



Brussels, 8.7.2019
C(2019) 5238 final

COMMISSION OPINION

of 8.7.2019

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 submitted by the Competent Authority of the United Kingdom to the European Commission

(Only the English text is authentic)

COMMISSION OPINION

of 8.7.2019

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 submitted by the Competent Authority of the United Kingdom to the European Commission

(Only the English text is authentic)

(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 Article 10(2) of the Regulation, the Plans have to be updated every four years, unless circumstances require more frequent updates. 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 United Kingdom, the Department for Business, Energy and Industrial Strategy ("BEIS"), has notified its National Risk Assessment ("NRA") pursuant to Article 7 of the Regulation to the Commission on 4 December 2018.

The BEIS notified to the Commission on 8 March 2019 its Preventive Action Plan ("PAP"). The BEIS has consulted other Member States' Competent Authorities on its PAP, in particular the members of the United Kingdom ("UK") Risk Group¹: Belgium, Germany, Ireland, Luxembourg and the Netherlands.

After having assessed the PAP, in view of the criteria mentioned in Article 8(8) and the template provided for in Annex VI of the Regulation, and having reported its main findings to the Gas Coordination Group on 19 March 2019 the Commission has the following remarks.

(1) COMMISSION ASSESSMENT OF THE PREVENTIVE ACTION PLAN

Template for the PAP

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

The PAP submitted by the BEIS does not fully and adequately follow the mandatory template provided for in Annex VI of the Regulation. For information which is not provided in the

¹ Defined in Annex I of the Regulation

PAP, reference is made to the Common Risk Assessments ("CRA") and the NRA. However, the information in the NRA is often equally insufficient.

The Commission takes the view that the PAP needs to be amended so that it follows the template contained in Annex VI of the Regulation.

Missing descriptions of the gas system

According to Article 9(1)(j) and Annex VI of the Regulation the PAP has to include a description of the national and regional gas systems.

The notified PAP does not include some of the required information and in some cases the information provided is insufficient. For example, several aspects regarding the description of the UK natural gas system (point 1.2 of Annex VI) are missing. Frequent references are made to the NRA, but the information provided there is often equally insufficient. Concretely, the information regarding point 1.1 of Annex VI letters (a), (b), (d) and (e) as well as regarding point 1.2 of Annex VI letters (e) and (f) is incomplete. There is no information available regarding the requirements under point 1.1 of Annex VI letters (c),(f) and (g) and under point 1.2 of Annex VI letters (g) and (h).

The Commission takes the view that the PAP needs to be amended to include the above mentioned information in sufficient detail as laid down in Annex VI of the Regulation.

Missing details on 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 "*measures, volumes, capacities and the timing needed to fulfil the [...] supply standard*" shall be contained in the PAP submitted by Member States in accordance with Article 8(5) of the Regulation.

In the UK PAP the gas volumes needed to comply with the supply standard are based on a 1-in-50 statistical probability rather than 1-in-20. This point was also raised in the previous Commission opinion² on the UK's PAP, when it was indicated that the UK should detail the volumes and capacities needed for the fulfilment of the 1-in-20 supply standard, as this would improve the transparency of and homogeneity among the Plans prepared by all Member States. In the response letter to the previous Commission Opinion on the UK's PAP, the BEIS acknowledged this and indicated that in the next version of the Plan this will be taken into consideration. However, in the present PAP this information has not been included.

With regard to the measures in place to comply with the supply standard, the UK PAP does not describe the said measures, indicating only that "*the UK can fulfil the supply standard on a national basis*". A reference is provided in the PAP to the NRA for further information but such information covers only modelling scenarios and not the measures in place to ensure compliance with the supply standard.

The Commission takes the view that the PAP needs to be amended to include the above mentioned information on the supply standard, following the template laid down in Annex VI of the Regulation.

² C(2017) 3502 final

Missing information on stakeholder consultation

Pursuant to Article 8(2) of the Regulation, Member States have to consult natural gas undertakings, the relevant organisations representing the interest of households, industrial gas consumers and, where it is not the competent authority, the national regulatory authority before establishing the PAP and the EP. The mechanisms used for such consultations as well as their results have to be described in the PAP in accordance with Annex VI section 9.

The description in Section 10 of the PAP merely illustrates that the TSO and Gas Distribution Network Operators have been informed about the arrangements for dealing with supply emergencies at TSO and DSO level (top-down approach). Information is however lacking on the mechanism used for consulting these stakeholders in the establishment of the Plans (bottom-up approach), as required by the Regulation. Moreover, details on the consultations with the other stakeholders listed in point 9 of Annex VI of the Regulation are missing altogether.

The Commission takes the view that the PAP should be amended to include the above-identified missing elements, following the template contained in Annex VI point 9 of the Regulation.

3. CONCLUSION

Based on the above assessment of the PAP, and in view of Article 8(8)(d) of the Regulation, the Commission concludes that the PAP does not comply with the provisions of the Regulation.

Therefore, the Commission requests the BEIS to amend the PAP taking duly into consideration the concerns expressed by the Commission in the present opinion and notify the amended PAP 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 UK 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 PAP which is publicly available. The BEIS 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, 8.7.2019

*For the Commission Miguel ARIAS CAÑETE
Member of the Commission*

