EUROPEAN COMMISSION

Brussels, 5.10.2011
C (2011) 7242 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].

PUBLIC VERSION

WORKING LANGUAGE

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Subject: **State aid No SA.31953 (2011/N) - Construction of regasification LNG terminal in Świnoujście**

Excellency,

I am pleased to inform you that the European Commission has assessed the above measure notified by the Polish Republic and decided to consider the aid to be compatible with the internal market pursuant to the Treaty on the Functioning of the European Union (hereinafter "TFEU").

1. PROCEDURE

1. Following pre-notification contacts, on 4 August 2011, Poland notified to the Commission, pursuant to Article 108(3) of the TFEU, its plans to build a regasification liquefied natural gas (LNG) terminal in Świnoujście.

His Excellency
Radosław SIKORSKI
Minister Spraw Zagranicznych
Al. J. Ch. Szucha 23
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POLAND

2. DESCRIPTION OF THE AID MEASURE

2.1. Project description

2. The notified project consists of the construction of installations and structures used for LNG reloading from ships, loading LNG to tank trucks, LNG regasification, in-process storage of LNG, and supplying natural gas to the Polish gas transmission system or to entities not connected to the national system. Polskie LNG S.A. (PLNG) is entrusted with the task of constructing and operating the LNG terminal.

3. The nominal regasification capacity of the terminal will equal 570,000 Nm^3 per hour, (5.0 billion Nm^3 annually), with possible extension of nominal transmission capacity to 856,000 Nm^3 per hour (7.5 billion Nm^3 annually), after 2017. The main installations planned to be constructed in the area of the LNG Terminal consist in:

   – An installation for unloading of LNG of various compositions, adjusted to support LNG tankers with the capacity from 120,000 m^3 to 216,000 m^3. Nominal unloading capacity of a station would equal 12,000 m^3 of LNG per hour (4,000 m^3 of LNG per hour for each of the three unloading arms). The capacity of the station for liquefied natural gas loading to tank trucks is estimated at 90 m^3 of LNG per hour for each of the arms, corresponding to a planned maximum loading capacity of the station of about 95,000 tonnes of LNG annually.

   – Two cryogenic in-process storage tanks, full containment type, with gross capacity of 160,000 m^3 each. It is estimated that net capacity of an LNG tank would equal about 155,000 m^3 of liquefied natural gas. Space has also been allocated for extension of the technology infrastructure and adding the third tank, ensuring total capacity of 480,000 m^3 (three tanks of 160,000 m^3 each) with respect to potential increase in regasification capacity up to 856,000 N m^3 per hour (7.5 billion Nm^3 annually) from 2017.

   – Complete regasification installation with a planned regasification capacity from 75,000 Nm^3/h to nominal value of 570,000 Nm^3/h, and 856,000 Nm^3/h after extension. Submerged Combustion Vaporizers (SCV) heated with gas are going to be installed.

   – Transmission installations within the LNG Terminal, installations connecting the Terminal with unloading platforms and connection to the National Transmission System.

   – Other necessary installations including nitrogen installation, high-pressure pumps, metering devices and control rooms, buildings and auxiliary infrastructure (road, yards, green areas, terminal fence).

2.2. The beneficiary

4. The beneficiary of the public funding, PLNG, was established as a special purpose vehicle, with the Gas Transmission Operator Gaz-System S.A. as a sole shareholder. PLNG was established in 2007 by Polskie Górnictwo Naftowe i Gazownictwo S.A. (PGNiG). Based on the Resolution of the Council of Ministers of 19 August 2008, Gas Transmission Operator GAZ-SYSTEM S.A. was appointed the owner of PLNG and on 8 December 2008, it acquired 100% of shares in PLNG. The amount of the company's share capital is PLN 110 million.

5. The Gas Transmission Operator GAZ-SYSTEM S.A. was established on 16 April 2004 as PGNiG – Przesył Sp. z o.o. – at that moment, 100% of the Company's shares were taken over by PGNiG. On 28 April 2005, PGNiG transferred all shares in GAZ-SYSTEM S.A. to the State Treasury. The amount of the share capital is PLN 3,4 billion. GAZ-SYSTEM S.A. is recorded on the list of enterprises with strategic importance to the Polish economy. Based on the Act of 24 April 2009 on investments related to the liquefied natural gas regasification terminal in Świnoujście, GAZ-SYSTEM S.A. coordinates the implementation of the investment related to the LNG terminal and other investments listed in the Act.

6. Poland indicated that PLNG will have all decision-making powers with respect to the activities carried out. PLNG is legally and functionally independent of GAZ-SYSTEM S.A., and maintains independent accounting records. It has its own Management Board, Supervisory Board, regulations and full competences with respect to the activities carried out. Furthermore, PLNG is a special purpose vehicle, having the task to construct and operate the LNG terminal in Świnoujście, and consequently, it would not carry out activities other than the ones allocated to an operator of the LNG regasification system, in particular, distribution, trade or storage of gas. Accordingly, Poland considers that there is no risk of cross-subsidisation between activities further downstream.

2.3. Legal basis

7. The legal basis of the measure is
   a) Act of 6 December 2006 on the Principles of Conduct of the Development Policy (Journal of Laws of 2009 No. 84 Item 712, as amended);
   b) Act of 10 April 1997 entitled the Energy Law (Journal of Laws of 2006 No. 89 Item 625, as amended);
   c) Energy Policy for Poland until 2030 adopted by the Council of Ministers on 10 November 2009;
   d) Policy for the Natural Gas Industry in Poland, Minister of the Economy, Warsaw, 20 March 2007;
   e) Act of 24 April 2009 on Investments Related to the Liquefied Natural Gas Regasification Terminal in Świnoujście (Journal of Laws No. 84 Item 700, as amended);
   f) Operational Programme 'Infrastructure and Environment' within the National Strategic Reference Framework for 2007-2013

2.4. Budget, duration, eligible costs and aid intensity

8. Total costs of the project (including the total investment expenditures, plus costs of consultations and operating expenses of the technical division, as well as financial expenses) amount to PLN 2 876 million, including eligible costs of PLN 1 824 million (1 624 million eligible capital expenditure plus 200 million promotion costs).

9. The total amount of aid to be granted is 925 591 117.47 PLN, corresponding to an aid intensity of 57% of the eligible costs of the project. The total budget is distributed in annual amounts for the implementation period until 2015, as illustrated below:

- 2011: PLN 243 million
- 2012: PLN 353 million
- 2013: PLN 129 million
- 2014: PLN 186 million
- 2015: PLN 15 million

10. Eligible costs related to the Project involving construction of the Terminal were identified and calculated in compliance with the principles set by the Ministry of Regional Development in the "Guidelines on eligibility of expenses within the framework of the Operational Programme Infrastructure and Environment". Poland explained that the date as from when the costs for this project could be considered as eligible should be 29 August 2007, the date when Poland announced the list of individual projects for the Operating Programme Infrastructure and Environment 2007-2013, so as also the minor preparatory expenses already incurred (e.g. related to process design, building permit documentation) can be qualified as eligible.

11. Eligibility of costs related to the implementation of the Project will be verified by responsible authorities, at the stage of assessment of the co-financing application, as well as at the stage of verification of the request for payment, during potential control on the site, and during controls of procedures for concluding contracts for tasks included in the project.

12. Poland presented the breakdown of costs into eligible and non-eligible, indicating the amounts financed from different financial sources, as shown in Table 1 below.

Table 1 – Financial sources of the project

Financial sources of the Project (in millions of PLN)	Eligible	Non-eligible	Total
Structural funds*	926	0	926
EU Fund – EEPR	[…]	[…]	[…]
Equity	[…]	[…]	[…]
EIB	[…]	[…]	[…]
EBRD & Commercial banks*	[…]	[…]	[…]
Total	1,624	1,148	2,772

* Expected.
Source: Polish authorities

13. The two cryogenic in-process storage tanks are not included in eligible costs for the Project, because PLNG received financial assistance up to EUR 55,000,000 for the aforementioned investment under the European Energy Programme for Recovery "EEPR", Gas and Electricity Infrastructure Projects[1].

[1] Commission Decision of 5 November 2010 on Union financial assistance for ACTIVITY No EEPR-2009-INTg-LNG-PL–SI2. 574820/SI2. 574825 within the scope covered by Regulation (EC) 663/2009 with respect to gas and electricity intersystem connections, K(2010) 7511 final

14. The financial analysis has been based on "Guidelines concerning selected issues connected with preparation of investment projects, including income generating projects"[2] and on the EU guide "Guide to Cost-Benefit Analysis of Investment Projects,"[3]. Poland submits that the "no over-compensation" method adopted in the financial analysis, in particular with respect to the method of determining the grant amount is consistent with the methodology recommended by representatives of the JASPERS Initiative for projects related to the gas sector in Poland.

15. Projections have been presented for the period including years 2007-2035. A technical lifetime of 40 years has been assumed for the most durable assets of the Project. A standard approach was adopted, involving analysis of changes in costs between the scenario with the Project's implementation and the scenario without the Project, as the Project is a greenfield project. The analysis was carried out at current prices in accordance with the aforementioned Guidelines. Inflation rates were accepted based on the forecasts issued by the Minister of Economic Affairs[4]. A nominal discount rate of 8.00% was considered. The analysis period covers the years 2007-2035, including the investment period (2007-2014) and the period of operation (2014-2035).

16. Poland presented the investment effectiveness ratios for the project. In the no aid scenario Poland indicated that the investment would not be financially profitable, as the financial rate of return (FRR) would be much lower than the discount rate of 8 %, and the net present value (NPV) would be negative. In the aid scenario the financial rate of return would be slightly lower than the considered discount rate, and the net present value still negative, as can be seen in table 2 below.

Table no. 2 – Investment effectiveness ratios

Ratio	No aid scenario	Aid scenario
FRR [%]	3.37%	7.37%
NPV [PLN]	-903,723,087	-90,319,841

Source: Polish authorities

17. The level of co-financing from EU funds in the Project has been determined using "no over-compensation" method, based on the recommendations of the Minister of Regional Development, according to which in the case of projects planned for co-financing from EU Funds, FRR should not exceed the value of the financial discount rate accepted for the purposes of the financial analysis, in order to avoid excessive return on the project at the expense of the EU taxpayer.

2 Minister of Regional Development, 15 January 2009

3 European Commission, Directorate General for Regional Policy, Final Report Submitted by TRT Trasporti e Territorio and CSIL Centre for Industrial Studies, 16/06/2008

4 In the document "Updated variants of the economic development of Poland, mentioned in item 7.4 of Subsection 4 – "Assumptions concerning the financial analysis", item (1)(d)(i) of the "*Guidelines concerning selected issues connected with preparation of investment projects, including income generating projects*" (Minister of Regional Development, 15 January 2009)

2.5. The notified project in the context of the gas market in Poland

18. Poland considers that the construction of the LNG terminal is consistent with its strategic interest, in particular the need to diversify the sources and supply routes for natural gas and to ensure the energy and economic security of the country. The Polish gas market is heavily dependent on imports, with domestic gas production accounting only for around 30% of gas demand. As a result, the market is dominated by import contracts, most notably from Russia (approx 50% of total demand), Turkmenistan (approx.16%), Germany and the Czech Republic (approx.6%). The projections of demand growth, domestic production and imports indicate that a supply gap emerges and will progressively widen by 2030.

19. For over a decade Poland has actively strived to ensure an increase in the country's energy security, but according to Poland the attempts to secure supplies of natural gas from new sources have not produced the desired result. OGP Gaz-System is executing projects aimed at connecting the Polish gas system with the Czech system (Cieszyn border crossing) and expansion of the existing connection with the German system (Lasów border crossing). These solutions have a positive impact on security of supplies in the event of problems with current supply routes.

20. However, these do not allow for direct supplies of gas to Poland originating from new sources (lack of effective diversification of gas supplies). According to Poland, the existing insufficient quantity of cross-border links (interconnectors) and the distribution and technical capabilities of the National Transmission Network constitute for new entrants significant barriers to entry into the Polish market.

21. Poland indicated that it has experienced several interruptions in imports of gas in the last few years: in 2004 (interruption in supply of natural gas through the territory of Belarus); in 2006 (interruption in supply of natural gas through the territory of Ukraine); in 2009 (interruption in supply of natural gas through the territory of Ukraine). According to Poland's Energy Policy up to 2030, the construction of an LNG receiving terminal on the Polish coast is deemed vital to improving Poland's energy security in terms of natural gas. The Policy for the Natural Gas Industry (adopted by the Cabinet on 20 March 2007) identifies the construction of an LNG receiving terminal on the Polish coast as a crucial factor for improving Poland's energy security in terms of natural gas.

22. According to the Polish authorities, the LNG Terminal in Świnoujście should eliminate the risk of interruption in gas supplies to end consumers. At the same time, construction of the terminal will create alternative infrastructure for current gas import routes to Poland, which are influenced by existing transmission network system determinants. In accordance with the analysis provided by Poland, approx. 60% of LNG Terminal regasification capacity will serve to satisfy increasing demand for gas, while the remaining 40% will serve to diversify gas supplies and increase Poland's energy security.

2.6. Operation of and third party access to the LNG terminal

23. In accordance with the Polish Energy Act, the operator of the natural gas liquefaction system is responsible for liquefaction of natural gas, the import, unloading or

regasification of LNG, as well as for the use and maintenance of the installations. The main tasks imposed on the operator refer to taking care of maintaining the necessary technical efficiency of the system and ensuring access to the system for other entities.

24. On 28 April 2008, PLNG applied to the President of the Energy Regulatory Office (ERO) for issuing a licence promise for carrying out business activities involving liquefaction and regasification of natural gas in liquefied natural gas installations for a period of five years. By decision of 30 June 2008, the President of the ERO issued the promise to PLNG within the scope consistent with the application and set the promise validity period until 1 July 2013. Poland indicated that before expiry of the period of validity of the promise, PLNG will apply to the President of the ERO for granting the licence for regasification of liquefied gas fuels. Poland has also explained that within the period of validity of the promise, the President of the ERO cannot refuse to grant the licence for activities referred to in the promise.

25. Poland explained that PLNG carried out the "2009 Procedure for Offering an LNG Terminal in Świnoujście", based on the European Regulators Group for Electricity and Gas (ERGEG) guidelines. Under the Procedure, PLNG allocated 570,000 Nm^3/h excluding dedicated capacity of the Terminal to short-term contracts. Poland submits that the procedure was carried out in keeping with complete transparency and equality rules. As a result of the procedure, on 18 March 2010, PLNG signed one regasification agreement, with PGNiG for 370 000 Nm^3/h, approximately 65% of the Terminal's shipment capacity. The remaining Regasification capacity of the terminal (200 000 Nm^3/h) is made available on the primary market to all interested entities on the terms set in the Terminal Instruction.

26. According to the regasification agreement signed with PGNiG, PLNG shall provide the long-term regasification services as well as additional services for 20 years starting from 1 July 2014 with a possible 6-month deferral option, for a tariff which will be charged according to the then binding tariffs approved by the President of the ERO.

27. PLNG did not apply for any exemption from Third Party Access rules, although such an option is available under the EU as well as national law. Therefore Poland submits that the services of LNG unloading, regasification and supply to the transmission system are offered by PLNG to all interested parties in accordance with the provisions of Directive 2003/55/EC[5] as well as Directive 2009/73/EC[6] and Regulation 715/2009/EC[7]

28. To date, PLNG has not received any proposal for the remaining available capacity, but the Polish authorities underlined that the remaining capacity will enable other entities than PGNiG to conclude short- or long- term contracts with PLNG, contributing to the increase of competition on the polish gas market.

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5 Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 15.7.2003, Pages 57-78).

6 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 14.8.2009, Pages 94-136).

7 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 14.8.2009, Pages 36-54)

29. The tariffs of PLNG are regulated, and must be approved by the President of the ERO. According to the Energy Act and the regulation of the Minister of Economic Affairs of 6 February 2008 on detailed principles for defining and calculating tariffs and principles for settlements in gaseous fuels trade, tariffs are calculated in a way that ensures covering the justified costs while protecting the customers against an unjustified price level. Poland submitted extensive information on the calculation of tariffs, in particular on the accepted rate of return for capital, which for 2011 was set at 9,597%.

30. In accordance with national regulations, the fees related to regasification will be calculated based on the justified costs, the regasification capacity and the quantities of LNG planned for regasification. The tariffs must ensure equal treatment to the users of the infrastructure (PLNG is obliged to offer to all users its services on equal terms and conditions and charge for the services the fees based on the same provisions of the tariffs). Poland explained that the tariff operator can define tariff groups and criteria for qualifying offtakers to each of the tariff groups (different tariff groups may be established based on offtake volumes, settlement mechanisms or the scope of services offered to a particular group).

31. Pursuant to the Tariff Regulation, tariff groups may be differentiated only due to various levels of expenses justified on the basis of the following criteria: type of gaseous fuel; volume and characteristics of the intake of gaseous fuel in the points of receipt; settlement system; points of delivery or receipt of gaseous fuel; scope of provided services. However, Poland indicated that PLNG does not plan to introduce any differentiation of terminal users in the tariff. In any event, if such differentiation was to be introduced (e.g. for short term services), it would be up to the President of ERO to approve a breakdown into tariff groups in the tariff approval procedure for the relevant power utility.

32. The calculation of revenues of PLNG is based on several main assumptions:

- use of 65% of the regasification capacity of the Terminal.
- about 98% of LNG deliveries will be regasified, while the remaining 2% will be reloaded to tank trucks (maximum reloading capacity equals 95,000 tonnes of LNG annually);
- the whole (contracted) regasified LNG will be the subject of an additional service involving nitrogen adding in order to achieve technical parameters of the National Transmission System;
- regasification in SCV technology.

33. Poland indicated that depreciation of assets financed from non-returnable EU funds is recognised by the President of the ERO as justified cost, providing a basis for the calculation of tariffs approved by the President of the ERO. At the same time, the aforementioned assets cannot be remunerated in the form of tariffs. Consequently, for assets financed without aid the depreciation and a return on capital are included in the tariffs, while for assets financed with aid, only the depreciation is included in the tariffs.

34. Poland indicated that the aid should result in reducing the tariff for LNG services by about 20%, which might encourage entities that have not entered the Polish gas market yet to conclude regasification agreements with PLNG, encouraging the competition on the Polish gas market. In that respect, there is a high level of concentration of supplies

on the Polish wholesale gas market resulting in a very small (only less than 2%) share of market players independent from the PGNiG Group. The majority of such companies purchase their gas from PGNiG. Trade in gas is performed only under bilateral contracts. There is neither a gas exchange nor trade in gaseous fuel in trade hubs.

2.7. Relationship with EU initiatives and legal framework

35. The notified measure consists in an individual grant to be implemented in line with the provisions of the EU Structural Funds[8]. The project is planned for implementation under activity 10.1 of the 2007-2013 Operational Programme "Infrastructure and Environment" (OPI&E), and is considered to be an individual project with strategic importance for the implementation of the operational programme. Poland explained that in the case of projects in the energy sector, the outcome of social and economic analyses determines whether co-financing from EU funds and the implementation of the investment would be justified.

36. Poland also underlines that the project is likely to contribute to completing the internal gas market, as it will facilitate gas trade between Poland and other countries. Moreover, Poland indicates that after the completion of projects envisaged in "Poland's Energy Policy until 2030" and aimed at the construction or expansion of inter-system connections enabling two-way transmission of gas on the EU market, the respective connections should enable the sale of gas transported into the Świnoujście terminal on the German market (through the planned two-way Boernicke-Szczecin connection), on the Danish market (also through the two-way Baltic-Pipe connection) and on the markets of Central European countries (using the planned North-South Corridor constituting a system of gas pipelines connecting the gas infrastructures of Poland, the Czech Republic, Slovakia and Hungary, including the Austrian hub of Baumgarten).

3. ASSESSMENT

3.1. Existence of State aid within the meaning of Article 107(1) of the Treaty

37. Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU") provides that "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market*". The examination of the cumulative conditions set out therein is examined hereinafter.

3.1.1. State resources and selective economic advantage

38. The aid is planned to be granted solely to the benefit of PLNG from State resources within the meaning of Article 107(1) of the TFEU because the choice of the project at hand and the transfer of Structural Funds resources from the EU budget to Poland are imputable to a decision and request of Poland.

[8] Council Regulation (EC) No 1083/2006 of 11 July 2006 on laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210, 31.7.2006

39. As regards the presence of an economic advantage to the sole beneficiary, the planned grant shall enable the beneficiary to build and own assets at financial conditions not otherwise available on financial markets, thereby obtaining an economic advantage.

40. The public funding of part of the investment will also allow PLNG to operate at tariffs significantly lower than if the investment were financed via tariffs for the part of it funded through aid. Reduced tariffs allow PLNG to attract more customers, including entities that were not yet active on the Polish market.

3.1.2. Distortion of competition and affectation of trade between Member States

41. The notified measure concerns the construction of an LNG terminal, which will offer services of LNG unloading, regasification and supply to the transmission system on the market. The gas market is liberalised at the EU level, gas is traded across the EU, and Poland is connected to the EU grid, with competition among alternative suppliers. Therefore trans-border gas transmission directly affects a territory exceeding Poland and potentially affects internal EU trade. It follows that the planned aid is likely to distort or threaten to distort competition and affect the patterns of trade between Member States.

3.1.3 Conclusion on existence of the aid

42. Taking the above into consideration the Commission concludes that the measure involves State aid within the meaning of Article 107 (1) of the TFEU.

3.2. Lawfulness of the aid

43. Poland confirmed to the Commission that the payment of the aid is conditioned by the approval by the European Commission. Therefore Poland has fulfilled its obligation according to Article 108(3) of the TFEU by notifying the aid measure before its implementation. Poland furthermore commits to notifying in the future any changes that would constitute an alteration of the aid subject to the present notification.

3.3. Compatibility under Article 107(3)(c) of the TFEU

44. The Commission notes that the measure primarily concerns the construction of an LNG terminal in Poland with unlikely prospect for these investments to be financed on regular commercial conditions i.e. from the company funds and recouped from tariffs, in the near and medium term.

45. Although the area covered by the measure is eligible under the European Regional Development Fund, as well as Article 107 (3) (a) TFEU assisted areas within the meaning of the Guidelines on national regional aid for 2007-2013[9], the aid is not primarily designed to contribute to regional development by supporting investment and job creation through the expansion and diversification of the economic activities located in the less-favoured regions, in particular by encouraging firms to set up new establishments there. In the case at hand neither job creation nor setting up new establishments are the main objective of the aid. The main objective of the aid is to increase security of supply of gaseous fuels in Poland, by diversifying the gas supplies,

9 OJ C 54, 4.3.2006, p. 13

favouring new gas flows in the region, thereby contributing to the completion of the internal gas market in the European Union.

46. The Commission therefore considers that the assessment of the compatibility of the measure with the internal market requires an assessment of the contribution of the measure to the development of the European Union market for gas and therefore needs to be based on Article 107(3)(c) TFEU which states that: "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be considered to be compatible with the internal market.

47. The compatibility of the measure with the internal market needs to be based on the direct application of Article 107(3)(c) TFEU, since aid for projects supporting natural gas infrastructure does not fall within the scope of the 2008 Environmental Aid Guidelines[10], which are based on that Article.

48. It is established Commission practice[11] that measures may be declared compatible directly under Art. 107(3)(c) TFEU, if they are necessary and proportionate and if the positive effects for the common objective outbalance the negative effects on competition and trade. In this regard, the Commission considers it appropriate to assess the following three questions:

(1) Is the aid measure aimed at a well-defined objective of common interest[12]?

(2) Is the aid well designed to deliver the objective of common interest? In particular:

(a) Is the aid measure an appropriate and necessary instrument, i.e. are there other, better-placed instruments[13]?

(b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?

(c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?

(3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

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10 OJ C 82 of 01.04.2008

11 Community framework for state aid for research and development and innovation OJ C 323, 30.12.2006, p. 1., point 1.3; Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p. 1., point 1.3.

12 Judgement of the court of 14 January 2009, Kronoply v. Commission (T-162/06, Rec. p. II-1; especially points 65, 66, 74, 75)

13 Judgement of the Court of 7 June 2001, Agrana Zucker und Stärke / Commission (T-187/99, Rec._p._II-1587) (cf. point 74); Judgement of the Court of 14 May 2002, Graphischer Maschinenbau / Commission (T-126/99, Rec._p._II-2427) (cf. points 41-43); Judgement of the Court of 15 April 2008, Nuova Agricast (C-390/06, Rec._p._I-2577) (cf. points 68-69).

Objective of Common Interest

49. An objective of common interest is an objective which has been recognised by the EU as being in the common interest of the EU Member States.

50. Pursuant to Article 194 TFEU, in the context of the establishment and functioning of the internal market the Union policy on energy shall aim inter alia to ensure security of energy supply in the Union.

51. The notified project will contribute to increasing security of supply of gaseous fuels to Poland, as it will diversify sources of supply and therefore improve the stability and continuity of the supply of gaseous fuels to final customers in Poland, reducing the risk of an interruption in supply. The gas crises which took place with varying degrees of intensity over the period 2004-2010, and, more generally, Poland's dependence on a single source of supply indicate a risk to secure supplies. By reason of its planned capacity, the capability to introduce liquefied natural gas into the domestic market using the LNG Terminal in Świnoujście can greatly mitigate the risk of interruption in gas supplies to end consumers.

52. In effect, the terminal in Świnoujście will contribute to increase the total capacity of regasification terminals in the EU by 5 billion Nm^3, and after potential extension – by 7.5 billion Nm^3 of gas. Establishing the LNG terminal would allow Poland to receive liquefied natural gas from any direction all over the world, thereby diversifying supply sources.

53. Additionally, the construction of the LNG Terminal together with the pipeline from Świnoujście to Szczecin and the distribution and control station in Goleniów and with future projects related to new trans-border connections allowing for two-way flows and gas storage (Poland-Czech Republic, Poland-Germany) would contribute to increase the capacity of the European gas grid and would allow for further gas transmission to other Member States. This would support the integration of the regional gas market in the EU, in particular markets in central and eastern Member States of the EU.

54. Moreover, pursuant to Articles 170 and 171 TFEU, the Union shall contribute to the development of trans-European networks in the area of energy infrastructures and, inter alia, establish guidelines covering the objectives, priorities and broad lines of measures envisaged; these guidelines shall identify projects of common interest, which the Union may support.

55. In this context, Decision No 1364/2006/EC laying down guidelines for trans-European energy networks, lists the planned LNG terminal in Poland in Annex I thereof[14]. Such Annex I defines axes for priority projects of common EU interest, including projects of European interest, as defined in Articles 7 and 8 of the Decision. Moreover, developing the capacities for receiving LNG and diversify sources and supply routes is listed as an additional criteria for identifying Projects of common EU interest, as referred to in Article 6(2) of the Decision in Annex II, point 8 thereof.

[14] Decision No 1364/2006/EC of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision No 1229/2003/ECOJ L 262 of 22/09/2006, p. 1.

56. It follows that the planned LNG terminal meets these criteria, so that the aid measure aims at supporting a well-defined objective of common interest recognised by the EU.

Aid well designed to deliver the objective of common interest

Appropriate Instrument

57. In the Second Strategic Energy Review[15], the Commission included LNG terminals and LNG storage plants on the list of measures enhancing liquidity and diversification of the gas market in the EU. The Commission also considered that "*liquefied natural gas (LNG) and adequate gas storage are important in providing liquidity and diversity to EU gas markets. Sufficient LNG capacity consisting of liquefaction facilities in the producing countries and LNG terminals and ship-based regasification in the EU should be available to all Member States, either directly or through other Member States on the basis of a solidarity arrangement. This is particularly important for Member States currently overwhelmingly dependent on a single gas supplier*".

58. The adequacy of LNG terminals and storage plants to deliver the objective of common EU interest is further reiterated in the Commission Communication Energy infrastructure priorities for 2020 and beyond[16], which noted that every European region should implement infrastructure allowing physical access to at least two different sources. Meanwhile, the infrastructure standards introduced in the Security of Gas Supply Regulation[17] impose additional flexibility requirements and increase the need for flexible supply, such as LNG, among other policy options.

59. The gas market in Poland has failed so far to provide for a project delivering a similar contribution to the achievement of the objective of common EU interest without State support. The construction of the LNG terminal will create alternative infrastructure for current gas import routes to Poland, which are influenced by existing transmission network system determinants.

60. Poland provided evidence that the aid allows for a considerable decrease in regasification service tariff rates. Whilst opening the industry for importing gas from other sources and locations, this possibility stimulates the establishment of a more competitive gas trading market in Poland and the whole of Eastern and Central Europe.

61. Consequently, the Commission considers that, in the circumstances and given the nature of the investments concerned, State aid is an appropriate instrument.

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15 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions – Second Strategic Energy Review: "An EU Energy Security and Solidarity Action Plan", COM(2008) 781.

16 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions Energy infrastructure priorities for 2020 and beyond - A Blueprint for an integrated European energy network COM(2010) 677 final of 17.11.2010.

17 Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, *OJ L 295, 12.11.2010, p. 1–22.*

Incentive Effect

62. Poland demonstrated that the aid leads to improving the financial indicators of the project to a level that can be acceptable for the beneficiary (as presented in table 2 above). While the net present value would be slightly negative and the generated internal rate of return remains below the 8% discount rate considered, the difference is no longer so significant, so that the aid provides an appropriate incentive for the beneficiary to carry on the notified project. Conversely, in the absence of aid, the project would yield a rate of return below 4% and a significantly negative net present value, making it unattractive to market investors.

63. Implementation of the LNG Terminal Project and the necessity for consumers to cover Project tariff revenues would cause an increase in consumer burden of approx. PLN […]/m^3 expressed per m^3 of gas (based on revenues for 2015). In relation to the current gas price adopted in the Project CBA (PLN […]/m^3), this would constitute an increase of […]%, i.e. a level which is acceptable both for the general public and for the President of ERO. In the absence of aid the realisation of the project would require significantly higher tariffs, which might not be accepted by the president of the ERO.

64. It can be therefore concluded that the aid has an incentive effect, as it provides the necessary incentive for the beneficiary to undertake the project.

Proportionality

65. A State aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum. As regards proportionality of the aid, Poland indicated that the aid intensity will be 57% of the eligible costs.

66. The proportionality of the aid must be seen in conjunction with the return made possible for PLNG. The Commission notes that in Poland, the lifetime financial rate of return for projects involving EU funding should not exceed 8%. For the measure at hand, the financial return on invested capital is 7.37%, that is, lower than 8% and also lower than the accepted rate of return for capital, which for 2011 was set at 9,6%. Moreover, Poland undertakes that the amount of planned aid shall not be taken into account for the purposes of tariff remuneration of the beneficiary.

67. This indicates that the aid shall not provide PLNG with excessive profits on the planned investment.

68. In view of the above it can thus be concluded that the State aid granted for the envisaged measures is proportional, and is limited to the minimum necessary.

Distortion of Competition and Balancing Test

69. On the one hand, the measure shall reinforce the competitive position of PLNG, by making it even more unlikely that alternative LNG operators build LNG terminals in the same area. The Polish terminal is the first investment of the kind localised on the Baltic Sea shore. Construction of the terminal will also constitute an important factor stimulating investments related to natural gas transmission in Poland.

70. On the other hand, Poland underlined that its decision of promoting the construction of the Świnoujście Terminal did not hinder the preparation of similar investments in

Finland and Lithuania. The construction of the terminal in Poland is unlikely to endanger similar implementations in other Baltic Member States.

71. The insufficient number of trans-border connections (inter-connections) as well as location and technical capacities of the national transmission system may constitute an actual barrier for new entities entering the Polish market. However, the construction of the Terminal in Świnoujście opens the Polish market to all interested entities without limitations typical for the linear infrastructure. In that context, the measure shall also increase the possible amounts of gas trade to and from Poland.

72. The project is thus likely to have a positive effect on the development of competition on the gaseous fuel market in Poland, as it will open new possibilities for new entities to enter the Polish gas market and allows gas suppliers from Poland access to gas supplies from various sources located in various parts of the world. The LNG terminal shall be operated pursuant to effective third party access rules. These access rules should ensure that benefits from the planned project favour competition among the prospective customers, which counterbalances the negative effects on competition upstream.

73. The LNG terminal will provide an opportunity on downstream markets for entities with smaller market shares than PGNiG to be able to use the LNG terminal for importing gas (e.g. by working together in order to jointly import larger quantities) instead of buying it from the market leader PGNiG. The LNG terminal introduces also new possibilities for LNG deliveries by using LNG vehicles.

74. The Terminal will be a new point of gas off-take on the map of the national gas system, available also to third parties. Consequently, the implementation of the project would allow for new players entering the gas market in Poland, which would increase competition on the market and thus, support reduction of prices of gas and flexibility in gas supplies, which would be favourable for end customers.

75. Given the sole activity and statutory limitations of PLNG to carry out other activities, including transmission, distribution, sale or storage activities as is clearly defined in the company's articles of association, the aid cannot be used to fund activities on other markets.

76. On balance, it can be concluded that these positive effects and contribution to common EU objectives, without strong negative spill-over on other Member States outweigh the negative effects on competition identified above.

Conclusion on the compatibility of the aid

77. The Commission thus concludes that the aid measure pursues an objective of common interest in a necessary and proportionate way and is therefore compatible with 107 (3) (c) of the TFEU.

4. CONCLUSION

78. The Commission has accordingly decided not to raise objections to the notified measure, because the aid can be found compatible with the internal market in accordance with Article 107 (3) (c) of the TFEU and Article 61 (3) (c) of the EEA Agreement.

79. The Commission reminds the Polish Authorities that, in accordance with article 108 (3) of the TFEU, plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty [now 108 of the TFEU] (OJ L 140, 30.4.2004, p.1).

80. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_pl.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General of Competition
State Aid Registry
B-1049 BRUSSELS
Telefax nº: + 32-2-296.12.42

Please, mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

Joaquin ALMUNIA
Vice-President