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COMMISSION OPINION

of 14.4.2015

**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**

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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 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 12 June 2014.

The Ministry of Industry and Trade notified to the Commission on 20 January 2015 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 28.01.2015, 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. 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 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 however 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 Ministry of Industry and Trade contains a detailed definition of the consumers considered as protected in the Czech Republic. However, this definition is in many cases based on the annual individual gas consumption level of the consumers. Consequently, it is not possible to determine whether all the consumers considered as protected in the Czech Republic are eligible to be treated as such, according to the categories described in Article 2(1) of the Regulation, nor if the 20% threshold is respected.

The Commission takes the view that the PAP should be amended in order to further clarify the definition of the protected customers and its compliance with Article 2(1) of the Regulation.

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, not all the gas volumes are reflected in the Plans, as required by Article 5(1)(b) of the Regulation, and instead, a reference is made to a so called "security standard". Such "security standard" is expressed in the PAP in terms of daily consumption and appears to be determined every year on the basis of information published by the market operator on the 1 May, but the PAP does not indicate how this "security standard" is calculated nor if there is a correspondence with the gas volumes required by Article 8 of the Regulation.

Secondly, the PAP contains a description of the different ways for a gas trader to demonstrate the provision of the "security standard" but it does not indicate the concrete obligation that the gas trader must comply with according to the "security standard". It appears that an obligation exists on gas traders to store in European gas storages an amount equal to 20% of the corresponding "security standard" between 30 September and 1 April each year. Nevertheless, this obligation is not clearly described as such in the text nor reflected in the long list of overall obligations for the gas traders included in the PAP.

The Commission considers that the Czech PAP should be amended to clearly 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

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

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

Definition of 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. an "early warning", "alert" and "emergency"². 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 Czech EP appears to be correct, there are some scattered references to another crisis level (i.e. "warning level") which is not included in the definitions provided in the EP. 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 national definitions of crisis levels compared to the Regulation is not appropriate. Moreover, introducing diverging definitions on national level could create confusion as to the situations referred to, amongst others, in case of contacts with other Member States, which use the Regulation's terminology.

The Commission considers that the Czech EP should be amended in order to align its definition of the crisis levels with the definitions provided in Article 10(3) of the Regulation.

Predefined actions to be taken in the case of an emergency

In accordance with Article 10(1)(l) of the Regulation, the EP shall establish a list of predefined actions to make gas available in the event of an emergency. Moreover, according to Article 10(1)(i) the EP shall 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.

The EP submitted by the Ministry of Industry and Trade contains detailed descriptions regarding the mechanism in place for the orderly disruption of different categories of consumers in the case of an emergency. Furthermore, the EP describes an order to carry out

² See Article 10(3)(a) of the Regulation: "**early warning level (early warning)**: when there is concrete, serious and reliable information that an event may occur which is likely to result in significant deterioration of the supply situation and is likely to lead to the alert or the emergency level being triggered; the early warning level may be activated by an early warning mechanism". Article 10(3)(b) of the Regulation: "**alert level (alert)**: when a supply disruption or exceptionally high gas demand occurs which results in significant deterioration of the supply situation, but the market is still able to manage that disruption or demand without the need to resort to non-market based measures". Article 10(3)(c) of the Regulation: "**emergency level (emergency)**: in the event of exceptionally high gas demand, significant supply disruption or other significant deterioration of the supply situation and in the event that all relevant market measures have been implemented but the supply of gas is insufficient to meet the remaining gas demand so that non-market measures have to be additionally introduced with a view, in particular, to safeguarding supplies of gas to protected customers according to Article 8".

the activities in a state of emergency which refers to the limit and later suspension of the gas consumption. Thus, it seems that the only applicable measure in the case of an emergency is the partial or total disruption of gas supply to consumers according to an order described in the EP. However, the EP also contains a brief reference to another measure such as "the mandatory extraction of natural gas from the underground gas storages". It is unclear when the latter measure would be applied, its extent and who would decide on its application in a concrete case. The EP refers to a Central Emergency Committee of the Czech Republic gas system as well as to a Decentralized Emergency Committee of the transmission system operator (TSO), but it follows from their tasks that both can adopt decisions regarding measures to be taken in the case of an emergency and, consequently, could decide on the measure in question regarding the storage.

The Commission considers that the Czech EP should be amended to clearly specify all possible measures that could be reasonably applied in the case of an emergency as well as the degree to which their use is necessary to cope with a crisis. The amended EP should further describe clearly the procedures to apply all measures.

Given the interconnections between the Czech Republic and its neighbours and the mutual interdependencies resulting from this close integration, it is important that Plans analyse the possible effects of national emergency measures carefully and take full account of risks for the security of supply in other Member States³. The recent "Energy Stress Tests"⁴ have 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 can dampen the effects of a serious supply disruption and avoid unnecessary harm for single Member States.

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 when 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 the "prompt" warning phase. Absent further information, it appears that these measures could be 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 a so-called "warning phase" and in order to prevent an emergency. Again, and on the basis of the information provided in the EP only, it appears that this could be a non-market based measure adopted at a stage prior to an emergency level. Moreover, this "warning phase" is not defined among the possible crisis levels in the Czech Republic, although the EP contains some scattered references to it.

³ See in this respect also Article 5(3) of the Regulation (obliging Member States to take into account the *impact of measures in the internal market*); see also Article 9(1)(d), obliging Member States to identify the *interaction and correlation of risks with other Member States*; Article 4(3) of the Regulation (Joint Plans); see also recital 5: *"...there is a clear risk that measures developed unilaterally by [a] Member state may jeopardise the proper functioning of the internal gas market (...); it is necessary to provide for solidarity and coordination in the response to supply crises."*

⁴ 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.

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.

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 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 2024. However, the PAP also refers afterwards to a different value of the N-1 standard. Moreover, both figures differ from the value of the N-1 standard contained 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, it does not refer to the same scenarios as 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. The inclusion of such transcriptions obscures rather than clarifies the Plans, notably as many parts are not directly relevant to the PAP or the EP. In order to improve the transparency and coherence of the Plans, the relevant provisions should 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 interconnector 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 Regulation⁵.

⁵ 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).

- 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.

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, 14.4.2015

For the Commission
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Member of the Commission