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COMMISSION OPINION

of 12.4.2017

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

Only the Lithuanian 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 every two years before 30 September.

The Competent Authority of Lithuania, the Ministry of Energy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 16 September 2016.

The Lithuanian Competent Authority notified to the Commission its updated Preventive Action Plan and updated Emergency Plan on 17 November 2016.

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 18 January 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans submitted by the Lithuanian Competent Authority are in many aspects detailed, comprehensive and were improved compared to the Plans submitted in 2015. The Commission welcomes in particular the detailed description of the Risk Assessment and the analysis of potential bottlenecks. However, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1 Preventive Action Plan

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 gas distribution network, and essential social services, connected to 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 scenarios 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*" should be contained in the Preventive Action Plan (PAP) submitted in accordance with Article 5(1)(b) of the Regulation.

The Lithuanian PAP includes a definition according to which the protected customers are all household customers, as well as non-household customers whose gas consumption does not exceed 20 000 m³ per year. Furthermore the Lithuanian PAP indicates that the share of natural gas consumed by protected non-household customers is 4.56 %.

However, the Lithuanian PAP does not include the description of the categories of the protected non-household customers. Therefore it is not possible to assess if all protected non-household customers fall under the definition of Article 2(1), namely small and medium-sized enterprises, connected to a gas distribution network, and essential social services, connected to gas distribution or transmission network. In addition, the PAP submitted by the Lithuanian Competent Authority does not include a description of the gas volumes and capacities needed to fulfil the supply standard. The plan only describes the quantities which are stockpiled by undertakings but does not state the supply standard as such or explain the correlation between stockpiled quantities and supply standard.

The Commission considers that the Lithuanian PAP should be amended to include the categories of protected non-household customers and include the volumes and capacities needed to meet the supply standard.

2.2 Emergency Plan

According to Article 10(1)(i) the EP should "*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*".

The EP submitted by the Lithuanian Competent Authority contains a number of measures to be applied in the case of a declaration of an emergency. It foresees in particular the freezing or regulating of gas prices in an emergency situation.

The Commission takes the view that the EP has to foresee that before freezing or regulating of gas prices all available capacity of interconnectors and re-gasification capacity of Klaipeda LNG terminal is used to allow additional gas volumes to be imported.

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").

In its reply from 23 June 2016 to the European Commission's opinion C(2016) 774 the Competent Authority of Lithuania mentioned that according to Article 33(9) of the Lithuanian Energy Law in case of an emergency the Government is authorised to regulate the export and import of energy resources. This non-market based measure is not explicitly mentioned in the EP.

The Commission considers that the EP has to mention all market and non-market based measures to ensure transparency and certainty. When designing such non-market measures it has to be considered that according to Article 10(4) the plans shall not introduce any measure unduly restricting the flow of gas across the borders.

2.3 Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Lithuanian 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 Plans should clearly mention whether the draft Plans have been exchanged with neighbouring Member States.

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 Lithuanian 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* Lithuania 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 Lithuanian 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, 12.4.2017

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission