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COMMISSION OPINION

of 15.1.2021

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 Hungary to the European Commission.

(Only the Hungarian 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 Hungary, the Hungarian Energy And Public Utility Regulatory Authority, notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 1 November 2019.

The Hungarian Energy And Public Utility Regulatory Authority notified to the Commission on 16 September 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 submitted by the Hungarian Energy and Public Utility Regulatory Authority are in some aspects detailed and provide solutions to deal with major crises. 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 notified PAP refers to a number of preventive measures but does not assess the expected impacts of these 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.

Missing information on regional measures

Pursuant to Article 8(3) and Annex VI, point 10 of the Regulation, preventive action plans must contain a regional dimension with appropriate and effective cross-border measures, based on the simulation referred to in Article 7(1) and the common risk assessment.

The Hungarian PAP, further to the risk assessments carried out for each the relevant risk group, does not contain any agreed preventive measures at regional level.

In light of the obligation set out in Article 8(3) and Annex VI, point 10 of the Regulation, the Commission takes the view that the PAP should be amended to include the regional measures.

Stakeholder consultation

While the notified PAP contains information on stakeholders having been consulted on the Hungarian crisis situation regulations, it lacks information on whether and how possible comments received following the consultation have been considered, as required by point 9 of Annex VI and Article 8(2) of the Regulation.

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

2.2 Emergency Plan (EP)

Restrictions to cross-border gas flow

Article 10(1)(i) of the Regulation requires Member States to identify and assess the effects of non-market-based measures to be applied when an emergency level is declared. In this context, Article 11(4) sets out the general rule that Member States are to follow the pre-defined measures and action as set out in the EP when an emergency is declared. Furthermore, Article 11(6) of the Regulation establishes an obligation on Member States and in particular on the Competent Authorities to ensure that: "(a) no measures are introduced which unduly

restrict the flow of gas within the internal market at any time; (b) no measures are introduced that are likely seriously to endanger the gas supply situation in another Member State; and (c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the emergency Plan".

According to Article 98/D of the Hungarian Gas Act¹, in case of an emergency situation the Government is empowered to set the conditions for delivering natural gas produced or stored in Hungary outside Hungary's territory, with the exception of transmission, storage at third party service providers and the delivery of natural gas from Hungary, stored in Hungary by persons domiciled outside Hungary for purposes other than domestic use. In addition, in an emergency situation the TSO, under certain circumstances, is entitled to reduce transit flows (Article 98/B of the Hungarian Gas Act).

Given that Hungary can supply and/or transit gas to other Member States, it is important that its Plans analyse the possible effects of national emergency measures carefully and take full account of risks for the security of supply in other Member States. The Commission considers that the Hungarian measures described in Article 98/D of the Hungarian Gas Act, i.e. the possibility to reduce transit flows and limit export sales in emergency situations, may have effects on neighbouring countries which may not be in line with the provisions set in Article 11(6)(a) and (c) of the Regulation. As regards Article 11(6)(b) of the Regulation, the Commission cannot conclude at this stage, on the basis of the information available, that such measure could endanger the security of supply of another Member State.

The Commission takes the view that the measure in question should be further explained in the EP, indicating at least its extent, its effect on neighbouring countries and the justification of the compliance of such measure with the conditions established in Article 11(6) of the Regulation.

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 point 8.3 of Annex VII to 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 Hungarian EP refers to solidarity measures and the possibility to conclude solidarity agreements with other EU Member States however without describing any provision in particular that would allow to implement the solidarity obligations in practice.

While the Commission is aware and welcomes the current on-going work of a number of Member States to develop a solidarity agreement in accordance with the obligations contained in the Regulation, the Commission considers that the EP should be amended to include more details on the possible initiatives and measures taken to comply with Article 13 of the

¹ Law XL. Of 2008 on natural gas supplies.

Regulation, including the necessary technical, legal and financial arrangements to be agreed with your neighbouring countries.

Missing information on regional measures

While the notified EP contains a brief chapter on the regional dimension, the provided information remains superficial and does not provide the level of detail on measures, procedures, and expected contributions of the measures per crisis level required pursuant to Article 8(3) and Annex VII point 8 of the Regulation, for each of the crisis levels, as well as cooperation mechanisms and solidarity.

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

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 Hungarian Energy And Public Utility Regulatory Authority 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* Hungary 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 Hungarian Competent Authority 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, 15.1.2021

For the Commission
Kadri SIMSON
Member of the Commission

