

**TECHNICAL SUMMARY OF THE MAIN FINDINGS IN
ADOPTED COMMISSION OPINIONS¹ ON THE
GAS SECURITY OF SUPPLY
PREVENTIVE ACTION PLANS AND EMERGENCY PLANS
PREPARED UNDER REGULATION (EU) No 994/2010**

I. INTRODUCTION

During 2014-2016 Member States have submitted to the Commission 53 Plans, including Preventive Action Plans and Emergency Plans (hereafter, "the Plans"), prepared by their Competent Authorities under Regulation (EU) No 994/2010 (hereafter, "the Regulation"). The Plans submitted are updated versions of the Plans that were adopted for the first time in 2012² and, similarly to the initial versions, had to be based on the national Risk Assessment that each Competent Authority had to adopt and notify to the Commission pursuant to Article 9 of the Regulation.

The Commission communicated 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. As a result, the Commission has adopted and published³ 27 opinions on the Plans submitted by the Member States. In two cases Member States engaged in a dialogue with the Commission's services on draft Plans prior to the notification of the final Plans as foreseen by Article 4(2) of the Regulation. The Commission reported regularly its main findings to the Gas Coordination Group on 28 January 2015, 4 May 2015, 22 September 2015, 9 December 2015 and 17 March 2016, ahead of the adoption of the opinions.

During this process the Commission had to engage in a structured dialogue with a number of Member States due to the delays in the adoption of the Plans. In two cases infringement procedures were also launched. Currently all Plans have been submitted and the infringement procedures are closed.

II. MAJOR ISSUES

In its assessment, the Commission made a number of comments to a large majority of Member States per Plan. A summary of those comments is provided in sections II.1 and II.2 of the present document. Additionally, the Commission made a number of comments on 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) of the Regulation, but which may provide useful guidance to the Competent Authorities for future amendments of the Plans. These comments have been reflected in section II.3 of this document.

All the opinions delivered by the Commission were adopted under Article 4(6)(b) (ii) of the Regulation⁴, i.e. non-compliance with the current Regulation, but for four cases where the Commission considered that no amendments to the submitted Plans were necessary.

¹ The present document summaries and provides an overview of the main findings of the Commission in its opinions issued on the Preventive Action Plans and Emergency Plans of the Members States. The document has been prepared in order to facilitate the comprehension of the adopted opinions and thus enhance transparency. The document contains information derived from the opinions or otherwise publically available. It has not legal value and does not prejudice any position the Commission may take *vis-à-vis* any Member State as regards the compatibility of national measures with EU law, including in the context of infringement proceedings.

² The Plans have to be updated every two years, unless circumstances require more frequent updates. The first update was due in December 2014.

³ https://ec.europa.eu/energy/sites/ener/files/documents/opinions_SoS%20Plans.pdf

⁴ Article 4(6)(b)(ii) of the Regulation: where the Commission, based on these consultations: (ii) considers that a Preventive Action Plan or an Emergency Plan is inconsistent with the risk scenarios or with the Plans of another

In accordance with the Regulation, the revised Plans shall also be consulted among Competent Authorities (Article 5(4) of the Regulation) at a draft status. Information regarding this consultation was often missing in the revised Plans, even if the consultation with neighbouring Competent Authorities took place. Only in 3 cases the consultations were made on the basis of courtesy translations into English, to the Commission's services knowledge. It is uncertain to what extent comments were actually exchanged (with one exemption) and, where submitted, how they were taken into account in the final versions of the updated Plans submitted to the Commission.

II.1. Preventive Action Plans (PAPs)

Most of the issues observed by the Commission in the PAPs can be grouped in two blocks: the definition of protected customers and the supply standard.

With regard to the protected customers, the first observation is that many PAPs (18 cases) do not indicate who the protected customers in the Member State in question are. In some cases the definitions were provided in the Risk Assessments, but the Risk Assessments are not always public and therefore not accessible to all stakeholders. In other cases, the definitions of protected customers were reflected in the Plans in terms that cannot be matched to the categories allowed by the Regulation (e.g. in terms of yearly consumption volumes or per type of national contract). As a result, it is not possible to identify in those cases whether the categories of protected customers in a given Member State are in line with the categories allowed by the Regulation and whether, as a result of it, the supply standard has been properly calculated⁵.

Secondly, the information provided on the supply standard was often incomplete. The Regulation requires Competent Authorities to provide information regarding the measures, volumes and capacities to fulfil the supply standard (Article 5(1) of the Regulation), however, information regarding volumes and capacities was missing in 10 cases and in 7 cases it was unclear how the supply standard was applied (measures). Additionally, in 8 cases there appeared to be an increased supply standard. While such possibility is allowed by the Regulation, it is conditional upon a number of requirements (i.a. the increased standard shall be imposed for reasons of security of gas supply and shall not unduly distort competition or hamper the functioning of the internal market in gas). With few exemptions, compliance with such conditions appears not to have been considered in the Plans. Part of this information was also missing in the PAP of one of the Competent Authorities having actually declared formally an increased standard. A condition for the establishment of an increased standard is also the identification in the PAP of how such increased standard may be temporarily reduced, in a spirit of solidarity, in the event of a Union or regional emergency. Such mechanism was missing in the cases of suspected increased standards as well as in the PAP of the abovementioned Competent Authority having formally declared the increased standard.

Finally, a number of questions were posed to 3 Competent Authorities regarding the assumptions made for the calculation of the N-1. In a particular case, the Commission asked for further information regarding the gas supply of certain protected customers in a Member States whose supply can only be provided via another Member State. Additional information was also requested in some cases regarding the information provided on existing and future infrastructures (Article 5(1)(f) of the Regulation), although the information provided under this point can be considered overall satisfactory. Information was also requested with regard to preventive measures (3 cases) and, in particular, with

Competent Authority, or that it does not comply with the provisions of this Regulation or other provisions of Union law, it shall request that the relevant Plan be amended;

⁵ Member States had to notify the Commission by 3 December 2011 their definition of protected customers, but this information has not always been made public, nor necessarily contains the relevant information so as to verify the compliance with the conditions set in Article 2 of the Regulation.

regard to storage-related measures (5 cases) for which little or no information was provided despite their known existence.

II.2. Emergency Plans (EPs)

As regards the EPs, the number of comments made by the Commission on the EPs was higher and they cover a wider range of topics compared to the PAPs.

The definition of the crisis levels in Member States was overall correct, with the exception of 4 cases, where clarifications were requested to ensure full alignment with the Regulation.

The information provided in the EPs as to the kind of measures that would apply in different crisis levels⁶, and particularly upon the declaration of the emergency level, was very often incomplete. In up to 14 cases it could not be deduced from the information provided in the EPs what the extent of the measure would be, who would trigger its application, upon which conditions it could be triggered and who would be obliged to comply with it. In 6 cases clarifications were further requested from the Competent Authorities as it seemed that, contrary to the provisions in the Regulation (Article 10(1)(i)), non-market based measures could be applied before the declaration of an emergency.

The contribution of market based but especially non-market based measures to coping with the situation at alert level and mitigating its effects in an emergency situation (as required by Article 10(1)(h) and (i) of the Regulation) was frequently missing as well (issue brought up in 5 cases). In other cases (3), it could not be deduced from the text of the submitted EPs how the natural gas undertakings and industrial gas consumers are given sufficient opportunity to respond to each crisis level (as required by Article 10(1)(d) of the Regulation) and, in 1 case, the interactions between these groups and the Competent Authority (Article 10(1)(b) of the Regulation) at different crisis levels were also unclear.

The most troubling issue identified in the EPs was the possible resort in 9 Member States to measures during an emergency that could potentially have a cross-border impact on other Member States, notably regarding gas exports. In accordance with the Regulation (Article 10(7)), Member States and in particular Competent Authorities shall ensure that measures adopted during an emergency comply with a number of conditions, notably that no measures unduly restrict the flow of gas within the internal market at any time or are likely to endanger seriously the gas supply situation in another Member State. Information was missing in the EPs as to the impact of these measures on other Member States, the conditions for triggering such measures and whether other Member States had been informed about these measures and would be informed in advance each time they could be applied.

Information was also requested regarding the cooperation with other Member States per crisis level and reporting obligations, in line with Article 10 (1) (j) and (k) of the Regulation respectively.

III. OTHER ISSUES

In a majority of opinions the Commission has included a number of additional comments. Such comments 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 and the purpose of their inclusion is to provide some guidance as regards some parts of the Plans that could be improved upon the revision of the Plans.

- *Limited description of the Risk Assessment in the PAP or insufficient explanations on the links between the measures contained in the Plans and the results of the Risk Assessment (8 cases):*

⁶ Article 10(3) of the Regulation defines three crisis levels: early warning level, alert level and emergency level.

This point is especially relevant as the majority of Risk Assessments are not public documents. Therefore, the summary provided in the Risk Assessment may be the only available information for stakeholders.

- *Lack of reference to the cooperation with other Member States and the exchange of draft Plans as required by the Regulation (12 cases).*

Only in very few cases was the Commission directly in copy of the mandatory consultation of draft Plans between Member States. Sometimes the Commission was informed ex-post of consultations carried out between Member States. Very few Member States indicated in their Plans whether the Plans had been consulted with other Member States and references on the extent to which comments from other Member States have been incorporated in the final versions of the Plans are, on a general basis, not described in the Plans submitted to the Commission.

- *Insufficient description of measures adopted to prevent spill-over effects of a gas crisis in the electricity sector and district heating or failure to justify why such measures would not be necessary (14 cases).*

The Regulation requires Member States to identify, if appropriate, the measures and actions to be taken to mitigate the impact of a gas supply disruption on district heating and on the supply of electricity generated from gas (Article 10(1)(e) of the Regulation). However, in a number of cases information on such measures was missing at all and no justification was provided as to why such measures would not be necessary or relevant for the Member State.

- *Extending the information provided in the Plans and improving the clarity of the text:*

In some instances the Commission recommended Member States to further expand sections of their Plans in future revisions for the sake of enhanced transparency, e.g. to provide summary information on curtailment plans. In order to improve the clarity of the text, it was also recommended to avoid full transcriptions of legal texts in the Plans and to use annexes for such purposes. These transcriptions obscure rather than clarify the Plans, therefore, it is recommended to include clear summaries of the legal provisions in the main body of the Plans while leaving the full transcription, if needed, to annexes.

- *Other technical issues:*

Within this category other comments were brought up by the Commission such as the need to properly incorporate in the Plans the provisions regarding L-gas. The Commission encouraged plans related to addressing the issue of odourisation and asked to explore the potential for market based demand side measures.

Finally, in a large majority of cases (19 cases) a reminder was added on the need to notify certain measures (e.g. infrastructure projects, public service obligations) under Article 108(3) TFUE⁷ should the measures involve the use of State resources which could constitute State aid within the meaning of Article 107(1) TFUE (if the other conditions therein are also met).

⁷

Unless they are caught by the General Block Exemption Regulation (Commission Regulation (EU) №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).