



Brussels, 2.3.2015
C(2015) 1410 final

COMMISSION OPINION

of 2.3.2015

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the United Kingdom 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 the United Kingdom, the Department of Energy and Climate Change ("DECC"), has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 03.06.2014.

The DECC notified to the Commission on 01.12.2014 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 28.01.2015, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The DECC has submitted a set of detailed and comprehensive Plans consistent with their Risk Assessment. The Commission welcomes the United Kingdom's approach to look at supplementary risk reduction measures as part of a continual activity even if the results of the Risk Assessment suggest that their market would remain resilient to all but the most extreme combination of severe infrastructure failure or supply shocks.

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 interruptions¹, 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 DECC does not include a description of the volumes and capacities needed to fulfil the supply standard nor indicates who the protected customers are. Instead, the PAP contains references to the Risk Assessment. The Risk Assessment contains in fact some figures on the gas volumes needed to satisfy the gas demand of the group of consumers considered protected customers by the United Kingdom under different scenarios, e.g. average winter conditions, 1-in-50 winter conditions² and 1-in-50 winter conditions combined with the loss of the largest supply infrastructure, the Milford Haven to Felindre pipeline. However, absent further information, it is unclear whether the group of protected customers defined by the United Kingdom falls within the categories and limits set by Article 2(1) of the Regulation as protected customers are defined in terms of their individual gas consumption level and other national categories and not in terms of the categories established in Article 2(1) of the Regulation. Consequently, it cannot be concluded whether the volumes related to the supply standard have been calculated on the correct basis.

Secondly, the conditions used for the calculation of the supply standard are based on a more stringent 1-in-50 winter scenario instead of a 1-in-20 standard as established in the Regulation. While Member States are free to use in their analysis more demanding conditions than those established in the Regulation to test the ability of their systems to cope with severe situations, it is unclear whether additional obligations on undertakings may stem from the use of a more stringent standard. This is particularly relevant as a reference is made in the Risk Assessment to the fact that the calculations on the basis of the 1-in-50 standard are used to ascertain the level of gas required to remain in the storage to enable safe operation of the system.

The Commission takes the view that the United Kingdom's PAP should also contain information on the detailed volumes and capacities needed for the fulfilment of the supply standard as this would improve the transparency of and homogeneity among the Plans prepared by all Member States. The DECC should furthermore clarify in the PAP how its definition of protected customers is aligned with the categories of consumers set in Article 2(1) and whether additional obligations arise from the calculations based on the 1-in-50 conditions. In the latter case, the DECC should clarify whether an increased standard is

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

² The 1-in-50 winter conditions refer to winter conditions occurring with a statistical probability of once in 50 years.

applied, in accordance with Article 8(2), and describe it in the PAP in accordance with Article 5(1)(b).

Obligations imposed on undertakings and other relevant bodies, including for the safe operation of the gas system

In accordance with Article 5(1)(c) of the Regulation, the PAP shall contain the obligations imposed on natural gas undertakings and other bodies, including for the safe operation of the gas system. In this regard, the PAP submitted by the United Kingdom contains some references to maintenance obligations as well as to the obligation to gas conveyors and the so-called Network Emergency Coordinator (NEC) to hold a safety case accepted by the Health and Safety Executive. However, the Risk Assessment of the United Kingdom makes a reference, as indicated in the section above, to requirements regarding gas levels in storages necessary for the safe operation of the network. There are no references to such measures nor indication of their concrete implications in the PAP. The Commission considers that such measure should be included and described in the PAP insofar as it seems to relate to the safe operation of the system.

2.2 Emergency Plan

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, including commercial agreements between the parties involved in such actions and the compensation mechanisms for natural gas undertakings where appropriate, taking due account of the confidentiality of sensitive data. Moreover, according to Article 10(1)(h), 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, 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

While the EP submitted by the DECC contains a very detailed description of the roles and responsibilities of different actors at all crisis levels, showing a well-established and elaborated emergency system, the EP does not indicate which concrete measures can be taken at each level. In this regard, the EP refers to an strategy proposed by National Grid Gas Transmission (NGGT) to be authorised by the Network Emergency Coordinator (NEC) to resolve a network gas supply emergency, to the responsibility of the Gas Distribution Network Operators (GDNDs) in managing local emergencies affecting their own network, and ultimately, to an action Plan to be developed by the Emergency Response Team within DECC to assist with the management of the consequences of the emergency and to support industry in containing and resolving the incident. However, there are no further indications as to the content of such plans and strategies and the concrete measures that could be contained in them and adopted during the different crisis levels, in particular during an emergency level declared in accordance with Article 10 of Regulation. The only references to concrete measures are included in a table in Appendix I (Figure 10) and simply refer to maximising supplies and storage and to firm load shedding, without further elaboration. There are no concrete indications either as regards the extent of the so-called "emergency powers".

In the light of the above, the Commission considers that the EP submitted by the DECC should be amended to include a clear list of pre-defined actions as established in Article 10(1)(l) and to identify the contribution of market-based and no-market based measures to cope with a crisis in accordance with Article 10(1)(h) and 10(1)(i).

Non-market based measures during "alert" level

Pursuant to Article 10(1)(a) of the Regulation, the EP shall build upon the three "crisis levels" 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. Pursuant to Article 10(3)(b) and (c)³ and Annex III of the Regulation, so-called "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 United Kingdom's EP contains a reference in Appendix I to "*instruct shippers and storage operators to amend storage flows*". Absent further information on this measure, it seems to be possible to revert to non-market based measures already during the so-called "*alert level*". This is in contradiction to the definition of an "alert level" in Article 10(3)(b) of the Regulation and with Annex III therein.

The Commission considers that the DECC should further describe in its EP the measure in question, notably its extent, the conditions that may trigger its application and the body that would take the decision to apply it, bearing in mind that non-market based measures shall only be used in the event of an emergency.

2.3 Other comments

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

- No measures and actions are defined to mitigate the potential impact related to district heating and electricity generation (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;
- 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. The Commission welcomes in this respect the cooperation mechanism established between the United Kingdom and Ireland, which constitutes

³ See Article 10(3)(b) of Regulation 994/2010: "*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*".

an excellent example of cooperation between Member States and which is described in detail in the Plans and in a Joint Preventive Action Plan. However, and given the fact that there are gas imports into the United Kingdom coming from other Member States, it would be useful if the Plans could describe whether any other cooperation has been considered or established with other Member States.

- It cannot be excluded from the data available that the projects mentioned in Section 6 of the PAP may involve State resources which could constitute State aid within the meaning of Article 107(1) TFEU. Should it be the case, the Commission reminds the UK to notify such aid under Article 108(3) TFEU.
- The UK explains in Section 4 of the PAP that Ofgem has proposed to proceed with a demand-side response (DSR) mechanism to encourage particularly industrial and commercial consumers to offer DSR in the event of very tight markets. While the Commission has recognised the role of moderating energy demand as a pillar to respond to energy security concerns⁴ and Member States are moreover required to encourage demand side resources, such as demand response⁵, the Commission also reminds the UK that if such DSR mechanisms entail State resources they might be 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 Regulation, the Commission concludes that some elements of the updated Plans do not comply with certain provisions of this Regulation.

The Commission requests the DECC 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 United Kingdom 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 DECC 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.

⁴ Communication from the Commission, "European Energy Security Strategy" COM(2014) 330 final.

⁵ 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.

Done at Brussels, 2.3.2015

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CERTIFIED COPY
For the Secretary-General,

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