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**COMMISSION OPINION**

**of 9.3.2015**

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan  
submitted by the Competent Authority of the Kingdom of Belgium 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 Belgium, the Directorate General of Energy of the Federal Public Service of Economy, SME, Self-Employed and Energy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 15.09.2014.

The Belgian Competent Authority notified to the Commission on 09.12.2014 its updated Preventive Action Plan and Emergency Plan. The Commission has no information regarding the consultation on the Belgian 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 28.01.2015, the Commission has the following remarks on the Plans.

#### **2. COMMISSION'S ASSESSMENT OF THE PLANS**

The Belgian Competent Authority has submitted a set of detailed and comprehensive Plans consistent with their Risk Assessment. The Commission welcomes in particular the information provided as regards the preventive measures taken by the electricity and gas transmission system operators (TSOs), namely ELIA and Fluxys Belgium, to assess and minimise the impact of a loss of power supply/electricity.

Nevertheless, 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 case of an exceptionally high gas demand or supply interruptions<sup>1</sup>, 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 Belgian Competent Authority does not include a description of the gas volumes and capacities needed to fulfil the supply standard, nor indicates who the protected customers are. Furthermore, it follows from the explanation provided in the PAP that a new legal framework for the supply standard is being drafted. The PAP describes then several options and approaches to the supply standard, but it appears that none of these measures are currently in place. While careful reflection on the approach to implement the supply standard is welcomed by the Commission, the Commission takes the view that existing measures should be described in the Plans and, absent such measures, new measures should be adopted as soon as possible to ensure the compliance with the supply standard in accordance with Article 8(1) of the Regulation. Moreover, the Commission considers that the Belgian PAP should be amended to include the measures, volumes and capacities needed to meet the supply standard. Information should also be included on protected customers and on their consumption levels.

## 2.2 Emergency Plan

### *Definition of the "early warning" crisis level*

In accordance with Article 10(3)(a) of the Regulation a so-called "early warning" crisis level is to be declared when there is *"concrete, serious and reliable information that an event may occur which is likely to result in significant deterioration of the supply situation and is likely to lead to the alert or the emergency level being triggered"*.

The Belgian EP appears to use a slightly different concept of "early warning" level, using the following definition: *"The early warning level will in general be activated when the operation of the transmission grid is under stress. (...) In the early warning level, an incident has occurred which causes Fluxys Belgium and the gas undertakings to be more vigilant (...)"*.

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<sup>1</sup> See Article 8(1) (concerning the "supply standard") and Article 2(1) of the Regulation (concerning the definition of "protected customers").

Such definition appears to make the declaration of an "early warning" level dependent on the actual occurrence of an incident. Pursuant to this definition, no "early warning" level could be declared absent an incident causing system stress. Pursuant to the Regulation, however, the "early warning" crisis level should be declared *before* a critical event actually occurs. This shall allow all parties, and notably market players, to prepare for possible consequences ahead of an incident. Consequently, the EP should be amended to bring the definition of the "early warning" crisis level fully in line with the Regulation.

#### *Contribution of market-based and non-market based measures to cope with a crisis*

Pursuant to Article 10(1)(a) of the Regulation, the EP shall build upon the three "crisis levels"<sup>2</sup> 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.

In accordance with Article 10(1)(h) of the Regulation, the EP shall identify the contribution of market-based measures, notably those listed in Annex II, for coping with the situation at alert level and mitigating the situation at emergency level. Similarly, 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 Belgian EP does not describe in sufficient detail the different market-based and non-market measures and their contribution to cope with a crisis at different levels. While for some measures it can be deduced that their contribution will depend on the concrete situation, other measures remain unclear, both concerning their content and scope (e.g. the "adaptation of market thresholds" and the "use of interruptible capacity on entry points" in case of entry shutdown or grid incident to enable market reaction, both by the gas TSO, during early warning and alert situations). The Commission considers that the EP should be amended to further clarify the content of the different measures that can be adopted at each crisis level and their contribution to cope with a crisis.

#### *Non-market based measures during "early warning" and "alert" levels*

Pursuant to Article 10(3)(b) and (c) and Annex III of the Regulation, non-market based measures shall be used only in the event of an emergency crisis level. Measures during an alert can only be market based measures, as mentioned in the non-exhaustive list in Annex II of the Regulation.

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<sup>2</sup> See Article 10(3)(a) of the Regulation: "*early warning level (early warning): when there is concrete, serious and reliable information that an event may occur which is likely to result in significant deterioration of the supply situation and is likely to lead to the alert or the emergency level being triggered; the early warning level may be activated by an early warning mechanism*". Article 10(3)(b) of the Regulation: "*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*".

The Belgian EP mentions that at early warning and alert levels gas undertakings can be required to take additional measures to help balance the system. Furthermore, the PAP indicates that the TSO may urge gas companies to withdraw gas from storage already at early warning or alert phases. In the light of such measures, and absent further information, it seems that the TSO can impose measures on gas undertakings at an early warning or alert level, beyond those necessary for the regular balancing of the system. Absent further clarifications on their nature, these measures appear to be non-market based measures. The adoption of such measures would be in contradiction to the definition of an "early warning" and an "alert level" in Article 10(3)(a) and (b) of the Regulation and with Annex III therein.

#### *Compliance with the conditions for the emergency measures*

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

In accordance with Articles 5(4) and 10(2) of the Regulation, the consultation between Competent Authorities as provided by Article 4(2) of the Regulation shall also be carried out before the adoption of the updated PAP and EP.

The Belgian EP indicates that, during an emergency, *"a gas undertaking can be called upon to enter imbalance constraint (...) which will limit the nominated exit quantities at the interconnection points within the shippers firm capacity"*. Additionally, the PAP indicates that *"before firm customers are interrupted, firm border-to-border transmission will be interrupted"*.

Given the manifold interconnections between Belgium and its neighbours and the mutual interdependencies resulting from this close integration, it is important that 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<sup>3</sup>. The recent "Energy Stress Tests"<sup>4</sup> 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 Belgian emergency measures described in the previous paragraph 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 measures could endanger the security of supply of another Member State, in particular because Belgium refers to an effective communication and

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<sup>3</sup> 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."*

<sup>4</sup> 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.

coordination with its neighbours in the framework of the Gas Platform (Belgium, Netherlands, Luxemburg, Germany and France). Nevertheless, and despite such a reference, neither the PAP nor the EP submitted by Belgium provide information as to whether the Competent Authorities of other Member States have been consulted on the updated PAP and EP, such as the United Kingdom or the other Member States in the Gas Platform.

The Commission takes the view that the measures in question should be further explained in the EP, indicating at least their extent, the conditions that would trigger their application, their effect on neighbour countries and the justification of the compliance of such measures with the conditions established in Article 10(7) of the Regulation. In this context, it should be clarified which Competent Authorities of other Member States, if any, have been consulted on the updated Plans.

### 2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Belgian 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)(i) to (iii), but which may provide useful guidance to the Competent Authority for future amendments of 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. Therefore, it would be useful if the Plans could describe in detail the cooperation mechanisms with other Member States, for example in the Gas Platform. 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 PAP contains a chapter describing the existing and future infrastructure in Belgium. While the information contained in this chapter is quite detailed, it could be further improved if estimated dates were provided for the entry into operation of the numerous future projects described in this section.
- Belgium explains in Section 6.2.1 of the PAP that a demand-side response (DSR) mechanism can be applied for the consumers to receive a discount on price in case of interruption. While the Commission has recognised the role of moderating energy demand as a pillar to respond to energy security concerns<sup>5</sup> and Member States are moreover required to encourage demand side resources<sup>6</sup>, such as demand response, the Commission also reminds Belgium that if such DSR mechanism entails State resources they might be caught by Article 107(1) TFEU as State aid and they must be notified to the Commission.
- The Commission reminds Belgium that if the projects mentioned in Section 8 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

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<sup>5</sup> Communication from the Commission, "European Energy Security Strategy" COM(2014) 330 final.

<sup>6</sup> (2) 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.

notified to the Commission under Article 108(3) TFEU unless they are caught by the General Block Exemption Regulation<sup>7</sup>.

### 3. CONCLUSION

Based on the above assessment, and in view of Article 4(6)(b)(ii) of 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 Belgium to amend the Plans taking duly into consideration the concerns expressed by the Commission in the present opinion.

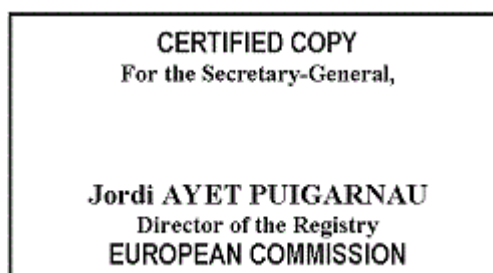
The Commission's assessment expressed in this opinion is without prejudice to any position it may take *vis-à-vis* Belgium as regards compatibility of national measures with EU law, including in the context of infringement proceedings.

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 Belgian 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, 9.3.2015

*For the Commission*

*Member of the Commission*



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<sup>7</sup> 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)