



Brussels, 12.4.2017
C(2017) 2391 final

COMMISSION OPINION

of 12.4.2017

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

Only the German 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 Germany, the Federal Ministry of Economics and Technology (hereafter "FME"), has notified to the Commission its Risk Assessment pursuant to Article 9 of the Regulation on 4 October 2016.

The FME notified to the Commission its updated PAP and EP on 2 December 2016.

The FME has consulted other Member States' Competent Authorities on its Plans, including its neighbours, and Sweden, Italy and Slovakia. Furthermore, Switzerland was consulted. On 9 December 2016, Poland has submitted comments to the draft EP. 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 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Commission considers that the Plans are in general of good quality and in many aspects detailed and comprehensive. The Commission welcomes that the Plans aim at an integrated view for the security of supply in the electricity and gas sectors and that additional information is provided on risks concerning the supply situation for L-

gas. While the Commission welcomes that Germany has tried to take into account the close integration of the German gas grid with other countries, in particular Austria and the Netherlands, further detail could be provided on the substantive results of the consultation of the plans with neighbouring Member States.

2.1. Preventive Action Plan (PAP)

The Commission considers the PAP to be in line with the requirements of the Regulation. The Commission considers that significant additional clarifications have been provided in the PAP on the existence or not of an increased supply standard pursuant to Article 8(1) of the Regulation. In this regard, the PAP underlines that the possibility for transmission system operators to impose the supply of certain systemically relevant gas-fired power plants does not constitute an increased supply standard, as these power plants are not put on an equal footing with protected customers. The Commission welcomes the alternative calculations provided in the PAP which demonstrate that the supply standard would also be met if these power plants as well as customers in the Austrian areas of Tirol and Vorarlberg, which can only be supplied via Germany, are included in the calculation.

2.2. Emergency Plan (EP)

The Commission considers that some elements of the EP do not fully comply with the requirements of the Regulation.

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

Article 10(1) of the Regulation provides for the EP to include a description of cross-border effects of potential non-market measures. Article 10(1)(i) requires *inter alia* an assessment of the degree of necessity to turn to nonmarket based measures to cope with a crisis, an analysis of the effects of such measures and the definition of the procedures to implement them.¹ The Article is an expression of the general idea of mutual cooperation and coordination in the development of Plans and decisions on crisis measures. This principle is underlying the entire Regulation².

The German EP contains a description of potential market and non-market based measures and refers to when such measures could be deployed. However, the EP does not elaborate on the quantified contribution of particular measures in coping with the crisis. Moreover, the EP should identify what the (quantified) effects of the measures would be, notably on other Member States. Germany has a large number of gas interconnections with neighbouring countries and serves as an important market

¹ Article 10(1)(i) obliges Member States 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 marketbased mechanisms alone can no longer ensure supplies, in particular to protected customers.*"

² 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."

for imports to other Member States. The 2014 "Energy Stress Tests"³ have shown that missing coordination of emergency measures in Central and Eastern Europe in case of a severe crisis can significantly weaken the resilience of Member States. By contrast, close coordination of emergency measures can reduce the effects of a serious supply disruption and avoid unnecessary harm for single Member States.

It is therefore important that the Risk Assessment and the Plans identify these interdependencies and take full account of risks for the security of supply. A positive example is that, together with Austria, an agreement was found regarding the operation of gas storage connected to both national networks but situated in Austrian territory⁴. Similarly, concerns for the cross-border use of storage situated in Germany in emergency situations have been raised by Poland in the consultation of the EP. The Commission welcomes where agreements on cross-border use of storage can be found. Even where no agreement was found, Article 10(1)(i) of the Regulation requires however at least to provide further clarity on the cross-border effects of non-market measures, especially in cases where concerns regarding interruptions of particular cross-border flows are raised by other Member States in the consultation of the EP.

2.3. Other comments

The Commission would like to draw the attention of the FME 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)(i) to (iii) of the Regulation, but which may provide guidance to the Competent Authority for future amendments of the Plans.

Further detail on the differentiation between protected customers on one hand and systemically relevant gas-fired power plants on the other hand is contained in the risk assessment⁵. The risk assessment explains that whereas operators of systemically relevant gas-fired power plants have the obligation to organize gas supplies generally on the basis of firm capacities, and curtailment of gas supplies to these power plants shall only occur after all market-based measures have been taken, supply of gas to these power plants is not primarily based on supply obligations, and the power plants do not benefit from the same level of protection as protected customers. As the risk assessment is not a publicly available document, the Commission would welcome if such clarification were provided in future PAPs.

Regarding the scope of the risk assessment, significant additional information is provided on risks for L-Gas supply. These risks also take into account the possibility of supply reductions other than the interruption of an individual import infrastructure. This includes the impact of a full interruption of L-gas supplies from the Netherlands⁶. In view of the variety of available infrastructure for imports in Germany, this approach could be taken into consideration also for other technical or political risks to gas supplies, independent of individual infrastructures.

³ 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.

⁴ P. 94 of the risk assessment.

⁵ Pages 32-33 of the risk assessment.

⁶ p. 91 of the risk assessment.

Taking into account the role of the German gas market for Central and Eastern Europe as well as the Plans of some of its neighbours, it is advisable that Germany takes into account the risk of a joint interruption of three major routes of Russian gas to Germany (Nord Stream, Yamal and Brotherhood). This could also include information on potential effects of measures by neighbouring countries on the German system in case of a (parallel) supply crisis (e.g. interruptions of gas imports from neighbouring countries).

As regards the measures foreseen to address risks to L-gas supply, the PAP provides that even if all measures are implemented in a timely manner, they will not suffice to fully address the risk of insufficient L-gas supplies. In view of such a concrete and plausible risk, the Commission would welcome for the Plans to provide further details on the preventive and emergency measures foreseen in case of a worsening of the situation. The Plans could e.g. contain further information on the role of interruptible contracts in L-gas networks or on the agreements with the Netherlands, if any.

The EP provides⁷ that calls for energy savings are only possible in the event of an emergency. The Commission would suggest for such calls for voluntary reductions of consumption to also be possible at earlier stages, especially where this could help preventing the declaration of an emergency.

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 EP do not comply with certain provisions of this Regulation.

The Commission requests the FME to amend the EP 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* Germany as regards compatibility of national measures with EU law, including in the context of infringement proceedings.

The Commission reminds Germany that if any of the investments in infrastructure mentioned in the plans 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.

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. FME is invited to inform the Commission within five working days following receipt of the opinion whether it considers that it contains sensitive information, the confidentiality of which is to be preserved.

Done at Brussels, 12.4.2017

For the Commission

Miguel ARIAS CAÑETE

Member of the Commission

⁷ P. 18 of the EP.