



Brussels, 13.1.2016
C(2016) 86 final

COMMISSION OPINION

of 13.1.2016

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

COMMISSION OPINION

of 13.1.2016

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

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 Slovakia, the Ministry of Economy of the Slovak Republic, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 31 August 2015.

The Slovak Competent Authority notified to the Commission on 31 August 2015 its updated Preventive Action Plan and its updated Emergency Plan. The Commission has no information regarding the consultation on the Slovak 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, 4 May 2015 and 22 September 2015, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans submitted by the Slovak Competent Authority are in some aspects detailed and provide solutions to deal with major crisis. Nevertheless, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

Information concerning the infrastructure standard

As provided by Article 5(1)(b) of the Regulation, the Slovak PAP reports the figures for the calculation of the N-1 standard and the calculation of the largest infrastructure. However, it needs to be noted that the figures for the standard are calculated using a Dmax of 44.4 mcm/d, while section 3.3 states that Dmax should be 46.9 mcm/d. It seems that the value used in the updated PAP could come from the previous version of the PAP.

Therefore the Commission invites the Slovak Competent Authority to revise the calculations of the N-1 standard on the basis of updated values.

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.

The PAP submitted by the Slovak Competent Authority refers to the Slovak Energy Act defining protected customers (Act No. 251/2012 on Energy and Amending Certain Laws) as gas customers connected to the distribution network of a certain number of categories². However, the Slovakian PAP does not contain specific figures on the protected customer's consumption and therefore, it is not possible to assess its full compliance with the requirements of Article 2(1) of the Regulation nor if the definition of protected customers is a correct basis for the calculation of the supply standard.

The PAP submitted by Slovakia moreover does not contain detailed information regarding the volumes necessary to comply with the supply standard.

The Commission therefore considers that the Slovak PAP should further explain the delineation of the group of protected customers and the compliance with the supply standard. The Commission reminds Slovakia that any increased supply standard should comply with the conditions set in Article 8(2) of the Regulation and shall be described in the PAP in accordance with Article 5(1) of the Regulation.

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 Gas household customers, small-sized undertakings (defined by the Slovak Energy Act as end gas customers with total maximum annual gas consumption of 100.000 kWh), gas customers producing heat and hot industrial water for households or other persons which are not able to use alternative fuel in the heat production, health-care, social services, social protection of children and social custody facility operators, schools and gas customers except for those included in the previous categories and under the terms specified by the Regulation and a generally binding legal regulation

Information on public service obligation

Article 5(1)(g) of the Regulation requires that the Plan shall report on all public service obligations that relate to security of gas supply. The Slovak Plan does not address the issue in question.

Therefore the Commission considers that the Slovak PAP should clearly indicate if such public service obligations relating to security of supply do not exist or provide sufficient information on them in case they exist.

2.2 Emergency Plan (EP)

Procedures and measures to be followed for each crisis level

Article 10(1)(f) of the Regulation sets out that the EP shall establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows. According to Article 10(1)(h) of the Regulation the EP shall identify the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at emergency level. Further, Article 10(1)(i) of the Regulation defines that the EP shall identify the contribution of non-market based measures for the emergency level 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.

Article 10(1)(d) of the Regulation establishes that the EP shall ensure that natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level.

The EP submitted by the Slovak Competent Authority fails to provide procedures and measures for each crisis level, presenting only non-market based measures, though without describing a procedure. The Slovakian EP does not provide either any identification or estimation of the contribution of market-based and of non-market based measures for coping with the relevant situations. Moreover, there is no explanation or diagram setting out the information flow or the links among market actors. In this context, it is not possible to assess whether natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level.

Therefore, the Commission considers that the Slovak EP should be amended to define clearly the procedures and measures to apply at each crisis level and how market based and non-market based measures contribute to coping with different crisis levels. The EP should also include the corresponding schemes on information flows for each crisis level as required by the Regulation.

Cooperation with other Member States

Article 10(1)(j) of the Regulation sets out that the Plan shall describe the mechanisms used to cooperate with other Member States for each crisis level. While the EP provided by the Slovak Competent Authority identifies the actors involved in cooperating with the Competent Authorities and TSOs of other Member States, it is lacking a clear description or detail of mechanisms per crisis level.

Therefore, the Commission is the view that the Slovak EP should be amended to include a description of the mechanisms per crisis level used to cooperate with other Member States.

Restrictions to cross-border gas flow

Article 10(7) of the Regulation establishes an obligation on Member States and in particular on the Competent Authorities to 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".

The EP provided by the Slovak Competent Authority establishes that the Competent Authority: *"shall decide on the interruption of gas withdrawal from storage facilities for respective gas market participants which store gas for customers outside of the defined territory upon considering the adoption of available measures aimed at ensuring technical safety of the system in the defined territory, including options of cross-border cooperation in accordance with the Regulation"*.

Given the manifold interconnections between Slovakia and its neighbours and the mutual interdependencies resulting from this close integration, it is important that its Plans analyse the possible effects of national emergency measures carefully and take full account of risks for the security of supply in other Member States. The "Energy Stress Tests"³ 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. The Commission considers that the Slovakian measure described in the previous paragraph, i.e. the possibility for the Competent Authority to interrupt gas withdrawals for consumers outside of their territory, may have effects on neighbouring countries which may not be in line with the provisions set in Article 10(7)(a) and (c) of the Regulation. As regards Article 10(7)(b), the Commission cannot conclude at this stage, on the basis of the information available, that such measure could endanger the security of supply of another Member State, among others since it is unclear whether this EP has been consulted with neighbouring countries.

The Commission takes the view that the measure in question should be further explained in the EP, indicating at least its extent, the conditions that would trigger its application, its effect on neighbouring countries and the justification of the compliance of such measure with the conditions established in Article 10(7) of the Regulation.

2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Slovak 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.

- There is no information provided in the updated Plans submitted by the Slovak Competent Authority regarding consultation of the Plans with the relevant, at least neighbouring, Member States, as required by Article 5(4) and Article 10(2) of the Regulation. The Plans should clearly mention whether they have been exchanged with neighbouring Member States.

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.

- The PAP provided by the Slovak Competent Authority contains an extensive summary of the risk assessment but there is no proper risk identification section or any reference to risk scenarios or identification of scenarios. The PAP should include a more comprehensive summary of the updated Slovak Risk Assessment, covering in particular the risk identification and risk scenarios. Furthermore, the PAP should establish a clear link between the measures contained in the PAP and the concrete risks they seek to remove or mitigate. Such improvements will enhance the readability of the Plans and will contribute to a higher transparency, notably as regards the effectiveness of the Plans.
- The PAP could further contribute to the transparency of the gas security of supply policy if it contained references to the economic impact, effectiveness and efficiency of the measures, or to their effects on the functioning of the internal energy market and the impact on the environment and on gas consumers.
- The PAP could be also improved by explaining how the Union-wide Ten Year Network Development Plan is taken into account, in particular regarding the actions to meet the infrastructure standard.
- No measures and actions are defined to mitigate the potential impact related to electricity generation (see Article 10(1)(e) of the Regulation) and there is no indication in the Plans why it would not be appropriate to identify such measures and actions;
- The Commission reminds Slovakia that if any of the investments in future infrastructure mentioned in Section 2.2 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 Regulation⁴.

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 Slovak 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 Slovak 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 Slovak 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.

⁴

Commission Regulation (EU) №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).

Done at Brussels, 13.1.2016

For the Commission

Miguel ARIAS CAÑETE

Member of the Commission

