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COMMISSION OPINION

of 22.6.2015

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the Republic of Slovenia 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 Slovenia, the Energy Agency, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 20 March 2015.

The Energy Agency notified to the Commission on 20 March 2015 its updated Preventive Action Plan and on 26 March its updated Emergency Plan. The Commission has no information regarding the consultation on the Slovenian Plans with other Member States, in particular with its neighbours.

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 January 2015 and 04 May 2015, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns the content of the Plans, they are in many aspects detailed and comprehensive. However, the Commission considers that some elements of the Plans do not 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. Article 8(1) of the Regulation requires that gas supply to protected customers be ensured for certain minimum periods in scenarios 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.

Firstly, the PAP submitted by the Energy Agency defines in its Articles 4 and 6 a series of obligations on suppliers and methodologies to calculate the gas volumes that suppliers to protected customers need to be able to provide in order to comply with the supply standard. According to these methodologies, the necessary gas volumes per scenario are calculated by increasing average or estimated consumption volumes by a multiplying factor. The multiplying factor is calculated differently for each scenario taking into account the temperatures or gas consumption for the 1 in 20 conditions² required by Article 8(1) of the Regulation. However, it is unclear whether the gas volumes calculated in this manner correspond to the gas consumption of the protected customers in the scenarios defined in Article 8(1) of the Regulation.

Secondly, the PAP mentions the categories of consumers that are considered as protected customers in Slovenia (i.e. households and essential social services) but it does not provide any concrete figure as regards their gas consumption volumes. Only the Risk Assessment provides an aggregated value in terms of percentage out of the total gas consumption. Consequently, it is not possible to determine whether the definition of protected customers meets the conditions set in Article 2(1) of the Regulation.

The Commission considers that the Slovenian PAP should be amended in order to further explain the volumes and capacities needed to fulfil the supply standard and whether their calculation according to the Slovenian methodology corresponds to the scenarios in Article 8(1) of the Regulation. The Commission reminds Slovenia that any increased supply standard needs to comply with the conditions set in Article 8(2) of the Regulation. The details on the definition of the protected customers and their consumption volumes should also be reflected in the PAP given their relevance for the fulfilment of the supply standard and the fact that the Risk Assessment is not a public document.

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;*"

¹ 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").

² "1 in 20" conditions refers to conditions occurring with a statistical probability of once in 20 years.

Article 8 of the Slovenian PAP contains a list of measures for the security of gas supply. However, the majority of the measures in that list are aimed at mitigating and remedying the effects of a disruptive event once a certain crisis level has been declared rather than preventing its appearance. Furthermore, no explanation is provided as to how the measures would be applied nor their timing.

The Commission takes the view that the Slovenian PAP should be amended in order to further explain the preventive measures that Slovenia would concretely put in place, their timing, scope and affected parties.

2.2 Emergency Plan

Non-market based measures during “early warning” and “alert” 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. The different levels are, *inter alia*, relevant for the measures allowed under the Regulation to mitigate a supply disruption or exceptionally high gas demand. Pursuant to Article 10(3)(b) and (c)³ and Annex III of the Regulation, so-called “non-market based measures” shall be used only in the event of an “emergency” crisis level. Measures during an “early warning” or “alert” can only be market based measures, as mentioned in the non-exhaustive list in Annex II of the Regulation.

The EP submitted by Slovenia refers in its Articles 3(8) and 5(8) to the role of the Competent Authority or the crisis team in removing the causes or reducing the effects of a gas disruption by establishing and implementing necessary actions at the “early warning” and “alert” levels respectively. Articles 4 and 6 mention the concrete measures that could be applied for each of the crisis levels in question. However, from the measures described in these articles it seems that the measures to be actually implemented by the Competent Authority are rather limited or not mentioned at all. While this approach is consistent with the crisis levels in question, where market solutions have to be exploited, it is unclear why the EP continues to refer to “necessary activities” to be determined by the Competent Authority or the crisis team.

The Commission considers that the Energy Agency should amend the Slovenian EP in order to further explain the concrete measures that the Competent Authority would adopt in the “early warning” and “alert” levels. It must be borne in mind that the adoption of non-market based measures at these crisis levels would be in contradiction to the definition of both an “early warning” and “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 Energy Agency 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

³ See Article 10(3)(b) of Regulation 994/2010: “*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*”.

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

- In order to enhance the transparency, the summary of the Risk Assessment contained in the PAP should be further expanded providing more information on the concrete scenarios and main conclusions.
- No measures and actions are defined to mitigate the potential impact related to district heating and electricity generation (see Article 10(1)(e)) and there is no indication in the Plans why it would not be appropriate to identify such measures and actions;
- 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 2014⁴. 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 Plans should clearly mention whether they have been exchanged with neighbouring Member States.
- The Commission reminds Slovenia that if any of the investments in future infrastructure or interconnector referred to in Article 8(1) and Annex 3 of the PAP involves State resources they could constitute State aid within the meaning of Article 107(2) 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.⁵
- Slovenia explains in Annex 2 to the PAP that different participants of the gas market can be under different public service obligations to perform services of general economic interest. The Commission reminds Slovenia that if such public service obligations entail State resources, they could constitute State aid within meaning of Article 107(1) TFEU and they must be notified to the Commission.
- Article 8(2) of the PAP promotes various supply and demand-side response measures in Slovenia in order to tackle the issue of security of supply. While the Commission has recognised the role of moderating energy demand as a pillar to respond to energy security concerns⁶ and Member States are moreover required to encourage demand side resources, such as demand response⁷, the Commission also reminds Slovenia that if any of such measures entail State resources they might be caught by Article 107(1) TFEU as State aid and they must be notified to the Commission.

3. CONCLUSION

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.

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)

⁶ Communication from the Commission, "European Energy Security Strategy" COM(2014) 330 final.

⁷ See Article 15 of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, OJ 14.11.2012, L315.

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 Energy Agency 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* Slovenia 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 Energy Agency 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, 22.6.2015

For the Commission

Member of the Commission

