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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 Poland to the European Commission**

(Only the Polish 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.

The Competent Authority of Poland, the Ministry of Energy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 31 October 2016.

The Ministry of Energy notified to the Commission on 21 December 2016 its updated Preventive Action Plan and Emergency Plan.

The Ministry of Energy has consulted other Member States' Competent Authorities on its Plans, including its neighbours Germany, Slovakia and the Czech Republic.

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, 3 February and 6 March 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Ministry of Energy has submitted a set of detailed and comprehensive Plans consistent with their Risk Assessment. The Commission welcomes in particular the clear structure of the Plans and the detailed explanations as regards the results of their Risk Assessment. It also welcomes the description of the cooperation and consultations carried out with neighbouring Member States and the clarifications that have been made relative to the PAP and EP submitted in 2014 including updates due to the LNG facility having become operational and investments in the infrastructure.

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

2.1 Preventive Action Plan

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.

In the summary of the PAP the protected customers are defined for the first time as: “[...] *The definition of protected customer encompasses household consumers connected to the natural gas distribution network, entities providing essential social services as well as district heating installations to the extent that they deliver heating to household customers and to the entities referred to above [...]*”¹. However, in Section 4 of the PAP also small and medium-sized enterprises (SMEs) are mentioned as protected customers when it demonstrates that SMEs, district heating and essential social services account altogether for 15% of the annual gas consumption. Poland quantifies the gas consumption of the protected customers in relative terms but does not provide absolute figures. The PAP should provide a definition of protected customers that is consistent throughout the plan. 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. SMEs and essential social services) and compare this volume against total Polish consumption.

Consequently, the Commission takes the view that the Polish PAP should be amended in order to ensure full compliance with Article 2(1) of the Regulation.

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)² requires 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. This provision expresses the general idea of giving priority to market based measures when addressing a crisis situation.

Whereas the EP provides a list of all market-based measures and a partial quantitative description of the extent of certain market-based measures to cope with a crisis situation, the EP does not provide any qualitative or quantitative assessment of the non-market based measures to cope with a crisis at the emergency level.

In addition the cross-border impact of Polish emergency measures and impact of such measures in the neighbouring Member States could be better described in the EP. Poland has

¹ Preventive Action Plan, p. 4.

² Pursuant to Article 10(1)(i) Member States are obliged '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.'

several interconnections with neighbouring countries and serves as a "transit" country for gas transports to other EU countries. The Energy Stress Tests³ has 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. 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.

Insufficient obligation to send the Commission a report after lifting the emergency

According to Article 13(5)⁶ the Competent Authority has to inform the Commission as soon as possible and at the latest 6 weeks after the lifting of the emergency about the assessment of the emergency and the effectiveness of the implemented measures. The EP does not contain all the obligations set out in Article 13(5). The EP does not require that the report that the Polish Competent Authority has to send to the Commission contain all elements required by the Regulation; in particular the assessment of the economic impact and the impact on the electricity sector is missing.

The Commission takes the view that the non-market measures in question should be further explained in the EP and the reporting obligations of the Competent Authority to the Commission should be developed to ensure the full compliance of the EP with the Regulation.

2.3 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of the Ministry of Energy 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 links between the preventive measures and particular risk scenarios developed in the Risk Assessment. In addition the PAP should provide more detailed information to ensure that the effectiveness of the preventive measures is properly assessed. The PAP would improve in terms of transparency and comprehensiveness if a table explicitly linking the risk scenarios and preventive measures was provided. It is also recommended to provide a quantitative and qualitative assessment of the possible impacts and effectiveness of the preventive measures.

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"), COOM (2014) 654 final.

⁴ Stress Test Report, p. 6 and 7.

⁵ Pursuant to Article 9(1)(d) Member States are obliged to identify the interaction and correlation of risks with other member States in the Risk Assessment.

⁶ Article 13(5) requires that '*After an emergency, the Competent Authority shall, as soon as possible and at the latest 6 weeks after the lifting of the emergency, provide to the Commission a detailed assessment of the emergency and the effectiveness of the implemented measures, including an assessment of the economic impact of the emergency, the impact on the electricity sector and the assistance provided to, and/or received from, the Union and its Member States. Such assessment shall be made available to the Gas Coordination Group and shall be reflected in the updates of the Preventive Action Plans and the Emergency Plans.*'

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). By way of example, as some risk scenarios in Poland depend on the situation on the German gas market, therefore more information on measures planned by Germany could be used to better assess a potential impact on the Polish situation.

Third, in accordance with Article 10(1)(h), Poland should further develop its first attempt to 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.

The Commission reminds Poland that if any of the investments in future infrastructure or interconnectors referred to in the PAP involve State resources they could constitute State aid within the meaning of Article 107(1) TFEU (if other conditions therein are met) and have to be notified to the Commission under Article 108(3) TFEU unless they are exempted under the General Block Exemption Regulation⁷.

Finally, Poland explains in Section 6 of the PAP that, within the meaning of the Energy Law, the TSO can be under different public service obligations related to security of gas supply. The Commission reminds Poland that if such public service obligations entail State resources, they could constitute State aid within the meaning of Article 107(1) TFEU; they have to 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 Ministry of Energy 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.

⁷ Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Article 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

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 Ministry of Energy 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