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COMMISSION OPINION

of 7.9.2017

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

(Only the Slovak 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 Slovakia, the Ministry of Economy of the Slovak Republic, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 28 April 2017.

The Slovak Competent Authority notified to the Commission on 28 April 2017 its updated Preventive Action Plan and its updated Emergency Plan. The Slovak Competent Authority has consulted all neighbouring Member States on its updated Plans.

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 22 March 2017 and 28 June 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans submitted by the Slovak Competent Authority are in some aspects detailed and provide solutions to deal with major crisis. 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)

Information concerning the infrastructure standard

As per Article 5(1)(b) of the Regulation, the Slovak PAP reports the figures for the calculation of the N-1 standard and the calculation of the largest infrastructure. In section 3.3 of the PAP it is mentioned that the D_{max} , based on historical data, amounts to 46.9 mcm. Nevertheless, in the N-1 formula, a different figure is used for D_{max} . More specifically, the total daily gas demand in exceptional conditions that is used equals 44.4mcm (both in Table 7 and in the calculation). These same differing figures were also used in the previous PAP submitted by Slovakia.

Further, in the 2015 PAP, two N-1 calculations were included, with and without the new interconnection with Hungary at the border point Velke Zlievce. In the present PAP, the N-1 calculation provided does not explicitly mention whether this particular interconnection has been taken into account.

Therefore, the Commission invites the Slovak Competent Authority to revise the calculations of the N-1 standard on the basis of updated values and clarify the infrastructure elements taken into account in the calculation.

Definition of protected customers and the supply standard

Article 2(1) of the Regulation contains the definition of protected customers, which covers principally all the household customers and allows Member States to also include "*small and medium-sized enterprises [...] and essential social services [...] provided that all these additional customers do not represent more than 20% of the final use of gas*". Moreover, Article 8(1) of the Regulation provides that gas supply to protected customers shall be ensured for certain minimum periods in scenarios of exceptionally high gas demand or supply interruptions¹, the so-called "supply standard". Pursuant to Article 5(1)(b) of the Regulation, the PAP submitted by the Member States shall contain "*the measures, volumes, capacities and the timing needed to fulfil the [...] supply standards*".

According to the Slovak Energy Act (Act No. 251/2012 on Energy and Amending Certain Laws), as mentioned in the PAP submitted by the Slovak Competent Authority, the definition of protected customers covers a range of customers apart from household consumers of gas². However, the Slovak PAP does not contain specific figures on the protected customers' consumption and on the required volumes for meeting the supply standard. Therefore, it is not possible to assess its full compliance with the requirements of Article 2(1) of the Regulation or whether the definition of protected customers constitutes the correct basis for the calculation of the supply standard.

As a consequence, and as it was also noted in the previous opinion of the Commission, the Commission considers that the Slovak PAP should specify whether the protected customers under Slovak law represent more than 20% of the final use of gas or not and refer in further detail to the conditions for fulfilling the supply standard. The Commission reminds Slovakia that any increased supply standard should comply with the conditions set in Article 8(2) of the

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 Gas household customers, small-sized undertakings (defined by the Slovak Energy Act as end gas customers with total maximum annual gas consumption of 100.000 kWh), gas customers producing heat and hot industrial water for households or other persons which are not able to use alternative fuel in the heat production, health-care, social services, social protection of children and social custody facility operators, schools and gas customers except for those included in the previous categories and under the terms specified by the Regulation and a generally binding legal regulation.

Regulation and shall be described in the PAP in accordance with Article 5(1) of the Regulation.

Information on public service obligations

Article 5(1)(g) of the Regulation requires that the Plan shall "*contain information on all public service obligations that relate to security of gas supply*". Nevertheless, as it was also noted in the previous opinion of the Commission, the current Slovak Plan fails to address this issue.

Therefore, the Commission considers that the Slovak PAP should clearly indicate whether such public service obligations pertaining to security of supply do not exist or provide with sufficient information on them in case they do exist.

2.2 Emergency Plan (EP)

Procedures and measures to be followed for each crisis level

Article 10(1)(f) of the Regulation provides that the EP shall "*establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows*". In addition, by virtue of Article 10(1)(h) of the Regulation, the EP shall "*identify the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at emergency level*". Moreover, Article 10(1)(i) of the Regulation defines that the EP shall identify the contribution of non-market based measures for the emergency level 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. Article 10(1)(d) of the Regulation requires the EP to "*ensure that natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level*".

The EP submitted by the Slovak Competent Authority mentions there are three crisis levels, but the EP is not organised around these three levels; actors, roles, responsibilities and actions are not described for each crisis level. Furthermore, the EP does not define which procedures and measures that should be followed for each crisis level. It solely presents non-market based measures without describing a procedure. The Slovakian EP also fails to provide any identification or assessment of the contribution of market-based and of non-market based measures for dealing with the relevant situations. It should also be noted that there is no justification or graphic illustration of the information flow or the links among the various market actors. As a result, the Commission is unable to assess whether natural gas undertakings and industrial gas customers are given a sufficient opportunity to respond at each crisis level.

Therefore, the Commission is of the opinion that the Slovak EP should be modified in order to define clearly the procedures and measures to apply at each crisis level and how market-based and non-market based measures contribute to coping with the different crisis levels, referring to the respective schemes on information flows for each crisis level as required by the Regulation.

Cooperation with other Member States

According to Article 10(1)(j) of the Regulation, the Emergency Plan shall "*describe the mechanisms used to cooperate with other Member States for each crises level*". Although the

submitted Slovak EP makes reference to the cooperation with gas infrastructure operators of other Member States, it fails to describe in more detail the specific cooperation mechanisms per crisis level.

Therefore, the Commission is of the view that the Slovak EP should be amended in order to include a description of the mechanisms per crisis level used in the context of cooperation with other Member States.

Restrictions to cross-border gas flow

Article 10(7) of the Regulation establishes an obligation on Member States and in particular on 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 Slovak EP indicates that the Competent Authority "*shall decide on the interruption of gas withdrawal from storage facilities for respective gas market participants which store gas for customers outside of the defined territory upon considering the adoption of available measures aimed at ensuring technical safety of the system in the defined territory, including options of cross-border cooperation in accordance with the Regulation*".

Given the multiple interconnections between Slovakia and its neighbours and the mutual interdependencies resulting from this close integration, it is important that the Slovak 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. Effective coordination of emergency measures can diminish the negative effects of a serious supply disruption and avoid unnecessary harm for single Member States. The Commission highlights that the possibility of interruption of gas withdrawals for consumers outside of the Slovak territory by the Competent Authority, as mentioned in the submitted EP, may have an impact on neighbouring countries which may not be in line with the provisions set in Article 10(7)(a) and (c) of the Regulation. As far as Article 10(7)(b) is concerned, given the information provided, the Commission is not able to draw any conclusions as to whether such measures could endanger the security of supply of another Member State.

The Commission considers that the Slovak EP should be amended so as to explain in more detail the measure in question, referring at least to 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.

2.3 Other comments

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

- The PAP provided by the Slovak Competent Authority contains an extensive summary of the risk assessment but there is no proper risk identification section or any reference to risk scenarios or identification of scenarios. The PAP should include

a more comprehensive summary of the updated Slovak Risk Assessment, covering in particular the risk identification and risk scenarios. Furthermore, the PAP should establish a clear link between the measures contained in the PAP and the concrete risks they seek to remove or mitigate. Such improvements will enhance the readability of the Plans and will contribute to a higher transparency, notably as regards the effectiveness of the Plans.

- The PAP could further contribute to the transparency of the gas security of supply policy if it contained references to the economic impact, effectiveness and efficiency of the measures, or to their effects on the functioning of the internal energy market and the impact on the environment and on gas consumers.
- The PAP could be also improved by explaining how the Union-wide Ten Year Network Development Plan is taken into account, in particular regarding the actions to meet the infrastructure standard.
- No measures and actions are defined to mitigate the potential impact related to electricity generation (see Article 10(1)(e) of the Regulation) and there is no indication in the Plans why it would not be appropriate to identify such measures and actions;
- With a view to improving transparency and readability, the updated Plans could indicate which of their elements are new or have been modified in these updated versions compared to the previous ones, notably since the updated Plans are to a large extent the same as the previous versions.

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 Slovak 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* the Slovak Republic 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 Slovak 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, 7.9.2017

For the Commission

Miguel ARIAS CAÑETE

Member of the Commission