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COMMISSION OPINION

of 9.7.2019

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 Kingdom of Denmark to the European Commission.

(Only the Danish 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 Kingdom of Denmark, the Danish Energy Agency ("DEA"), has notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 17 October 2018.

The DEA notified to the Commission on 1 March 2019 its Preventive Action Plan and Emergency Plan. The DEA has consulted other Member States' Competent Authorities on its Plans, including its neighbours and Austria, Belgium, Czech Republic, France, Luxembourg, The Netherlands and Slovakia.

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, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns their content, the Plans are in many aspects detailed and comprehensive in the description of the Danish gas system and the infrastructure standard.

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

¹ C(2017) 5962 final

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.

The Plans submitted by the DEA do not follow the mandatory templates provided for in Annex VI and VII of the Regulation.

The Commission takes the view that the PAP and EP need to be amended so they follow the templates contained in Annex VI and VII of the Regulation.

2.1 Preventive Action Plan (PAP)

Insufficient information on the Risk Assessment

Article 8(2)(a) of the Regulation requires Member States to establish “*a preventive action plan containing the measures needed to remove or mitigate the risks identified, including the effects of energy efficiency and demand-side measures in the common and national risk assessments and in accordance with Article 9*”. The Commission has to assess such Preventive Action Plan (PAP) according to Article 8(7) of the Regulation.

The assessment of the measures presented in the PAP requires the availability of the scenarios used for the identification and assessment of risks. Without knowledge of the scope of the risk assessment and the assumptions taken in the scenarios, the appropriateness of measures for removing or mitigating risks cannot be fully evaluated. However, the notified Danish Risk Assessment contains only a brief summary of identified risks, while stating that the results of the analysis of a number of risk scenarios are contained in a confidential Annex.

The Commission considers that the Danish PAP needs to be amended to include more information on the results of and the scenarios considered in the Danish Risk Assessment. Moreover, a more detailed version of the Risk Assessment should be made available to the Commission, for which all appropriate channels for handling sensitive information can be used, if needed.

Information regarding measures

Pursuant to Article 9 of the Regulation, the PAP shall contain the measures designed to address the risks identified in the Risk Assessment in order to maintain gas supply to all customers as far as possible.

According to the PAP, the Tyra complex in Denmark will be taken offline for refurbishment. Production will be reduced as of March 2019 and terminated from 1 November 2019 to 1 July 2022. While Denmark and Sweden will mainly be supplied from Germany during the Tyra refurbishment, the PAP also states that supplies from the South Arne offshore field and biomethane facilities will remain available. However, in the PAP this availability is limited to Denmark.

The Commission takes the view that the DEA should amend the PAP to either clarify any reason for such a limitation or remove it.

Details on the calculation of the infrastructure standard

The PAP must indicate the measures, volumes and detailed capacities needed to fulfil the infrastructure standard pursuant to Article 9 of the Regulation and Annex VI, point 3.

The section on the infrastructure standard in the notified PAP appears not to be finalised. The input parameters for the calculation of the N-1 formula differ substantially from the parameters used in the national and group risk assessments, as well as from the figures presented in section 10 of the PAP on the regional dimension. When calculating the N-1 formula with the provided input parameters, the results differ from the presented information.

The Commission considers that while the difference in the outcome for the N-1 percentage does not alter the qualitative implications, the PAP should be updated to clarify the correct input parameters and results of the N-1 formula.

Missing details on the fulfilment of the supply standard

The PAP must indicate the measures, volumes and detailed capacities needed to fulfil the supply standard pursuant to Article 9 of the Regulation and Annex VI, point 4, as well as information on the *ex ante* monitoring system for the compliance with the supply standard (point 4(d)(iii)), the description per measure in terms of economic, environmental, and consumer impact (point 4(d)(v)), and information per measure where they are non-market based (point 4(d)(vi)). This information is missing in the notified PAP.

The Commission takes the view that the Danish PAP should contain the explicit detail of the economic, environmental and consumer impact of the measures in place to comply with the supply standard.

Missing information on the protected customers elements

Article 2(5) of the Regulation contains a definition of "protected customers" with some quantitative limits for some categories of consumers. Small and medium-sized enterprises connected to a gas distribution network (Article 2(5)(a)) and essential social services, connected to a gas distribution or transmission network (Article 2(5)(b)) may only be considered "protected" in so far as they do not represent more than 20% of the total annual final gas consumption.

According to the notified PAP, the definition of "protected customers" in the Danish PAP includes "[...] *small and medium-sized enterprises, district heating installations, and vital institutions such as hospitals and schools* [...]". However, the categories used in the notified PAP to present the split of consumption between different customer groups (households, industry protected, industry non-protected, district heating) do not allow conclusions on the combined share of customers falling under points (a) and (b), and thus do not enable verification of whether the limit of 20% is respected.

The Commission considers that the Danish PAP should be amended to clearly indicate whether the categories of consumers considered as protected by the DEA match the eligible consumers under the Regulation and whether the 20% threshold is respected.

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:

- 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).
- Infrastructure standard: the notified PAP does not include the necessary information on the largest gas infrastructure and the N-1 formula at the regional level (point 3.1).
- Preventive measures: the PAP fails to present information on the economic impact, effectiveness and efficiency of preventive measures (point 5(a)(ii)) and their impact on customers (point 5(a)(iii)). This information is equally missing for the regional dimension (point 11.3(a)). Furthermore, the PAP does not present in sufficient detail the necessary justifications why the presented non-market based measures are necessary (point 5(c)(i)) and proportionate (point 5(c)(ii)), nor an adequate analysis of their impacts (point 5(c)(iii)).
- Stakeholder consultation: while the notified PAP contains information on stakeholders having been informed on developments regarding the Danish gas production and market, it lacks information on whether, and if, how, relevant stakeholders have been consulted in the establishment of the Plans (point 9).

2.2 Emergency Plan

Non-market based measures during normal operation and "alert" level

Pursuant to Article 11(1), non-market based measures can only be adopted in the case of an Emergency after all market-based measures have been implemented and are still insufficient.

In the description of measures that may already be taken during normal operation, the notified EP describes the balancing of gas. In this description the EP states that “[t]he shippers purchase or sale of balancing gas from/to Energinet is settled at the so-called neutral gas price (footnote omitted) which is calculated for each gas day. However, there is a cap on the neutral gas price.” This description is not clear as to the meaning and consequence of the referred cap.

Furthermore, the notified EP states that during a declared national emergency “*there may be restrictions in gas flows to the market and cross-border infrastructure to safeguard supplies to protected customers*”. In section 2.6.1 of the EP on supplies to Sweden, it is further stated that already “[a]t the Alert crisis level in Denmark supplies in Dragør might be reduced. This is done in order to avoid declaring Emergency in Denmark, which would otherwise entail the risk of interruption of supplies to all non-protected Swedish customers within a few hours.” As described, such a measure appears to be non-market based.

The EP also states that “*Energinet is determined about avoiding having to declare Emergency if possible, which it achieves by activating the commercially interruptible customers (in Denmark and Sweden) as early as the Alert crisis level, and by aligning supplies to the Swedish market to the extent deemed necessary in the specific situation.*”.

The EP should be amended to remove the possibility to resort to non-market based measures before the declaration of an emergency level. Moreover, it should be clarified in the EP what is referred to by a cap on the neutral gas price. It should also be further clarified in a revised

EP what is meant by “aligning supplies to the Swedish market” and the “relevant situations” in line with the requirements of the Regulation.

Missing information regarding specific measures for the electricity and district heating sectors

Pursuant to Article 10(1)(e) and Annex VII point 3 of the Regulation the EP should indicate the measures and actions to be taken to mitigate the potential impact of a disruption of gas supply on district heating and the supply of electricity generated from gas or indicate why such measures would not be appropriate.

The EP submitted by the DEA does not include information on such measures nor indicates why they would not be appropriate.

The Commission considers that the DEA should amend the EP to either include specific measures for the electricity and district heating sectors or indicate why such measures would not be appropriate.

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 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 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 DEA 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 mandatory descriptions pursuant to Article 10(1) of the Regulation

Article 10(1) of the Regulation provides for a mandatory list of elements that need to be addressed in the EP, including the identification of the contribution of market-based measures for coping with the situation at alert level as well as of non-market based measures for the emergency level pursuant to Article 10(1)(h) and (i). The notified EP does include qualitative information. However, it does not include quantitative information on those measures.

The Commission considers that the DEA should amend the EP to include information in accordance with Article 10(1)(h) and 10(1)(i) of the Regulation.

Other missing information

The EP references a change to the calculation of the gas price during emergency. Additional information on when this change is envisaged and the formula for determining the price should be included.

Secondly, while the notified EP contains a brief chapter on the regional dimension, the provided 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 Annex VI point 10 of the Regulation. Given the fact that Denmark and Sweden will be dependent on gas deliveries from Germany during the refurbishment of the Tyra complex, the co-operation with Germany and resulting measures should be described in more detail.

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

2.3 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of the DEA 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.

- The notified PAP focuses on the years 2020 and 2021. That is because Denmark's main source of natural gas, the Tyra complex, will be taken offline for refurbishment and such fact has severe implications, notably in terms of production capacity. The Commission reminds the DEA that the PAP must be updated every 4 years after 1 March 2019 or more frequently if the circumstances so warrant (Article 9(11) of the Regulation). Therefore, the Commission expects that a revised PAP will be submitted before July 2022 to cover the period after the Tyra refurbishment and until 1 March 2023.

Such revised PAP should particularly indicate whether an increased supply standard (i.e. 60 days instead of 30 days), based on the risk assessment, will apply after the Tyra refurbishment. As already indicated in the 2017 Opinion, the PAP should then provide a description of the volumes and capacities needed to fulfil the supply standard including any increased supply standard.

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 DEA 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 Denmark as regards the compatibility of national measures with EU law, including in the context of infringement proceedings.

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 DEA 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, 9.7.2019

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission