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COMMISSION OPINION

of 29.4.2020

under Regulation (EU) No 2017/1938, concerning measures to safeguard the security of gas supply and repealing Regulation No 994/2010, on the Emergency Plan submitted by the Competent Authority of the United Kingdom to the European Commission

(Only the English text is authentic)

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1. PROCEDURE

The United Kingdom withdrew from the European Union as of 1 February 2020. During the transition period, which ends on 31 December 2020, unless extended, Union law, with a few limited exceptions, continues to be applicable to and in the United Kingdom and any reference to Member States in Union law shall be understood as including the United Kingdom.

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 Article 10(2) of the Regulation, the Plans have to be updated every four years, unless circumstances require more frequent updates. The consultation provided for between Competent Authorities under Article 8(6) of the Regulation 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 United Kingdom, the Department for Business, Energy and Industrial Strategy ("BEIS"), has notified its National Risk Assessment pursuant to Article 7 of the Regulation to the Commission on 4 December 2018. The BEIS notified to the Commission on 8 March 2019 its PAP and the Commission provided its opinion on 8 July 2019¹. The BEIS notified to the Commission on 7 November 2019 its EP.

After having assessed the EP, in view of the criteria mentioned in Article 8(8) and the template provided for in Annex VII of the Regulation, and having reported its main findings to the Gas Coordination Group on 29 January 2020 the Commission has the following remarks.

2. COMMISSION ASSESSMENT OF THE EMERGENCY PLAN

Template for the EP

¹ C(2019) 2538 final

Article 8(5) of the Regulation contains a legal obligation for the EP to be developed in accordance with the template included in Annex VII of the Regulation. This template is meant to improve the transparency, comparability and homogeneity among the Plans prepared by all Member States.

The EP submitted by the BEIS does not fully and adequately follow the mandatory template provided for in Annex VII of the Regulation. While the first level headings reflect the template, key information is only provided in Annex I which does not follow the template.

The Commission takes the view that the EP needs to be amended so that it follows the template contained in Annex VII 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 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.

While the Commission welcomes the current on-going work of the BEIS with other Member States to develop the solidarity provisions, 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.

Other missing mandatory information pursuant to Article 10(1) of the Regulation

Article 10(1) of the Regulation provides for a mandatory list of elements that need to be addressed in the EP.

Pursuant to Article Article 10(1)(h) and (i) of the Regulation, the EP shall identify the contribution of market-based measures for coping with the situation at alert level as well as of non-market based measures mitigating the situation at emergency level. The notified EP does include a list of measures, but does not provide information on their contribution to handling a supply crisis.

Pursuant to Article Article 10(1)(g) of the Regulation, the EP shall designate a crisis manager and define its role. While the EP shows the importance of the Network Emergency Controller (NEC; the EP also uses the term Network Emergency Coordinator) it does not provide information on which entity or person has the role of NEC.

Pursuant to Article 10(1)(e) and Annex VII point 3 of the Regulation, the EP shall indicate the 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 or indicate why such measures would not be appropriate. As regards district heating, the EP states that the UK does not currently have specific measures in place relating to district heating due to the very low numbers of district heating networks currently operating in the UK. However, this is not further substantiated, given that no information is provided on the impact of a disruption in this sector. As regards impacts on electricity generation from gas power plants, reference is made to Annex 1 of the EP. However, there, despite the significant share of gas in the UK electricity mix, only references to co-operation with gas TSOs and NEC as well as to directions from the Competent Authority/BEIS using emergency powers are provided, but without providing further details.

Pursuant to Article Article 10(1)(n) of the Regulation, the EP shall estimate gas volumes that could be consumed by solidarity protected customers covering at least the cases described in Article 6(1) of the Regulation. However, the EP does not provide such information .

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

3. CONCLUSION

Based on the above assessment of the EP, and in view of Article 8(8)(d) of the Regulation, the Commission concludes that the EP does not comply with the provisions of the Regulation.

Therefore, the Commission requests the BEIS to amend the EP to include the above-identified missing elements, following the template pursuant to Annex VII of the Regulation, and to notify the amended EP 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 UK 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 EP which is publicly available. The BEIS 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, 29.4.2020

For the Commission
Kadri SIMSON
Member of the Commission

