COMMISSION DECISION (EU) 2022/444

of 28 June 2021

on the state aid scheme SA.49414 (2020/C) (ex 2019/NN) implemented by France in favour of operators of natural gas storage infrastructure

(notified under document C(2021)4494)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those articles ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 23 October 2017, the French authorities informed the Commission of the draft reform of the legal and regulatory framework applicable to natural gas storage ('the reform'). The French authorities pre-notified the draft on 23 November 2017 and, following adoption of the reform by the French Parliament, sent additional information to the Commission.

(2) By letter of 28 February 2020, the Commission informed France of its decision ('the opening decision') to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the formal investigation procedure') in respect of the measure.

(3) The opening decision was published in the *Official Journal of the European Union*. The Commission called on interested parties to submit their comments on the measure.

(4) During the formal investigation procedure, the Commission received comments from interested parties. It forwarded them to France, giving it the opportunity to comment. The French authorities submitted their comments by letter of 3 August 2020.

(5) The French authorities submitted additional information on 21 September 2020, 26 January 2021, 15 March 2021 and 10 May 2021.

2. BACKGROUND TO THE MEASURE

2.1. Natural gas storage in France

(6) Underground natural gas storage infrastructure enables natural gas stocks connected to the transmission network to be built up. It contributes to gas flow management in the network.

([1]) OJ C 112, 3.4.2020, p. 39.

(7) Storage is used as a means of ensuring a balance between the amount of natural gas in the network and the amount consumed, for example in the event of supply disruption or a peak in demand linked to a cold spell in winter. Together with pipelines and compressors, storage also makes it possible to deliver gas within the transmission network, particularly in the event of congestion.

(8) Storage operators offer storage capacity to natural gas suppliers operating in retail and wholesale markets and to transmission system operators. The willingness of natural gas suppliers to pay for storage capacity depends on the difference in the natural gas price between summer and winter ('the spread'). Natural gas production levels are relatively stable throughout the year, whereas gas consumption varies considerably depending on temperature.

(9) There are 14 storage facilities in France, 11 of which are in operation ([2]), and 3 storage operators:

— Storengy, a wholly owned subsidiary of ENGIE, owns and operates 12 sites, 3 of which are on standby and 9 in operation. The latter account for a working volume of 102,1 TWh (74 % of total national capacity);

— Teréga (formerly TIGF), owned by Snam (40,5 %), GIC (31,5 %), EDF Investissement (18 %) and Predica (10 %), runs a site in operation with a working volume of 33,1 TWh (24 % of total national capacity);

— Géométhane, owned by Storengy (50 %), CNP (49 %) and Géostock (1 %), runs a site in operation with a working volume of 3,3 TWh (2 % of total national capacity).

(10) Seasonal variations in natural gas prices have decreased since 2009. Until 2011, the spread was high enough to induce suppliers to take up all available storage capacity. Since 2011, the spread has been insufficient to cover the storage price offered by operators (spread of EUR 1,5-2/MWh at a price of EUR 6-7/MWh). As a result, storage capacity has not been fully taken up since 2010-2011. Three sites were run at reduced capacity ('placed on standby') in 2014 and 2015, while the take-up rate of the storage infrastructure in operation was 63 % in 2017-2018.

2.2. **Legal and regulatory framework**

(11) To safeguard security of supply, France initially introduced a decree in 2014 to strengthen the obligations on natural gas suppliers to build up natural gas stocks ([3]). It subsequently took the view that this system had several flaws, and some natural gas suppliers brought an action challenging the legality of the decree. In the light of this, France decided to introduce an adjusted measure, which is the subject of this Decision ('the measure in question').

(12) Article 33 of Directive 2009/73/EC of the European Parliament and of the Council ([4]) allows Member States to regulate storage infrastructure. Natural gas storage is also one of the measures that Member States may put in place to comply with the obligations arising from Regulation (EU) 2017/1938 of the European Parliament and of the Council ([5]) under the conditions laid down therein, in particular the obligation to safeguard security of supply for national customers while ensuring the proper and continuous functioning of the internal market in natural gas.

([2]) There are 12 sites in operation if Lussagnet and Izaute are considered separately. The latter belong to Teréga and share some technical installations. For this reason, they are sometimes considered to be a single facility (e.g. multiannual energy programme (PPE) 2019-2028) and sometimes two separate facilities (e.g. PPE 2016-2023).

([3]) Decree No 2014-328 of 12 March 2014 amending Decree No 2006-1034 of 21 August 2006 on access to underground natural gas storage facilities (*décret n°2014-328 du 12 mars 2014 modifiant le décret n°2006-1034 du 21 août 2006 relatif à l'accès aux stockages souterrains de gaz naturel*).

([4]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

([5]) Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

3. DETAILED DESCRIPTION OF THE MEASURE IN QUESTION AND GROUNDS FOR INITIATING THE PROCEDURE

3.1. Objective of the mechanism

(13) The regulatory mechanism is intended to ensure continued operation of the storage infrastructure necessary to safeguard security of natural gas supply in France in the medium and long term.

(14) In particular, the mechanism aims to ensure that the network is able to meet demand, especially during cold spells, and that natural gas can be delivered within the transmission network, in particular in the event of congestion.

3.2. Legal basis

(15) The mechanism for regulating essential natural gas storage infrastructure was incorporated into the Energy Code (*code de l'énergie*) by Act No 2017-1839 of 30 December 2017 ([6]) (*loi Hydrocarbures*, 'Hydrocarbons Act'), which entered into force on 1 January 2018.

(16) In particular, Article 12 of the Hydrocarbons Act provides that the scope of the regulatory mechanism is defined by the multiannual energy programme ('PPE'), referred to in Article L.141-1 of the Energy Code. The PPE is adopted by decree after consultation with several advisory bodies and revised at least every 5 years for two 5-year periods. The PPE for the period 2019-2028 was established by Decree No 2020-456 of 21 April 2020 ('Decree No 2020-456 on the PPE').

(17) In addition, under Article 12 of the Hydrocarbons Act, the Energy Regulatory Commission ('CRE') lays down certain procedures under the regulatory mechanism, in particular as regards the auctioning of storage capacity, the authorised revenue of storage operators and the arrangements for collecting that revenue through the sale of capacity and the tariffs for using the natural gas transmission network, which are paid to storage operators (see recitals 20 to 22).

3.3. Overall functioning of the mechanism

(18) The mechanism for regulating natural gas storage adopted in France in 2017 is based on three principles.

(19) First, the scope of the mechanism covers the underground storage infrastructure necessary to safeguard security of supply in France in the medium and long term ([7]) ('essential storage infrastructure'). The list of essential infrastructure is established by the Decree on the PPE. This infrastructure must be kept running by its operators ([8]).

(20) Secondly, essential storage infrastructure capacity is auctioned according to procedures laid down by the CRE ([9]). The auctions are open to any supplier established in an EU Member State or other State with authorisation to supply the French retail or wholesale market. As of January 2018, 213 French and foreign suppliers had such authorisation. Auction revenues are collected directly by storage operators.

([6]) Act No 2017-1839 of 30 December 2017 ending the exploration and extraction of hydrocarbons and laying down various provisions relating to energy and the environment (*loi n°2017-1839 du 30 décembre 2017 mettant fin à la recherche ainsi qu'à l'exploitation des hydrocarbures et portant diverses dispositions relatives à l'énergie et à l'environnement*).

([7]) Article L.421-3-1 of the Energy Code.

([8]) Article L.421-3-1 of the Energy Code.

([9]) Article L.421-5-1 of the Energy Code.

(21) Thirdly, operators of essential storage infrastructure are guaranteed that their costs will be covered in so far as they correspond to those of an 'efficient operator' ([10]). In this regard, they receive regulated revenue set by decision of the CRE ('authorised revenue'). If their direct revenue from customers is lower than their authorised revenue, storage operators receive compensation equal to the difference between the two amounts (see recital 89). This compensation is financed by natural gas shippers based on their portfolio of firm-service customers connected to the public natural gas distribution network who have not declared that they can be cut off without risk (see recitals 104 and 105). The compensation is collected by the transmission system operator in the form of a dedicated charge incorporated into the tariff for using the transmission network ('ATRT' tariff) and is then paid to storage operators.

(22) However, if the storage operators' revenue exceeds their authorised revenue, they must repay the surplus through the tariff for using the transmission network (see recital 90).

3.4. **Scope of the regulatory mechanism**

(23) According to the explanations provided by the French authorities, essential storage infrastructure is identified by determining the infrastructure needed to ensure the network can meet demand and the infrastructure needed to deliver natural gas within the transmission network.

3.4.1. *Infrastructure needed to ensure the network can meet demand in the event of a cold spell*

(24) The level of security of supply expected from the gas system is set out in Article R.121-4 of the Energy Code. The aim is to safeguard supplies to all consumers who have not contractually agreed to having supply interrupted in extremely cold weather conditions, such as those occurring statistically once every 50 years.

(25) The infrastructure needed to ensure that the system can meet demand is identified on the basis of work carried out by the transmission system operators, which compare demand for natural gas during cold spells of 1 to 30 days with natural gas supply capacity, in particular from liquefied natural gas (LNG) interconnectors and terminals.

3.4.1.1. Estimated demand for natural gas

(26) First of all, the French authorities examined five scenarios for the expected evolution of natural gas consumption over the next 10 years, excluding electricity generation. The expected reduction ranges from 2 % to 18 % compared with the reference year of 2012. The French authorities finally assumed a 2 % reduction in natural gas consumption, excluding electricity generation.

(27) Average daily consumption of natural gas (excluding electricity generation) during a cold spell was then estimated at around 3 640 GWh/d in 2025, excluding the consumption of low calorific natural gas ('L-gas'). The consumption of natural gas for electricity generation during a cold spell was estimated at 310 GWh/d.

(28) The French authorities also took into account the interruptible share of natural gas demand, i.e. the consumers who have concluded an interruptible contract with the operator of the network they are connected to. In this respect, at the time the regulatory mechanism was implemented, interruptibility measures for cold spells were still being formulated. The French authorities assumed potential interruptibility was 138 GWh/d.

(29) The French authorities specified that load shedding was a last resort in the event of a supply crisis and not a flexibility mechanism. This is why load shedding was not taken into account when estimating the demand for natural gas during cold spells.

([10]) Article L.452-1 of the Energy Code.

(30) The fact that average consumption during a short cold spell is higher than that during a longer cold spell was also taken into account.

(31) Lastly, the French authorities took account of the gradual decrease in the use of L-gas, in view of a programme for conversion to high-calorific natural gas ('H-gas'), which today accounts for 90 % of the natural gas consumed in France. The conversion operation started in 2018 and will be completed by 2028 at the latest. The French authorities estimate that demand for L-gas converted into H-gas will be 180 GWh/d in 2025.

(32) In the light of the above, the French authorities estimated the overall demand for natural gas during a cold spell of 4 days in 2025 to be around 4 000 GWh/d.

3.4.1.2. Estimated natural gas supply capacity

(33) The French authorities estimated natural gas supply capacity by taking into account interconnectors, LNG supply from LNG terminals and the performance of natural gas stocks.

(34) First, as regards interconnectors, estimates of firm capacity, based on the assumption of 100 % utilisation of firm H-gas interconnector capacities, amount to 1 780 GWh/d for imports and 425 GWh/d for exports ([11]). Net imports of H-gas via pipelines are estimated at 1 355 GWh/d.

(35) The French authorities pointed out that it would be very costly to strengthen the gas network and interconnectors ([12]), especially compared with using existing storage facilities. In any case, the infrastructure concerned would not be available in the medium term because of long construction times.

(36) Secondly, as regards LNG supply, the four French LNG terminals can feed a total of 1 160 GWh/d into the network ([13]). However, this capacity can be mobilised only if LNG is available in the tanks at the LNG terminals. For a contingency like a cold spell of less than 10 days, the French authorities considered that only LNG stocks in tanks would be released. However, beyond 10 days, LNG shipments could be delivered, and LNG terminals could be used to their full capacity. Two scenarios were chosen based on the average level of LNG stocks observed in tanks: the worst winter (scenario 1) and the best winter (scenario 2).

(37) Both scenarios reflect a level of use of LNG terminals which is higher than the average use during the winters of 2011 to 2018. France finally opted for scenario 1 and estimated the potential feed-in from LNG terminals at 330 GWh/d for a 4-day cold spell.

(38) The French authorities pointed out that the existing liquefaction terminals operate at close to maximum capacity in order to recoup the significant investment cost. In addition, almost all LNG shipments are covered by long-term contracts owing to the capital intensity of the projects and are therefore already sold before being produced. The lower cost of storing natural gas in gaseous form also explains the lack of development of LNG storage worldwide. The quantities of LNG available in the short term are therefore limited.

(39) Thirdly, as regards the performance of underground natural gas stocks, the French authorities explained that the aquifers used, which account for 90 % of storage infrastructure in France, must be filled to a sufficiently high level and emptied to a sufficiently low level each year. The rate at which gas can be withdrawn from storage infrastructure also decreases as the stock decreases.

([11]) The data on firm H-gas interconnector capacities are taken from ENTSOG's Transmission Capacity Map 2017.

([12]) For example, France has estimated the cost of building the Arc Lyonnais, Eridan and Perche pipelines to facilitate gas transmission from northern to southern France at EUR 1,6 billion.

([13]) The feed-in capacity is divided as follows among the four terminals: the Montoir terminal has a feed-in capacity of 400 GWh/d, the Fos-Cavaou LNG terminal 205 GWh/d, the Fos-Tonkin LNG terminal 205 GWh/d and the Dunkirk LNG terminal 520 GWh/d. When the Dunkirk interconnector is used at full capacity, the Dunkirk LNG terminal can feed no more than 350 GWh/d into the French natural gas network on account of a bottleneck in the transmission network.

(40) Given that, during the nine winters preceding France's analysis, storage facilities were on average 42 % full on 1 February and 85 % of the cold spells recorded over the last 70 years started before 5 February, the French authorities assumed that a withdrawal rate associated with a filling level of 45 % of working volume is available in each storage facility at the beginning of a cold spell.

(41) The French authorities also took into account the buffer stocks that the natural gas transmission system operators must build up in order to supply essential social services as a last resort in the event of the failure of a supplier, i.e. a withdrawal rate of 124 GWh/d at a filling level of 45 % of working volume.

(42) On the basis of all of these assumptions, for the period 2019-2025 the French authorities established an annual need for storage infrastructure of 138,5 TWh in working volume and a withdrawal rate of 2 376 GWh/d at a filling level of 45 % of working volume in order to ensure the network can meet demand during a cold spell ([14]).

3.4.2. *Infrastructure needed to deliver natural gas within the transmission network*

(43) The French authorities also identified the storage infrastructure needed to safeguard supply throughout the country taking into account the delivery capacity of the natural gas transmission network. To this end, they examined the various instances of congestion in the transmission network.

(44) The transmission system operators ('TSOs') identified the most likely congestion scenario, which reflects the situation observed at the time in a market where, according to the French authorities, suppliers seek to maximise natural gas imports from Norway and Russia, currently the most competitive sources of natural gas in Europe, and to reduce imports of LNG, for which higher valuations can be obtained in Asia. In this situation, four main operational limitations are likely to be observed (see Figure 1 below).



Figure 1: Main operational limitations likely to be observed in the transmission network when suppliers seek to maximise natural gas injections from north-eastern France

([14]) Decree No 2020-456 on the PPE.

(45) The methodology takes account of the fact that natural gas suppliers need LNG stocks to be able to meet consumer demand, but there is no constraint on them as regards how LNG stocks are distributed among the four French LNG terminals.

(46) Where a constraint applies, it is assumed that transmission system operators initially use the interruptible capacity of the interconnectors to address congestion. When congestion persists, the volume of natural gas that would need to be removed from underground storage infrastructure downstream of the congestion point is noted.

(47) This makes it possible to establish the underground natural gas stocks required downstream of each congestion point to be able to deliver natural gas within the transmission network.

(48) When this method is applied to the winter of 2018-2019 with regard to the main congestion points likely to be observed when suppliers seek to maximise natural gas injections from north-eastern France, the estimated combined working volumes needed from underground storage are at least:

— 16 TWh downstream of congestion point NS4 (Izaute, Lussagnet and Manosque storage facilities);

— 54 TWh downstream of congestion point NS3 (Céré-la-Ronde, Chemery, Izaute, Lussagnet and Manosque storage facilities);

— 55 TWh downstream of congestion point NS2 (Céré-la-Ronde, Chemery, Etrez, Izaute, Lussagnet, Manosque and Tersanne storage facilities);

— 64 TWh downstream of congestion point NS1 (Beynes, Céré-la-Ronde, Chemery, Etrez, Germigny-sous-Coulomb, Gournay-sur-Aronde, Izaute, Lussagnet, Manosque, Saint-Illiers-la-Ville and Tersanne storage facilities).

3.4.3. *List of facilities falling within the scope of regulation*

(49) The French authorities pointed out that, since the work on identifying essential infrastructure could not be completed sufficiently early in view of winter 2018-2019, the regulatory mechanism was initially applied as a provisional measure for the year 2018-2019 to all natural gas storage facilities in France. The facilities were identified by the 2016 PPE as necessary for security of supply ([15]).

(50) The Decree of 26 December 2018 ([16]) subsequently removed from the list of necessary infrastructure the three Storengy sites running at reduced capacity (Soings-en-Sologne, Saint-Clair-sur-Epte and Trois-Fontaines) and the Lussagnet phase 1 (Teréga) and Manosque 2 (Géométhane) projects. This infrastructure has not been used since the introduction of regulated access to natural gas storage.

(51) Lastly, for the period 2019-2023, Decree No 2020-456 on the PPE sets out the underground natural gas storage infrastructure which must be kept running in order to safeguard security of supply in the medium to long term. It represents a working volume of 138,5 TWh and a withdrawal capacity of 2 376 GWh/d at a filling level of 45 % of working volume:

Facility	Operator	Year of entry into service	Type of storage
Beynes	Storengy	1956	Aquifer
Céré-la-Ronde	Storengy	1993	Aquifer
Cerville-Verlaine	Storengy	1970	Aquifer
Chemery	Storengy	1968	Aquifer
Etrez	Storengy	1980	Salt cavern

([15]) Decree No 2016-1442 of 27 October 2016 on the PPE (*décret n° 2016-1442 du 27 octobre 2016 relatif à la PPE*).
([16]) Decree No 2018-1248 of 26 December 2018 on gas storage infrastructure necessary for security of supply (*décret n° 2018-1248 du 26 décembre 2018 relatif aux infrastructures de stockage de gaz nécessaires à la sécurité d'approvisionnement*).

Germigny-sous-Coulomb	Storengy	1982	Aquifer
Gournay	Storengy	1976	Aquifer
Lussagnet/Izaute	Teréga	1957	Aquifer
Manosque	Géométhane	1993	Salt cavern
Saint-Illiers-la-Ville	Storengy	1965	Aquifer
Tersanne/Hauterives	Storengy	1970	Salt cavern

Table 1: Natural gas storage installations required to remain in operation until 2023

(52) The PPE expects storage needs to decrease for the period 2024-2028. The list of storage infrastructure could be reduced by a withdrawal capacity of at least 140 GWh/d at 45 % of working volume by 2026. Given the uncertainties surrounding the volumes necessary for security of supply after 2026, these volumes should be confirmed in 2023 and set out in the next PPE.

3.5. **Auctioning of storage capacity**

(53) In accordance with Article L.421-5-1 of the Energy Code, regulated storage capacity is auctioned according to procedures laid down by the CRE. In particular, under the CRE decision of 22 February 2018, the auctions are carried out with a reserve price of zero ([17]).

(54) The results of the first auction were as follows:

Storage period	**Revenue (million EUR)**	**Average award price (EUR/MWh)**
2018-2019	68,4	0,53
2019-2020	233,6	1,80
2020-2021	504,6	3,85

Table 2: Auction results and revenue from additional sales during the year

3.6. **Coverage of the authorised revenue of storage operators as laid down by the CRE**

(55) Under Article L.452-1 of the Energy Code 'tariffs for the use of transmission networks ... shall be set in a transparent and non-discriminatory manner in order to cover all the costs incurred by transmission system operators and operators of the storage infrastructure referred to in Article L. 421-3-1, in so far as those costs correspond to those of efficient operators'.

(56) The same article also provides that those costs 'shall take into account the characteristics of the service provided and the costs associated with that service' and that, in the case of storage operators, they must include in particular 'a normal return on the capital invested'.

(57) Article L.452-2 of the Energy Code empowers the CRE to lay down the 'methods used to set tariffs for the use of natural gas transmission networks' and to ask storage operators to provide it with the information necessary to set those tariffs, in particular accounting and financial data.

(58) It follows from these provisions that the CRE is empowered by law to set the authorised revenue of storage operators in such a way as to cover the costs of an 'efficient operator' and to ensure a normal return on the capital invested.

([17]) Decision No 2018-039 of 22 February 2018 on the procedures for selling storage capacity in the context of implementing regulated third-party access to underground storage of natural gas in France (*délibération n°2018-039 du 22 février 2018 portant décision relative aux modalités de commercialisation des capacités de stockage dans le cadre de la mise en œuvre de l'accès régulé des tiers aux stockages souterrains de gaz naturel en France*).

(59) The CRE set the projected authorised revenue by decision, initially for a regulatory period of 2 years. This first storage tariff was valid in 2018 and 2019 ('ATS 1') ([18]). The CRE then harmonised the regulatory framework for storage operators with that of other infrastructure tariffs. The second storage tariff ('ATS 2') applies from 2020 for a period of 4 years ([19]).

(60) The general approach to setting the projected authorised revenue is the same for the various storage tariffs. The authorised revenue of storage operators was set *ex ante* by the CRE on the basis of forecasts sent by operators, which are then adjusted the following year and subject to *ex-post* audits. The costs of storage operators are taken into account by the CRE to the extent that they are considered efficient.

(61) However, given the particularly short deadlines for implementing the reform, a simplified framework was applied for 2018 and 2019. For these first years, the CRE adopted a tariff framework in which the differences between the projected and actual level of all costs and revenue were adjusted retrospectively. This mechanism guarantees a tariff level which is ultimately exactly the same as the operator's actual expenditure and revenue. For the period 2020-2023, the CRE wished to extend the regulatory principles incentivising storage infrastructure and, after completing its analyses, assumed a stable progression of operators' costs in a context marked by a downward trend in natural gas consumption.

(62) According to the method set out by the CRE, projected authorised revenue is equal to the sum of estimated net operating expenses, estimated regulatory capital costs and settlement of the balance of the previous year's clawback account ('CRCP').

Authorised revenue = net operating expenses + regulatory capital costs + clawback account

(63) Only activities falling within the scope of regulation are taken into account for the calculation of these components.

3.6.1. *Net operating expenses*

(64) Net operating expenses correspond to the gross operating expenses (energy costs, external consumption, staff costs, taxes and charges) of an 'efficient operator' after deducting operating income (in particular, capitalised production, non-tariff income, profits or losses from the purchase/sale of stored natural gas).

(65) Given the short deadlines for implementing the reform, the CRE could not determine for the period 2018-2019 whether the operators' costs corresponded to those of an 'efficient operator'. As a result, the costs taken into account during this period ultimately correspond to the actual costs borne by the storage operators, as validated by the CRE. For the ATS 2 tariff, the CRE implemented an incentivising regulatory mechanism for net operating expenses, with the exception of certain predefined items. With a few exceptions, any deviation from the operating expenses projected for the ATS 2 period will thus be borne by the operator or accrue to the operator.

3.6.2. *Regulatory capital costs*

(66) Regulatory capital costs comprise depreciation of and return on fixed capital. This item thus corresponds to the sum of the depreciation of the regulated asset base ('RAB'), the return on fixed capital calculated on the basis of the weighted average cost of capital ('WACC') for the RAB already put into service and the cost of the debt for assets under construction ('AUC').

Regulatory capital costs = RAB depreciation + RAB x WACC + AUC x cost of debt

(67) The CRE confirmed that this methodology corresponds to the regulatory practice for regulated facilities in the natural gas and electricity markets in France and Western Europe ([20]).

([18]) CRE decision No 2018-068 of 22 March 2018 on the tariff for the use of the underground natural gas storage infrastructure of Storengy, TIGF and Géométhane from 2018 (*délibération de la CRE n°2018-068 du 22 mars 2018 portant décision sur le tarif d'utilisation des infrastructures de stockage souterrain de gaz naturel de Storengy, TIGF et Géométhane à compter de 2018*).

([19]) CRE decision No 2020-011 of 23 January 2020 on the tariff for the use of the underground natural gas storage infrastructure of Storengy, Teréga and Géométhane.

([20]) The CRE bases this comparison on the study *Methodologies and parameters used to determine the allowed or target revenue of gas transmission system operators (TSOs)*, carried out by Economic Consulting Associates (ECA) for the Agency for the Cooperation of Energy Regulators (ACER).

(68) In order to determine the initial level of the RAB on 1 January 2018 ('initial RAB' or 'opening RAB'), the CRE uses the 'current economic costs' method ([21]). This involves calculating the net economic value of assets (i) on the basis of the gross accounting value of assets included in the operators' accounts (historical construction costs), (ii) adjusted for inflation, then (iii) depreciated over the useful life of the assets.

(69) Each year, the RAB evolves according to:

— depreciation, based on the useful life of the assets, deducted from the RAB;

— new investment put into service, which increases the RAB;

— where appropriate, assets dismantled before being fully depreciated, which reduces the RAB;

— the revaluation of assets for inflation (consumer price index excluding tobacco).

(70) The CRE considers that the most representative measure of the initial value of investments carried out by operators is the gross value of assets recorded in their company accounts. According to the CRE, this value, examined by auditors as part of their annual audit, is documented and objective. This method is identical to that applied in 2002, when natural gas TSOs were first regulated, and is also used for regulated LNG terminals in France.

(71) The CRE did not take into account the replacement cost of assets, but a depreciated value, in line with the depreciation recorded by the storage operators before 2018, so as not to impose on the community a cost already paid in the past or the depreciation of assets already taken into account.

(72) For most assets, the depreciation periods applied by operators in their historical accounts are similar to those they requested in their tariff proposals. They also correspond to standard data for the sector seen in other countries.

(73) As regards cushion gas ([22]), however, the CRE rejected the operators' request to consider a uniform depreciation period of 250 years. The CRE took into account the fact that cushion gas, unlike their other assets, was depreciated by operators over periods which varied from one operator to the next and over time (from 25 years to 250 years). As a result, in order to establish the initial RAB of the storage operators, the CRE assumed a degree of depreciation of cushion gas in line with the level of accounting depreciation recorded by each of the three operators. For the future, it has set the depreciation period for cushion gas at 75 years, corresponding to three renewals of the concession to operate the underground cavern for 25 years.

(74) The useful life assumed by the CRE for the different asset categories of operators is as follows:

Asset category	Useful life
Cushion gas	75 years
Wells, caverns, collection	50 years
Processing, compression, delivery and metering installations	20-30 years
Real estate and buildings	30 years
Miscellaneous equipment	10-15 years
Software, small items	5 years

Table 3: Depreciation period assumed by asset category

([21]) This method follows from the amending Finance Act of 28 December 2001, which set up a special committee (the Houri committee) to determine the price at which the State should sell natural gas transmission networks. A comparable method was also used to value the assets of LNG terminals and natural gas distributors.

([22]) 'Cushion gas' is the gas injected permanently into underground reservoirs which is essential for the operation of the storage facilities because it is needed to maintain a minimum storage pressure allowing the working volume to be supplied at the required withdrawal rate (CRE decision No 2018-068, referred to above).

(75) In addition, in 2017 the CRE asked the external consultant […] to audit the storage operators' initial RAB request. The result of the calculation for Storengy is [EUR 3-5 billion].

(76) In the case of Teréga, an additional study carried out by the consultancy PwC based on a discounted cash flow approach values the RAB at [EUR 1-2 billion].

(77) For the implementation of the regulatory mechanism, the CRE thus revised the initial RABs requested by the storage operators in order to take into account the independent economic assessment of the market value of the assets. The CRE then adopted the following initial RABs:

As of 1 January 2018	Storengy (billion EUR)	Teréga (billion EUR)	Géométhane (billion EUR)
Operator's request	4,0	1,37	0,20
RAB set by the CRE	3,5	1,15	0,19

Table 4: Initial RABs of storage operators on entry into force of the regulation

(78) As regards the rate of return on capital, the CRE used the WACC method to enable the operator to finance interest costs and obtain a return on equity comparable to the return it could obtain for investments with comparable levels of risk. The CRE pointed out that the WACC method is commonly used by European regulators to determine the rate of return on regulated infrastructure assets.

(79) On the basis of economic studies and the work of external consultants ([23]), the CRE set the WACC at 5,75 % for 2018 and 2019. For the period 2020-2023, the CRE assumed a WACC of 4,75 %. The method used to establish the WACC for ATS 2 is unchanged from that used for ATS 1. This is justified by lower financing costs, the planned reduction in corporation tax and an increase in asset beta. This increase in asset beta reflects consideration of the financial risk, in particular the stranded costs borne by shareholders in natural gas infrastructure companies on account of the energy transition.

(80) In the absence of a comparable storage operator listed on the stock market, the CRE took the WACC of the natural gas TSOs as the reference rate and increased it by a specific risk premium for storage. This premium is set at 50 basis points owing to the concentration of storage facilities, the geological risk below ground and the risk of substitutability by LNG terminals as well as of interconnectors with other countries.

(81) The CRE also specified that this rate of return is lower than that granted to regulated operators of LNG terminals (7,25 % when the measure entered into force), whose activity is more risky, especially in commercial terms, because of the co-existence of regulated and unregulated LNG terminals and a smaller number of customers. Furthermore, the CRE referred to the example of the 6,5 % rate of return used by the Italian regulator for natural gas storage.

3.6.3. *Investment*

(82) Each year, under Article L.421-7-1 of the Energy Code, underground natural gas storage operators submit their annual investment programme to the CRE for approval. In this context, the CRE 'ensures that the investment necessary for the proper development of storage and transparent and non-discriminatory access to it is carried out'.

(83) In the second storage tariff, the CRE introduced an incentive to control the costs of various categories of investment.

([23]) In particular, the Compass Lexecon report of 20 March 2017 recommended setting the WACC between 4,2 % and 5,8 %.

3.6.4. *Clawback account*

(84) The authorised revenue is set by the CRE on the basis of the operators' forecasts of their expenditure and revenue for the following year. The clawback account was introduced to take into account the difference between the projected expenditure or revenue and the expenditure or revenue actually recorded for a number of predefined items. This therefore protects operators from variations in certain expenditure or revenue items. The clawback account is also used for the payment of financial incentives resulting from the application of incentivising regulatory mechanisms and for taking into account any capital gains or stranded costs, once validated by the CRE.

(85) For the ATS 1 tariff, in the first period of regulated storage, the CRE adopted a tariff framework in which the differences between projected total expenditure and revenue and actual total expenditure and revenue were adjusted retrospectively. The tariff was therefore '100 % clawback' and no cost or revenue items were incentivised.

(86) For the ATS 2 tariff, the CRE defines the scope of the clawback account in line with the general framework for all tariffs for electricity networks and natural gas infrastructure. Only certain predefined items are thus subject to *ex-post* coverage of the differences between forecast and actual amounts via the clawback account. These items relate in particular to investment expenditure and sales revenue. By contrast, almost all operating expenses are subject to an incentive, which may be total (100 % of the differences between forecast and actual amounts are at the expense of or accrue to the operator) or partial (e.g. for energy costs, where the incentive is 20 %, with 80 % of the differences being covered by clawback).

3.7. **Beneficiaries**

(87) The beneficiaries of the measure are the operators of the natural gas storage infrastructure falling within the scope of the regulatory mechanism. Since the entry into force of the measure, the beneficiaries have been Storengy, Teréga and Géométhane.

3.8. **Financing of the measure through tariffs for using the transmission network**

(88) The authorised revenue of the storage operators is financed from their direct revenue and, where this is lower than the authorised revenue, also from storage compensation equivalent to the difference between the authorised revenue and direct revenue.

Compensation = authorised revenue – direct revenue

(89) The operators' direct revenue mainly stems from auctions, but also from any historical long-term contracts and additional services.

(90) Storage compensation is collected by TSOs from natural gas shippers in the form of a dedicated charge, the 'storage charge', incorporated into the tariff for using the transmission network (ATRT tariff) under conditions set by the CRE (see recital 21).

(91) It should be noted first that there are two TSOs in France, i.e. two holders of an authorisation to use natural gas transmission pipelines under Article L.431-1 of the Energy Code: GRTgaz and Teréga (formerly TIGF).

(92) GRTgaz is a public limited company, owned 75 % by ENGIE and 25 % by Société d'Infrastructures Gazière. GRTgaz, directly controlled by ENGIE, is independent from the other parts of its vertically integrated undertaking (the ENGIE group) in line with the independent TSO model, ensuring effective separation of TSO activities from production and supply activities ([24]).

([24]) CRE decision of 26 January 2012 on the licensing of GRTgaz (*Délibération de la CRE du 26 janvier 2012 portant décision de certification de la société GRTgaz*); CRE decision No 2019-135 of 25 June 2019 on the maintenance of Teréga's licensing following three acquisitions by Crédit Agricole Group of holdings in energy production companies (*délibération n°2019-135 de la CRE du 25 juin 2019 portant décision sur le maintien de la certification de la société Teréga à la suite de trois prises de participation du groupe Crédit Agricole dans des entreprises de production d'énergie*).

(93) As described in recital 9, Teréga is owned 40,5 % by Snam, 31,5 % by GIC, 18 % by EDF Investissement and 10 % by Predica. Teréga also meets the conditions of an independent TSO ([25]).

3.8.1. *Setting by the CRE of the storage charge incorporated into the tariffs for using the transmission network*

(94) In accordance with the sixth subparagraph of Article L.452-1 of the Energy Code, 'tariffs for the use of natural gas transmission networks shall be collected by the operators of those networks. Transmission system operators shall pay to the underground natural gas storage operators referred to in Article L. 421-3-1 a share of the amount collected in accordance with methods set out by the Energy Regulatory Commission.'

(95) Under Article L.452-2 of the Energy Code, 'the methods used to establish tariffs for the use of natural gas transmission networks ... shall be set by the Energy Regulatory Commission'.

(96) On the basis of those provisions, by its decision No 2018-069 of 22 March 2018 ([26]), the CRE laid down procedures for calculating the storage charge, applicable from 1 April 2018.

(97) According to the CRE, the storage charge paid by each shipper must reflect the value of 'security of supply', i.e. the remuneration for storage which gives priority to supplying natural gas to customers whose supply cannot be interrupted, in particular domestic customers.

3.8.2. *Payment of the storage charge by shippers and passing on to final customers*

(98) With regard to shippers' obligation to pay the storage charge, by its decision of 22 March 2018 the CRE incorporated the storage charge into the ATRT tariffs by inserting new provisions in its decision No 2018-022 of 7 February 2018 on the adjustment of the tariff for the use of the natural gas transmission networks of GRTgaz and TIGF on 1 April 2018.

(99) It follows from that amendment that 'any shipper who is assigned firm delivery capacity at at least one transport distribution interface point (PITD) is subject to a storage charge based on the winter modulation of the customers connected to the public gas distribution networks in its portfolio on the first day of each month'.

(100) 'Shipper' refers to any 'natural or legal person who enters into a contract with a TSO for the delivery of gas in the transmission network. The shipper may be the eligible customer, the supplier or their authorised representative.' A PITD is defined as a 'physical or notional interface between a transmission network and a public distribution system'.

(101) Moreover, it follows from the wording of the sixth subparagraph of Article L.452-1 of the Energy Code that TSOs must levy ATRT tariffs (see recital 94 – 'shall be collected').

(102) As regards passing on the storage charge to end users, the CRE pointed out that shippers will pass the storage charge on to their final customers included in the compensation calculation in the 'transmission' part of their invoice. The CRE does not have a list of the customers concerned.

([25]) CRE decision of 26 January 2012 on the licensing of TIGF; CRE decision of 4 February 2016 on the maintenance of TIGF's licensing following Predica's acquisition of a stake in TIGF Holding (*délibération de la CRE du 4 février 2016 portant décision sur le maintien de la certification de la société TIGF à la suite de l'entrée de la société Predica dans le capital de TIGF Holding*).

([26]) CRE decision No 2018-69 of 22 March 2018 incorporating a storage charge into the tariff for the use of the transmission networks of GRTgaz and TIGF (*délibération de la CRE n°2018-69 du 22 mars 2018 portant décision d'introduction d'un terme tarifaire stockage dans le tarif d'utilisation des réseaux de transport de GRTgaz et TIGF*).

(103) More specifically, this passing-on is mandatory only for the regulated tariffs for the sale of natural gas under Articles L.445-3 and R.445-3 of the Energy Code ([27]). For market offers, it is at the discretion of the supplier.

3.8.3. *Distribution of funds collected by TSOs among storage operators according to procedures laid down by the CRE*

(104) In accordance with the CRE's decision on the storage charge, once the revenue from the storage charge is collected, it is paid by the TSOs to the various storage operators in proportion to the compensation to be received ([28]). The share allocated to each operator corresponds to the ratio between the operator's projected annual compensation and the total projected compensation of all regulated storage operators, as set by the CRE. These shares are specified annually in the CRE decision adapting the storage charge.

(105) To that end, in accordance with the CRE decision, TSOs enter into a contract with each storage operator in order to set out the arrangements for collecting and paying compensation, the cost of which is set by the CRE and covered by the authorised revenue of the operators. For 2018, the cost was EUR 130 000 per TSO per storage operator ([29]).

3.9. **Budget**

(106) Each year, the total amount of compensation paid to regulated operators depends on auction revenues and the authorised revenue set by the CRE. The compensation paid to the three regulated storage operators amounted to EUR 528 million in 2018, EUR 540 million in 2019 and EUR 251 million in 2020.

	2018 (million EUR)	**2019 (million EUR)**	**2020 (million EUR)**
Storengy	402	392	199
Teréga	101	113	25
Géométhane	26	36	28
Total	528	540	251

Table 5: Level of storage compensation for 2018, 2019 and 2020

3.10. **Duration**

(107) The provisions of the Hydrocarbons Act relating to the mechanism for regulating storage operators entered into force on 1 January 2018. The CRE set the authorised revenue of storage operators from 1 January 2018. In addition, the first auction of storage capacity took place from 5 to 29 March 2018 for the period 2018-2019, and further auctions were held in 2019-2020 and 2020-2021 (see Table 2 in recital 54).

(108) The storage charge was also incorporated into the ATRT tariff with effect from 1 April 2018. The CRE first set the projected authorised revenue for a regulatory period of 2 years ([30]). It then harmonised the regulatory framework for storage operators with that of other infrastructure tariffs. This second storage tariff applies for the period 2020-2023 ([31]).

([27]) Article L.445-3 of the Energy Code: 'Regulated tariffs for the sale of natural gas shall be determined on the basis of the intrinsic characteristics of the supplies and the costs associated with those supplies. They shall cover all those costs ... '
Article R.445-3 of the Energy Code: 'For each supplier a tariff formula shall be established which reflects the entire cost of supplying natural gas. *The tariff formula and the costs other than those of supply shall make it possible to determine the average cost of supplying natural gas, on the basis of which the regulated tariffs for the sale of gas are fixed, according to the detailed conditions for serving the customers concerned. Costs other than those of supply shall include in particular:* …2. the costs of using natural gas storage facilities, if appropriate'.

([28]) Decision No 2018-069, referred to above, pp. 7-8.

([29]) Decision No 2018-069, referred to above.

([30]) CRE decision No 2018-069 of 22 March 2018, referred to above.

([31]) CRE decision No 2020-011 of 23 January 2020, referred to above.

(109) The French authorities have not set an end date for the mechanism. However, the scope of the mechanism was defined by the last PPE ([32]) until the PPE is next revised. That revision is planned for 2023 and will take place by 31 December 2028 at the latest.

3.11. **Commitments**

(110) The French authorities have given two commitments. First, they have undertaken to submit a report to the Commission by the end of 2024. The points to be covered in the report are as follows:

— information on the implementation of the measure during the previous period (2018-2023), in particular the auction results in terms of volumes and prices and the amounts of remuneration received per site;

— an updated overview of the functioning of the natural gas market in France and in particular of the factors justifying the continuation of the measure for the period 2023-2028, including the spread, the level of demand, investment in the gas network in France and abroad, and investment in LNG terminals;

— information on the revision of the PPE in 2023 and any impact on the scope of the measure;

— the method for calculating the guaranteed remuneration during the regulatory period 2023-2028. If the calculation method changes, the Commission would like information on the reasons for the change;

— data on the impact of the measure on competition, with an emphasis on the potential distortion of competition identified in the Decision, e.g. the impact of the measure on natural gas storage facilities in neighbouring Member States, on interconnectors and on French LNG terminals. This information should be supported by historical data on the use of the assets and by relevant changes to the regulatory regime for natural gas storage in the countries neighbouring France. The impact of the measure on the retail trade in France must also be assessed and quantified.

(111) Secondly, the French authorities undertake to publish the following information on a comprehensive website dedicated to State aid in France ([33]) and on the Transparency Award Module: a link to the full text of the mechanism and the procedures for implementing it; the identity of the beneficiaries of the funding; the form of the funding; the amount granted to each beneficiary; the date of award; the type of undertaking (SME/large company), the region in which the beneficiary is established and the main economic sector in which the beneficiary operates.

3.12. **Grounds for initiating the formal investigation procedure**

(112) The Commission took the preliminary view in its opening decision that the regulatory mechanism constituted State aid within the meaning of Article 107(1) TFEU which could be compatible with the internal market under Article 107(3)(c) TFEU. Nevertheless, during the formal investigation procedure, the Commission had expressed doubts as to the proportionality of the regulatory mechanism and the possible distortion of competition.

(113) More specifically, the Commission had found that, for the purpose of setting the storage operators' authorised revenue, the CRE allows them to obtain a return on their fixed capital. The calculation of this return involves assessing the value of the regulated assets. The Commission expressed doubts about the process of independent economic assessment of the market value of the assets when the regulatory mechanism was introduced by the CRE, which could have called into question the proportionate nature of the measure.

(114) In the light of the information supplied to the Commission during the formal investigation procedure, the Commission could not rule out that the mechanism might distort competition. Excessive distortion of competition could have existed between (i) natural gas suppliers in France and those in other Member States, (ii) natural gas storage operators, on the one hand, and LNG and interconnector operators, on the other, and (iii) natural gas storage operators in France and those in other Member States.

([32]) Decree No 2020-456 of 21 April 2020, referred to above.
([33]) http://www.europe-en-france.gouv.fr/Centre-de-ressources/Aides-d-etat/Regimes-d-aides.

4. COMMENTS BY FRANCE

(115) France sent its comments to the Commission with the CRE's comments in annex. The CRE's comments are thus considered to be an integral part of the comments by France.

(116) France considers that the doubts expressed by the Commission with regard to the reform of natural gas storage are unfounded.

4.1. **Existence of aid**

(117) First, France disputes that the measure in question involves State resources. Furthermore, in France's view, requiring an operator to move from a negotiated scheme to a regulated scheme cannot be considered to confer an economic advantage on that operator. France also contests the notion that operators of interconnectors and LNG terminals are competitors of storage operators.

(118) Next, with regard to financing through State resources, France disputes the notion that covering part of the costs borne by operators of essential facilities for natural gas storage constitutes a mandatory contribution. The tariff for using natural gas transmission networks is paid by natural gas suppliers in exchange for a delivery service that is designed to ensure a high degree of reliability and the long-term ability to meet a reasonable level of demand ([34]).

(119) France also notes that it is only mandatory to pass on the cost of using the transmission network to natural gas consumers in their bills if a consumer has chosen to benefit from regulated sales tariffs for natural gas. According to France, only a small proportion of natural gas supplied in France is offered at the regulated tariff ([35]); moreover, regulated sales tariffs for natural gas are due to be gradually phased out ([36]).

(120) Furthermore, with regard to the advantage conferred, France notes that, first, the lower risk to which regulated activities are exposed is taken into account when determining the cost of capital since the return on invested capital is lower compared with non-regulated activities. Second, France contests the notion that revenue received by a storage operator under the regulated scheme is systematically higher than that received by the same operator under a negotiated scheme ([37]). France also points out that the regulatory framework that has been in place since 2018 is symmetrical: 'compensation' could work in reverse and be paid out by storage operators if their sales revenue exceeded the authorised amount set by the CRE. Thus, the regulated model cannot be dissociated from the obligations and loss of economic opportunity to which storage operators are subject under that model.

(121) The EUR 494 million write-down of ENGIE group's regulated storage operations came only a few days after the CRE's chosen parameters for the storage tariff were published, illustrating that there was no longer an expectation that profits could be made as a result of favourable market conditions. Lastly, France notes that the introduction of the regulatory mechanism did not lead to an increase in revenue for French storage operators between 2017 and 2018, with the exception of Storengy. France also points out that, at comparable spread levels, Storengy's authorised revenue under the regulated framework is lower than its revenue from sales under the negotiated scheme.

(122) France considers that it is not appropriate to analyse the situation of storage operators located in other Member States when assessing the selective nature of the advantage conferred. It quotes the General Court and the Court of Justice, which found that 'the condition relating to selectivity […] can be assessed only at the level of a single Member State' ([38]). In any event, France points out that storage operators in other Member States are not in a comparable factual and legal situation with regard to the objective of the measure in question, namely, to guarantee the security of natural gas supplies in France.

([34]) Pursuant to Article 14(4) of 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.

([35]) According to the Retail market report for the fourth quarter of 2019 (*Observatoire des marchés de détail du 4e trimestre 2019*) published by the CRE on 31 December 2019, 66 % of residential and non-residential sites are paying market rates, while 34 % are charged the regulated sales tariff, and 91 % of natural gas supplied is charged at market rate, while 9 % is charged at the regulated sales tariff.

([36]) Pursuant to Article 63 of Law No 2019-1147 of 8 November 2019 on energy and climate.

([37]) Although sales revenue was low between 2013 and 2017, the total authorised revenue is significantly lower than the turnover achieved by the operators in question for 2008-2012, in a context where spread was high.

([38]) Judgment of 7 November 2014, *Banco Santander* v *Commission*, T-399/11, EU:T:2014:938, paragraph 75; Judgment of 11 November 2004, *Spain* v *Commission*. C-73/03, EU:C:2004:711, paragraph 28.

(123) With regard to interconnector operators, on the one hand, and operators of LNG terminals, on the other, France notes that all of these operators are regulated in France ([39]). They are therefore subject to regulatory mechanisms that are very similar to the mechanism in place for storage, with the regulator setting an amount of authorised revenue allowing them to cover their costs. Consequently, France considers that it cannot be disputed that the measure in question confers a selective advantage on these operators vis-à-vis operators of gas interconnectors and LNG terminals.

(124) With regard to the effect on competition and trade between Member States, France takes the view that operators of interconnectors and LNG terminals are not in competition with storage operators (see recitals (133) et seq.).

4.2. **Compatibility of the measure with the internal market**

4.2.1. *Proportionality*

(125) France points out that regulation based on operators' costs is an approach that has been widely adopted by European regulators. This approach guarantees that operators have sufficient revenue to safeguard their operations and ensures that end consumers do not pay for storage at a price that exceeds that of the service provided. Conversely, France notes that, in its view, a method based on spread levels would be volatile and, depending on short-term market price fluctuations, might not allow operators to cover their costs or could, on the other hand, generate undue profits.

(126) In order to set the storage tariff, the CRE has adopted a regulatory system based on covering what are deemed to be efficient costs borne by operators. Thus, the CRE sets an amount of authorised revenue for each operator to cover operating costs as well as the depreciation of assets and the cost of capital. To calculate storage operators' initial RAB value on 1 January 2018, the CRE reassessed the gross book value of operators' assets on 31 December 2016 (see recital (55) et seq. on setting authorised revenue).

(127) In the alternative, France provides additional information to demonstrate that other methods give RAB values that are consistent with the CRE's method.

(128) Storage operators' value for their shareholders is determined by applying accounting rules and on the basis of long-term revenue forecasts for their operations. For Storengy, the CRE took an initial RAB value of EUR 3,5 billion, with Storengy valued at [EUR 3 to 5 billion] in ENGIE's balance sheet on 31 December 2016. For Teréga, the CRE took an initial RAB value of EUR 1,156 billion, with the storage operation valued at around [EUR 1 to 2 billion] in the parent company's balance sheet on 31 December 2016.

(129) Recent transactions also shed light on the value of the undertakings and the valuation of storage operations in transactions. For example, based on transactions involving Teréga's share capital in 2013 ([40]) and 2015 ([41]), its storage operation assets are estimated to be worth [EUR 1 to 2 billion].

(130) Moreover, France states that external consultants also worked on calculating the operators' RAB values. For Storengy, the calculation made by the consultant […] for the CRE gave a value of [EUR 3 to 5 billion]. France also refers to a study by PwC, commissioned by Teréga, which gives an RAB value of between [EUR 1 and 2 billion] in 2018.

(131) Lastly, France considers that an alternative method, involving drawing up an historical overview of an operator's revenue to determine whether it covered past investment, would not be a sufficiently sound basis for determining the RAB value. This method would involve reconstructing an overview, from the date of the initial commissioning, of the oldest storage assets (from the end of the 1950s) and the free cash flows of each operator i.e. the cash flow available to the operator after financing its working capital requirements, taxes and investments, so as to compare those figures against the gross value of its assets.

([39]) With the exception of Dunkerque LNG, which is covered by an exemption.
([40]) Purchase of the undertaking TIGF by a consortium comprising GIC, Snam and EDF.
([41]) Purchase of TIGF shares by Prédica.

(132) It would be particularly complex to piece together this overview owing to the exhaustive document-based searches required and the changes in the current storage undertakings' organisational and ownership structures. For Storengy, which is part of an integrated model within Gaz de France/GDF Suez, reconstructing this historical overview would require carve-out scenarios to be drawn up for the activity. Meanwhile Terega has undergone successive changes of ownership.

4.2.2. *Negative effects on competition and trade*

(133) As regards distortions of competition between French suppliers and suppliers from other Member States taking up storage capacity in France, France explains that the 'nationality' of the supplier is irrelevant. Public auctions are open to all authorised suppliers of natural gas. Authorisation to supply natural gas is not restricted to French suppliers and may be granted to any person established in the territory of an EU Member State ([42]). Second, the French authorities stress that, for the same delivery service, the same tariff is charged to French suppliers and suppliers from other Member States for use of the natural gas transmission networks.

(134) Furthermore, according to France, storage operators are not in competition with interconnectors and LNG terminals. First, France points out that the Commission has never considered that a single market exists for the storage of natural gas, regasification facilities and interconnectors. France also notes that, in assessments of the gas system's ability to meet a reasonable level of demand, essential facilities for natural gas storage complement the full use of interconnectors and the use of LNG terminals at full capacity, in line with available stocks of liquefied natural gas.

(135) Furthermore, France notes that the Commission has, on several occasions, acknowledged the existence of a separate market for underground natural gas storage, both in France ([43]) and in other Member States ([44]). Following a market investigation concerning a transaction on French territory, the Commission found that storage and other forms of flexibility were not substitutable ([45]). France also notes that in two decisions, the Commission took the view that the natural gas storage market was regional or even national in scope ([46]).

(136) France considers that each flexibility instrument has its own functions and features, meaning that it cannot be substituted by another flexibility instrument. Interconnectors are used to supply the country's natural gas. Were it not for storage, interconnectors would need to have the capacity to guarantee the supply of natural gas across French territory at times of peak demand. Capacity on such a scale would be inefficient. Moreover, the EU has set the objective of reducing natural gas consumption. There are no plans for any further investment in France's current interconnectors. The question raised by the Commission with regard to competition and long-term investment signals would therefore appear to be purely theoretical.

(137) LNG terminals offer the option of arbitrage as a means of supplying the country at a lower cost. The availability of LNG is uncertain and depends to a great extent on global supply and demand conditions that regularly cause shipments to be redirected. Furthermore, LNG terminals have limited storage capacity ([47]), which, even in a best-case scenario, could not be drawn on for more than 5 days. This is less than the average duration of a cold spell, which is 5 to 15 days, meaning that an inbound shipment could not be arranged quickly enough to prevent a breakdown in supply ([48]).

(138) Natural gas storage therefore offers trans-seasonal flexibility that cannot be provided by interconnectors in comparable economic conditions or by LNG terminals. However, the existence of energy stocks in France cannot in itself guarantee the security of natural gas supplies for the country. It remains vital to use interconnectors and LNG terminals to supply the country.

([42]) Pursuant to Article L. 443-4 of the Energy Code.
([43]) See for example the Commission Decision of 14 November 2006 in case M.4180 – Gaz de France/Suez, paragraph 341.
([44]) Commission Decision of 29 September 1999 in case M.1383 – Exxon/Mobil, paragraphs 69 and 261; Commission Decision of 25 April 2003 in case M.3086 – Gaz de France/Preussag Energie, paragraph 14; Commission Decision of 21 December 2005 in case M.3696 – EON/MOL, paragraph 99; Commission Decision of 19 November 2013 in case M.6984 – EPH/Stredoslovenska Energetika, paragraph 24.
([45]) Commission Decision of 8 October 2004 in case M.3410 – Total/Gaz de France, paragraph 19.
([46]) Commission Decision of 21 December 2005 in case M.3696 – EON/MOL, paragraph 130; Commission Decision of 19 November 2013 in case M.6984 – EPH/Stredoslovenska Energetika, paragraph 24.
([47]) 4,2 TWh in storage on average in French terminals during winter.
([48]) 10 to 15 days depending on where the gas is coming from.

(139) The different types of infrastructure are therefore complementary and are not competing to ensure security of supply in France.

(140) Even if interconnectors, LNG terminals and natural gas storage were considered to be in competition, France notes that French interconnectors and LNG terminals are all regulated, with the exception of the Dunkirk terminal. The profitability of the infrastructure therefore corresponds to the rate of return on the assets set by the CRE. As a result, implementation of the regulatory scheme for storage cannot have an impact on the profitability of other regulated infrastructure.

(141) Furthermore, France notes that recent history contradicts any hypothesis of there being competition that is detrimental to interconnectors or LNG terminals. Since the end of 2018, levels of usage of French and European terminals have been particularly high compared to the previous 10 years. Moreover, operators of LNG terminals have recently successfully launched procedures to sell their medium-term capacity. Regulation of storage, combined with the merging of zones in France that took place at the end of 2018, has made a significant contribution to improving the depth and liquidity of the market in France and Western Europe.

(142) France also contests the notion that regulation of storage could reduce incentives to use LNG terminals and existing interconnectors. These incentives come from price signals sent by the various natural gas markets ([49]). In this context, storage is an additional means of optimising the cost of supplying natural gas and ensuring competitive market prices.

(143) France also notes that decisions to invest in interconnectors and LNG terminals are based on supply strategies that are not negatively impacted by natural gas storage.

(144) Lastly, France considers that the situation of storage operators in other Member States is in no way affected by the measure in question. The French authorities note that, as a result of the design of the French gas system, whereby 100 % of available capacity at interconnectors is taken into account, means of supply upstream of interconnectors, particularly natural gas storage facilities in other EU Member States, are taken into account automatically. Moreover, the French authorities note that some of these facilities are also regulated.

(145) Storage capacity is sold by means of auctions and at market price. Consequently, the measure in question does not disadvantage storage operators in other Member States. Moreover, the measure in question can have only a minimal effect on price formation. Around 130 TWh ([50]) can be stored in France, which is a low figure compared with the quantities traded on the market. In 2018, 28 220 TWh were traded on the TTF ([51]).

(146) Storage operators in the various Member States are therefore all subject to market conditions over which French storage facilities have little influence, and thus it cannot be considered that the introduction of the measure in question could reduce their profitability.

(147) France also notes that filling levels are high at German and Belgian facilities and that these levels increased between 2018 and 2019 ([52]). These high levels illustrate that the regulation of French storage facilities does not prevent operators in other Member States from selling all of their storage capacity in favourable market conditions.

5. **COMMENTS BY INTERESTED PARTIES**

(148) The Commission received comments from 18 interested parties, three of whom are beneficiaries of the measure in question. Their comments are summarised in recitals (149) to (233).

([49]) Global LNG price on the various European marketplaces.
([50]) Sold over a 4-month period.
([51]) Title Transfer Facility, which accounts for the majority of futures trading.
([52]) Rising from 88 % to 99 % and from 54 % to 97 % respectively.

5.1. **Comments by beneficiaries of the measure**

5.1.1. *Géométhane*

(149) Géométhane highlights the positive effects of the introduction of the measure in terms of energy security. Géométhane sent a detailed report to the Commission to support its arguments ([53]).

5.1.1.1. Existence of aid

(150) According to Géométhane, for various reasons the measure in question does not constitute State aid.

(151) First, Géométhane notes that State resources are not used to finance the measure given that the storage charge cannot be considered a mandatory contribution: resources are transferred between private operators only (natural gas suppliers and storage operators), the State has limited control over the funds, the measure in question does not draw on the State budget, and it requires operators to maintain the essential storage facilities covered by the scheme.

(152) Moreover, the measure in question cannot be considered to confer a selective advantage on storage operators operating on French territory vis-à-vis operators located abroad since they are not in a legal and factual situation that is comparable to that of storage operators located on French territory with regard to the objective of the measure in question. Furthermore, operators of other flexibility instruments are not in a comparable legal and factual situation.

(153) Lastly, Géométhane states that the measure in question does not have an impact on competition and trade between Member States.

5.1.1.2. Compatibility of the aid

(154) If the measure in question were found to constitute State aid, Géométhane argues that the measure ought to be considered compatible with the rules on State aid. The measure in question helps ensure energy security, which is an objective of common interest. Moreover, the measure is necessary and appropriate as a means of achieving this objective, in the light of analysis of alternative measures.

(155) The introduction of the measure in question has an incentive effect given that, without such a measure, low take-up rates for storage capacity and the drop in revenue from auctions as a result of a decrease in spreads would have led storage operators to mothball, or even permanently close, facilities that are essential for ensuring the security of natural gas supplies in France.

(156) Calculating authorised revenue using the RAB valuation method based on current economic costs is justified and proportionate given that:

— the RAB value was subject to an independent economic evaluation when the regulatory mechanism was introduced, by means of an external audit carried out by the consultancy firm […];

— the initial RAB value proposed by the operators was not accepted by the CRE;

— the current economic costs methodology is based on the gross book value of the assets for the RAB valuation;

— the methodology makes it possible to reflect the cost of replacing assets net of depreciation;

— the methodology applies to all tariffs for regulated infrastructure in France;

— the methodology is used by almost all European regulators.

([53]) *Technical-financial report drawn up following the launch by the European Commission of an investigation into regulatory conditions for natural gas storage in France*, […] 12 June 2020.

(157) Alternatively, establishing an RAB value based on the market value as represented by spreads would not be appropriate as it would not cover operators' costs, which goes against the principle of covering costs set out in Directive 2009/73/EC. Thus, taking into account the market value would jeopardise the regulatory mechanism, the aim of which is to ensure that storage facilities which are essential for the proper functioning of the transmission network remain in operation. Furthermore, there is a risk of overpayment in the event of an increase in spread. The RAB value applied by the CRE is consistent with the market value of the infrastructure over the medium and long term.

(158) It would not have been appropriate to assess whether or not the revenue generated prior to the introduction of the regulatory mechanism was sufficient to cover their initial investment costs, since taking this revenue into account in the assessment would go against the practices of European regulators and would be complex and unreliable.

(159) Lastly, measures are in place to limit the scope for operators to make profits (namely, the weighted average cost of capital, effective cap on costs for operators of storage infrastructure and an incentivising regulatory mechanism).

(160) In the alternative, Géométhane notes that the RAB value used by the CRE corresponds to the value of a recent transaction. In 2016, 98 % of the share capital of Géosud, which itself holds a 50 % stake in Géométhane, was transferred from Total, Ineos and Géostock to the undertaking CNP Assurances for […]. It is thus possible to calculate the total value of Géométhane as estimated by the purchaser at the time of this transfer, namely […] ([54]) (added to which was […] in available cash flow, making a total of around […]). According to Géométhane, this market value is consistent […] with the RAB value of EUR 188,9 million given by the CRE in 2018, in addition to which were assets under construction […].

(161) The measure in question prevents negative effects on competition and trade between Member States.

— There is no distortion of competition between French suppliers of natural gas and foreign suppliers of natural gas. The method of auctioning storage services ensures equal treatment of French and foreign natural gas suppliers. The method of financing storage compensation set out in the regulatory mechanism also ensures that foreign and French suppliers are treated equally. Foreign suppliers do not benefit from lower prices than their French counterparts;

— nor is there any distortion of competition with respect to storage operators in neighbouring countries. Since the regulatory mechanism came into effect, filling levels have been on the rise throughout the EU and have reached particularly high levels;

— nor is there any distortion of competition between storage operators and LNG terminals or interconnectors given that LNG terminals and interconnectors are not substitutable. When adopting decisions on mergers, the Commission has defined the natural gas storage market as a separate market. It is more a matter of natural gas storage, LNG terminals and interconnectors being complementary.

5.1.2. *Storengy*

(162) Storengy highlights the positive effects of the introduction of the measure in terms of the energy security objective. Storengy sent a detailed report to the Commission to support its arguments ([55]).

5.1.2.1. Existence of aid

(163) According to Storengy, for various reasons the measure in question does not constitute State aid.

([54]) Making a purchase price of (130,6)/(98 % x 50 %).

([55]) *Technical-financial report drawn up following the launch by the European Commission of an investigation into regulatory conditions for natural gas storage in France*, […] 12 June 2020.

(164) First, Storengy notes that State resources are not used to finance the measure given that the storage charge cannot be considered a mandatory contribution, resources are transferred between private operators only (natural gas suppliers and storage operators), the State has limited control over the funds, the measure in question does not draw on the State budget, and it requires operators to maintain the essential storage facilities covered by the scheme.

(165) Moreover, the measure in question cannot be considered to confer a selective advantage on storage operators operating on French territory vis-à-vis operators located abroad since they are not in a legal and factual situation that is comparable to that of storage operators located on French territory with regard to the objective of the measure in question. Furthermore, operators of other flexibility instruments are not in a comparable legal and factual situation.

(166) Lastly, Storengy states that the measure in question does not have an impact on competition and trade between Member States.

5.1.2.2. Compatibility of the aid

(167) If the measure in question were found to constitute State aid, Storengy argues that the measure ought to be considered compatible with the rules on State aid. The measure helps ensure energy security, which is an objective of common interest. Moreover, the measure in question is necessary and appropriate as a means of achieving this objective, in the light of analysis of alternative measures.

(168) The introduction of the measure in question has an incentive effect given that, without the measure, low take-up rates for storage capacity and the drop in revenue from auctions as a result of a decrease in spreads would have led storage operators to mothball, or even permanently close, facilities that are essential for ensuring the security of natural gas supplies in France.

(169) Calculating authorised revenue using the regulated asset base valuation method based on current economic costs is justified and proportionate given that:

— the RAB value was subject to an independent economic evaluation when the regulatory mechanism was introduced, by means of an external audit carried out by the consultancy firm […];

— the initial RAB value proposed by the operators was not accepted by the CRE;

— the current economic costs methodology is based on the gross book value of the assets for the RAB valuation;

— the methodology makes it possible to reflect the cost of replacing assets net of depreciation;

— the methodology applies to all tariffs for regulated infrastructure in France;

— the methodology is used by almost all European regulators.

(170) Alternatively, establishing an RAB value based on the market value as represented by spreads would not be appropriate as it would not cover operators' costs, which goes against the principle of covering costs set out in Directive 2009/73/EC. Thus, taking into account the market value would jeopardise the regulatory mechanism, the aim of which is to ensure that storage facilities which are essential for the proper functioning of the transmission network remain in operation. Furthermore, there is a risk of overpayment in the event of an increase in spread. The RAB value given by the CRE is consistent with the market value of the infrastructure over the medium and long term.

(171) It would not have been appropriate to assess whether or not the revenue generated prior to the introduction of the regulatory mechanism was sufficient to cover their initial investment costs, since taking this revenue into account in the assessment would go against the practices of European regulators and would be complex and unreliable.

(172) Lastly, measures are in place to limit the scope for operators to make profits (namely, the weighted average cost of capital, effective cap on costs for operators of storage infrastructure and an incentivising regulatory mechanism).

(173) The measure in question prevents negative effects on competition and trade between Member States.

— There is no distortion of competition between French suppliers of natural gas and foreign suppliers of natural gas. The method of auctioning storage services ensures equal treatment of French and foreign natural gas suppliers. The method of financing storage compensation set out in the regulatory mechanism also ensures that foreign and French suppliers are treated equally. Foreign suppliers do not benefit from lower prices than their French counterparts;

— nor is there any distortion of competition with respect to storage operators in neighbouring countries. Since the regulatory mechanism came into effect, filling levels have been on the rise throughout the EU and have reached particularly high levels;

— nor is there any distortion of competition between storage operators and LNG terminals or interconnectors given that LNG terminals and interconnectors are not substitutable. When adopting decisions on mergers, the Commission has defined the natural gas storage market as a separate market. It is more a matter of natural gas storage, LNG terminals and interconnectors being complementary.

5.1.3. *Teréga*

(174) Teréga stresses that the main objective of the storage reform is ensuring the security of natural gas supplies in France, something which was under threat prior to the entry into force of the regulatory mechanism.

5.1.3.1. Existence of aid

(175) Teréga considers that the measure cannot be classified as State aid. Teréga notes that regulatory systems based on the principles of covering the costs of an efficient operator and a normal return on invested capital are commonplace in the EU, and are not considered to constitute State aid.

(176) First, Teréga considers that the measure in question is simply a tariff regulation instrument that is not financed through State resources. It has no impact on the State budget and does not generate any extra costs that must be passed on to final customers. Moreover, the French State does not exert government control over the funds collected by TSOs or over the TSOs themselves, which are private-law undertakings controlled by shareholders that are mostly from the private sector.

(177) Next, Teréga considers that the measure in question does not confer a selective advantage on the operators concerned. The regulatory mechanism is based on auctions and also comprises efficiency incentives and an *ex-post* adjustment instrument for all costs and revenue. Furthermore, the symmetrical nature of the regulatory mechanism means that storage operators do not necessarily receive compensation but may in fact be required to repay any overcompensation.

(178) Moreover, with regard to the criterion of selectivity, Teréga considers that the situation of foreign operators is not relevant when assessing this aspect. Storage operators are in a factual and legal situation that differs in many respects from that of LNG terminal operators and interconnector operators, particularly with regard to the objective of ensuring security of natural gas supplies in France.

(179) Lastly, Teréga states that the measure in question in no way affects competition and trade between Member States. Storage capacity is assigned through auctions, using a market mechanism that does not discriminate against operators located in other Member States. Moreover, when adopting decisions on mergers and anti-competitive practices, the Commission has always defined the relevant natural gas storage market as, at most, national in scale and has never considered there to be a larger-scale market, either in terms of the services in question or in terms of geography. In any event, the fact that gas infrastructure is very widely regulated is incompatible with the view that competition on the natural gas markets is distorted.

5.1.3.2. Compatibility of the aid with the internal market

(180) Even were the regulatory mechanism to constitute State aid (which it does not), Teréga maintains that the regulatory mechanism meets all the conditions for it to be compatible with the internal market within the meaning of Article 107(3)(c) TFEU.

(181) Teréga considers that the objective of the measure in question is one of common interest as it aims to ensure security of natural gas supplies in France. By increasing the amount of natural gas available at storage sites, the regulatory mechanism seeks to achieve a specific and quantifiable level of supply security. Moreover, the measure in question constitutes a necessary intervention by the State that is based on a reasonable assessment and addresses well-identified market flaws, such as final consumers' inability to indicate the value they assign to security of supply (such as the insurance value or system value). Furthermore, Teréga stresses that the measure at issue is an appropriate means of strengthening security of supply on French territory, not only compared with other available flexibility measures, but also compared with other types of storage regulation.

(182) Teréga questions the Commission's reasoning in the Opening Decision with regard to the proportionality of the measure in question. The regulatory mechanism limits the amount of alleged aid to the minimum amount required. The regulatory mechanism is based on the principle of covering the costs of an 'efficient operator', capping storage operators' revenue and having in-built incentives for operators to encourage efficiency with regard to their operating expenditure. Moreover, the CRE had an independent cost assessment carried out to be certain that only acceptable costs are taken into account. The CRE also referred to a set of objective, contemporary and credible economic studies carried out by independent experts to value the regulated assets. In this respect, the method used by the CRE to value the assets is consistent with and corresponds to the practices of other European regulators. Contrary to what the Commission suggests, Teréga considers that taking into account pre-regulation revenue in the regulated asset base value would necessarily be incomplete in the absence of available data and, in any event, might be contrary to general principles of law. Moreover, the CRE's work relates to storage operators' operating costs as well as the valuation of their assets, information which has systematically been made public in the CRE's tariff-setting decisions, thus ensuring that the measure is transparent.

(183) Lastly, Teréga takes the view that the measure in question does not distort competition between natural gas suppliers located in France and those located abroad. The measure at issue is non-discriminatory. All retail suppliers can purchase capacity at French storage sites through auctions. Also, all retail suppliers serving French customers pay ATRT tariffs, thereby supporting the compensation mechanism. The measure even has a positive impact on the retail markets for natural gas by limiting periods of system stress and reducing the risk of network congestion. Nor is there any distortion of competition with respect to LNG operators and operators of interconnectors. These operators are themselves subject to significant regulation of their revenue, and rather than competing with storage operators, they complement their activities to ensure security of supply. The measure in question does not favour one source of natural gas supplies over another, nor does it prohibit or discourage the use of interconnectors and LNG terminals as complementary tools. For example, capacity take-up rates at European LNG terminals in recent years illustrate this trend. Lastly, the measure in question does not introduce a distortion of competition with regard to foreign storage operators, since they could not be placed at a disadvantage by the auctions, which use a market-based mechanism. Furthermore, in practice, the introduction of the measure has not hindered the general increase in take-up rates for storage in Europe.

5.2. **Comments by other interested parties**

5.2.1. *French Independent Electricity and Gas Association (AFIEG)* ([56])

(184) The AFIEG provided its comments on the method of valuing storage assets and the scale of storage assets required in terms of volume and withdrawal rate to ensure security of supply.

(185) The AFIEG points out that the distortions of competition that existed prior to the reform, caused by the previous system's lack of transparency, have been eliminated.

([56]) The AFIEG brings together French undertakings and subsidiaries of European operators in the electricity and gas sectors: Alpiq Energie France, BKW France, Endesa, Fortum France, Gazprom Energy, Total Direct Energie, Gazel Energie and Vattenfall. Enovos and Primeo Energie are associate members.

(186) With regard to the method used to value the regulated asset base, the AFIEG does not have precise figures available that would make it possible to confirm the CRE's valuation, but it considers that economic value should take precedence over book value. Using the economic value would make it possible to reflect stocks at a given time ('t') rather than giving a more historical overview. Moreover, the AFIEG considers that the valuation of cushion gas is a fundamental aspect of the valuation of storage assets, and it therefore expressed its desire for the chosen cushion gas depreciation rules to be taken into consideration with regard to their financial impact on the RAB value. Furthermore, the AFIEG points out that storage operators are not exposed to greater business risks than transmission network operators. Consequently, the rate of return on the RAB value used for storage operators should not be higher than the rate of return for TSOs.

(187) The AFIEG considers that the scale of storage assets required in terms of volume and withdrawal rate to ensure security of supply should be reduced by the French authorities in order to maximise the cost-benefit ratio of storage for consumers. The French authorities have set out the minimum natural gas stock levels required to ensure security of supply, namely a withdrawal rate of 1 990 GWh/d and a volume of 64 TWh ([57]), whereas the list set out in the Decree on the PPE for 2023-2028 refers to a withdrawal rate of 2 376 GWh/d and a volume of 138,5 TWh. The AFIEG considers that the figures set out in the Decree on the PPE are too high in relation to the storage requirements needed to guarantee security of supply in France. The figures should therefore be lowered so as to avoid extra costs for end consumers and to ensure that other natural gas flexibility capacity is not placed at a disadvantage. Furthermore, the AFIEG notes that the figure chosen by the French authorities for disruption risk coverage is too stringent at 2 % compared with neighbouring countries, where it is 5 %.

5.2.2. *French Gas Association (AFG)* ([58])

(188) In the AFG's opinion, the regulatory framework for natural gas storage introduced by the French authorities on 1 January 2018 is a good one.

(189) The AFG considers that the measure in question is underpinned by the principle of cost-based regulation and has led to efficient and proportionate valuation of assets. The principle of cost-based regulation is used by the majority of regulatory authorities and applies to transmission activities, natural gas distribution and LNG terminals in France.

(190) According to the AFG, a method using market prices rather than the costs of 'efficient operators' could have led to a regulatory framework that was unstable and far removed from the most desirable economic outcome: if spreads were unfavourable, the method would not ensure coverage of operators' costs and could potentially put them in a critical situation. Conversely, if market spreads were very favourable, operators' revenue would have been too high and far removed from the best value for customers using storage facilities.

(191) According to the AFG, regulation of French storage facilities has not led to a distortion of competition vis-à-vis other natural gas infrastructure in France, LNG terminals in France and the EU, or storage operators in the EU. With regard to LNG terminals, the AFG notes that the volume of LNG imported into France has doubled in the space of 2 years, rising from 9,6 Gm^3 in 2017 to 21,5 Gm^3 in 2019. The AFG also mentions that LNG terminal development projects are currently being considered in Germany. With regard to storage operators in Europe, the AFG points out that filling levels in Germany, the Netherlands and Belgium increased between 2018 and 2019, and reached at least 95 % in Western Europe on 1 November 2019.

5.2.3. *National Association of Energy Retailers (ANODE)* ([59])

(192) According to ANODE, the regulation of French storage facilities makes it possible to reconcile suppliers' desire to have market rules governing the sale of storage capacity with a regulated mechanism to ensure security of supply.

([57]) Order of 13 March 2018 on minimum natural gas stock levels to guarantee security of natural gas supplies from 1 November 2018 to 31 March 2019.

([58]) The AFG is the professional association for the French gas industry. Its full members are EDF, ENGIE, France Gas Liquides, Gazprom, GRDF, GRTgaz, Teréga and Total. In addition to full members, the association has associate members, partner members and members who are natural persons from within the industry.

([59]) ANODE represents alternative energy suppliers in France. ANODE's members are EkWateur, Enercoop, Energie d'ici, Eni Gas & Power France, Greenyellow, Gaz Européen, Planète OUI, Plüm Energie, SAVE, Total Direct Energie, Vattenfall and Wekiwi.

(193) Furthermore, ANODE considers it crucial to regularly review the target take-up rates and filling levels for storage facilities and the scale of assets taken into account in the compensation mechanism for the purpose of guaranteeing security of supply so as to ensure that they correspond to actual requirements. ANODE argues that this point is all the more important given that France assumed a 2 % reduction in natural gas consumption, excluding electricity generation […].

(194) With regard to proportionality, ANODE considers that the CRE will need to take into account experience gained with regard to costs and the operation of storage facilities as well as the reduction in the risk borne by storage operators. In its view, the rate of return on the RAB value for storage operators should be aligned with the rate for TSOs.

5.2.4. *Electricity and Gas Regulatory Commission (CREG)* ([60])

(195) The CREG considers that it has not been proven that all storage capacity in France is required at all times to ensure the security of natural gas supplies. Charterers use part of this natural gas, potentially a significant part, to make profits linked to speculation on the difference between summer and winter prices for natural gas. The compensation mechanism could therefore also be a way for charterers to make profits from natural gas for free. This gives charterers operating in France a competitive advantage that charterers in neighbouring countries do not have.

(196) Belgium has only one natural gas storage facility at the Loenhout site, operated by Fluxys Belgium ([61]). The CREG considers this site to be in competition with other storage sites in the north-west of the EU.

(197) Although the spread between winter and summer natural gas prices was small in 2017 and 2018, the fact that the largest storage facility in the United Kingdom was unavailable led to an increase in reservations for storage capacity on the north-western EU market. This explains the filling levels of 87 % and 84 % for Loenhout for the 2016-2017 and 2017-2018 seasons.

(198) However, the filling level for the 2018-2019 season was low, standing at 54 %, while the filling level for the EU 28 remained fairly stable. The CREG notes that the filling level for storage facilities in France increased from 75 % for the 2017-2018 season to 94 % for the 2018-2019 season. Loenhout's role as a source of flexibility has been taken over by French storage facilities that have benefited from very low tariffs under a new regulatory support framework. The CREG considers that the introduction of the French compensation mechanism has therefore had a very significant impact on Loenhout: only market operators with existing long-term contracts have remained active at the Loenhout site. The CREG takes the view that the French compensation mechanism forces storage operators in neighbouring countries to sell their storage capacity at their marginal cost, or even at a lower cost.

(199) Moreover, the CREG notes that the filling level for the 2019-2020 season was exceptional, both for Belgium (97 %) and for the EU 28 (97 %). This level can be explained by the very low price of natural gas during the summer of 2019 and a wide spread.

(200) The CREG concludes that it cannot be ruled out that the compensation mechanism used in France causes distortions of competition between operators of storage facilities on French territory and those in neighbouring Member States, between market operators active on the French market and those active in neighbouring Member States, and between natural gas storage operators on the one hand and LNG operators and interconnector operators on the other.

([60]) The CREG is the electricity and gas regulator in Belgium.

([61]) The site has a storage capacity of 780 million cubic metres (equating to 9 TWh).

5.2.5. *[…]* ([62])

(201) […] considers that it is imperative to build up stocks of natural gas to ensure security of supply in the short term and that the regulatory principles implemented in 2018 are appropriate. Given that the volume of stocks required to ensure security of supply is greater than the 'economic' volume that would be spontaneously arrived at by the market, it is necessary to supplement storage operators' revenue.

(202) However, the scope of regulation must be restricted to storage capacity that is strictly necessary to ensure security of supply. This point is important to ensure that end consumers do not bear excessive costs. Too large a scope could also be detrimental to storage facilities located in another Member State and have an impact on LNG terminals and interconnectors.

(203) […] acknowledges that it is difficult to calculate precisely the storage volume required to ensure security of supply. However, […] considers that it could be necessary to include all underground storage facilities when determining the scale of facilities required to ensure security of supply. In light of recent developments, […] considers that the scenarios assumed by France could factor in greater use of LNG resources in particular, which would reduce the volume required to ensure security of supply.

(204) […] also questions the decision to limit the scope of regulation to underground storage facilities only, particularly given that French legislation acknowledges the existence of supplies in storage at LNG terminals and considers that these supplies could help ensure the security of natural gas supplies.

(205) In the medium and long term, […] expects that France will need to manage the decommissioning of some of its gas infrastructure. Consequently, even if strengthening import capacity reduced the volume that needed to be kept in storage to ensure security of supply, this alternative could ultimately prove very costly. As a result, to ensure security of supply, it would appear to be more appropriate to use existing storage facilities rather than build new import capacity.

5.2.6. *European Federation of Energy Traders (EFET)* ([63])

(206) The EFET supports the reform introduced by the French authorities in 2018, which created an attractive and competitive market for natural gas storage in France.

(207) As regards the compatibility of the aid, the EFET does not cast doubt on the methodology used to calculate the base value or the rate of return on capital, as set by the CRE. The value of the regulated assets should correspond to the regulated asset base and a regulated rate of return.

(208) The EFET does not believe that the introduction of the reform has created distortions of competition between French natural gas storage operators and those in other Member States, as demonstrated by the steady increase in operators' market participation in France and abroad since 2018; nor has it created distortions of competition between natural gas storage operators and LNG terminal operators, since the market value of LNG terminals has been increasing since 2018.

5.2.7. *Elengy* ([64])

(209) The introduction of the reform has not resulted in an artificial reduction in incentives to use LNG terminals. First, activity at Elengy's terminals has increased since the measure was implemented, reaching record levels in 2019 and 2020.

(210) Second, the appeal of LNG terminals is influenced by a number of factors: the gap between EU and Asian markets, tariffs, the existence of long-term contracts, the depth and liquidity of the market downstream, the flexibility of the terminal, and trade rules. The measure concerning storage does not have a direct impact on these factors, but has had indirect, positive effects. The reform has helped to maximise EU storage capacity by deepening the natural gas market in the EU, making it possible to store natural gas and reduce costs for consumers when demand for natural gas is high, and by increasing the liquidity available on the French market.

([62]) […].
([63]) The EFET brings together more than 100 energy traders operating in more than 28 European countries.
([64]) LNG terminal operator.

5.2.8. *Enovos* ([65])

(211) Enovos considers that, when there are various players participating in the system in sufficient number, the market is best placed to set the value of an asset. The current auctioning mechanism ensures a fair market assessment. If the auction system leads to a situation where certain market players are remunerated more or less than others, adjustments will take place at auctions in subsequent years.

5.2.9. *Fluxys* ([66])

(212) Fluxys notes that natural gas storage in the EU has been facing significant challenges in recent years, given that it is increasingly difficult for natural gas storage operators to cover operating costs. To adapt to rapid changes in the market, it is necessary to put in place an appropriate economic model that reflects the value of natural gas storage for the system and its contribution to security of supply. Establishing support mechanisms unilaterally could create distortions of competition with other EU Member States. Consequently, a compensation mechanism based on strict criteria should apply to all EU Member States.

5.2.10. *National Federation of Mines and Energy CGT (FNME-CGT)* ([67])

(213) According to the FNME-CGT, the reform of natural gas storage in France has made it possible to achieve the following two objectives: guarantee energy security at a fair price for consumers and ensure the proper functioning of the transmission network to safeguard delivery.

(214) The FNME-CGT considers that the measure in question cannot be classified as State aid. It does not regard the compensation as being financed through State resources. Moreover, the measure in question is not a mandatory charge in exchange for which there is no consideration, like a tax. Also, the FNME-CGT states that it is only mandatory to pass on the cost of using the transmission network to natural gas consumers in their bills if a consumer has chosen to benefit from regulated sales tariffs. In addition, the storage charge revenue and the operators collecting compensation are not controlled by the State.

(215) The FNME-CGT does not consider that the measure in question confers a selective advantage given that storage operators are subject to obligations requiring them to ensure continued operation of their facilities. Moreover, operators must pay back any surplus revenue to network operators, leading to a loss of economic opportunity.

(216) If the measure in question were found to constitute State aid, it would be compatible with the internal market.

(217) The FNME-CGT considers that the method of valuing regulated assets is proportionate to the objective of ensuring security of supply. Regulating operators' revenue based on costs that are controlled and approved by the national regulatory authority has ensured that final consumers pay a price that is set in advance in a transparent manner.

(218) Moreover, the method of calculating the RAB is applied to all tariffs for regulated infrastructure in France, aside from electricity distribution. A calculation based on summer/winter spreads would not have made it possible to correct the shortcomings of a market that was not able to reflect the insurance value of assets in prices. Moreover, the RAB values proposed by operators were subject to an independent audit commissioned by the CRE, following which the initial RAB value was lowered. Furthermore, the initial RAB value takes into account the depreciated value of the assets. Certain fully depreciated assets were even included in the RAB value and given a value of zero, meaning that there was no return whatsoever on those assets.

(219) According to the FNME-CGT, there are other aspects which illustrate that the measure is proportionate: the scope of regulation under the PPE is reviewed regularly, coverage of gas infrastructure operators' costs is limited to costs that correspond to those of 'efficient operators', the compensation is symmetrical, which prevents any risk of overcompensation, and the regulation aims to maximise take-up of storage capacity as well as revenue from auctions.

([65]) Trader in the energy sector.
([66]) Gas storage operator in Belgium.
([67]) French trade union affiliated to the General Confederation of Labour (CGT).

(220) The FNME-CGT considers that the measure has not had a negative impact on competition and trade. First, the compensation financed by each supplier is determined by its consumption profile, regardless of whether its facilities are based on French territory or in a neighbouring country, hence this does not create distortion of competition between suppliers. Second, storage is not in competition with LNG and interconnectors; instead they are complementary. LNG terminals have technical characteristics and operational constraints that are specific to the LNG supply chain. While storage facilities are designed to cover requirements at times of peak demand, LNG terminals and gas interconnectors are a means of importing natural gas and diversifying sources of supply. The complementarity between storage facilities and LNG terminals has made it possible to store LNG that was imported into the EU at a low cost, which benefits natural gas users. Third, the measure in question does not create a distortion of competition vis-à-vis storage operators in other Member States, as demonstrated by the fact that take-up rates and use of storage facilities in the EU have both increased and are now at high levels.

(221) Unlike the PPE, the FNME-CGT does not believe that natural gas consumption will fall by 2 % per year, given the development of new uses for natural gas. The FNME-CGT highlights certain aspects of supply security that are often forgotten when determining the scale of infrastructure, such as the fact that, in average weather conditions, the main source of supply is cut off for up to 6 months.

5.2.11. *GRTgaz* ([68])

(222) According to GRTgaz, the network and storage facilities have been designed to work together and both are indispensable to cover winter demand. GRTgaz carried out simulations at the beginning of 2018 which indicated a storage requirement of 115 to 125 TWh taking into account weather scenarios that corresponded to recent winters. GRTgaz also notes that filling storage facilities to maximum levels, i.e. 135 TWh, would not suffice in a cold winter that includes a cold spell and if LNG were not used.

(223) Between 2012 and 2018, GRTgaz issued regular warnings regarding the problems caused by insufficient take-up rates and filling levels at underground storage facilities, and particularly the risk in terms of security and continuity of supply. Moreover, GRTgaz considers that the creation of the single area (TRF) on 1 November 2018 strengthened the role of storage facilities in the French gas system.

5.2.12. *Hungarian Gas Storage* ([69])

(224) Natural gas storage in itself constitutes a guarantee and brings value to the system, as demonstrated by studies carried out by the association Gas Infrastructure Europe. This value is not reflected in market prices ([70]). Regulatory intervention is therefore needed ([71]), such as the mechanism introduced in France. The French system, which is market-based, guarantees a level playing field with other sources of flexibility. Overcompensation is prevented, since any difference between regulated revenue and market revenue is paid back. Transparency of compensation is ensured by the arrangements put in place by the CRE. As a result of the introduction of the measure, there are no distortions of competition on the storage market or in the energy value chain. The measure in question serves as an example for other EU countries.

5.2.13. *Total Direct Énergie* ([72])

(225) As set out in the PPE Decree, the scale of assets required to ensure security of supply was set at 138,5 TWh, whereas only 90 TWh were considered necessary in the previous storage mechanism.

(226) Total Direct Énergie questions the assumed figure for usage of interconnectors, which stands at 1 585 GWh/d, while the technical capacity is 1 810 GWh/d. This difference does not appear to be justified. The delivery period for shipments, which is 10 days, should be updated and firm contracts for LNG deliveries should be taken into account (which would make it possible to bring down the average delivery period). Lastly, the benefits of LNG are reduced since cold spells lasting only 6 to 9 days are taken into account.

([68]) Gas transmission system operator.
([69]) Gas storage operator.
([70]) Study carried out by Gas Infrastructure Europe (GIE): Gas Storage Market Failures, Pöyry, September 2017.
([71]) Study carried out by Gas Infrastructure Europe (GIE): Measures for a sustainable gas storage market, FTI-CL Energy, October 2018.
([72]) Undertaking operating in the energy sector.

(227) Overestimating infrastructure requirements would automatically lead to storage operators being overpaid. The initial RAB value should have taken into account depreciation that had already occurred. Moreover, Total Direct Énergie considers that storage operators' activities are over-remunerated compared with the risks borne. These activities are not exposed to greater risks than those faced by transmission network operators. There is therefore no justification for a higher rate of return. For this reason, the chosen rate of return on the RAB value should not be higher than the rate of return for TSOs, which the CRE has currently set at 5,25 %.

(228) Total Direct Énergie also considers that the scope of the measure is such that it distorts price signals on the wholesale markets and does not encourage operators to use other flexibility instruments (especially interconnectors and LNG), despite their being just as vital. Total Direct Énergie notes that long-term agreements for take-up of interconnector capacity will expire in the coming years, but current market signals do not encourage renewal of those agreements.

5.2.14. *Uniper Energy Storage* ([73])

(229) The availability of storage capacity is essential to ensure reliable and cost-effective operation of all the infrastructure used to import natural gas. However, the fact that the market should encourage full use of storage capacity is not reflected in the market conditions for underground natural gas storage ([74]). For many years now, operators of storage systems have been faced with a significant reduction in market prices. These circumstances are made worse by the different situations across Europe with regard to competition, which vary based on the different national frameworks that apply to access to storage and flexibility (market-based or regulated). It is therefore necessary to harmonise national regulatory systems for natural gas storage ([75]).

5.2.15. *Professional Association of Private Gas Operators (Uprigaz)* ([76])

(230) UPRIGAZ notes that France already amended its regulatory mechanism for storage after UPRIGAZ brought an action for misuse of powers before the Council of State challenging the previous mechanism. UPRIGAZ considers that the updated mechanism is appropriate and allows a real market value to emerge for storage products in France.

(231) UPRIGAZ takes the view that the use of French LNG terminals and of those located in neighbouring countries cannot be considered to be hindered by the regulatory mechanism for natural gas storage. French LNG terminals sent out 9,6 Gm^3 in 2017. Send-out volumes in 2018 (11,1 Gm^3) and 2019 (21,5 Gm^3) clearly illustrate the market appetite for French LNG terminals over that period. The same can be said of LNG terminals in neighbouring countries; send-out volumes rose sharply in Belgium (from 1,1 Gm^3 in 2017 to 6,7 Gm^3 in 2019) and the Netherlands (from 0,8 Gm^3 in 2017 to 7,9 Gm^3 in 2019).

(232) UPRIGAZ also considers that the methodology used by the French authorities, particularly the assumption of 100 % availability of firm entry capacity at interconnector points, does not restrict competition.

(233) Lastly, UPRIGAZ considers that the measure in question does not give French storage operators an unfair advantage over their foreign counterparts.

6. **ASSESSMENT OF THE AID**

6.1. **State aid within the meaning of Article 107(1) TFEU**

(234) State aid is defined in Article 107(1) TFEU as '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 … in so far as it affects trade between Member States'.

([73]) Gas storage operator.

([74]) Studies carried out by Gas Infrastructure Europe (GIE): Gas Storage Market Failures, Pöyry, September 2017 and Value of the gas storage infrastructure for the electricity system, Artelys, October 2019.

([75]) Study carried out by Gas Infrastructure Europe (GIE): Measures for a sustainable gas storage market, FTI-CL Energy, October 2018.

([76]) UPRIGAZ brings together undertakings involved in the entire gas supply chain or part thereof: Dalkia France, Eni, ENGIE, Equinor, ENGIE Cofely, Naturgy, Total Energie Gaz, Teréga and Total Gaz Électricité Holdings France.

(235) For a measure to be classed as State aid, all of the following criteria have to be met: (a) the measure must be imputable to the State and financed through State resources; (b) the measure must confer a selective advantage likely to favour certain undertakings or the production of certain goods; and (c) the measure must distort or threaten to distort competition and must be likely to affect trade between Member States.

6.1.1. *State resources and imputability*

(236) For measures to be classed as State aid within the meaning of Article 107(1) TFEU, they must, first, be granted directly or indirectly through State resources and, second, be imputable to the State ([77]).

(237) With regard, first, to the condition relating to the imputability of the measure, it is necessary to examine whether the public authorities must be regarded as having been involved in adopting the measure ([78]).

(238) It should be noted that the regulatory mechanism was established by a law adopted in 2017 ([79]), the scope of which is laid down by decree ([80]) and the detailed rules of which are set down in decisions adopted by the CRE, an independent administrative authority, within the framework of the powers conferred on it by law (see recitals (15) to (17)). In particular, the CRE devises the detailed rules for auctioning essential infrastructure capacity, determines the authorised revenue of storage operators and sets out the methodology for calculating the storage charge in the ATRT tariffs. The regulatory mechanism must therefore be regarded as imputable to the State.

(239) As regards the condition relating to direct or indirect financing through State resources, it is clear from the case-law of the Court of Justice that it is not necessary to establish in every case that there has been a transfer of State resources for the advantage granted to one or more undertakings to be capable of being regarded as State aid within the meaning of Article 107(1)TFEU ([81]).

(240) The Court has, more specifically, held that funds financed through compulsory contributions imposed by State legislation, and managed and apportioned in accordance with the provisions of that legislation, may be regarded as State resources within the meaning of Article 107(1) TFEU, even if they are administered by institutions distinct from the public authorities ([82]). It is not necessary to make a distinction between institutions governed by public or private law ([83]). The decisive factor, in that regard, consists of the fact that such institutions are appointed by the State to manage a State resource and are not merely bound by an obligation to purchase by means of their own financial resources ([84]). In the *ENEA SA* judgment, the Court held that a measure was not granted through State resources where the extra costs resulting from that measure could not be fully passed on to end-users ([85]). Moreover, it is clear from the case-law of the Court that the detailed rules for calculating those contributions may be determined precisely by regulation or by decision of a public body, such as the national regulatory authority, without, however, ruling out the classification of 'compulsory contributions imposed by the legislation of the State' ([86]).

([77]) Judgment of 16 May 2002, *French Republic* v *Commission*, C-482/99, EU:C:2002:294, paragraph 24; judgment of 30 May 2013, *Doux Élevage et Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 27, and judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 16.

([78]) Judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 17 and the case-law cited.

([79]) Act No 2017-1839 of 30 December 2017 ending the exploration and extraction of hydrocarbons and laying down various provisions relating to energy and the environment.

([80]) Decree No 2020-456 on the multiannual energy programme (PPE).

([81]) Judgment of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 36; judgment of 30 May 2013, *Doux Élevage et Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 34; judgment of 28 March 2019, *Germany* v *Commission*, C-405/16 P, EU:C:2019:268, paragraph 55; and judgment of 20 September 2019, *FVE Holýšov I e.a.* v *Commission*, T-217/17, EU:T:2019:633, paragraph 105.

([82]) Judgment of 2 July 1974, *Italy* v *Commission*, C-173/73, EU:C:1974:71, paragraph 35; judgment of 19 December 2013, *Association Vent De Colère! and Others*, C 262/12, EU:C:2013:851, paragraph 25; judgment of 28 March 2019, *Germany* v *Commission*, C 405/16 P, EU:C:2019:268, paragraph 58; and judgment of 20 September 2019, *FVE Holýšov I e.a.* v *Commission*, T-217/17, EU:T:2019:633, paragraph 107.

([83]) Judgment of 20 September 2019, *FVE Holýšov I and others* v *Commission*, T-217/17, EU:T:2019:633, paragraph 126.

([84]) Judgment of 28 March 2019, *Germany* v *Commission*, C 405/16 P, EU:C:2019:268, paragraph 59 and the case-law cited, and judgment of 20 September 2019, *FVE Holýšov I and others* v *Commission*, T-217/17, EU:T:2019:633, paragraph 108.

([85]) Judgement of 13 September 2017, *ENEA*, C-329/15, EU:C:2017:671, paragraph 30.

([86]) Judgment of 15 May 2019, *Achema and others* C-706/17, EU:C:2019:407, paragraph 66.

(241) In the *Essent Netwerk Noord* judgment ([87]), the measure in question was classified as a charge and hence a measure involving a State resource since the surcharge was imposed by the State by law on purchasers of electricity in accordance with the objective criterion of the number of kilowatt hours (kWh) transmitted ([88]). The Court stated, in that regard, that the identity of the person liable for payment of the charge was of little account in so far as the charge related to the product or to a necessary activity in connection with the product ([89]).

(242) Moreover, in *EEG 2012* ([90]), the Court held that the fact that the financial burden levied on suppliers was optional and was passed on to final consumers only 'in practice' was not sufficient for it to be concluded that State resources were involved.

(243) In the present case, the compensation of storage operators' costs comes within the scope of the regulatory mechanism and is covered by the tariffs for using the transmission network, as provided for by the Hydrocarbons Act (see recitals (17) and (104)). Under its statutory powers (see recital (17)), the CRE incorporated a charge into the ATRT tariffs which is intended to finance the regulatory mechanism in question (the storage charge) (see recital (90)). The financing also covers the cost of collection and payment of compensation to the TSOs (see recital (105)).

(244) In accordance with the CRE's decision of 7 February 2018 ([91]), any shipper who is assigned firm delivery capacity at at least one transport distribution interface point (PITD) is subject to a storage charge to be paid to the TSO with which they have concluded a delivery contract (see recital (99)). The storage charge for each shipper, in accordance with the methodology laid down by the CRE, is based on the winter modulation of its non-load shedding and non-interruptible customers connected to the public natural gas distribution networks (see recital (21)). Contrary to the view expressed by some interested parties, it follows from the above that the storage charge amounts to a compulsory contribution imposed on shippers by law, and is not optional; the amount of the charge is calculated according to the objective criterion of the winter modulation of their customers based on the methodology established by the CRE. These contributions are calculated to cover all TSO costs related to this service.

(245) This analysis is confirmed by the fact that the storage charge paid by shippers must be passed on to consumers in the regulated sales tariffs for natural gas (see recitals (98) to (101)).

(246) Under the Hydrocarbons Act, TSOs pay to storage operators covered by the regulatory mechanism a proportion of the sums collected under the ATRT tariffs in accordance with the detailed rules laid down by the CRE, a public body. The CRE thus sets the amount of that proportion and the cost of the collection and payment service (see recital (90)). TSOs are appointed and mandated by law to collect and pay the storage charge to regulated storage operators. The TSOs are not free to use these funds as they wish since they have no discretion in terms of setting and allocating these funds, which are subject to mandatory redistribution, the amounts being decided by the CRE.

(247) Consequently, the storage charge forming part of the ATRT tariffs, which is used to finance the regulatory mechanism, takes the form of a compulsory contribution imposed by law on both shippers and consumers, as regulated tariffs, under the supervision of the CRE. In addition, the funds from the storage charge are managed and distributed by the TSOs. The Commission therefore considers that the measure is granted through State resources.

6.1.2. *Selective advantage*

(248) According to settled case-law, measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or which confer an economic advantage that the recipient undertaking would not have obtained under normal market conditions, are regarded as State aid ([92]).

([87]) Judgment of 17 July 2008, *Essent Netwerk Noord BV*, C-206/06, EU:C:2008:413.
([88]) Judgment of 17 July 2008, *Essent Netwerk Noord BV*, C-206/06, EU:C:2008:413, paragraphs 47 and 66.
([89]) Judgment of 17 July 2008, *Essent Netwerk Noord BV*, C-206/06, EU:C:2008:413, paragraph 49.
([90]) Judgment of 28 March 2019, *Germany* v *Commission* (C-405/16 P, EU:C:2019:268).
([91]) Decision No 2018-022 of 7 February 2018 on changes in the tariff for using the natural gas transmission networks of GRTgaz and TIGF as of 1 April 2018.
([92]) Judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 79, judgment of 27 June 2017; *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 65; and judgment of 15 May 2019, *Achema and Others*, C 706/17, EU:C:2019:407, paragraph 74.

(249) In the present case, under the regulatory mechanism, regulated storage operators receive a guaranteed income, the 'authorised revenue', set by the CRE in such a way as to guarantee that their costs are covered, in so far as they correspond to those of an 'efficient operator', and that they receive a normal return on the capital invested (see recital (21) above). This authorised revenue is made up of the income directly received by operators and, where this income is lower than the authorised revenue, the storage compensation paid by the TSOs. Thus regulated storage operators, who would be compensated for any losses, are no longer subject to the uncertainty inherent in normal market conditions. Contrary to the arguments put forward by some interested parties, the Commission therefore considers that operators of essential storage infrastructure enjoy an economic advantage.

(250) In order to assess the selectivity of the advantage, the Court has held that it is necessary to determine whether, under a particular legal regime, the national measure in question is such as to favour 'certain undertakings or the production of certain goods' over others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation and which are accordingly subject to different treatment ([93]).

(251) In this case, the regulatory mechanism applies only to natural gas underground storage infrastructure regarded as necessary to ensure security of supply on French territory in the medium to long term. A restrictive list of this essential infrastructure is laid down by decree (see recital (19)).

(252) For winter 2018-2019, that list included, as a transitional measure, all storage infrastructure on French territory (see recital (16)). As the legislation currently stands, the essential storage infrastructure for the period 2019-2023 comprises all the storage infrastructure in operation on French territory, excluding the three facilities on standby and two projected developments for the storage of natural gas (see recitals (49) and (50)). The current multiannual energy programme (PPE) also provides for a reduction in the list of essential infrastructure during the next revision of the PPE (see recital 52).

(253) Thus, storage sites for natural gas that have been placed on standby are excluded from the scope of the regulatory mechanism. In addition, France anticipates that sites in operation at the moment will be excluded in future because of the decrease in natural gas consumption projected in the PPE. Storage operators from other Member States, in particular neighbouring ones, are also excluded. Operators of other flexibility instruments which also contribute to ensuring security of supply, such as operators of LNG terminals and interconnector operators, are excluded as well.

(254) Therefore, even if the existence of a selective advantage were examined at national level and concerned only natural gas storage infrastructure, contrary to the views expressed by some interested parties, the Commission considers that the measure at issue would confer a selective advantage as this advantage is reserved for operators of the essential storage infrastructure included in the current PPE list.

(255) Consequently, the measure in question may favour certain undertakings over others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation.

6.1.3. *Impact on competition and trade between Member States*

(256) As regards the potential effect on trade between Member States, according to the case-law of the Court the fact that an economic sector such as natural gas has been liberalised at EU level may serve to determine that the aid in question has a real or potential effect on trade between the Member States ([94]).

([93]) Judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraphs 53 to 55, and judgment of 21 December 2016, *Commission* v *World Duty Free Group and Others*, C-20/15 P and C-21/15 P, EU:C:2016:981, paragraph 54.

([94]) Judgment of 5 March 2015, *Banco Privado Português et Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 51, judgment of 18 May 2017; *Fondul Proprietatea*, C-150/16, EU:C:2017:388, paragraph 34; and judgment of 15 May 2019, *Achema and Others*, C 706/17, EU:C:2019:407, paragraph 94.

(257) In this case, operators of essential storage facilities in France will obtain an advantage over their competitors because of the introduction of the regulatory mechanism. This concerns in particular storage operators from other Member States, even if it is considered, as alleged by some, that the market is regional. Based on the submissions from the interested parties, the Commission cannot rule out the fact that the measure will have an impact on the storage of natural gas in neighbouring countries, in particular in Belgium where there is no guaranteed remuneration for natural gas storage.

(258) Nor can the Commission rule out implications for operators of other flexibility instruments such as LNG terminal operators and interconnector operators. Even though they also operate on the basis of an authorised revenue, as stated by some interested parties, their income is not supplemented by the State in the same way.

(259) As the natural gas market has been liberalised at European Union level, any advantage granted to an undertaking in this sector has the potential to affect trade between Member States. The Commission therefore considers that the measure is likely to affect trade between Member States.

(260) The measure at issue is intended to guarantee a certain income for storage operators of essential storage facilities. The Commission thus concludes that the measure is likely to distort competition.

6.1.4. *Conclusion as regards the classification of the measure at issue as State aid*

(261) For the reasons set out in recitals (234) to (260), the Commission considers that the measure at issue constitutes State aid within the meaning of Article 107 TFEU.

6.2. **Unlawfulness of the State aid**

(262) By setting the authorised revenue of storage operators from 1 January 2018, organising auctions and incorporating a storage charge into the ATRT tariffs from 1 April 2018, the French authorities implemented a regulatory mechanism that constitutes State aid.

(263) The French authorities did not notify the measure to the Commission before the date on which they started to implement it. Thus France acted in breach of Article 108(3) TFEU. Consequently, the Commission considers that the measure at issue has been unlawfully implemented.

6.3. **Compatibility of the State aid with the internal market**

6.3.1. *Legal basis for assessing the compatibility of the measure in question*

(264) The mechanism for regulating natural gas storage infrastructure implemented by France is intended to boost the economic activity of storing natural gas in order to ensure security of supply in the medium and long term.

(265) The Commission would point out that this is the first time that it has had to assess the compatibility of a natural gas storage regulatory mechanism with the internal market.

(266) This type of measure is not provided for in the Guidelines on State aid for environmental protection and energy ([95]) or in any other Commission guidelines.

(267) The compatibility of the regulatory mechanism with the internal market should be assessed in the light of the provisions of the TFEU and in particular Article 107(3)(c), which states that aid to facilitate the development of certain economic activities may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

([95]) Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014, p. 1).

(268) Thus, in order for the aid to be declared compatible, it must be intended to facilitate the development of certain economic activities or of certain economic areas and, in addition, it must not adversely affect trading conditions to an extent contrary to the common interest ([96]).

(269) With respect to the first condition, the Commission must examine the aid scheme to see whether it is intended to facilitate the development of certain economic activities. With respect to the second, the Commission must weigh the positive effects which the proposed aid has on the development of the activities it is intended to support against the negative effects that it may have on the internal market in terms of distortions of competition and adverse effects on trade caused by the aid.

6.3.2. *Facilitating the development of an economic activity*

6.3.2.1. The economic activity developed

(270) Under Article 107(3)(c) TFEU, aid may be regarded as compatible with the internal market if it facilitates the development of certain economic activities ([97]). It must act as an incentive for the undertaking or undertakings concerned by changing their behaviour in such a way as to facilitate the development of an economic activity which, without the aid, would not be carried out or would be carried out in a limited or different manner. The aid must not subsidise the costs of an activity that an undertaking would have engaged in in any case, and must not compensate for the normal business risk of an economic activity.

(271) In this case, the economic activity developed by the aid is the storage of natural gas in France.

(272) The regulatory mechanism is intended to change the economic behaviour of natural gas storage operators. The French authorities said that, if France had not put in place the regulatory mechanism and had abolished the previous system of storage obligations, the price charged by storage operators would be very close to the spread of natural gas sales prices. Spreads have in fact been decreasing since 2009. As a result, the prices charged no longer allowed storage operators to cover their costs before the reform was introduced. Following the decline in profitability of natural gas storage in France, three natural gas storage sites were placed on standby in 2014 and 2015 (see recital (10)). France then identified a real risk that operators would further reduce the storage capacity offered to the market and placed additional storage sites on standby.

(273) The Commission would also point out that the filling rate at storage sites has dropped. The rate of take-up of storage capacity stood at only 63 % in 2017-2018. The drop in the take-up rate thus led to a further fall in income for operators.

(274) As a result of the reform, take-up rates increased to 93 % of storage capacity in 2018-2019 and 2019-2020.

(275) In a counterfactual scenario, without the introduction of the regulatory mechanism there would have been a risk of a significant reduction in the development of the economic activity of natural gas storage in France. Since the implementation of the reform, the authorised revenue and the obligation of storage operators to make their storage capacity available through auctions have thus fostered the development of the economic activity of storage operators.

(276) Therefore, the Commission considers that the regulatory mechanism facilitates the development of the economic activity of natural gas storage in France.

6.3.2.2. Compliance of the aid scheme with other provisions of EU law

(277) The Commission would point out that the measure at issue and the economic activity developed comply with the provisions of EU law.

([96]) Judgment of 22 September 2020, *Austria* v *Commission*, C-594/18 P (Hinkley point (C), EU:C:2020:742, paragraph 19.

([97]) As confirmed by the recent judgment of the Court of Justice of 22 September 2020, *Austria* v *Commission*, EU:C:2020:742.

(278) In the field of energy, any charge intended to finance a State aid measure must comply in particular with Articles 30 and 110 TFEU. In the present case, the storage charge is hypothecated to the support granted to storage operators (see recital (246)). A charge which is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the TFEU if the revenue from such a charge is intended to support activities which specifically benefit the domestic products subject to the charge.

(279) In the present case, the storage charge is paid by shippers using the natural gas transmission network, in which almost all of the gas is imported, irrespective of whether the shippers are French or not (see recitals (98) to (100)). On the other hand, the beneficiaries are the operators of the natural gas storage infrastructure. French and foreign shippers have non-discriminatory access to the auctions organised by natural gas storage operators (see recital (20)). It is therefore not a situation in which the charge specifically benefits the domestic products on which it is levied. Articles 30 and 110 TFEU are therefore complied with.

(280) Furthermore, as stated in recital (12), Article 33 of Directive 2009/73/EC explicitly allows Member States to regulate storage infrastructure. The storage of natural gas is also one of the measures that Member States can introduce to ensure compliance with the obligations arising from Regulation (EU) 2017/1938, under the conditions laid down in that Regulation, in particular the obligation to safeguard security of supply to national customers in accordance with the need for the proper and continuous functioning of the internal market in natural gas.

6.3.2.3. Conclusion on facilitating the development of an economic activity

(281) In view of the above, the Commission considers that the measure in question contributes to the development of the economic activity of the storage of natural gas in France, in compliance with the other provisions of European law.

6.4. **The adverse effects resulting from the aid do not affect trading conditions to an extent contrary to the common interest**

(282) The Commission must examine whether the adverse effects resulting from the aid do not adversely affect trading conditions to an extent contrary to the common interest. First, the Commission will set out the positive effects of the aid, taking into account the common interest and, second, it will assess the elements for limiting the negative effects of the aid on trade, namely the necessity, appropriateness, proportionality and transparency of the aid. In the light of this analysis, the Commission will identify the remaining effects on trade before weighing up the positive and negative effects of the aid on the internal market.

6.4.1. *Positive effects of the aid*

(283) As indicated in recitals (270) to (276), the aid scheme has positive effects on facilitating the development of the economic activity of natural gas storage in France.

(284) In addition, the Commission notes that the development of the economic activity of natural gas storage has positive effects in terms of security of supply of natural gas in France in the medium to long term. Storage is necessary to ensure that the network is capable of meeting demand during cold spells and delivering gas in the transmission network in the event of congestion.

(285) In relation to cold spells, France carried out simulations of the level of natural gas demand and natural gas supply capacity in the medium to long term. The demand for natural gas was thus estimated for cold spells of 1 to 30 days, such as those occurring once every 50 years in France (see recital (25)). The French authorities took on board a number of assumptions about the development of natural gas consumption over the next 10 years. They assumed that consumption would drop by 2 % during the period 2018-2028 (see recital (26)). They also estimated the effects of interruptibility mechanisms which, however, have not yet been implemented (see recital (28)).

(286) In terms of supply, the French authorities took into account the availability parameters of the different sources of natural gas. In particular, estimates were based on an assumption of 100 % utilisation of the firm capacity of existing interconnectors and the supply of LNG from LNG terminals with a delivery time of 10 days for new cargoes (see recitals (33) to (38)).

(287) This methodology appears to be consistent with historical data and availability forecasts at the time of the analysis carried out.

(288) The French authorities estimated the need for natural gas storage in terms of 2 376 GWh/d in withdrawal rate associated with a filling level of 45 % of the working volume in order to cope with cold spells in the period between 2019 and 2025.

(289) However, as mentioned in recital (10), the decrease in spreads observed since 2009 has led to a drop in the take-up rate of storage capacity to below the level necessary to ensure security of supply, and resulted in three sites being placed on standby, despite the obligation for suppliers to maintain natural gas stocks.

(290) Consequently, it seems that the normal functioning of the gas storage market is not sufficient to maintain the storage infrastructure considered necessary to guarantee the security of supply required by France. The aim of the aid scheme is thus to facilitate the development of natural gas storage activity in France, which would not be guaranteed simply by the normal functioning of the market.

6.4.2. *Limiting the negative impact of the aid scheme on the internal market*

(291) In the opening decision, the Commission established that the aid scheme introduced by the French authorities could have an impact on the following markets: (i) French natural gas suppliers and those of other Member States, (ii) natural gas storage operators, and LNG and interconnector operators, and (iii) French natural gas storage operators and those of other Member States.

(292) The Commission has assessed the factors that could contribute to limiting the negative impact of the measure in question, namely the necessity, appropriateness and proportionality of the mechanism, as well as its transparency.

(a) The necessity of the aid scheme

The Commission considers that State intervention is necessary if, in a given situation, such intervention can bring about a significant improvement which the normal functioning of the market alone would not bring about, for example, by correcting a well-defined market failure.

(293) As stated in recital (10), spreads have decreased since 2009 and storage operators are no longer able to cover their costs. There was a risk that the economic activity of natural gas storage in France would be significantly reduced. Since the implementation of the reform, the rate of storage of natural gas in France has in fact increased.

(294) Therefore, the Commission concludes that the reform was necessary to facilitate the development of the economic activity of natural gas storage in France.

(b) The appropriateness of the aid scheme

(295) Aid is an appropriate policy instrument to facilitate an economic activity where it is not possible to achieve the same result through other policy instruments that cause fewer distortions of competition.

(296) Several alternative instruments were envisaged by France, but these would not facilitate the development of the economic activity of natural gas storage in France in the same way or guarantee the same level of security of supply for the following reasons.

(297) First, maintaining the previous system of storage obligations imposed on suppliers would not have ensured security of supply. As the spread has become significantly lower than the cost of storage capacity, incentives to suppliers to reserve capacity have significantly decreased, resulting in three sites being placed on standby. Placing other sites on standby would have been problematic since it emerged from the assessment of the need for storage that all facilities were necessary to ensure security of supply in the event of a prolonged cold spell. Furthermore, the overall storage cost under the storage obligation system was higher ([EUR 5 to EUR 8/MWh in 2016 and 2017]) than under the regulatory mechanism (EUR 5,6/MWh after the reform).

(298) Second, strengthening the gas network and interconnectors would not be a credible alternative either because of the high cost of these measures compared to using existing storage infrastructure. In any case, this type of investment would not address potential shortages of natural gas in the event of a cold spell and would not be available in the medium term.

(299) Similarly, it appears from the information provided by France that increasing recourse to LNG is not a credible alternative for ensuring security of supply. Existing liquefaction terminals are operating at a level close to their maximum capacity in order to recoup the significant investment cost. In addition, almost all LNG cargoes are subject to long-term contracts due to the capital intensity of these projects and are therefore already sold prior to their production. The lower cost of storing natural gas in gaseous form also explains the lack of development of LNG storage worldwide. Thus the quantities of LNG available in the short term are low.

(300) Third, France explained that a purely administrative system of penalties imposed on suppliers for failure to supply natural gas to final customers could not be regarded as a satisfactory alternative either. This kind of system presents a feasibility problem as the balancing of European gas markets takes place on a daily basis. The load-shedding measures implemented by the system operator in the event of a critical drop in pressure in the network would lead to a subsequent trade in natural gas that would make it extremely difficult to identify the supplier initially in default. Similarly, the customers cut off are not necessarily the customers of the defaulting supplier. In this context, France argues that *ex ante* measures are preferable to *ex post* penalties.

(301) Fourth, the same applies to load-shedding or interruptibility mechanisms. The French authorities specified that load shedding was a last resort in the event of a supply crisis and not a flexibility mechanism, the effectiveness of which depends on the consumer's compliance with the load-shedding order issued by the network operator, since it is not possible to carry out automatic load shedding remotely. The mechanism for regulating essential storage infrastructure is designed to avoid supply crises requiring the use of load shedding. Interruptibility mechanisms which address high hazard and low probability risks such as cold spells were still being defined at the time of the reform and were taken into account to assess the demand for natural gas. On the other hand, interruptibility mechanisms would not be suitable for addressing the risks of congestion characterised by a lower hazard but a higher probability.

(302) In view of these factors, the Commission considers that the regulatory mechanism is an appropriate instrument to facilitate the development of natural gas storage activity and to ensure security of supply.

(c) Proportionality of the aid scheme

(303) Aid is regarded as proportionate when it is confined to the minimum amount necessary to limit the effects on the internal market.

(304) In the present case, under the regulatory mechanism, storage operators benefit from a guaranteed income. To assess the proportionality of the regulatory mechanism, it is necessary to assess the proportionality of the method for calculating the authorised revenue of storage operators described in recitals (59) to (81).

(305) In its opening decision, the Commission expressed doubts about the CRE's independent economic assessment of the market value of the RAB at the time when the regulatory mechanism was introduced. The Commission felt that this might have undermined the proportionality of the aid scheme.

(306) Although this valuation is mainly based on gross accounting value and depreciation of assets, France and the beneficiaries were able to demonstrate that the CRE carried out a thorough revaluation of the original RAB on 31 December 2016. The CRE checked that the depreciation periods requested by the operators corresponded to the periods indicated in their historical accounts and to standard industry data observed in other countries. In particular, the CRE questioned the depreciation period of cushion gas. As stated in recital (73), the CRE rejected the request for a depreciation period of 250 years, instead setting the depreciation period for cushion gas at 75 years. The CRE hired external economic consultants to assist it in defining the initial RAB. The Commission notes that, following these reviews, the CRE selected an initial RAB of EUR 4,8 billion for the three operators, a drop of 13 % compared to the RAB requested by the operators (see Table 4 in recital (77)).

(307) The Commission also notes that the use of alternative methods such as the value of storage operators in their shareholders' accounts, the values taken into account in recent transactions or the discounted cash-flow approach used in the Teréga study by PwC lead to similar asset values (see recitals (76), (129) and (160)).

(308) Furthermore, the use of a value based on spreads does not include the value that the storage of natural gas represents for the system in terms of security of supply. That indicator is therefore not sufficiently representative of medium- and long-term developments to be useful as an indicator for a regulatory mechanism such as the one in the present case, which is designed to ensure security of supply in the medium to long term.

(309) In the comments received by the Commission in the course of the procedure, it was stated that a historical reconstruction of operators' revenue would necessarily be incomplete in the absence of available data, and would be contrary to general principles of law.

(310) The Commission would also point out that the storage tariff is intended to compensate operators for their costs, in so far as those costs correspond to those of 'efficient operators'. To this end, the CRE reviews the compensation requested by operators at the beginning of each tariff period and checks the investments envisaged by operators on an annual basis (see recital (82)). The compensation also comprises a clawback mechanism. The Commission notes that, for the years 2018-2019, the CRE took into account only the costs considered to be efficient, and that since ATS 2, an incentive has been in place for many items to keep costs under control: an incentivising regulatory mechanism for net operating expenses and investment expenditure, and an incentivising regulation on service quality (see recitals (60), (61), (65), (83), (84) and (85)).

(311) Lastly, the methodology determining the WACC of natural gas storage sites and the mark-up in relation to the GRTgaz reference rate are adequate.

(312) The Commission therefore concludes that the remuneration method established by the CRE, and in particular the valuation of regulated assets, results in proportionate compensation which limits the impact of the aid scheme on the internal market.

(d) Transparency of the aid scheme

(313) The Commission considers that the commitments by France listed in recital (111) ensure the transparency of the aid scheme.

6.4.3. *Prevention of negative effects on competition and trade*

(314) The Commission considers that an aid measure minimises the negative effects on competition and trade between Member States where those effects are sufficiently limited for the overall balance of the measure to be positive.

(315) In the opening decision, the Commission could not rule out the fact that the mechanism might distort competition to a greater extent than the minimum negative effects justified by the introduction of the aid scheme between (i) French natural gas suppliers and those of other Member States, (ii) natural gas storage operators and LNG operators and interconnector operators, and (iii) French natural gas storage operators and those of other Member States.

(316) In the present case, the Commission does not consider that the aid scheme distorts competition between French suppliers and suppliers of natural gas from other Member States on the natural gas supply markets, since the auctions are open to all natural gas suppliers, under similar conditions, whether they are located in France or in another Member State. In addition, some interested parties confirmed in their comments that, for the same delivery service, the same tariff is charged to French suppliers and suppliers from other Member States for use of the natural gas transmission networks. The Commission was therefore unable to find any distortions of competition between French natural gas suppliers and those from other Member States.

(317) Moreover, as regards distortions of competition between storage operators and suppliers of alternative flexibility instruments in France, the French authorities and interested parties consider that the other instruments are imperfect substitutes for the storage of natural gas since they operate within varying timeframes and may be needed in different situations. For instance, in the case of cold spells, LNG terminal capacity can be mobilised only if LNG is

available in the tanks. This limited capacity could not be mobilised for more than 5 days under the best possible conditions. This is less than the average duration of a cold spell, meaning that an inbound shipment could not be arranged quickly enough to prevent a breakdown in supply. In the event of network congestion, the effectiveness of LNG terminals depends on their geographical proximity to consumption points.

(318) Several third parties also pointed out that the take-up of LNG terminals and the storage of natural gas are not in competition. According to them, LNG imports into Europe and France have increased significantly since the introduction of the aid scheme in 2018. The importation of ~ 21,5 bcm of LNG into France in 2019 was a record high.

(319) According to the comments received, interconnectors are primarily import instruments. The interested parties state that, were it not for storage, interconnectors would need to have the capacity to guarantee the supply of natural gas across French territory at times of peak demand. This would not be an efficient approach. In view of the projected decline in the consumption of natural gas in France, there is no plan to build new interconnectors. The cost of building additional interconnectors and strengthening the network would in fact be higher than the cost of the aid scheme at issue.

(320) Furthermore, the storage of natural gas has no impact on the total volume of natural gas passing through interconnectors as this is based on the volume of natural gas consumed in France. Nevertheless, interested parties cite a report ([98]) by the Agency for the Cooperation of Energy Regulators (ACER) which states that the abundance of gas in the storage inventory minimises imports when peak consumption occurs, which is normally when the gas price is the highest.

(321) As stated by interested parties, the Commission has on several occasions acknowledged (without taking a position) that a relevant market exists for natural gas transmission infrastructure, including in particular interconnectors, natural gas storage, LNG terminals and regasification infrastructure. The Commission recognises that the different flexibility instruments can provide complementary services without completely ruling out the possibility that natural gas storage has an impact on LNG terminals and interconnectors. However, the Commission could not find any significant distortions of competition.

(322) The aid scheme could also lead to distortions of competition with respect to storage operators in other Member States, in particular those neighbouring France. This risk is especially high for Belgium and Germany because of the interconnectors.

(323) The CREG (Belgian Commission for Electricity and Gas Regulation) informed the Commission that, following the introduction of the regulatory mechanism, the filling level of the only Belgian storage site, Loenhout, fell from 84 % (winter of 2017-2018) to 54 % (winter of 2018-2019). The filling level then rose to 97 % in the winter of 2019-2020. The filling level in 2018-2019 corresponded to long-term contracts. According to the CREG, the introduction of the remuneration mechanism in France (see recitals (195) to (200)) had an impact. Although the filling levels rose again the following winter, the Commission cannot rule out an impact on the storage of natural gas in neighbouring countries. However, the Commission notes that Fluxys, the Loenhout operator, does not say that the regulatory mechanism had a significant impact on its activities (see recital (212)).

(324) In the short term, distortions of competition between operators in neighbouring Member States are limited by the significant take-up rate (e.g. over 90 % in Germany, and 60 % in Belgium), based on long-term contracts. However, these contracts will end in 2022-2023. When these long-term contracts are renegotiated, the regulatory mechanism could therefore influence future commercial conditions in terms of prices, take-up rates and also the profitability of storage operators in neighbouring Member States. In order for the Commission to make sure that its assessment on this point remains valid once the long-term contracts come to an end, the French authorities undertook to provide a report to the Commission before the end of 2024 containing data on the impact of the measure on competition (see recital (111)).

(325) The Commission also takes note of Fluxys' wish to have an appropriate model at European Union level to respond to market developments (see recital (212)). Other storage operators made positive comments on the reform introduced in France while at the same time expressing a preference for a harmonised approach in the European Union (see recitals (224) and (229)).

([98]) ACER report of 6 April 2020, *The internal gas market in Europe:The role of transmission tariffs*, point 174.

6.5. **Balancing test: positive and negative effects of the aid on the internal market**

(326) The overall balance of the effects of a State aid scheme must be positive: the scheme must avoid adversely affecting trading conditions to an extent contrary to the common interest.

(327) The Commission would point out that, in the present case, the aid scheme facilitates the development of an economic activity, namely the storage of natural gas in France. It also notes that the regulatory mechanism contributes to the security of natural gas supplies. Moreover, the appropriateness, necessity and proportionality of the aid limit its impact on competition and trade. The Commission concludes that while an impact on competition between French natural gas storage operators and those from other Member States cannot be ruled out, it seems that the negative effects of the aid are sufficiently limited for the overall balance of the aid scheme to be positive until the end of the current PPE in 2028, provided that there are no significant changes in competition on the natural gas markets listed in recital (110) ([99]).

(328) In light of the above, the Commission concludes that the positive impact of the aid on the development of the economic activity in question outweighs the potential negative effects on competition and trade, at least until 2028. Competition and trade will therefore not be affected to an extent contrary to the common interest until then.

7. **CONCLUSIONS**

(329) The Commission regrets the fact that France unlawfully implemented the aid in question in breach of Article 108(3) of the TFEU. However, it finds that the measure in question is compatible with the internal market within the meaning of Article 107(3)(c) TFEU until 31 December 2028, when the current PPE period ends,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which France has implemented for natural gas storage operators is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty of the Functioning of the European Union.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 28 June 2021.

For the Commission
Margrethe VESTAGER
Member of the Commission

([99]) If the Commission considers that existing aid is not or is no longer compatible with the internal market, it may initiate the procedure laid down in Chapter IV of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).