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COMMISSION OPINION

of 9.10.2015

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the French Republic to the European
Commission**

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1. PROCEDURE

Article 4(1) of Regulation (EU) No 994/2010 ("Regulation") requires the Competent Authority of each Member State to establish a Preventive Action Plan ("PAP") and an Emergency Plan ("EP", together: "Plans"). In accordance with Article 5(4) and Article 10(2) of the Regulation, the Plans have to be updated every two years, unless circumstances require more frequent updates.

The Plans (as well as their updates) need to be based on the national Risk Assessment which each Competent Authority has to adopt and notify to the Commission before the adoption of the Plans pursuant to Article 9 of the Regulation. The Risk Assessment should make a full assessment of the risks affecting the security of gas supply in the Member State on the basis of the common elements which include, inter alia, running various scenarios of exceptionally high gas demand and supply disruption. The Risk Assessment has to be updated for the first time at the latest 18 months after the adoption of the Plans.

The Competent Authority of France, the Direction générale de l'énergie et du climat of the Ministère de l'écologie, du développement durable et de l'énergie, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 13 August 2014.

The French Competent Authority notified to the Commission on 24 June 2015 its updated Preventive Action Plan and its updated Emergency Plan. The Commission has no information regarding the consultation on the French Plans with other Member States, in particular with its neighbours.

The Commission considers it appropriate to communicate any comments on the updated Plans by using the same procedure and applying the same assessment criteria as set out in Article 4(6) of the Regulation in respect of the initial Plans.

Thus having assessed the Plans, as updated, in view of the criteria mentioned in Article 4(6)(b)(i) to (iii) of the Regulation, and having reported its main findings to the Gas Coordination Group on 28 January 2015 and 4 May 2015, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns the contents of the Plans, the Plans submitted by the French Competent Authority are in many aspects detailed and comprehensive. The Commission welcomes in particular the detailed description of indicators for the determination of crisis levels, including numerical values providing indications for the declaration of early warning and alert levels. The Commission also welcomes the reference to the concrete considerations as to the eventual temporary reduction of the French increased security of supply standard to offer assistance to

other Member States in case of emergency. The Commission also underlines the comprehensive description of infrastructure projects, in particular interconnectors. Finally, the explicit description of measures with a potential impact on market functioning, including storage obligations and odorisation provisions, significantly contributes to transparency. However, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1 Preventive Action Plan

Definition of protected customers and the supply standard

Article 2(1) of the Regulation contains a definition of certain groups of gas customers as "protected customers" with quantitative limits for some categories of consumers. While all household customers connected to a gas distribution network are to be considered as protected, the Regulation allows the Member States to include in the definition also other categories, provided however that certain conditions are met. In particular, Article 2(1)(a) of the Regulation provides that small and medium-sized enterprises, connected to a gas distribution network, and essential social services, connected to a gas distribution or transmission network, may also be considered "protected" if the Member State so decides, but only in so far as they do not represent more than 20% of the final use of gas. Article 8(1) of the Regulation requires that gas supply to protected customers be ensured for certain minimum periods in scenarios of an exceptionally high gas demand or supply interruptions¹, the so-called "supply standard". The *"measures, volumes, capacities and the timing needed to fulfil the [...] supply standard"* shall be contained in the PAP submitted by Member States in accordance with Article 5(1)(b) of the Regulation.

The EP submitted by the French Competent Authority, to which the PAP refers as regards the definition of protected customers, indicates that *"il est nécessaire de considérer comme protégés au sens du règlement l'ensemble des consommateurs raccordés aux réseaux de distribution"*. Thus, all customers connected to the distribution grid are regarded as protected customers for the purpose of the Regulation. No reasoning is expressly provided for this choice. The PAP and EP submitted by the French Competent Authority do not provide any basis to assess whether amongst those customers, the consumption by eligible non-household customers contributes with less than 20 % to the final use of gas in France. Whereas the EP alleges that the distribution system operators are unable to execute targeted curtailments at a higher level, which could implicitly aim at explaining the choice to regard all customers connected to these operators as protected customers, this reasoning seems to be contradicted by the order of curtailment foreseen in Annex 2.2 to the EP. This annex recommends a precise order of curtailment within the heterogeneous group of customers connected at the distribution level, which requires distribution system operators to proceed to such selective curtailments.

As a consequence of the definition for protected customers potentially exceeding the possibilities of Article 2 (1) of the Regulation, the information contained in the PAP and EP do not allow verification if the supply standard applied by the French Competent Authority exceeds the margin of appreciation foreseen under the Regulation. The PAP describes the obligations imposed on natural gas undertakings to comply with the supply standard, and provides the gas volumes and capacities associated to the supply of protected customers, as required by Article 5(1) (b) of the Regulation. However, as the share of protected customers

¹ See Article 8(1) (concerning the "supply standard" and the concrete scenarios) and Article 2(1) of the Regulation (concerning the definition of "protected customers").

amongst the total customers possibly exceeds the boundaries of Article 2 (1) of the Regulation, this may result in an implicit increased supply standard.

The Commission therefore considers that the French PAP should further explain the delineation of the group of protected customers and, if necessary, adjust the volumes and capacities needed to fulfil the supply standard accordingly. The Commission reminds France that any increased supply standard or additional obligation in this regard can only be imposed for reasons of security of gas supply and has to comply with the conditions set in Article 8(2) of the Regulation. In particular, any such supply standard and the measures used for its implementation may not hamper the functioning of the internal market in gas or impact negatively on the ability of any other Member State to supply its protected customers in the event of a national, regional or Union emergency in accordance with Article 8 of the Regulation.

Storage obligation

In the PAP, the French Competent Authority provides information on storage obligations for gas suppliers active in France. These obligations, which are in place since 2014, require suppliers to maintain at the beginning of winter stocks representing 80 % of the storage rights allocated to the respective supplier, in view of supplying its final non-interruptible customers (customers not having signed a contract expressly allowing for interruptions of supply) connected to the distribution grid. In total, these storage obligations are equivalent to 65 % of total storage capacities available in France.

As described in the PAP, the French legislation applies an explicit increased supply standard. As described in the previous section, this can only be imposed for reasons of security of gas supply and has to comply with the conditions set in Article 8(2) of the Regulation. The Commission reminds France that it has thus to be ensured that the described storage obligations fulfil all requirements of Article 8 of the Regulation, and in particular do not unduly distort competition (both in the gas supply and in the storage capacity markets) nor unduly hamper the functioning of the internal market in gas or negatively impact on the ability of other Member States to supply its protected customers in the event of a national, regional or Union emergency. The Commission requests the French Competent Authority to carefully assess the storage obligation in view of Article 8 of the Regulation and ensure that it meets these requirements.

2.2 Emergency Plan

Measures to be adopted in the case of an emergency

According to Article 10(1)(f) the EP shall "*establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows.*" Article 10(1)(i) requires the EP to "*identify the contribution of non-market based measures planned or to be implemented for the emergency level, notably those listed in Annex III, and assess the degree to which the use of such non-market based measures is necessary to cope with a crisis, assess their effects and define the procedures to implement them, ...;*" Furthermore, Article 10(7)² contains a number of conditions that Member States and, in

² Article 10(7) of the Regulation: The Member States and, in particular, the Competent Authorities shall ensure that:(a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time;(b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and (c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.

particular, Competent Authorities, shall comply with in the context of the declaration of the emergency level.

The EP submitted by the French Competent Authority contains a number of measures to be applied in the case of the declaration of the emergency level. However, the information provided on some of the measures is insufficient to understand how these measures would work in practice and on this basis assess the degree to which the use of such non-market based measures is necessary to cope with a crisis and assess their effects, as required by Article 10(1)(f) and (i) of the Regulation. In particular, the following comments can be made:

- Whereas section 4.4 of the EP contains an assessment of the importance of district heating in France, and establishes that measures may be justified to prevent interruptions to district heating, additional details on the conditions, type, and implementation of such measures would be necessary to assess the impact and justification of such non-market based measures.
- For the early warning and alert levels, the EP provides limited information on the flow of information and eventual decision-making procedures. In particular, whereas an obligation to inform the Competent Authority on a daily basis exists, it is not clearly established how this information shall be further treated and how the responsibilities are allocated in the absence of a crisis cell. The Commission reminds France that whereas non-market based measures may be taken only at emergency level, the implementation of structured procedures at earlier level can help mitigating crisis situations.
- As regards the possibility to reduce the level of public service obligations to enable supplies of protected customers in other Member States, the EP provides a good description of possible measures and conditions. The lowering of public service obligations is however subject to several conditions, including the absence of risk to the "*outil industriel*". Additional information on these conditions would be necessary to ensure that these conditions are imposed only in the interest of ensuring security of supply in France, and are in line with the limitations imposed by Article 8 (2) of the Regulation on increased supply standards, which does not allow for other considerations to the detriment of security of supply in other Member States. Furthermore, section 4.6 of the EP provides that the supply standard may in no case be lowered to less than a 5 % cold spell risk. It would require further information to determine if this limitation is to be seen as absolute, and independent of the respective security of supply and climatic situation both in France and in the concerned other Member States, in which case the remaining increased supply standard could be seen as potentially endangering security of supply in another Member State.

The Commission takes the view that in order to rely upon each of these measures a more detailed description and assessment of their impacts is necessary.

2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the French Competent Authority to some other elements of the submitted Plans, which do not raise legal concerns in terms of their compatibility with the elements mentioned in Article 4(6)(b)(i) to (iii), but which may provide useful guidance to the Competent Authority for future amendments of the Plans.

- Cooperation with other relevant Member States in the development of preparatory and mitigating measures in case of a crisis is of key importance to maximize national supply security, as shown by the stress test exercise carried out during summer 2014³. In this context, the analysis of potential effects of measures adopted by neighbouring countries on the own system in case of parallel emergencies would increase the effectiveness of the Plans.
- The Plans should clearly mention whether they have been exchanged with neighbouring Member States.
- The substantive requirements to declare an emergency could merit further clarity. The EP provides in part similar criteria as foreseen in Article 10 (3) of the Regulation: It has to be established that a technical incident has occurred within the gas network, which will not be resolved on short notice, market measures are insufficient to ensure supply for protected customers, or a deterioration of the supply situation or exception weather conditions create a risk of interruption for non-interruptible clients. The EP however provides additional conditions, the functioning of which appears unclear. In particular, the emergency shall also be declared if public service obligations are temporarily lowered to ensure supplies to other Member States where necessary. In this regard the conditions and effects for such a declaration of emergency would require further explanation. In particular, it is unclear whether such a declaration of emergency to enable a lowering of public service obligations would be a sufficient basis for other non-market based measures to be taken, or whether this particular emergency is limited to affecting the public service obligations.
- The Commission reminds France that the emergency plan should contribute to a transparent preparation of remedial actions in crisis situations with cross-border impact. The degree of detail in the analysis of causes, extent and implementation regarding potential interruptions of transit flows to Spain, Italy and Switzerland (section 5.2 of the EP) would thus merit further improvement.
- The Commission welcomes the information provided in section 3.5.1. of the PAP on the issue of odorisation of gas in the French transmission network. As described in the PAP, the currently investigated change to odorisation after the transmission network could contribute to the functioning of the internal market for natural gas and to security of supply of other Member States. The Commission invites the French Competent Authority to proceed with the analysis of possibilities to switch to a system of odorization after the transmission system, and fully take into account the reciprocal benefits of increased market and system integration both from an economic standpoint and in order to ensure optimal security of supply levels.
- France explains in Sections 3.1 and 6.1 - 6.2 of the PAP that, under the French Energy Code and Decree No 2009-250 of 19 March 2004 the TSO and gas suppliers can be under different public service obligations. The Commission reminds France that if such public service obligations entail State resources in the form of publicly set remunerations they could constitute State aid within the meaning of Article 107(1) TFEU and they must be notified to the Commission.

³ Communication of 16.10.2014 on the short term resilience of the European gas system Preparedness for a possible disruption of supplies from the East during the fall and winter of 2014/2015 ("Stress Test Report"), COM(2014) 654 final.

- The Commission reminds France that if any of the investments in future infrastructure, storage or interconnectors referred to in Section 3.3. and Section 5.3 of the PAP involves State resources they could constitute State aid within the meaning of Article 107(1) TFEU (if the other conditions therein are also met) and must be notified to the Commission under Article 108(3) TFEU unless they are caught by the General Block Exemption Regulation.⁴

3. CONCLUSION

Based on the above assessment, and in view of Article 4(6)(b)(ii) of the Regulation, the Commission concludes that some elements of the updated Plans do not comply with certain provisions of this Regulation.

The Commission requests the French Competent Authority to amend the Plans taking duly into consideration the concerns expressed by the Commission in the present opinion.

The Commission's assessment expressed in this opinion is without prejudice to any position it may take *vis-à-vis* France as regards compatibility of national measures with EU law, including in the context of infringement proceedings.

The Commission will publish this opinion. The Commission does not consider the information contained herein to be confidential, in particular as it relates to documents which are publicly available. The French Competent Authority is invited to inform the Commission within five working days following receipt of the opinion whether it considers that it contains commercially sensitive information, the confidentiality of which is to be preserved.

Done at Brussels, 9.10.2015

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission



⁴ Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1-78).