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COMMISSION OPINION

of 28.2.2018

pursuant to Article 4(6)(b)(ii) of Regulation (EU) No 994/2010 on the assessment of the Preventive Action Plan and Emergency Plan submitted by the Competent Authority of Republic of Croatia to the European Commission

(Only the Croatian 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 ("Preventive Action Plan") and an Emergency Plan ("Emergency Plan", 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 Croatia, the Ministry of Environment and Energy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 4 October 2016.

The Ministry of Environment and Energy has consulted Italy, Slovenia and Hungary on its Emergency Plan. In the case of the Preventive Action Plan and according to the Commission's knowledge, only Slovenia and Hungary were consulted.

The Ministry of Environment and Energy notified to the Commission its updated Preventive Action Plan and its Emergency Plan on 19 January 2017 and on 9 November 2017, respectively.

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, as updated, 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 Ministry of Environment and Energy submitted a set of detailed and comprehensive Plans consistent with their Risk Assessment. As far as their content is concerned, the Plans are in many aspects detailed and comprehensive and provide for solutions to mitigate the main risks identified in the detailed Risk Assessment. However, the Commission considers that some elements of the Plans should be further aligned with the requirements of the Regulation.

2.1 Preventive Action Plan

Inclusion of customer groups beyond the limits of Article 2(1) of the Regulation

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. These limits are meant to avoid that Member States declare an unnecessarily high proportion of their customers as "protected", thereby impeding physical or virtual cross-border exchanges with neighbouring countries, notably during times of a parallel gas supply crisis¹.

According to the notified Preventive Action Plan, the definition of "protected customers" in Croatia includes, *inter alia*, institutions connected to the gas distribution system. Absent further specifications on the abovementioned institutions, it could be the case that the group of protected customers in the notified Preventive Action Plan goes beyond the eligible categories provided for in Article 2(1) of the Regulation.

Secondly, Croatia's Preventive Action Plan demonstrates in section 13.2 (Annex 2) that the consumption of the small and medium-sized enterprises and essential social services included in the list of protected consumers is within the 20% threshold. However, the analysis does not take into account the consumption of the 'institutions', as an additional group of consumers considered as protected in Croatia. In the Commission's view, if certain institutions are considered as protected customers along with the small and medium-sized enterprises and essential social services, provided that such inclusion is still within the scope of the definition

¹ See in this context also recital 10 and Article 8(2) of the Regulation.

in Article 2(1) of the Regulation, the consumption of these institutions should be included in the calculations for the 20% threshold requirement.

Calculation of Supply Standard

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 interruptions², 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.

Section 7 of the Preventive Action Plan describes the calculation method used for the supply standard. The described method suggests that for the calculation of the 30-day of exceptionally high demand the daily average consumption of the 7-day extreme temperature is taken and multiplied by 30. Analogously, for the 30-day period of average winter conditions, February 2017 was selected without justifying how that period corresponds to average winter conditions.

Absent further explanations it is unclear how the methodology described ensures compliance with the supply standard as described in Article 8(1) of the Regulation. It appears that the above calculation methods could lead to a reduced supply standard and would therefore not be in line with Article 8(1) of the Regulation. However, it is also possible that such methodology leads to a de facto increased supply standard.

The Commission considers that the Croatian Preventive Action Plan should be amended to clarify the calculation of the supply standard and its compliance with the requirements contained in Article 8 of the Regulation. Moreover, the Commission reminds Croatia that any increased supply standard must comply with the conditions set in Article 8(2) of the Regulation and be described in the Preventive Action Plan.

2.2 Emergency Plan

Non-market based measures during early warning and alert levels

Pursuant to Article 10(1)(a) of the Regulation the Emergency Plan shall build upon the three "crisis levels" defined in Article 10(3) of the Regulation, labelled as 'early warning level', 'alert level' and 'emergency level'. 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 planned for an event of an "emergency" crisis level.

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

³ See Article 10(3)(b) of the Regulation: "*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*".

The Croatian Emergency Plan contains a description of possible measures under each of the three crisis levels in Section 2.3 and correctly does not include non-market based measures under the first two crisis levels. However, the actions envisaged by the Republic of Croatia during the 'early warning level' as described in Section 10.1 and during the 'alert level', as described in Section 11.1, include the issuing of conditions for export of gas from domestic production, among the list of measures. According to these descriptions, it appears that the Croatian Government can revert to non-market based measures outside the '*emergency level*' conditions. Moreover, the adoption of decisions on safeguarding of gas stocks in the territory of the Republic of Croatia, also listed as one of the measures here, is closely linked and could be considered as a non-market based measure.

The Commission takes the view that the Emergency Plan should be amended in order to clearly define the status and scope of the measures mentioned above. The Commission reminds Croatia that, in case the measures in question were non-market based measures, their adoption in phases prior to an emergency would be in contradiction to the definition of an "early warning" and an "alert level" in Article 10(3)(a) and (b) of the Regulation and with Annex III therein.

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 Croatian Emergency Plan makes some references to this in its Section 9.4, it seems to refer to a set of attempts initiated solely by Croatia and not firm measures agreed with other Member States.

Therefore, the Commission is of the view that the Croatian Emergency Plan 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.

3. CONCLUSION

Based on the above assessment, and pursuant Article 4(6)(b)(ii) of the Regulation, the Commission concludes that some elements of the Plans do not comply with certain provisions of this Regulation⁴.

The Commission requests the Ministry of Environment and Energy 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 Republic of Croatia as regards the 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 the Plans which are publicly available. The Ministry of Environment and Energy is invited to inform the Commission within five working days following receipt of the opinion whether it considers

⁴ As concerns the Commission's assessment of the *consistency* of the Croatian Plans with Plans of other relevant Competent Authorities under Article 4(6)(ii) of the Regulation, it should be noted that the Commission had to base its assessment on the initially submitted Plans by the neighbouring countries (in particular Hungary and Slovenia), since no updated Plans from the Competent Authorities have been notified to the Commission by these countries by 3.12.2014.

nevertheless that it contains commercially sensitive information, the confidentiality of which is to be preserved.

Done at Brussels, 28.2.2018

For the Commission
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Member of the Commission