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COMMISSION OPINION

of 16.1.2020

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 Netherlands to the European Commission.

(Only the Dutch text is authentic)

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1. PROCEDURE

Articles 8(2)(a) and 8(2)(b) of Regulation (EU) 2017/1938 (the "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 Netherlands, the Ministry of Economic Affairs and Climate Policy ("MEACP"), has notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 9 October 2018.

The MEACP notified to the Commission on 8 October 2019 its Preventive Action Plan and Emergency Plan. The MEACP has consulted other Member States' Competent Authorities on its Plans, including with neighbouring countries and the countries that are members of the same risk groups as the Netherlands.

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 particular the so-called Quick-read facilitates the reading by a larger audience and the tables in Annex I offer a very clear summary, notably as regards who takes decisions.

Nevertheless, the Commission considers that some 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.

Whilst most information is available in the Plans, they do not follow the mandatory templates provided for in Annex VI and VII of the Regulation.

The Commission takes the view that the PAP and EP should be amended so that they follow the templates contained in Annex VI and VII of the Regulation.

2.1 Preventive Action Plan (PAP)

Missing information on the the system

Article 8(5) of the Regulation establishes that the PAP must be developed in accordance with the templates contained in Annex VI to the Regulation. Pursuant to Annex VI of the Regulation, the PAP must include a description of the national gas system as well as the regional gas system of the risk groups.

The PAP submitted by MEACP does not contain a description of the regional gas system for the Norway risk group. Moreover, with regard to the regional gas systems for which information is provided, information is lacking on the use of low calorific gas for electricity generation in particular with regard to Germany. Information is also missing with regard to: peak gas demand (even if a source is mentioned); Dutch H-gas production and imports (in particular as merely reporting flows does not provide a meaningful picture of imports meant to meet Dutch demand); the access regime for LNG terminals; a description of the role of storages compared to heating season demand and bottlenecks within the Dutch gas system.

The Commission takes the view that the MEACP should amend the PAP by completing the assessment with the above information as required by Article 8(5) and Annex VI to the Regulation.

Missing information on the economic impact of the preventive measures

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.

In the PAP risks and measures to address them are identified to the extent they relate to the reduction of the production of L-gas and relate to technological failures and earthquakes. However, the assessment of the economic impact, effectiveness and efficiency of preventive measures is not based on any factual or other in-depth analyses.

The Commission takes the view that the MEACP should amend the PAP by including a more comprehensive assessment of the economic impact, effectiveness and efficiency of preventive measures, as required by Article 9(1) (f) to (h) and Annex VI of the Regulation.

2.2 Emergency Plan (EP)

Missing information on solidarity arrangements

Article 13 of the Regulation requires Member States to, in a spirit of solidarity, adopt a set of provisions to ensure the supply of gas to a minimum number of customers 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 Netherlands claims that according to Article 13 (11) the Regulation, it is exempted from this obligation for the purpose of receiving solidarity for as long as it can cover the gas consumption of its solidarity protected customers (which all use L-gas) with its own production, which arguably it still can. However, the Netherlands has to conclude solidarity arrangements for the purpose of providing solidarity with Belgium, Germany and the United Kingdom as the Dutch gas network is directly connected within the gas network of those of the L-gas risk group.

While the Commission is aware of the current on-going work of the MEACP with other Member States to develop the solidarity provisions and 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.

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 MEACP 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 Netherlands 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 MEACP 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, 16.1.2020

For the Commission

Kadri SIMSON

Member of the Commission