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COMMISSION OPINION

of 28.1.2020

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 the Portuguese Republic to the European Commission.

(Only the Portuguese 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 Portuguese Republic, the Directorate General of Energy and Geology, has notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 14 of January 2019.

The Competent Authority of the Portuguese Republic notified to the Commission on 10 of 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 2019, 27 June 2019 and 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 in the description of the Portuguese gas system and the infrastructure standard. Moreover, the Plans establish a very clear link between risks and measures introduced to address them, thus increasing the transparency of security of supply policies.

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

2.1 Preventive Action Plan (PAP)

Missing regional chapter

Pursuant to Article 8(3) and Annex VI to the Regulation, the PAP and EP must contain a regional chapter or several regional chapters jointly developed by the risk groups where the given Member State holds membership, as defined in Annex I to the Regulation. Each chapter must contain appropriate and effective cross-border measures that address common risks.

Portugal is a member of the North Sea – Norway and of the North African – Algeria risk groups. The PAP submitted by the Portuguese Competent Authority does not contain a regional chapter for Norway.

The Commission considers that the Portuguese PAP should be amended to contain a regional chapter for Norway as required by Article 8(3) of the Regulation.

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.

While the Commission is aware of the current on-going work of the Directorate General of Energy and Geology with other 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.

Missing regional chapter

Pursuant to Article 8(3) and Annex VII to the Regulation, the PAP and EP must contain a regional chapter or several regional chapters jointly developed by the risk groups where the given Member State holds membership, as defined in Annex I to the Regulation. Each chapter must contain appropriate and effective cross-border measures that address common risks.

Portugal is a member of the North Sea – Norway and of the North African – Algeria risk groups. The EP submitted by the Portuguese Competent Authority does not contain a regional chapter for Norway.

The Commission considers that the Portuguese EP should be amended to contain a regional chapter for Norway as required by Article 8(3) of the Regulation.

2.3 Other Comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of the Portuguese Competent Authority to some other elements of the submitted

Plans. These issues do not raise legal concerns in terms of their compatibility with the elements mentioned in Article 8(8)(a) to (d) of the Regulation, but may provide useful guidance to the Competent Authority for future amendments of the Plans.

- Whilst the efforts in the Portuguese PAP to present the economic impact and efficiency of a number of preventive measures are very welcome, it would enhance the usefulness of the PAP if more information were provided on the impact of those measures on the environment. One means of achieving this would be to provide more information about the sustainability indicator mentioned in the PAP.”
- In order to increase the transparency with regard to the consultation carried out on the draft PAP, further details could be provided in the PAP as regards the comments received, e.g. nature of the comments received.

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 Competent Authority of Portugal 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 Portuguese Republic 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.

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 Competent Authority of Portugal 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, 28.1.2020

For the Commission
Kadri SIMSON
Member of the Commission