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COMMISSION OPINION

of 11.9.2017

**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**

(Only the French and Dutch texts are authentic)

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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 on 20 December 2016.

The Belgian Competent Authority notified to the Commission on 21 April 2017 its updated Preventive Action Plan and Emergency Plan.

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 15 May and 28 June, 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. It should also be noted that, as

mentioned in section 7.2 of the Belgian PAP, the draft PAP and EP have been shared within the Gas Platform for consultation before being notified to the Commission.

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)

Definition of protected customers

The Commission welcomes the incorporation of some of its comments made in its Opinion of 9 March 2015¹ on the assessment of the previous Belgian PAP with respect to the definition of protected customers. As it was also then pointed out, 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.

According to the Belgian PAP protected customers as "all customers connected to the distribution network". Nevertheless, this definition includes groups of customers outside the ones identified in article 2.1 of the Regulation. Therefore, the Commission is of the opinion that there should be a clarified definition of protected customers accompanied by more information and the relevant consumption levels.

Qualitative and quantitative assessment of impacts and effectiveness of measures taken and link with risk scenarios

Article 5(3) provides that the PAP "*shall take into account the economic impact, effectiveness and efficiency of the measures, the effects on the functioning of the internal energy market and the impact on the environment and on consumers, and shall not put an undue burden on natural gas undertakings, nor negatively impact on the functioning of the internal market in gas*". In the present Belgian PAP there is no information provided with respect to the impacts and effectiveness of the measures in question. The Commission considers that the updated Belgian PAP should be amended to include a more detailed analysis of the impacts and effectiveness of the suggested measures.

Moreover, pursuant to Article 4(6)(b)(ii) the Commission should assess the consistency between the PAP and the risk scenarios. However, the submitted PAP does not provide any strong correlation analysis between the list of preventative measures and the risk scenarios, as those were elaborated in the Risk Assessment. Therefore, the PAP should be amended so as to contain a more detailed analysis of the link between the risk scenarios and the preventative measures.

2.2 Emergency Plan (EP)

Definition of the "early warning" crisis level

¹ C(2015) 1552 final

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"*.

Although this exact definition is mentioned in section 4.2 of the Belgian EP, in section 4.2.1 the wording used in the previous Belgian EP appears to be reiterated despite the concern that had been raised in the 2015 Opinion issued by the Commission. More specifically, the Belgian EP repeats the following definition for "early warning" level: *"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 (...)"*.

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.

Quantitative assessment of contribution of market-based and non-market based measures

Article 10(1)(a) of the Regulation provides that the EP shall build upon the three "crisis levels" as defined in Article 10(3). 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(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 Commission welcomes the qualitative analysis of the market and non-market based measures that was added in the updated Belgian EP. Nevertheless, the Commission considers that the EP should be amended to also include a quantitative assessment of the contribution 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.

The Belgian EP still 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.

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

- 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 concerns² and Member States are also required to encourage demand side resources³, 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 notified to the Commission under Article 108(3) TFEU unless they are caught by the General Block Exemption Regulation.⁴

3. CONCLUSION

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.

² Communication from the Commission, "European Energy Security Strategy" COM(2014) 330 final.

³ See Article 15 of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, OJ L 315, 14.11.2012, L315.

⁴ 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, 11.9.2017

For the Commission
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Member of the Commission