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## COMMISSION OPINION

**of 18.2.2020**

**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 Federal Republic of Germany to the European Commission.**

(Only the German text is authentic)

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### 1. PROCEDURE

Articles 8(2)(a) and 8(2)(b) of Regulation (EU) No 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 Federal Republic of Germany as regards the implementation of the Regulation is the Federal Ministry for Economic Affairs and Energy (hereafter "BMW"). BMW has notified its risk assessment pursuant to Article 7 of the Regulation to the Commission on 3 December 2018..

BMW notified to the Commission on 21 June 2019 its Preventive Action Plan and on 17 October 2019 its Emergency Plan.

BMW has consulted other Member States' Competent Authorities of the seven risk groups pursuant to Article 7(2) of the Regulation in which Germany is a member on its Plans, including its neighbours.

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 German gas system and the infrastructure standard. The Commission welcomes that the Plans aim at an integrated view for the security of supply in the electricity and gas sectors 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)**

### *Information on the risk assessment*

Pursuant to Article 9(1)(a) and Annex VI, point 2, to the Regulation, the PAP must contain a summary of the risk assessment, in particular a list of the scenarios assessed, the risks and shortcomings identified and the main conclusions.

The notified German PAP describes in section 2 some of Germany's gas system's features relevant to security of gas supply. However, it contains no summary of the risks identified in the risk assessment, in particular concerning possible risks that are expressly addressed in the PAP such as the temporary unavailability of the TENP I pipeline and the transition from L-Gas to H-Gas.

The Commission considers that the German PAP needs to be amended to include more information on the risks identified in the Risk Assessment as required by Annex VI to the Regulation. Moreover, the Commission would like to underline that said information should be included even where – due to the singularity of an event like the market conversion – no historic data are available to calculate a probability of risk.

### *Missing information on the economic impact of the preventive measures, as well as their impact on the internal market, the environment and 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 consumers.

The notified PAP refers to a number of preventive measures but 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.

### *Other missing information*

The notified PAP further lacks information on the following items listed in Annex VI pursuant to Article 8(5) of the Regulation:

- Description of the system: 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).
- Stakeholder consultation: while the notified PAP contains information on stakeholders having been informed on developments regarding the German gas

production and market, it lacks information on whether and how possible comments received following the consultation have been considered.

- According to Article 8(5) and Annex VI 1.2.(a) of the Regulation, main gas consumption figures shall be included in bcm (final gas consumption) and mcm/d (peak demand). Annex VI 1.2.(d) requires to further include in the PAP a breakdown, to the extent possible, of gas import sources per country of origin. Pursuant to Annex VI 1.2.(e)(ii), the PAP shall also include storage facilities' maximal daily withdrawal capacity at different filling levels. The PAP contains gas consumption figures mainly in TWh. It provides that storage facilities allowed for a maximum useful working gas volume of approx. 23.5 bn m<sup>3</sup>. The BMWi did not submit a breakdown of gas imports per country, arguing this was necessary for data protection. However, providing import figures per country of origin is a usual part of import-export statistics for many product markets. Those statistics contain aggregated data and do not relate to individual supply contracts.

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

## **2.2 Emergency Plan (EP)**

### *Templates for the Plans*

Article 8(5) of the Regulation contains a legal obligation for the Plans to be developed in accordance with the templates included in Annex VI and VII of Regulation. Such templates are meant to improve the transparency, comparability and homogeneity among the Plans prepared by all Member States.

Whereas the PAP follows the general structure provided in the template set out in Annex VI of the Regulation, the EP does not follow the template provided for in Annex VII of the Regulation.

The Commission takes the view that the EP needs to be amended so that it follows the template contained in Annex VII to the Regulation.

### *Technical, legal and financial arrangements on solidarity*

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 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 sets out that a first proposal on such measures for the Baltic Sea risk group was circulated at a workshop in early 2019. The EP further sets out that “bilateral consultations are planned to follow”.

While the Commission is aware of the current on-going work of the BMWi with other Member States to develop the solidarity provisions and welcomes the comprehensive work and leading role taken by Germany, 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.

#### *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 German EP contains a description of potential market and non-market based measures and refers to when such measures could be deployed. The Commission particularly welcomes the concrete example of market-based measures deployed in the supply bottleneck situation of February 2012. 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 information on the contribution of measures in coping with a crisis and their effects.

### **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 BMWi 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 Federal Republic of Germany 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 BMWi 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, 18.2.2020

*For the Commission*  
*Kadri SIMSON*  
*Member of the Commission*