



Brussels, 20.5.2020
C(2020) 3303 final

COMMISSION OPINION

of 20.5.2020

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 Slovak Republic to the European Commission.

(Only the Slovak 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) 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 the Slovak Republic, the Ministry of Economy, notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 23 January 2020.

The Ministry of Economy notified to the Commission on 23 January 2020 its Preventive Action Plan and Emergency Plan. The Commission has no information regarding the consultation on the Slovak Plans with other Member States, in particular with the neighbouring Member States.

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 and 29 January 2020, 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 Slovak gas system and the infrastructure standard.

Nevertheless, the Commission considers that some elements of the Plans, already partially included in the 2017 Commission opinion¹, do not fully comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

Missing information in the description of the gas system

Pursuant to Point 1.2.a of Annex VI of the Regulation, the PAP shall indicate the main gas consumption figures, including a breakdown of annual final gas consumption by type of customers. Pursuant to Point 1.1 of Annex VI of the Regulation, the PAP shall provide a brief consolidated description of the regional gas system for each risk group the Member State participates in. Additionally, Member States have to include in the PAP a description of the role of energy efficiency measures and their effect on annual final gas consumption in accordance with point 1.2 (h) of Annex VI of the Regulation.

While the Slovak PAP includes overall gas consumption figures, a breakdown by type of customers is missing from the Plan. The Slovak PAP also describes in detail the Slovak gas system, but it does not contain information on the regional gas systems the Slovak Republic participates in. The PAP does not include information either on the role of energy efficiency measures nor on their effect on annual final gas consumption.

The Commission considers that the Slovak PAP should be amended to include the above mentioned missing information.

Missing details in the fulfilment of the supply standard

Article 6(1) of the Regulation requires that gas supply to protected customers be ensured for certain minimum periods in case of an exceptionally high gas demand or supply interruptions, the so-called "supply standard". The PAP must indicate the volumes and detailed capacities needed to fulfil the supply standard (for the respective scenarios described in Article 6 of the Regulation) pursuant to Article 9 and Annex VI, point 4 of the Regulation.

While the notified PAP contains a section on the fulfilment of the supply standard, the information on volumes and detailed capacities needed to fulfil the supply standard for the respective scenarios is missing.

The Commission takes the view that the Slovak PAP should be updated with the required details on the fulfilment of the supply standard for each of the respective scenarios described in Article 6 of the Regulation.

¹ C(2017) 5990 final of 7 September 2017.

Information on public service obligations

Article 9(1)(k) of the Regulation requires that the Plan shall contain information on all public service obligations that relate to the security of gas supply. Nevertheless, as it was also noted in the previous opinions of the Commission, the current Slovak PAP fails to address this issue.

Therefore, the Commission considers that the Slovak PAP should clearly indicate whether such public service obligations pertaining to security of gas supply do not exist or provide sufficient information on them in case they do exist.

Missing information on stakeholder consultation

Pursuant to Article 8(2) and Annex VI point 9 of the Regulation, the PAP should provide information on the mechanisms for and results of consultations with stakeholders, including organisations representing the interest of households and of industrial gas customers.

The Slovak PAP contains basic information on consultations with certain stakeholders, but there is no information on consultations with the above-mentioned groups.

The Commission considers that the Slovak PAP should be updated to include information on consultation with organisations representing the interest of households and organisations representing the interest of industrial gas customers. In the event that these groups have not been consulted, additional consultations should be carried out and the results should be included in an amended PAP.

Missing information on the economic impact of the preventive measures

Article 9(1) (f)-(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, including those for the compliance with the supply standard, as well 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 perspective stated in Article 9(1)(f) and (h) of the Regulation.

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

Missing information on regional measures

Pursuant to Article 8(3) and Annex VI, point 10 of the Regulation, preventive action plans must contain a regional dimension with appropriate and effective cross-border measures, based on the simulation referred to in Article 7(1) and the common risk assessment.

The Slovak PAP, further to the risk assessment carried out for the risk groups Slovakia is part of, does not state the regional preventive measures agreed.

The Commission considers that the Slovak PAP should be amended to include the above mentioned missing information.

2.2 Emergency Plan (EP)

Procedures and measures to be followed for each crisis level

Article 10(1)(f) of the Regulation provides that the EP shall establish detailed procedures and measures to be followed for each of the crisis levels. In addition, pursuant to Article 10(1)(h) of the Regulation, the EP shall identify the contribution of market-based measures for coping with the situation of alert level and mitigating the situation at emergency level. Moreover, Article 10(1)(i) of the Regulation defines that the EP shall identify the contribution of non-market based measures for the emergency level and assess the degree to which the use of such non-market based measures is necessary to cope with the crisis, assess their effects and define the procedures to implement them.

The EP submitted by the Slovak Competent Authority mentions that there are three crisis levels, but the EP is not organised around these three levels; actors, roles, responsibilities and actions are not described for each crisis level. Furthermore, the EP fails to provide any identification or assessment of the contribution of market based and non-market based measures for dealing with the relevant situation. The notified EP refers to the Slovak system of “restrictive delivery levels”, “restrictive heating curves” and “contingency delivery levels” which are declared and revoked by the distribution system operator performing the tasks of gas dispatching. However, the EP does not quantify the expected contribution of such emergency measures.

Therefore, the Commission is of the opinion that the Slovak EP should be modified in order to define clearly the measures to be applied per crisis level and how market-based and non-market-based measures contribute to coping with the different crisis levels.

Restrictions to cross-border gas flow

Article 11(6) of the Regulation establishes the obligation on Member States, and in particular on the Competent Authorities, to ensure that (a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time; (b) no measures are introduced that are likely seriously to endanger the gas supply situation in another Member State; and (c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the emergency plan.

The Slovak EP states that “In the event of a gas sector emergency, the storage system operator must, on the basis of and to the extent specified in a decision of the Ministry of Economy, suspend gas withdrawal from the storage for the gas market participants who store gas for customers outside the Slovak Republic.”

Given the multiple interconnections between Slovakia and its neighbours and the mutual interdependencies resulting from this close integration, it is important that the Slovak EP analyses the possible effects of national emergency measures carefully and take full account

of risks for the security of supply in other Member States. The Commission highlights that the possibility of interruption of gas withdrawals for consumers outside of the territory of the Slovak Republic by the Competent Authority, as described in the submitted EP, may have an impact on neighbouring countries which would not be in line with the provisions of Article 11(6) of the Regulation.

The Commission considers that the Slovak EP should be amended so as to explain in detail the measure in question, outlining its effects on neighbouring countries and the compliance of the measure with the conditions established in Article 11(6) of the Regulation.

Missing information on solidarity arrangements

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 Slovak EP states that expert discussions on specific arrangements are ongoing both among the Member States concerned and in the Gas Coordination Group. It states, that concrete information, including the description of solidarity measures, will be added to the Plan once they are agreed.

The Commission considers that the EP should be amended to include the above mentioned information.

Missing information on emergency tests

According to Article 10(3) and Annex VII to the Regulation, the EP should indicate the calendar for the emergency tests, as well as the actors involved and the relevant procedures. The notified EP does not include this information.

The Commission considers that the EP should be amended to include the above mentioned missing information.

Missing information on the regional dimension

Pursuant to Article 8(3) and point 8 of Annex VII to the Regulation, the EP must contain a regional dimension with appropriate and effective cross-border measures, based on the simulation referred to in Article 7(1) and the common risk assessment.

While the notified EP contains a brief chapter on the regional dimension, the information remains superficial and does not provide the level of detail on measures, procedures, and expected contributions of the measures per crisis level required pursuant to Article 8(3) and Annex VII point 8 of the Regulation.

The Commission considers that the EP should be amended to include the above mentioned information.

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 Minister of Economy 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 Slovak 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 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 Minister of Economy 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, 20.5.2020

For the Commission
Kadri SIMSON
Member of the Commission