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COMMISSION OPINION

of 9.2.2016

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the Republic of Lithuania 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 Lithuania, the Ministry of Energy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 15 February 2015.

The Lithuanian Competent Authority notified to the Commission its updated Preventive Action Plan and updated Emergency Plan on 15 February 2015.

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 Lithuanian Competent Authority are in many aspects detailed and comprehensive. The Commission welcomes in particular the detailed description of the Risk Assessment and the analysis of potential bottlenecks and the description of needed infrastructure projects. 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) submitted in accordance with Article 5(1)(b) of the Regulation.

The Lithuanian PAP refers to the Inventory of Measures Safeguarding the Reliability of Natural Gas Supply approved by Government Resolution No 163 of 26 February 2008 which defines the scope of the protected customers. According to this definition, the protected customers are all household customers, as well as non-household customers whose gas consumption does not exceed 20 000 m³ per year.

Since there is no description of the categories of the protected non-household customers included in the PAP, it is not possible to assess if all protected non-household customers fall under the definition of Article 2(1). Furthermore, due to missing data in the PAP, it cannot be assessed which percentage of the final use of gas has to be attributed to the protected non-household customers and if the threshold of Article 2(1) is respected. In addition, the PAP submitted by the Lithuanian Competent Authority does not include a description of the gas volumes and capacities needed to fulfil the supply standard.

The Commission considers that the Lithuanian PAP should be amended to include the volumes and capacities needed to meet the supply standard. More detailed information should also be included on the categories of protected non-household customers and on their consumption levels.

Storage obligation

The PAP provides information on storage obligations for gas suppliers who are supplying protected customers. In addition, the PAP points out that also non-protected customers should choose a gas stockpiling method, naming various options. Such an additional gas stockpiling obligation goes beyond the supply standard of Article 8(1). An increased supply standard 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. The Commission reminds Lithuania that it has thus to be ensured that the described storage obligations fulfil all requirements of Article 8(2) of the Regulation, and in particular do not unduly distort competition (both in the gas supply and in the storage capacity markets) nor unduly hamper the functioning of the internal market in gas or negatively impact on the ability of any other Member State to supply its protected customers in the event of a national, regional or Union emergency. The Commission requests the Lithuanian Competent Authority to carefully assess the storage obligation in view of Article 8(2) of the Regulation and ensure that it meets the requirements therein.

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").

2.2 Emergency Plan

Measures to be adopted in case of an emergency

According to Article 10(1)(f) the Emergency Plan (EP) should "*establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows.*" Article 10(1)(i) requires the EP 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 [...]*".

The EP submitted by the Lithuanian Competent Authority contains a number of measures to be applied in the case of the declaration of the emergency. However, the information provided on some of the measures is insufficient to understand how they 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, it is not clear in which cases and how the freezing of prices for energy resources would be necessary to cope with an emergency.

The Commission takes the view that in order to rely upon each of these measures a more detailed description and assessment of their impacts is necessary in the EP.

2.3 Other comments

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

- No measures and actions are defined in the EP to mitigate the potential impact related to district heating (see Article 10(1)(e)) and there is no indication why it would not be appropriate to identify such measures and actions.
- The Plans should clearly mention whether the draft Plans have been exchanged with neighbouring Member States.
- The Commission reminds Lithuania that if any of the investments in future infrastructure (such as interconnectors towards Poland and Latvia) referred to in points 50 - 51 and 53 and Table 6 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 (if not yet approved) must be notified to the Commission under Article 108(3) TFEU unless they are caught by the General Block Exemption Regulation².
- Points 54-55 of the PAP promote demand side monetary measures in Lithuania in order to tackle the issue of security of supply. The Commission reminds Lithuania that if such measures entail State resources and confer an economic advantage to an understanding going beyond what it could obtain on market terms, they might be

² 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).

caught by Article 107(1) TFEU as State aid 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 Lithuanian 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* Lithuania 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 Lithuanian 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.

Done at Brussels, 9.2.2016

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission