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COMMISSION OPINION

of 17.7.2019

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 Czechia to the European Commission.

(Only the Czech 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 Czechia, the Czech Ministry of Industry and Trade ('MIT'), has notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 18 March 2019.

The MIT notified to the Commission on 18 March 2019 its Preventive Action Plan and Emergency Plan. The MIT has consulted other Member States' Competent Authorities on its Plans, including its neighbours, as well as Belgium, Denmark, Estonia, France, Italy, Latvia, Lithuania, Luxembourg, The Netherlands and Sweden.

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 in June 2019, the Commission has the following remarks on the Plans.

2. COMMISSION'S ASSESSMENT OF THE PLANS

As concerns their content, the Plans describe in sufficient detail the Czech gas system, the infrastructure standard and provides a summary of the national risk assessment. However, there are significant omissions and the Commission considers that some of the elements of the Plans do not fully comply with the requirements of the Regulation.

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 MIT do not fully follow the mandatory templates provided for in Annex VI and VII of the Regulation in terms of both structure (order and title of chapters) and content (missing information).

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)

Missing regional chapter

Pursuant to Article 9(3) of the Regulation, the PAP and 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.

The Czech PAP does not contain any regional chapter (Annex VI point 10.) or reference to any cross-border measures agreed with other member states. The reference to the quality, reliability and robustness of the Czech gas system and the level of diversification achieved does not provide exceptions from under this obligation. Such system resilience should be a good basis for joint measures that could benefit the security of supply of the whole region and other member states with less resilient gas systems.

The Commission considers that the Czech PAP should be amended to contain a regional chapter or several regional chapters (for each risk-group) with cross-border measures as required by the Regulation.

Information on the supply standard

The PAP must indicate the volumes and capacities needed to fulfil the supply standard pursuant to Article 9 and Annex VI, point 4 of the Regulation. While the definition of protected customers, their annual gas consumption and a detailed methodology to calculate the supply standard is provided in the Annex to the PAP, the volume and capacity needed (points 4(b) and (c)) is missing for the scenario of a supply disruption (Article 6.1(c)) arguing that such an event has never occurred. Similarly, the description of the economic, environmental, and consumer impact (point 4(d)) of the measures to comply with the supply standard is missing.

The Commission takes the view that the Czech PAP should be amended to contain volumes and capacities needed to comply with the supply standard for all scenarios, as well as details of the economic, environmental and consumer impact of the measures in place to comply with the supply standard.

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 system and summary of the common risk assessment: the notified PAP does not include a brief consolidated description of the regional gas system and

a summary of the common risk assessment for each risk group the Member State participates in (point 1.1).

- Infrastructure standard: the notified PAP does not include the N-1 formula for all relevant risk groups, with the exception of the one for the Baltic Sea risk group (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)).
- Stakeholder consultation: the notified PAP does not contain information on whether, and if, how, relevant stakeholders have been consulted in the establishment of the Plans (point 9).
- Some of the information required by the template are put into an Annex, such as the point on public service obligation that could feature in the main document

2.2 Emergency Plan

Information in the main body of the EP

A lot of detail and extracts from relevant legislation have been provided in an Annex to the Czech EP, including on roles and responsibilities, measures during a crisis, etc. This is a useful approach in that it increases the clarity and ease of reading of the Plan itself. At the same time, following the template for the EP in the Regulation (Annex VII), it is important to make sure that all necessary information can be found in the main body of the Plan.

More specifically, the EP defines in detail the three crisis levels, however, the measures that are adopted under each of these crisis levels form part of the Annex only. While the Annex to the Czech EP contains all details and references to legislation in this regard, a brief description of the measures, the actors, the procedure and communication process should be shortly described in the main body of the Emergency Plan for each crisis level (Annex VII points 2.1, 2.2 and 2.3) and so the CZ EP should be amended accordingly.

The main role for the TSO in an emergency has been clearly highlighted in the EP, in a similar fashion, the main role and responsibility for the competent authority and all other relevant stakeholders (Annex VII point 5.) should be identified in the main body of the EP, leaving the detailed legislative content in the Annex and so the Czech EP should be amended accordingly.

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 in the Annex to the EP and partly in the main body of the document. However, it does not include quantitative information on those measures.

In addition, while in the EP there is a reference to DSOs having measures in place to prevent undue gas consumption during emergency 10(1)(f), there is no information on what these are and no information on how TSOs comply with this same obligation.

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

Missing regional dimension

While the notified EP contains a brief chapter on the regional dimension, the provided information remains limited to procedural steps in the national context taken by the TSO and does not include cross-border measures and expected contributions of the measures per crisis level required pursuant to Annex VI point 10 of the Regulation. The chapter mentions the need for cooperation and repeats the obligations in the Regulation without identifying how such cooperation can take place, what information exchange arrangements (Article 10(1)(j)) and joint measures Member States have agreed to. Similarly, obligations to inform the Commission and Competent Authorities of directly connected Member States when declaring a crisis (Article 11(2)) does not appear as part of the described procedures.

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

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.

The Czech EP already makes reference to the ongoing legislative and technical work that will allow Czechia concluding solidarity agreements with Germany, Slovakia and Poland. 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.

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.

Therefore, the Commission requests MIT 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* Czechia 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. MIT 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, 17.7.2019

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

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Director of the Registry
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