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COMMISSION OPINION

of 8.6.2015

**under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan
submitted by the Competent Authority of the Kingdom of Spain 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 Spain, the Ministry of Industry, Energy and Tourism, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 27 June 2014.

The Ministry of Industry, Energy and Tourism notified to the Commission on 5 March 2015 its updated Preventive Action Plan and Emergency Plan. The Commission has no information regarding the consultation on the Spanish Plans with other Member States, in particular with its neighbours.

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 January 2015 and 04 May 2015, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Ministry of Industry, Energy and Tourism has submitted a set of detailed and comprehensive Plans consistent with their Risk Assessment. The Commission welcomes in particular the mutual assistance agreements between neighbouring TSOs (with France and Portugal) and the measures in place to consider the impact of disruptive events also in the electricity sector. It also welcomes the inclusion of a scenario in their analysis of risks relevant for a neighbouring Member State.

Nevertheless, the Commission considers that some elements of the Plans do not appear to 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. 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.

Firstly, the PAP submitted by the Ministry of Industry, Energy and Tourism does not explain in sufficient detail how the compliance with the supply standard is ensured nor the volumes and capacities needed to comply with it. There is only a brief reference to some measures in a footnote in the EP, but key information is still missing in that reference, e.g. whether the scenarios defined in Article 8 of the Regulation would be considered out of the extraordinary circumstances mentioned there.

Secondly, the PAP does not contain information as regards who the protected customers are and how much they consume. Instead, the Risk Assessment explains in detail these issues and provides data to verify the compliance with the conditions set in Article 2(1) of the Regulation. While this definition appears to be correct, this is key information for the fulfilment of the supply standard and should be reflected in the PAP.

The Commission considers that the Spanish PAP should be amended in order to further explain the measures, volumes and capacities needed to fulfil the supply standard. The details on the definition of the protected customers should also be reflected in the PAP given their relevance for the fulfilment of the supply standard and the fact that the Risk Assessment is not a public document.

2.2 Emergency Plan

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)² and Annex III of the Regulation, so-called

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

² 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*".

"non-market based measures" shall be used only in the event of an "emergency" crisis level. Measures during an "early warning" or "alert" can only be market based measures, as mentioned in the non-exhaustive list in Annex II of the Regulation.

The EP submitted by the Ministry of Industry, Energy and Tourism contains a detailed description of the roles and responsibilities of different actors, showing a well-established emergency system. It furthermore describes different measures that can be applied at different stages to prevent the escalation of disruptive events and bring the system back to normal operation. Nevertheless, the Spanish EP also contains some references to the possible resort, during "early warning" or "alert" levels, to measures such as an increased withdrawal from underground storages and the use of some stocks in LNG terminals and underground storages, the so-called operative reserve established in the national Winter Plan. Absent further information on these measures, it seems to be possible to revert to non-market based measures already during "early warning" and "alert" levels. This is in contradiction to the definition of both an "early warning" and "alert level" in Article 10(3)(a) and (b) of the Regulation and with Annex III therein.

The Commission considers that the Ministry of Industry, Energy and Tourism should further describe in its EP the above mentioned measures, notably whether they are measures that suppliers may voluntarily use or whether they are mandatory. The EP should also clarify the conditions that may trigger its application and the body that would take the decision to apply them, 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 Ministry of Industry, Energy and Tourism 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.

- While the PAP and EP are quite detailed documents, their structure would improve if the PAP focused on the preventive side and the EP on the different measures to apply according to the crisis levels. Currently, the main body of the PAP appears to be more focussed on the measures to take once an event has occurred than on the prevention side. Additionally, the description of the public service obligations in the PAP could be further improved, in the line of the annexes to the Risk Assessment.
- 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, as shown by the stress test exercise carried out during summer 2014³. In this context, the analysis of potential effects of measures adopted by neighbouring countries on the own system in case of parallel emergencies would increase the effectiveness of the Plans.
- While it seems that some exchange of relevant documents may have taken place between Spain and its neighbouring Member States (the reference to neighbouring Member States' Risk Assessment indicates that this was the case), the Plans should

³ Communication of 16.10.2014 on the short term resilience of the European gas system Preparedness for a possible disruption of supplies from the East during the fall and winter of 2014/2015 ("Stress Test Report"), COM(2014) 654 final.

clearly mention whether they have been exchanged with neighbouring Member States.

The Commission moreover reminds Spain that if any of the investments in future infrastructure or interconnector referred to in Annex II to the PAP involves State resources they could constitute State aid within the meaning of Article 107(2) TFEU (if the other conditions therein are also met) and must be notified to the Commission under Article 108(3) TFEU unless they are caught by the General Block Exemption Regulation.⁴

Annex I to the PAP promotes various supply and demand side measures in Spain in order to tackle the issue of security of supply. The Commission reminds Spain that if any of such measures entails 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 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 Ministry of Industry, Energy and Tourism 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* Spain 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 Ministry of Industry, Energy and Tourism 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, 8.6.2015

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

⁴ Commission Regulation (EU) N° 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1-78)