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COMMISSION OPINION

of 2.3.2015

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of Ireland 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 Ireland, the Commission for Energy Regulation ("CER"), has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 03.06.2014.

The CER notified to the Commission on 02.12.2014 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. Moreover, the Commission welcomes the cooperation mechanism established between Ireland and the United Kingdom, which constitutes an excellent example of cooperation between Member States and which is described in detail in a Joint Preventive Action Plan, prepared by the two Member States.

Nevertheless, the Commission considers that some elements of Ireland's national 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.

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.

The PAP submitted by CER does not include a description of the volumes and capacities needed to fulfil the supply standard nor the consumption figures of the protected customers. Instead, the PAP contains references to the Risk Assessment. The Risk Assessment contains in fact some figures on the gas volumes needed to satisfy the gas demand of the group of consumers considered protected customers by Ireland under different scenarios, e.g. average winter conditions, 1-in-50 winter conditions² and 1-in-50 winter conditions.

However, the conditions used of the calculation of the supply standard are based on a more stringent 1-in-50 winter scenario instead of 1-in-20 standard as established in the Regulation. While Member States are free to use in their analysis more demanding conditions than those established in the Regulation to test the ability of their systems to cope with severe situations, it is unclear whether additional obligations on undertakings may stem from the use of a more stringent standard.

The Commission takes the view that Ireland's PAP should also contain the explicit detail of the volumes and capacities needed for the fulfilment of the supply standard as well as the general consumption figures of the protected customers as this would improve the transparency of and homogeneity among the Plans prepared by all Member States. CER should also clarify whether additional obligations stem from the calculations based on the 1-in-50 conditions. In the latter case, CER should clarify whether an increased standard is applied, in accordance with Article 8(2), and describe it in the PAP in accordance with Article 5(1)(b).

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. The notified EP does not identify 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 (h) and (i)³.

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

² The 1-in-50 winter conditions refer to winter conditions occurring with a statistical probability of once in 50 years.

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

2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of CER 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 Irish PAP does not sufficiently link the list of preventive measures to the risk scenarios developed in the Risk Assessment. Consequently, no quantitative assessment of the possible impacts of the measures is provided.
- The Plans do not report on the spill over effects of a gas crisis on the electricity sector even if 56 % of gas is used for power generation and there is no indication in the Plans why it would not be appropriate to address these spill over effects.
- It cannot be excluded from the data available that the infrastructure projects mentioned in Section 4.3 of the Irish 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 Ireland 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 CER 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* Ireland 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. CER 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, 2.3.2015

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION