



Brussels, 6.9.2017
C(2017) 5989 final

COMMISSION OPINION

of 6.9.2017

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

(Only the French 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 Luxembourg, the Ministry of Economy, has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 24 February 2017.

The Competent Authority of Luxembourg notified to the Commission on 2nd June 2017 its updated Preventive Action Plan and its updated Emergency Plan. The Commission notes that Luxembourg exchanges both Plans with its neighbours (France, Belgium, The Netherlands and Germany) in the framework of the Gas Platform as underlined in Chapter 5 of its PAP.

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 22 March 2017 and 28 June 2017, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans submitted by the Competent Authority of Luxembourg are in many aspects detailed and comprehensive.

The Commission welcomes in particular the description of the preventive actions recently implemented such as the merger of the Belgian and Luxembourg gas markets as of 1 October 2015 which has increased the firm entry capacity from Belgium enabling better optimisation

of gas flows by the upstream transmission system operator and improving the security of supply of Luxembourg. The Commission also welcomes the introduction of a preferential network-use tariff for eligible customers accepting to be disconnected from the network in crisis situations. This market-based demand response measure is certainly an additional contribution to security of supply in crisis situations.

However, the Commission considers that some elements of the Plans do not comply with the requirements of the Regulation.

2.1. Emergency Plan

The EP submitted by the Competent Authority of Luxembourg contains a number of measures and procedures to be applied when a crisis level is declared. The role and responsibility of the different actors as well as the steps to be followed during a crisis level are well described.

Contribution of market-based measures

Although the market based measures to be used are clearly identified in paragraph 5.2, there is no quantification of their contribution. The EP should contain additional quantitative information on the contribution of market-based measures to cope with the situation at alert level and mitigate the situation at emergency level as required by Article 10(1)(h). The Commission notes that quantification of some of these market-based measures is provided in the Risk Assessment, but clear quantification for all market-based measures should appear in the EP.

Contribution of non-market-based measures

Similarly as to the above, insufficient information is provided as regards the contribution of non-market-based measures planned or implemented for the emergency level. We understand that the measure would mainly consist in a load shedding plan with different levels of interruption. However, no quantitative information is provided for each of the priority levels mentioned in paragraph 5.3 which would allow to assess, as required by Article 10(1)(i) the degree to which the use of non-market based measures is necessary to cope with a crisis and assess their effects.

Information on the role and responsibility of industrial gas customers

The EP submitted contains insufficient information on the role and responsibility of industrial gas consumers including relevant electricity producers as required by Article 10(1)(b).

The Commission takes the view that the EP should be amended in order to include a more detailed description of the elements mentioned above.

2.2. Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of the Competent Authority of Luxembourg 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.

For the sake of transparency, the PAP should contain the concrete figures which show that that the consumption of non-household customers eligible to priority level 1 in the load shedding plan contribute to less than 20% of the final use of natural gas in Luxembourg.

The EP prepared by the Competent Authority of Luxembourg should contain the measures and actions to be taken to mitigate the potential impacts of a gas supply disruption on district heating and the supply of electricity generated from gas, or indicate why this would not be appropriate, in accordance with Article 10(1)(e) of the Regulation.

In addition, the Commission reminds the Competent Authority of Luxemburg that if the preferential network-use tariff for eligible customers accepting to be disconnected from the network in crisis situations constitutes State aid within the meaning of Article 107(1) TFEU, it

must be notified to the Commission under Article 108(3) TFEU unless it is caught by the General Block Exemption Regulation.

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 Competent Authority of the Grand Duchy of Luxembourg 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* Luxembourg 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 Competent Authority of Luxembourg is invited to inform the Commission within five working days following the receipt of the opinion whether it considers that it contains commercially sensitive information, the confidentiality of which is to be preserved.

Done at Brussels, 6.9.2017

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission