the remaining 2.25 million cubic metres per day (mcm/d) gap for 2023. Taking into account a change of flow in the system in this scenario, the Alexandroupolis INGS would also help to solve internal bottlenecks<sup>8</sup>.
- (26) Security of supply is also considered to be improved for Bulgaria, as a potential source to feed into the interconnector Greece Bulgaria (IGB), which is currently under construction as well as the larger South East European Region.

#### *5.4.1 Conditions*

- (27) RAE imposed a condition on Alexandroupolis INGS to have effective anti-hoarding measures in place<sup>9</sup>. These measures should further contribute to security of supply preventing non-utilisation of the LNG facility if needed for security of supply reasons.

#### *5.4.2 Conclusion*

- (28) The Commission agrees that the proposed investment should bring about an overall positive impact for the Greek and the Union's security of supply. It enables access to new sources of gas from other LNG export locations globally.

### **5.5 "Principle of solidarity"**

- (29) As set out in case T-883/16<sup>10</sup>, the General Court concludes that the principle of solidarity also entails a general obligation on the part of the European Union and the

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<sup>8</sup> RAE decision, p.50

<sup>9</sup> RAE decision, p. 59

<sup>10</sup> Judgment of the General Court of 10 September 2019 in Case T-883/16 Poland v European Commission, points 72-73.

Member States, in the exercise of their respective competences, to take into account the interests of the other stakeholders. Notably, Member States shall endeavour, in the exercise of their powers in the field of energy policy, to avoid adopting measures likely to affect the interests of the EU and the Member States as regards security of supply, its economic and political viability, the diversification of supply or of sources of supply, and to do so to take account of their interdependence and de facto solidarity.

- (30) RAE notes in its draft decision that it has consulted with the national regulatory authority of Bulgaria (Energy and Water Regulatory Authority, EWRC) the exemption decision and no objection was raised. It also assesses the impact of the exemption to neighbouring countries. Further, the European Commission has given the possibility to all interested stakeholders, including Member States, to comment on the requested exemption. No Member State has commented, and no stakeholder has argued that the exemption shall not be granted.
- (31) There is no indication that the planned project would negatively impact the security of supply and the economic or political viability of the EU or Member States. To the contrary, the creation of additional regasification capacity, positively contributes to security of supply for Greece and the EU. There is also no indication that the additional capacity of Alexandroupolis INGS would negatively impact the functioning of the existing gas infrastructure in other Member States.
- (32) Based on the above, the Commission considers the requirements set out by the General Court on the basis of Article 194 of the Treaty on the Functioning of the European Union to be met. However, the Commission recommends that RAE explicitly makes a reference to the principle of solidarity in its final decision and better clarifies how its assessment complies with this principle.

## **5.6 "The investment must enhance competition in gas supply "**

- (33) The Commission notes that in order to analyse the competitive effect of the exemption, the relevant gas markets and in particular the question whether the investment leads to the creation or strengthening of a dominant market position needs to be considered. That has to be assessed on case-by-case basis.
- (34) Article 36 of Directive 2009/73/EC requires that the investment project enhances competition in gas supply and that the exemption is not detrimental to competition. While these two requirements are not identical, they imply that the project must enhance competition to the benefit of the consumers<sup>11</sup>.

### *5.6.1 The Alexandroupolis INGS exemption is not detrimental to competition*

#### *The exemption from third party access ('TPA')*

- (35) TPA seeks to ensure that all competitors in a given market have non-discriminatory access to the infrastructure, including LNG facilities, and can compete on equal terms.
- (36) Gastrade requested an exemption from TPA for 25 years. RAE decided to exempt only the capacity that was booked in the market test<sup>12</sup>. It is necessary to assess whether and to what extent the shareholders and beneficiaries of the exempted capacity of

<sup>11</sup> Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions, paragraph 30.

<sup>12</sup> see (11)

Alexandroupolis INGS have the ability and the incentive to foreclose competitors on product markets adjacent to the LNG facility.

*Incentive and ability to foreclose*<sup>13</sup>

- (37) The incentives to foreclose mainly emanate from the protection of capacity holder profits from their activities on adjacent markets, such as the Bulgarian and Greek downstream wholesale and retail gas markets.
- (38) RAE assessed the competitive effects of the capacity booked through the Market Test and concludes that it ensures the strengthening of competition as no player would be able to acquire a dominant position as a result of the capacity at the new LNG Terminal for the Greek market<sup>14</sup>.
- (39) [BUSINESS SECRET]<sup>15</sup>.
- (40) In order to safeguard full compliance of the exemption not being detrimental to competition, RAE included a capacity cap for bookings by dominant companies. The cap limits bookings beyond 40% of the total capacity<sup>16</sup>.
- (41) [BUSINESS SECRET].
- (42) As RAE points out in the notified decision, the capacity from Alexandroupolis INGS towards the Greek system will be limited to 0.7 mNm<sup>3</sup>/d (out of the 9 mNm<sup>3</sup>/d requested), i.e. 0.26 bcm/a. Flows to Bulgaria via Sidirokastron are limited by this constraint unless solved via the introduction of conditional capacity products or additional investments and upgrades into the DESFA system<sup>17</sup>.
- (43) The exemption provides for remedies to avoid that undertakings acquire a market position in which they are no longer exposed to effective competitive pressure. The ability to raise prices and, hence, to reap the benefits of a foreclosure strategy is properly ring-fenced. However, the capacity booking cap in relation to Alexandroupolis INGS, does not seem to be suited to avoid negative effects on the competitive situation in Bulgaria. A 40% capacity cap on bookings at Alexandroupolis INGS with a 5.5 bcm/a capacity means 2.2 bcm/a. This means that the capped capacity

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<sup>13</sup> The present analysis of incentive and ability to foreclose is broadly based on the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) C265/6 of 18.10.2008.

<sup>14</sup> This is also true for the incumbent, DEPA, whose market share has fallen sharply over the last years, reaching less than 40% in 2020 (RAE decision, p.48).

<sup>15</sup> RAE decision, p.48

<sup>16</sup> RAE decision, pp. 62-63

<sup>17</sup> RAE decision, p. 10



could still enable or enhance a dominant position in relation to the Bulgarian market size. The cap on IGB is also not a limiting factor as it could be possible in the future that the capacity of the second point connecting Greece with Bulgaria, i.e. Sidirokastron can be used to import LNG from Alexandroupolis INGS beyond the current limit of 0.26 bcm/a.

- (44) The Commission notes that RAE introduced a cap of 40% bookings by dominant undertakings as a safeguard in the exemption decision for the interconnector Greece Bulgaria. However, this pipeline is planned with a capacity of 3 bcm/a. Hence, the 40% cap represents 1.2 bcm/a in absolute numbers.
- (45) A reduction of the capacity cap to 25% of the total capacity of the LNG terminal (i.e. 1.375 bcm/a) would ensure that other undertakings can get enough effective access to the Bulgarian market to create competitive pressure and approximate it with the capacity cap on the interconnector Greece Bulgaria setting the cap at 40% (i.e. 1.2 bcm/a).
- (46) The Commission also notes that the booking cap applies, among other things, to companies with a market share of 40% or larger “on the upstream market of supplying gas into Greece<sup>18</sup>”. This is missing in relation to the Bulgarian upstream market without providing information on the reasons to treat it differently. To ensure consistency with the approach followed in the case of Greece, RAE should extend the application of the cap for capacity bookings also to undertakings with a share of 40% or larger on the upstream market for supplying gas into Bulgaria.

#### *The exemption from tariff regulation*

- (47) Since the tariffs charged by Alexandroupolis INGS are the same regardless of whether the shipper concerned is an Alexandroupolis INGS shareholder or not, the envisaged exemption from tariff regulation for the full amount of capacity is not detrimental to competition.
- (48) On the contrary, as shown by RAE, the tariff, in case there would be no exemption, would be significantly higher. Therefore the positive effects on competition are enabled by providing the exemption.

#### 5.6.2 Conclusion

- (49) Therefore, the Commission concludes that granting the exemption from TPA and regulated tariffs is not considered to be detrimental to competition in Greece.
- (50) [BUSINESS SECRET].
- (51) The Commission therefore concludes that the capacity cap for bookings by dominant undertakings should be amended by reducing its share from 40% to 25% of the planned Alexandroupolis INGS capacity. [BUSINESS SECRET] Furthermore, RAE should extend the application of the cap for capacity bookings also to undertakings with a share of 40% or larger on the upstream market for supplying gas into Bulgaria.

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<sup>18</sup> RAE decision, p. 62

**5.7 "The level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted"**

*5.7.1 The investment would not take place without the exemption*

- (52) There is no general regulatory framework for LNG terminals in Greece. The operating rules for the existing Revithoussa LNG terminal are included in the Greek network code and are applicable specifically to this terminal. This scheme implies the booking of specific time-slots for vessel unloadings before the beginning of each year. Each cargo must be regasified in a maximum of 18 days (unless extra in-tank capacity is reserved though the secondary market). This model is not compatible with long-term capacity bookings based on a share of capacity of the terminal, which is the intended model for the Alexandroupolis INGS.
- (53) Gastrade argues that without the TPA exemption, it would not be possible to allocate long-term capacity as this is not foreseen by the model applied to the existing LNG terminal. If a regulated tariff was applied, the tariff would rise to a level that is prohibitively high, which in turn undermines any capacity bookings. The exemption from regulated tariffs enables a stable tariff, which is necessary to have a chance for additional bookings beyond the capacity booked in the market test.
- (54) Alexandroupolis INGS entails significant investment in infrastructure that is associated with sizeable risks of financial, regulatory, political and technical nature.
- (55) Under a typical regulated access regime, the owner of the infrastructure enjoys a large degree of revenue certainty and protection from volume or construction risks, provided that its investments are approved, and the revenues are guaranteed through regulated tariffs approved by a regulatory authority to be paid by the users of the infrastructure. That mechanism ensures the compatibility between the size of the project and the level of the resulting tariffs.
- (56) RAE informs that no such revenue certainty is provided for Alexandroupolis INGS as the terminal is a purely commercial initiative and not a project imposed or required by the regulator. Gastrade takes the risk of not achieving a higher IRR than the one based on the secured bookings from the market test, i.e. [BUSINESS SECRET]. The Commission further notes that the targeted utilisation of grants is subject to state aid control (cf. 5.10.4). Any reduction risks reducing the current IRR further.
- (57) The Commission thus considers this requirement to be met.

*5.7.2 The investment under exempted regime*

*5.7.2.1 Introduction*

- (58) Gastrade requested exemptions from unbundling, third party access and tariffication pursuant to Article 36 of Directive 2009/73/EC be of a 25 year duration, from the start date of operations expected for 1 January 2023.
- (59) As regards the duration of an exemption, the relevant Guidelines<sup>19</sup> specify that, the following should be taken into consideration:

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<sup>19</sup> Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity SEC (2009) 62 final.

- (a) throughput contracts for terminals, duration of underlying transportation contracts for pipelines and cables, or upstream and downstream supply contracts, or both;
- (b) the level of risk, notably, the duration of the exemption does not have to correspond to the full length of the amortisation period. The exemption duration should be equal to or less than the expected period for cost recovery of the new infrastructure.

#### 5.7.2.2 *Scope and duration of the exemption from TPA*

- (60) The exact amount of capacity to be exempted from third party access was not specified. RAE noted that Gastrade does not foresee a risk for the implementation of the Project, if the exemption from third party access rules applies only to the part of the capacity reserved through the Market Test<sup>20</sup>.
- (61) RAE granted the requested exemption from third party only for the part of the regasification capacity that has been booked through the Market Test for a period of 15 years starting from the commercial operation date and subject to five additional conditions<sup>21</sup>. Inter alia, these conditions are aimed at making sure that additional transparency and non-discriminatory access of the non-exempted part of the capacity is guaranteed.
- (62) It is therefore justified and proportional that the exempted capacity is subject to additional conditions imposed by RAE.

#### 5.7.2.3 *Scope and duration of the exemption from regulated tariffs*

- (63) Based on the business case presented by Gastrade, the project lifetime is calculated over a thirty year period. The targeted return on capital employed is [BUSINESS SECRET].
- (64) [BUSINESS SECRET]
- (65) The Commission notes that the tariff calculation in the presented business plan extends the calculation for the tariff beyond the duration of the tariff exemption. In this regard it needs to be noted that the tariff for the Alexandroupolis INGS after the tariff exemption expires has to be in line with the regulated regime in place in Greece at that moment in time.

#### 5.7.3 Conclusion

- (66) In light of what has been said, the Commission considers the scope and duration of the exemption proportional.
- (67) Based on the above, the Commission concludes that the risk criterion within the meaning of Article 36(1) of the Directive 2009/73/EC is met.

#### **5.8 "The infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built"**

- (68) The current shareholders of the Alexandroupolis INGS are:

<sup>20</sup> RAE decision, p.17, see also (19)

<sup>21</sup> RAE decision, pp. 58-60

- Ms. Asimina- Eleni Copelouzou (60%), founding Shareholder of Gastrade with no other activities in the gas sector;
- Gaslog Cyprus Development Limited (20%), which is a 100% subsidiary of GasLog ltd (GASLOG) a leading global provider of LNG shipping services listed in the New York Stock Exchange; and
- Public Gas Corporation S.A. (DEPA), a group of companies undertaking gas activities in Greece which is renamed to DEPA Commercial S.A. following the partial demerger and the spin- off of DEPA S.A.. DEPA Commercial S.A. maintains the wholesale and retail gas activities of DEPA S.A. as well as the rights and obligations associated with DEPA’s participation in the share capital of GASTRADE.

(69) The transmission network to which the Alexandroupolis INGS will be connected is owned and operated by DESFA, the regulated national natural gas transmission system operator of Greece. DESFA was initially a daughter company of DEPA, which has been certified by RAE under the ownership unbundling model in 2018. DESFA’s 66% of the shares were sold to SENFLUGA, a joint venture of SNAM Rete Gas (60%), Enagas (20%) and Fluxys (20%). In 2019, the company DAMCO SA bought 10% of the shares of SENFLUGA. [BUSINESS SECRET] It is noted that participates as a passive shareholder in DESFA with no decision making powers regarding the operation of the natural gas transmission system of DESFA.

(70) It follows that the Alexandroupolis INGS is separate in its legal form from the existing TSO within the meaning of Article 36(1) of Directive 2009/73/EC.

## **5.9 "Charges must be levied on users of that infrastructure"**

(71) Access to the Alexandroupolis INGS will be subject to charges. Based on information provided by RAE, tariffs will be applied to users under a tariff methodology based on the tariff code to be submitted for approval to RAE at the latest 12 months before commercial operation. The tariffs have to be set following certain criteria.

(72) In particular, all terminal users will pay the same tariff for the whole duration of the exemption, whereas [BUSINESS SECRET]. Additional revenues will be returned to the users based on the tariff code to be approved by RAE<sup>22</sup>.

(73) We note however that RAE already in its exemption decision sets principles to be followed by the tariff code. One is the obligation to return revenues beyond the IRR cap to the initial and future users of the Alexandroupolis INGS. [BUSINESS SECRET]

### **5.9.1 Conclusion**

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<sup>22</sup> RAE decision, p. 54, 55

- (74) It follows that the Alexandroupolis INGS charges will be imposed equally on the users of the infrastructure and no charges will be imposed to final consumers in Greece in line with Article 36(1) of Directive 2009/73/EC.
- (75) However, the Commission considers that the principle included in the exemption for the tariff methodology to be approved by RAE requiring that revenues beyond the IRR cap to be returned to initial and new shippers<sup>23</sup> shall be subject to the terms of the forthcoming state aid decision. RAE shall take a decision how to implement the IRR cap when approving the tariff code without prejudice to state aid rules. In this regard, RAE needs to take into account the outcome of the state aid process mentioned under section 5.10.4 of this decision.

**5.10 "The exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected"**

- (76) The Alexandroupolis INGS will improve the functioning of the internal gas market by increasing its liquidity and flexibility further through enabling additional LNG imports which are different from the traditional sources of gas currently imported in the South-East region.
- (77) The functioning of the regulated system is not comprised because the Alexandroupolis INGS works on the basis of the agreement with DESFA that the costs incurred by the regulated system operated by DESFA due to the new terminal will be borne by Gastrade. DESFA is not obliged to make additional investments into the Greek transmission system, unless RAE considers that this is done on a positive cost-benefit analysis<sup>24</sup>.
- (78) In addition, the tariff rules of the regulated system are not affected as the Alexandroupolis INGS will be exempted from the tariff regulation and the tariffs will be exclusively charged to its users. The regulated tariff rules will not apply to this terminal, rather the specific tariff code to be proposed by Gastrade and approved by RAE.
- (79) [BUSINESS SECRET]
- (80) The Commission notes that there is a discrepancy between the project lifetime and the tariff exemption. In case that the exemption ends before the project lifetime, the

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<sup>23</sup> RAE decision p. 54

<sup>24</sup> RAE decision, p. 55, 56, cf. also p. 10

Commission recommends that RAE clarifies the expected value for including it in the regulated asset base.

- (81) Finally, in light of what is stated in this section and in section 4.4, the exemption from regulated third party access and tariff regulation should not be detrimental to competition.

#### 5.10.1 Conclusion

- (82) It follows from the above that the exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected.

### **5.11 Other matters**

#### 5.11.1 Changes in shareholder structure

- (83) Pursuant to section 4.4 point 3 of the RAE decision, RAE requires Gastrade to notify any change whereby an enterprise, directly or indirectly, acquires joint or sole control over or merges with Gastrade, or with one of its shareholders. Such a change can subsequently be assessed in cooperation with the national competition authority, in order to verify whether Gastrade continues to comply with the conditions under which the exemption has been granted.
- (84) The Commission agrees that precautionary measures are required to ensure that the conditions under which the exemption was granted are still complied with where there are changes to the shareholder structure of Gastrade or its shareholders.

#### 5.11.2 Non-compliance with the provisions of this Decision

- (85) The RAE decision foresees that any infringement by Gastrade of the conditions set in the decision can result in a sanction imposed on Gastrade by RAE. If Gastrade does not comply with its obligations, RAE is entitled to impose sanctions proportionate to the seriousness of the infringement, in accordance to national rules and legislation and, can even revoke the exemption pursuant to Article 36 of Directive 2009/73/EC, accordingly, if Gastrade is found to be in serious breach of one or more conditions laid down in this Decision.
- (86) RAE can amend or revoke this Decision where a material change of circumstances leads to a change in the basis on which it has been determined that the conditions listed in Article 36(1) of Directive 2009/73/EC have been met .
- (87) The exemption can also be revoked where Gastrade is subject to initiated bankruptcy proceedings or has been adjudicated or declared bankrupt.
- (88) The Commission agrees to the measures and recalls that an amendment or revocation of the Exemption Decision should be notified without delay to the Commission.

#### 5.11.3 State aid

- (89) Any plan to grant state aid through public funds, including the Union Structural funds, to the Alexandroupolis INGS project is subject to the notification requirements to the Commission pursuant to Article 108 of the Treaty on the Functioning of the European Union.
- (90) The Commission takes note that state aid for Alexandroupolis INGS was prenotified under reference number SA.55526 (2019/PN) on 16 October 2019.

## 6. CONCLUSION

- (91) In light of what has been stated and provided that the Greek Exemption Decision is amended in accordance with this Decision and that the NRA takes duly into account the Commissions Decision when taking decisions addressed to Alexandroupolis INGS on the basis of this exemption decision, the Commission takes the view that an exemption should be granted to Alexandroupolis INGS in accordance with Article 36(9) of Directive 2009/73/EC. The final decision shall be notified to the Commission pursuant to Article 36(9) Directive 2009/73/EC.

HAS ADOPTED THIS DECISION:

### *Article 1*

The Regulatory Authority for Energy of the Hellenic Republic ('RAE') shall amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No 1333/2020 of 17 September 2020 (the Greek Exemption Decision) notified to the Commission on 25 September 2020, in accordance with Article 36(8) of Directive 2009/73/EC.

### *Article 2*

RAE shall monitor and, at the request of the Commission, report on the implementation of the conditions set out in this Decision.

### *Article 3*

RAE shall amend its additional terms to safeguard full compliance with the criteria of Article 36(1) by reducing the cap for bookings from dominant undertakings at the Alexandroupolis INGS from 40% to 25% and extend the condition to undertakings with a share of 40% or larger on the upstream market of supplying gas into Bulgaria.

### *Article 4*

RAE shall amend its decision to ensure that the mandatory return of any profit beyond the set internal rate of return ('IRR') cap to initial and future users of the Alexandroupolis INGS will be subject to the terms of the forthcoming state aid decision.

*Article 5*

This Decision is addressed to the Regulatory Authority for Energy of the Hellenic Republic (RAE), Piraeus Street 132, 118 54 Athens.

Done at Brussels, 25.11.2020

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