



Brussels, 18.10.2020
C(2020) 7156 final

COMMISSION OPINION

of 18.10.2020

under Regulation (EU) No 2017/1938, concerning measures to safeguard the security of gas supply and repealing Regulation No 994/2010, on the Preventive Action Plan and Emergency Plan submitted by the Competent Authority of Belgium to the European Commission

(Only the French and Dutch texts are authentic)

COMMISSION OPINION

of 18.10.2020

under Regulation (EU) No 2017/1938, concerning measures to safeguard the security of gas supply and repealing Regulation No 994/2010, on the Preventive Action Plan and Emergency Plan submitted by the Competent Authority of Belgium to the European Commission

(Only the French and Dutch texts are authentic)

1. PROCEDURE

Articles 8(2)(a) and 8(2)(b) of Regulation (EU) 2017/1938 ("Regulation") require 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 9(11) and 10(2) of the Regulation, the Plans have to be updated every four years, unless circumstances require updates that are more frequent. The consultation provided for between Competent Authorities under Article 8(6) shall be carried out before the adoption of the Plans.

The Plans (as well as their updates) need to be based on the Risk Assessment that each Competent Authority has to adopt and notify to the Commission before the adoption of the Plans pursuant to Article 7 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 Competent Authority of Belgium, the Directorate-General for Energy of the Federal Public Service Economy, S.M.E.s, Self-Employed and Energy, notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 15 February 2019.

The Directorate-General for Energy of the Federal Public Service Economy, S.M.E.s, Self-Employed and Energy notified to the Commission on 11 July 2019 and 18 June 2020 its Preventive Action Plan and Emergency Plan, respectively.

After having assessed the Plans, in view of the criteria mentioned in Article 8(8) and the templates provided for in Annex VI and VII of the Regulation, and having reported its main findings to the Gas Coordination Group on 19 March 2019, 27 June 2019, 26 September 2019, 29 January 2020 and 22 April 2020, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans are in some aspects detailed and comprehensive in the description of the Belgian gas system and the infrastructure standard. The Commission welcomes that the Plans aim at an integrated view for the security of supply in the gas sector and that additional information is provided on risks concerning the supply situation for L gas.

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

2.1 Preventive Action Plan (PAP)

Missing information on the economic impact of the preventive measures

Article 9(1)(f) to (h), as well as Annex VI, points 4 and 5 of the Regulation require Member States to include in their PAP information on the economic impact of the envisaged measures as well as a description of the effects of such measures on the functioning of the internal market, the environment and consumers.

The notified PAP refers to a number of preventive measures but it does not assess the expected impacts of these measures from the different perspectives stated in Article 9 (1)(f) to (h) of the Regulation.

The Commission takes the view that the PAP should be amended to include the above mentioned information.

Missing details on stakeholder consultation

Pursuant to Article 8(2) of the Regulation, Member States have to consult natural gas undertakings, the relevant organisations representing the interest of households, industrial gas consumers and, where it is not the competent authority, the national regulatory authority before establishing the PAP and the EP. The mechanisms used for such consultations as well as their results have to be described in the PAP in accordance to Annex VI, point 9 of the Regulation.

While the notified PAP contains information on stakeholders having been informed about the developments regarding the Belgian gas production and market, it lacks information on whether and how possible comments received following the consultation have been considered. In addition, the PAP lacks information about the mandatory consultation of the national regulatory authority, under Article 8(2) of the Regulation.

The Commission considers that the PAP should be amended to include the above identified information.

Inaccurate information on the protected customers data

According to Article 9(1)(b) and Annex VI, point 4(a), to the Regulation, the PAP shall contain the definition of protected customers, including categories of customers covered and their annual gas consumption. This information is presented in section 5 of the PAP, which confirms the information sent to the Commission on 9 February 2018 when notifying the definition of protected customers under Article 6(1) of the Regulation. Section 5 reiterates the difficulties of implementing the definition contained in Article 2(5) of the Regulation; it

enumerates the different categories of customers that (apart from the purely residential customers) are connected to the distribution network in Belgium and stresses the fact that eligible protected customers are present in each of these categories. As a matter of consequence, all customers connected to the distribution network in Belgium are considered as a protected customer. The PAP then provides the relevant data based on this definition.

The Commission observes that this definition is not compliant with the requirements in Article 2(5) of the Regulation. While differentiating legally between protected and non-protected customers within a distribution network might be difficult in some cases, non-eligible customers should not get the formal status of “protected customers”. Otherwise, it would be difficult to prevent them from consuming gas in case of a severe gas supply disruption, to the detriment of those who need to be protected under the Regulation. The PAP itself acknowledges that limiting the consumption of such non-eligible customers in a crisis situation might be difficult, both technically and institutionally (public distribution being a regional competence).

The Commission considers that a proper definition of protected customers, in line with the requirements of Article 2(5), needs to be elaborated and notified to the Commission by the Belgian authorities. Chapter 5 of the PAP will then need to be amended so that it refers to the new definition of protected customers and provides the relevant data accordingly.

Other missing information – description of the gas system

According to Article 8(5) and Annex VI, point 1.2.(a) of the Regulation, main gas consumption figures shall be included in bcm (final gas consumption) and mcm/d (peak demand). The PAP contains gas consumption figures mainly in TWh.

The Commission considers that the PAP needs to be amended so as to include the above mentioned information.

2.2 Emergency Plan (EP)

Description of the effect of non-market-based measures

Article 10(1) of the Regulation provides for the EP to include a description of crossborder effects of potential non-market-based measures. Article 10(1)(i) of the Regulation requires inter alia an assessment of the degree of necessity to turn to non-market based measures to cope with a crisis, an analysis of the effects of such measures and the definition of the procedures to implement them.

The Belgian EP contains a description of potential market and non-market based measures and refers to when such measures could be deployed. However, the EP does not elaborate on the contribution of particular measures in coping with a crisis. Moreover, the EP should identify what the effects of the measures would be, also on other Member States.

The Commission takes the view that the EP needs to be amended to include the information above concerning the contribution of non-market based measures in coping with a crisis and their effects.

Missing information on the application of solidarity provisions

Article 13 of the Regulation requires Member States to, in a spirit of solidarity, adopt a set of provisions to ensure the supply of gas to a minimum number of consumers in all Member States and the conditions thereof (hereafter “solidarity obligations”). This is a last resort measure to be applied in extreme situations. Article 10(1)(m) and Annex VII, point 8.3 to the Regulation require Member States to describe the arrangements in place to apply the solidarity obligations laid down in Article 13 of the Regulation.

The Belgian EP contains no information on the solidarity arrangements with neighbouring Member States. While the Commission is aware and welcomes the current on-going work of a number of Member States to develop solidarity agreements in accordance with the obligations contained in the Regulation, the Commission considers that the EP should be amended to include more details on the content of the solidarity agreements in accordance with Article 13 of the Regulation.

3. CONCLUSION

Based on the above assessment, and in view of Article 8(8)(d) of the Regulation, the Commission concludes that some elements of the Plans do not comply with certain provisions of this Regulation.

The Commission requests the Directorate-General for Energy of the Federal Public Service Economy, S.M.E.s, Self-Employed and Energy to amend the Plans taking duly into consideration the concerns expressed by the Commission in the present opinion and notify the amended Plans to the Commission within three months pursuant to Article 8(9) of the Regulation.

The Commission's assessment expressed in this opinion is without prejudice to any position it may take *vis-à-vis* the Kingdom of Belgium as regards the compatibility of national measures with EU law, including in the context of infringement proceedings and the enforcement of European Union competition rules, including State aid rules.

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. The Directorate-General for Energy of the Federal Public Service Economy, S.M.E.s, Self-Employed and Energy 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, 18.10.2020

For the Commission
Kadri SIMSON
Member of the Commission