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COMMISSION OPINION

of 10.6.2020

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 Slovenia to the European Commission.

(Only the Slovenian 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 Slovenia, the Energy Agency, notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 28 August 2019.

The Energy Agency notified to the Commission on 13 January 2020 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, 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 describe in sufficient detail the Slovenian gas system and provide a summary of the national risk assessment. 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.

¹ C(2017) 4585 final of 6 July 2017.

2.1 Preventive Action Plan (PAP)

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 mechanism used and the results of consultations with stakeholders.

The Slovenian PAP contains basic information on a public consultation organised by the Energy Agency, but there is no information on the participation of stakeholders and on the results of the consultation.

The Commission considers that the Slovenian PAP should be updated to include information on the organisations having participated and on the results of the consultation. In the event that relevant stakeholders, as indicated in Article 8(2) of the Regulation, have not been consulted, additional consultations should be carried out and the results should be included in the amended PAP.

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 Slovenian PAP does not contain any reference to regional preventive measures agreed further to the risk assessments carried out for each of the risk groups.

In light of the obligation set out in Article 8(3) and Annex VI, point 10 of the Regulation, the Commission takes the view that the PAP should be amended to include regional measures identified by the risk groups to which Slovenia adheres or explain why the risk groups have not considered any measures necessary.

2.2 Emergency Plan (EP)

Template for the Plan

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

The EP submitted by the Energy Agency does not follow the mandatory 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 of the Regulation.

Missing information on market based measures

Pursuant to Article 10(1)(f) and (h) and Annex VII point 2 of the Regulation, the EP should set out, for each crisis level, the measures to be taken and the expected contribution of these measures, including market based measures, to address the respective situation.

The Slovenian EP provides a list of envisaged market-based measures for each of the crisis levels. For each measure, the respective actor is mentioned. However, there is no information on the expected contribution of the measures.

The Commission considers that the EP should be amended to include the details in question.

Classification of measures

Pursuant to Articles 10(1)(i) and 11(1) of the Regulation, 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. Therefore, the classification of measures into market based and non-market based measures is essential for the correct implementation of the Regulation.

The Slovenian EP provides a list of market-based measures which are to be used by the relevant actors at all three crisis levels. However, one of the measures listed in the EP – the mandatory switch to another source of energy or, if this is not immediately feasible, reduction of the consumption of gas for electricity producers that use gas for electricity production and whose production installations are not defined as critical infrastructure for electricity production – appears to be a non-market based measure as it constitutes a compulsory demand reduction².

The Slovenian EP should therefore be amended to re-classify the measure in question as non-market-based-measure, which can only be adopted in the case of an emergency and after all market-based measures have been implemented and are still insufficient.

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 Energy Agency does not include information on such measures nor indicates why they would not be appropriate.

The Commission considers that the Energy Agency 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 mandatory descriptions pursuant to Article 10(1) of the Regulation

² Cf. indicative list of non-market based measures in Annex VIII 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 at emergency level pursuant to Article 10(1)(h) and (i) of the Regulation.

The notified EP does include qualitative information. However, it does not include quantitative information on those measures.

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

Other missing information

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 Article 8(3) and Annex VII point 8 of the Regulation.

The EP contains a brief section on emergency tests, but it does not include a calendar of tests nor any information on the procedure for tests and the concrete scenarios simulated, as required by Article 10(2) and Annex 7 of the Regulation.

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

2.3 Recommendations

Infrastructure standard

Article 5 of the Regulation defines the infrastructure standard, which requires that, in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure is able to satisfy total gas demand during one day for a specific scenario of very high demand. The "*measures, volumes, capacities and the timing needed to fulfil the infrastructure [...] standard*" shall be contained in the PAP submitted by Member States in accordance with Article 9(1)(c) of the Regulation.

The PAP submitted by the Energy Agency in its Annex 1 provides information on the infrastructure standard developments from 2018 until 2028. However, it does not include a clear description of the capacities needed to fulfil the infrastructure standard for each scenarios.

The Commission considers that the Slovenian PAP should be amended to contain the explicit detail of the volumes and capacities needed to fulfil the infrastructure 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 Energy Agency 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* Slovenia 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 Energy Agency 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, 10.6.2020

For the Commission
Kadri Simson
Member of the Commission