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COMMISSION OPINION

of 26.9.2018

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

(Only the Greek text is authentic)

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1. PROCEDURE

Article 4(1) of Regulation (EU) No 994/2010 ("the 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.

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 (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 Greece, the Regulatory Authority for Energy ("RAE"), has notified its updated Risk Assessment pursuant to Article 9 of the Regulation to the Commission on 20 October 2017.

The Greek Competent Authority notified its updated Preventive Action Plan on 21 June 2018.

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 Plan, 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, 28 June 2017, 27 September 2017, 9 November 2017 and 20 February 2018 the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns the content of the Plan, the Greek Competent Authority has submitted a detailed and comprehensive Plan. The Commission appreciates the clear link established between the risk scenarios considered and the measures adopted as well as the due consideration given to the spill over effects of a gas crisis in the electricity sector. The Commission also recognises that the Greek Competent Authority has addressed in the revised Preventive Action Plan a number of the comments contained in the Commission opinion¹ on the previous Greek Preventive Action Plan. The Commission also commends the initiative of Greece to submit the most recent Preventive Action Plan according to the template provided in the new 2017 Regulation. However, the Commission considers that some elements of the Plan do not comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

Compliance with the N-1 formula

According to Article 6(1) of the Regulation and as part of the infrastructure standard, in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure, determined according to the N-1 formula contained in Annex I, must be able to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years. Article 6(2) allows for such obligation to be considered fulfilled where the Competent Authority demonstrates in the PAP that a supply disruption may be sufficiently compensated for, in a timely manner, by appropriate market-based demand-side measures. The "*measures, volumes, capacities and the timing needed to fulfil the infrastructure standard*" shall be contained in the PAP submitted by Member States in accordance with Article 5(1)(b) of the Regulation, including the extent to which demand-side measures can sufficiently compensate, in a timely manner, for a supply disruption.

It follows from the Greek Plan that Greece complies with the N-1 formula from 2018 onwards by applying the provision contained in Article 6(2) of the Regulation, i.e. by resorting to a number of market-based demand-side measures. These measures are described in the PAP, including their potential to compensate for a supply disruption by reducing gas demand. However, it appears that their full potential cannot be achieved in practice yet. Consequently, it is unclear whether currently such measures would actually allow to sufficiently compensate for a supply reduction and thus comply with the N-1 formula as required by the Regulation.

For example, one of the measures (so-called "A2") consists on a number of incentives to foster the use of alternative fuels in gas-fired power generation facilities. According to the PAP up to 3 plants could switch fuels and use alternative fuels from a technical point of view and therefore, these 3 plants have been considered in the calculations in the risk assessment. However, it appears from the PAP that currently only one power plant has a contract in place to apply such fuel switching. Consequently, it is unclear whether the total estimated gas demand savings stemming from this measure would actually be achieved in practice. Similarly, it is unclear whether the maximum expected savings of another measures, the so-called measure A1 related to large interruptible customers, can be fully achieved in practice.

The Commission considers that the Greek PAP should be amended to clearly indicate the extent to which the market-based demand-side measures described in the PAP can currently

¹ Commission opinion of 22.4.2016, C(2016) 2464 final

contribute to compensating for a supply disruption by reducing gas demand and thus allow Greece to comply with the N-1 formula.

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. 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. 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.

While the definition of protected customers is clear in the PAP submitted by the Greek Competent Authority Nonetheless, the Greek Competent Authority does not indicate the total annual gas consumption of the different categories of protected customers, in particular those referred to in Article 2(1)(a) of the Regulation.. Consequently, it is not possible to assess whether the supply standard has been correctly calculated or whether it is above the values set in Article 8(1) of the Regulation, and whether the 20% cap set in Article 2(1)(a) of the Regulation is respected.

The Commission considers that the Greek Competent Authority should amend the PAP to include the gas consumption volumes of protected customers per category of consumers. The Commission also reminds the Greek Competent Authority that any increased supply standard or additional obligation in this regard can only be imposed for reasons of security of gas supply, has to comply with the conditions set in Article 8(2) of the Regulation and has to be described in the PAP in accordance with Article 5(1)(b) of the Regulation. .

Information regarding Public Service Obligations

According to Article 5(1)(g) of the Regulation, the PAP should contain information on all public service obligations that relate to security of gas supply.

The PAP submitted by the Greek Competent Authority does not contain information regarding Public Service Obligations that relate to security of supply, including those communicated in the Commission in the past. In fact, the PAP from October 2012 mentioned that Articles 48 and 81 of Law 4001/2011 were amended in order to clearly provide for the obligation of gas suppliers to guarantee uninterrupted supply to protected customers, as provided for in the Regulation, and that with the upcoming revision of the Greek Natural Gas Licensing Regulation, to be completed early in 2016, the specific terms to implement this obligation would be included in the standard supply license terms.

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

The Commission considers that the Greek Competent Authority should clarify in an amended PAP whether the above-mentioned obligations, or any other, are still in place and, if they are in place, how they have been implemented.

2.2 Other comments

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

The PAP should clearly indicate whether the Greek Competent Authority has consulted other Member States on its Plans, notably Bulgaria.

The Commission also takes the liberty of pointing out that the RAE decision to gradually reduce the tolerances for balancing purposes and the intended move to using market-based mechanisms for load balancing purposes are supportive to improving the resilience of the gas markets (as well as indirectly electricity markets) in Greece. At the same time however, sharper imbalance prices may reduce the incentive to participate in demand response schemes, especially if their reward is (implicitly) based on a flat rate payment. It may thus in time be recommendable to a more market based system to procure demand response based capacity.

The Commission reminds Greece that if any of the investments in future infrastructure, such as LNG terminals, or any other mentioned in 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.

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 Plan do not comply with certain provisions of this Regulation.

The Commission requests the Greek Competent Authority to amend the Plan 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 Hellenic Republic 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 Greek Competent Authority 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, 26.9.2018

For the Commission
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Member of the Commission