TOTALENERGIES LNG SERVICES FRANCE

Exemption request file for the Le Havre floating storage and regasification unit (FSRU)

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Part 1. General context of the exemption request.

1. TotalEnergies LNG Services France ("**TELSF**"), a subsidiary of TotalEnergies, is undertaking the project to install and operate a floating liquefied natural gas storage and regasification terminal ("**FSRU**"[1]) located in Le Havre, within the scope of "Grand Port fluvio-maritime de l'Axe Seine" (Haropa Port) in the Seine-Maritime department (the "**Le Havre FSRU**" or the "**Project"**).

2. The Project, which is intended to partially offset the high risk of a reduction in, or even a complete cessation of, European gas imports from Russia, takes place in an unprecedented context of deteriorating supply security conditions of the French and European gas markets.

3. The present document constitutes the application for exemption from the third-party access obligations and regulated tariffs provided for respectively in Articles L. 111-97 and L. 452-2 of the French Energy Code (the "**Exemption Request**").

4. With this document, TELSF intends to demonstrate that the Project meets the criteria for exemption from third-party access and regulated tariffs as defined in Article 36 of the 2009/73/EC Directive of July 2009, *concerning common rules for the internal market in natural gas* (the "**Directive"**), transposed into French law in Articles L. 452-5, L. 452-6, L. 111-109, and R. 111-43 to R. 111-51 of the French Energy Code. TELSF wishes to obtain a partial exemption from the provisions relating to third-party access and a total exemption from those relating to regulated tariffs for a period of 5 years from the date of commercial commissioning of the Le Havre FSRU.

5. TELSF is a company incorporated under French law in the legal form of a simplified joint stock company managed by a President and a Managing Director, who are vested with extensive powers to act on behalf of TELSF as provided for in the company's statutes.

6. The Exemption Request aims to provide details the general context of the Project prior to demonstrating that it meets the five cumulative criteria necessary to obtain the exemption.

1.2. General presentation of the Project.

1.2.1. Description of the Project with regard to its purpose.

1.2.1.1. Description of the Project.

7. The war in Ukraine has revealed the need for the European Union ("**EU**") to limit its dependence on Russian gas imports and to diversify its gas supply sources. Until the beginning of 2022, the EU imported 90% of its gas consumption, approximately 45% of which came from Russia.

8. These two objectives, which aim to limit the EU's dependence on Russian gas imports and to diversify its gas supply sources by increasing imports of liquefied natural gas ("**LNG**"), are the two major axes of the *REPowerEU* plan, published by the European Commission on May 18, 2022. In

[1] *Floating Storage and Regasification Unit.*

particular, this plan calls for phasing out the dependence on fossil fuels originating in Russia before 2030.

9. In line with the objectives of the *REPowerEU* plan, Law No. 2022-1158 of August 16, 2022, *on emergency measures for the protection of purchasing power* (the "**Purchasing Power Law**"), includes provisions aimed at guaranteeing France's security of gas supply and introduces, in domestic law, a specific regime applicable to the operation of an FSRU in France.

10. In this context, TELSF plans to install and operate a new LNG import facility in France.

11. This new LNG import facility, with an annual capacity of 5 bcm, is intended to compensate for part of the significant reduction in, or even total cessation of, gas imports from Russia, whose overall volumes reached around 155 bcm per year in the EU before the outbreak of the war in Ukraine. Gas imports from Russia to Europe have already been significantly reduced: indeed, Russia has interrupted its pipeline gas deliveries to the Netherlands, Denmark, Poland, Finland, and Bulgaria since the beginning of June 2022. In addition, Russia has significantly reduced its supply to Germany, Austria, France, and Italy. In this context, the urgent implementation of additional means of supply, especially of LNG, is necessary to limit the deterioration of the supply/demand balance in the European gas market.

Since they can be commissioned within a shorter timeframe and at low installation costs compared to onshore LNG terminals, FSRUs are an effective means of rapidly increasing LNG import capacity, thereby contributing to the supply/demand balance in the gas market. The installation of an FSRU on the French coast, therefore, meets both the timeliness and diversification of supply sources objectives.

12. As a result, the Project proposes to achieve the following objectives:

- a swift commissioning of the Le Havre FSRU (objective: September 2023);
- a significant additional import capacity for France and the EU;
- an infrastructure that can be integrated easily into the GRTgaz transmission grid to which it will be connected and that can be commissioned without disrupting its operation.

13. The Project takes place in a context of profound change in the configuration of gas flows in and out of France (before and after the outbreak of the war in Ukraine). To illustrate:

- The historically imported flow of gas into France at the Virtualys interconnection point between France and Belgium has reversed. Thus, it is now the French market that exports gas[2] to the Belgian market and not the other way around, which had been the practice for decades.

- The import flow to France from Germany at Obergailbach has been reduced to a minimum level. Eventually, this flow is expected to reverse. In the very short term, the commercialization of a

[2] Only H-gas flows (high calorific value) were taken into account in the analysis. L-gas flows (low calorific value) from the Groningen field in the Netherlands were not taken into account because of the separate nature of their grids.

physical export capacity of 100 GWh/d, from the week of October 10, 2022[3], allows gas to be exported from France to Germany, thus contributing to the supply/demand balance on the entire Western European gas market.

- Exports from France to Switzerland at Oltingue, a significant part of which is destined for Italy, have increased. This exportation increase was only partially offset by new imports into France from Spain via the Pirineos point, which had served as a gas export point from France to Spain until now.

- Finally, LNG imports at French LNG terminals have risen sharply, reaching levels close to maximum capacity for several months.

14. As a result of this major reconfiguration of flows, linked to the contrasting geographical distribution of LNG import terminals in Europe, certain entry capacities into France are no longer usable given the new constraints on the supply/demand balance in the Western European market following the already observed reductions in Russian gas imports by pipeline. For example, the entry capacity into France at Obergailbach is practically no longer usable because it would mean the imbalance in supply and demand on the German gas market were it to be used to a significant extent.

15. Without a return to the flow configuration that prevailed before the outbreak of the war in Ukraine, the Le Havre FSRU will make it possible to compensate for a substantial part of the reduction in Russian gas imports on the French market.

16. TotalEnergies has vessels on long-term lease that can serve the purpose of regasifying LNG for import into France and the EU.

17. TotalEnergies plans to mobilize one of its regasification vessels in France and assign it to its subsidiary TELSF for a period of 5 years, starting from the date of the terminal commercial operation.

18. Following studies conducted in partnership with GRTgaz, the French natural gas transmission system operator, the site of the port of Le Havre in Normandy (Seine-Maritime), on the coast of the English Channel, was chosen to host the Project. This site appeared to be the most suitable for the following reasons:

- Le Havre is located in the North of France. This is an ideal location given the structure of the gas transmission network in this part of the country. As such, an FSRU in this location can compensate for disruptions in imports of Russian natural gas, whose entry point for supply is also located in the northern half of France. The additional volumes of gas imported in the form of LNG re-gasified by the Le Havre FSRU would thus replace the drop in Russian gas supply volumes, historically imported by pipeline at the Obergailbach interconnection point located on the border between France and Germany (see Figure below);

[3] According to the CRE deliberation of September 29, 2022, regarding the creation of a physical gas exit capacity offer at the Obergailbach network interconnection point.

- The gas transmission pipeline to which Le Havre is connected links to the Paris region. The Project will help meet the high demand for gas in the Paris region and to fill several underground gas storage sites located in this region, such as the sites at Saint-Illiers-la-Ville, Saint-Clair-sur-Epte, Beynes, Germigny-sous-Coulombs and Trois Fontaines. These sites make a substantial contribution to balancing France's energy system and to the security of supply of France and the Western European market;

- The need for investment in the GRTgaz network is limited. The new pipeline to connect the FSRU to the existing gas transmission system will be restricted to 3.5 km in length and can, therefore, be built in a short timeframe;

- Given the previous existence of an LNG terminal in Le Havre (until 1990), GRTgaz' system is already sized to integrate such infrastructure without disrupting the system[4].

- The Port of Le Havre has the infrastructure and equipment, and organization and resources (qualified personnel, in particular) to accommodate an FSRU-type vessel and to receive the LNG tankers that will come to supply it with LNG.

19. The choice of the port of Le Havre has thus been validated by the French authorities at the national level (Ministry of Energy Transition) and local level (Haropa Port, Le Havre Urban Community, decentralized State services).

20. For Haropa Port, the FSRU will be an opportunity to strengthen Le Havre's position as a reference energy platform in Europe and to develop its port traffic in the English Channel, in a context of intense competition between the major ports, particularly between those located in the North Sea.

[4] Deliberation of the Energy Regulatory Commission n° 2022-2140 of July 21, 2022, on the implementation *of the 2021 investment program and on the approval of the revised 2022 investment program of GRTgaz and Teréga (transmission)*. The detailed terms and conditions for marketing and entry capacity availability on the gas transmission grid downstream of the FSRU will be specified at a later date by the CRE and GRTgaz.

Figure: Substitution of Russian gas imported by pipeline with LNG imported by the Le Havre FSRU (illustrative).

1.2.1.2. The purpose of the Project.

21. The project to mobilize an FSRU is part of the French and European strategy to help limit the consequences of a reduction or cessation of natural gas deliveries from Russia.

22. It will make it possible, indeed, to reduce French and European dependence on Russian gas imports and to diversify gas supply sources, in line with the European Commission's *REPowerEU* plan.

23. The Project's regasification capacity of approximately 5 bcm per year (or 150 GWh per day on average throughout the year) will increase the existing overall gas import capacity by pipeline and in the form of LNG of the main gas markets in Western Europe.

24. As shown in the *Figure*below, the current overall gas import capacity (including LNG) for an area encompassing France, Belgium, the Netherlands, Germany, Italy, and Spain is 15,508 GWh/d. To avoid double counting, this overall capacity takes the total entry capacity of this area into account without counting the interconnection capacity between the different markets constituting it[5].

25. The Project's regasification capacity will therefore increase natural gas import capacity to ~15,658 GWh/d, which represents an increase of less than 1% of the overall import capacity of the area under consideration (relevant market for the analysis).

[5] It is demonstrated throughout this document that the area comprising the French, Belgian, Dutch, German, Italian and Spanish markets is the relevant market for the competitive analysis, as it is the area with the minimum perimeter in which the supply/demand balance is formed.

26. This percentage increase of 1% represents a low estimate of the contribution of the Le Havre FSRU to the Western European supply capacity, as a significant portion of the existing gas import capacity of the Western European market would become largely unusable in a scenario of complete cessation of Russian gas imports.

Overall import capacity of Western European countries (GWh/d)

Estimated import capacity[1] (excluding intra-Western Europe), in GWh/d	Import capacity by pipeline	LNG import capacity	Total import capacity
France	604	1,103	**1,707**
Belgium	514	299	**813**
Netherlands	1,633[2]	382	**2,015**
Germany	3,875	0	**3,875**
Italy	3,136	523	**3,659**
Spain	780	2,658	**3,438**
Total Western European market	**10,543**	**4,965**	**15,508**

1. Based on 2022 technical capacity by import mode (pipelines and LNG terminals) to Western Europe (France + Belgium + Netherlands + Germany + Italy + Spain)
2. Including production in the Netherlands, estimated to be constant in relation to 2021 production data

Source: ENTSOG, ALSI, SmartGRTgaz, Emerton analysis

Figure: Pipeline and LNG import capacity in the main Western European markets.

27. The Le Havre FSRU will therefore strengthen security of supply and limit the deterioration of market conditions resulting from the decline in Russian natural gas imports on the upstream and downstream wholesale gas markets.

28. Finally, the war in Ukraine is currently giving rise to strong demand for additional LNG supplies to compensate for the reduction in, or even stoppage of, Russian gas deliveries that have already taken place in some countries. This new European demand for LNG is in addition to the pre-existing global demand for LNG prior to the war in Ukraine.

29. By mobilizing an FSRU in Le Havre for a fixed term, TotalEnergies contributes to meeting a need identified in France and the EU.

1.2.1.3. TELSF as the Project company.

30. The Project is carried out by TELSF, a French company registered under number 893 714 329 RCS of Nanterre.

31. TELSF is a company that will be assigned to the Project and will have the human, financial and organizational resources adapted to the industrial and commercial operation of the Project, as well as the required management for this type of activity.

1.2.2. The technical aspects of the Project.

32. The Project consists of:

- the installation in the port of Le Havre, on the Bougainville wharf, of an FSRU vessel:
  - fitted with flexible LNG transshipment equipment between the supply vessel and the FSRU tanks;
  - with an LNG storage capacity of 142,750 m^3;
  - with a regasification capacity of 500 mmscfd (around 5 bcm/year), and a possible peak capacity of 750 mmscfd (7.5 bcm/year) when permitted by the downstream network;
  - fitted with a fire-fighting system;
  - fitted with equipment to analyze the quality of the unloaded LNG and to meter the gas emitted after regasification;
  - and strictly in accordance with international maritime standards.

- the installation on the Bougainville wharf including:
  - the mooring equipment for the FSRU vessel and the supply vessel;
  - a system for transferring re-gasified gas between the FSRU and the transmission network, comprising one high-pressure (HP) arm;
  - a fire-fighting system;
  - and a control system of the entire installation.

- the commissioning of the above-listed equipments on an estimated date of September 1, 2023, and their operation by TELSF for the duration of the Project.

33. The LNG specifications acceptable to the Le Havre FSRU aim to be as broad as possible while conforming to industry standard parameters and meeting the standards imposed by the transmission grid operator, GRTgaz.

34. The Le Havre FSRU uses the so-called closed-loop regasification technology: the heat used to reheat the LNG is not provided by seawater, as is the case at many onshore regasification terminals, but is instead produced by boilers fueled with natural gas.

1.2.3. Project estimated timetable.

35. A target schedule has been established with the objective of commercial commissioning of the Le Havre FSRU in September 2023.

1.2.4. Project interfaces and partners.

1.2.4.1. Haropa Port: the « Grand Port fluvio-maritime de l'axe Seine » (Le Havre - Rouen - Paris).

36. The Project is developed by TELSF, in collaboration with the port authorities of Le Havre (Haropa Port), which:

- authorize the installation and operation of the FSRU of Le Havre;
- manage the associated traffic of LNG tankers;
- directly or indirectly provide the necessary ancillary services (piloting, towing, mooring, etc.); and
- authorize TELSF's occupancy of the Bougainville wharf under a temporary occupation agreement of the public port property where the FSRU will be moored and where the transfer system, the pipeline, and the GRTgaz reception station for re-gasified LNG will be located.

37. In addition, Haropa Port will coordinate the performance of the necessary navigation studies to define the weather conditions for entry and exit, the mooring of supply vessels, as well as the necessary towing and piloting means.

1.2.4.2. *Gas transmission grid (GRTgaz).*

38. GRTgaz is responsible for building and operating the connection between the Le Havre FSRU and the French natural gas transmission grid.

39. This connection includes a 1,400 m² platform comprising the connection of the HP transfer arm between the FSRU and the ground, and ensuring the reheating, odorization and gas pressure regulation functionalities, as well as the construction of a DN500 pipe of approximately 3.5 km between the platform and the existing downstream network (a DN500 pipe).

1.3. Presentation of and reasons for requesting exemption from third-party access and regulated tariffs.

1.3.1. Infrastructure eligibility.

40. Article 32 of the Directive provides for the regulated third-party access to gas infrastructure, as a matter of principle and article 41 also provides for the fixing of a regulated tariff for these same infrastructures, as a matter of principle. Concomitantly and by way of exception, the Directive provides for the possibility of an exemption from these general rules under article 36 ("**Article 36**").

41. The Directive limits the request for exemption to new major gas infrastructures (Article 36, §1).

42. The Le Havre FSRU falls into the category of installations eligible for an exemption, provided that it:

- constitutes an activity regulated by Directive 2009/73/C;
- is a new infrastructure, meaning infrastructure that was not completed by August 4, 2003[6];
- is a large infrastructure facility given it is an LNG facility[7] .

1.3.2. The emergency situation resulting from the energy crisis in which the Project is contextualized and its implementation scheduled make the Le Havre FSRU Project incompatible with a regulated model.

43. The FSRU is expected to be commissioned in Le Havre in September 2023 in order to compensate for reductions in Russian gas exports and, in particular, to strengthen the EU's security of gas supply as quickly as possible and in any case, before winter of 2023 – 2024.

44. As a result, the implementation of third-party access and a regulated tariff is not compatible with the Project decision-making and implementation timeline for commissioning in September 2023. Indeed, the installation work and the implementation of a regulated tariff, as well as the organization of a procedure for the marketing of capacity whose tariff would be regulated, could not be carried out for several months, with the effect of postponing the decision regarding the mobilization of the Le Havre FSRU and thus delaying the provision of the infrastructure.

45. The need for the regulator to adopt a tariff methodology that is unprecedented for an FSRU in France, for which an ad hoc tariff would need to be created, the level of which would be difficult to anticipate due to the uncertainty associated with developing reliable allocation hypotheses, does not allow for the regulation of this infrastructure. The difficulty in obtaining visibility on the tariff level of the Le Havre FSRU within a regulated framework would thus constitute a strong limitation on the commercial attractiveness of the terminal, which would be directly detrimental to the security of supply of the Western European market.

46. In addition, the regulator's fixing of marketing procedures for third-party access to the entirety of the capacity of the Le Havre FSRU appears to be equally incompatible with an investment decision by TotalEnergies that would allow for the commercial commissioning of the FSRU by September 2023, such decision having to be based, inter alia, on the assumption that 50% of the capacity is reserved by TotalEnergies.

1.3.3. The technical and economic characteristics of the Project are neither compatible with the potential regulation of the Le Havre FSRU, which would pose a significant risk of non-use or under-use of the FSRU's capacity on the operator.

47. Unlike onshore LNG terminal projects, the Project involves limited CAPEX and significantly more substantial OPEX. The Project's OPEX includes fixed annual operating costs independent of the quantities of LNG actually regasified and variable operating costs.

[6] Article 2 of the Directive.
[7] Article 36 of the Directive.

48. The variability in OPEX will be a function of the overall utilization rate of the FSRU's regasification capacity. Variable OPEX costs would be directly dependent on the higher or lower rate of terminal's utilization. However, the level of utilization of the FSRU cannot be anticipated at this stage. Since the methodology used by the regulator to determine a regulated tariff is based primarily on a forecasted OPEX trajectory (net operating expenses, see Section 2.4.1.), such uncertainty would preclude the fixing of a regulated tariff for the Le Havre FSRU.

49. The uncertainty regarding both the future allocation rate and the future utilization rate of the FSRU makes it particularly difficult to develop a regulated tariff that is also commercially attractive.

50. The regulatory regime therefore appears to be unsuitable for the Project.

1.3.4. Exemption from the regulated tariff, one the one hand, and regulated third-party access for 50% of the capacity of the Le Havre FSRU, on the other hand, is essential.

51. Due to the importance of the Project's OPEX, and particularly the uncertainty regarding the amount of variability in OPEX, directly linked to the uncertainty regarding the level of utilization of the terminal as described above, the decision to mobilize the FSRU by TELSF is subject to the existence of a subscription commitment for a minimum of 50% of the FSRU's capacity for the entire duration of its mobilization.

52. The commitment to book 50% of the total capacity of the FSRU over the entire duration of its mobilization would ensure that the Project's costs are covered in sufficient proportion so as to enable TELSF to confirm its investment decision.

53. TotalEnergies Gas & Power Ltd ("**TEGPL**" or the "**Primary Capacity Holder**"), a subsidiary of TotalEnergies in charge of short-, medium-, and long-term LNG trading, operates TotalEnergies' fleet of LNG carriers and regasification capacities for this purpose. TEGPL wishes to book 50% of the capacity of the Le Havre FSRU for the duration of the Project, i.e., 5 years.

54. This subscription commitment would take the form of a "Ship-or-Pay" allocation model constituting a commitment to pay for all subscribed capacity, whether it is ultimately used or not, which is in line with the commercial model generally used in conventional LNG terminals.

55. TEGPL's commitment to book 50% of the FSRU's capacity over its mobilization period allows TELSF to secure the coverage of a substantial portion of the FSRU's costs and, thus, to build a more competitive exempted tariff with a more predictable tariff level, based on a minimum base and a guarantee of subscriptions.

Such a commitment is likely to enable TELSF to make an investment decision while maximizing the commercial attractiveness of the regasification service offered to third parties. Indeed, a guarantee of 50% of the capacity of the Le Havre FSRU enables TELSF to offer a tariff whose structure and level best reflect the costs of the infrastructure, without incorporating a specific risk premium.

56. Under these conditions, a partial exemption from third-party access to the infrastructure, up to 50% of the total capacity of the FSRU and for the entire duration of its mobilization, is a necessary condition for TotalEnergies' investment decision and, as such, for the execution of the Project.

57. This level of subscription of 50% of the total capacity of the FSRU, sufficient for the investment decision, also has the advantage of leaving 50% of the terminal's capacity available to third parties.

58. The remaining 50% of the capacity of the Le Havre FSRU will be commercialized and offered to third parties under the conditions described in Section 1.4.

1.3.5. The reasons for the request for exemption.

59. In view of the conditions of Article 36 of the Directive and the study of the exemption decisions previously granted in the EU (see Section 1.5.1.2.), the Project carried out by TELSF is likely to benefit from a partial exemption from third-party access and a total exemption from regulated tariffs.

60. It is under these conditions, and in order to pursue the Project and complete it for winter 2023, that TELSF has decided to conduct the precise analyses allowing it to verify the satisfaction of the exemption criteria.

61. These analyses are presented below (see Section 2) with a view to obtaining an exemption that is essential for the execution of the Project.

62. The exemption criteria were met in view of the unprecedented conditions prevailing on the European gas markets and the willingness at national and European level to limit dependence on Russian gas imports within a particularly tight timeframe.

1.4. Presentation of the Project commercial approach.

63. TELSF proposes to market 50% of the total capacity not subscribed by the Primary Capacity Holder according to the terms and conditions that are to be validated by the CRE, the broad outlines of which would be as follows:

- TELSF will conduct an initial sales campaign for this capacity approximately 6 months prior to the commercial start-up of the Project.
    - The capacity offered will be for the entire duration of the Project;
    - The total capacity offered will be of the order of 2.5 bcm per year (or its equivalent in energy);
    - The minimum subscription will be 1 bcm per year over the total duration of the Project;
    - The base tariff will be the same as that offered to the Primary Capacity Holder;
    - The applicants will have the option (but not the obligation) to offer a premium (in euros) in addition to the base tariff of the first year; and
    - The offers will be ranked according to the revenue they generate for the Project.

- In the event that the first campaign does not lead to the allocation of the entire capacity and as long as there is still unallocated capacity, successive annual campaigns, carried out no later than 3 months before the end of year N for the capacity remaining available from year N+1, will be organized according to the same rules as the first campaign.

- In the event that unallocated capacity remains at the end of an annual campaign carried out in year N, the capacity for year N+1 will be offered to current capacity holders and then, where appropriate, to the market through an open and non-discriminatory call for tenders.

64. TotalEnergies' entities will not be able to participate in the marketing process of the capacity beyond the 50% of capacities held under this exemption request unless unallocated capacity remains at the end of the first campaign. In such a circumstance, a TotalEnergies entity wishing to be allocated capacity will not be authorized to offer a premium.

65. In order to avoid any risk of capacity retention, the service contract concluded with the various capacity holders will contain a clause requiring them to include a mechanism for the release of the capacity they do not plan to use on the market. The terms and conditions of this return to the market are described in Section 2.7.2.

1.5. Reminder of the European and French legal context in which the request for exemption is made.

1.5.1. The European context.

1.5.1.1. The 2009 gas directive.

66. The possibility of a derogation from the regulation provided for in Article 36 of the Directive is subject to the satisfaction of five cumulative criteria:

(i) the investment must enhance competition in gas supply and improve security of supply;

(ii) the level of risk associated with the investment is such that the investment would not be made if an exemption were not granted;

(iii) the infrastructure must belong to a natural or legal entity that is distinct, at least in terms of legal form, from the managers of the systems within which it will be built;

(iv) access fees are collected from the relevant users of the infrastructure;

(v) the exemption must not prejudice competition on the relevant markets that are likely to be affected by the investment nor the proper operation of the domestic natural gas market, nor the efficient operation of the associated regulated networks, nor the security of natural gas supply in the EU.

67. The Commission staff working paper of May 6, 2009, *related to Article 22 of Directive 2003/55/EC* [new gas infrastructure] *concerning common rules for the internal market in natural gas and Article*

7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity indicates how these criteria should be implemented.

68. This document remains relevant insofar as the text of Article 36 of Directive 2009/73/EC (amended by Directive 2019-692 of April 17, 2019) has adopted, without modification, that of Article 22 of Directive 2003/55/EC referred to in the European Commission's document.

1.5.1.2. Applications for exemption granted to date in the EU.

69. To date, several onshore LNG terminals and FSRU projects have been granted full and partial exemptions under Article 36's procedure. Other decisions have recently been adopted but are not yet published.

These exemptions range from 5 to 25 years. These total and partial exemptions have all been granted by the European Commission and form relevant precedents for the present application for exemption of the Le Havre FSRU.

Country	Terminal	Exemption year	Exempted capacity	Exemption duration	Type of exemption
Netherlands	**EemsEnergy Terminal BV (FSRU)**	2022	100% 10 bcm	5 years	Full
Germany	**Hanseatic Energy Hub GmbH LNG Terminal**	2022	100% 13.3 bcm	20 years	Full
France	**Dunkirk LNG Terminal – Review**	Decision not available or not yet adopted by the European Commission.			
Germany	**German LNG Terminal (Brunsbüttel)**	2021	100% 8 bcm	25 years	Full
United Kingdom	**South Hook LNG Terminal – Extension**	2020	100% 5.3 bcm	25 years	Full
Greece	**Alexandroupolis Independant Gas System LNG (FSRU)**	2020	100% 5.5 bcm	- 15 years with exemption to third-party access and exempted tariffs - 10 years with third party access and exempted tariffs	Full
United Kingdom	**Grain LNG Terminal – Extension (3)**	2013	100% Segment A: 3.7 bcm Segment B: 2.6 bcm Segment C: 2.0 bcm	Segment A: 22 years Segment B: 20 years Segment C: 13 years	Full
Italy	**Porto Empedocle LNG Terminal**	Final decision not available (2012).			
Ireland	**Shannon LNG Terminal**	2010	100% 4 bcm	20 years	Full
France	**Dunkirk LNG Terminal**	2010	100% 13 bcm	20 years	Full
Netherlands	**Eemshaven LNG Terminal BV**	2009	100% 12 bcm	20 years	Full
Italy	**OLT Offshore LNG Toscana (Livorno LNG Terminal) (FSRU)**	Withdrawal of the exemption granted (2009) in 2015, at the operator's request. Now regulated.			

Netherlands	**LionGas LNG Terminal**	Decision available in Dutch only (2007).			
Netherlands	**Gate Terminal BV**	2007	100% 12 bcm	20 years	Full
United Kingdom	**Grain LNG Terminal – Extension (2)**	2007	100% 7.1 bcm	19 years	Full
United Kingdom	**Dragon LNG Terminal**	2005	100% 6 bcm	20 years	Full
United Kingdom	**South Hook LNG Terminal**	2005	100% 10.5 bcm	25 years	Full
United Kingdom	**Grain LNG Terminal** **Grain LNG Terminal – Extension (1)**	2005	100% 4.5 bcm (initial) + 10 bcm (additional)	20 years (initial) 25 years (additional)	Full
Italy	**Brindisi LNG Terminal**	Decision not available (2005). Project suspended in 2007.			
Italy	**Adriatic LNG (Rovigo)**	2005	8 bcm: - 20% of capacity with third-party access (and exempted tariffs) (1.6 bcm); and - 80% of capacity with third party access exemption (and tariff exemption) (6.4 bcm)	25 years	Partial

Table 2: Requests for exemption granted to date by the European Commission[8].

1.5.2. The national framework.

1.5.2.1. The provisions of the French Energy Code.

70. The exemption procedure provided for by the Directive has been transposed into domestic law in Articles L. 452-5, L. 452-6, L. 111-109, and R. 111-43 to R. 111-51 of the Energy Code.

1.5.2.2. The provisions of the Purchasing Power Law.

71. The Purchasing Power Law includes provisions relating to the security of gas supply and the regime applicable to the operation of an FSRU (Article 29).

72. Article 29 I of the Purchasing Power Law allows the Minister in charge of energy, if necessary, to increase the national LNG processing capacity in order to ensure the supply security, and to designate an FSRU by decree to submit it to the regime provided for by this provision. This designation entails an obligation for the FSRU operator to keep it in operation. The decree sets the date of the FSRU commercial commissioning and may set processing capacity (regasification capacity) to be achieved.

73. The FSRU operator is required to develop an annual investment program, which it must submit to the French Energy Regulatory Commission (the "**CRE**") for approval. The CRE ensures that the investments necessary for the proper operation of the FSRU are made (maintenance or renewal of installations and equipment).

[8] Public data.

74. The exemption decision provided for in Article L. 111-109 of the Energy Code should include the rules and mechanisms applicable to the management and allocation of FSRU capacities, defined by the CRE.

75. Article 30 of the Purchasing Power Law also provides for procedural derogations specific to the Le Havre FSRU project in order to accelerate the implementation of the Project[9].

76. These procedural derogations are valid:

- for the execution of the Project; and
- until January 1, 2025 only; and
- for the construction of a natural gas transmission pipeline less than 5 kilometers in length and its associated installations.

77. The duration of the Le Havre FSRU's operating permit may not exceed five years.

[9] See also in that respect Decree No. 2022-1275 of September 29, 2022, *concerning the legal regime applicable to the litigation relating to decisions concerning the floating LNG terminal project in the district of Grand Port fluvio-maritime de l'axe Seine (Le Havre site).*

Part 2. Assessment of the fulfilment of each of the conditions required for exemption in the context of the Project.

2.1. The structure of the demonstration.

2.1.1. Analysis of the fulfilment of the conditions for exemption.

78. The present file demonstrates the satisfaction of the five cumulative criteria of Article 36 of the Directive.

2.1.2. The organization of the demonstration.

79. Article 36 of the Directive sets out five cumulative criteria to be met, ordered from a) to e) (see Section 1.5.1.1.).

80. Criterion a) brings together two distinct ideas, namely improving the competition in gas supply on the one hand and improving the supply security on the other hand.

81. These two ideas are presented here as criterion a)1) and criterion a)2), respectively.

82. Similarly, criterion e) includes two distinct ideas, namely, non-interference with the competition and the proper functioning of the domestic gas market, on the one hand, and non-interference with the functioning of the regulated network to which the infrastructure is connected, on the other hand.

83. These two ideas are presented here as criteria e)1) and e)2), respectively.

84. The satisfaction of criteria a) to e) of the Directive is therefore presented by the analysis of seven successive criteria: a)1), a)2), b), c), d), e)1) and e)2).

2.2. Compliance with criterion a)1): the investment will enhance competition in gas supply.

85. The regulatory framework requires two cumulative conditions relating to competition: the investment must improve competition in the supply of gas, and it must not negatively impact competition nor the proper functioning of the domestic gas market. The application file must, therefore, examine the positive or negative, direct or indirect, impact of the commissioning of the Le Havre FSRU either on the relevant gas market(s) or on the upstream and downstream markets of the LNG value chain. Schematically, the competitive analysis consists of examining, in concentric circles starting from the relevant market, the gas markets that are affected by the commissioning of the FSRU.

86. The definition of the relevant market is framed by the principles of competition legislation, as clarified by precedents in case law and in the decision-making practice of regulatory and competition

authorities. The relevant market, in terms of both product and geography, is likely to evolve over time. In addition, the analysis will have to consider the limited operating time of the Le Havre FSRU.

87. By analogy with the practices observed in the context of merger control, the competitive analysis for the purposes of this case does not require a conclusive assessment regarding the relevant market.

2.2.1. Analysis of the effects on the relevant markets directly associated with Article 36 of the Directive.

88. In this case, insofar as the purpose of the exemption is to allow TEGPL, as a future user of 50% of the FSRU's capacity, to import LNG with the objective of re-gasifying it and supplying the associated territory with natural gas, the relevant market directly affected by the request for exemption associated with Article 36 is therefore the wholesale gas market, conceived by the European Commission, in its twofold dimension, as:

- the upstream wholesale market in which gas suppliers source wholesale gas from producers with a view to subsequent resale on the trading market (downstream wholesale market) or on the retail supply markets; and

- the downstream wholesale market where suppliers (who source wholesale gas from the upstream wholesale market) sell wholesale gas to other traders or resellers[10].

2.2.1.1. Upstream wholesale gas market.

- Definition of the relevant market.

89. In the past, the European Commission considered it relevant to regard the existence of an upstream wholesale market for natural gas, in which producers sell large quantities of gas to importers and traders through long-term supply contracts for subsequent resale[11].

90. With regard to the geographic dimension of this market, the European Commission, while leaving the question open, considered that this market could, from the demand side, include the European Economic Area (EEA), Algeria and Russia, but it did not rule out the possibility that, from the supply side, the geographic dimension might be more restricted (and limited to certain areas more restricted than the EEA, or even to a national territory), due to technical constraints (limited interconnection infrastructures, etc.)[12].

91. In this case, the LNG that will be imported and received via the Le Havre FSRU will ultimately only supply the relevant territories (gas markets neighboring France). The gas unloaded by the Le Havre FSRU will therefore not differ from the other sources of gas supplying the territories in question.

[10] As reference, for example, the M.7936 - *Petrol/Geoplin* decision of March 10, 2017, paragraph 17.
[11] As reference, for example, the M.9175 - *Total/Chevron Denmark* decision of March 7, 2019, paragraph 23.
[12] As reference, for example, the M.9175 - *Total/Chevron Denmark* decision of March 7, 2019, paragraph 26.

92. Therefore, in terms of product, the relevant market directly concerned in the present case, within the meaning of Article 36, is the upstream wholesale market for natural gas, thus including the supply of gas in the form of LNG.

93. From a geographic point of view, this market must be defined as being wider than the French territory alone and encompass a market zone including the main markets whose gas networks are directly or indirectly interconnected with the French gas transmission grid, namely Belgium, the Netherlands, Germany, Italy (via Switzerland) and Spain.

94. Indeed, as illustrated in *Figure* below, by exporting large quantities of gas to Belgium and Italy, for example, or by limiting its imports significantly, as is the case with Germany, the functioning of the French gas market after the war in Ukraine contributes directly to the supply/demand balance of the Benelux, German[13] and Italian markets. In addition, the Spanish market contributes directly to the balance of the French market by exporting gas at the Pirineos interconnection point, which contributes overall to the supply/demand balance of all the countries mentioned above.

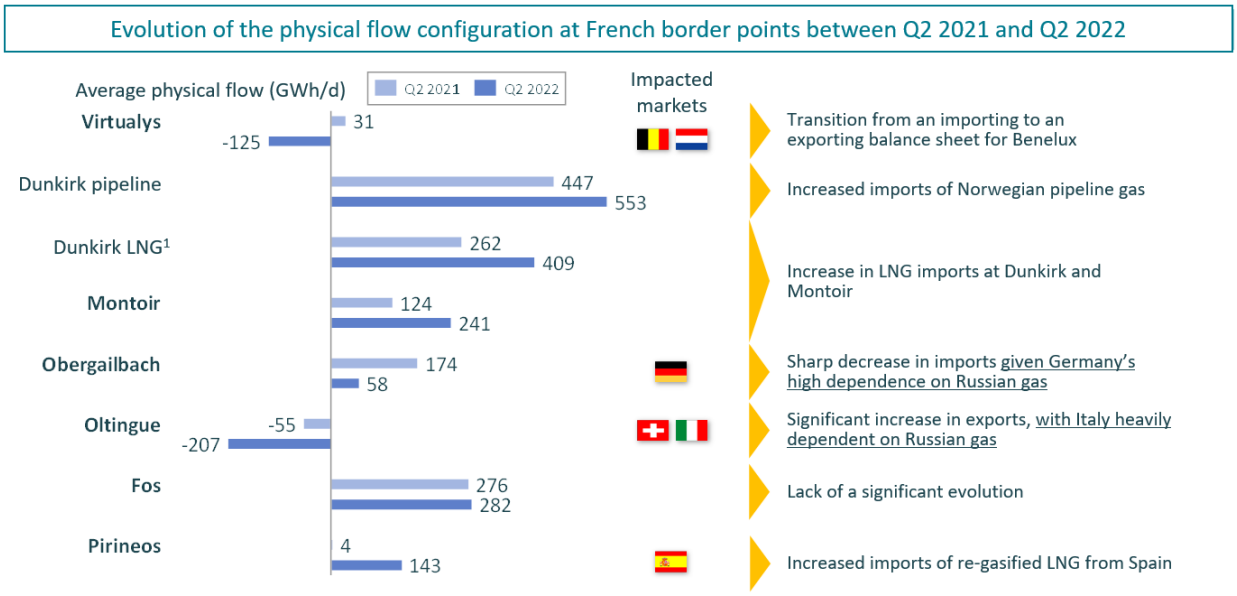

Figure: Analysis of the evolution of gas and LNG flows at import and interconnection points between the French networks and the main neighboring markets.

95. The *Figure* above shows that gas supplies (including LNG) in France contribute directly to the supply/demand balance over a wider territory than France alone. The supply/demand balance is therefore formed at least in the geographical area made up of the French, Belgian, Dutch, German, Italian and Spanish territories, in which France plays a pivotal role.

[13] The public consultation launched by the CRE on September 15, 2022, announcing the establishment of 100 GWh/d of capacity from France to Germany, reinforces the argument of a Western European market integrating, at least, these countries.

96. The United Kingdom is not included in the analysis as British authorities have recently stated that they would interrupt exports to continental Europe in the event of supply difficulties on the British market. It would therefore be irrelevant to include the United Kingdom in the scope of the markets on which the supply/demand balance involving the French market is based.

97. Moreover, as the United Kingdom is no longer part of the EU, it would not be affected if a sharp drop in supply led to the activation of solidarity and cooperation mechanisms to guarantee the security of natural gas supply[14] between EU Member States. The deterioration of supply conditions in Germany linked in particular to the explosions observed in September 2022 on the Nord Stream 1 and Nord Stream 2 pipelines could lead to the activation of such mechanisms (an example measure could be to limit or stop the consumption of certain sites in neighboring countries so as to reduce the gas flow from Germany or increase the gas flow to Germany).

98. Under these conditions, the relevant market for the purposes of the competitive analysis is therefore the upstream wholesale gas market covering at least France, Belgium, the Netherlands, Germany, Italy and Spain.

➢ <u>Competitive analysis.</u>

- Analysis of the evolution of TotalEnergies' market share on the upstream wholesale market over the period when the FSRU is made available in Le Havre.

99. The objective of the following analysis is to estimate TotalEnergies' market share on the relevant upstream wholesale market over the period 2023 – 2028, and to assess the impact of TEGPL's subscription of 50% of the capacity of the Le Havre FSRU on this market share under three scenarios:

– A reference scenario, which includes all the current technical capacities on the Western European upstream wholesale market, without considering new LNG terminals, new FSRUs and planned extensions of existing terminals.

– A first alternative scenario, "scenario 2", leading to an overestimation of TotalEnergies' market share. This scenario is limited to the allocated capacity on the Western European upstream wholesale market over the period 2023 – 2028, without considering new LNG terminals, new FSRUs or planned extensions of existing terminals. In addition, this scenario artificially limits the regasification capacity of the Spanish terminals to the technical capacity of the Pirineos interconnection point in the Spain to France direction, in order to take the existing capacity congestion at the French-Spanish border into account. Furthermore, this scenario assumes that the 50% of the capacity of the FSRU not booked by TEGPL is not allocated.

– A second alternative scenario, "Scenario 3", which, similarly to the reference scenario, considers all current technical capacities, including projects for new LNG terminals, new FSRUs and planned extensions of existing terminals (see Appendix 2).

[14] Regulation (EU) 2017/1938 of the European Parliament and of the Council of October 25, 2017, *concerning measures to safeguard security of natural gas supply and repealing Regulation (EU) No 994/2010*. In addition, a solidarity agreement between France and Germany was made on September 5, 2022.

100. The methodology for calculating all the technical and subscribed capacities on the Western European upstream wholesale market over the period 2023 – 2028 is outlined in Appendix 3.

- **Analysis of the reference scenario.**

101. As exemplified by the data provided by TELSF, TotalEnergies' market share in the Western European upstream wholesale market regarding technical import capacity is very limited, ranging from [redacted] over the period 2023 – 2028, when compared to the total technical gas import capacity (including LNG) currently available in the Western European market.

102. The Le Havre FSRU would only have a minor impact on TotalEnergies' competitive position, causing its market share to fluctuate between [redacted] over the considered period.

- **Analysis of the first alternative scenario: scenario 2.**

103. Taking into account the import capacity allocated to all market players over the 2023 – 2028 period and making the deliberately conservative assumption of a drastic limitation of the Spanish regasification capacity to 225 GWh/d (corresponding to the transmission capacity at the Pirineos[15] point between Spain and France), TotalEnergies' market share (without considering the Le Havre FSRU), which is significantly overestimated in this scenario, remains below [redacted] over the period 2023 – 2028.

104. The data provided by TELSF also demonstrates that this market share, which is still significantly overestimated due to the methodology used, would not increase substantially because of the allocation of new capacity in the Le Havre FSRU, which fluctuates between [redacted] and [redacted] over the considered period.

105. In this respect, it should be noted that scenario 2 leads to an overestimation of TotalEnergies' market share on the Western European import capacity market for three reasons:

- firstly, because of the particularly low assumption made regarding capacity allocations in the Spanish terminals (the assumption limits Spanish LNG import capacity to 225 GWh/d, corresponding to the transport capacity of Pirineos, when this regasification capacity can reach 1,970 GWh/d); and

- in addition, because of the decreasing trend in allocations made to market players over the next few years, a trend which does not necessarily reflect the reality of actual future allocations, some of which are made shortly before the period in which the capacity is utilized.

- Finally, the conservative assumption taken is that only 50% of the FSRU capacity is allocated.

[15] The transmission capacity at the Pirineos point in the Spain to France direction was recently increased to a maximum of 265 GWh/d, including 40 GWh/d of interruptible capacity. In order not to create underestimation bias in TotalEnergies' market share, the capacity used for the analysis corresponds to the historical capacity of Pirineos, which is limited to 225 GWh/d.

- **Analysis of the second alternative scenario: scenario 3.**

106. When considering the new onshore LNG terminals and FSRU projects that are currently being installed in the relevant market, TotalEnergies' market share, without taking the Le Havre FSRU into account, is between [redacted] over the period 2023 – 2028, and between [redacted] when considering the FSRU. Insofar as it cannot be guaranteed that all projects related to new LNG terminals, FSRUs and extensions of existing terminals will be completed, TotalEnergies' market share assessed in this scenario is rather a lower limit of the evaluation.

107. Again, in such a scenario, TotalEnergies' market share will not significantly increase due to the allocation of new capacities in the Le Havre FSRU.

108. Overall, it appears that upon commissioning of the Project, TotalEnergies' market share on the relevant upstream wholesale market will remain limited and, in any event, below 15%, even in scenario 2, leading to a substantial overestimation of its market share.

109. In the light of the market share estimates provided, it can be ruled out that TotalEnergies holds a dominant position or is a significant market power able to restrict competition on the upstream wholesale gas market because of capacity allocations from the Le Havre FSRU.

- Analysis of the impact of the 50% capacity subscription by TEGPL on the level of concentration of the upstream wholesale gas market.

110. As a preliminary point, it should be emphasized that the impact on market concentration stemming from the Le Havre FSRU must be analyzed in relation to the unprecedented market situation in which this Project is contextualized. Indeed, the Le Havre FSRU is intended to secure the supply conditions of Western European market by creating additional import capacity to be used as a partial substitute for reductions in Russian gas supply volumes that have already been observed and that are likely to occur in the future (high probability). These risks have recently materialized. Thus, on July 25, 2022, Gazprom announced that it would reduce the physical flow of the Nord Stream 1 pipeline to 20% of its capacity as of July 27, 2022, for reasons considered to be of a political nature by the German government. In addition, deliveries from Nord Stream 1 have been interrupted since September 2, 2022, even though they were supposed to resume after a three-day maintenance-related stoppage. Afterwards, on September 27, 2022, significant damage to the Nord Stream 1 and 2 gas pipelines was announced, which suggests that they will not be put back into operation in the short or medium term.

111. The estimate of the variation in market concentration attributable to the Le Havre FSRU and its 100% exemption with TEGPL's subscription of 50% capacity cannot therefore be made without taking into account the fact that the additional import capacity that it would bring to the Western European market must be compared with a reduction, partly ongoing and already materialized, and partly in the future (high risk of reduction), in Russian gas import capacity which is significantly greater than the capacity of the Le Havre FSRU.

112. These assumptions were, therefore, used to calculate the change in the Herfindahl-Hirschman Index ("**HHI**")[16] of the upstream wholesale market.

113. The analysis of the impact of allocating new capacity in the Le Havre FSRU is based on the reference scenario which takes into account the technical capacity of the upstream wholesale market.

114. The analysis that was performed makes it possible to assess the impact of the allocation of new capacity in the Le Havre FSRU on the respective market shares of TotalEnergies and Gazprom, as well as to evaluate the effects of the variation of the HHI index on the relevant market.

115. TotalEnergies' and Gazprom's contributions to the HHI of the relevant upstream wholesale market are quantified by comparing the calculated HHIs in each of the following scenarios:

- On the one hand, the scenario "Without the Le Havre FSRU", which encompasses all technical capacities currently existing on the Western European upstream wholesale market, without including the potential future capacities of the Le Havre FSRU, was used to estimate TotalEnergies' market share.

  In this scenario, assuming a continuation of Russian gas supply and therefore a stability of gas import capacity allocated to Gazprom or import gas intended to be delivered by Gazprom, it appears that Gazprom's theoretical market share in the considered upstream gas wholesale market is much higher than that of TotalEnergies.

- On the other hand, the scenario "With the Le Havre FSRU", which includes all current technical capacities on the Western European upstream wholesale market, including an additional capacity of 150 GWh/d (corresponding to the average annual delivery capacity of the Le Havre Project), of which 50% (75 GWh/d) is attributed to TEGPL, was used to assess its market share.

  This additional capacity allocated to TotalEnergies on the upstream wholesale market, intended to compensate for the reduction in gas volume imported from Russia and part of the at least equivalent reduction in volume initially imported by Gazprom, has thus been deducted from the capacity allocated to Gazprom in order to calculate its contribution to the variation in the HHI of the upstream wholesale market.

116. As shown by the data provided by TELSF, the Le Havre FSRU and its 50% subscription by TEGPL, combined with a corresponding decrease in Gazprom's market share, leads to a decrease of between [redacted] and [redacted] in the market's HHI, thus demonstrating the positive effect of the Le Havre FSRU, as it leads to a decrease in the concentration of the upstream wholesale market.

117. The Le Havre FSRU's impact on the contribution of TotalEnergies' share to the upstream wholesale market's HHI in a scenario without the replacement of Gazprom's market share would be limited. Thus, even in a scenario where the downward impact of Gazprom's market share decline on the HHI

[16]The HHI index is a criterion for evaluating the concentration of a market. It is the result of the sum of the squared market shares of all players in the analyzed market. The higher the coefficient is, the more concentrated a market is; conversely, the lower the coefficient is, the more fragmented the market is.

is not considered, the Le Havre FSRU would have only a negligible impact on the upstream wholesale market concentration.

118. If the same analysis of the variations in HHI index were performed under scenarios 2 and 3, the impact would be similar, with a decrease in the sum of the cumulative TotalEnergies' and Gazprom's contributions to the HHI, thus illustrating a decrease in market concentration for all three scenarios.

119. The Le Havre FSRU project will, as a result, improve the competitive situation on the upstream wholesale market.

120. Moreover, investment in the Le Havre FSRU will in no way lead to saturation or congestion of gas imports in the area. This is because, on the one hand, 50% of the FSRU's capacity will be accessible to third parties wishing to supply the wholesale market and, on the other hand, extensions of existing terminals and several new FSRU or land terminal projects are underway in other countries within the relevant market. As a result, the Le Havre FSRU Project will not have any exclusionary effect on other players wishing to supply the wholesale market.

2.2.1.2. Downstream wholesale gas market.

- Definition of the relevant market.

121. In its decision-making practice, the European Commission has defined the downstream wholesale natural gas market as including sales by suppliers (sourcing upstream gas from producers) to other traders or resellers.

122. Within the wholesale market, the European Commission has also considered, on several occasions, a market for trading on hubs, distinct from the supply to resellers[17].

123. A gas trading hub is a marketplace that provides services to facilitate trade between market participants. In essence, a hub facilitates gas trading between buyers and sellers and enables the various gas players on the market to find sufficient supply volumes in the short term or to sell excess capacity.

124. Within the trading market, the European Commission, while leaving the question open, has also questioned whether gas trading carried out over the counter ("**OTC"**) and on organized markets (exchanges) belong to the same market or whether they constitute separate markets[18]. In its decision *Total / Chevron Denmark*, the European Commission (without giving a definitive ruling) noted that these two forms of trading could belong to the same market.

125. From a geographic point of view, the European Commission, while leaving the question open, has considered that this market could be national in scope. In certain decisions, however, the Commission has adopted a broader geographic definition, including neighboring hubs located

[17] M. 5585 *Centrica / Venture Production*, paragraph 19; M. 4180 *GDF / Suez*, paragraphs 70-72.
[18] M.9175 *Total/Chevron Denmark*, paragraph 40.

outside the national territory[19], insofar as traders can easily use these neighboring hubs and that the prices and types of contracts available at these different hubs are similar.

126. In this case, it should be noted that once re-gasified at the Le Havre FSRU, the gas injected into the network will be sold by TEGPL on the French hub, namely the gas exchange point ("**PEG"**)[20], or on the other Western European hubs (e.g., TTF, THE, ZTP, PSV or PVB), which constitute the relevant downstream wholesale market.

127. Gas is traded on the European hubs both on organized markets (exchanges), such as the *Powernext Gas* exchange which operates on the French market (PEG), or over the counter (OTC) where different types of contracts are negotiated and traded (spot contracts, forward contracts, futures contracts). In accordance with the European Commission's decision-making practice described above[21], it can be considered that in the present case, these two types of exchanges constitute a single market, given their substitutability in terms of prices and types of contracts exchanged and the fact that players can use these two types of exchanges without distinction.

128. From a geographic point of view, it should be emphasized that the transactions carried out on the PEG have, at a minimum, an impact on the entire Western European downstream wholesale market, including the various hubs (PEG, ZTP, TTF, THE, PSV, PVB) on which the gas supply/demand balance is formed.

129. Indeed, the *Figure* below highlights the strong correlation (with correlation coefficients equal to or close to 0.95) between gas prices on the French hub (PEG) and the prices on the main hubs in neighboring countries (e.g., TTF for the Netherlands, THE for Germany, PSV for Italy and PVB for Spain). These correlations confirm the existence of a Western European downstream wholesale market that encompass the markets considered above and on which a global supply/demand balance is formed.

[19] For example, in its decision M.9175 *Total/Chevron Denmark*, the Commission considered that the geographic market was wider than the Danish ETF (Exchange Transfer Facility) hub, and that it also included other European hubs (such as TTF in the Netherlands, Gaspool and NCG in Germany).

[20] In France, financial transactions on the wholesale gas market take place on a single exchange point, the Trading Region France ("**TRF**"), where gas volumes are bought and sold, with a view to their distribution throughout the country via the two gas transmission system operators (Teréga and GRTgaz). A single hub or virtual gas exchange point (the PEG) concentrates gas purchases and sales for the entire TRF.

[21] Refer, in particular, to the M.9175 *Total/Chevron Denmark* decision mentioned above.

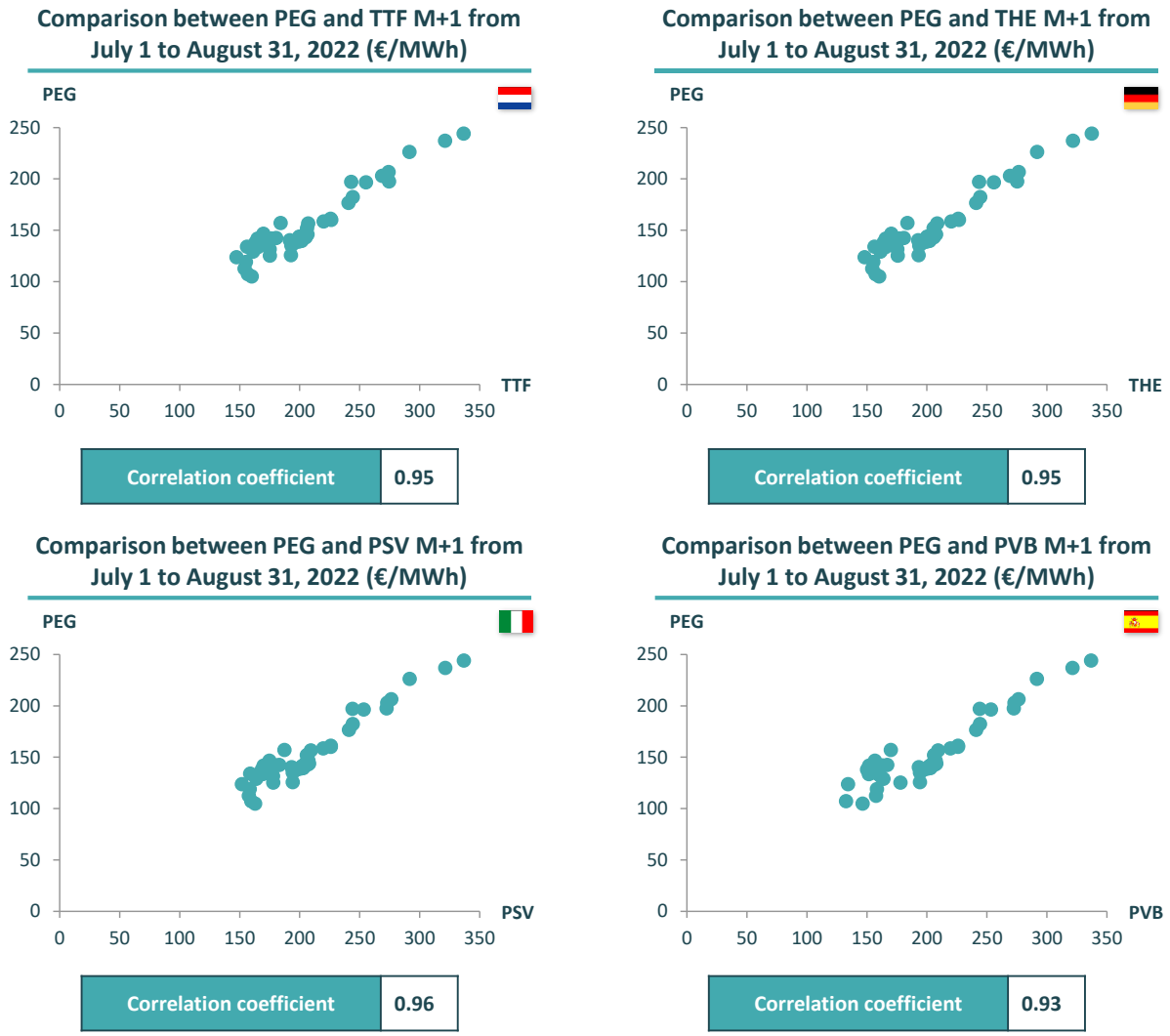

Figure: Comparison between M+1 PEG prices and M+1 TTF, THE, PSV and PVB prices from July 1 to August 31, 2022.

130. In addition, the transactions carried out on the French, Belgian, Dutch, German, Italian and Spanish hubs are largely mainly based on the implementation of framework contracts known as "EFET" established by the *European Federation of Energy Traders*. These elements reinforce and confirm the relevance of the scope of the market used for the analysis.

131. In view of the above, it is therefore possible to consider, for the purposes of the analysis, the existence of the gas trading market (all types of exchanges combined) encompassing all hubs of the Western European markets mentioned above: France (PEG), Belgium (ZTP), the Netherlands (TTF), Germany (THE), Italy (PSV) and Spain (PVB).

➢ Competitive analysis.

- Analysis of TotalEnergies' market share on the downstream wholesale market.

132. The investment will improve competition in the relevant market and will have no discernible effect on the degree of concentration nor on the position of TotalEnergies in the relevant markets.

133. First of all, insofar as it will make it possible to increase the volume of gas delivered to the PEG and other European hubs, the Le Havre FSRU project will limit the deterioration of the supply volume on the downstream wholesale gas market (itself a result of the deterioration of the supply volume on the upstream wholesale market) and will thus, in the context of a market under pressure, improve the depth and liquidity of the downstream wholesale market.

134. In this market, it should also be noted that TotalEnergies' current market share appears limited and will not increase significantly due to the allocation of new capacity in the Le Havre FSRU.

135. The data provided by TELSF shows that TotalEnergies' current market share in the downstream wholesale gas market appears limited and does not exceed 6% in any case.

136. In this market, TotalEnergies is a player among many other important and renowned players, including, for example: Shell, ENI, RWE, Uniper, EDF Trading, ENGIE, BP, Equinor, Vitol. TotalEnergies does not currently hold a dominant position nor a significant market power in the relevant market.

137. Moreover, it appears that TotalEnergies' market share will not increase significantly due to the allocation of new capacity in the Le Havre FSRU (the market share increment being estimated at [redacted], assuming that 50% of the FSRU's capacity, i.e., 25 TWh booked by TEGPL, is indeed used by TotalEnergies).

138. Thus, in the light of the market share estimates above, it can be ruled out that, because of its capacity allocation in the Le Havre FSRU, TotalEnergies is able to hold a dominant position or a significant market power that would enable it to restrict competition in the Western European wholesale gas market.

- Analysis of the impact of the 100% exemption of the FSRU with 50% of the capacity subscribed by TEGPL on the concentration of the downstream wholesale market.

139. To assess the impact of the FSRU on the concentration of the downstream wholesale market, TotalEnergies' contribution to the variation of HHI index linked to the 25 TWh increase in volume traded in the Western European downstream wholesale market was quantified. This volume of 25 TWh corresponds to half of the annual capacity utilization of the Le Havre FSRU.

140. In all considered scenarios, the variation in the HHI index caused by the Le Havre FSRU is negligible. In addition, it is essential to recall that the mobilization of the Le Havre FSRU is part of a Western European gas market that is structurally considered to be in deficit over the period 2023 – 2028. The provision of additional import capacity will therefore limit the deterioration of the market's supply/demand balance

141. In addition, Gazprom is publicly considered as a player no longer acting according to rational market criteria, particularly by the CRE[22]. Under these conditions, the volumes associated with the Le Havre FSRU and sold on the downstream wholesale market could make it possible to replace the volumes of gas imported by Gazprom with the volumes of gas imported by TotalEnergies. Given that TotalEnergies behaves as a rational market player and sells its gas on the French market, as well as on other Western European hubs, such a substitution can only improve the conditions of competition in the downstream wholesale market in question.

142. **The Le Havre FSRU project will thus improve the competitive situation on the downstream wholesale market**.

2.2.2. Analysis of the effects on the other markets indirectly associated with Article 36.

2.2.2.1. Downstream markets for the retail supply of gas.

143. Downstream of the Le Havre FSRU and the directly affected wholesale market, four markets are theoretically relevant in accordance with the European Commission's decision-making practice[23]:

- the gas supply to large industrial customers;
- the gas supply to small industrial and commercial customers;
- the gas supply to domestic consumers;
- the gas supply to combined cycle gas turbine ("**CCGT**"[24]) power plants.

144. These markets are generally considered by the European Commission to be national in scope.

145. TotalEnergies' limited market share in the downstream wholesale market rules out any risk of input foreclosure on the downstream retail supply market**.**

146. Indeed, the European Commission consistently considers that, for input foreclosure to be a concern, the vertically integrated player must have a significant degree of market power in the upstream market. It is only in these circumstances that the player can be expected to have a significant influence on the conditions of competition on the upstream market and thus, also potentially, on prices and supply conditions on the downstream market.

147. In this case TotalEnergies' market share on the downstream wholesale market (located upstream of the retail supply market) remains below 6%. This market share remains well below the 30% threshold outlined by the European Commission, below which the ability for input foreclosure is considered unlikely[25].

148. Any risk of input foreclosure on the downstream retail supply market can therefore be excluded.

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[22] CRE, Monitoring Report 2021, The functioning of the wholesale electricity and natural gas markets, June 2022, pages 39 through 54.

[23] COMP/M.4180 *Gaz de France/Suez*; COMP/M.3868 *Dong/Elsam/Energi*; COMP/M.3440 *EDP/ENI/GDP*; COMP/M.5740 *Gazprom/A2A/JV*; COMP/M.6910 *Gazprom/Wintershall/Target Companies.*

[24] *Combined cycle gas turbine.*

[25] European Commission, *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of player concentration*, 18 October 2008 (2008/C 265/07), Part IV, §25 and 35.

2.2.2.2. Global upstream LNG production and shipping markets.

149. Two upstream markets of the Le Havre FSRU on the value chain are theoretically and indirectly relevant according to Article 36: (i) the global LNG production market and (ii) the global LNG shipping market.

150. In its previous decision-making practice, the European Commission considered the existence of a separate market for LNG liquefaction including at least the liquefaction sites located in the EEA, the US Northeast Coast, the Caribbean, South America and North and West Africa, and potentially also including sites in Southeast Asia and the Middle East.

151. The European Commission has also considered the existence of a global LNG shipping market but has left the question open[26].

152. The FSRU likely to be mobilized in Le Havre is an existing infrastructure that could potentially be deployed elsewhere. Since the LNG production and LNG shipping markets are global in scope, the impact on the LNG production and LNG shipping markets would be much the same whether the FSRU is deployed in Le Havre or somewhere else.

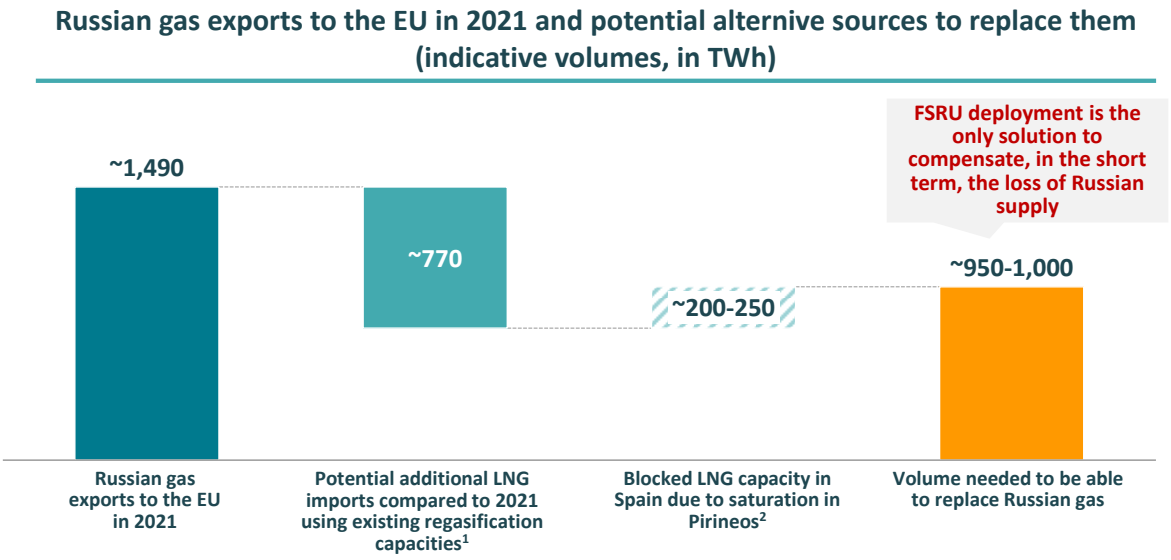
2.3. Compliance with criterion a)2): the investment will improve supply security.

153. The contribution of the investment to the supply security can be assessed through the following three criteria: diversification of supply routes, flexibility (in case of emergency) and infrastructure size.

2.3.1. Forecasts for short-term security of supply due to the war in Ukraine expose France and the EU to a high risk of a supply shortage.

154. The additional import capacity made possible by the Le Havre terminal Project is part of a scenario in which the evolution of the European gas market is structurally in deficit over the period 2023 – 2028.

[26] M.5944 *Osaka/UFG/Infrastructure Arzak/SAGGAS*, paragraphs 30 and 31.



1. With a 90% utilization rate of the regasification terminals; 2. Available LNG capacity coupled with the Algerian pipeline can cover Spanish demand and generate a surplus of 250-300 TWh, yet available export capacity is limited to ~80 TWh/year at Pirineos
Source: EU quarterly gas report Q4-2021, ENTSOG, Emerton analysis

Figure: Additional supply needs to replace Russian gas exports (indicative view).

155. Whether the decrease in Russian pipeline gas imports is deliberate or involuntary, the scenario of a total loss of Russian gas imports to the EU results in a very large deficit of gas supply at the European level. This deficit is likely to be only partially compensated in the short term by the existing regasification terminals.

156. At constant consumption, the uncompensated deficit resulting from a total loss of Russian supplies is in the order of 950 to 1,000 TWh (directional order of magnitude). There would therefore be a need for ~20 FSRUs of the size of the Le Havre FSRU on a European scale (subject to the availability of LNG, etc.).

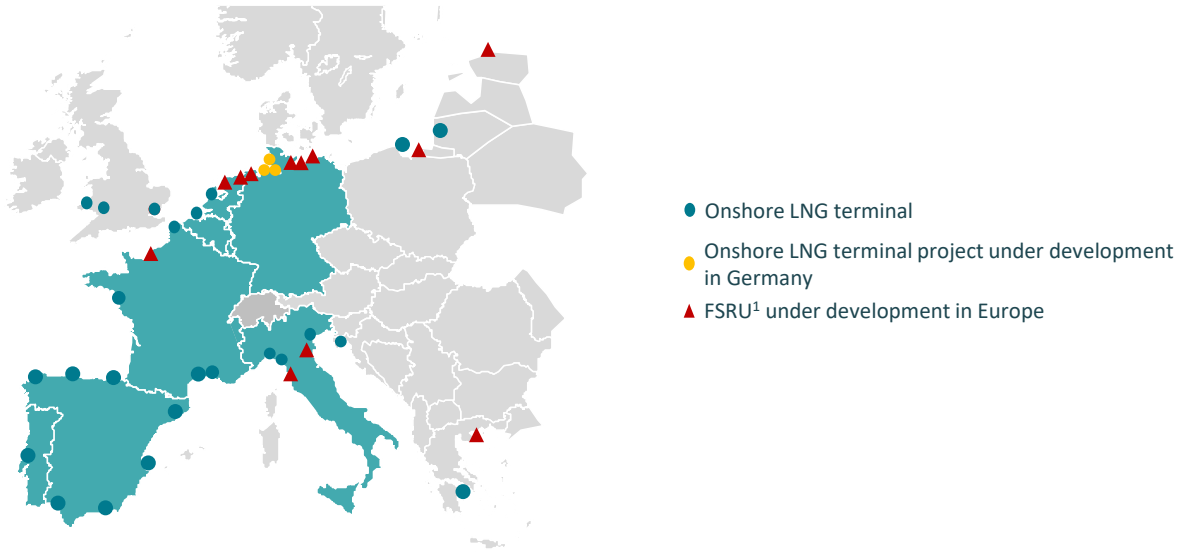


Figure1: Indicative map of regasification terminals and FSRU projects in Europe.

157. Today, more than ten FSRU projects are planned in Europe. These projects are the only possible sources of a significant increase in gas imports in the EU in the next few months or quarters[27].

158. The Le Havre terminal project is therefore part of this framework: it is intended to limit, in a very short timeframe, the current deterioration of the EU's security supply conditions.

159. The impacts of these strong tensions on gas and LNG supply are all the more important on the functioning of the market and its price levels as gas demand is not correlated to price.

160. Despite increased targets to control gas consumption, gas demand is a necessity for many industries, for which reductions in gas consumption and the resulting reductions or even shutdowns of production are decided only as a last resort because of their economic and employment consequences.

161. In addition, gas-fired power generation (CCGT), whose gas consumption is usually correlated with price (as it depends on the clean spark spread) and is a very useful lever for adjusting gas demand, no longer plays this balancing role, given the very high wholesale electricity market prices. As an illustration, the clean spark spread was above €1,500/MWh in Q4 2022 in France at peak hours and around €700/MWh during the base load case (prices as of September 27, 2022).

162. Thus, the Project takes place in a particularly deteriorated gas market context, both from the point of view of constraints on supply, as well as those on demand.

[27] Almost no room for maneuver over the considered time horizon of 2023 – 2028 to significantly increase gas imports by pipeline from Norway, Algeria, Libya, or Azerbaijan.

2.3.2. The contribution of the Le Havre FSRU to supply security is crucial.

163. In line with national and European strategic objectives, the Le Havre regasification terminal Project provides an urgent response to the challenges of supply security and energy sovereignty.

164. The project to install a floating regasification terminal in the port of Le Havre will increase LNG import capacity by ~5 bcm per year on the French and Western European gas markets from September 2023 for a period of 5 years.

165. This project, which was announced by the Prime Minister on June 23, 2022, during a visit to GRTgaz, meets the government's objective of limiting dependence on Russian gas and strengthening the energy sovereignty of France and the EU. It is considered necessary by the authorities, as evidenced by the measures adopted by Parliament on the subject in the Purchasing Power Law (see Section 1.5.2.2.).

166. The Project is fully consistent with the European *REPowerEU* plan, which aims to limit dependence on Russian gas imports by promoting solidarity between member states.

167. The crisis in Ukraine has had a significant impact on gas flows between France and its European neighbors.

168. Significant gas flow transits from France to Belgium (pre-crisis in Ukraine, France imported approximately 50 GWh/d of gas from Belgium via the Virtualys connection; nevertheless, since the crisis, this situation has reversed and it is now Belgium that imports approximately 150 GWh/d of gas from France through this connection[28]) and to Switzerland (up to 50 GWh/d pre-crisis in Ukraine, these flows have now increased to 200 GWh/d), a significant part of which is ultimately destined for Italy.

169. Imports from Germany, transiting through the Obergailbach connection, have strongly decreased and have reached their technical minimum (flow close to 0 GWh/d compared to 200 GWh/d pre-crisis in Ukraine). A capacity of 100 GWh/d was provided to the German market from France during the week of October 10, 2022, at the end of the public consultation launched by the CRE on September 15, 2022.

170. Finally, Spain has six LNG terminals and a total reception capacity well above its market size. This excess capacity could theoretically be used to supply Northern Europe; however, the transportation infrastructure both at the Spanish-French border and in South-Eastern France is not designed to handle volumes equal to the export potential from Spain nor the needs of the Northern European market in the event of disruption of Russian gas supply. The volume of gas exported from Spain to France is limited by the technical capacity of the interconnection point, Pirineos, currently capped at 225 GWh/d.

171. The *Figure* below, shows the gas import capacities that can be mobilized in France before the outbreak of war in Ukraine. The supply-demand balance on French territory is guaranteed, for the most part, by the technical import capacities linked to the LNG terminals and the Dunkirk pipeline

[28] H gas only.

import point, which, together, total 1,860 GWh/d of available import capacity. The remaining part of the available gas and LNG import capacity is provided by the interconnection points between France and its European neighbors (Virtualys with Belgium, Obergailbach with Germany, Oltingue with Switzerland and, finally, Pirineos with Spain). Prior to the outbreak of the war in Ukraine, these flows allowed for the import of approximately ~200 GWh/d (i.e., 250 GWh/d of cumulative imports from Belgium and Germany and 50 GWh/d of exports to Switzerland).

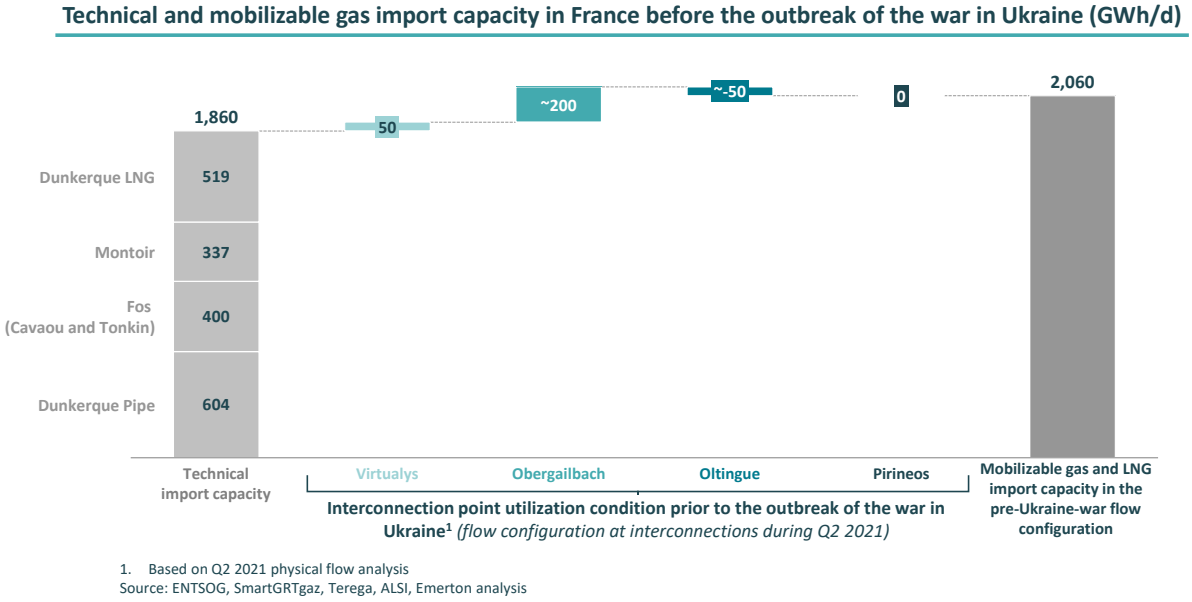


Figure: Comparison of available gas import capacity in France before the outbreak of war in Ukraine.

172. Before the outbreak of the war in Ukraine, mobilizable gas and LNG import capacity in France reached a cumulative total of 2,060 GWh/d as shown in the *Figure* above.

173. The *Figure* below illustrates the disruption of certain flows at the border points described in the sections above and caused by the outbreak of war in Ukraine and its resulting impact on the supply flow of gas from Russia. The inventory of import capacity that can be mobilized in France is very clearly impacted, going from 2,060 GWh/d to 1,735 GWh/d, thus showing a decrease of 325 GWh/d.

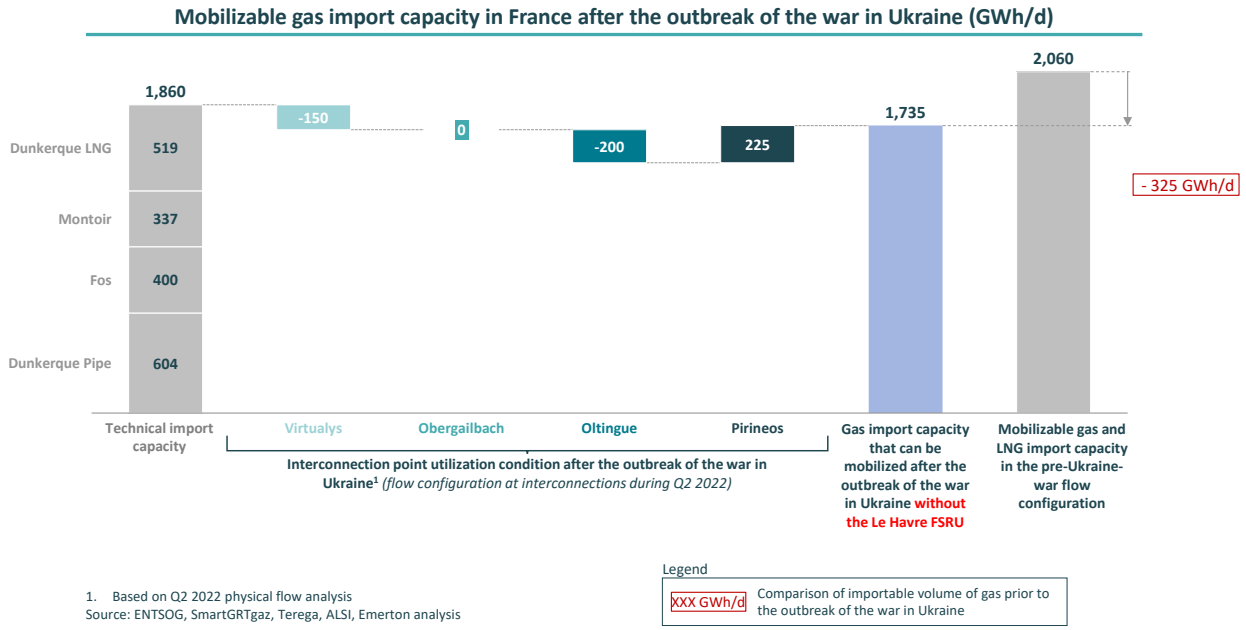


Figure: Comparison of gas import capacity that can be mobilized in France after the outbreak of the war in Ukraine.

174. As shown in the *Figure* above, the current imbalance generated by the change in flow configurations between France and its European neighbors is about 325 GWh/d of lost gas import capacity.

175. It is in the context of France's loss of import capacity which ultimately serves the Western European market, that the Le Havre FSRU project takes place. This project is necessary to swiftly improve the supply security in this area. The additional 150 GWh/d capacity represented by the Le Havre FSRU does not allow to a return to a normal pre-crisis situation, as France would still remain 175 GWh/d in deficit despite the addition of the terminal, as illustrated by the *Figure* below.

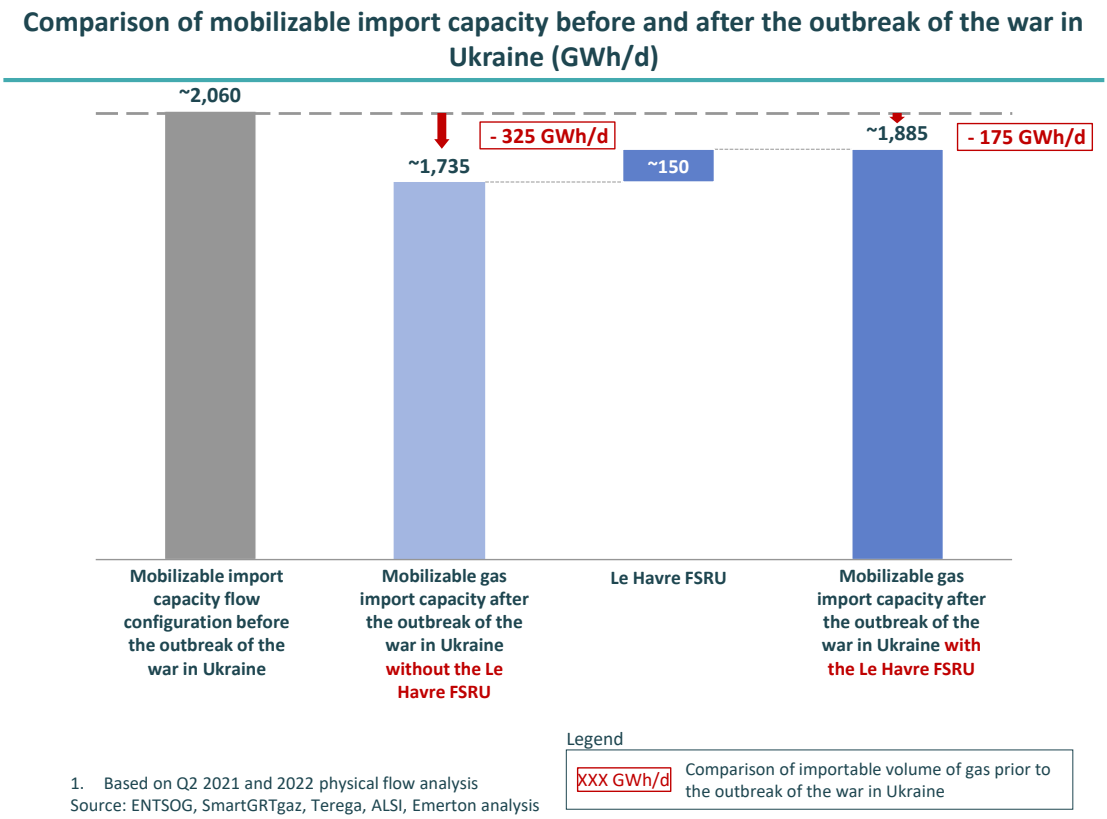


Figure: Comparison of gas import capacity that can be mobilized in France after the outbreak of the war in Ukraine.

2.3.3. Conclusion regarding criterion a)2).

176. The Le Havre FSRU will thus make a significant contribution to improving supply security in France and in the EU.

177. Criterion a)2) is, therefore, satisfied.

2.4. Compliance with criterion b): the level of risk associated with the investment is such that this investment will not be made without an exemption allowing for the subscription of 50% of the FSRU's capacity by TEGPL.

2.4.1. To date, regulation only covers onshore LNG terminals.

178. Upon its entry into service, the Le Havre FSRU will be in competition with other European terminals, both onshore and offshore, which will put pressure on the tariff level and the level of quality and flexibility of the services provided by the Le Havre FSRU.

179. To date, there is no FSRU in France.

180. France only has onshore LNG terminals (Montoir, Dunkirk, Fos Tonkin and Fos Cavaou). Therefore, only one single tariff, per onshore terminal, exists to date.

181. In 2021, the CRE set the ATTM6 tariff, which corresponds to the sixth tariff for LNG terminals[29] and whose objective is to cover the costs of LNG terminal operators for the years 2021 to 2024, i.e., for a period of approximately four years with a tariff evolution clause at mid-term point (April 1, 2023).

182. Pursuant to Article L. 452-1-2 of the French Energy Code, ATTM6 covers the costs incurred by the operators. Each terminal[30] has its own tariff, which takes into account its own cost structure, according to an identical methodology that integrates the forecasted OPEX (net operating expenses, "**CNE**"), the expected return (normative capital expenses, "**CCN**", which includes an average cost of capital set at 4.25%), as well as the balance of the previous year's income and expenses adjustment account ("**CRCP**").

2.4.2. The Purchasing Power Law of August 16, 2022, allows for either the regulation or the exemption of floating terminals.

2.4.2.1. The general framework applicable to the operation of an FSRU, whether regulated or exempted.

183. Article 29 I of the Purchasing Power Law allows the Minister in charge of energy, if necessary, to increase the national LNG processing capacity to ensure the supply security, and to designate an FSRU by decree in order to submit it to the regime provided by said Article.

184. This designation entails an obligation for the operator of the FSRU to maintain it in operation.

185. The decree sets the date of the FSRU commercial commissioning and may set the processing capacity (regasification capacity) to be achieved.

186. Article 29 IV of the Purchasing Power Law provides that the FSRU operator is required to establish an annual investment program that it must submit to the CRE for approval. The CRE ensures that the necessary investments for the proper functioning of the FSRU are made (maintenance or renewal of installations and equipment).

2.4.2.2. The regulated framework is applicable, in principle, to the operation of an FSRU.

187. In accordance with Article 29 V of the Purchasing Power Law, the FSRU tariff is established in a transparent and non-discriminatory manner so as to cover all costs incurred and includes a return on capital invested by the operator if these costs correspond to those of an efficient operator.

188. The gas transmission grid operator pays the FSRU operator a share of the amount of the tariff for the use of the natural gas transmission system (the "**ATRT**") in accordance with the terms and conditions set by the CRE.

[29] CRE decision of January 7, 2021, concerning *the tariff for the use of regulated LNG terminals.*
[30] *Ibidem,* pages 10 and 44.

189. In addition, Article 29 V of the Purchasing Power Law refers to Article L. 111-97 of the French Energy Code, which provides that the CRE shall ensure that third parties have transparent and non-discriminatory access to the capacity and services offered by the FSRU operator.

2.4.2.3. The exempted framework is applicable, by exception, to the operation of an FSRU.

190. Article 29 VII of the Purchasing Power Law allows the operator of an FSRU to benefit from the exemption provided for in Article L. 111-109 of the Energy Code.

191. It specifies that the exemption decision must include the rules and mechanisms applicable to the management and allocation of FSRU capacity, as defined by the CRE (that is to say, the exemptions that are granted: nature, duration, etc.).

192. It is within the framework of this legal provision that the present Exemption Request is made.

193. Article 29 VI of the Purchasing Power Law recalls the incompatibility between the establishment of a regulated tariff and a request for exemption. Indeed, the methods for establishing the tariffs for the use of natural gas transmission grids provided for in Article 29 V of the Purchasing Power Law cannot benefit an operator who has a (partial or total) exemption from third party access.

2.4.3. The regulated regime provided for by the Purchasing Power Law, applicable in principle to the operation of an FSRU, is not compatible with the risks incurred by TELSF in the context of the Le Havre FSRU project, unlike the exempted regime which the Purchasing Power Law also provides for.

194. In its very essence, the application of regulated regime would suppose that the service offer, the technical conditions, the tariff structure, and the tariff levels themselves be defined and published by the CRE.

2.4.3.1. The operational characteristics of the FSRU are poorly suited to the application of a regulated regime.

195. The operational procedures for using the Le Havre FSRU, whether for unloading LNG carriers, storing LNG, or emitting re-gasified LNG onto the network, are constrained.

196. These constraints stem from the design of the Project itself, which is characterized by a limited LNG storage capacity compared to the volumes of LNG usually transported by LNG carriers.

197. This sizing generates interdependent constraints between the operational modalities of LNG unloading (dates of unloading slots) and the profile of daily injections of re-gasified LNG onto the network.

198. These operational constraints are all the more important in case of a large number of FSRU users. Commercializing the entirety of the capacity in a regulated mode would thus greatly limit the operational attractiveness of the Le Havre FSRU. The fact that the Le Havre terminal can structure its commercial and operational offer on the basis of a 50% allocation guarantee constitutes an

important lever for commercial attractiveness, both in terms of pricing and the definition of operational conditions.

2.4.3.2. The existence of loss of financial opportunities does not favor the adoption of a regulated regime for the Le Havre FSRU.

- Loss of opportunity due to the immobilization of the FSRU in Le Havre.

199. The Project involves the mobilization by TELSF of one FSRU from its fleet for a period of 5 years.

200. As explained in Section 1.3.3., in the absence of visibility on the coverage of such costs and on the tariff levels associated with the use of the FSRU, visibility that regulation would not be able to provide, particularly given the strong uncertainties affecting both allocations and the future use of the terminal's capacity, the Project would not be carried out.

201. In a regulated model, the regulated tariff is indeed set on the following principles:

- The CAPEX, which represents a small part of the Project costs, would be remunerated between 3% and 5% on average (decreasing trend: 6.5% for ATTM4, 5.25% for ATTM5 and 4.25% for ATTM6). Such a rate would be largely insufficient for a project like the Le Havre FSRU carried by TELSF, given that it is a temporary infrastructure mobilized in an emergency and for a short period of time and, as such, will only benefit from limited amortization, unlike conventional LNG terminals;

- The OPEX, which represents the largest part of the Project costs due to the FSRU charter costs, are not remunerated (pass-through) but only covered, with uncertainties linked to the importance and unpredictability of the variable costs (see Section 1.3.3.).

202. If TELSF were able to sell its entire regasification capacity under a regulated scheme, at a regulated tariff, its revenue would still be significantly lower than the revenue it would be likely to receive by making the FSRU available to a third party at market price in another geographic area.

203. Although the loss of opportunity exists in both the exempted and regulated models, the exempted model unlike the regulated model, will nevertheless allow TELSF to limit this loss because:

- a significant portion (50%) of the commercial risk will be assumed by TEGPL; and

- the implementation of a model in which 50% of the capacity is booked for a single user and the rest of the capacity will be offered to third parties with a minimum commitment requirement (see Section 2.7.2. and commercialization scheme) will make it possible to optimize the operation of the Le Havre FSRU compared to a regulated model with, as the case may be, a higher number of users.

- Financial risk due to the regulator's lack of commitment on the treatment of charter costs as CAPEX.

204. In a regulated framework, it is uncertain whether the costs of the vessel's charter will be treated as CAPEX, insofar as they are not, strictly speaking, investment costs. Such costs could therefore ultimately be considered by the regulator as OPEX, which would not generate any remuneration beyond the strict coverage of their costs. This qualification uncertainty constitutes a significant risk to the profitability of the Project for the FSRU operator. In addition, this risk which would be removed later on by the regulator, that is to say after the decision to invest in the Project, cannot therefore be assumed by TELSF.

- Financial risk due to exchange rate fluctuations.

205. TELSF will pay its operating costs in euros, with the notable exception of the FSRU charter, which represents a significant portion of operating costs and is denominated and payable in US dollars. In a regulated framework, a depreciation of the euro against the dollar would therefore likely generate very significant differences between the costs of the FSRU as assumed by the operator and the revenue generated by the tariffs, thus threatening the economic balance of TELSF. The tariff exemption allows TELSF to structure the pricing in such a way so as to limit its exposure to evolution of the exchange rate between the euro and the dollar, while ensuring that the commercial attractiveness of the FSRU for its users is preserved.

2.4.3.3. The regulated regime would lead to a deterioration of the commercial attractiveness of the Le Havre FSRU.

206. The commercial attractiveness of the Le Havre Project depends on the characteristics of the terminal itself (logistics and operating costs), as well as the characteristics of the market to which it gives access (liquidity, tariff). Regulation would limit the attractiveness of the Project because of the lack of visibility on the tariff level. As a result, multi-year bookings would be unattractive.

- Business risk due to no-use or under-use of the terminal.

207. Due to the price spreads that have emerged between the French wholesale gas market and the Belgian, Dutch, German and Italian markets, the French wholesale gas market has become significantly less price attractive for LNG market participants. As illustrated in the *Figure* below, the gap between the M+1 price of the PEG and the TTF and THE reached €100/MWh at the end of August 2022.

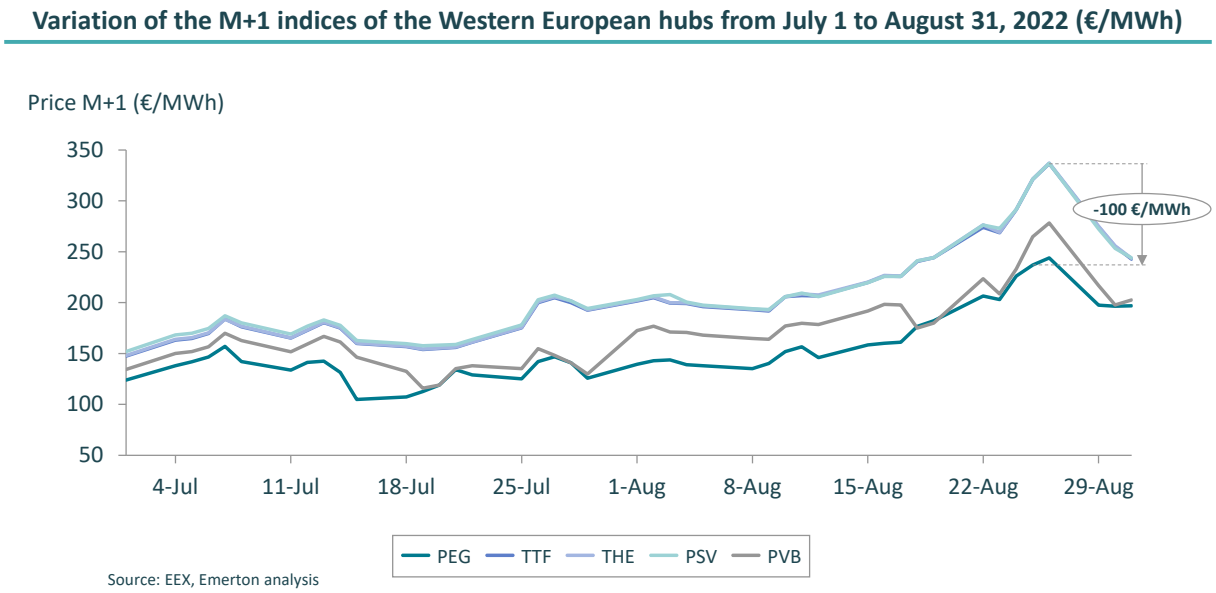


Figure 2: Comparison of price levels in different Western European markets.

- Commercial risk due to a strong lack of visibility on capacity allocations.

208. In a regulated framework, TELSF would be required to make investments and immobilize the FSRU with no visibility on future revenues. Accepting the operation of the FSRU in a regulated framework would be particularly risky as demonstrated above.

TEGPL wishes to book 50% of the capacity of the Le Havre FSRU over a period of 5 years from the date of commercial commissioning and, in return, assumes the commercial risks associated with the booking of this capacity.

2.4.4. Conclusion regarding criterion b).

209. The regulated regime is incompatible with the TELSF project. TELSF would have no industrial and economic interest in committing to a project which, given the competitive pressure and the ability of LNG suppliers to optimize, would expose itself to commercial failure in the absence of guarantees of attractiveness.

210. Thus, without an exemption, the Project will not be carried out.

211. Criterion b) is, therefore, met.

2.5. Compliance with criterion c): the infrastructure will be owned by an entity that is legally distinct from the operators of the system within which it will be built.

2.5.1. TELSF.

212. TELSF, a subsidiary of TotalEnergies, registered with the Registry of the Commercial Court of Nanterre on February 5, 2021 (identified under No. 893 714 329 R.C.S. Nanterre), is intended to be the future operator of the Le Havre terminal.

2.5.2. The distinction with the operator of the public gas gird.

213. As stated in the European Commission's working document of May 6, 2009, it is necessary to demonstrate, through legal autonomy between the network operator and TELSF, that the exempted activity is not financed by the regulated tariff of the network operator's regulated activities.

214. The gas grid operator to which the Le Havre FSRU will be connected is GRTgaz. GRTgaz is a public limited company incorporated on December 11, 2001, registered with the Registry of the Commercial Court of Nanterre and identified under the number 440 117 620 RCS Nanterre.

215. GRTgaz is ~61% owned by Engie, a vertically integrated energy company, ~39% by Société d'Infrastructures Gazière or "SIG" (a company owned by Caisse des Dépôts and CNP, which is, itself, part of the Caisse des Dépôts group), and ~0.5% by the Alto employee fund.

216. GRTgaz SA (n°440 117 620 RCS Nanterre) is legally distinct from TotalEnergies LNG Services France SAS (n° 893 714 329 R.C.S. Nanterre).

217. The absence of a legal link between TELSF and GRTgaz is therefore directly demonstrated.

2.5.3. Conclusion regarding criterion c).

218. It results from these elements that the owner of the terminal, TELSF, is legally distinct from the operator of the public gas network to which it will be connected.

219. Criterion c) is therefore met.

2.6. Compliance with criterion d): a fee will be charged to the users of the infrastructure in question.

220. TELSF will implement a tariff that will allow it to cover all costs related to the provision of the LNG reception, storage and regasification service for the nominal capacity of the FSRU:

- its fixed costs are composed essentially of:
    - the fixed portion of the FSRU rental charter;

  - the reimbursement and remuneration of the Project's investments: wharf fitting, gas equipment, security, engineering and development costs, etc.;
  - fixed operating costs: wharf rent, personnel costs, port services, security-guarding, IT costs, insurance, taxes, service and maintenance contracts, dismantling provisions, etc.

- its variable costs composed essentially of:
  - taxes and duties;
  - the variable portion of the FSRU rental charter;
  - possible costs of CO_2, maintenance of cryogenic conditions on the FSRU, etc.

221. The tariff paid by terminal users, including TEGPL, will be subject to a ship or pay commitment.

It will be estimated annually by TELSF and will be invoiced and paid for on a monthly basis in 1/12 increments.

222. As a result, fees will be effectively collected by TELSF from users of the Le Havre FSRU (TEGPL and third parties). Therefore, criterion d) is met.

2.7. Compliance with criterion e)1): the exemption will not adversely affect competition or the proper functioning of the domestic gas market.

2.7.1. The substitution of Russian gas with LNG import capacity by TELSF can only improve the operating conditions of the domestic market.

223. The Project will enable LNG volumes re-gasified in Le Havre to be offered for sale at PEG (and, potentially, at other European hubs).

224. This proposal will directly contribute to enhancing competition in the downstream wholesale market.

225. In addition, the effects on the concentration of the upstream wholesale market (gas and LNG supply market) in the relevant scope comprising France, Belgium, the Netherlands, Germany, Italy, and Spain, will be beneficial as shown by the analysis previously presented in this document.

2.7.2. The implementation of capacity anti-retention mechanism guarantees that competition will not be affected.

226. TELSF, taking into account the recommendations of the European Commission and the CRE, will set up mechanisms to re-market the unused capacity. The contemplated systems, of *Use-It-Or-Lose-It* ("**UIOLI**") type, will aim at maximizing the use of the Le Havre terminal to enable it to fully play its role as a contributor to the supply security of France and Europe and to help capacity holders get the best value out of their assets.

227. TELSF wishes to allow each subscriber to choose between 2 UIOLI mechanisms, whichever is best suited to each. Both mechanisms will ensure that the primary capacity is not retained without

significantly degrading the value of the allocation, be simple to implement, flexible, and effective, and be well understood by the market and the stakeholders likely to be interested by the proposed service. The detailed operational modalities of the proposed UIOLI mechanisms will be shared with the CRE to ensure that they meet the needs of the market.

- The terms for the implementation of the proposed mechanisms are as follows:

228. UIOLI mechanism No. 1:

- The capacity offered in this framework will be marketed in the form of a package comprising an unloading slot, a quantity of LNG to be unloaded, a quantity of gas to be emitted from the FSRU and an emission profile.

- Within a reasonable period[31] prior to the slot date, the subscriber will offer to the market, via a call for tenders, the sale of the lot described above for the slot that the subscriber does not wish to use.

- The date of the unloading slot, the quantities to be unloaded and issued, and the profile shall be those set forth in the annual or quarterly unloading schedule in effect on the sale date.

- The capacity holder will be allowed to set a positive reserve price for the lot.

229. UIOLI Mechanism No. 2:

- The capacity proposed in this framework will be marketed in the form of a swap where the subscriber will purchase from a third-party player in the LNG ex-ship market at the entrance of the terminal and will resell an equivalent quantity of gas to the same counterparty (minus the volume used in the regasification and transportation process) delivered to the PEG.

- Within a reasonable period[32] prior to the slot date, the subscriber will offer the sale of the swap described above for the slot that the subscriber does not wish to use to the market, via a call for tenders.

- The capacity holder will be allowed to set a positive reserve price for the swap.

- The service contracted by the third-party player through the swap will be, from an operational and commercial point of view, identical to that which would have been obtained by purchasing capacity directly from the terminal operator. In particular, it will be able to deliver at the terminal entrance and to retrieve from the PEG the same quantity of gas, under identical terms and conditions, as if it were using the corresponding regasification capacity directly.

- The proposed mechanism prevents the third party from:

[31] This period of time will be specified at a later date and will be subject to the CRE's assessment.

[32] This period of time will be specified at a later date and will be subject to the CRE's assessment.

  - booking capacity to access the gas transmission grid between the terminal and the PEG;

  - having to establish and manage the commercial and operational relationship with the gas transmission grid operator.

- Ultimately, the difference between the UIOLI No. 2 mechanism and the UIOLI No. 1 mechanism lies in the contractual scheme. In practice, the effects are the same: a third party will be able to access the terminal through a contract with the capacity holder, and the procedures for unloading an LNG tanker by the third party and for the re-delivery of the gas to the PEG will be identical to those that would have been carried out by the Le Havre FSRU in a direct contractual relationship with the third party.

230. The capacity will be put back on the market by the capacity holder according to a transparent and non-discriminatory process, through a call for tenders open to all players likely to be interested in delivering LNG to the terminal. To allow the process of releasing capacity to the market to be fast and efficient, the market players consulted will be qualified beforehand according to objective criteria.

231. As long as a capacity transfer has not been determined for a given slot, the capacity holder may decide to withdraw its offer and use the unloading slot and the corresponding storage and regasification service for its own account.

232. The capacity holder will be required to inform the FSRU operator in real time of the operations undertaken to return unused capacity to the market and their results.

2.8. Compliance with criterion e)2): the exemption does not impair the efficient operation of the regulated system to which the infrastructure is connected.

2.8.1. The Le Havre FSRU will improve the efficiency of GRTgaz's transmission grid.

233. The FSRU will constitute a new gas injection point on the national and European transmission network. It will contribute to the expansion of entry capacity and thus to the improvement of the reliability of the whole system.

234. The CRE notes that beyond the current crisis situation, *"the execution of the project, offering the possibility to quickly connect an FSRU, will keep a long-term insurance value for the French system (for example, if one of the gas entries to the French network were temporarily unavailable)*"[33].

[33] Deliberation of the Energy Regulatory Commission n° 2022-2140 of July 21, 2022 *on the report on the implementation of the 2021 investment program and on the approval of the revised 2022 investment program of GRTgaz and Teréga (transmission)*.

235. The project to establish a connection to accommodate an FSRU on GRTgaz's gas grid in Le Havre was approved by the CRE on July 21, 2022[34].

2.8.2. TELSF makes every effort to optimize the integration of the Le Havre FSRU into the transportation network.

236. TELSF initiated, very early on, exchanges with GRTgaz to allow the latter to determine the best conditions for the connection of the Le Havre FSRU to the GRTgaz gas transmission grid.

237. *"GRTgaz's network* [is] *already sized for* [the Le Havre FSRU]", that is to say, for "*the construction of a 1,400 m² platform including the connection for an FSRU, the reheating, odorization and pressure regulation functions, as well as a DN500 pipeline to the existing network*"[35].

238. In this context, regular steering committees with GRTgaz are held to monitor and coordinate the progress of studies and authorization applications, and to identify potential challenges and "*risks associated with the work identified by the CRE (crossing of the Grand Canal du Havre in particular)*"[36], both on the FSRU side and on the gas grid side. This active coordination is the first element of guarantee for ensuring the safety of the system.

239. TotalEnergies is in regular contact with GRTgaz in relation to the Le Havre FSRU project.

240. An inter-operator agreement (the "**Inter-Operator Agreement**") will be concluded between TELSF and GRTgaz.

241. The purpose of the Inter-Operator Agreement is to set the terms and conditions for flow management, as well as for the proper management of the interface between TELSF and GRTgaz.

2.8.3. Conclusion regarding criterion e)2).

242. The Project will improve the efficiency of the gas transmission grid through increased grid security and resilience.

243. The Le Havre FSRU will significantly improve the security of supply for France and the EU, with positive consequences for the efficiency of the network operation (lower probability of supply disruption).

2.9. Conclusion on meeting the exemption criteria.

244. The sections above demonstrated that the Project met the seven cumulative criteria a)1), a)2), b), c), d), e)1) and e)2) of the requirements of the Directive and the provisions of the French Energy Code:

- It has been demonstrated that the Le Havre FSRU will improve competition, satisfying criteria a)1) and e)1) (see Section 2.2.);

[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*

- The document has also shown that the Le Havre FSRU Project will improve the supply security of France and the EU, satisfying criterion a)2) (see Section 2.3.);

- It has been demonstrated that the risks associated with the Project are such that the Le Havre FSRU could not be operated in a non-exempt setting, satisfying criterion b) (see Section 2.4.);

- It has been established that the Le Havre FSRU will be operated by a company that is legally separated from the gas grid operator to which it will be connected, thus satisfying criterion c) (see Section 2.5.);

- TELSF has made clear its intention to implement a fee for access to the Le Havre FSRU, which satisfies criterion d) (see Section 2.6.);

- It has also been established that the Le Havre FSRU will not affect competition or the proper functioning of the domestic market (see Section 2.7.);

- Finally, it has been demonstrated that the Le Havre FSRU will improve the efficiency of the network operation, satisfying criterion e)2) (see Section 2.8.).

245. Under these conditions, the Project fulfills all necessary conditions to obtain an exemption for a period of 5 years from the date of its commercial commissioning.

Appendix 1

Kbis of TELSF company

Greffe du Tribunal de Commerce de Nanterre
4 Rue Pablo Neruda
92020 Nanterre Cedex

N° de gestion 2021B01393

Extrait Kbis

EXTRAIT D'IMMATRICULATION PRINCIPALE AU REGISTRE DU COMMERCE ET DES SOCIETES
à jour au 17 octobre 2022

IDENTIFICATION DE LA PERSONNE MORALE

Immatriculation au RCS, numéro	893 714 329 R.C.S. Nanterre
Date d'immatriculation	05/02/2021
Dénomination ou raison sociale	**TotalEnergies LNG Services France**
Forme juridique	Société par actions simplifiée
Capital social	50 000,00 Euros
Adresse du siège	1 Passerelle des Reflets 92400 Courbevoie
Activités principales	L'exploitation et la gestion d'un terminal flottant de stockage et regazéification (« FSRU ») ; la prestation de services de déchargement, rechargement, stockage, regazéification de Gaz Naturel Liquéfié (GNL), pour l'émettre sur les réseaux de transport à destination des lieux de consommation ; la commercialisation de biens et services directement ou indirectement liés à l'installation, notamment l'accès des tiers aux services de regazéification.
Durée de la personne morale	Jusqu'au 05/02/2120
Date de clôture de l'exercice social	31 décembre
Date de clôture du 1er exercice social	31/12/2021

GESTION, DIRECTION, ADMINISTRATION, CONTROLE, ASSOCIES OU MEMBRES

Président

Nom, prénoms	[redacted]
Date et lieu de naissance	[redacted]
Nationalité	[redacted]
Domicile personnel	[redacted]

Directeur général

Nom, prénoms	[redacted]
Date et lieu de naissance	[redacted]
Nationalité	[redacted]
Domicile personnel	[redacted]

RENSEIGNEMENTS RELATIFS A L'ACTIVITE ET A L'ETABLISSEMENT PRINCIPAL

Adresse de l'établissement	1 Passerelle des Reflets 92400 Courbevoie
Activité(s) exercée(s)	L'exploitation et la gestion d'un terminal flottant de stockage et regazéification (« Fsru ») ; la prestation de services de déchargement, rechargement, stockage, regazéification de Gaz Naturel Liquéfié (Gnl), pour l'émettre sur les réseaux de transport à destination des lieux de consommation ; la commercialisation de biens et services directement ou indirectement liés à l'installation, notamment l'accès des tiers aux services de regazéification.
Date de commencement d'activité	20/01/2021
Origine du fonds ou de l'activité	Création

R.C.S. Nanterre - 17/10/2022 - 09:17:07 COG

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Greffe du Tribunal de Commerce de Nanterre
4 Rue Pablo Neruda
92020 Nanterre Cedex

N° de gestion 2021B01393

Mode d'exploitation Exploitation directe

Le Greffier

FIN DE L'EXTRAIT

Appendix 2

Projects associated with new LNG terminals, FSRUs or extensions of existing terminals in the Western European market (as of September 30, 2022).

Country	Terminal name/location	Year of commissioning	Capacity (in bcm)
	Brunsbüttel LNG terminal - 1	**2023**	3.50
	Brunsbüttel LNG terminal - 2	**2026**	4.50
	Stade LNG terminal	**2026**	13.3
	Wilhelmshaven	**2022**	5.00
	Wilhelmshaven	**2023**	5.00
	Wilhelmshaven	**2023**	5.00
	Wilhelmshaven	**2023**	5.00
	Wilhelmshaven	**2024**	5.00
	Zeebrugge LNG Terminal - Extension	**2024**	6.40
	Zeebrugge LNG Terminal - Extension	**2026**	8.20
	FSRU 1 - SNAM Golar Tundra	**2023**	5.00
	FSRU 2 - SNAM Golar Arctic	**2024**	5.00
	BW Singapour	**2024**	5.00
	Porto Levante LNG terminal	**2024**	0.50
	Porto Empedocle	**2026**	8.274
	Gate terminal, Rotterdam	**2024**	1.50
	Gate terminal, Rotterdam	**2026**	2.50
	Eemsenergyterminal	**2022**	8.00

Appendix 3

Methodology for estimating TotalEnergies' market share in the Western European upstream wholesale market.

	Description of methodology step
Step 1: Data collection	▪ **Collection of allocated and technical capacity of all entry points to the Western European market,** ▪ The information is retrieved through different sources (ENTSOG, GRTgaz, Terega, ALSI, as well as the websites of the LNG terminal operators)
Step 2: Data processing	▪ **Processing of ENTSOG data**, which provides the entry and exit technical and allocated capacity for each entry point: – For example, at the "Olbernhau (DE) / Hora Svaté Kateřiny (CZ)" point, which connects Germany with the Czech Republic, the exit capacity from the Czech Republic and the entry capacity to Germany are outlined – **When the entry and exit data do not align, the smaller value is used** (for example, if the entry capacity at Olbernhau is 100 GWh/d and the exit capacity at Hora Svaté Kateřiny is 50 GWh/d, 50 GWh/d is used for this point) ▪ For LNG terminals, the assumption is that 100% of the technical capacity is allocated
Step 3: Data aggregation and market share calculation	▪ Sum of all entry point capacities to the Western European market and calculation of the market shares of TotalEnergies and Gazprom ▪ To obtain the market shares, we **make the conservative assumption that Gazprom has a capacity equal to the volume exported to these countries**

Legend

Conservative hypothesis

Appendix 4

Technical and allocated capacity details in the European market considered for the analysis of the upstream wholesale market.

		Technical capacity (GWh/d)[1]					
Country	Pipeline name	2023	2024	2025	2026	2027	2028
	FranPipe	604	604	604	604	604	604
	Zeebruge ZPT Pipeline	337	338	337	336	336	336
	Interconnector	238	185	180	180	180	180
	Production	673	673	673	673	673	673
	Emden EPT1	964	964	964	964	964	964
	Europipe 1	488	398	398	398	398	398
	Europipe 2	126	43	43	43	43	43
	Netra	542	293	216	216	216	266
	Nord Stream 1	1,313	1,304	1,385	1,167	1,167	1,167
	Malnow	625	649	649	649	649	649
	Waidhaus (OGE)	272	249	249	169	135	100
	VIP Oberkappel	154	135	135	135	135	135
	Uberackern ABG	175	175	175	175	175	0
	Tarvisio	1,200	1,200	1,200	1,200	1,200	1,200
	Transmed	1,138	1,138	1,138	1,138	1,138	1,138
	TAP	291	291	291	291	291	291
	Gorizia	42	42	42	42	42	42
	GreenStream	476	476	476	476	476	476
	Medgaz	337	337	337	337	337	337
	MEG	443	443	443	443	443	443
	Total	10,435	9,936	9,935	9,636	9,602	9,442

1. Technical capacities published mid-July 2022
Source: ENTSOG, GRTgaz, Emerton analysis

		Allocated capacity (GWh/d)[1]					
Country	Pipeline name	2023	2024	2025	2026	2027	2028
	FranPipe	289	265	249	151	0	0
	Zeebruge ZPT Pipeline	272	338	337	277	100	97
	Interconnector	38	17	17	17	17	13
	Production	2	0	0	0	0	0
	Emden EPT1	222	197	164	104	68	8
	Europipe 1	328	102	102	102	76	0
	Europipe 2	87	39	34	15	2	0
	Netra	369	175	170	140	77	0
	Nord Stream 1	1,194	1,349	1,347	1,129	1,129	1,129
	Malnow	0	0	0	0	0	0
	Waidhaus (OGE)	272	249	249	169	135	100
	VIP Oberkappel	22	6	0	0	0	0
	Uberackern ABG	0	0	0	0	0	0
	Tarvisio	179	179	179	179	179	0
	Transmed	0	0	0	0	0	0
	TAP	272	272	272	272	272	272
	Gorizia	0	0	0	0	0	0
	GreenStream	120	119	90	0	0	0
	Medgaz	0	0	0	0	0	0
	MEG	0	0	0	0	0	0
	Total	3,665	3,308	3,210	2,555	2,056	1,618

1. Allocated capacities published mid-July 2022
Source: ENTSOG, GRTgaz, Emerton analysis