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**COMMISSION OPINION**

**of 21.6.2017**

**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**

(Only the Bulgarian text is authentic)

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## 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 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 Bulgaria, the Bulgarian Ministry of Energy, has notified a Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 24 November 2016. The Commission registered the Preventive Action Plan and Emergency Plan, submitted by the Bulgarian Competent Authority, on 16 December 2016.

The Commission has no information regarding the consultation on the Bulgarian Plans with other Member States, in particular with its neighbours.

The Commission considers it appropriate to communicate any comments on the Plans by using the procedure and assessment criteria as set out in Article 4(6) of the Regulation in respect of the initial Plans.

Thus having assessed the Plans, 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 Bulgarian Ministry of Energy has submitted a set of comprehensive Plans. However, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

#### 2.1 Preventive Action Plan

The Commission has no information regarding the consultation on the Bulgarian Plans with other Member States, in particular with its neighbours. According to Bulgaria no preparation

and implementation of a joint Preventive Action Plan with neighbouring EU Member States is currently envisaged. The Commission recalls that cross-border co-operation already on the planning level can noticeably increase the security of gas supply in line with the standards set in the Regulation (Article 8).

#### *Results of the risk assessment*

According to Article 5(1)(a) of the Regulation, the PAP shall contain the results of the risk assessment. As in the preceding plan from 2015, the Bulgarian PAP reproduces to a large extent the Risk Assessment but 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, similarly to the previous PAP, the explanations provided on the assumptions underlying each scenario are not sufficiently clear. In particular, there is no information on how the value for  $D_{max}$ <sup>1</sup> has been estimated and the reasons for the difference in the change of  $P_{max}$ <sup>2</sup> and  $EP5$ <sup>3</sup> between the two scenarios. Bulgaria should provide for each variable used in the formula for the implementation of the infrastructure standard a description of the methodology to calculate the variables' values and the input data which determine the values included in the plan for the years 2016 to 2020.

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.

Similarly to the previous PAP, the updated 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 9.14.3 of the EP envisages the compulsory switching to alternative fuel for

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<sup>1</sup>  $D_{max}$  = national consumption minus peak consumption, in million m<sup>3</sup>/day.

<sup>2</sup>  $P_{max}$  = 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.

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, 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 peak level of gas consumption by protected customers is estimated at 3.3 mcm/day and that it will ensure gas supply in line with Articles 8 (1) in exceptional situations via withdrawal of gas stored in UGS Chiren. Bulgaria confirms "the possibility to ensure supplies to the protected customers in the country during a possible disruption of the supplies". However, it appears unrealistic that the full withdrawal capacity of UGS Chiren can be exclusively used for protected customer when taking into account that electricity generation and industrial installations with continuous production processes will also require supplies from this source. Furthermore, 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 and for which volumes the district heating companies included in the definition of protected customers have the capability of switching fuel.

## **2.2 Emergency Plan**

### *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 how this dialogue is organised.

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 how this dialogue is organised.

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*

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<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").

*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.

Similarly to the 2015 EP, the updated 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 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, 9.12 and 9.14, 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 9.12.1) and transfer of quantities between the national transmission system and the transit system (item 9.12.3). 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 The use of underground gas storage in the Preventive Action Plan and the Emergency Plan**

Both the Emergency Plan and the Preventive Action Plan oblige gas undertakings, which supply customers before the start of the withdrawal season in winter with seasonally variable consumption (e.g. district heating companies), to store between 10% and 20% of the annual nominations of these customers in UGS Chiren; this corresponds to a total gas volume of 290 million cubic meters. The gas volumes stored are planned to cover the variation of the customer consumption and would be withdrawn at a pace sufficient to cover the consumption variation until the end of the winter season.

However, covering the seasonal variation of the customer gas demand seems to be part of a normal commercial activity. It is therefore unclear how storing gas in UGS Chiren with the

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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.

purpose of covering the seasonal variation of the customer demand can be part of the measures and obligations provided by the Emergency Plan and the Preventive Action Plan.

Furthermore, it is recalled that reserving a larger share of the storage capacity for purposes provided by the Emergency Plan and the Preventive Action Plan, the remaining storage capacity in UGS Chiren offered to the market would be accordingly reduced. This would limit the possibility of market players to have access to gas storage and would potentially affect their ability to compete on the market. According to Article 3(6) of the Regulation the measures included in the Preventive Action Plan and the Emergency Plan shall not unduly distort competition.

In view of the above, it is therefore necessary that both the Emergency Plan and the Preventive Action Plan are amended to ensure that storing gas in UGS Chiren under these Plans is limited to measures intended to remove or mitigate risks affecting the security of gas supply in Bulgaria and do not include normal commercial activity.

## 2.4 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.
- While it Bulgaria may have been in contact with its neighbours during the preparation of its Risk Assessment and its Plans, the Plans should clearly indicate whether they have been exchanged with neighbouring Member States.
- If any of the investments in future infrastructure, storage or interconnectors referred to in Section 7 ("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>

## 3. CONCLUSION

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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)

Based on the above assessment, and in view of Article 4(6)(b)(ii) of the Regulation, the Commission concludes that parts of the 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, 21.6.2017

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

