Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

20 December 2017*

(Reference for a preliminary ruling — Energy — Gas industry — Security of gas supply — Regulation (EU) No 994/2010 — Obligation of natural gas undertakings to take measures to safeguard the supply of gas to protected customers — Point 1 of the second paragraph of Article 2 — Definition of 'protected customers' — Article 8(2) — Additional obligation — Article 8(5) — Possibility for natural gas undertakings of fulfilling their obligation at regional level or at Union level — National legislation imposing on gas suppliers an additional gas storage obligation, the scope of which includes customers who are not protected customers within the meaning of Regulation No 994/2010 — Obligation to be fulfilled, as regards 80% of the gas stored, on the territory of the Member State concerned)

In Case C-226/16,

Request for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 15 April 2016, received at the Court on 22 April 2016, in the proceedings

**Eni SpA,**

**Eni Gas & Power France SA,**

**Union professionnelle des industries privées du gaz (Uprigaz)**

v

**Premier ministre,**

**Ministre de l'environnement, de l'énergie et de la mer,**

intervening parties:

**Storengy,**

**Total Infrastructures Gaz France (TIGF),**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, E. Levits, A. Borg Barthet (Rapporteur), M. Berger and F. Biltgen, Judges,

Advocate General: P. Mengozzi,

Registrar: V. Giacobbo-Peyronnel, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 16 March 2017,

after considering the observations submitted on behalf of

– Eni SpA and Eni Gas & Power France SA, by C. Lefort, M. Dantin and A. Soloshchenkov, avocats,

– l'Union professionnelle des industries privées du gaz (Uprigaz), by N. Autet and G. Marson, avocats,

– Storengy and Total Infrastructures Gaz France (TIGF), by C. Le Bihan-Graf and L. Rosenblieh, avocates,

– the French Government, by D. Colas, R. Coesme, S. Horrenberger, and A. Daly, acting as Agents,

– the Polish Government, by B. Majczyna, M. Rzotkiewicz and K. Rudzińska, acting as Agents,

– the European Commission, by M. Patakia and O. Beynet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(2) and (5) of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (OJ 2010 L 295, p. 1).

2 The request has been made in proceedings between (i) Eni SpA and Eni Gas & Power France SA (together, 'Eni') and the Union professionnelle des industries privées du gaz (Trade association of private gas undertakings, 'Uprigaz') and (ii) the Premier ministre (Prime Minister, France) and the ministre de l'environnement, de l'énergie et de la mer (Minister for the environment, energy and the sea, France) concerning the lawfulness of décret No 2014-328 du 12 mars 2014 modifiant le décret No 2006-1034 du 21 août 2006 relatif à l'accès aux stockages souterrains de gaz naturel (JORF of 14 March 2014, p. 5283) (Decree No 2014-328 of 12 March 2014 amending Decree No 2006-1034 of 21 August 2006 concerning access to underground stocks of natural gas, 'Decree No 2014-328').

## Legal context

### *EU law*

3 Recitals 5, 9 and 10 of Regulation No 994/2010 are worded as follows:

'(5) However, under the current measures regarding the security of gas supply that have been taken at Union level, Member States still enjoy a large margin of discretion as to the choice of measures. Where the security of supply of a Member State is threatened, there is a clear risk that measures developed unilaterally by that Member State may jeopardise the proper functioning of the internal gas market and the supply of gas to customers. Recent experience has demonstrated the reality of that risk. In order to allow the internal gas market to function even in the face of a shortage of supply, it is necessary to provide for solidarity and coordination in the response to supply crises, both concerning preventive action and the reaction to concrete disruptions of supply.

…

(9) A major disruption of gas supply to the Union can affect all Member States, the Union as a whole and Contracting Parties to the Treaty establishing the Energy Community, signed in Athens on 25 October 2005 [(OJ 2006 L 198, p. 18)]. It can also lead to severe economic damage across the Union's economy. Likewise, the disruption of gas supply can have a severe social impact, in particular on vulnerable groups of customers.

(10) Certain customers, including, inter alia, households and customers providing essential social services such as healthcare and childcare activities, educational activities and other social and welfare services as well as services indispensable for the functioning of a Member State, are particularly vulnerable and might need protection. A wide definition of such protected customers should not conflict with European solidarity mechanisms.'

4 The second paragraph of Article 2 of that regulation provides:

'... the following definitions shall apply:

1. "protected customers" means all household customers connected to a gas distribution network and, in addition, where the Member State concerned so decides, may also include:
   (a) small and medium-sized enterprises, provided that they are connected to a gas distribution network, and essential social services, provided that they are connected to a gas distribution or transmission network, and provided that all these additional customers do not represent more than 20% of the final use of gas; and/or
   (b) district heating installations to the extent that they deliver heating to household customers and to the customers referred to in point (a) provided that these installations are not able to switch to other fuels and are connected to a gas distribution or transmission network.

…'

5 Article 3(6) of that regulation provides:

'The measures to ensure the security of supply contained in the Preventive Action Plans and in the Emergency Plans shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable, shall not unduly distort competition and the effective functioning of the internal market in gas and shall not endanger the security of gas supply of other Member States or of the Union as a whole.'

6 Article 8 of that regulation, entitled 'Supply standard', is worded as follows:

'1. The Competent Authority shall require the natural gas undertakings, that it identifies, to take measures to ensure gas supply to the protected customers of the Member State in the following cases:

(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.

The Competent Authority shall identify the natural gas undertakings referred to in the first subparagraph by 3 June 2012 at the latest.

2. Any increased supply standard going beyond the 30-day period referred to in points (b) and (c) of paragraph 1 or any additional obligation imposed for reasons of security of gas supply shall be based on the risk assessment referred to in Article 9, shall be reflected in the Preventive Action Plan and shall:

(a) comply with Article 3(6);

(b) not unduly distort competition or hamper the functioning of the internal market in gas;

(c) not impact negatively on the ability of any other Member State to supply its protected customers in accordance with this Article in the event of a national, Union or regional emergency; and

(d) comply with the criteria specified in Article 11(5) in the event of a Union or regional emergency.

In a spirit of solidarity, the Competent Authority shall identify in the Preventive Action Plan and the Emergency Plan how any increased supply standard or additional obligation imposed on natural gas undertakings may be temporarily reduced in the event of a Union or regional emergency.

3. After the periods defined by the Competent Authority in accordance with paragraphs 1 and 2, or under more severe conditions than those defined in paragraph 1, the Competent Authority and natural gas undertakings shall endeavour to maintain, as far as possible, the gas supply, in particular for protected customers.

4. The obligations imposed on natural gas undertakings for the fulfilment of the supply standards laid down in this Article shall be non-discriminatory and shall not impose an undue burden on those undertakings.

5. Natural gas undertakings shall be allowed to meet these obligations at a regional or Union level, where appropriate. The Competent Authority shall not require the standards laid down in this Article to be met based on infrastructure located only within its territory.

6. The Competent Authority shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the internal market in gas and at a price respecting the market value of the supplies.'

7 Article 11(5) of Regulation No 994/2010 concerning Union and regional emergency responses provides:

'The Member States and in particular the Competent Authorities shall ensure that:

(a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time, notably the flow of gas to the affected markets;

(b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and

(c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 [of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ 2009 L 211, p. 36)] is maintained as far as technically and safely possible, in accordance with the Emergency Plan.'

### *French law*

8 In France, the storage of natural gas is governed by the provisions of Articles L. 421-1 to L. 421-16 of the Code de l'énergie (Energy Code). Those provisions organise access to gas stocks within the framework of the public service obligations which require suppliers to ensure continuity of supply of natural gas even in extreme situations.

9 Article L. 421-3 of the Energy Code is worded as follows:

'The natural gas stocks shall make it possible to ensure, as a priority:

1. the proper functioning and balancing of networks connected to underground natural gas stocks;

2. the direct or indirect satisfaction of the needs of domestic customers and of other customers that have not accepted, under a contract, an interruptible supply or that operate in the public interest;

3. compliance with the other public service obligations laid down in Article L. 121-32.'

10 The first paragraph of Article L. 421-4 of the code provides:

'Any supplier shall hold in France, on 31 October each year, directly or indirectly through an authorised representative, sufficient stocks of natural gas, taking account of its other regulatory instruments, to meet its contractual obligations, for the period between 1 November and 31 March, relating to the direct or indirect supply of customers mentioned in the third subparagraph of Article L. 421-3. …'

11 Under Article L. 421-7 of the Energy Code, a decree of the Conseil d'État (Council of State, France) is to lay down the conditions and implementing arrangements, inter alia, for Article L. 421-4.

12 Decree No 2006-1034 of 21 August 2006 concerning access to underground stocks of natural gas (JORF of 23 August 2006, p. 12370, 'Decree No 2006-1034'), adopted pursuant to Article L. 421-7 of the Energy Code, specifies the conditions on the basis of which access to natural gas stocks is organised. According to the order for reference, that decree provides, first, for the allocation to each natural gas supplier of rights of access to storage capacities or 'storage rights', determined by reference to its customer portfolio, to enable it to supply those customers during the winter period and, second, for the imposition of obligations on those suppliers concerning, inter alia, the obligation to hold minimum stocks at the beginning of the winter period.

13 Article 9 of Decree No 2014-328 amended Decree No 2006-1034, providing, inter alia, that the storage obligations imposed on suppliers are to be calculated by reference to 'storage rights' corresponding no longer only to the annual consumption of their domestic customers and of their customers operating in the public interest, as was provided in the initial version of Decree No 2006-1034, but also to the consumption of customers connected to the distribution network that have not accepted, under a contract, an interruptible supply. In consideration thereof, Decree No 2014-328 reduced the rate of the storage obligations from 85% to 80% of storage rights.

## The dispute in the main proceedings and the questions referred for a preliminary ruling

14 By two applications on 12 and 14 May 2014, Eni and Uprigaz brought an action before the Conseil d'État (Council of State) seeking the annulment of Decree No 2014-328 as having been adopted *ultra vires*.

15 In their actions, Eni and Uprigaz submit, inter alia, that that decree infringes Regulation No 994/2010. They maintain that the decree improperly extends the definition of 'protected customers' set out in point 1 of the second paragraph of Article 2 of the regulation. They argue that it also imposes on natural gas suppliers the obligation to locate storage capacities in France, in contravention of Article 8(5) of that regulation.

16 In this regard, the referring court notes, first, that Decree No 2014-328 includes within the national definition of 'protected customers' non-domestic customers connected to the distribution network that have not accepted, under a contract, an interruptible supply, which are not necessarily 'small and medium-sized enterprises' within the meaning of point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010. The definition of 'protected customers' thus adopted in the decree therefore goes beyond the ambit of the definition contained in the regulation. The French authorities maintain, however, that those additional customers correspond to sites of modest size which, even if they belong to large enterprises, share many characteristics with small and medium-sized enterprises. Furthermore, according to those authorities, such a broad definition pertains to the additional obligations which Member States may impose, for reasons of security of gas supply, in accordance with Article 8(2) of that regulation.

17 In those circumstances, the lawfulness of Decree No 2014-328 depends, in the referring court's view, on whether that provision is to be interpreted as preventing the imposition by a Member State on natural gas suppliers of additional obligations resulting from the inclusion among protected customers, whose consumption contributes to defining the limits of the storage obligations designed to ensure continuity of supply, of customers who are not mentioned in point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010.

18 Secondly, the referring court states that, in order to ensure continuity of gas supply to customers, Article L. 421-4 of the Energy Code requires suppliers to hold in France sufficient stocks of natural gas, taking account of the other regulatory instruments available to them, and that Decree No 2014-328 implies that 80% of the storage rights must be given effect within national territory, whilst nevertheless providing that the Minister responsible for energy is to take account of the other regulatory instruments available to a gas supplier in order to assess whether the storage capacities held by it are sufficient to guarantee compliance with its storage obligation. The lawfulness of Decree No 2014-328 therefore also depends on whether Article 8(5) of Regulation No 994/2010 prevents a Member State from imposing such obligations on natural gas suppliers.

19 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must [Article 8(2) of Regulation No 994/2010] be interpreted as constituting an obstacle to the imposition by a Member State on natural gas suppliers of additional obligations resulting from the inclusion among "protected customers", whose consumption contributes to defining the limits of the storage obligations designed to ensure continuity of supply, of customers who are not mentioned in [the second paragraph of Article 2] of that regulation?

(2) Must [Article 8(5) of Regulation No 994/2010] be interpreted as constituting an obstacle to the imposition by a Member State on natural gas suppliers of obligations relating to the volumes of gas stored and the withdrawal rates attached thereto, and to the holding of storage capacities acquired by virtue of rights reflecting the obligation to hold stocks on the territory of that Member State, whilst at the same time providing that the Minister, in assessing a supplier's storage capacities, is to take account of the other regulatory instruments available to that supplier?'

## Consideration of the questions referred

### *Preliminary observations*

20 It should be recalled that the Court has already had occasion to rule on the margin of discretion granted to the Member States with regard to security of natural gas supply, in the context of Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply (OJ 2004 L 127, p. 92), which established for the first time a legal framework at EU level for the purpose of safeguarding the security of natural gas supply and which preceded Regulation No 994/2010.

21 The Court held that that directive had established only a framework within which it fell to the Member States to define general policies on security of supply and that, as stated in recital 3 of the directive, it constituted only a minimum common approach to security of natural gas supply. The Court also held that Directive 2004/67 accorded a broad margin of discretion to the Member States with regard to the methods of achieving the aims pursued by the directive (see, to that effect, judgment of 17 July 2008, *Commission* v *Spain*, C-207/07, not published, EU:C:2008:428, paragraphs 43 and 44).

22 While Directive 2004/67 accorded a broad margin of discretion to the Member States with regard to the choice of measures for safeguarding security of gas supply, it is clear from recital 5 of Regulation No 994/2010 that that regulation was adopted so as to provide a tighter framework for that discretion, in order to prevent measures developed unilaterally by a Member State jeopardising the proper functioning of the internal gas market and the supply of gas in the other Member States.

### *The first question*

23 By its first question, the referring court asks, in essence, whether Article 8(2) of Regulation No 994/2010 must be interpreted as precluding national legislation, such as that in the main proceedings, that imposes on natural gas suppliers a gas storage obligation, the scope of which includes customers who are not among the 'protected customers' listed in point 1 of the second paragraph of Article 2 of that regulation.

24 It must be recalled that, as is clear from Article 8(1) of that regulation, Regulation No 994/2010 requires the Member States to ensure, in the cases listed in that provision, gas supply to certain customers, referred to as 'protected customers'.

25 In that regard, it is apparent from point 1 of the second paragraph of Article 2 of Regulation No 994/2010 that the definition of 'protected customers' contained therein includes the category of 'household customers connected to a gas distribution network' and, when the Member State so decides, two further categories, defined in point 1(a) and (b) of the second paragraph of Article 2 of that regulation respectively.

26 As regards, more specifically, the category in point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010, that provision sets out that Member States may regard as protected customers 'small and medium-sized enterprises, provided that they are connected to a gas distribution network, and essential social services, provided that they are connected to a gas distribution or transmission network, and provided that all these additional customers do not represent more than 20% of the final use of gas'.

27 In the present case, the French Government asserts that, by including, for the purposes of national law, among protected customers not only household customers, but also non-domestic customers connected to the distribution network that have not accepted, under a contract, an interruptible

supply, Decree No 2014-328 did not go beyond the definition of 'protected customers' under point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010. It submits that this category of customers encompasses entities of modest size, such as small enterprises, small branches of large enterprises, small businesses belonging to integrated networks or small industrial plants belonging to a larger enterprise, the larger entities not being connected to the distribution network, but directly to the transmission network.

28 In that context, the French Government argues that the reference to 'small and medium-sized enterprises' in point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010 should be understood as covering not only entities with legal status as small and medium-sized enterprises but, in the light of the objectives of that regulation, as also including entities which in fact constitute autonomous units that consume an equivalent volume of gas to a small and medium-sized enterprise.

29 Such an interpretation of 'protected customers' within the meaning of that provision cannot however be upheld.

30 In that regard, it must be pointed out that not all customers that have not accepted, under a contract, an interruptible gas supply are included in the categories listed in point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010. In particular, it is undisputed that small branches of large enterprises, small businesses belonging to integrated networks or small industrial plants belonging to a larger enterprise are not 'small and medium-sized enterprises', within the ordinary meaning of that term, as the French Government moreover acknowledges.

31 The fact that the gas consumption of such entities is, potentially, similar to that of a small or medium-sized enterprise is irrelevant in that regard. As is apparent from recitals 9 and 10 of Regulation No 994/2010, the list of 'protected customers' in point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010 of that regulation is not so much based on the volume of gas consumption of those customers as it is on the specific protection of which they are in need in the event that the gas supply is interrupted, given their vulnerability.

32 Contrary to what the French Government contends, those entities and small or medium-sized enterprises do not share the same need for protection against potential interruptions in gas supply. As observed by the Advocate General in point 59 of his Opinion, belonging to an enterprise, to a group or to a sizeable integrated network enables those entities to have economic and technical resources which SMEs generally do not have and which can make it possible for those entities to deal with such an interruption.

33 It is therefore appropriate to examine whether a Member State can, under Article 8(2) of Regulation No 994/2010, impose on natural gas suppliers measures intended to safeguard the supply of gas to a wider group of customers than the 'protected customers' listed in point 1(a) of the second paragraph of Article 2 of that regulation.

34 In that regard, it follows from Article 8(2) of Regulation No 994/2010 that Member States have the possibility of adopting two types of measures that go beyond those which they are required to impose on natural gas undertakings that they identify in accordance with paragraph 8(1) of that regulation and which are limited, as recalled in paragraph 24 of the present judgment, to protected customers.

35 In the first place, Member States can provide for 'increased supply standards', that is to say, as is clear from the wording of Article 8(2) of that regulation, measures going beyond the 30-day period referred to in points (b) and (c) of Article 8(1) of the regulation. That power does not therefore relate to the broadening of the scope *ratione personae* of those measures, but to the extension of their application in time.

36 In the second place, those Member States may impose 'additional obligations' on natural gas undertakings for reasons of security of gas supply. In that regard, the use of the word 'additional' underlines the fact that they are supplementary obligations, which are different in nature from the measures mentioned in Article 8(1) of Regulation No 994/2010, to which Article 8(2) of that regulation does not refer in respect of those obligations.

37 Thus, as observed by the Advocate General in point 67 of his Opinion, it is apparent from the wording of Article 8(2) of Regulation No 994/2010 that a Member State may, in principle, impose an additional obligation on natural gas undertakings, the scope of which includes customers who are not among the 'protected customers' listed in point 1 of the second paragraph of Article 2 of that regulation.

38 However, it is equally clear from the wording of that provision that the possibility for a Member State of imposing such an additional obligation on gas undertakings is subject to compliance with the strict conditions set out in that provision.

39 In the present case, it is for the referring court to determine whether the imposition, under Decree No 2014-328, on gas suppliers of an additional obligation to store gas, the scope of which includes all customers connected to the distribution network that have not accepted, under a contract, an interruptible supply, and that are not necessarily protected customers under point 1(a) of the second paragraph of Article 2 of Regulation No 994/2010, meets the conditions thus set out in Article 8(2) of that regulation.

40 In the light of all the foregoing, the answer to the first question is that Article 8(2) of Regulation No 994/2010 must be interpreted as not precluding national legislation, such as that in the main proceedings, that imposes on natural gas suppliers a gas storage obligation, the scope of which includes customers who are not among the protected customers listed in point 1 of the second paragraph of Article 2 of that regulation, provided that the conditions set out in Article 8(2) of the regulation are complied with, a matter which it is for the referring court to ascertain.

### *The second question*

41 By its second question, the referring court asks, in essence, whether Article 8(5) of Regulation No 994/2010 must be interpreted as precluding legislation of a Member State that imposes on natural gas suppliers an obligation to hold gas stocks on its territory, in order to guarantee security of supply in the event of crisis, whilst at the same time providing that the competent authority, in assessing a supplier's storage capacities, take account of the other 'regulatory instruments' available to that supplier.

42 In that regard, it must be noted that the first sentence of Article 8(5) of Regulation No 994/2010 provides that natural gas undertakings are to be allowed to meet obligations imposed on them for the fulfilment of the supply standards laid down in Article 8 of that regulation at a regional or Union level, where appropriate.

43 Furthermore, as stated in the second sentence of Article 8(5) of that regulation, the competent authority must not require the standards laid down in this article to be met based on infrastructure located only within its territory.

44 In the present case, Article 9 of Decree No 2014-328, read in conjunction with Article L. 421-4 of the Energy Code, requires gas suppliers to hold in French territory, on 31 October each year, gas stocks corresponding at least to 80% of the storage rights relating to the consumers included within the scope of the obligation, while providing that the Minister responsible take account of the other regulatory instruments available to the supplier in verifying that it is meeting its obligations.

45 Such legislation, in so far as it requires suppliers to hold necessarily and exclusively in France sufficient stocks of natural gas in order to comply with their obligations to safeguard security of supply in the event of crisis, is incompatible with the second sentence of Article 8(5) of Regulation No 994/2010, which, as has been recalled, prohibits the competent authority from requiring the standards laid down in Article 8 to be met based on infrastructure located only within the territory of the Member State concerned.

46 Although it is the case that the French legislation allows the Minister responsible to take account of the 'other regulatory instruments' of the gas supplier concerned, the referring court has not provided sufficient information to clarify the nature and scope in practice of the assessment which it is for the competent authority to make in that respect.

47 In that regard, it falls to the referring court to interpret national law and to ascertain whether the power which the competent authority has under the national legislation to 'take account of the other regulatory instruments' of the suppliers concerned ensures that it is actually possible for them to meet their obligations at regional level or at Union level.

48 In the light of the foregoing, the answer to the second question is that Article 8(5) of Regulation No 994/2010 must be interpreted as precluding national legislation that requires natural gas suppliers to comply with their obligations to hold gas stocks, in order to guarantee security of supply in the event of crisis, necessarily and exclusively through infrastructure located within the territory of the Member State. In the present case, it is for the referring court to ascertain whether the power which the competent authority has under the national legislation to take account of the 'other regulatory instruments' available to the suppliers concerned ensures that it is actually possible for them to meet their obligations at regional level or at Union level.

## Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. **Article 8(2) of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC must be interpreted as not precluding national legislation, such as that in the main proceedings, that imposes on natural gas suppliers a gas storage obligation, the scope of which includes customers who are not among the protected customers listed in point 1 of the second paragraph of Article 2 of that regulation, provided that the conditions set out in Article 8(2) of the regulation are complied with, a matter which it is for the referring court to ascertain.**

2. **Article 8(5) of Regulation No 994/2010 must be interpreted as precluding national legislation that requires natural gas suppliers to comply with their obligations to hold gas stocks, in order to guarantee security of supply in the event of crisis, necessarily and exclusively through infrastructure located within the territory of the Member State. In the present case, it is however for the referring court to ascertain whether the power which the competent authority has under the national legislation to take account of the 'other regulatory instruments' available to the suppliers concerned ensures that it is actually possible for them to meet their obligations at regional level or at European Union level.**

[Signatures]