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COMMISSION OPINION

of 8.10.2020

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 Lithuania to the European Commission

(Only the Lithuanian 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 Lithuania, the Ministry of Energy, notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 26 April 2019.

The Ministry of Energy notified to the Commission on 21 May 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, 29 January 2020 and 22 April 2020, 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 Lithuanian gas system. 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 details on the fulfilment of the supply standard

The PAP must indicate the measures, volumes and detailed capacities needed to fulfil the supply standard, pursuant to Article 9(1)(c) of the Regulation and Annex VI, point 4, as well as information on the ex ante monitoring system for the compliance with the supply standard (point 4(d)(iii)), the description per measure in terms of economic, environmental, and consumer impact (point 4(d)(v)), and information per measure where they are non-market based (point 4(d)(vi)). This information is missing in the notified PAP.

The Commission takes the view that the Lithuanian PAP should contain the explicit detail of the economic, environmental and consumer impact of the measures in place to comply with the supply standard.

Missing information on the protected customers elements

Article 2(5) of the Regulation contains a definition of "protected customers" with some quantitative limits for some categories of consumers. Pursuant to Article 9(1)(b) of the Regulation, this definition must be included in the PAP. Small and medium-sized enterprises connected to a gas distribution network (Article 2(5)(a)) and essential social services, connected to a gas distribution or transmission network (Article 2(5)(b)) may only be considered "protected customers" in so far as they do not, jointly, represent more than 20% of the total annual final gas consumption.

The categories used in the notified Lithuanian PAP to present the split of consumption between different customer groups (households, industry protected, industry non-protected, district heating) do not allow a clear view of the combined share of customers falling under points (a) and (b), and thus it is not possible to verify whether the limit of 20% is respected.

The Commission considers that the Lithuanian PAP should be amended to clearly indicate whether the categories of consumers considered as protected by the Ministry of Energy match the eligible consumers under the Regulation and whether the 20% threshold is respected.

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

but not limited to organisations representing the interests of households and organisations representing the interests of industrial gas customers.

The Lithuanian PAP does not contain any information on consultations with stakeholders.

The Commission considers that the Lithuanian PAP should be updated to include information on consultations with stakeholders and with the national regulatory authority. 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.

Missing information on the preventive measures, including the economic impact, 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 notified PAP lists a number of measures but they are of very general nature. There is no clear link to the risk scenarios identified in the risk assessment and some of them seem to have rather curative than preventive character. In addition, the PAP does not assess the expected impacts of these measures from the different perspectives stated in Article 9 (1)(f) to (h) of the Regulation. Moreover, the PAP is missing the justification concerning each non-marketed based measure – notably, there is no explanation why such measures are necessary (i.e. why the security of supply cannot be achieved via market-based measures alone).

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

Other missing information

According to Article 8(5) and Annex VI 1.2.(a) of the Regulation, the main gas consumption figures shall be included in bcm (final gas consumption) and mcm/d (peak demand). The Lithuanian PAP does provide such figures, but these are only provided in TWh and GWh. The Commission considers that the PAP needs to be amended so as to present these figures as required.

2.2 Emergency Plan (EP)

Contribution of market based and non-market based measures to cope with a crisis

Pursuant to Article 10(1)(h) and (i) 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 to address the respective situation.

The Lithuanian EP provides a list of envisaged market based and non-market based measures. However, there is no information on the expected contribution of the listed measures to cope with a crisis.

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

Missing information on solidarity arrangements

Article 13 of the Regulation requires Member States to adopt, in a spirit of solidarity, 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 Lithuanian EP does not include any information on arrangements in place to apply the solidarity obligations, referring only to the dedicated document on regional cooperation.

While the Commission is aware that the discussions among the members of the North-Eastern risk group have started on this matter 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.

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 submitted EP does not include information on such tests. More specifically, it does not include the calendar for the simulations, nor does it indicate the concrete impact scenarios simulated. The Commission considers that the EP should be updated in this respect.

Missing information on specific measures for electricity and district heating

Pursuant to Article 10(1)(e) 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 submitted EP 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.

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 of Energy 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* Lithuania 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 Ministry of Energy 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, 8.10.2020

For the Commission
Kadri SIMSON
Member of the Commission