



Brussels, 6.7.2017
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COMMISSION OPINION

of 6.7.2017

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

(Only the English 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 for the first time at the latest 18 months after the adoption of the Plans.

The Competent Authority of Ireland, the Commission for Energy Regulation ("CER"), has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 30 September 2016.

The CER consulted with the UK Competent Authority and notified to the Commission on 2 December 2016 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 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

Concerning their content, the Plans are detailed and comprehensive and provide for solutions to mitigate the main risks identified in the Risk Assessment, including spill over risks to other sectors such as electricity. Moreover, the Commission welcomes the cooperation mechanism established between Ireland and the United Kingdom,

which is described in detail in a Joint Preventive Action Plan, prepared by the two Member States.

Nevertheless, the Commission considers that some elements of Ireland's national Plans do not comply with the requirements of the Regulation.

2.1. Preventive Action Plan (PAP)

The Regulation obliges Member States to ensure gas supply to protected customers for certain minimum periods in case of an exceptionally high gas demand or supply interruptions¹. This "Supply Standard" shall provide for a protection of certain customers in case of a crisis.

Missing details on the fulfilment of the supply standard pursuant to Article 5(1)(b)

The conditions used of the calculation of the supply standard are based on a more stringent 1-in-50 winter scenario instead of 1-in-20 standard as established in the Regulation. While Member States are free to use in their analysis more demanding conditions than those established in the Regulation to test the ability of their systems to cope with severe situations, it is unclear whether additional obligations on undertakings may stem from the use of a more stringent standard.

The Commission reaffirms its view, previously outlined in its opinion on the 2014 PAP², that Ireland's PAP should also contain the explicit detail of the volumes and capacities needed for the fulfilment of the 1-20 supply standard as this would improve the transparency of and homogeneity among the Plans prepared by all Member States. CER should also clarify whether additional obligations stem from the calculations based on the 1-in-50 conditions. In the latter case, CER should clarify whether an increased standard is applied, in accordance with Article 8(2), and describe it in the PAP in accordance with Article 5(1)(b).

Furthermore, the PAP fails to provide any figures for the supply standard or to list the risk scenarios reflected in this preventive plan.

Missing details on the fulfilment of the infrastructure standard pursuant to Article 5(1)(b)

The PAP does not report the figures used to calculate the N-1 infrastructure standard.

The PAP should also clarify the responsibility for developing the Emergency Plan. The CER is listed as the competent authority for the development of the PAP and the EP. However, the TSO is also identified as the party tasked with developing and maintaining the 'Natural Gas Emergency Plan'.

2.2. Emergency Plan (EP)

Missing mandatory descriptions pursuant to Article 10(1) of the Regulation

Article 10(1) of the Regulation provides for a mandatory list of elements that need to be addressed in the EP. Although the notified EP identifies high-level market-based measures and also non-market based measures for coping with situations, their

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

² C(2015) 1412 final COMMISSION OPINION of 2.3.2015 under Regulation (EU) No 994/2010 on the Preventive Action Plan and Emergency Plan submitted by the Competent Authority of Ireland to the European Commission

detailed impact and contributions, as required by Article 10 (1) (h) and (i)³, are not included.

The CER, as the competent authority, is listed as declaring each crisis level. This should be checked for consistency with sections 2.3 and 5.1 of the National Gas Emergency Plan⁴. Furthermore, according to 1.2 (iii), "The CER has appointed GNI as the National Gas Emergency Manager...The CER has also appointed GNI as the Crisis Manager...". It is difficult to determine the information flows and advice between the three entities frequently mentioned in the EP.

2.3. Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of CER to some other elements of the submitted Plans, which do not necessarily raise legal concerns in terms of their compatibility with the elements mentioned in Article 4(6)(i) to (iii), but which may provide useful guidance to the Competent Authority for future amendments of the Plans.

The Irish PAP does not sufficiently link the list of preventive measures to the risk scenarios developed in the Risk Assessment, nor does it provide a quantitative assessment of the possible impacts of the measures is provided. Although some of the actions listed generally tend to be robust measures to cope with a crisis, it is nevertheless unclear and difficult to evaluate whether the plan will be effective or efficient to mitigate these risks that are not identified or mapped.

It cannot be excluded from the data available that the infrastructure projects mentioned in Section 4.3 of the Irish PAP may involve State resources which could constitute State aid within the meaning of Article 107(1) TFEU. Should it be the case, the Commission reminds Ireland to notify such aid under Article 108(3) TFEU.

The Emergency Plan would benefit from elaborating on the "joint protocol between NGG and GNI" in the event of load shedding as recalled in the "Joint Preventive Action Plan" and also on some of the more technical aspects of the load shedding plans such as fuel-switching, etc.

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 Plans do not comply with certain provisions of this Regulation.

The Commission requests CER 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 Ireland as regards the compatibility of national measures with EU law, including in the context of infringement proceedings.

³ See in this respect also Article 5(3) of the Regulation (underlining the need to take into account the impact of measures).

⁴ National Gas Emergency Plan (2016) <http://www.gasnetworks.ie/en-IE/Safety/NGEP/>

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. CER 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, 6.7.2017

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

