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**COMMISSION OPINION**

**of 9.10.2015**

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

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#### **1. PROCEDURE**

Article 4(1) of Regulation (EU) No 994/2010 ("the 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 Bulgaria, the Bulgarian Ministry of Energy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 5 June 2015.

The Bulgarian Competent Authority forwarded the updated Plans to the Greek and Romanian authorities on 5 June 2015.

The Bulgarian Competent Authority notified its updated Preventive Action Plan and updated Emergency Plan to the Commission on 3 July 2015.

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, the Commission has the following remarks on the Plans.

#### **2. COMMISSION'S ASSESSMENT OF THE PLANS**

The Bulgarian Ministry of Energy has submitted a set of comprehensive Plans. However, the Commission considers that some elements of the Plans submitted by the Bulgarian Competent Authority do not comply with the requirements of the Regulation.

##### **2.1 Preventive Action Plan**

*Results of the risk assessment*

According to Article 5(1) (a) of the Regulation, the PAP shall contain the results of the risk assessment. Whereas the Bulgarian PAP reproduces to a large extent the Risk Assessment, it does not identify or describe specific risk sources and related risk scenarios.

The Commission takes the view that the Bulgarian PAP should be amended to include a more comprehensive in-depth risk scenario analysis.

#### *Infrastructure standard*

As regards the calculation of the infrastructure standard pursuant to Article 6 of the Regulation, the Bulgarian PAP provides information on two different scenarios, referred to as the "basic scenario" and the "target scenario". However, the explanations provided on the assumptions underlying each scenario are not sufficiently clear. In particular, there is no information on how the value for Dmax<sup>1</sup> has been estimated, the reasons for the difference in the change of Pmax<sup>2</sup> and EP5<sup>3</sup> between the two scenarios or what EP7 would be.

The Commission considers that the Bulgarian PAP should be amended to include the above-mentioned information.

#### *Definition of protected customers and the supply standard*

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 also be considered "protected" if the Member State so decides, but only in so far as they do not represent more than 20% of the final use of gas.

The PAP submitted by the Bulgarian Competent Authority considers all of the customers eligible pursuant to Article 2(1) of the Regulation as "protected". However, the PAP does not indicate the levels of consumption of the small and medium-sized enterprises and essential social services. Consequently, it is not possible to verify if the gas quantities used by these customer groups represent no more than 20% of total use. The Commission recalls the fact that any increased supply standard can only be imposed for reasons of security of gas supply and subject to the conditions set out in Article 8(2) of the Regulation.

As regards district heating installations delivering heating to households as protected customers, Item 9.12.1 of the EP envisages the compulsory switching to alternative fuel for district heating companies. However, pursuant to Article 2(1)(b) of the Regulation, district heating companies with switch fuel capabilities cannot be considered as protected.

Article 8(1) of the Regulation requires that gas supply to protected customers be ensured for certain minimum periods in three separate scenarios, covering an exceptionally high gas demand and supply interruptions<sup>4</sup>, the so-called "supply standard". The "*measures, volumes,*

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<sup>1</sup> Dmax = national consumption minus peak consumption, in million m<sup>3</sup>/day.

<sup>2</sup> Pmax = national gas production minus maximum possible withdrawal, in million m<sup>3</sup>/day.

<sup>3</sup> EP5 = technical capacity for import through the interconnector Bulgaria-Romania, in million m<sup>3</sup>/day.

<sup>4</sup> See Article 8(1) (concerning the "supply standard" and the concrete scenarios) and Article 2(1) of the Regulation (concerning the definition of "protected customers").

*capacities and the timing needed to fulfil the [...] supply standard" shall be contained in the PAP submitted by Member States in accordance with Article 5(1)(b) of the Regulation.*

The Bulgarian PAP indicates that the gas supply for protected customers could be ensured in the scenarios of exceptionally high gas demand over seven and thirty days (Articles 8(1)(a) and (b) of the Regulation) via withdrawal of gas stored in UGS Chiren, stating that "the possibility to ensure supplies to the protected customers in the country during a possible disruption of the supplies" could be confirmed. However, there is no information provided on how gas quantities withdrawn from storage could be delivered to customers in the event of the disruption of the single largest gas infrastructure (Article 8(1)(c)).

The Commission takes the view the Bulgarian PAP should be amended to include detailed information on the levels of consumption of the protected customer groups and on compliance with the supply standard in case of supply interruptions in accordance with Article 8(1)(c) of the Regulation. Furthermore, it should be clarified whether the district heating companies included in the definition of protected customers have the capability of switching fuel.

#### *Information regarding the interconnections with neighbouring Member States*

As regards the capacity of physical reverse flow at the interconnection of the Greek gas system and the transit pipeline of Bulgaria, the respective reverse flow capacities reported by Bulgaria and by Greece do not match. The Bulgarian PAP (Section V.3) states that 4.2 mcm/d at 35 bar and up to 6 mcm/d at 40 bar could be transported via reverse flow, whereas Greece reports maximum capacities of 1 mcm/d in an emergency event and up to 3 mcm/d on an interrupted basis.

The Commission considers that this point should be clarified in the Bulgarian PAP after consulting the Competent Authority of Greece.

#### *Preventive measures*

According to Article 5(1) (d) of the Regulation, the PAP shall contain "*the other preventive measures, such as those relating to the need to enhance interconnections between neighbouring Member States and the possibility to diversify gas routes and sources of supply, if appropriate, to address the risks identified in order to maintain gas supply to all customers as far as possible;*"

The measures set out in points 3.5.1 and 3.5.2 of the EP impose recurring storage obligations on natural gas undertakings which are not linked to the occurrence of an emergency situation.

Therefore, the Commission takes the view that these measures seem to be preventive measures and as such, should be described in the PAP as required by Article 5(1)(d) of the Regulation.

## **2.2 Emergency Plan**

#### *Crisis levels*

Pursuant to Article 10(1)(a) of the Regulation, the EP shall build upon the three "crisis levels" defined in Article 10(3) of the Regulation, i.e. "early warning", "alert" and "emergency". The different levels are, *inter alia*, relevant for the measures allowed under the Regulation to mitigate a supply disruption or exceptionally high gas demand.

While the definition of the crisis levels in the Bulgarian EP appears to be correct, there are some instances in the EP where reference is made to "alarm level" instead of "alert level". The references to the crisis levels should be aligned throughout the EP and also with the definitions contained in Article 10(3) of the Regulation. Since the Regulation is directly applicable in all the Member States, using different terminology could create confusion and should thus be avoided.

The Commission considers that the Bulgarian EP should be amended in order to align the terminology for respective the crisis levels with the definitions provided in Article 10(3) of the Regulation.

#### *Possibility for undertakings and customers to respond at each crisis level*

Pursuant to Article 10(1)(d) of the Regulation, the EP shall ensure that natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level. The Bulgarian EP does not provide information on this point.

The Commission considers that the Bulgarian EP should be amended to include the above-mentioned information.

#### *Reporting obligations on natural gas undertakings*

Pursuant to Article 10(1)(k) of the Regulation, the EP should detail the reporting obligations imposed on natural gas undertakings at alert and emergency levels. The Bulgarian EP does not provide information on this point.

The Commission considers that the Bulgarian EP should be amended to include the above-mentioned information.

#### *Measures to be adopted in the case of an emergency*

According to Article 10(1)(f) the EP shall "*establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows.*" Article 10(1)(i) requires the EP 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, ...;*" Furthermore, Article 10(7)<sup>5</sup> contains a number of conditions that Member States and, in particular, Competent Authorities, should comply with in the context of the declaration of the emergency level.

The EP submitted by the Bulgarian Competent Authority contains a number of measures to be applied in the case of the declaration of the alert level and emergency level. However, the information provided on some of the measures is insufficient to understand how these measures would work in practice and would contribute to coping with the situation, as required by Article 10(1)(f) of the Regulation. Furthermore, additional clarifications should be

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<sup>5</sup> Article 10(7) of the Regulation: The Member States and, in particular, the Competent Authorities shall ensure that:(a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time;(b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and (c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.

added to the information flows for each crisis level contained in the Annexes of the EP as they are currently not self-explanatory. In particular, the following comments can be made:

- The meaning of the term "enhanced operational control" referred to in items 7.4 and 8.4 of the Bulgarian EP is not sufficiently specified.
- With regard to the market-based measures under sections 8.7 and 8.8, the Bulgarian EP does not contain information on the contribution of such measures for coping with the situation at alert level and mitigating the situation at emergency level.
- With regard to the non-market-based measures under sections 9.10 and 9.11, the Bulgarian EP does not assess the degree to which the use of such non-market based measures is necessary to cope with a crisis, assess their effects or define the procedures to implement them.
- At emergency level, the Bulgarian EP envisages a restriction or suspension of the transit transmission (item 9.11.1) and transfer of quantities between the national transmission system and the transit system (item 9.11.3). In addition to the missing information referred to in the preceding point, the Bulgarian EP does not sufficiently assess the compliance of these measures with the requirements set out in Article 10(7) of the Regulation.

The Commission takes the view that the Bulgarian EP should be amended to include the above-mentioned information.

### 2.3 Other comments

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

- 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, as shown by the stress test exercise carried out during summer 2014<sup>6</sup>. In this context, the analysis of potential effects of measures adopted by neighbouring countries on the own system in case of parallel emergencies would increase the effectiveness of the Plans.
- If any of the investments in future infrastructure, storage or interconnectors referred to in Section IV ("Preventive measures") of the PAP involve State resources, they could constitute State aid within the meaning of Article 107(1) TFEU (if the other conditions therein are also met) and must be notified to the Commission under Article 108(3) TFEU unless they are caught by the General Block Exemption Regulation.<sup>7</sup>

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<sup>6</sup> 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.

<sup>7</sup> Commission Regulation (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1-78)

### 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 Bulgarian Competent Authority 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 Republic of Bulgaria 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. The Bulgarian Competent Authority 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, 9.10.2015

*For the Commission*  
*Miguel ARIAS CAÑETE*  
*Member of the Commission*

