



Brussels, 12.3.2015
C(2015) 1636 final

COMMISSION OPINION

of 12.3.2015

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

COMMISSION OPINION

of 12.3.2015

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

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 Germany, the Federal Ministry of Economics and Technology (hereafter "FME"), has notified to the Commission its Risk Assessment pursuant to Article 9 of the Regulation on 10 June 2014.

The FME notified to the Commission its updated Preventive Action Plan and Emergency Plan on 11 December 2014.

The FME has consulted other Member States on its Plans, including its neighbours and Sweden, Italy and Slovakia.

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, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns their content, the Commission considers that the Plans are in general of good quality and in many aspects detailed and comprehensive. The Commission welcomes in particular that Germany has tried to take into account the close integration of the German gas grid with other countries and that Germany has consulted its Plans with neighbouring countries. It also welcomes that the Plans aim at an integrated view for the security of supply in the electricity and gas sectors. However, the Commission considers that some elements of the Plans do not fully comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

Unclarity concerning a possible increased supply standard

Article 8(1) of the Regulation requires that gas supply to the so-called protected customers be ensured for certain minimum periods in case of an exceptionally high gas demand or supply interruptions, the so-called "supply standard"¹. The concrete definition of the cases in which gas supply must be ensured is reflected in Article 8(1)(a) to (c)². In accordance with Article 8(2) of the Regulation, any supply standard going beyond the 30-day period referred to in Article 8(1)(b) and (c) or any additional obligation imposed for reasons of security of gas supply shall be based on the risks identified in the risk assessment³ and shall comply with a set of conditions. Notably it shall not unduly distort competition or hamper the functioning of the internal market in gas, nor impact negatively on the ability of any other Member State to supply its protected customers in the event of a national, Union or regional emergency. 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. According to the same article, the PAP must also include explanations on any increased supply standard under Article 8(2) of the Regulation.

The German PAP describes the measures in place to comply with the supply standard as well as the necessary gas volumes for each of the scenarios contained in Article 8(1) (a) to (c). The PAP also contains figures regarding the gas consumption in each of the scenarios contained in Article 8(1) (a) to (c) for two additional categories of consumers, namely the Austrian areas of Tirol and Vorarlberg, which can only be supplied via Germany, and the so called "*systemically relevant gas-fired power plants*"⁴. In each scenario, the total gas consumption figure for the three categories, i.e. protected customers in Germany, the Austrian regions and the systemically relevant gas-fired power plants, is provided.

However, on the basis of the information contained in the German PAP, it appears that obligations which go beyond the requirements necessary to cover the scenarios in Article 8(1)(a) to (c) could be imposed on gas undertakings in order to cover the two additional categories of consumers mentioned above, at least for the peak-demand scenario contained in Article 8(1)(a) of the Regulation. This would mean a *de facto* increased supply standard. In accordance with Article 5(1)(b) of the Regulation such increased standard should be described in the PAP, including how the conditions contained in Article 8(2) of the Regulation are met. With respect to scenarios (b) and (c), it is unclear to what extent, if any, there are obligations on gas undertakings regarding the supply of the additional categories of consumers, i.e. the Austrian areas of Tirol and Vorarlberg (notably other consumers different to households) and the systemically relevant gas-fired power plants. In such a case, these obligations would also

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

² Article 8(1): (a) extreme temperatures during a 7-day peak period occurring with a statistical probability of once in 20 years; (b) any period of at least 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years; and (c) for a period of at least 30 days in case of the disruption of the single largest gas infrastructure under average winter conditions.

³ See Article 9 concerning the Risk Assessment.

⁴ According to the PAP, the gas supply for the plants designated as "systemically relevant" must be safeguarded in order to maintain security of the power supply.

be part of an increased supply standard and should be described in the PAP as indicated before.

The Commission considers that the German PAP should be amended to further clarify the extent of the supply standard obligations and to reflect any increased supply standard in accordance with Article 8(2) of the Regulation, including how the conditions contained therein are met.

2.2 Emergency Plan (EP)

Article 10(1) of the Regulation provides for a mandatory list of elements that need to be addressed in the EP. Some of these elements are missing in the notified EP.

Missing description of (cross-border) effects of potential measures

Article 10(1)(i) requires *inter alia* an assessment of the degree of necessity to turn to non-market based measures to cope with a crisis, an analysis of the *effects* of such measures and the definition of the procedures to implement them.⁵ The Article is an expression of the general idea of *mutual cooperation and coordination* in the development of Plans and decisions on crisis measures. This principle is underlying the entire Regulation⁶.

The German EP contains a description of potential market and non-market based measures and refers to when such measures could be deployed. However, the EP does not elaborate on the quantified contribution of particular measures in coping with the crisis. Moreover, the EP should identify what the (quantified) effects of the measures would be, notably on other countries.

Germany has a large number of gas interconnections with neighbouring countries and serves as an important market for imports to other EU countries. The recent "Energy Stress Tests"⁷ have shown that missing coordination of emergency measures in case of a severe crisis can significantly weaken the resilience of Member States. By contrast, close coordination of emergency measures, including in the region between Germany, Poland and other countries in the region, can reduce the effects of a serious supply disruption and avoid unnecessary harm for single Member States⁸.

It is therefore important that the Risk Assessment and the Plans identify these interdependencies and take full account of risks for the security of supply⁹. In this context, the

⁵ Article 10(1)(i) obliges Member States 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.*"

⁶ See in this respect also Article 5(3) of the Regulation (obliging Member States to take into account the *impact of measures in the internal market*); see also Article 9(1)(d), obliging Member States to identify the *interaction and correlation of risks with other Member States*; Article 4(3) of the Regulation (Joint Plans); see also recital 5: "*...there is a clear risk that measures developed unilaterally by [a] Member state may jeopardise the proper functioning of the internal gas market (...); it is necessary to provide for solidarity and coordination in the response to supply crises.*"

⁷ 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.

⁸ See e.g. Stress Test Report, p. 6 and 7.

⁹ See Article 9(1)(d), obliging Member States to identify the interaction and correlation of risks with other Member States in the Risk Assessment.

German Plans lack a description of *potential effects own measures may have on internal energy market* (e.g. changes of gas flows to neighbouring countries like reverse flows via Yamal to Poland).

2.3 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of the FME 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) of the Regulation, but which may provide guidance to the Competent Authority for future amendments of the Plans.

- While the German PAP already contains a section describing the results of the Risk Assessment carried out pursuant to Article 9 of the Regulation, the German PAP would notably improve if this section were further expanded by providing more information on the concrete scenarios assessed and the results observed in each case. Moreover, a quantitative assessment of the possible impacts of the measures to mitigate the risks considered in the Risk Assessment is not provided. The inclusion of this information will enhance notably the transparency as the Risk Assessment is not a public document and would also contribute to the consistency of the Plans. In this regard, for example, the PAP refers in a latter section to the experience in February 2012, which, according to the PAP, showed that the loss of quantities at certain interconnection points can result in regional bottlenecks depending on a series of conditions. However, it cannot be concluded from the PAP whether such a situation was also considered in the updated Risk Assessment, although it seems to have triggered certain actions, notably in terms of network expansion.

Finally, also a more general comment regarding the Risk Assessment can be made. Taking into account the role of the German gas market for Central and Eastern Europe as well as the Plans of some of its neighbours, it is advisable that Germany takes into account the risk of a joint interruption of three major routes of Russian gas to Germany (Nord Stream, Yamal and Brotherhood).

- The effectiveness of the German Plans would clearly increase if they would include information on *potential effects of measures by neighbouring countries on the own system* in case of a (parallel) supply crisis (e.g. interruptions of gas imports from neighbouring countries)¹⁰.
- The PAP could describe in more detail the situation as regards L-gas¹¹ in Germany. The PAP includes a few scattered references to L-gas but according to recital 6 of the Regulation, L-gas should be taken into account in the Risk Assessment, PAPs and EPs at national and regional level.
- As regards the supply standard, and without prejudice to section 2.1 of this opinion, the PAP refers to the requirements imposed on gas undertakings in the Energy Industry Act. However, the PAP does not make any reference to sanctions or other enforcement measures contained in the Act. This information would improve the description of the supply standard in Germany.

¹⁰ See in this context also Article 9(1)(d).

¹¹ L-gas refers to low calorific gas

- Given the fact that the Austrian areas of Tirol and Vorarlberg can only be supplied technically via Germany, the German PAP could be complemented by further explaining the cooperation with the Austrian Competent Authority to ensure the gas supply to the protected customers in these areas.
- The Commission reminds Germany that if any of the investments in infrastructure mentioned in Sections 7.1 to 7.3 of the PAP involve State resources they could constitute State aid within the meaning of Article 107(1) 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.
- Germany explains in Section 5.1.1. of the EP that Section 14(b) of the Energy Industry Act sets out rules for the DSOs to conclude interruptible gas grid connection contracts with end-users and in return to charge a reduced grid fee. While the Commission has recognised the role of moderating energy demand as a pillar to respond to energy security concerns¹² and Member States are moreover required to encourage demand side resources, such as demand response¹³, the Commission reminds Germany that if such mechanism 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 FME 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* Germany 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. FME 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, 12.3.2015

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

¹² Communication from the Commission, "European Energy Security Strategy" COM(2014) 330 final.

¹³ (2) 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.