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COMMISSION OPINION

of 29.5.2017

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

Only the English 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 the United Kingdom, the Department for Business, Energy and Industrial Strategy ("BEIS"), has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 27 September 2016.

BEIS notified to the Commission on 5 December 2016 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 18 January and 3 February 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans submitted by BEIS are overall in line with the wider objectives set by the Regulation. They present a clear picture of emergency and preventive actions, as well as giving an overview of the key actors and respective responsibilities under each of the Plans. The Commission welcomes the United Kingdom's continuing efforts in identifying any additional risk reduction measures, even where its Risk

Assessment shows a high level of system resiliency under a combination of severe infrastructure and supply shocks.

Moreover, the Commission welcomes the cooperation mechanism established between Ireland and the United Kingdom 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 the United Kingdom's national Plans are not fully compliant with the Regulation and present elements for improvement. The Commission's remarks are presented below by Plan submitted.

2.1. Preventive Action Plan

Establishing a better link between risks and preventive measures

The PAP does not list risk scenarios. As a result, measures envisaged by the PAP cannot be linked back to specific risk scenarios. The text provides a short summary of the results of the Risk Assessment, stating that the UK is resilient, but the risk scenarios have not been detailed.

We appreciate however that compared to its 2014 version the PAP now gives information on supply standards, including clarifications on "protected customers" and associated gas volumes at day 7 and day 30. This is a major improvement, which was requested by the Commission in its 2015 opinion pursuant to Article 2(1) of the Regulation¹.

Obligations imposed on undertakings and other relevant bodies

The conditions used for the calculation of the supply standard are based on a more stringent 1-in-50 winter scenario instead of a 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.

This is particularly relevant as a reference is made in the Risk Assessment to the fact that the calculations on the basis of the 1-in-50 standard are used to ascertain the level of gas required to remain in the storage to enable safe operation of the system. The Commission calls on the United Kingdom to include in its PAP explicit details of the volumes and capacities needed for the fulfilment of the 1-20 supply standard, as this would improve the transparency of and homogeneity among the Plans prepared by all Member States.

2.2. Emergency Plan

Inclusion of measures addressing district heating

In accordance with Article 10(1)(e) of the Regulation, the EP shall identify measures and actions to mitigate the potential impact of a gas supply disruption on district heating. According to the EP submitted by BEIS it seems that measures of this kind have not been considered, or they have failed to be listed. We invite the United Kingdom to explicitly cover measures addressed to district heating as part of the EP.

Contribution of market-based and non-market based measures

¹ C(2015) 1412 final 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.

According to 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. Similarly, Article 10(1)(i) requires the EP to identify the contribution of non-market based measures applying to 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.

Although the EP underlines that efforts are made, as part of an emergency response, to resort to market-based measures for as much as possible, the EP lacks a clear identification of the contribution of market and non-market measures, and a quantification of their respective effects. The Commission calls on the United Kingdom to bring the EP into compliance on this point.

Mechanisms to inform other Member States and the European Commission

The Regulation, inter alia through Article 10(1)(j), foresees that EP shall describe mechanisms to cooperate with other Member States for each crisis level, and to inform the European Commission in case of an emergency in line with Article 10(6). The Commission appreciates that the United Kingdom is cooperating with the Republic of Ireland as set out in their Joint Preventive Action Plan on Gas already cited above. However, the EP is unclear on the type and mechanisms for cooperation with other Member States and with the Commission under emergency scenarios. A general reference is made to the need to keep informed the European Commission, but the EP does not fully address the requirements of the Regulation on the matter.

2.3. Other comments

In addition to the remarks presented above, the Commission would like to draw the attention of BEIS on some other elements of the submitted Plans, which do not necessarily 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.

More clarity is needed in relation to the role played by the Network Emergency Coordinator (NEC). We appreciate its statutory role of serving as an independent co-ordinator of actions across affected parties under an emergency scenario, however the appointment of NEC and its role vis-à-vis BEIS in declaring an emergency should be clarified further.

The Commission notes that more efforts may have been put into better detailing the effects of the newly introduced demand side response mechanism ("DSR") within the PAP. The Commission takes note that, following the result of Ofgem's Gas Significant Code Review, a DSR methodology was implemented as of 1st October 2016. According to it, end users of gas will be able to signal their willingness to make additional energy available following a Gas Deficit Warning. It is unclear however how the introduction of the DSR methodology has been fed into infrastructure and supply standards. The Commission further reminds the UK that if such DSR mechanisms entail State resources they might be caught by Article 107(1) TFEU as State aid and they must be notified to the Commission.

3. IT CANNOT BE EXCLUDED FROM THE DATA AVAILABLE THAT THE PROJECTS MENTIONED IN SECTION 6 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 THE UK TO NOTIFY SUCH AID UNDER ARTICLE 108(3) TFEU. 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 BEIS 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 United Kingdom 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. BEIS 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, 29.5.2017

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

