EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State aid SA.34938 (2012/N) – Poland
Aid to increase the capacity of PGNiG's gas storage facility in Husów

Dear Sir,

The Commission wishes to inform the Republic of Poland that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the aid measure.

I. PROCEDURE

1. By electronic notification of 6 June 2012, Poland notified the above measure, according to Article 108 (3) of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

2. The Commission asked additional information by letters of 3 August 2012 and 21 December 2012. The Polish authorities submitted the requested information, respectively, by letter registered on 31 August 2012, further complemented by e-mail registered on 24 October 2012, and by letters registered on 18 January 2013 and on 6 February 2013.

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II. DESCRIPTION OF THE MEASURE

Description and objectives of the investment project

3. The notified investment project consists of co-financing from the EU Structural Funds of an expansion of a gas storage facility in Husów, located in South-Eastern Poland. The project will be implemented in line with the provisions of Council Regulation (EC) No 1083/2006 of 11 July 2006 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[1], planned for implementation in the framework of the 2007-2013 national Polish Environment and Infrastructure Operational Programme (hereinafter "EIOP")[2], approved by the Commission on 7 December 2007.

4. Natural gas undertakings keep gas stocks in commercial storages to guarantee delivery to their customers at times of changing supply and demand conditions. In addition, some Member States have developed strategic storage sites where gas is reserved exclusively for emergency situations.[3] The notified financing of the extension of an existing gas storage site subject to the present Decision does not refer to such strategic reserves in Poland.

5. The present notification follows a Commission's Decision adopted on 23 June 2010 in case N 660/2009 raising no objections to the financing of an investment in underground gas storage facilities[4] (hereinafter "the 2010 Decision"), which concerned four investment projects of expansion of existing or construction of new underground natural gas storage (hereinafter "UGS") facilities, aimed at improving the security of gas supply in Poland. By means of these projects, the total capacity of UGS facilities in Poland was envisaged to increase by 1.027 billion m^3.

6. The notified investment complements the above projects by increasing the existing UGS Husów's working gas capacity by 100 million m3 of natural gas (from the existing 400 million m3 to 500 million m3) by August 2014, which is the forecasted date of the completion of the project.

7. The aid aims, according to the Polish authorities, at improving the energy security of Poland in case of disruption. In that respect, the infrastructure allegedly contributes to the EU security of supply strategy and to the development of more competitive gas markets. In particular, Poland claims that the broad aims of the investment as indicated in the 2010 Decision and the same legal basis for compatibility with the internal market pursuant to the direct application of Article 107(3) c) TFEU apply to UGS Husów's expansion:

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[1] OJ L 210, 31.7.2006.

[2] The document is accessible on the following website: www.mrr.gov.pl/aktualnosci/fundusze_europejskie_2007_2013/Strony/20110812_Lista_projektow_indywidualnych_Program_Infrastruktura_Srodowisko.aspx.

[3] Commission Staff Working Document *Investment projects in energy infrastructure*, adopted on 15.11.2012, SWD (2012) 367, p. 21.

[4] OJ C 213, 6.8.2010, p. 10.

- Creation of reserves of gas for use in the event of interruption in supply, which is particularly relevant for Poland which depends heavily on imports;
- Balancing seasonal loads in order to satisfy peak demand during winter months (gas is stored from April to October and usually withdrawn from November to March) and enabling peak balancing of daily demand for gas;
- Enabling rational and economic extraction of natural gas whilst supporting transmission by eliminating local system bottlenecks or critical pressure constraints;
- Commercial optimisation of gas price fluctuations and of the operation of the entire system, including the facilitation of swap transactions;

8. Furthermore, the Polish authorities have confirmed that the beneficiaries were not obliged under national law to carry out the investment, and that they would not have been able to do so on a commercially viable basis.

The beneficiaries

9. In Poland, the business activity consisting of gas storage is regulated by the public authorities and requires a concession contract. Storage system operators (hereinafter "SSO") are appointed by the Energy Regulatory Office (hereinafter "ERO") and are subject to the rules applicable to an SSO, notably as regards tariffs.

10. The incumbent gas company, Polskie Górnictwo Naftowe i Gazownictwo S.A. (hereinafter "PGNiG") has such a concession for UGS Husów. PGNiG, which is mainly State-owned[5], has a quasi-monopolistic position on the markets of production, import, distribution, wholesale and retail sales of gas. Distribution of gas is operated by six separate gas distribution companies fully owned by but legally unbundled from PGNiG.

11. In November 2010, a limited liability company Storage System Operator (Operator Systemu Magazynowania Sp. z o.o., hereinafter "SSO Ltd."), wholly-owned by PGNiG, was created. This incorporation is part of the process to adapt PGNiG's business structure to the requirements of the Directive of the European Parliament and of the Council 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (hereinafter "Directive 2009/73/EC")[6]. Article 15 of Directive 2009/73/EC requires that *"(…) storage system operator which [is] part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission, distribution and storage"*.

12. On 1 March 2011, PGNiG applied to the President of ERO with a motion to appoint SSO Ltd. as the storage system operator in Poland. By decision of ERO

[5] By 31 December 2011, 27.592% of the company's shares belonged to shareholders other than the State Treasury.
[6] OJ L 211, 14.8.2009, p. 94.

dated 22 May 2012, SSO Ltd. has been appointed a storage system operator and fulfils this function since 1 June 2012. PGNiG remains the owner of the storage facilities, whereas SSO Ltd – as the operator - has the duty of operating and allocating storage capacities.

13. It follows that the beneficiaries of the notified measure are PGNiG in its capacity as the owner of the assets planned to be subsidised and, indirectly, SSO Ltd., which is the operator of the PGNiG's gas storage system in charge of operating the subsidised assets.

Rules applicable to gas storage

14. Under the EU rules, there is no mandatory requirement for commercial or strategic gas storage reserve (unlike for oil storage). Regulation No 994/2010 of 20 October 2010 concerning measures to safeguard the security of the natural gas supply and repealing Council Directive 2004/67/EC[7](hereinafter "Regulation No 994/2010") and, in particular, Article 8(1) lays down a supply standard obliging identified natural gas undertakings to take measures to ensure gas supply to protected customers (e.g. households, SMEs and district heating installations in specific conditions) in specific circumstances (e.g. extreme temperatures during a 7-day peak period occurring with probability of once in 20 years). However, Regulation No 994/2010 does not prescribe the type of gas infrastructure which must be available to meet supply standards and, more specifically, a particular obligation to construct or use UGS such as Husów[8].

15. As regards the Polish law regarding mandatory reserves for gas, the Act on Stocks (*ustawa o zapasach*)[9], it obliges companies engaged in supply of gas to third parties[10] to store a percentage of gas imports in storage installations connected to the transmission and distribution gas systems.[11] Mandatory reserves for gas importers must correspond to the level of 30 daily average volumes of imports for a certain period and must be stored in storage installations, the technical parameters of which allow for a total supply to the gas system for the period not longer than 40 days. Storage installation is defined in the Polish Energy Law[12] as an installation used for storing gaseous fuels, including for instance container-less storage of natural gas (*magazynowanie bezzbiornikowe*), part of LNG installations

[7] OJ L 295, 12.11.2010, p. 1.

[8] Recital 27 of the Regulation No 994/2010 indicates: *"It is essential in the interests of a well-functioning gas market that the necessary investments in indigenous production and infrastructures, such as interconnections, in particular those providing access to the gas network of the Union, equipment allowing physical bi-directional gas flows on pipelines as well as storage and LNG re-gasification facilities, be made by natural gas undertakings in good time, bearing in mind possible supply disruptions such as the one that occurred in January 2009."*

[9] Act of 16.2.2007 on stocks of crude oil, petroleum products and natural gas and on the procedures applicable in circumstances of a threat to the fuel security of the State and disruptions on the petroleum market, Journal of Laws 2007, Nr. 52, item 343, as amended.

[10] Subject to certain thresholds as regards the volume of imported gas and the number of customers. Importers of gas for own use are excluded from this obligation.

[11] Under the Law of 29.19.2010 on strategic reserves (Journal of Laws 2010, Nr 229, item 1496), there is a separate obligation imposed on the Polish authorities, in particular the Minister of Economy (*Minister Gospodarki*) and the Material Reserves Agency, to maintain certain reserves.

[12] Act of 10.4.1997 – the Energy Law, Journal of Laws 20112, item 1059.

used for storage and storage capacity of pipelines[13]. Since the storage obligation under the Act on Stocks can be met in different ways, including – under certain conditions[14] - outside the Polish territory, there is no obligation under the Polish law mandating the construction of gas storage sites such as UGS Husów.

16. The total active capacity of gas storage facilities run by SSO Ltd. for the season 2012/2013 amounts to approximately 1822 million m^3. The President of ERO has defined the mandatory reserves of gas to be held by PGNiG for the period from 1 October 2012 until 30 September 2013 at the level of 883.3 million m^3, which corresponds to 48.48% of SSO Ltd.'s storage capacity.[15] The mandatory reserves imposed on PGNiG or other companies are exclusively linked to the levels of gas supply on the Polish market by PGNiG or other companies and not to PGNiG's activities on the gas storage market, in terms of existing or mandatory storage capacity.

17. The February 2012 cold snap in Poland, during which the gas consumption rose to record level as freezing weather set demand at very high levels, is one of the most recent examples of disruption which directly affected Poland. Indeed, on 2 February 2012, the Polish Minister of Economy decided to release of obligatory stocks of natural gas. The decision was issued following a request of the transmission system operator Gaz – System S.A. due to the sharp increase in natural gas consumption. Alternative solutions available on the market such as use of virtual reverse flows and imports through available interconnectors had been used as well, but were not sufficient to cover the demand.

Third Party Access to gas storage

18. Pursuant to Directive 2009/73/EC, the Member States must ensure access to the gas storage facilities for third parties. In order to fulfil the obligations with regard to the implementation of the rule of third party access (hereinafter "TPA") to storage facilities, Poland transposed these rules into the Energy Law. According to the provisions of the Polish Energy Law, SSO Ltd. is subject to the general principles on TPA, which obliges owners and operators of gas storage infrastructure to provide gas storage services at storage facilities on equal terms to customers and enterprises selling gaseous fuels under a contract for the provision of these services. Access to storage facilities is being offered since 1 July 2009.

19. TPA to storage facilities operated by SSO Ltd. is implemented through the Rules for Storage Services (hereinafter referred to as "the Rules") and the Tariff for Storage. Both require an approval by ERO. The Rules foresee that the storage services are offered to all parties by allocating the released capacities in an open call. In case the demand for capacities would be bigger than available capacities,

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[13] Article 8 of the Act on Stocks also mentions for instance storage capacity in refineries, wholesale containers, containers in harbours and on transport ships.

[14] Such storage installations must be connected to the Polish gas system and their technical parameters (as well as the parameters of the connected gas systems) and concluded transport service agreements must allow for supply of natural gas reserves stored outside the Polish territory into the national gas transmission or distribution network for the period not longer than 40 days, see Article 24 a (1) of the Act on Stocks.

[15] According to the current forecasts, this ratio will amount to 30.9% in 2015 and to 31.4% in 2020.

the allocation will be made in proportion to the requests. Pursuant to the Rules, the duration for which storage services can be provided on the basis of a service agreement is one year as a minimum and four years as a maximum.

Aid amount, intensity and duration

20. The planned amount of eligible expenditure (under the EU Structural Funds) of the expansion of UGS Husów project amounts to PLN 67 700 000. The planned total amount of aid will not exceed PLN 38 589 000 which is approximately EUR 9.45 million. The aid intensity will therefore not exceed the level of 57%.

21. The aid will be granted on the basis of a co-financing agreement signed with the beneficiary following a positive evaluation of the application for co-financing in line with the method for selection of individual projects laid down in Article 21(1) of the Act of 6 December 2006 on the development policy[16]. The agreement contains a clause whereby the payment of the funds is conditional upon the nature of the state aid decision of the European Commission. Any provisions in such decision must be incorporated into the co-financing agreement and respected when the funding is paid to the beneficiary.

22. In order to establish the precise aid amount, the Polish authorities have applied the Polish Guidelines on selected issues of investment preparation, including revenue-generating projects[17]. In particular, the use of this method ensures that, after taking into account the subsidy, the financial rate of return (FRR/K), calculated in the project's financial effectiveness analysis, does not exceed the discount rate assumed in the financial analysis, that is, in the project under assessment, the level of 8% nominal or 5% actual. As a result, the net present value (FNPV/K) for the project is negative. The details of the financial performance of the project, with and without aid, are presented in the table below:

Parameters	**Without the aid**	**With the aid**
Financial rate of return (FRR)	1.53%	7.74%
Net Present Value (NPV)	- 33 210 988 PLN	- 835 627 PLN

23. As regards the time of implementation of the notified project, on 5 May 2011, PGNiG requested the Oil and Gas Institute (*Instytut Nafty i Gazu*) to add the Husów project to the list of individual projects of EIOP. Subsequently, on 14 May 2011, the Oil and Gas Institute requested the Ministry of Economy to add the Husów project to the list. The project was added to the August 2011 edition of the list and the first contract was concluded by PGNiG on 12 April 2012 concerning a supply of a construction machine, which is considered to be the date of starting the project. The aid will be granted at the moment of the signature of the co-

[16] Journal of Laws No 227, entry 1658, as subsequently amended.
[17] Guidelines within the scope of selected issues associated with the preparation of investment projects, including income generating projects, available at: http://www.mrr.gov.pl/fundusze/wytyczne_mrr/obowiazujace/horyzontalne/strony/lista.aspx

financing agreement. The expansion of the gas storage facility at Husów is foreseen to be completed in August 2014.

III. ASSESSMENT

Existence of State aid within the meaning of Article 107(1) TFEU

24. Article 107(1) 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 internal market*".

Aid granted by a Member State or through State resources

25. The project is co-financed from the EU Structural Funds. Before being granted to the beneficiary undertaking, those funds are first disbursed to the Member State in question and thus, are under the control of the Member State's authorities at the moment of the final payment to the beneficiary. In the case at hand, since the choice of the project and the final transfer of the Structural Funds depend on the discretion of the Polish authorities, the aid is considered to be granted from State resources within the meaning of Article 107 (1) TFEU.

Favouring certain undertakings or the production of certain goods

26. The aid in the form of refund will reduce the amount of capital that SSO Ltd. would need for the financing of the planned investment. In addition, the gas storage facilities still belong to PGNiG. The company, which is also SSO Ltd.'s sole shareholder, will therefore become owner of assets co-financed from the EU Structural Funds, which it would be able to use e.g. as a collateral to obtain credits for other purposes.

27. In the view of the direct benefits to SSO Ltd. and its mother company PGNiG , the aid will provide them with an economic advantage which they would not have obtained under normal market conditions.

28. As this advantage is only granted to PGNiG and SSO Ltd., the aid under assessment has a selective nature within the meaning of Article 107(1) TFEU.

Distortion of competition and affectation of trade between Member States

29. The markets for wholesale gas supply and gas storage in Poland on which PGNiG and SSO Ltd. are active are open to competition. The planned aid may deter other companies operating in the EU to invest in new gas storage facilities in Poland or in Member States interconnected to Poland and may therefore distort or threaten to distort competition as to the construction and operation of gas storage capacities. Indeed, importers of gas can fulfil the obligations resulting from the Polish Act on Stocks through alternative storage installations than underground storage facilities such as UGS Husów or in gas storage facilities outside the Polish territory. Therefore, the economic advantage granted for the construction of UGS

Husów distorts or threatens to distort competition between providers of gas storage services.

30. As gas is traded between EU Member States, including between Poland and other Member States, the planned aid allowing for increased storage capacity in Poland is likely to affect trade of gas between Member States.

Conclusion on existence of the aid

31. In the light of the above considerations, the Commission concludes that the measure involves state aid within the meaning of Article 107 (1) TFEU.

Lawfulness of the aid

32. Poland confirmed to the Commission that the payment of the aid is subject to the approval by the Commission. Therefore, Poland has fulfilled its obligation according to Article 108(3) TFEU by notifying the aid measure before its implementation.

Compatibility under Article 107(3)(c) TFEU

33. According to the case law, it is up to the Member State to invoke possible grounds of compatibility of the aid. Poland has claimed that the aid is justified on the ground that it enhances security of energy supply in Poland and, in keeping with the Commission's assessment in the 2010 Decision, invoked the direct application of Article 107(3)(c) TFEU.

34. It is established Commission practice that, in order to be compatible under Article 107(3)(c) TFEU, an aid must pursue an objective of common interest in a necessary and proportionate way. In this regard, the Commission considers it appropriate to assess the following questions:

(1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or another objective of common interest)?

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

- Is the aid measure an appropriate instrument, i.e. are there other, better-placed instruments?
- Is there an incentive effect, i.e. does the aid change the behaviour of firms?
- 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?

Objective of common interest

35. Pursuant to Article 194 TFEU, "*In the context of the establishment and functioning of the internal market and with regard to the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:*

a) ensure the functioning of the energy market;

b) ensure security of energy supply in the Union; (…)"

36. According to the case-law, security of energy supply constitutes an objective of common interest which may justify derogation from the rules of free movement of goods.[18] The Commission therefore takes the view that it may also constitute an objective of common interest justifying the granting of state aid.

37. The Commission wishes to recall that not any investment into gas infrastructure may benefit from state aid for the reasons of security of supply and thus, be authorised on the basis of Article 107(3)(c) TFEU. The assessment of whether an investment into gas infrastructure makes a contribution to security of supply needs to be carried out on an individual basis, taking into account specific circumstances of the particular infrastructure and markets involved, as developed below.

38. Stored gas is expressly mentioned among the instruments to enhance the security of gas supply in Regulation No 994/2010. Recital 26 thereof as to *"Measures necessary to ensure the fulfilment of the supply standard"* refers, inter alia to *"additional storage capacities and volumes"*. Indeed, the use of gas storage and its flexibility was clearly demonstrated in January 2009, when most Member States doubled the gas supply from their storages in comparison to January 2008[19]. Investments in increased storage capacity, reverse-flow infrastructure and additional LNG terminals are needed in the EU to address the security of supply challenge and increase market integration and competition[20].

39. As it was indicated in the 2010 Decision, underground gas storages make an important contribution to increased security of energy supply through stabilising supply of gas and reacting to changes in demand of gas, whether daily, seasonal or resulting from unforeseen interruptions of gas supply such as the Russian-Ukrainian gas crisis of 2009. Furthermore, the Commission recognised in the 2010 Decision that underground gas storages make a key contribution to increased energy security and the creation of the basic infrastructure for the operation of the internal market in natural gas, thereby promoting the wider interest of the European Union, beyond the specific interest of Poland.

40. In view of the contribution of the planned investment in UGS Husów to security of supply, which is an expressly recognised objective of EU energy policy, it can

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[18] Case 72/83 *Campus Oil* [1984] ECR 2730, paragraph 33 to 51; Case C-503/99 *Commission* v *Belgium* (‚Distrigaz') [2002] ECR I-4809, paragraph 46 to 55; Case C-483/99 *Commission* v *France* (‚Elf-Aquitaine') [2002] ECR I-4781, paragraph 47 to 54.

[19] Commission Staff working document: "Assessment report of Directive 2004/67/EC on security of gas supply" (SEC(2009)978 accompanying COM(2009)363), p.22 to 26.

[20] Commission Staff Working Document *Investment projects in energy infrastructure,* 15.11.2012, SWD (2012) 367, p. 16.

be concluded that the project contributes to a well-defined objective of common interest.

Appropriate instrument

41. The state aid to gas storage facilities will allow for additional capacity to stabilise gas supply in times of crisis in Poland, by going beyond the level of security of supply provided by market forces and applicable Union or national legislation. As regards the situation of security of supply in Poland, the situation of the February 2012 cold snap in Poland referred to in recital 17, illustrates that in times of a sharp increase in natural gas consumption by the customers, despite the fact that all alternative available solutions (market forces, application of EU and national legislation) have been used, they appeared not to be sufficient to cover the increase in demand. The aid is therefore appropriate to increase security of supply. As pointed out in the 2010 Decision, gas storage is a widely used instrument and recognised in EU law as appropriate for the purposes of guaranteeing security of supply. Moreover, Poland uses gas storage in conjunction with other instruments to achieve the intended aim of security of gas supply, including the non-exhaustive list in annex II of Regulation No 994/2010.

42. Furthermore, at the level of the aid measure, the Polish authorities have explored alternative possibilities of financing the notified project of gas storage facility in Husów, such as imposing a legal obligation to realise the investment at hand by the SSO Ltd. It has been pointed out, however, that the beneficiary is constrained in its investment decisions by the available capital. Therefore, the SSO Ltd. could for instance postpone the investment beyond the time frame that is required from the perspective of national and EU security of supply policy. This would not guarantee a timely achievement of the above-defined objective of common interest.

43. Consequently, and in line with the 2010 Decision, the Commission considers that state aid for investment in additional storage capacities is an appropriate instrument to achieve the common objective of security of supply.

Incentive effect

44. State aid has an incentive effect if the aid changes the recipients' behaviour towards reaching the objective of common interest in cases of market failure. The aid granted for the planned storage is capable of providing the necessary incentive effect.

45. As portrayed in recital 22, without the aid, the project would yield a financial rate of return of 1.53%, which would be manifestly insufficient to attract private investment on pure commercial considerations.

46. Secondly, beyond profitability considerations, state aid to a particular activity or investment lacks incentive effect where the beneficiary is legally obliged to perform them. In this respect, the construction and operation of gas storage facilities and the storage of gas reserves in such facilities are instruments which enable the implementation of Regulation No 994/2010 but which are not mandated by it. As shown at recital 14, Regulation No 994/2010 does not oblige

specific undertakings or the Member States to have predefined minimum levels of gas storage capacity or to store pre-defined volumes of gas.

47. Likewise, it follows from the information supplied by Poland portrayed at recitals 15 and 16 that applicable national law does not create an obligation on PGNiG or the SSO Ltd. to build up, maintain and operate the additional storage capacity brought about by the expansion of UGS Husów. On the contrary, the increase of storage capacity brought about by UGS Husów is well above the current level of storage obligations of gas suppliers active on the Polish market.

48. It follows that in order to achieve the security of supply objective, the foreseen investment would be carried out only if partly financed by a support from State resources and is not mandated by legal obligations. In addition, as confirmed by the Polish authorities, the works on the project have not started before the application by the beneficiary for the financing from EIOP. Therefore, it can be concluded that the state aid will provide for the necessary incentive effect.

Proportionality

49. A state aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum. The maximum aid intensity of the project will not exceed 57%, which is in line with the aid intensities which the Commission did not object to in its 2010 Decision. As portrayed in recital 22, the net present value of the project is expected to remain negative, even including the planned aid. The project shall yield a return around 8% in nominal terms which is not excessive in absolute terms and in comparison with typical returns in this sector.

50. In addition, the Commission has considered that the part of the investment corresponding to the co-financing from the EU Structural Funds will not form part of engaged capital of the SSO Ltd., on the basis of which the calculation of tariffs takes place. In combination with the tariff regulation preventing that excessive revenues are derived from the operation of the subsidised infrastructure, this ensures that the planned aid shall not provide excessive profits beyond a reasonable return to SSO Ltd.

51. In view of the above, it can thus be concluded that the state aid granted for the envisaged measures is proportional.

Distortion of competition and balancing test

52. The market of gas storage is regulated by the State and, so far, SSO Ltd. has been appointed as the only storage system operator in Poland. According to Poland, no alternative operator is currently planning to operate UGS's in Poland on a pure commercial – non-subsidised - basis. However, an alternative operator could be given the licence of an SSO and start offering competing storage services, at least in the medium term. Therefore, the planned subsidy, in so far as it contributes to expansion of existing storage capacities owned by PGNiG and operated by SSO Ltd., might have the effect of deterring operators to invest in new underground gas storage facilities such as the one under assessment or in alternative infrastructure for gas storage.

53. The Commission notes in this context, however, that the impacts on competition on the market for storage of gas are mitigated on the downstream markets, as the beneficiary of the aid is obliged to ensure third party access to its storage facilities for all suppliers of gas. As mentioned above, new storage capacities in Husów may allow for new entries in the Polish gas market to stock imported gas for the purpose of its supply and distribution on the Polish market.

54. This possibility is not merely theoretical. Recent developments, as described below, are likely to result in increased competition on the gas supply market to which the increased storage capacity of Husów could contribute.

55. In September 2011, a cross-border connection between the Polish and Czech gas transfer system was commissioned in Cieszyn (by the Polish and Czech operators of transfer gas pipelines). This connection enables, in the first period, to import natural gas into Poland in an amount of approx. 0.5 billion m^3/year, whilst transmission of gas in a reverse direction is also possible. In the future, expansion of this connection to a level of 2-3 billion m^3/year is anticipated. Further, since November 2011, interruptible reverse services are being offered on the Yamal pipeline. The maximum technical capacity of the reverse flow is ca. 5.8 billion m^3/year. Moreover, in January 2012, the cross-border connection of the Polish and German gas transmission system in Lasów near Zgorzelec was expanded, which increases the possibility of natural gas transmission to the Polish system from the Western direction up to 1.5 billion m^3/year. Additional storage capacities in UGS Husów could therefore accompany and support the development of a more competitive gas market in Poland, removing a possible competitive constraint as to gas storage obligations in the longer term.

56. Since appropriate TPA provisions ensure that access to the new storage capacity will be granted in a non-discriminatory and effective manner, on the basis of regulated conditions, the measure will ensure the positive effects in terms of security of supply and interpenetration of gas systems, within the internal market. In addition, as prescribed by the Polish Act on Stocks, the obligation to keep mandatory reserves of gas imposed on certain gas importers on the Polish market can be fulfilled by means of alternative installations than underground storage facilities such as UGS Husów as well as in gas storage facilities located outside the territory of Poland. Hence, the negative effects on competition are mitigated to a satisfactory extent by the identifiable positive effects of the aid.

57. Therefore, it can be concluded that the possible distortions of competition and trade resulting from the state aid will be limited and outweighed by the positive effects of flanking measures such as TPA to storage capacity, possibilities for gas storage in alternative storage installations, including outside the Polish territory, and a contribution to a decrease of entry barriers through an expansion of overall gas storage capacity in UGS facilities, so that the overall balance with regard to the objective of common interest is positive.

Conclusion with regard to compatibility

58. The Commission thus concludes that the aid measure is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

IV. CONCLUSION

59. The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

60. The Commission reminds the Polish Authorities that, in accordance with article 108(3) TFEU, any 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[21] (now Article 108 TFEU).

61. 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/competition/elojade/isef/index.cfm

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

Joaquín ALMUNIA
Vice-President

[21] OJ L 140, 30.4.2004, p.1.