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COMMISSION OPINION

of 21.1.2016

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the Grand Duchy of Luxembourg 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 Luxembourg, the Ministry of Economy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 7 September 2015.

The Competent Authority of Luxembourg notified to the Commission on 14 September 2015 its updated Preventive Action Plan and its updated Emergency Plan. The Commission has no information regarding the consultation on the Plans of Luxembourg 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 Competent Authority of Luxembourg are in many aspects detailed and comprehensive. The Commission welcomes in particular the description of the preventive actions recently implemented such as the completion in September 2014 of the Bridel loop reducing the pressure losses in the national network and the pressure management agreement with Belgium increasing the capacity of the interconnection between the two countries.

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*" should be contained in the Preventive Action Plan (PAP) in accordance with Article 5(1)(b) of the Regulation.

The PAP, submitted by the Competent Authority of Luxembourg, recalls in paragraph 4.3 that the protected customers are defined in Luxembourg as all households connected to the natural gas distribution network. The Competent Authority of Luxembourg has not decided to include the small and medium enterprises or the district heating installations, as possible under Article 2(1)(a) and (b). However, the PAP defines in paragraph 5.1 on preventive measures four levels of priority in the load shedding plan. Level 4 corresponds to interruptible industrial customers, level 3 to non-interruptible industrial customers, level 2 to cogeneration or electricity generation plans and level 1 to households, commercial customers and non-interruptible public establishments. Customers of level 1 have the highest protection level.

The Plans submitted by the Competent Authority of Luxembourg do not provide any explanations or justifications on the differences between the definitions of protected customers and customers of level 1. The Plans also do not provide any basis to assess whether amongst the customers of level 1, the consumption by eligible non-household customers contributes with less than 20 % to the final use of gas in Luxembourg. As a consequence of the definition for protected customers potentially exceeding the possibilities of Article 2 (1) of the Regulation, the PAP does not allow verification if the supply standard applied by the Competent Authority exceeds the limits foreseen under the Regulation. The PAP describes the obligations imposed on natural gas undertakings to comply with the supply standard, and provides the gas volumes and capacities associated to the supply of protected customers, as required by Article 5(1) (b) of the Regulation. However, as the share of protected customers amongst the total customers possibly exceeds the boundaries of Article 2 (1) of the Regulation, this may result in an implicit increased supply standard.

The Commission therefore considers that the PAP should further explain the delineation of the group of protected customers and, if necessary, adjust the volumes and capacities needed to fulfil the supply standard accordingly. The Commission reminds Luxembourg that any increased supply standard or additional obligation in this regard can only be imposed for reasons of security of gas supply and has to comply with the conditions set in Article 8(2) of the Regulation. In particular, any such supply standard and the measures used for its

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").

implementation may not hamper the functioning of the internal market in gas or impact negatively on the ability of any other Member State to supply its protected customers in the event of a national, regional or Union emergency in accordance with Article 8 of the Regulation.

2.2 Emergency Plan

Measures to be adopted in the case of an emergency

According to Article 10(1)(b), the Emergency Plan (EP) should "*define the role and responsibilities of natural gas undertakings and of industrial gas customers including relevant electricity producers and their interaction with the Competent Authorities... at each of the crisis level...*". Pursuant to Article 10(1)(d), the EP shall "*ensure that national gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level*". Furthermore, Article 10(1)(h) and (i) requires the EP to "*identify the contribution of market based measures... for coping with the situation at alert level*" and "*non-market based measures planned or to be implemented for the emergency level*".

The EP submitted by the Competent Authority of Luxembourg contains a number of measures and procedures to be applied in the case of the declaration of a crisis level. The role and responsibility of natural gas undertakings are described in paragraph 4. However, consumers are not mentioned amongst the actors in the case of the declaration of a crisis level. Furthermore, the information provided is insufficient to understand how these procedures would work in practice and, on this basis, to assess the degree to which the use of non-market based measures is necessary to cope with a crisis and assess their effects, as required by Article 10(1)(f) and (i) of the Regulation. In particular, the following comments can be made:

- Additional quantitative information on the contribution of market based measures and non-market based measures to cope with alert and emergency levels should be included in the EP;
- Additional information on the interaction with the industrial customers, including electricity producers, appears necessary to assess the impact and justification of the non-market based measures.
- Cooperation with other Member States at each crisis level needs to be described in the EP.

The Commission takes the view that the EP should be amended in order to include a more detailed description of the measures to take in case a crisis level is declared and the assessment of their impacts, along the lines indicated above.

2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Competent Authority of Luxembourg 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 Plans should clearly mention whether they have been exchanged with neighbouring Member States.
- The EP prepared by the Competent Authority of Luxembourg should contain the measures and actions to be taken to mitigate the potential impacts of a gas supply

disruption on district heating and the supply of electricity generated from gas, or indicate why this would not be appropriate, in accordance with Article 10(1)(e) of the Regulation.

- Belgium and Luxembourg announced the merger of their gas markets as of 1 October 2015. The Commission believes that the consequences on the security of supply should be assessed in the Plans.
- 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 2014². 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 Luxembourg that if the investments in future infrastructure (interconnector with France) mentioned in Section 5.3.1 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 Regulation³.

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 Competent Authority of the Grand Duchy of Luxembourg 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* Luxembourg 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 Competent Authority of Luxembourg is invited to inform the Commission within five working days following the receipt of the opinion whether it considers that it contains commercially sensitive information, the confidentiality of which is to be preserved.

² 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.

³ Commission Regulation (EU) No 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, 21.1.2016

For the Commission
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Member of the Commission