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COMMISSION OPINION

of 5.3.2020

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 Republic of Finland to the European Commission.

(Only the Finnish and Swedish texts are 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 Finland, the National Emergency Supply Agency ('NESA'), notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 29 January 2019. NESA notified to the Commission on 30 October 2019 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 and 26 September 2019, 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 Finnish gas system, infrastructure standard and supply standard. Furthermore, the high level of regional coordination with neighbouring countries at political and technical level is very welcome.

Nevertheless, the Commission considers that some elements of the Plans do not fully comply with the requirements of the Regulation.

2.1 Preventive Action Plan (PAP)

Missing information on the economic impact of the preventive measures, as well as their impact on the internal market, the environment and on customers

Article 9(1) (f) to (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 as well as a description of the effects of such measures on the functioning of the internal market, the environment and consumers.

The Finnish PAP refers to a number of preventive measures at national and regional level. While the PAP addresses the impact of some of the regional preventive measures, it could further elaborate on the impact on competition in the gas markets and, furthermore, it lacks information on the impact of national preventive measures.

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

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 for and results of consultations with stakeholders, including organisations representing the interests of households and organisations representing the interests of industrial gas customers.

This is not provided in the Finnish PAP and the Commission considers that it should be updated to include information on consultations with organisations representing the interests of households and 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 the PAP.

2.2 Emergency Plan (EP)

Missing information on specific measures for electricity and district heating

Pursuant to Article 10(1) and Annex VII point 3 of the Regulation, the EP should set out 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.

The EP submitted by NESAs does not include information on such measures and actions. It does not indicate either why such measures would not be appropriate. The Commission considers that the EP should be amended to include the details in question.

Missing information on emergency tests

Article 10(3) of the Regulation requires Member States to carry out real time response simulations of emergency situations at least once between the four-year updates of the EP. Pursuant to Article 10(3) and Annex VII point 7 of the Regulation, the EP should set out information on such emergency tests.

The EP submitted by NESAs does not include information on such tests. The Commission considers that the EP should be updated in this respect.

2.3 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of NESAs 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 Plans were prepared and notified to the Commission before the entry into operation of the Balticconnector pipeline on 1 January 2020. Following its entry into commercial use, Finland is now directly connected to another Member State and, consequently, the solidarity provisions contained in Article 13 of the Regulation have started to apply as of that date. The Commission reminds NESAs that the Plans must be updated every 4 years after 1 March 2019 or more frequently if the circumstances so warrant (Article 9(11) and 10(2) of the Regulation). Therefore, the Commission expects that a revised EP will be submitted now describing the arrangements in place to apply the solidarity obligations laid down in Article 13 of the Regulation in accordance with Article 10(1)(m) and Annex VII point 8.3 of the Regulation.
- The PAP should clarify whether the measures mentioned in section 12.3.3 of the PAP refer to measures other than those described in other sections of the PAP. In such case, the nature and impact of such non-market-based measures for Finland should be more thoroughly described as well as how they relate to market-based measures.
- The priority order for the implementation of the non-market-based measures described in the EP, and in particular the priority order (if any) for the gas restrictions that may be carried out by type of user, would be of interest for the stakeholders of the gas market and for gas users.
- Additional information on the design and the effect of the actions carried out in the event of natural gas disruption (section 13.8 of the EP) would also be welcome, notably the secondary market sales mechanism.
- The Plans would also benefit from additional information regarding the impact of actions carried out in the event of natural gas disruption on the markets of neighbouring countries.

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 NESAs 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* Finland 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 NESAs are 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, 5.3.2020

For the Commission
Kadri SIMSON
Member of the Commission