



Brussels, 6.3.2015
C(2015) 1525 final

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 Poland to the European Commission**

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 Poland to the European Commission

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 Poland, the Ministry of Economy (hereafter "MoE"), has notified to the Commission its Risk Assessment pursuant to Article 9 of the Regulation on 29 July 2014.

The MoE notified to the Commission its updated Preventive Action Plan and Emergency Plan on 3 December 2014. The Commission has no information regarding the consultation on the Polish 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, 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 Risk Assessment. However, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

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

Article 2(1) of the Regulation contains a definition of "protected customers" with some quantitative limits for some categories of consumers. 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.

Poland describes the protected customers as "*households connected to the distribution network and essential social services*". In this context Poland quantified the gas consumption of protected consumers during 30 days of exceptionally high gas demand, occurring with a probability of once in 20 years. In order to verify that the 20% limit is respected by Poland, it would be necessary to quantify the total consumption of protected customers pursuant to Article 2(1)(a) of the Regulation (i.e. small and medium-sized enterprises and essential social services) and compare this volume against total Polish consumption.

2.2 Emergency Plan

Article 10(1) of the Regulation provides for a mandatory list of elements that need to be addressed in the EP. Some of these elements are missing in the notified EP.

Missing description of (cross-border) effects of potential measures

Article 10(1)(i) requires *inter alia* an assessment of the degree of necessity to turn to non-market based measures to cope with a crisis, an analysis of the *effects* of such measures and definition of the procedures to implement them.¹ The Article is an expression of the general idea of *mutual cooperation and coordination* in the development of Plans and decisions on crisis measures. This principle is underlying the entire Regulation².

While the EP contains a description of potential market and non-market based measures, it does not elaborate on when each measure would be expected to enter into force and what the (quantified) effects of the measures would be, notably on other countries.

Poland has several interconnections with neighbouring countries and serves as a "transit" country for gas transports to other EU countries. The recent "Energy Stress Tests"³ have

¹ Article 10(1)(i) obliges Member States 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, taking into account the fact that non-market based measures are to be used only when market-based mechanisms alone can no longer ensure supplies, in particular to protected customers.*"

² See in this respect also Article 5(3) of the Regulation (obliging Member States to take into account the *impact of measures in the internal market*); see also Article 9(1)(d), obliging Member States to identify the *interaction and correlation of risks with other Member States*; Article 4(3) of the Regulation (Joint Plans); see also recital 5: "*...there is a clear risk that measures developed unilaterally by [a] Member state may jeopardise the proper functioning of the internal gas market (...); it is necessary to provide for solidarity and coordination in the response to supply crises.*"

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.

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, including in the region between Poland, Germany and Eastern European countries, can reduce the effects of a serious supply disruption and avoid unnecessary harm for single Member States⁴.

It is therefore important that the Risk Assessment⁵ and the Plans identify these interdependencies and take full account of risks for the security of supply in the Member State. For this purpose, and in order to avoid measures which are inconsistent with measures envisaged by neighbouring countries, the Regulation provides for a mandatory consultation process with neighbouring countries⁶. In this context, the Commission notes that the Polish Plans lack a description of *potential effects own measures may have on internal energy market* (e.g. changes of gas flows to neighbouring countries).

An improved analysis of the interdependencies of the Polish gas system with the gas system of other countries in case of a crisis would improve the robustness of the proposed measures, thereby strengthening the resilience of the Polish system to supply crises.

2.3 Other comments

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

- First, the Commission is of the opinion that the Polish PAP should improve the description of the link between the preventive measures and particular risk scenarios developed in the Risk Assessment. It is recommended to provide a quantitative assessment of the possible impacts of the measures.
- Second, the effectiveness of the Polish Plans would clearly increase if they would include information on *potential effects of measures by neighbouring countries on the own system* in case of a (parallel) supply crisis (e.g. interruptions of gas imports from neighbouring countries)⁷. By way of example, as some risk scenarios in Poland depend on the situation on the German gas market⁸, more information on measures planned by Germany could be used to better assess a potential impact on the Polish situation.
- Third, regarding the compliance with the infrastructure standard, Article 6 of the Regulation establishes an obligation to ensure that in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure, is able to satisfy total gas demand even in case of exceptionally high demand (so-called

⁴ See e.g. Stress Test Report, p. 6 and 7.

⁵ See Article 9(1)(d), obliging Member States to identify the interaction and correlation of risks with other Member States in the Risk Assessment.

⁶ See Article 4(2) of the Regulation as regards the initial Plans and Articles 5(4) and 10(2) as regards the Updated Plans. Information about such consultations is not provided for in the Plans.

⁷ See in this context also Article 9(1)(d).

⁸ See e.g. page 7 of the PAP, where the interdependence with Germany is mentioned, however without following up on this aspect in the Plans.

"infrastructure standard"). In line with Article 6 of the Regulation Poland identified the Underground Storage Facility Mogilno as the single largest gas infrastructure and estimated N-1 criterion to be 103,7%. However, Poland indicated in the PAP that the infrastructure standard calculated on the basis of the "N-1" formula in this case "cannot be treated as an entirely reliable measure" for internal security of supply risks. Poland is encouraged to explain in more detail its assessment and the Commission encourages Poland to further develop this point (e.g. under which scenario and to what extent total gas demand would not be met in case of a disruption of the largest infrastructure due to internal bottlenecks).

- Finally, in accordance with Article 10(1)(h), the EP shall identify the contribution of market-based measures, notably those listed in Annex II, for coping with the situation at alert level and mitigating the situation at emergency level. The EP could be improved by providing more information on the contribution of market-based measures to the improvement of the different crisis situations.
- It cannot be excluded from the data available that the projects mentioned in Section 9 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 Poland to notify such aid under Article 108(3) TFEU.
- Poland explains in Section 6 of the PAP that, within the meaning of the Energy Law the TSO can be under a public service obligation. The Commission reminds Poland that if such public service obligations entail State aid within the meaning of Article 107(1) TFEU, they must be notified to the Commission.

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 MoE 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* Poland 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. MoE 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

