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COMMISSION OPINION

of 20.2.2019

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 Ireland 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) 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 Ireland, the Commission for Regulation of Utilities ("CRU"), has notified its Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 2 October 2018.

The CRU consulted with the UK Competent Authority and notified to the Commission on 3 October 2018 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 8 January 2019, the Commission has the following remarks on the Plans.

2. COMMISSION ASSESSMENT OF THE PLANS

The Commission welcomes the good quality of the content of the Plans. By providing information on the gas supply situation, emergency management and contingent preventive measures the Plans address the main requirements of Regulation 2017/1938. The Commission appreciates that the Plans also consider the 1-in-20 supply standard for the N-1 calculation. Nevertheless, the Plans are lacking sufficient detail in some respects. In addition, it is not analysed to what extent the preventive measures are suitable to tackle the risks identified.

Templates for the Plans

Despite the quality of the overall Plans, the Commission finds that they do not sufficiently reflect the new provisions of Regulation 2017/1938 in terms of structure and content. Concerning structure, the Plans do not sufficiently follow the mandatory template provided for in Annex VI and VII of the Regulation, as required by Article 8(5), but instead have

largely kept the format of previous reports. The template provided in the Annex of Regulation 2017/1938 is meant to streamline respective national plans in order to improve the transparency, completeness and homogeneity among the Plans prepared by all Member States.

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

2.1. Preventive Action Plan

The Preventive Action Plan covers the information laid down in Article 9 of the Regulation in large parts. More specifically, the PAP contains description of the gas system, a summary of the infrastructure standard and the supply standard including a definition of protected customers, the results of the risk assessment, market based and non-market based preventive measures, infrastructure and operational improvements, and an approach for regional cooperation. For many of these sections, however, there is a lack of detail.

Missing quantification of general information as suggested by paragraphs 1.1 and 1.2 of the Template in Annex VI

The general description of the Irish gas system could focus more on the various risk groups. Moreover, it could be strengthened by adding quantitative data, e.g. on the main consumption patterns per type of consumer.

Missing detail on the interaction between gas supply and electricity generation as suggested by paragraph 1.1(f) of the Template

In describing the system, the Plan indicates how much gas is allocated to electricity generation, but it fails to analyse the inter-linkages between the gas supply and the electricity sector with respect to the role of gas as a backup for intermittent generation from renewable energies.

Missing alignment with paragraphs 2 to 5 of the Template

The Plan discusses the results of the national risk assessment against the infrastructure standard, the supply standard and potential gas supply disruptions from Great Britain (GB) as well as from third countries via GB. For the sake of completeness, the plan could provide a brief summary of the scenarios that have been identified in the risk assessment. The sub-chapters on compliance with the infrastructure standard and supply standard contain the most relevant information such as the definition of protected customers, the N-1 figures and listed gas volumes differences for demand and supply under the distinct load scenarios. However, the compliance check for both the infrastructure standard and the supply standard should be improved considerably and need to be aligned to the template in Annex VI of the Regulation.

Preventive, market based and non-market based, measures are identified in the Plan. The Plan does not clarify if fuel switching, as a market based demand side measure, is a realistic option on a larger scale. There appears to be no agreement between the competent authority and the grid operator on the application of this measure.

Updating economic and environmental impact assessment pursuant to Article 9(1)(f) to (h)

In describing the economic impact of gas supply interruptions, effectiveness and efficiency of gas supply interruptions, the Plan refers to a report by Ireland's Economic Social Research Institute (ESRI) from 2010. It does not contain an assessment of how preventive measures could contribute to the mitigation of potentially negative economic and environmental impacts in accordance with Article 9 (1)(f) to (h).

Missing details on the regional dimension of security of gas supply pursuant to Article 8(3) and as suggested by paragraph 10 of the Template

The Plan provides a description of the regional dimension of security of gas supply, largely focusing on the coordination in regional risk groups for risk management. The regional approach is highly welcomed by the Commission. However, aligning the Plan with the Regulation template would be required to make this chapter comprehensive and to clarify the impact of preventive measures in terms of mitigating risks related to security of supply.

The Commission takes the view that the PAP needs to be amended to include the above-identified missing elements following the template provided in Annex VI of the Regulation.

2.2. Emergency Plan

The Emergency Plan sets out the roles and responsibilities of all relevant parties in a clear and comprehensive manner. The different crisis levels are well explained, including stakeholder involvement, procedural issues and reporting obligations. As regards specific measures to be applied, the Plan lacks detail. In particular, a summary of the measures of the Irish gas TSO's (GNI) Natural Gas Emergency Plan should be included, as well as the implications these measures have for coping with an emergency event. Article 10 of the Regulation sets out the content of the emergency plans. Some of the points therein are not adequately addressed by the Plan.

Missing details on undue consumption of gas pursuant to Article 10(1)

The issue of how to prevent the undue consumption of gas by customers who are not “protected customers” during an emergency scenario should be covered in the Plan. This would ideally indicate the nature and functioning of measures involved, and clarify the responsibilities of the actors involved in this process.

Alignment with the Template in Annex VII, and paragraphs 7 and 8.3 in particular

Furthermore, adopting the template as in Annex VII of the Regulation would be required to bring more clarity on a number of issues. Generally, the plan provides a good description of the procedural steps at each crisis level. A calendar indicating the timeframes for a real time response in case of emergency, as provided for in Chapter 7 of the template, would alter the quality of the procedural description. In that respect, the flow charts in the annex of the Plan are useful but need to be complemented by the other elements of the template.

The Plan provides a brief explanation of current cooperation mechanisms with the UK and acts of solidarity under an emergency scenario. Aligning this paragraph with the provisions of Chapter 8.3 of the template would render it easier to assess actions on a regional dimension per crisis level and their respective impact.

The Commission takes the view that the EP needs to be amended to include missing information and to fully align with the template provided in Annex VII to the Regulation.

2.3. Other comments

Apart from the remarks presented above, the Commission would like to draw the attention of CRU 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 PAP does not sufficiently link the list of preventive measures to the risk scenarios developed in the Risk Assessment, nor does it provide a quantitative assessment of the possible impacts of the measures provided. Although some of the actions listed generally tend to be robust measures to cope with a crisis, it is nevertheless unclear and difficult to

evaluate whether the plan will be effective or efficient to mitigate these risks as they are not identified or mapped.

Furthermore, Article 8(1) of the Regulation requires that the PAP and EP do not unduly distort competition. The Plans provide a good overview of market-based and non-market-based measures including how they interact and the Commission welcomes the prominent role of market-based measures in the Plans. However, based on the information provided, it is difficult to conclude that the Plans meet this requirement.

Finally, the Commission considers that, from the data available, it is difficult to rule out that the infrastructure projects mentioned in Section 4.3 of the PAP involve State resources which could constitute State aid within the meaning of Article 107(1) TFEU. Should it be the case, the Commission reminds Ireland to notify such aid under Article 108(3) TFEU, unless these measures are caught by the General Block Exemption 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 CRU to amend the Plans taking duly in 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 Ireland as regards the compatibility of national measures with EU law, including in the context of infringement proceedings.

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. CRU 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, 20.2.2019

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

