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COMMISSION OPINION

of 6.7.2017

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

(Only the Hungarian text is authentic)

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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 consultation provided for between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plans.

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.

On 29 September 2016, the Competent Authority of Hungary, the Hungarian Energy and Public Utility Regulatory Authority, notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission.

On 2 December 2016, the Competent Authority of Hungary notified its updated Preventive Action Plan and its updated Emergency Plan to the Commission.

The Commission has no information regarding the consultation on the Hungarian 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 18 January 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans submitted by the Hungarian Energy and Public Utility Regulatory Authority are in some aspects detailed and provide solutions to deal with major crisis. Nevertheless, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1 Emergency Plan (EP)

Restrictions to cross-border gas flow

Article 10(7) of the Regulation establishes an obligation on Member States and in particular on the Competent Authorities to 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".

According to Article 97/A of the Hungarian Gas Act¹, in case of an emergency situation the Government is empowered to set the conditions for export sales of domestically produced or stored gas. In addition, in an emergency situation the TSO, under certain circumstances, is entitled to reduce transit flows.

Given that Hungary can supply and/or transit gas to other Member States it is important that its Plans analyse the possible effects of national emergency measures carefully and take full account of risks for the security of supply in other Member States. The "Energy Stress Tests"² have shown that missing coordination of emergency measures in case of a severe crisis can significantly weaken the resilience of Member States. By contrast, close coordination of emergency measures can dampen the effects of a serious supply disruption and avoid unnecessary harm for single Member States. The Commission considers that the Hungarian measures described in the previous paragraph, i.e. the possibility reduce transit flows and limit export sales in emergency situations, may have effects on neighbouring countries which may not be in line with the provisions set in Article 10(7)(a) and (c) of the Regulation. As regards Article 10(7)(b) of the Regulation, the Commission cannot conclude at this stage, on the basis of the information available, whether such a measure could endanger the security of supply of another Member State.

The Commission takes the view that the measure in question should be further explained in the EP, indicating in particular, its effect on neighbouring countries and the justification of the compliance of such measure with the condition established in Article 10(7)(b) of the Regulation.

2.2 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Hungarian Energy and Public Utility Regulatory 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) of the Regulation, but which may provide useful guidance to the Competent Authority for future amendments of the Plans.

- The PAP could further contribute to the transparency of the gas security of supply policy if it contained references to the economic impact, effectiveness and efficiency

¹ Law XL. of 2008 on natural gas supplies

² 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.

of the measures, or to their effects on the functioning of the internal energy market and the impact on the environment and on gas consumers;

- While it seems that Hungary had been in contact with its neighbours during the preparation of its Risk Assessment and its Plans, the Plans should clearly indicate whether they have been exchanged with neighbouring Member States.
- The Commission reminds Hungary that if any of the investments in future infrastructure referred to in Section 4 of the PAP (such as new interconnector, pipeline, storage, capacity expansion of existing interconnection infrastructure) 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 Regulation³.

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 Hungarian Energy and Public Utility Regulatory 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* Hungary 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 Hungarian Energy and Public Utility Regulatory 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, 6.7.2017

For the Commission

Miguel ARIAS CAÑETE

Member of the Commission

³ Commission Regulation (EU) N°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)