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COMMISSION OPINION

of 24.4.2020

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 Malta to the European Commission.

(Only the English 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 Malta, the Ministry for Energy & Water Management (MEW), notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 1 March 2019.

The MEW notified its Preventive Action Plan and Emergency Plan to the Commission on 20 January 2020. The Commission has no information regarding the consultation on the Maltese Plans with other Member States.

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 and 29 January 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 specificities of the Maltese gas system and the infrastructure standard.

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.

2.2 Emergency Plan

Missing information on measures to be adopted per crisis level.

Pursuant to Article 10(1)(f) and Annex VII point 2 of the Regulation, the EP should set out, for each crisis level, the procedures and measures to be taken, and the expected contribution of these measures to address the respective situation. According to Article 10(1)(o) of the Regulation the EP must establish a list of predefined actions to make gas available in the event of an emergency.

The notified EP provides a list of specific measures focusing on the electricity sector. However, these measures focus on managing the spillover effects of a gas crisis in the electricity sector rather than on making gas available in case of a crisis.

Given the significant role of gas in the production of electricity in Malta, the Commission considers that the Maltese EP should be amended to include the above mentioned missing information.

Missing information on non-market based measures

According to Article 10(1)(h) and (i) of the Regulation, the EP has to identify the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at emergency level and of non-market-based measures planned or to be implemented for the emergency level, and assess the degree to which the use of such non-market-based measures is necessary to cope with a crisis.

The notified EP does not include information on the expected contribution of the listed measures.

Therefore, the Commission considers that the Maltese EP should be amended to provide the above mentioned information.

Missing information on emergency tests

The EP contains a brief section on emergency test but does not include a calendar of tests nor any information on the procedure for tests and the concrete scenarios simulated, as required by Article 10 paragraph 2 and Annex 7 of the Regulation.

The Commission considers that the Maltese EP should be amended to include the above mentioned missing 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 MEW 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* Malta 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 MEW 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, 24.4.2020

For the Commission
Kadri SIMSON
Member of the Commission

