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COMMISSION OPINION

of 12.7.2017

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

(Only the Latvian text is 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 consultation provided for between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plans.

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 Latvia, the Ministry of Economics, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 20 January 2017.

The Ministry of Economy has consulted other Member States' Competent Authorities on its Plans, including its neighbours Lithuania and Estonia. The Latvian Competent Authority notified to the Commission its updated Preventive Action Plan and updated Emergency Plan on 20 January 2017.

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 3 February, 6 and 22 March, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns the contents of the Plans, the Plans submitted by the Latvian Competent Authority are in many aspects detailed and comprehensive. Generally speaking they are an update of the 2014 Plans without major changes. The Commission welcomes in particular the detailed description of the Risk Assessment, the analysis of potential bottlenecks and the description of needed infrastructure projects. However, the Commission considers that some

elements of the Plans necessitate further improvement to fully comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

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.

The Latvian PAP, similarly to the 2015 PAP, defines only the households and social services providers as protected customers. While the definition included in the Latvian PAP corresponds to Article 2(1) of the Regulation, the PAP also refers to the Regulation of the Cabinet of Ministers No 312 "Procedures for the supply of energy users and sale of heating fuel during declared energy crisis". Regulation No 312 divides the energy users in three groups and defines different curtailment scenarios for each group. The first group which should have the highest level of protection includes some of the social services; however, it does not include the households. In fact, the households are mentioned in the second group together with certain industry undertakings which could be curtailed up to 80 % during a severe energy crisis. Therefore, there is a contradiction between the PAP and the Regulation No 312. Furthermore, it is not clear if certain industry undertakings are considered "protected" and especially if they are fulfilling the conditions defined in Article 2 (1) of the Regulation.

The Commission considers that despite the concerns raised in the Commission opinion of 28 October 2015¹ the Latvian PAP and national legislation continue to include contradicting definitions of protected customers which need further clarification.

2.2 Emergency Plan (EP)

Predefined actions to be taken in the case of an emergency

In accordance with Article 10(1)(l) of the Regulation, the EP shall establish a list of predefined actions to make gas available in the event of an emergency. Moreover, according to Article 10(1)(h) and (i), the EP shall identify the contribution of market and non-market based measures planned or to be implemented for the emergency level, notably those listed in Annex II and III, and assess the degree to which the use of such measures is necessary to cope with a crisis, respectively for the non-market based measures assess their effects and define the procedures to implement them, taking into account the fact that non-market based measures are to be used only when market-based mechanisms alone can no longer ensure supplies, in particular to protected customers.

The EP submitted by the Ministry of Economics contains a detailed description of the roles and responsibilities of different actors but a list of predefined actions to make gas available in the event of an emergency, as required by Article 10(1)(l) is not included in the EP.

¹ C(2015) 7421 final

Furthermore, the quantitative contribution of measures – market or non-market – for coping with a crisis, as required by Article 10(1)(h) and 10(1)(i), is not explained in the EP either.

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".

The Latvian EP indicates that, "at the alert level of a natural gas supply crisis and during an energy crisis, JSC "Latvijas Gāze", on the basis of the long-term natural gas supply agreements with JSC "Gazprom" and "Itera Latvija" Ltd. (the valid agreements ensure the supply of the necessary quantity of natural gas to Latvia until 2030) and agreements with natural gas transmission system operators JSC "Amber Grid" (Lithuania) and Elering Gaas AS (Estonia), shall request changes to the natural gas flows and system operation modes in extraordinary cases".

Given the regional importance of the Inčukalns Underground Gas Storage Facility to the neighbouring Member States, it is important that the EP also analyses the possible effects of national emergency measures and thereby takes account of possible risks for the security of supply in other Member States². The "Energy Stress Tests"³ of 2014 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 Latvian emergency measure described in the previous paragraph, i.e. the obligation to request changes to the natural gas flows, 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, in particular because Latvia states that the EP was discussed with neighbouring countries.

The Commission takes the view, as it did in its 2015 opinion, 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 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."

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.

2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Latvian 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 to mitigate the potential impact related to district heating and electricity generated from gas (see Article 10(1)(e)) and there is no indication in the Plans why it would not be appropriate to identify such measures and actions.
- Missing responsibility for the “detailed assessment” of the crisis when an emergency is lifted and how it is transferred to the Commission, as per Article 13(5).
- The EP does not assess the possible impacts of interruptible contracts but merely states that Inčukalns Underground Gas Storage Facility is capable of supplying all customers so that no interruptible contracts are concluded. In this case further explanations regarding the range of possible measures that could be adopted in Latvia in the case of a crisis (including interruptible contracts) would improve the plan.
- 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 2014⁴. In this context, the analysis of potential effects of measures adopted by neighbouring countries on its own system in case of parallel emergencies would increase the effectiveness of the Plans.
- It would be welcome if the rationale used to estimate demand of protected consumers in the various winter/peak scenarios were provided.
- Public service obligations should be addressed in a clearer manner.
- The Commission reminds Latvia that if any of the investments in future infrastructure, storage, LNG terminal or interconnector referred to in Sections 2.3.1 and 2.6 of the PAP involves 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 Regulation⁵.

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 fully with certain provisions of this Regulation.

The Commission requests the Latvian Competent Authority to amend the Plans taking duly into consideration the concerns expressed by the Commission in the present opinion.

⁴ 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.

⁵ Commission Regulation (EU) N°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)

The Commission's assessment expressed in this opinion is without prejudice to any position it may take *vis-à-vis* Latvia 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 Latvian 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, 12.7.2017

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission