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COMMISSION OPINION

of 6.3.2015

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the Kingdom of Denmark 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 the Kingdom of Denmark, the Danish Energy Agency ("DEA"), has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 18.06.2014.

The DEA notified to the Commission on 03.12.2014 its updated Preventive Action Plan and Emergency Plan.

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 28.01.2015, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns their content, the Plans are in many aspects detailed and comprehensive and provide for solutions to mitigate the main risks identified in the detailed Risk Assessment.

Nevertheless, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1 Preventive Action Plan

The Regulation obliges Member States to ensure gas supply to a specifically defined group of customers ("protected customers") for certain minimum periods in case of an exceptionally

high gas demand or supply interruptions¹. This "Supply Standard" shall provide for a protection of certain customers in case of a crisis. At the same time, Article 2(1) of the Regulation contains also *limits* for the definition of certain groups of gas customers as "protected customers". These limits are meant to avoid that Member States declare an unnecessarily high proportion of their customers as "protected", thereby impeding physical or virtual cross-border exchanges with neighbouring countries, notably during times of a parallel gas supply crisis².

Missing details on the fulfilment of the supply standard pursuant to Article 5 (1)(b)

According to Article 5(1)(b) of the Regulation, the "*measures, volumes, capacities and the timing needed to fulfil the [...] supply standard*" pursuant to Article 8 of the Regulation shall be contained in the PAP as well as any increased supply standard under Article 8(2) of the Regulation. Such increased standard shall, among others, not impact negatively on the ability of any other Member State to supply its protected customers in the event of a national, Union or regional emergency in accordance with Article 8(2) of the Regulation.

The PAP submitted by DEA does not include a description of the volumes and capacities needed to fulfil the supply standard. Instead, the PAP contains references to the Risk Assessment. The PAP states that the Risk Assessment is annexed to the plan; however, the Danish Risk Assessment is not a public document and it is therefore not among the published documents on the website of DEA.

Secondly, the PAP includes an increased supply standard which is raised from 30 to 60 days. It is stated in the EP and not in the PAP that the supply standard would be reduced to 30 days in the event of declared emergency at EU or regional level. Nevertheless, it has not been assessed whether and how the increased standard would impact Sweden which is dependent on gas imports from Denmark or if Sweden is included in the 60 day supply standard. In addition the Risk Assessment only provides data on 30 day standard and not on 60 day standard.

The Commission takes the view that the Danish PAP should also contain the explicit detail of the volumes and capacities needed for the fulfilment of the supply standard and the increased standard as this would improve the transparency of and homogeneity among the Plans prepared by all Member States. DEA should also clarify the impact of increased supply standard on Sweden.

Missing elements to quantify the 20% threshold in Article 2(1)(a)

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 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 only be considered "protected" in so far as they do not represent more than 20% of the final use of gas.

According to the notified PAP, the definition of "protected customers" in the Danish PAP includes also undertakings connected to the gas distribution network, provided that their

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

² See in this context also recital 10 and Article 8(2) of the Regulation.

annual consumption of gas does not exceed certain limits in cubic meters described in the Executive Order No 962 of 27 September 2012, and in addition all consumers that offer essential social services and are connected to gas distribution, town-gas or transmission network.

The PAP does not include any figures as regards the percentage of the Danish final gas use that these added groups of protected customers represent. The notified Risk Assessment contains some figures regarding the general gas consumption in Denmark, including for the undertakings mentioned above for which it indicates that the final use of gas could go beyond the limits of Article 2(1)(a); however, it does not provide enough information to verify that the limit of 20 % is respected.

The Commission takes the view that the Danish PAP should contain the consumption volume of all categories of protected customers described above as this would improve the transparency of and homogeneity among the Plans prepared by all Member States and would allow the Commission to verify if the limits are respected.

2.2 Emergency Plan

Missing mandatory descriptions pursuant to Article 10(1) of the Regulation

Article 10(1) of the Regulation provides for a mandatory list of elements that need to be addressed in the EP, including the identification of the contribution of market-based measures for coping with the situation at alert level as well as of non-market based measures for the emergency level pursuant to Article 10(1) (h) and (i)³. The notified EP does not include such information.

The Commission considers that the DEA should amend the EP to include the information required in accordance with Article 10(1)(h) and 10(1)(i) of the Regulation.

2.3 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of the DEA, 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)(i) to (iii), but which may provide useful guidance to the Competent Authority for future amendments of the Plans.

- The PAP does not directly link the list of preventive measures to the risk scenarios developed in the Risk Assessment. Adding such link would allow the quantitative assessment of the possible impacts of the measures proposed and would increase the reliability of the PAP.
- The identification of measures and actions in the EP to be taken to mitigate the potential impact of a gas supply disruption on the supply of electricity generated from gas would also further improve the plan.
- The 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. The Commission welcomes in this respect the

³ See in this respect also Article 5(3) of the Regulation (underlining the need to take into account the impact of measures).

ongoing co-operation with Sweden. However, given the fact that gas deliveries from Germany are expected to increase in several crisis scenarios the co-operation with Germany and resulting measures should be described in more detail.

- Denmark explains in Section 5.1.2 of the PAP that, within the meaning of the Natural Gas Supply Act, the transmission system operator (Energinet.dk) can be under a public service obligation. The Commission reminds Denmark that if such public service obligations entail State aid within the meaning of Article 107(1) TFEU, they must be notified to the Commission.
- It cannot be excluded from the data available that the projects mentioned in Section 7.2 of the PAP may involve State resources which could constitute State aid within the meaning of Article 107(1) TFEU. Should it be the case, the Commission reminds Denmark to notify such aid under Article 108(3) TFEU.

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 Plans do not comply with certain provisions of this Regulation.

The Commission requests DEA 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* the Kingdom of Denmark as regards the 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 the Plans which are publicly available. DEA 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, 6.3.2015

For the Commission

Member of the Commission

