



2026/2114

24.9.2026

COMMISSION DECISION (EU) 2026/2114

of 7 April 2026

on the measure State aid SA.44678 (2022/C) (ex 2018/N) – Modification of aid for LNG Terminal in Lithuania implemented by Lithuania

(notified under document C(2026) 2114)

(Only the English 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 the provision(s) ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) On 20 November 2013, the Commission adopted Decision C(2013) 7884 final ⁽²⁾ (the “2013 Decision”), in which aid measures for the construction and operation of a floating liquefied natural gas terminal in the Klaipėda Seaport (the “LNG Terminal”) were declared compatible with the internal market.
- (2) Lithuania amended the aid measures on 1 January 2016 (the “2016 Amendments”). The 2016 Amendments were pre-notified to the Commission after their entry into force, on 26 February 2016.
- (3) On 7 July 2016, Achema and Achemos Grupė (the “complainants”) lodged a complaint with the Commission alleging that the 2016 Amendments constituted unlawful State aid incompatible with the internal market (the “complaint”).
- (4) In January 2018, the Lithuanian authorities informed the Commission of their intention to modify the aid measures as of 1 January 2019 (the “2019 Amendments”).
- (5) On 9 July 2018, the Lithuanian authorities notified the 2016 Amendments and the 2019 Amendments to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”).
- (6) On 31 October 2018, the Commission adopted Decision C(2018) 7141 final ⁽³⁾ (the “2018 Decision”) approving the 2016 and 2019 Amendments.
- (7) On 8 September 2021, following an action for annulment brought by Achema AB’s and Achema Gas Trade UAB’s (the “applicants”), the General Court partially annulled the 2018 Decision, in so far as the Commission had decided not to raise objections to the State aid resulting from the 2016 Amendments ⁽⁴⁾.
- (8) The General Court dismissed the remainder of the action and rejected the challenge to the 2018 Decision concerning the 2019 Amendments.

⁽¹⁾ OJ C 52, 10.2.2023, p. 27.

⁽²⁾ Commission Decision of 20 November 2013 in case SA.36740 (2013/NN) - Aid to Klaipėdos Nafta – LNG Terminal, Lithuania (OJ C 161, 4.5.2016, p. 1).

⁽³⁾ Commission Decision of 31 October 2018 in case SA.44678 (2018/N) - Modification of aid for LNG Terminal in Lithuania (OJ C 14, 11.1.2019, p. 1).

⁽⁴⁾ Judgment of the General Court of 8 September 2021, *Achema AB and Achema Gas Trade UAB v Commission*, T-193/19, ECLI:EU:T:2021:558.

- (9) By letter dated 1 December 2022, the Commission informed Lithuania that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the aid resulting from the 2016 Amendments.
- (10) The Commission decision to initiate the procedure (the “Opening Decision”) was published in the Official Journal of the European Union ⁽⁵⁾. The Commission called on interested parties to submit their comments.
- (11) Lithuania sent its comments on the Opening Decision on 17 February 2023. The Commission received no comments from interested parties.
- (12) Further information was submitted by Lithuania on 27 August 2024, 22 and 26 September 2025.
- (13) By letter dated 20 March 2026, Lithuania agreed to exceptionally waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ⁽⁶⁾ and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background

2.1.1. *The 2013 Decision*

- (14) The LNG Terminal project was developed by Lithuania with the objective to diversify gas sources, increase security of supply and introduce more competition in the Lithuanian gas market.
- (15) Before the LNG Terminal became operational, Lithuania’s only gas supply route was pipeline gas from Russia, and the Russian natural gas undertaking OAO Gazprom (“Gazprom”) was the only gas supplier.
- (16) This complete dependence stemmed from the isolation of the Lithuanian gas market in view of the limited options for cross-border natural gas flows to Lithuania. The natural gas system of Lithuania was connected only to the natural gas systems of the Republic of Belarus (“Belarus”), the Republic of Latvia (“Latvia”) and the Kaliningrad region of the Russian Federation (“Kaliningrad”). Before the LNG Terminal was built, Lithuania was supplied gas only from Russia (via Belarus or Latvia) – for internal consumption and as a transit from Belarus to Kaliningrad.
- (17) Under the 2013 Decision, the approved State aid measures consisted of the following:
 - (a) Investment and operating aid to the owner and operator of the LNG Terminal, AB Klaipėdos Nafta (“KN”). The investment aid covered the part of KN’s installation costs that could not be financed through other means, while the operating aid covered the fixed operating costs of the LNG Terminal. Both aid measures were financed through the LNG Supplement – a special levy collected by the Lithuanian transmission system operator for natural gas (the “TSO”) from all users of the natural gas transmission system, for a duration of 55 years.
 - (b) A State guarantees to KN, covering 100 % of the loans the terminal operator needed for the construction of the LNG Terminal.

⁽⁵⁾ Cf. footnote 1.

⁽⁶⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

- (c) An obligation on certain electricity and heat producers to purchase a minimal mandatory quota of gas imported through the LNG Terminal (the “Purchase Obligation”) ⁽⁷⁾. The purpose of the Purchase Obligation is to ensure the technical minimum LNG volume necessary for the LNG Terminal to remain operational at all times ⁽⁸⁾ (the “LNG Mandatory Quantity”). The Purchase Obligation was imposed on private and public undertakings operating in the regulated segment of electricity and heat generation (the “Obligated Purchasers” ⁽⁹⁾). Together, the Obligated Purchasers bought the LNG Mandatory Quantity from a selected supplier (the “Designated Supplier”). Each Obligated Purchaser had an off-take quota established as a percentage of the LNG Mandatory Quantity. At the moment of the 2013 Decision, the overall quantity to be purchased by Obligated Purchasers amounted to 0,54 bcm of LNG per year. The share of the LNG Mandatory Quantity each Obligated Purchaser had to buy was proportionate to its supply needs.

2.1.2. *Facts subsequent to the 2013 Decision*

- (18) On 10 February 2014, following a call for tenders, the Lithuanian Ministry of Energy appointed the public company Litgas UAB (“Litgas”) as the Designated Supplier.
- (19) On 21 August 2014, following a call for tenders, Litgas signed a 5-year contract for the supply of the minimal quantity of LNG (0,54 bcm/year) with Statoil.
- (20) To ensure the constant regasification at the LNG Terminal, the contract provided for a fixed delivery schedule, whereby four LNG cargoes per year, once per quarter, were delivered on an even basis to the LNG Terminal.
- (21) The contract was concluded at the time when the Asian LNG markets were characterised by high prices, which exerted upwards pressure on European LNG prices. Nonetheless, the Lithuanian authorities demonstrated that the contract concluded with Statoil was cheaper than other options received in the course of the tender procedure (see Figure 1 below). Even though the alternative bidders offered lower prices for the years 2017-2019, Statoil offered significantly lower prices for the first two years of the contract, so that in aggregate over the 5-year delivery period the selected bid was the most attractive.

Figure 1

Comparison of bid offers (EUR/MWh)

[...] ^(*)

Source: *Lithuanian authorities*

- (22) In December 2014, the LNG Terminal entered into commercial operation and Litgas began to supply LNG to the LNG Terminal upstream and, downstream, gas to the Obligated Purchasers.

2.1.3. *Context of the 2016 and 2019 Amendments*

- (23) The price paid by the Obligated Purchasers for the LNG was regulated by the national regulatory authority (“NRA”) and covered all costs incurred by Litgas in supplying the LNG Mandatory Quantity. This mechanism was intended to place all the additional costs of supplying the LNG Mandatory Quantity on the Obligated Purchasers, who could subsequently pass on those costs to their final consumers.

^(*) Confidential information.

⁽⁷⁾ The 2013 Decision explains that: “In order to secure the development of the LNG terminal in the first years of operation, the LNG Terminal Law institutes a process by which LNG gas from the terminal has to be purchased by way of an obligation for certain electricity and heat producers to each buy allocated minimal quantities of natural gas through the LNG Terminal. [...] All other consumers of natural gas active in Lithuania are free to purchase natural gas from the Designated Supplier, other suppliers, at the natural gas exchange, or to import them directly through the LNG Terminal. This Purchase obligation is to last for 10 years. It could be shortened if the development and integration of the Lithuanian natural gas market is sufficient to guarantee the minimum off-take that is required for the LNG Terminal to work on a steady mode.”

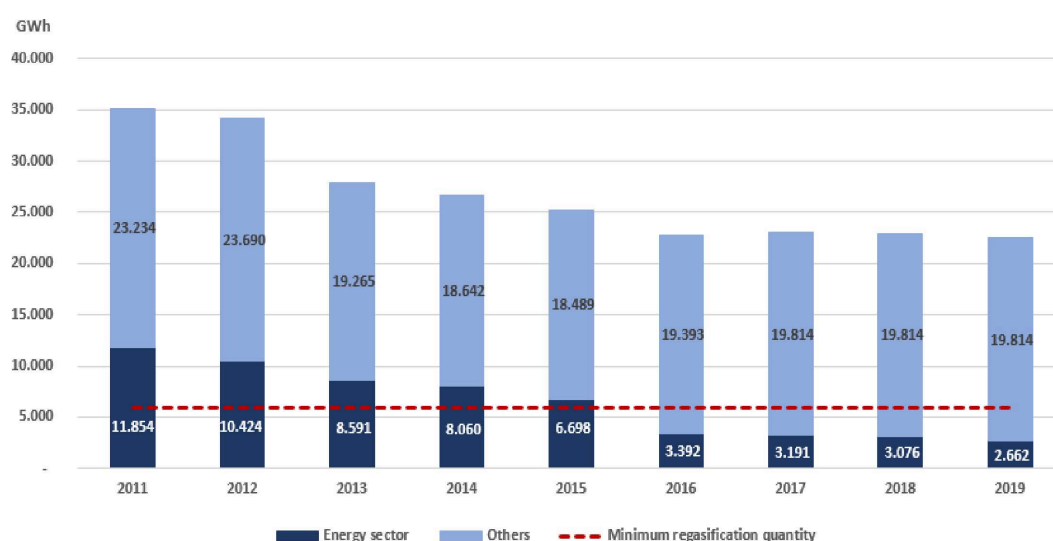
⁽⁸⁾ The Lithuanian Government set the quantity upon declaration of KN of the LNG volume necessary to ensure stable operation of the LNG Terminal.

⁽⁹⁾ Those are electricity or heat producers whose price of produced energy is regulated. This encompasses central heating and electricity (co-generation) plants.

- (24) However, this mechanism appeared to be inefficient when demand for natural gas decreased dramatically and the costs of supplying the LNG Mandatory Quantity were distributed among the Obligated Purchasers in proportion to their declining demand for natural gas.
- (25) As shown in Figure 2, from 2011 to 2014, annual natural gas consumption in Lithuania dropped by 24 % (from 3,4 bcm in 2011 to 2,6 bcm in 2014) and a further reduction of demand was expected in the following years. The 'energy sector' reflects the demand by the Obligated Purchasers and the red dotted line corresponds to the LNG Mandatory Quantity of 0,54 bcm of gas, as approved by the 2013 Decision.

Figure 2

Annual natural gas consumption in Lithuania



Source: Lithuanian authorities

- (26) Demand for natural gas decreased dramatically and the costs of supplying the LNG Mandatory Quantity had to be distributed among the Obligated Purchasers over a smaller quantity of gas purchased. In effect, due to the reduced demand for natural gas, the unit price for the Obligated Purchasers, covering the costs to maintain the LNG Terminal operational increased significantly. In this context, Lithuania realised that the burden of maintaining the LNG Terminal operational should be distributed on all consumers of the natural gas system which were benefiting from the security of supply guaranteed by the LNG Terminal.
- (27) In parallel, as explained by Lithuania, the *know-how* accumulated by KN in operating the LNG terminal for a few years enabled it to realise that on favourable conditions the LNG terminal could be run not only on a steady regime but also on standby regime. The difference between these two regimes lies merely with the different technical means used to achieve the same purpose (i.e. to keep the LNG Terminal cooled down), which requires different minimum quantities of gas to ensure regasification. Following the regime change into a standby regime, the Lithuanian authorities could reduce to 0,37 bcm/year the LNG Mandatory Quantity that was needed to ensure the operation of the LNG Terminal.
- (28) In view of the above considerations, in particular since the cost for the Obligated Purchasers turned out to be unsustainable, the Lithuanian authorities adopted the following amendments:
- (a) The 2016 Amendments covering the period 2016-2018 ⁽¹⁰⁾, which contained:
 - (1) Changes to the set-up of the Purchase Obligation involving a new pricing mechanism for the LNG Mandatory Quantity that the Obligated Purchasers had to buy;
 - (2) The introduction of a SGEI compensated via a new component of the LNG Supplement payable to the Designated Supplier for the supply of the LNG Mandatory Quantity.

⁽¹⁰⁾ From 1 January 2016 to 31 December 2018.

- (b) The 2019 Amendments covering the period 2019-2024 ⁽¹¹⁾, which contained:
- (1) The abolition of the Purchase Obligation;
 - (2) The introduction of a new methodology for calculating the compensation for the SGEI entrusted to the Designated Supplier.
- (29) A detailed description of the amendments is provided in sections 2.5 and 2.6.

2.2. National legal basis

- (30) Lithuania indicated as national legal basis for the 2016 Amendments the Law on Energy ⁽¹²⁾ and the Law on Liquefied Natural Gas Terminal ⁽¹³⁾ ("LNG Terminal Law"), as amended. Article 11 of the LNG Terminal Law provides that the Designated Supplier is entrusted with the obligation to deliver the LNG Mandatory Quantity to the LNG Terminal.
- (31) Furthermore, Lithuania indicated a list of implementing provisions:
- (a) Government Resolution of 7 November 2012 No 1354 "On the Order of Natural Gas supply diversification approval", amendment adopted on 2 December 2015 ("DivReg").
 - (b) NRA Resolution No O3-650 approved on 15-12-2015 "Regarding approval of the Methodology for Setting Forecasted Natural Gas Reference Price".
 - (c) The order of the Minister of Energy of 10 February 2014 No 1-20 "On UAB Litgas awarding as the Designated Supplier" ("Order awarding Litgas as the Designated Supplier").
 - (d) The National Control Commission for Prices and Energy Resolution No O3-367 of 13 September 2013 "On the approval of methodology of fixing State-regulated prices in the natural gas sector" amendments adopted on 18 December 2015 ("NRA Methodology No O3-367"). The NRA Methodology No O3-367 details the parameters for calculating the compensation to the Designated Supplier.

2.3. Budget

- (32) The total estimated budget for the measure was EUR 276 703 731 covering the period 2016-2024. The performance of SGEI was completed in 2024 and the actual total budget for the period 2016-2024 was lower than estimated. It amounted to EUR 217 684 793 ⁽¹⁴⁾.
- (33) The total estimated budget for the measure during the period 2016-2018 was EUR 78 631 120. The actual budget for the period 2016-2018 was EUR 71 846 326, allocated as shown in Table 1 below.

Table 1

Budget for the measure during the period 2016-2018

	2016	2017	2018	Total
Aid in EUR	30 258 089	19 066 043	22 522 194	71 846 326

Source: The Lithuanian authorities

⁽¹¹⁾ From 1 January 2019 to 31 December 2024.

⁽¹²⁾ Law on Energy of the Republic of Lithuania No. IX-884 adopted on 16-05-2002; Official Gazette Valstybės žinios, 2002, 56-2224.

⁽¹³⁾ Law on Liquefied Natural Gas Terminal No. XI-2053 adopted on 12-06-2012. Publication: Official Gazette Valstybės žinios, 2012, 68-3466.

⁽¹⁴⁾ Lithuania explains that the final figures may be subject to minor adjustments following the NRA's final report. Nevertheless, the Lithuanian authorities confirm that, in any event, the actual budget will remain below the initially estimated and very close to the actual budgets indicated.

2.4. Beneficiary

- (34) The beneficiary of the 2016 Amendments is the Designated Supplier, Litgas, the recipient of the new component of the LNG Supplement.
- (35) Litgas was founded in December 2012 by KN. In October 2016 the State-owned energy company Lietuvos Energija became the sole shareholder of Litgas with a share ownership of 100 %.
- (36) On 1 January 2019, Litgas was merged into UAB Lietuvos duju tiekimas ("LDT"), which is also controlled by Lietuvos Energija, and its functions of the Designated Supplier and its status of beneficiary were taken over by LDT ⁽¹⁵⁾.

2.5. The 2016 Amendments

- (37) Pursuant to the 2016 Amendments, the Purchase Obligation was amended as follows:
 - (a) Litgas, as the Designated Supplier, was entrusted with an SGEI consisting of an obligation to provide the LNG Mandatory Quantity to the LNG Terminal. The SGEI was financed by a new component of the LNG Supplement to compensate Litgas for the costs it incurred in connection with the SGEI which were not entirely covered by the revenue from the downstream resale of gas at a regulated price. That new component of the LNG Supplement in favour of Litgas was added to the LNG Supplement in favour of KN.
 - (b) The methodology for calculating the regulated price paid by the Obligated Purchasers to Litgas for the purchase of the LNG Mandatory Quantity was changed. That price was now calculated by the NRA by reference to the market price, on the basis of the average gas market prices, taking into account data relating to contracts for the supply of gas traded on the Lithuanian gas exchange and on a bilateral basis.
 - (c) The LNG Mandatory Quantity was reduced from 0,54 bcm per year to 0,37 bcm per year.
 - (d) The quantity of gas that each Obligated Purchaser had to purchase from Litgas was now determined only on the basis of its individual demand for gas; if the gas demand from all the Obligated Purchasers taken together was less than the LNG Mandatory Quantity, Litgas was to sell the quantities not resold to Obligated Purchasers on the national or international market.
- (38) On 18 February 2016, Litgas and Statoil signed an amended contract, according to which, first, the annual quantity of LNG supplied by Statoil to Litgas was reduced to 0,37 bcm per year, second, the duration of the contract was extended until 2024 and, third, the LNG price was reduced.

2.5.1. Determination of the regulated price by the NRA

- (39) Following the 2016 Amendments, the LNG purchased by the Obligated Purchasers from Litgas was sold at a new regulated price, calculated on the basis of the projected natural gas market prices for the Lithuanian market.
- (40) The NRA set the regulated natural gas price using an approved "Methodology for Setting Forecasted Natural Gas Reference Price" (the "Methodology").
- (41) The Methodology was based on several principles. According to the Methodology, the price projections on which the regulated natural gas price was based were calculated by taking into account the prices and the volumes of natural gas quantities imported to Lithuania in the course of the last 12 months. For that purpose, data from gas supply contracts traded on the Lithuanian gas exchange and on a bilateral basis (both on wholesale and retail markets) as well as projected prices of each company importing natural gas on the basis of their contractual conditions were taken into account. Furthermore, the respective weighted average prices were calculated taking into account any correlation effects as well as any additional gas suppliers' expenses and profits.

⁽¹⁵⁾ Following a subsequent change of the legal entity's name, LDT now operates as UAB Ignitis ("Ignitis").

- (42) The regulated natural gas price was updated once a year. In case of a major change in any of the main input parameters for the calculation of the natural gas price the latter could be updated on a more frequent basis – once every three or six months. A major change was defined as a sudden increase or decrease in the market price of natural gas of more than 10 %. In that case, the new regulated natural gas price would have been revised up or down by a maximum of 10 %. Since the middle of 2017 the regulated natural gas price was updated once per quarter.
- (43) According to the Lithuanian authorities, the new price setting mechanism did not pose any serious risks of distorting downstream markets. That is due to the fact that the Obligated Purchasers, who bought natural gas at the new regulated price ⁽¹⁶⁾, operated on regulated markets and sold electricity and heat at regulated prices. Lithuania confirmed that under the amended set-up of the Purchase Obligation the Obligated Purchasers continued to be subject to the requirements of separation of accounts if they engaged in any non-regulated activities.
- (44) The provisions of the LNG Terminal Law foresaw that quantities of natural gas not sold to the Obligated Purchasers would be auctioned on the market. The auctions were organised by the market operator (GET Baltic), as defined in the Law of the Republic of Lithuania on Natural Gas. In case the surplus natural gas quantities were not fully realised through the auctions, the remaining quantities had to be realised by the Designated Supplier through the gas exchange or by concluding bilateral trade agreements.
- (45) The Lithuanian authorities explained that the amended Methodology did not entail any extra profit for the Obligated Purchasers. Any positive financial effects of the changes described above were fully passed on to final consumers in the form of lower regulated prices of heat and electricity.

2.5.2. *SGEI Compensation to Litgas*

- (46) Article 5(2) of the LNG Terminal Law dealt with cost compensation via the LNG Supplement.
- (47) The compensation to Litgas took into account Litgas's revenues resulting from the LNG sold at regulated prices to the Obligated Purchasers and on the free market, all Litgas's costs stemming from its activities as the Designated Supplier and a regulated profit margin. The compensation notably covered the difference between the LNG price paid, upstream, by Litgas to Statoil and the price at which Litgas sold, downstream, to the Obligated Purchasers and to the free market. The introduction of the new component of the LNG Supplement for Litgas was a direct consequence of the amended Methodology for calculating the price of the LNG Mandatory Quantity purchased by the Obligated Purchasers.
- (48) Based on the 2016 Amendments, Litgas received a fixed profit margin approved by the NRA of 0,24 EUR/MWh on the sale of the LNG Mandatory Quantity to the Obligated Purchasers.
- (49) A different mechanism was applicable for sales of the LNG Mandatory Quantity on the free market. Litgas was entitled to keep half the profit from such sales, yet such profit in all cases could not exceed the average profit margin earned by natural gas companies in Lithuania. In the years 2016-2018, the profit margin earned by Litgas was in the range of 1,1 % to 1,5 %.
- (50) Pursuant to the Law on Natural Gas ⁽¹⁷⁾ applicable to the Lithuanian gas sector, natural gas companies were required to keep separate accounts for each natural gas activity (transmission, liquefaction, distribution, storage, supply to non-domestic and domestic consumers) and all undertakings, including Litgas, were obliged to submit to the NRA annual reports on costs as well as annual audited reports for the regulated activities. In line with these requirements, Litgas was obliged to maintain separate accounts for its regulated activities as a Designated Supplier (which involved all activities related to the management of the LNG Mandatory Quantity) and for its non-regulated activities (which involved activities such as consulting and small-scale reloading not related to the LNG Mandatory Quantity).

⁽¹⁶⁾ The price of natural gas distributed by the Designated Supplier subject to the Purchase Obligation was regulated by the State (Art. 24 of the DivReg). Costs incurred by the Obligated Purchasers in purchasing such obligatory volumes of natural gas from the Designated Supplier were included into their regulated energy prices (Art. 20 of DivReg).

⁽¹⁷⁾ Requirements set forth in the Law on Natural Gas were detailed further in NRA Decision No O3-316 "Regarding the separation of accounts, costs of the natural gas undertakings", Item 11.

- (51) Lithuania indicated that, in the period 2016-2018, almost all activities of the Designated Supplier were dedicated to the performance of the SGEI ⁽¹⁸⁾.
- (52) The new component of the LNG Supplement was designed to compensate Litgas for the costs associated with the activities of the Designated Supplier. Under the LNG Terminal Law, the costs associated with the activities of the Designated Supplier providing the SGEI and covered by the new component of the LNG Supplement had to be "justified costs" – i.e. the costs associated with the SGEI of the Designated Supplier had to be incurred in an "efficient manner".
- (53) The NRA Methodology No O3-367 contained a mechanism for the SGEI provider to perform assigned obligations efficiently. For a certain number of operating expenses (repairs, maintenance, personnel, insurances, marketing and administrative costs, etc.), the NRA established a ceiling for the price of the regulated service. Costs going beyond that limit were not compensated. In addition, since 2017 the regulated companies had an additional incentive to further reduce OPEX. A company, which reduced its costs more than required by the NRA in a given period of time, could keep part of such savings. Moreover, the costs that were taken into account for setting the new component of the LNG Supplement and the compensation were increased only by half of the inflation coefficient and not more than 3 %.
- (54) The new component of the LNG Supplement covered costs such as gas acquisition costs, labour costs, administration costs, amortization costs, costs for repairs, marketing and sales costs as well as financial costs. Furthermore, as explained in recital (20), under the LNG supply contract with Statoil the delivery schedule was fixed and four LNG cargoes per year were delivered once per quarter on an even basis to the LNG Terminal. This type of long-term contract with a fixed delivery schedule gives rise to some costs, namely boil-off gas costs, balancing costs and long-term guarantee costs. In 2017 these specific costs constituted more than two thirds of the total Designated Supplier's costs ⁽¹⁹⁾.
- (55) For the purposes of determining the justified costs, Litgas submitted to the NRA monthly reports with data on the quantities of LNG bought and sold as well as on all expenses and revenues resulting from buying and selling LNG. The NRA evaluated the actual and the forecasted costs of Litgas's activities as Designated Supplier as well as the way in which they were incurred and established the eligible costs which could be covered by the new component of the LNG Supplement.

Boil-off gas costs

- (56) The Designated Supplier had to keep its LNG in tanks at the LNG Terminal and regasify LNG at the minimum output rate to keep the LNG Terminal operational (rather than releasing LNG to the natural gas system immediately) even though such slow regasification causes high natural losses of LNG due to evaporation (boil-off gas). Boil-off gas is a natural loss of LNG, which occurs in the period from injection of LNG into tanks until its release to the natural gas system. As a general rule, the less time LNG is kept in a tank, the less natural loss of LNG is incurred by the specific user of the LNG Terminal.
- (57) Lithuania indicated that boil-off gas costs accounted for a significant proportion of the Designated Supplier's costs incurred in connection with the supply of the LNG Mandatory Quantity (in 2017 boil-off gas costs amounted to ca. 55 % of the total costs incurred by the Designated Supplier) and were incurred mainly during the winter period (December to March). As shown in Figure 3 below, this can be explained by the fact that the volume of boil-off gas is

⁽¹⁸⁾ The non-regulated activities, which are non-SGEI activities, represented around 0,5 % of Litgas's total revenues over the period 2016-2018, and did not exceed 1 % in any given year.

⁽¹⁹⁾ The total Designated Supplier's costs included boil-off gas costs, balancing costs, bank guarantee costs, financing costs, OPEX and costs of regasification and capacity booking.

higher in winter ⁽²⁰⁾ and that during this period, Litgas is generally the only user at the LNG Terminal ⁽²¹⁾. During the summer period, the volume of boil-off gas is lower, and part of the boil-off gas costs are allocated to other users of the LNG Terminal ⁽²²⁾. The graph below illustrates fluctuations of the boil-off gas at the LNG Terminal throughout the year.

Figure 3

Monthly fluctuation of boil-off gas in 2017 at the LNG Terminal

[...]

Source: Lithuanian authorities

- (58) The Lithuanian authorities provided evidence that for the entire year 2017 the Designated Supplier lost [5-15 %] of its LNG due to boil-off, while other suppliers lost only 1,23 % of their LNG. According to the Lithuanian authorities, such differences are explained by the fact that, unlike the Designated Supplier, other suppliers generally do not use the LNG Terminal in the winter period and that other suppliers can regasify LNG at a much faster pace than the Designated Supplier. Lithuania underlined that only actual boil-off costs which were attributable to the Designated Supplier were included in the calculation of Litgas's compensation.

Balancing costs

- (59) Lithuania explained that the Designated Supplier incurred significant balancing costs. In 2017 these costs were EUR 900 000 which represented approximately 12 % of the total Designated Supplier's costs.
- (60) To ensure stable operation of the LNG Terminal, the Designated Supplier must release its LNG into the natural gas system at a stable output rate throughout the year. Therefore, the Designated Supplier's delivery schedule does not correspond to projected demand of natural gas from its consumers. For example, in the winter period when the demand is higher the Designated Supplier cannot release immediately natural gas from tanks as this would leave the LNG Terminal empty until the next delivery of LNG, whereas requesting to deliver an LNG cargo earlier (if agreed by Statoil) would impair the delivery schedule for the entire year.
- (61) Lithuania noted that in view of these considerations the Designated Supplier is in a different situation from other market participants. In particular, the import profile of pipeline gas suppliers mirrors the demand for natural gas throughout the year. Thanks to flexible gas contracts other suppliers of natural gas incurred minimal balancing costs.
- (62) Nonetheless, whilst keeping its obligations towards the LNG Terminal, the Designated Supplier must also meet the demand of its customers. To meet the demand of its customers and to ensure the steady operation of the LNG Terminal the Designated Supplier can have recourse to two instruments:
- (a) Swap contracts - including agreement on lending (in the summer period) or borrowing (in the winter period, when the Designated Supplier is short of gas or when the use of the LNG terminal is impossible, e.g. due to maintenance) of natural gas.
 - (b) Inčukalns storage site in Latvia - provides a physical underground storage solution when the Designated Supplier has surplus of natural gas (mostly in summer period) and can be retrieved when Designated Supplier has a shortage of natural gas. During the period 2016-2018, the storage was used by the Designated Supplier for balancing purposes in 2018 only.

⁽²⁰⁾ Lithuania explained that this is due to the way the LNG Terminal performs regasification. The closed loop system – the mode of operation during cold season, causes several times higher boil-off volumes than the open loop system – the mode of operation during warm season.

⁽²¹⁾ Due to increased demand (ex. increased energy consumption such as heat and electricity), LNG is more expensive in winter. As a result, all the users of the LNG terminal buy LNG in the summer period when it is cheaper. Litgas is the only user in winter of the LNG terminal as it is bound by its SGEI obligation to regasify constantly and receive cargoes of LNG based on fixed schedule.

⁽²²⁾ The actual LNG Terminal's boil-off gas costs are allocated to the terminal users in proportion to the amount of gas virtually stored in the terminal in line with the LNG terminal rules approved by the NRA.

- (63) The cost of such swap and storage contracts was also compensated as part of the balancing costs. As explained by Lithuania, by implementing these types of contracts the Designated Supplier increased its efficiency ratio, particularly, in terms of cost savings due to the seasonal usage of natural gas and fluctuating demand-supply curves. An additional benefit of the use of swap contracts is the possibility to optimize the operation of the LNG terminal at regasification rates that allow a significant reduction in the boil-off gas loss rate.

Long-term guarantee

- (64) Lastly, Lithuania also considered that the Designated Supplier should be compensated for costs of the long-term guarantee. To secure the long-term contract with Statoil, the Designated Supplier had to issue a performance guarantee for Statoil to cover a commitment until 2024. The cost related to the guarantee is EUR 300 000 per year. Lithuania explained that the cost is specific to the long-term nature of the contract with Statoil and that other market participants do not bear such a cost.

2.6. The 2019 Amendments

- (65) Lithuania closely monitored the LNG Terminal's operation and development of the natural gas market in the country. Due to positive changes in 2018, the Lithuanian authorities decided to introduce as of 1 January 2019 several changes to the measure.
- (66) Lithuania changed the model for the calculation of the SGEI compensation paid to Litgas and introduced more competition in the natural gas market from 1 January 2019. The Purchase Obligation was abolished and Litgas was able to sell the LNG Mandatory Quantity freely on the market.

2.6.1. Abolition of the Purchase Obligation

- (67) The Lithuanian authorities continued to regard it as necessary to secure regular supplies of LNG to the LNG Terminal via the long-term supply contract with Statoil. Lithuania explained that plausibly cheaper gas purchasing options as annual or spot capacity bookings could not guarantee achieving this objective. First, annual capacity bookings allow for redirecting cargoes to another destination (subject to penalties). Second, spot bookings are not sufficiently reliable since the LNG Terminal's operations must be planned in advance.
- (68) Therefore, as of 1 January 2019, the Purchase Obligation was transformed into a delivery obligation placed on Litgas. Litgas remained bound to deliver the LNG Mandatory Quantity, which is needed to keep the LNG Terminal operational irrespective of market conditions ("the Delivery Obligation"). The Delivery Obligation applies for the same period and on the same conditions which applied to the Purchase Obligation, namely until 2024 and for an LNG Mandatory Quantity of 0,37 bcm/year.
- (69) Simultaneously, as of 1 January 2019 the obligation to purchase such quantities of natural gas from Litgas originally placed on the Obligated Purchasers was abolished.
- (70) As a result, Litgas was exposed to full market risks in selling the LNG Mandatory Quantity in the market and the Obligated Purchasers could buy gas on the market at a market price determined by market conditions without any intervention of the NRA and based entirely on their needs.

2.6.2. SGEI Compensation to Litgas

- (71) Pursuant to the 2019 Amendments, Litgas continued to receive compensation from the LNG Supplement.
- (72) According to Article 11 of the LNG Terminal Law, the following costs were compensated to Litgas:
- (a) Difference between the import price of the LNG Mandatory Quantity supplied by the Designated Supplier under the contract with Statoil and a monthly factual average weighted import price of natural gas imported into Lithuania calculated by the NRA;

(b) Boil-off gas costs: (a) all factual boil-off gas costs experienced by the Designated Supplier during the periods when Litgas was the only user of the LNG terminal; and (b) difference between the actual boil-off gas costs experienced by Litgas and average of boil-off gas costs experienced by other LNG Terminal users during the periods when Litgas was not the only user of the LNG terminal;

(c) Long-term guarantee financing costs.

(73) Under the new compensation methodology, Litgas was no longer compensated for balancing costs.

(74) Furthermore, Litgas sold LNG directly on the market and its marginal profit was no longer regulated by the NRA. Therefore, the Designated Supplier's profit margin earned by selling the LNG Mandatory Quantity on the market solely depended on its efficiency and market conditions.

2.7. Transparency

(75) The Lithuanian authorities informed the Commission that the outcome of public discussions on the necessity of the Designated Supplier, scope and duration of the SGEI entrusted to the Designated Supplier were available in various legislative acts and documents of parliamentary discussions, which are published in the central register of laws available at <https://www.e-tar.lt/>.

(76) Furthermore, the information regarding the amounts of compensation granted to Litgas each year is available on the website of the NRA: www.regula.lt.

(77) Finally, the Lithuanian competition authority is responsible for publishing such information on the state aid transparency portal: <https://webgate.ec.europa.eu/competition/transparency/public/>.

2.8. The complaint and comments from the Lithuanian authorities

2.8.1. The complaint

(78) In the complaint, the complainants put forward several allegations regarding the 2016 Amendments.

(79) The complainants alleged in particular that the new component of the LNG Supplement paid to Litgas since 1 January 2016 constituted a direct grant, suggesting the presence of State aid as it provided an economic advantage to Litgas.

(80) Furthermore, the complainants stated that the parameters of the compensation to Litgas were not objectively set and led to overcompensation of Litgas. The overcompensation resulted from the fact that the compensation of Litgas covered the difference between the price at which the Designated Supplier bought LNG and the price at which it sold LNG. The complainants also claimed that Litgas was guaranteed to be compensated even beyond the quota relating to the Purchase Obligation, since the compensation included additional cost elements.

(81) The complainants also considered that the gas supply contract Litgas concluded with Statoil was based on a very high gas price and that the volume to be purchased by Litgas was excessive. In this context Litgas's costs were not comparable with those of a typical well-run undertaking.

(82) Finally, the complainants alleged that Litgas had not been appointed the Designated Supplier in conformity with public procurement rules.

2.8.2. Comments from the Lithuanian authorities

(83) On 7 September 2016 the Commission forwarded the complaint to the Lithuanian authorities requesting their comments on the issues raised. The Lithuanian authorities replied on 5 October 2016, 11 November 2016 and 27 January 2017.

- (84) To the allegation regarding the existence of economic advantage bestowed by the new component of the LNG Supplement onto Litgas, the Lithuanian authorities responded that under the measure approved by the 2013 Decision, Litgas could not sell the LNG Mandatory Quantity on a commercial basis in free markets. Initially, it was required to sell the LNG Mandatory Quantity only to designated electricity and heat producers, all of which were subject to regulated tariffs in the heat and electricity sectors.
- (85) Furthermore, the Lithuanian authorities argued that the new set-up of the Purchase Obligation under the 2016 Amendments did not provide an economic advantage to Litgas as any sales which the Designated Supplier performed on the open gas market were monitored and regulated by the NRA, which prevented Litgas from retaining any profit which would make it better remunerated than the average gas supplier on the market.
- (86) The Lithuanian authorities rebutted the allegations of the complainants related to overcompensation on the basis of the fact that the LNG sale price of the Designated Supplier was regulated by the NRA. Established rules took into account the actual costs of the Designated Supplier, which it had incurred by implementing the entrusted SGEI. These calculations were performed by the NRA. The NRA's assessment procedure was performed taking into account the return from the resale activity of the part of LNG Mandatory Quantity, which exceeded the volume purchased by the Obligated Purchasers. Such return was limited by law to the average return of gas suppliers operating on the Lithuanian gas market.
- (87) The Lithuanian authorities stressed that the contract concluded with Statoil was best priced compared to other options received in the course of tender procedure.
- (88) According to the Lithuanian authorities the selection of Litgas did not violate public procurement rules. The tender conditions were clearly laid out in the LNG Terminal Law.

2.9. Grounds for initiating the procedure

2.9.1. *The General Court's judgement*

- (89) The General Court held that, with regard to the 2016 Amendments, the Commission ought to have entertained doubts as to the compatibility of the measure with the internal market and should have initiated the formal investigation procedure.
- (90) More specifically, the General Court found that the 2018 Decision did not contain sufficient information justifying why boil-off and balancing costs were fully compensated under the 2016 Amendments, while under the 2019 Amendments boil-off gas costs were compensated only partially and balancing costs not at all. The General Court considered that this was all the more important that boil-off and balancing costs represented a significant part of Litgas's total costs and, therefore, significantly affected the amount of compensation during the period from 2016 to 2018.
- (91) The General Court also underlined that the Commission did not examine whether the Purchase Obligation determined, in any way whatsoever, the extent of the boil-off and balancing costs incurred by Litgas in the context of the SGEI obligation.
- (92) According to the General Court, the Commission should have explained why it considered that the compensation for the same SGEI (the nature and scope of which it considered unchanged) was compatible with the internal market both in the version resulting from the 2016 Amendments and in the version resulting from the 2019 Amendments, despite the clear differences in compensation for these costs.

2.9.2. *The Opening Decision*

- (93) Following the partial annulment of the 2018 Decision and as explained in Section 3.3.1 of the Opening Decision, the Commission assessed the compatibility of the 2016 Amendments with the internal market on the basis of the conditions established in the 2012 SGEI Framework ⁽²³⁾.

⁽²³⁾ Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15), referred to herein as the '2012 SGEI Framework'.

- (94) In the light of the General Court's conclusions (see section 2.9.1) that the Commission should have had doubts as to the compatibility with the internal market of certain aspects of the 2016 Amendments, the Commission decided to initiate the formal investigation procedure.
- (95) In the Opening Decision, the Commission questioned whether Lithuania correctly compensated in full the boil-off and balancing costs in 2016-2018, or whether it should have compensated only that part of costs which Litgas would not have incurred in the absence of the SGEI (see recital 212 of the Opening Decision).
- (96) Moreover, the Commission raised doubts on whether all the boil-off and balancing costs could be considered 'economically justified' costs linked to the SGEI and incurred efficiently in the period from 2016 to 2018. The Commission also called into question whether the compensation for the entirety of the boil-off and balancing costs under the 2016 amendments was 'necessary' for the operation of the SGEI (see recital 212 of the Opening Decision).
- (97) Finally, the Commission sought clarification on whether the difference in the compensation of the boil-off and balancing costs before and after 2019 may have been due to the existence of the purchase obligation during the period from 2016 to 2018 and to its abolition as of 2019. In other words, the Commission raised the question on whether the purchase obligation determined, in any way, the extent of the boil-off and balancing costs incurred by Litgas in the context of the SGEI (see recital 212 of the Opening Decision).

3. COMMENTS FROM LITHUANIA

- (98) This section summarises the comments received from Lithuania on 17 February 2023 on the Opening Decision and complemented on 27 August 2024 following questions from the Commission.

3.1. Methodologies to determine the SGEI compensation

- (99) First, Lithuania recalled that the 2012 SGEI Framework foresees two methodologies to determine the maximum amount of compensation: the net avoided cost methodology ⁽²⁴⁾ and the cost allocation methodology ⁽²⁵⁾. Under the net avoided cost methodology, the maximum compensation is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation. Although the net avoided cost is considered the most accurate methodology, the 2012 SGEI Framework allows alternative methods, such as the methodology based on cost allocation, when the net avoided cost methodology is not feasible or appropriate ⁽²⁶⁾. Lithuania explained that the methodology used to calculate the amount of compensation in 2016-2018 was based on cost allocation, while from 2019 onward, it was based on net avoided cost.
- (100) In that respect, Lithuania recalled that the commercial operation of the LNG Terminal started in December 2014. At the end of 2015, when the 2016 Amendments were introduced, Lithuania had very little experience in operating LNG terminals and assessing relevant costs, or in regulating such operations. This floating LNG Terminal was one of the first in the entire EU. Hence, Lithuania could not rely on the experience of other Member States to project the likely behaviour of the Designated Supplier without the SGEI. In the years 2016 to 2018, the regulator developed the know-how necessary to apply a more sophisticated methodology.
- (101) Moreover, when the Lithuanian authorities initially designed the SGEI, they did not know whether there would be any commercial use of the LNG Terminal. Eventually in 2016-2018 the LNG terminal was used by only two other users, which Lithuania considers would have not provided in any case a valid example of a 'typical' commercial market operator that could have been used to apply the net avoided cost methodology ⁽²⁷⁾.

⁽²⁴⁾ Point 25 of the 2021 SGEI Framework.

⁽²⁵⁾ Point 28 of the 2012 SGEI Framework.

⁽²⁶⁾ Point 27 of the 2012 SGEI Framework.

⁽²⁷⁾ The companies are (i) Achema, active in the fertiliser's industry, which uses natural gas almost exclusively to satisfy its own needs and (ii) LDT (now Ignitis) which belonged to the same group as Litgas. For Achema, the Lithuanian authorities explain that the production of fertilizers and demand for gas is the highest in summer when the global price of natural gas is the lowest, while for the heating sector demand for gas is highest in winter. For LDT, Lithuania explains that should LDT have been considered as counterfactual for the net avoided cost methodology, this would have led to a clear conflict of interest as LDT could have directly influenced the amount of compensation paid to Litgas, belonging to the same group.

- (102) Prior to December 2014, Lithuania was an 'energy island' 100 % dependent on the natural gas supply from Russia. Hence, the market did not have any experience in purchasing, delivering, keeping, selling LNG. The initial years of operation of the terminal were different from the following ones in terms of market maturity and competition: while in 2016-2018 there were only 2 additional commercial users of the LNG terminal, there were 6/7 users per year in 2019-2022. The change in the gas market structure induced Lithuania to believe that the market was mature enough to start applying the net avoided cost methodology as of 2019.
- (103) In this context, Lithuania explained that the decision to use the cost allocation methodology and to compensate all boil-off and all balancing costs in 2016-2018 was justified by: (i) the lack of know-how in 2015, which prevented the regulator from applying a more sophisticated net avoided cost methodology until 2019; (ii) the lack of sufficient data to determine the cost for Litgas to operate without the SGEI, which is necessary to apply the net avoided cost methodology.
- (104) Lithuania also showed that applying the net avoided cost methodology for the compensation of boil-off and balancing costs in 2016-2018 would not have significantly changed the amount of compensation. Indeed, boil-off and balancing costs incurred by other users of the LNG Terminal in 2016-2018 were minimal. Thus, the amount of compensation would not have changed significantly by considering all costs or only those exceeding the average costs incurred by other market operators.

3.2. Abolition of the Purchase Obligation

- (105) Lithuania explained that the modification of the Purchase Obligation into the Delivery Obligation in 2019 did not have an effect on the level of the boil-off gas costs for the LNG Mandatory quantity on the technical side. Under the Delivery Obligation, Litgas was still bound to deliver and release LNG into the natural gas grid up to the minimum quantities and schedule needed to keep the LNG terminal operational. Litgas was still subject to higher boil-off gas costs since the Designated Supplier was bound to release LNG into the natural gas grid slowly to satisfy the technical needs of the LNG terminal.
- (106) However, Lithuania explained that the abolition of the Purchase Obligation reduced the balancing costs on the technical side as, by selling freely on the market, Litgas was now able to be more responsive to market demand and to reduce its balancing needs ⁽²⁸⁾. Even so, according to Lithuania, additional balancing costs were still expected to be incurred after 2019 and could have been partially compensated under the net avoided cost methodology. However, Lithuania explained it had deliberately decided to undercompensate the SGEI after 2019 by excluding all balancing costs, so that Litgas would be even more exposed to competition. Lithuania stressed that such decision should not be understood as a confirmation that balancing costs were not necessary for the performance of the SGEI.

3.3. Control exercised by the NRA

- (107) Finally, Lithuania argued that in 2016-2018 any risk of overcompensation was eliminated by the NRA's control over (i) each separate cost element included in the SGEI compensation and (ii) Litgas's profit margin. As a result of this control, Litgas's profit margin was very low in 2016-2018, amounting to 1,1 %-1,5 %, while the average profit margin earned by suppliers active on the Lithuanian gas supply market historically amounted to 3,2 %. So, even if there was overcompensation of specific costs, the regulator ruled out such overcompensation in establishing the regulated profit margin.

⁽²⁸⁾ The SGEI performed by Litgas required scheduling the delivery of LNG in more or less equal intervals over the calendar year to ensure constant operation of the LNG terminal. The Purchase Obligation was mostly placed on heat producers, which have a strong demand for natural gas in winter periods and low demand in summer. The SGEI prevented Litgas from changing the schedule of delivery of LNG to address the seasonality of demand of the Obligated Purchasers. As a result, Litgas had to "borrow" natural gas from other suppliers/storage in the winter period and "return" all such natural gas in the summer. Such operations caused high balancing costs. Having abolished the Purchase Obligation, Litgas started to sell natural gas on the open market, which enables it to be more reactive to the demand of customers. Yet, the performance of the SGEI still prevents Litgas from being as reactive as any other market participant. Litgas (i) cannot decide to stop deliveries of LNG when there is no demand from the market (which means that Litgas must store/lend surplus of natural gas); (ii) cannot release LNG to the natural gas grid on such a pace which is needed by a customer (which means that Litgas must "borrow" natural gas to satisfy order submitted by the customer).

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid

- (108) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (109) In order to conclude whether State aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU (i.e. transfer of State resources and imputability to the State, selective advantage, potential distortion of competition and affectation of intra-EU trade) are met for the measure under assessment.
- (110) In the 2013 Decision, the Commission concluded that the LNG Supplement constituted State aid to KN.
- (111) Since by the 2016 Amendments Lithuania introduced the new component of the LNG Supplement to Litgas, the Commission has to assess whether the cumulative criteria of Article 107(1) TFEU are met for the new component of the LNG Supplement to constitute State aid.
- (112) The Commission has already preliminarily concluded in the Opening Decision (see recitals 98 to 106 of the Opening Decision), that the aid constitutes State aid within the meaning of Article 107(1) TFEU.

4.1.1. *Transfer of State resources and imputability*

- (113) As held by the Court ⁽²⁹⁾, State resources encompass both advantages which are granted directly by the State and those granted by a public or private body designed or established by the State. The Commission considers that the new component of the LNG Supplement constitutes State resources imputable to the State for the following reasons.
- (114) First, the system for attribution and collection of the LNG Supplement was established by Lithuania. After the 2016 Amendments, Article 5(2) of the LNG Terminal Law stipulated that the new component of the LNG Supplement was collected, administered and paid out to Litgas by the TSO under supervision of the NRA. The LNG Supplement does not finance the transmission services, it constitutes a separate surcharge.
- (115) Second, the State appointed the TSO as administrator of the LNG Supplement. The TSO is instructed by the State by means of legal acts and the supervision of the NRA. The NRA controls the entire process with regard to the administration and transfer to Litgas of the funds collected.
- (116) The Commission also notes that the TSO - AB "Amber Grid" - is controlled by UAB "EPSO-G", which is 100 %-owned by the Lithuanian Ministry of Energy.
- (117) On the basis of those elements, the Commission concludes that the new component of the LNG Supplement was provided to Litgas by the State through State resources and is imputable to the State.

4.1.2. *Economic advantage*

- (118) The new component of the LNG Supplement provides an economic advantage to Litgas as it ensures certain cost coverage and positive net revenues which would not be achieved under the normal competitive conditions on the market.

⁽²⁹⁾ Judgment of 22 March 1977, Steinike & Weinling, 76/78, ECLI:EU:C:1977:52, paragraph 21; Judgment of 13 March 2001, Preussen Elektra, C-379/98, ECLI:EU:C:2001:160, paragraph 58.

4.1.3. *Selectivity*

- (119) The new component of the LNG Supplement is a selective advantage as it was granted solely to Litgas pursuant to a specific legal act – the LNG Terminal Law. Pursuant to the law other gas suppliers were not eligible to perform this function (See section 4.3.5).

4.1.4. *Effect on trade and distortion of competition*

- (120) The objective of the new component of the LNG Supplement was to ensure the continuous operation of the LNG Terminal. Gas is a product traded between Member States. Favouring a particular LNG supplier – Litgas – is liable to affect the patterns of trade between Member States. In addition, gas is used for electricity production. Electricity is another product traded across Member States. Therefore, the new component of the LNG Supplement distorts or threatens to distort competition and is likely to affect trade between Member States.

4.1.5. *Conclusion on the existence of State aid*

- (121) On the basis of the above-mentioned elements, the Commission concludes that the new component of the LNG Supplement involves State aid within the meaning of Article 107(1) TFEU.

4.2. **Lawfulness of the aid**

- (122) Lithuania granted the new component of the LNG Supplement under the 2016 Amendments to Litgas before the adoption of the 2018 Decision authorising the measure. Moreover, the latter decision was annulled by the General Court, in so far as it concerned the 2016 Amendments. The aid granted under the 2016 Amendments must therefore be regarded as unlawful ⁽³⁰⁾.

4.3. **Compatibility with the internal market**

- (123) As mentioned in recital 93, the Commission has assessed the compatibility of the 2016 Amendments with the internal market on the basis of the conditions established in the 2012 SGEI Framework.

4.3.1. *Genuine service of general economic interest as referred to in Article 106 TFEU*

- (124) As indicated in point 13 of the 2012 SGEI Framework, Member States have a wide margin of discretion regarding the nature of services that could be classified as being SGEI. The Commission's task is to ensure that the margin of discretion is applied without manifest error as regards the definition of SGEI. The Commission's competence in this respect is limited to checking whether the Member State has made a manifest error when defining the service as an SGEI and to assessing any State aid involved in the compensation.

- (125) However, as foreseen in point 46 of the 2012 SGEI Communication ⁽³¹⁾, where specific Union rules exist, the Member States' discretion is bound by those rules, without prejudice to the Commission's duty to carry out an assessment of whether the SGEI has been correctly defined for the purpose of State aid control. Therefore, the measure would be incompatible with Article 106(2) TFEU if it infringes specific EU law provisions. In the case at hand, the relevant provisions are laid down in the Gas Directive ⁽³²⁾.

⁽³⁰⁾ See Article 108(3) TFEU and Judgment of 12 February 2008, *CELF*, C-199/06, ECLI:EU:C:2008:79, paragraphs 61 to 64.

⁽³¹⁾ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

⁽³²⁾ 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).

- (126) The entrustment of a particular public service task implies the supply of services which, if it were to consider its own commercial interest, an undertaking would not assume or would not assume to the same extent or under the same conditions. Applying a general interest criterion, Member States or the Union may attach specific obligations to such services.
- (127) The Commission notes that, according to Article 3(2) of the Gas Directive, security of supply is an objective that might justify a public service obligation.
- (128) As explained in recital 208 of the 2013 Decision, the mere construction of the LNG Terminal would not ensure security of supply in Lithuania. In order to meet this objective, it would require maintaining the LNG Terminal operational at all times.
- (129) The LNG Terminal Law imposes an obligation on Litgas to deliver the LNG Mandatory Quantity which is needed to ensure the stable operation of the LNG Terminal and maintain the LNG Terminal operational.
- (130) In order to keep the LNG Terminal operational, certain quantities of LNG must be kept in tanks of the LNG Terminal and constantly released into the natural gas system.
- (131) Furthermore, the Commission notes that annual capacity bookings or spot bookings were not sufficient to ensure stable operation of the LNG Terminal. This is because first, deliveries under annual bookings can always be redirected to another delivery point if LNG prices justify it and second, LNG operations must be planned two weeks in advance so the terminal cannot rely on spot deliveries. Therefore, the Commission asserts that some LNG quantities must be delivered on an even basis throughout the year in accordance with a fixed schedule, including the periods when the demand for natural gas is low.
- (132) In the light of the assessment above, the Commission concludes that Litgas's obligation to keep the LNG Terminal operational by delivering the LNG Mandatory Quantity at a fixed schedule to the LNG Terminal constitutes a genuine SGEI as referred to in Article 106 TFEU. The General Court confirmed in its judgment that the applicants have not demonstrated that the Commission should have had doubts as regards the classification of the measures at issue as genuine SGEIs and as regards their necessity and scope ⁽³³⁾.

4.3.2. *Need for an entrustment act specifying the SGEI and the methods of calculating compensation*

- (133) As indicated in section 2.3 of the 2012 SGEI Framework, the concept of SGEI within the meaning of Article 106 TFEU means that the undertaking or undertakings in question have been entrusted with the operation of the SGEI by way of one or more official acts.
- (134) These acts must specify, in particular (i) the precise content of the SGEI and its duration; (ii) the undertakings and territory concerned; (iii) the nature of any exclusive rights assigned to the undertakings concerned; (iv) the parameters for calculating, controlling and reviewing the compensation; and (v) the arrangements for avoiding and recovering any overcompensation.
- (135) The Commission notes that the precise nature of the SGEI is determined in Article 11 of the LNG Terminal Law. Namely, the provision states that the Designated Supplier is entrusted with the obligation to deliver the LNG Mandatory Quantity to the LNG Terminal (see recital 30).
- (136) Furthermore, the Commission takes note that by Order of the Minister of Energy No 1-20 of 10 February 2014, Litgas was appointed as Designated Supplier on the Lithuanian territory (see recital 31(c)).

⁽³³⁾ Judgement of the General Court of 8 September 2021, *Achema AB v European Commission*, T-193/19 ECLI:EU:T:2021:558, paragraph 124.

- (137) As regards the parameters for calculating the compensation, the Commission notes that Article 11 of the LNG Terminal Law established the principles for calculating the compensation to the Designated Supplier. The detailed parameters were defined in the relevant implementing regulation - NRA Methodology No O3-367 complementing the LNG Terminal Law (see recital 31(d)).
- (138) The Commission considers that the legal acts such as the LNG Terminal Law and the NRA methodology No O3-367 established a clear model for calculating the compensation. The parameters of this compensation paid to Litgas were set by the NRA.
- (139) The NRA Methodology No O3-367 provided the formula by which the NRA calculated the compensation to be paid to Litgas. The Commission notes that the formula included all the costs for which Litgas was compensated. The list of costs was clearly defined, and no other costs were included into the compensation model.
- (140) Moreover, the Commission notes that Litgas's profit was strictly limited to a fixed profit margin approved by the NRA of 0,24 Eur/MWh and that its profit from sales in all cases could not exceed the average profit margin earned by natural gas companies in Lithuania.
- (141) Based on the LNG Terminal Law, the compensation was limited only to the LNG Mandatory Quantity.
- (142) Finally, Litgas had to submit to the NRA regular reports on costs and revenues in order to ensure that any overcompensation was detected in a timely manner and was subsequently eliminated.
- (143) By clearly defining the eligible costs, subjecting the Designated Supplier to regular reporting requirements and limiting its profits to the average profit observed on the market (see recitals 48 and 49), the Commission considers that the entrustment act and its implementing regulations provided the necessary arrangements to calculate, control, review and avoid overcompensation.
- (144) The Commission therefore considers that the allegations of the complainants that the parameters of the compensation to Litgas for the period from 1 January 2016 until 31 December 2018 were not objectively set and that Litgas was guaranteed to be compensated even beyond the quota relating to the Purchase Obligation (see recital 80) are unfounded.
- (145) In light of the above, the Commission concludes that the entrustment act complies with the requirements of section 2.3 of the 2012 SGEI Framework.

4.3.3. *Duration of the period of entrustment*

- (146) As indicated in section 2.4 of the 2012 SGEI Framework, "the duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI."
- (147) Article 11 of the LNG Terminal Law stipulates that the duration of the SGEI is limited to 10 years and is revised yearly by the NRA. The Commission considers that the duration of the entrustment is justified as it is linked to the duration of the contract with Statoil for the supply of the LNG Mandatory Quantity, which expires in 2024 (see recital 38).

4.3.4. *Compliance with Commission Directive 2006/111/EC⁽³⁴⁾*

- (148) According to point 18 of the 2012 SGEI Framework: "Aid will be considered compatible with the Internal Market on the basis of Article 106(2) TFEU only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings".

⁽³⁴⁾ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

- (149) Under Article 2(d) of Directive 2006/111/EC, any undertaking that is entrusted with the operation of an SGEI pursuant to Article 106(2) TFEU, that receives public service compensation in any form whatsoever in relation to such service and that carries out other activities, is an undertaking required to maintain separate accounts.
- (150) The account separation and transparency requirements for public undertakings established in the Directive 2006/111/EC are fulfilled by implementing acts – Resolution of the Government of the Republic of Lithuania No 768 dated 14 July 2005 and Amending Resolution No 1333 dated 12 December 2007.
- (151) As detailed in recital 50, Litgas is obliged to maintain separate accounts for its regulated activities as a Designated Supplier and for its non-regulated activities.
- (152) Based on the above, the Commission considers that the requirements of Directive 2006/111/EC are complied with.

4.3.5. *Public procurement requirements*

- (153) Point 19 of the 2012 SGEI Framework requires that the responsible authority entrusts the provision of the service in question in compliance with the applicable Union rules in the area of public procurement.
- (154) The Commission considers that the contract would in principle fall within the material scope of Directive 2004/18/EC of the European Parliament and of the Council ⁽³⁵⁾.
- (155) As was stated in the 2013 Decision (recitals 229-236), the LNG Terminal project is a project of major importance for Lithuania and the appointment of AB Klaipėdos Nafta as the operator of the LNG Terminal by the Lithuanian government was exempted from the public procurement rules on grounds of protection of the essential interests of a Member State as provided by Article 14 of the Directive 2004/18/EC.
- (156) The Commission considers that the appointment of Litgas as the Designated Supplier is subject to the same principles as the appointment of AB Klaipėdos Nafta in this respect. As in the case of AB Klaipėdos Nafta, the contract by which Litgas was appointed as the Designated Supplier is therefore also covered by the exemption provided in Article 14 of the Directive 2004/18/EC.
- (157) This is due to the fact that the task of keeping the LNG Terminal operational through deliveries of the LNG Mandatory Quantity must be considered as essential for Lithuania's security of gas supply. Any disruption in the delivery of the LNG Mandatory Quantity would jeopardise the operation of the LNG Terminal and thus the supply of LNG into the Lithuanian gas market and thus ultimately Lithuania's security of supply. In particular, given the structure of the Lithuanian gas supply market an entrustment of the Designated Supplier's tasks via a public procurement procedure pursuant to Directive 2004/18/EC would risk conferring the genuine SGEI to an undertaking linked to the former single gas supplier. In addition, an undertaking selected through the procedure under Directive 2004/18/EC without being controlled by the State could have (at the time of the tender or later) developed ties with the former single supplier that would allow the latter to influence its market behaviour in a way that could negatively affect the fulfilment of its SGEI mission.
- (158) In the Commission's view thus adopting a different approach towards the Designated Supplier than the operator of the LNG Terminal (AB Klaipėda Nafta) would jeopardise the essential interests invoked in the 2013 Decision. Therefore, the appointment of Litgas as the Designated Supplier by the Ministry of Energy should be exempted from the public procurement rules on grounds of protection of the essential interests of a Member State as provided by Article 14 of the Directive 2004/18/EC.

⁽³⁵⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

- (159) In this context the Commission also notes that, irrespective of the applicability of the Article 14 exemption, in 2014 Lithuania conducted a selection process for the appointment of the Designated Supplier. The selection criteria were approved by the Ministry of Energy on 3 January 2014 and made public. The tender evaluation criteria were established in the secondary legislation, i.e. Section 49 DivReg. In order to take into account the above security concerns, participation in this tendering procedure was only open to undertakings meeting the following selection criteria:
- (a) 2/3 votes of the shareholders general meeting should be held directly or indirectly by the State; and
 - (b) the Designated Supplier should not be involved in activities related to the transmission and (or) distribution of gas.
- (160) Litgas took part in the call for tender and was selected as the winner. Consequently, by the order of the Minister of Energy of 10 February 2014 No 1-20 “On UAB LITGAS awarding as the Designated Supplier”, Litgas was appointed as the Designated Supplier.
- (161) Based on the above and as confirmed by the General Court in its judgment ⁽³⁶⁾, the Commission considers that point 19 of the 2012 SGEI Framework is complied with.

4.3.6. *Amount of compensation*

- (162) Point 21 of the 2012 SGEI Framework states that “(...) the amount of the compensation must not exceed what is necessary to cover the cost of discharging the PSOs, including a reasonable profit”. The amount of compensation can be established on the basis of either the expected costs and revenues or the costs and revenues actually incurred or a combination of the two (point 22 of the 2012 SGEI Framework). Where the compensation is based, in whole or in part, on expected costs and revenues, they must be specified in the entrustment act. They must be based on plausible and observable parameters concerning the economic environment in which the SGEI is being provided and rely, where appropriate, on the expertise of sector regulators or of other entities independent from the undertaking. Member States must indicate the sources on which these expectations are based (point 23 of the 2012 SGEI Framework).
- (163) The net costs necessary, or expected to be necessary, should be calculated using the net avoided cost methodology where required or possible (point 24 of the 2012 SGEI Framework). Although the Commission regards the net avoided cost methodology as the most accurate method for determining the cost of a public service obligation, there may be cases where the use of that methodology is not feasible or appropriate. In such case, where duly justified, the Commission can accept alternative methods for calculating the net cost necessary to discharge the SGEI, such as the methodology based on cost allocation (point 27 of the 2012 SGEI Framework).
- (164) Under the 2016 Amendments, the compensation granted to Litgas for the SGEI took into account Litgas's revenues resulting from the LNG sold at regulated prices to the Obligated Purchasers and on the free market, all Litgas's costs stemming from its activities as the Designated Supplier and a regulated profit margin. It was calculated, in essence, on the basis of the following three factors: (i) the difference between the LNG price paid, upstream, by Litgas to Statoil and the price at which Litgas sold, downstream, to the obligated purchasers and to the free market; plus (ii) a compensation for the 'justified' costs incurred in connection with the SGEI, namely the operating costs, boil-off gas costs, balancing costs and the costs of financing a long-term State guarantee; plus (iii) a profit margin determined by the NRA (see section 2.5.2).
- (165) Following the 2019 Amendments, which placed a delivery obligation on Litgas and abolished the purchase obligation (see section 2.6.1), placing market risks on Litgas, the compensation granted to Litgas for the SGEI was calculated, in essence, on the basis of the following two factors: (i) the difference between the LNG price paid, upstream, by Litgas to Statoil, and the actual average price of gas imported into Lithuania, calculated by the NRA; to which was added, (ii) compensation for part of the boil-off gas costs and the costs of financing a long-term State guarantee. The boil-off gas costs incurred by Litgas were compensated in full during the periods when Litgas was the only user of the LNG terminal and for the part exceeding the average of boil-off gas costs experienced by other LNG Terminal users during the periods when Litgas was not the only user of the LNG terminal (see section 2.6.2).

⁽³⁶⁾ ECLI:EU:T:2021:558, paragraphs 130-149.

- (166) It follows, in particular, that while all the boil-off gas costs and balancing costs incurred by Litgas were included in the compensation for the SGEI during the period from 2016 to 2018, Litgas was compensated under the 2019 Amendments for only part of the boil-off gas costs and not at all for the balancing costs that it incurred.
- (167) In the Opening Decision, the Commission questioned whether Lithuania correctly compensated the boil-off and balancing costs in 2016-2018 in view of this difference (see section 2.9.2).
- (168) In its reply, Lithuania put forward that this difference was justified by the fact that Lithuania used the cost allocation methodology to calculate the amount of compensation in 2016-2018, while from 2019 it used the net avoided cost methodology (see recital 99). Lithuania considers that the use of the cost allocation methodology in the period 2016-2018 was justified (see recitals 100 to 103).
- (169) The Commission has therefore assessed whether i) the use of the cost allocation methodology rather than the net avoided cost methodology for the period 2016-2018 was indeed justified and ii) whether the cost allocation methodology was applied correctly.

4.3.6.1. Appropriateness of the cost allocation methodology for the period 2016-2018

- (170) As recalled in recital 163, under the 2012 SGEI Framework, the net costs necessary, or expected to be necessary, to discharge the SGEI should be calculated using the net avoided cost methodology where required or possible. However, in cases where the use of that methodology is not feasible or appropriate, where duly justified, the Commission can accept alternative methods, such as the methodology based on cost allocation.
- (171) Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation (point 25 of the 2021 SGEI Framework). The net avoided cost methodology therefore requires that Member States establish *ex ante* a counterfactual scenario of what the net cost or profit of the provider would be without the public service obligation.
- (172) First, the Commission notes that the LNG Terminal was the first in Lithuania, and one of the first floating terminals in the EU ⁽³⁷⁾, and that there was no developed market expertise in LNG procurement and trading (see recital 100). Lithuania had therefore not yet acquired know-how and could not have acquired it from other EU countries, which it developed in the years 2016 to 2018 as the terminal was in operation.
- (173) Second, the Commission considers that at the time when Lithuania had to decide which methodology to use, the LNG market in Lithuania was not sufficiently developed as until then Gazprom was the only supplier and Lithuania did not know whether the terminal would actually be used by private companies (see recitals 101 and 102). It was not possible for Lithuania to develop a counterfactual scenario due to lack of knowledge of how Litgas would behave as a standard user of the floating LNG Terminal and what costs it would incur without the SGEI obligation.
- (174) Based on the above, the Commission considers that the use of the net avoided cost methodology was neither feasible nor appropriate in the period 2016-2018 and that the application of the cost allocation methodology was justified for the assessment of the 2016 Amendments.
- (175) The Commission considers that the fact that Lithuania changed its compensation methodology in 2019 is a result of market changes and increased competition in the market which could no longer justify the application of the cost allocation methodology, and which made it possible to apply the net avoided cost methodology. Indeed, it became possible for Lithuania to identify a relevant counterfactual scenario for Litgas and to determine the costs for Litgas of operating without the SGEI obligation.

⁽³⁷⁾ In 2014, only one other floating LNG terminal was operational in Europe: The Italian OLT offshore LNG Toscana that started operating in 2013. See here: 20150617 GLE LNG abstract_final.pdf.

- (176) The Commission understands that the abolition of the Purchase Obligation also reflects these changes in the market. Indeed, the Purchase Obligation was initially put in place to secure the development of the LNG Terminal in the first years of operation and to ensure the off-take of the LNG Mandatory Quantity. The Purchase Obligation was planned to last for 10 years but the Lithuanian authorities had envisaged that this duration could be shortened if the development and integration of the Lithuanian natural gas market was sufficient to guarantee the minimum off-take that is required for the LNG Terminal to remain operational (see footnote 7). The Commission considers that the fact that Lithuania initially put in place the Purchase Obligation shows that at that time, the market was immature and the Lithuanian authorities did not know if and how the market would develop. The fact that Lithuania abolished the Purchase Obligation in 2019 shows that the market had sufficiently developed and that Lithuania considered that there was enough demand in the market to buy the LNG Mandatory quantity.
- (177) As explained by Lithuania (see recital 106), the Commission notes that the abolition of the Purchase Obligation in 2019 had an impact on the balancing costs and allowed to reduce these costs. This abolition had however no direct impact on the level of boil-off gas costs incurred by Litgas because the boil-off is determined by the minimum quantity that itself is determined by the technical characteristics of the terminal but does not depend on whether there is a Purchase Obligation or not (see recitals 105 and 106).

4.3.6.2. Correctness of the application of the cost allocation methodology for the years 2016-2018

- (178) Under the cost allocation methodology, the net cost necessary to discharge the public service obligations can be calculated as the difference between the costs and the revenues for a designated provider of fulfilling the public service obligations ⁽³⁸⁾.
- (179) As described in recital 47, the compensation to Litgas took into account Litgas's revenues resulting from the LNG sold at regulated prices to the Obligated Purchasers and on the market, all Litgas's costs stemming from its activities as the Designated Supplier and a regulated profit margin.
- (180) The Commission notes that Litgas was obliged to maintain separate accounts for its regulated activities as a Designated Supplier (which involved all activities related to the management of the LNG Mandatory Quantity) (see recital 50). Therefore, the Commission considers that Litgas's costs and revenues linked to its SGEI activities were correctly identified in its accounts.

4.3.6.2.1. Costs

- (181) In addition to operating costs as described in recital 54, the compensation covered the following costs: boil-off gas costs, balancing costs and state guarantee costs.
- (182) The Commission considers that boil-off and balancing costs are inherently related with the function of the designated supplier. Indeed, Litgas incurred boil-off and balancing costs that were linked to the LNG Mandatory quantity and to the way Litgas had to buy and sell this quantity to comply with its SGEI obligation (see recitals 56 to 63 and 105 to 106).
- (183) In that respect, the Commission agrees with the Lithuanian authorities that the decision to no longer compensate balancing costs in 2019 does not automatically imply that these costs were not linked to the SGEI and necessary to operate the SGEI (see recital 106).
- (184) Under the cost allocation methodology, all the costs necessary to operate the SGEI can be compensated and not only that part of costs which the provider would not have incurred in the absence of the SGEI.
- (185) Based on the above, the Commission considers that Lithuania correctly applied the cost allocation methodology by compensating in full balancing and boil-off gas costs as direct costs necessary for the operation of the SGEI.
- (186) Therefore, the Commission considers that, in the period 2016-2018, all the boil-off and balancing costs were economically justified costs linked to the SGEI.

⁽³⁸⁾ Point 28 of the 2012 SGEI Framework.

- (187) As regards costs related to the long-term guarantee, the Commission notes that to secure long-term supply of LNG from Statoil, Litgas had to issue long-term contract performance guarantees for Statoil and incurred costs for these guarantees (see recital 64).
- (188) The Commission considers that these long-term guarantee costs are justified costs incurred in direct connection with the SGEI, as these costs are related to the long-term nature of the contract that Litgas concluded with Statoil to fulfil its SGEI mission.
- (189) In view of the above, the Commission considers that all the costs taken into account in the compensation are directly related to the fulfilment of Litgas's obligations under the SGEI and necessary to perform the SGEI.

4.3.6.2.2. Revenue

- (190) In accordance with point 32 of the 2012 SGEI Framework, the revenue to be taken into account must include at least the entire revenue earned from the SGEI.
- (191) Based on the 2016 Amendments, the revenues which Litgas received as a result of selling the LNG to the Obligated Purchasers at the established regulated price were taken into account. In addition, the revenues that Litgas obtained from selling on the market the part of the LNG Mandatory Quantity not purchased by the Obligated Purchasers were also included. Thus, the Commission concludes that all possible revenues that Litgas could earn under the SGEI it has been entrusted with were covered.

4.3.6.3. Reasonable profit

- (192) The 2012 SGEI Framework allows for the entity fulfilling the SGEI to achieve a reasonable profit. This is the rate of return on capital that would be required for a typical company considering whether or not to provide the SGEI for the whole duration of the entrustment act, taking into account the level of risk (points 33 and 35 of the 2012 SGEI Framework). Where duly justified, other profit level indicators can be used (point 34 of the 2012 SGEI Framework).
- (193) In relation to the profit margin, the Commission notes that already according to the 2013 Decision Litgas was entitled to a reasonable profit margin. Under the 2016 Amendments, the NRA established a fixed profit margin for Litgas taking into account natural gas market conditions in Lithuania. Based on the NRA calculations Litgas was entitled to (1) a fixed profit margin of 0,24 EUR/MWh on the sale of the LNG Mandatory Quantity to the Obligated Purchasers and (2) Half of the profit on the sales of LNG on the market provided that the profit did not exceed the profit margin of a natural gas company operating on the market.
- (194) The Lithuanian authorities explained that the profit margin for sales of LNG on the market established by the 2016 Amendments was well below the average profit margin earned by suppliers active on the Lithuanian gas supply market which historically amounted to 3,2 %. For the period from 2016 to 2018, Litgas profit margin was in the range from 1,1 % to 1,5 %.
- (195) In addition, based on the NRA Methodology No O3-367 any extra profit beyond the observed average market profit was recouped from the beneficiary.
- (196) In view of the evidence provided that the profit margin of Litgas was market conform, the Commission considers that it corresponds to a reasonable profit as per the 2012 SGEI Framework.

4.3.6.4. Efficiency incentives

- (197) As regards the efficiency incentives, point 39 of the 2012 SGEI Framework, provides that "[i]n devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI at high standard, unless they can duly justify that it is not feasible or appropriate to do so".
- (198) The efficiency mechanisms applicable to Litgas were established in the NRA Methodology No O3-367.

- (199) The NRA Methodology No O3-367 contained a mechanism for the SGEI provider to perform assigned obligations efficiently. For a certain number of operating expenses (repairs, maintenance, personnel, insurances, marketing and administrative costs, etc.), the NRA established a ceiling for the price of the regulated service. Costs going beyond that limit were not compensated. In addition, since 2017 the regulated companies had an additional incentive to further reduce OPEX. A company, which reduced its costs more than required by the NRA in a given period of time, could keep part of such savings (see recital 53).
- (200) Moreover, incentives for efficient operation also related to the adjustment to inflation. The costs that were taken into account for setting the LNG Supplement and the compensation were increased only by half of the inflation coefficient and not more than 3 % (see recital 53).
- (201) To conclude, the Commission considers that the 2016 Amendments introduced new mechanisms positively incentivising Litgas not only to maintain its efficiency but also to increase it. Based on the 2016 Amendments, Litgas had 1) the possibility to increase profitability by reducing OPEX exceeding the NRA established benchmark and 2) the possibility to keep part of the profit from the sale of surplus LNG Mandatory Quantity.

4.3.6.5. Control of overcompensation

- (202) Point 16(e) of the 2012 SGEI Framework requires that the act of entrustment includes arrangements for avoiding and recovering overcompensation. The latter should be understood as compensation that the undertaking receives in excess of the amount of aid as defined in point 21 of the 2012 SGEI Framework for the whole duration of the contract (point 47 of the 2012 SGEI Framework).
- (203) Point 49 of the 2012 SGEI Framework states that “Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with the requirements set out in this section. They must provide evidence upon request from the Commission. They must carry out regular checks, or ensure that such checks are carried out, at the end of the period of entrustment and, in any event, at intervals of not more than three years. For aid granted by means other than a public procurement procedure with publication, checks should normally be made at least every two years”.
- (204) Litgas was obliged to submit to the NRA regular reports on costs and revenues in order to ensure that any overcompensation was detected in a timely manner and was subsequently eliminated (see recitals 50 to 55).
- (205) In light of the foregoing the Commission considers that the measure includes arrangements for avoiding and recovering overcompensation.

4.3.6.6. Allegations by the complainants regarding the efficiency of Litgas operations

- (206) The complainants put forward claims that Litgas failed to operate efficiently as a typical well-run undertaking. In particular, the complainants argued that under the contract with Statoil, Litgas had to purchase excessive volumes at a very high gas price (see recitals 81).
- (207) In view of the evidence submitted by the Lithuanian authorities in terms of global LNG prices and received bids (see recital 21), the Commission considers, the allegations of the complainants regarding the high price of the gas supply contract concluded by Litgas as unfounded. In particular, the Commission notes that even though in the course of the tender procedure other bidders offered lower prices for the years 2017 - 2019, Statoil offered significantly lower prices for the first two years of the contract (2015 - 2016), so that in aggregate over the five-year delivery period the selected bid was the most attractive. Furthermore, the Commission takes note of the fact that the gas supply contract renegotiated in 2016 provides for a lowering of the initially contracted gas acquisition price and quantities of LNG.

- (208) The Commission also considers unfounded the allegations of the complainants regarding the excessive volumes contracted under the supply agreement between Litgas and Statoil. The initially contracted volume equalled the LNG Mandatory Quantity that was necessary to keep the LNG Terminal operational in steady mode in its incipient stage when there were no other LNG Terminal's users. In view of that the Commission regards the initially contracted gas volume as necessary for Litgas to perform its obligations under the SGEI. The Commission also notes that following the renegotiation of the contract with Statoil the LNG Mandatory Quantity (see recital 38) and the purchase price of natural gas were lowered. Therefore, the Commission notes that the difference in the LNG Mandatory Quantity stems from different technological requirements for the operation of the LNG Terminal, which were based on the technical expertise provided to the Lithuanian authorities.
- (209) The Commission also considers that swap contracts and gas storage options were another way of minimising costs resulting from changes in seasonal demand (see recitals 61-62). The promotion of such measures was enshrined in the applicable legal framework.
- (210) In view of the above, the Commission considers that the complainants' allegations regarding the efficiency of Litgas are unfounded and that the requirements of the 2012 SGEI Framework regarding efficiency incentives are complied with.
- (211) In this regard, the General Court concluded in its judgment that the complainants had failed to show that the Commission should have had doubts as to whether the extension of the contract between Litgas and Statoil rendered the compensation for the SGEI disproportionate ⁽³⁹⁾.

4.3.7. *Provisions applicable to undertakings carrying out activities outside the scope of the SGEI*

- (212) Although its activities as Designated Supplier represent the core of Litgas's business the company also performs a limited number of activities unrelated to the scope of the SGEI (see recital 50).
- (213) According to point 44 of the 2012 SGEI Framework, where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services.
- (214) The Commission notes that the Lithuanian authorities have demonstrated that Litgas is subject to full separation of accounts (see recital 50).
- (215) The legal obligation to separate accounts of SGEI and non-SGEI activities is established in Article 44 of Law on Natural Gas. The detailed methodology for the separation of accounts, allocation of costs and revenues is regulated by the NRA Decision No O3-316 "Regarding the separation of accounts, costs of the natural gas undertakings".
- (216) In this context the Commission considers that the requirements of point 44 of the 2012 SGEI Framework are satisfied.

4.3.8. *Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union*

- (217) The requirements set out in sections 2.1 to 2.8 of the 2012 SGEI Framework are usually sufficient to ensure that the aid does not distort competition in a way that is contrary to the interests of the Union. However, it is conceivable that in some exceptional circumstances serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union (see points 51 and 52 of the 2012 SGEI Framework).
- (218) In this case, the Commission considers that no serious competition distortions in the internal market have remained unaddressed and that the aid cannot affect trade to such an extent as would be contrary to the interests of the Union. This view is confirmed by the GC judgment.

⁽³⁹⁾ ECLI:EU:T:2021:558, paragraphs 196-205.

- (219) The Commission considers that the potential negative effects on competition and trade will be minimal. Litgas is entrusted to deliver the LNG Mandatory Quantity that amounts to 0.37 bcm. As the total capacity of the LNG Terminal is 3,75 bcm, the LNG Terminal has capacity to provide access to other potential gas suppliers. For the year 2018 there were at least two other users of the LNG Terminal.
- (220) Furthermore, the notified 2016 Amendments were limited in time from 1 January 2016 until 31 December 2018 which ensures avoidance of long-term distortions of competition.

4.3.9. *Transparency*

- (221) Point 60 of the 2012 SGEI Framework provides that Member States must publish, for each SGEI compensation they grant: (i) the results of the public consultation, (ii) the content and duration of the SGEI, (iii) the undertakings and the territory concerned and (iv) the amounts of aid granted to the undertakings on a yearly basis.
- (222) In this case, the Lithuanian authorities published the above-mentioned information on a publicly accessible website (see recitals 75 to 77).

5. **CONCLUSION**

- (223) The Commission finds that Lithuania has unlawfully implemented the aid in question in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the Commission finds that the measure is compatible with the internal market on the basis of Article 106 TFEU, in light of the relevant provisions of the 2012 SGEI Framework.

HAS ADOPTED THIS DECISION:

Article 1

The State aid measure to maintain the LNG Terminal operational, which Lithuania implemented for Litgas during the period 2016-2018, is compatible with the internal market within the meaning of Article 106 of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 7 April 2026.

For the Commission
Teresa RIBERA
Executive Vice-President