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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 the Czech Republic to the European
Commission**

(Only the Czech 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 Czech Republic, the Ministry of Industry and Trade, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 29 September 2016.

The Ministry of Industry and Trade notified to the Commission on 17 February 2017 its updated Preventive Action Plan and Emergency Plan.

The Ministry of Industry and Trade has consulted other Member States' Competent Authorities on its Plans, including its neighbours Poland, Slovakia, Germany and Austria.

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 6 and 22 March, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Ministry of Industry and Trade has submitted a set of detailed and comprehensive Plans providing for solutions to mitigate the main risks identified in their Risk Assessment. The Plans also show improvements compared to the Plans submitted previously, in particular regarding the definition of protected customers. Nevertheless, the Commission considers that some elements of the Plans do not appear to comply with the requirements of the Regulation.

2.1 Preventive Action Plan

Definition of the supply standard and related measures

Article 8(1) of the Regulation requires that gas supply to protected customers be ensured for certain minimum periods in case of an exceptionally high gas demand or supply interruptions¹, 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 Czech PAP contains some figures as regards the supply standard for some of the cases of exceptionally high gas demand or supply interruption defined in Article 8 of the Regulation. However, the supply standard calculated under the first scenario does not fully correspond to the 7-day peak period referred to in Article 8(1)(a), as it only refers to one day, and as such can also be interpreted as an increased supply standard if multiplied to cover one week. It is also not clear from the PAP how the calculation provided for the 30-days exceptionally high demand scenario (Article 8(1)(b)) leads to the 1-in-20 case that is sought after. In addition, the calculation of and the values provided for the supply standard in the PAP are inconsistent with those in the Risk Assessment.

Finally, it appears that an obligation exists on gas traders to store in European gas storages an amount equal to 30% of the corresponding "security standard" between 1 October and 31 March each year. Nevertheless, it is not clear to what specific risk this obligation relates to, how the volumes are calculated and what the impact, effectiveness and efficiency of such measure is. It is not clear either whether the proof that gas traders need to provide to demonstrate they meet the "security standard" are in addition to this storage obligation or are alternatives to it.

The Commission considers that the Czech PAP should be amended to correctly reflect all the volumes and measures needed for the compliance with the supply standard in the Czech Republic in accordance with Article 5(1)(b) of the Regulation. The Commission also reminds the Czech Republic that any supply standard going beyond the 30-day period referred to in Article 8(1)(b) and (c) of the Regulation or any additional obligation imposed for reasons of security of gas supply shall be based on the risks identified in the Risk Assessment and shall comply with a set of conditions as defined in Article 8(2) of the Regulation. Furthermore, such increased supply standard should also be included in the PAP in accordance with Article 5(1)(b) of the Regulation.

2.2 Emergency Plan

Non-market based measures during crisis levels other than "emergency" level

Pursuant to Article 10(3)(b) and (c) and Annex III of the Regulation, non-market based measures shall be used only in the event of an emergency crisis level. Measures during an alert can only be market based measures, as mentioned in the non-exhaustive list in Annex II of the Regulation.

The EP submitted by the Ministry of Industry and Trade refers to a series of measures to be adopted for preventing an emergency situation. Among these measures, it refers to deviations in the "business settlement" based on instructions from the TSO to prevent an emergency in

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

the early warning phase. In the absence of further information, these measures could be considered as non-market based measures. Furthermore, the EP refers to the limit and even suspension of gas supplies to certain categories of consumers, according to a national classification of the gas consumers, in alert level in order to prevent an emergency. On the basis of the information provided in the EP only, it appears that this could also be a non-market based measure adopted at a stage prior to an emergency level.

The Commission takes the view that the EP should be amended in order to clearly define the status and scope of the measures mentioned above. The Commission reminds the Czech Republic that, in case the measures in question were non-market based measures, their adoption in phases prior to an emergency would be in contradiction to the definition of an "early warning" and an "alert level" in Article 10(3)(a) and (b) of the Regulation and with Annex III therein.

Missing description of (cross-border) effects of potential measures

Article 10(1)(h) of the Regulation requires the identification of the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at emergency level. 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.

- The EP could be improved by providing more information on the contribution of market- and non-market based measures to the improvement of the different crisis situations, in particular, it should provide a quantitative assessment of their possible impacts and effectiveness.

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

According to Article 13(5)³ of the Regulation, 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 a reference to the obligations set out in Article 13(5).

The Commission takes the view that 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 remarks presented above, the Commission would like to draw the attention of the Ministry of Industry and Trade 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

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.'

³ 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.'

4(6)(b)(i) to (iii), but which may provide useful guidance to the Competent Authority for future amendments of the Plans.

- The Czech PAP describes in Table 14 in section 3 the compliance with the N-1 standard and provides figures and estimations for its calculation up to 2025. However, the actual N-1 values are missing from the table, so the actual value of N-1 is not known. In addition, there is an inconsistency between the figures in the text and the table and between those in the Risk Assessment. While figures show in all cases the compliance by the Czech Republic with the N-1 standard as required by the Regulation, the references to the value of the N-1 standard should be aligned throughout the document in order to improve the coherence of the PAP.
- The PAP contains in section 3 a summary of the scenarios considered for the Risk Assessment. However, these scenarios do not correspond to the scenarios developed in the Risk Assessment. The PAP should include a summary of the scenarios of the Risk Assessment, which is not a public document, in order to improve the transparency of the Plans prepared by all Member States.
- Both the PAP and EP contain numerous full transcriptions, often repeated, of different articles from national legislation. Excessive or repetitive production to the legal texts in the Plans may prejudice the clarity and coherence of the Plans, in particular where the texts are not directly relevant to the PAP or the EP. In order to improve the clarity and coherence of the Plans, the relevant provisions could be summarized and integrated in the main text, avoiding repetitions, while the full transcriptions could be moved to annexes.
- 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. 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.
- The Commission reminds the Czech Republic that if any of the investments in future infrastructure or interconnectors referred to in Section 6 the PAP involves 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 Regulation⁴.
- The Czech Republic explains in Section 7 of the PAP that, within the meaning of Section 12 of Act No. 458/2000 Coll. different participants of the gas market can be under different public service obligations. The Commission reminds the Czech Republic that if such public service obligations entail State resources, they could constitute State aid within the meaning of Article 107(1) TFEU and they must be notified to the Commission.

⁴

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 Ministry of Industry and Trade 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 Czech Republic 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 Ministry of Industry and Trade 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