



Brussels, 15.2.2023
C(2023) 1007 final

COMMISSION OPINION

of 15.2.2023

**pursuant to Article 3a of Regulation (EC) No 715/2009 - Belgium - Certification of
Fluxys Belgium N.V. as gas storage system operator**

Only the French and Dutch text is authentic

COMMISSION OPINION

of 15.2.2023

pursuant to Article 3a of Regulation (EC) No 715/2009 - Belgium - Certification of Fluxys Belgium N.V. as gas storage system operator

Only the French and Dutch text is authentic

I. PROCEDURE

On 27 October 2022, the Commission received a notification from the Regulatory Commission for Electricity and Gas in Belgium (Commission de Régulation de l'Électricité et du Gaz, hereafter "CREG"), of a preliminary decision concerning the certification of Fluxys Belgium N.V. (hereafter "Fluxys") as storage system operator for gas.

Pursuant to Article 3a of Regulation (EC) No 715/2009¹ (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 the Gas Regulation.

II. DESCRIPTION OF THE SITUATION OF THE STORAGE SYSTEM OPERATOR

Fluxys is the operator of the storage infrastructure in Belgium. Fluxys is already certified as operator of the natural gas transmission network and is the only gas TSO in Belgium. However, storage system operators controlled by a transmission system operator which have already been certified under the unbundling rules, must nevertheless be certified in accordance with the procedure laid down in the Gas Regulation.

Fluxys owns and operates the Loenhout storage infrastructure, which is connected to the Belgian natural gas transmission network. The working volume of the Loenhout warehouse is 9 TWh.

Ownership, supply or other commercial relationships

Fluxys is under the control of Fluxys NV (with 90 % of the shares), which in turn is controlled by Publigas (with 77.40 % of the shares). The shareholders of Publigas are Belgian municipalities and municipal holding companies.

In addition to Publigas, the Caisse de dépôt et placement du Québec (CDPQ) holds today a minority shareholding in Fluxys NV with 19.85 % of the shares. CDPQ is a financial institution which primarily manages funds for pension schemes and public and private insurance in Canada (Québec). On 23 September 2022, CDPQ announced the upcoming transfer of its 19.85 % stake to a third party.

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.

The remaining shares of Fluxys are held today by Federal Participation and Investment Company (FPIM) and by the employees and management of the Fluxys group.

The Belgian shareholders of Publigas have an interest in securing the country's energy supply. Moreover, although a minority shareholder, the FPIM also has an interest in filling the warehouse and providing incentives to do so. The FPIM is a Belgian federal holding company which manages, on behalf of the Belgian State, shareholdings in public and private undertakings of strategic economic importance for Belgium.

As manager of a Canadian pension fund, CDPQ is a financial investor in Fluxys NV and does not threaten the proper use and filling of the storage facility. In any event, CDPQ is a minority shareholder.

A transfer of CDPQ's shares is planned but should not change this analysis given that the new shareholders would hold minority stakes: Energy Infrastructure Partners AG (EIP) amounting to 15.24 %, Ethias of 1.32 %, AG Insurance NV of 1.98 % and the Federal Participation and Investment Company (FPIM, which is already a shareholder) of 1.32 %.

It should also be noted that the Federal Minister for Energy is entitled to oppose any transfer or change of use of the strategic assets of Fluxys, if the Minister considers that the operation is detrimental to national interests in the energy sector. The Loenhout storage facility is included in the list of strategic assets. This means that, if necessary, the Minister for Energy may oppose the transfer of ownership of this installation to entities from third countries that could jeopardise the security of energy supply or the essential security interests of the Union or of Belgium. In addition, the Federal Minister of Energy has the right to appoint two representatives of the federal government to the Board of Directors of Fluxys in an advisory capacity. These representatives may, within four working days, appeal to the Minister any decision of the Board of Directors of Fluxys that they consider contrary to the country's energy policy guidelines, including the country's energy supply objectives.

Publigas's majority shareholding in Fluxys is reflected in the composition of the governing bodies of those companies and their management structure. For example, the board of directors of Fluxys consists of 20 directors, 11 of whom were appointed on a proposal from Publigas and 1 on a proposal from CDPQ. The remaining directors consist, respectively, of 7 independent directors and the managing director of the company. Each director has one vote and decisions of the board are taken by a majority of the directors present or represented. The directors appointed by Publigas are thus able to take all the decisions of the undertaking and, in particular, take all decisions ensuring that (i) the operator of the storage facility has all the human, technical, physical and financial resources necessary to carry out the natural gas storage operations effectively and (ii) the necessary incentives are provided to guarantee the adequate use and filling of the underground gas storage facility in such a way that the underground storage facility can play its role in supporting the security of supply of Belgium and neighbouring Member States and the overall flexibility of the energy systems.

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

Fluxys confirmed that the Loenhout storage facility is not subject (directly or indirectly) to any obligation or commitment which the Union would have towards third countries and therefore that there is no risk of security of supply due to potential rights and obligations of the Union with respect to a third country.

Rights and obligations of Belgium with respect to a third country

Fluxys confirmed that the Loenhout storage facility is not subject (directly or indirectly) to any obligation or commitment which Belgium would have towards third countries and therefore that there is no risk of security of supply due to potential rights and obligations of Belgium with respect to a third country.

Other specific facts and circumstances

Fluxys reports 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

The CREG has come to the preliminary conclusion that Fluxys 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 Fluxys is non-existent. In its preliminary decision the CREG considered the following factors:

- ownership that could negatively affect the incentives and the ability of Fluxys 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; or any specific facts and circumstances could negatively affect the incentives and the ability of Fluxys to fill the underground gas storage facility.

Ownership, supply or other commercial relationships

The CREG 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 Fluxys Belgium is virtually non-existent.

The CREG will monitor the transaction announced by CDPQ the upcoming transfer of its 19.85 % stake to a third party in due time.

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

The CREG shares the analysis of Fluxys that given the limited size of the Loenhout storage facility and the purely national nature of its contribution to security of supply, there is no risk arising with third countries as regards security of supply.

Rights and obligations of Belgium with respect to a third country

The CREG notes that Fluxys confirmed that the Loenhout storage facility is not subject (directly or indirectly) to any obligation or commitment which Belgium would have towards third countries and therefore that there is no 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

The CREG notes that Fluxys 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 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.

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

- the ownership of Fluxys and other commercial relationships do not affect negatively the incentives and the ability of Fluxys to fill the underground gas storage facility. The majority shareholders are Belgian municipalities and municipal holding companies that have interest to fill the storage facility. CDPQ, a financial investor based in Canada, is a minority shareholder that cannot influence significantly Fluxys Belgium NV's decisions and therefore its shareholding does not pose a threat to that objective;
- there is no risk of security of supply stemming from an obligation or commitment which the Union would have towards third countries;
- there is no risk of security of supply stemming from an obligation or commitment which Belgium 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 Fluxys to fill the underground gas storage facility,

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

As regards the minority shareholding of CDPQ in Fluxys NV, with 19.85 % of the shares, the Commission considers that CREG has conducted an appropriate analysis of its potential risks to the security of supply of the Union. As manager of a Canadian pension fund, CDPQ is a financial investor in Fluxys NV and does not threaten the proper use and filling of the storage facility. Furthermore, its 19.85% participation does not allow CDPQ to influence Fluxys Belgium NV's decisions. The planned transfer of CDPQ's shares should not change this analysis given that the new shareholders would hold minority stakes: Energy Infrastructure Partners AG (EIP) amounting to 15.24 %, Ethias of 1.32 %, AG Insurance NV of 1.98 % and the Federal Participation and Investment Company (FPIM, which is already a shareholder) of 1.32 %. Furthermore, as explained in the preliminary decision, the Royal Decree of 16 June

1994 provides an additional safeguard by allowing the Federal Minister for Energy to oppose any transfer, transfer or change of use of the strategic assets of Fluxys Belgium NV, if the operation is considered as posing a risk to national interests in the energy sector.

Nevertheless, in case that the CREG detains additional information that Fluxys has or will have in the future supply or other commercial relationships that could negatively affect the incentives and the ability to fill the underground gas storage facility, it should notify the Commission immediately.

V. CONCLUSION

Pursuant to Article 3a(6) of the Gas Regulation, CREG shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of Fluxis, and when it does so, shall communicate this decision to the Commission.

Pursuant to Article 3a(10) of the Gas Regulation, CREG shall continuously monitor Fluxys as regards compliance with the certification requirements set out in paragraphs 1 to 4 of the Article. In case CREG has knowledge that a planned change in rights or in influence over Fluxys could lead to non-compliance with the requirements of paragraphs 1 to 3 of the Article, 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. CREG 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, 15.2.2023

For the Commission
Kadri SIMSON
Member of the Commission