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## **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 and Emergency Plan submitted by the Competent Authority of the Kingdom of Spain to the European Commission**

(Only the Spanish 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 Spain, Ministerio para la Transición Ecológica (Ministry for the Ecologic Transition, hereafter, "Ministry"), notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 28 September 2018.

The Ministry notified to the Commission on 5 March 2019 its Preventive Action Plan and Emergency Plan. The Ministry consulted other Member States' Competent Authorities on its Plans, in particular those Member States that are members of the Algeria and Norway risk groups referred to in Annex I of the Regulation.

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 8 January 2019, the Commission has the following remarks on the Plans.

#### **2. COMMISSION'S ASSESSMENT OF THE PLANS**

The Commission observes that the Plans follow the structure of the templates included in Annexes VI and VII of the Regulation. They describe the functioning of the Spanish gas system, the role of the infrastructures and future developments and the infrastructure standard, as well as the gas supply situation, contingent preventive measures and emergency management, including graphs that help visualising processes and responsibilities. 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

### *Missing details on the description of the system*

In accordance with Annex VI point 1 of the Regulation, the PAP has to include a description of the gas system, including a description of the role of gas in electricity production.

When describing the preventive measures (under section 5), the Spanish PAP takes into account the inter-linkages between the gas supply and the electricity sector and refers in particular to the role of gas as a backup for variable generation from renewable energies. These aspects are however not mentioned nor quantified when describing the Spanish gas system under section 1.

The Commission takes the view that the PAP submitted by the Ministry should be amended to include the description of the role of gas in the electricity sector as required by Annex VI point 1.

### *Missing information on the protected customers*

Pursuant to Article 9(1)(b) and letter (a) of point 4 of Annex VI, Member States must include in their PAP their definition of “protected customer” in line with article 2(5) the Regulation.

Article 2(5) of the Regulation contains a definition of certain groups of gas customers as “protected customers” with quantitative limits for some categories of consumers. While all household customers connected to a gas distribution network are to be considered as protected, the Regulation allows the Member States to include in the definition also other categories, provided however that certain conditions are met.

The PAP does not explain in particular which consumers are deemed as “providing essential services”, which are considered as protected customers under Article 60 of Royal Decree 1434/2002. This issue was already identified by the Commission in its opinion on 15 September 2017 (C(2017)6140 final). To accommodate this remark, the Spanish authorities inserted at the time a new footnote with a link to Royal Decree 1434/2002, which includes the full list of “protected customers”. In their follow-up letter of 9 March 2018 (ENER.B/BAO/mp s(2018)1213982), the Commission’s services recommended to provide detailed information in future plans, including a list of those in annex.

The Commission considers that the PAP submitted by the Ministry should be amended to include detailed information on the categories of consumers considered protected customers.

### *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 PAP does not assess the expected impacts of the preventive measures from the different perspectives stated in Article 9 (1)(f) to (h) of the Regulation.

The Commission considers that the PAP should be amended to include the above-mentioned information, including specifically the information on a number of envisaged preventive measures which seem to have been conceived in the form of public service obligation.

### *Missing information on the stakeholder consultations*

The PAP refers to a public consultation on the PAP and provides the list of operators and institutions whose views were considered, which does not include the national energy

regulator. As the consultation of the national regulatory authorities is mandatory under Article 8(2) of the Regulation, it would be useful if this section would describe how the Spanish national energy regulator, the Comisión Nacional de los Mercados y la Competencia, was consulted on the PAP and whether its views were taken into consideration.

## **2.2 Emergency Plan**

### *Missing information on measures to be adopted per crisis level*

Article 10(1)(h) and (i) of the Regulation require Member States to identify in their EP the contribution of market and non-market based measures for coping with the situation at alert and emergency levels.

The Spanish EP describes the different measures, procedures and responsibilities, as well as the flows of information. All measures are usefully presented in the form of a table and grouped by different crisis levels. However, information is missing on the expected contribution of the measures to cope with the relevant crisis situation.

The EP describes some non-market based measures that may be implemented for the emergency level, but it does not provide sufficient details on the aspects mentioned in section 3(c) of the template, in particular the criteria applied to judge the opportunity of each measure.

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

### *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 EP simply refers to ongoing talks within the Algeria Risk Group. While the Commission 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.

## **2.3 Other comments**

Apart from the remarks presented above, the Commission would like to draw the attention of the Ministry 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 provide a description of the regional dimension of security of gas supply, largely focusing on the coordination in regional risk groups for risk management. However, they fail to address some elements of the relevant sections of the templates. Adding the missing information would clarify the impact of the described measures and would make the relevant chapters comprehensive.
- According to the EP, Spain is in the process of incorporating the requirements and protocols of the Regulation in the system operation rules, which should be reflected in the next EP. The Commission invites Spain to update the EP as soon as these

adaptations have been carried out, without waiting for the four-year period foreseen in Article 10(2) of the Regulation.

- The EP describes the procedures under which real time response simulations of emergency situations shall be organised in the future, under the revised operational rules. However, the EP could be improved by providing a calendar for such tests.

### 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 Ministry 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 Spain 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. The Ministry 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*