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COMMISSION OPINION

of 5.3.2020

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 Grand Duchy of Luxembourg to the European Commission.

(Only the French text is authentic)

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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) 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 the Grand Duchy of Luxembourg, the Ministry of Energy and Spatial Planning (hereafter "Ministry"), has notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 1 February 2019.

The Ministry notified to the Commission on 18 October 2019 its Preventive Action Plan and Emergency Plan.

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, 27 June, 26 September 2019, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

The Plans are in many aspects detailed and comprehensive. They include a very detailed description of emergency procedures, including graphs that help visualising processes and responsibilities. The Commission also welcomes the inclusion of an assessment of cross-border impacts of preventive measures adopted in neighbouring Member States.

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

Missing regional dimension

Pursuant to Article 8 (3) of the Regulation, the Preventive Action Plan (PAP) and the Emergency Plan (EP) shall contain a regional chapter or several regional chapters, jointly developed by the risk groups where the given Member State is member, with appropriate and effective cross-border measures that address common risks.

While the notified PAP contains a brief chapter on the regional dimension, the provided information is not sufficient. With regards to N-1 formula, a reference is made to the common risk assessment reports, which are not public documents. In any case, the information required by Annex VI, point 11.1 with respect to the N-1 formula is missing. Additionally, the mechanisms for cooperation and the preventive measures – required by points 11.2 and 11.3 of Annex VI to the Regulation – are missing.

The notified EP chapter on regional dimension does not contain measures to be adopted per crisis level or reference to any cooperation mechanism in place to cooperate within each of the relevant risk group, as required by point 8 of Annex VI to the Regulation.

The Commission considers that the Luxembourg PAP and EP need to be amended to include all the missing information mentioned above.

2.1 Preventive Action Plan (PAP)

Missing information on the economic impact of the preventive measures, as well as their impact on customers

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 customers.

The PAP submitted by the Ministry fails to present information on the quantification of the economic impact, effectiveness and efficiency of preventive measures (point 5(a)(ii) of Annex VI) and their impact on customers (point 5(a)(iii) of Annex VI).

The Commission considers 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.

Section 9 of the PAP describes the consultation carried out with stakeholders on the PAP and the applied mechanisms, but it does not mention the results of the consultation.

The Commission considers that the PAP should be amended to include the above-identified missing results following the template contained in Annex VI point 9 of the Regulation.

Other missing information

The notified PAP further misses information on the following items listed in Annex VI pursuant to Article 8(5) of the Regulation and should be amended to include:

- Description of the regional gas system for each risk group: the notified PAP does not include a brief consolidated description of the regional gas system for each risk group the Member State participates in (point 1.1 of Annex VI). Reference is made to the Common Risk Assessments, which are not public documents, without giving any information on them.
- Definition of protected customers: the PAP shall contain the definition of protected customers and the figures regarding consumption of the defined protected customers as notified by Luxembourg on 5 March 2018 (point 4 (a) of Annex VI).
- Description of the gas system:
 - Point 1.2(d) of Annex VI requires Member States to include in the PAP a breakdown, to the extent possible, of gas import sources per country of origin. The data provided in the notified PAP might be outdated (as it dates from 2013) and does not reflect the current situation, particularly after the introduction of the BELUX integrated market area in October 2015. Newer data should be available, as gas suppliers are obliged to submit annual reports, according to Article 29 of the Grand Ducal Regulation of 19 May 2003 and mentioned in Section 6.1 of the PAP.
 - Pursuant to point 1.2(g) of Annex VI, the PAP shall include information about gas in the electricity production. While the PAP states consumption data, a description of the capacity (MWe) is missing.

2.2 Emergency Plan (EP)

Missing information on the application of solidarity provisions

In a spirit of solidarity, Article 13 of the Regulation requires Member States to adopt a set of provisions to ensure the supply of gas to a minimum number of customers 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 of 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 EP submitted by the Ministry does not include any information on arrangements in place to apply the solidarity obligations.

While the Commission is aware of the current on-going work of a number of Member States to develop the solidarity provisions and welcomes such work, the Commission considers that the EP should be amended to include the detailed provisions for the application of the solidarity obligations contained in Article 13 of the Regulation.

Undue consumption by non-protected customers

Pursuant to Article 10(1)(l) of the Regulation and Annex VII, point 6 thereto, the EP must describe the measures in place to prevent the consumption by customers who are not protected customers of gas supply intended for protected customers during an emergency.

The notified EP does not include information on such measures. Consequently, the Commission considers that the EP should be amended to include information on such measures.

1.1. Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of the Ministry to some other elements of the submitted Plans, which do not necessarily raise legal concerns in terms of their compatibility with the elements mentioned in Article 8(8) (a) to (d) of the Regulation, but which may provide useful guidance to the Competent Authority for future amendments of the Plans.

- In order to increase transparency, the Plans could include information on the consultation of other Member States' Competent Authorities, especially of neighbouring countries, including on the exchange of draft plans to ensure consistency between them (Article 8 (6) of the Regulation).
- While Luxembourg is not bound to comply with the N-1 rule by way of exception, the description of the values used for calculation is generic and could be updated according to the national situation (e.g. breakdown of import capacities, point 3.2.(a)(iii) Annex VI to the Regulation).
- With respect to the supply of electricity generated from gas, the notified EP should include a formal mechanism to ensure appropriate coordination between the main actors in the gas and electricity sectors at the different crisis levels (point 3 (b) (iii) Annex VII to the Regulation) or indicate why that would not be necessary.
- The EP describes that real time response simulations of emergency situations are "regular" and the next one will be performed before the next updated emergency report. However, the EP could be improved by providing a calendar for such tests (point 7 (a) Annex VII to the Regulation).
- While the Commission welcomes market-based measures, both the PAP and EP could be improved by describing in more detail the implementation modalities and the market impact of market-based measures, in particular the preferential tariffs (section 5.2.1.4 of the PAP) and the procedural scenarios in case of disruption of a certain category of supplier and/or shipper (section 5.2.2 of the PAP), and the specific application of the preferential tariffs at early warning and alert levels (sections 2.1.2.2 and 2.2.2.1 of the EP).

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 Ministry 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 Grand Duchy of Luxembourg as regards the compatibility of national measures with EU law, including in the context of infringement proceedings and the enforcement of the 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 Ministry 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, 5.3.2020

For the Commission
Kadri SIMSON
Member of the Commission