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COMMISSION OPINION

of 29.1.2018

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

(Only the Estonian text is authentic)

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1. PROCEDURE

Article 4(1) of Regulation (EU) No 994/2010 (hereinafter "the 2010 Regulation" or "the Regulation") required 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 had to be updated every two years, unless circumstances required more frequent updates.

This obligation has been substantively widened and reinforced by Article 8 of Regulation (EU) 2017/1938 (hereinafter "the 2017 Regulation"), which repeals the 2010 Regulation as of 1 November 2017. Article 8(7) of the 2017 Regulation requires the new plans to be made public and notified to the Commission by 1 March 2019. According to Article 8(12), "Preventive action plans and emergency plans developed under Regulation (EU) No 994/2010, updated in accordance with that Regulation, shall remain in force until the preventive action plans and the emergency plans referred to in paragraph 1 of this Article are established for the first time". In line with recital 63 of the 2017 Regulation, this rule aims at ensuring legal certainty. Therefore, the rules applicable to the Plans under the 2010 Regulation remain applicable until the adoption of the first plans pursuant to Article 8 of the 2017 Regulation.

The Plans under the 2010 Regulation (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 2010 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 Estonia, the Estonian Competition Authority, has not notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission but indicates that the Preventive Action Plan and Emergency Plan are based on the Risk Assessment submitted on 14 September 2015.

The Estonian Competition Authority has consulted Latvia and Lithuania on its draft Plans.

The Estonian Competition Authority notified to the Commission on 31 October 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 2010 Regulation in respect of the initial Plans, which remains applicable in line with Article 8(12) of the 2017 Regulation.

Thus having assessed the Plans in view of the criteria mentioned in Article 4(6)(b)(i) to (iii) of the 2010 Regulation, and having reported its main findings to the Gas Coordination Group on 22 March 2017, 28 June 2017, 27 September 2017 and 9 November 2017, the Commission notes as follows.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Estonian Competition Authority has submitted a set of detailed and comprehensive Plans consistent with their Risk Assessment of 2015. These plans coincide to a large extent to the Preventive Action Plan and Emergency Plan submitted in 2015. The Commission considers that some elements of the Plans submitted by the Estonian Competent Authority do not fully comply with the requirements of the Regulation.

2.1 Emergency Plan (EP)

Role, responsibilities and interaction with the Competent Authority

Pursuant to Article 10(1)(b) of the Regulation, the EP should define the role and responsibilities of natural gas undertakings, industrial gas customers and electricity producers in the event of gas supply disruptions and their interaction with the Competent Authorities. The Estonian EP provides a list of actions for each crisis level but does not describe the role, responsibilities and interaction with the Competent Authority of natural gas undertakings, industrial gas customers and electricity producers.

The Commission considers it appropriate that the Estonian EP is amended so as to include the above-mentioned information.

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

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) of the Regulation 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 of the Regulation, 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 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 Estonian Competent Authority contains very detailed description of the roles and responsibilities of different actors at all crisis levels, showing a well-established and elaborated emergency system, the Estonian EP does not contain information on the contribution of such measures for coping with the crisis, as required by Article 10(1)(h) and 10(1)(i) of the Regulation. The only references to concrete measures are included in the Estonian PAP instead of the EP and regarding emergency level, the EP only refers to the list of measures contained in Section 26(3) of the Estonian Natural Gas Act.

In the light of the above, the Commission considers that the EP submitted by the Estonian Competent Authority should be amended to include a clear list of pre-defined actions as established in Article 10(1)(1) of the Regulation, describing in detail their extent and impacts,

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) of the Regulation and 10(1)(i) of the Regulation.

2.2 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Estonian 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) of the Regulation, 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 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.

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 Estonian 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* Estonia 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 Estonian 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, 29.1.2018

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission