

Opinion 03/24

under Regulation (EU) No 2017/1938 concerning measures to safeguard the security of gas supply as amended by Regulation with regard to gas storage, on the Preventive Action Plan and Emergency Plan submitted by the Competent Authority of Moldova to the Energy Community Secretariat.

1. Procedure

Articles 8(2)(a) and 8(2)(b) of Regulation (EU) 2017/1938 of 25 October 2017 concerning measures to safeguard the security of gas supply as amended by Regulation with regard to gas storage (“the Regulation”)¹ require the Competent Authority of each Contracting Party, after consulting the natural gas undertakings, the relevant organisations representing the interests of household and industrial gas customers, including electricity producers, electricity transmission system operators, and where it is not the competent authority, the national regulatory authority, 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 more frequent updates.

The PAP shall contain the measures needed to remove or mitigate the risks identified in the national risk assessment made by the respective Contracting Party in accordance with Article 7 of the Regulation and notified to the Energy Community Secretariat (“the Secretariat”). The national risk assessment should fully assess the risks affecting the security of gas supply in the Contracting Party based on the common elements, which include, inter alia, running various scenarios of exceptionally high gas demand and supply disruption.

The Ministry of Energy, Moldova's competent authority, notified the Secretariat of its national risk assessment on 7 May 2024, pursuant to Article 7 of the Regulation.

On the same date, the Ministry of Energy notified the Secretariat of its plans.

The Secretariat discussed the national risk assessment with Moldovan authorities. The updated risk assessment was notified to the Secretariat on 2 July 2024.

After having assessed the Plans, in view of the criteria mentioned in Articles 9 and 10 of the Regulation and the templates attached as Annex V, VI and VII to the Regulation, and having reported its main findings to the Gas Coordination Group on 21 June 2024, based on Article 8(8) of the Regulation, the Secretariat has the following remarks on the Plans.

¹ Incorporated and adapted by Ministerial Council Decision 2021/15/MC-EnC of 30 November 2021 on Annex 1 to the Treaty establishing the Energy Community and adapting and implementing Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and by Ministerial Council Decision 2022/01/MC-EnC adapting and implementing Regulation (EU) 2022/1032 with regards to gas storage.

2. Secretariat's assessment of the Plans

The Plans largely follow the templates attached to the Regulation. They are detailed and comprehensive in many aspects, including the description of the Moldovan gas market and the gas infrastructure system.

Nevertheless, the Secretariat considers that the Plans do not fulfill some requirements listed in the Regulation. Most notably, before their adoption, the Plans need to be upgraded to reflect the updated risk assessment.

a. Preventive Action Plan (PAP)

Lack of risk assessment conclusions and links between defined risks and preventive measures

Pursuant to Article 9(1)(a) and Article 2(b) of Annex VI of the Regulation provide that the PAP shall contain the results of the risk assessment.

Article 8(2)(a) of the Regulation provides that that the PAP shall contain the measures needed to remove or mitigate the risks identified in the national risk assessment and point 5(a) of Annex VI of the Regulation requires a description of "each of the preventive measures adopted per identified risk by risk assessment."

Although the risk assessment methodology, risk groups, risk probabilities, and list of scenarios are sufficiently elaborated, the conclusions of the risk assessment are missing. Furthermore, the specific preventive measures are not linked to the specific risks identified in the risk assessment.

The Secretariat considers that the PAP should be amended to include the risk assessment's conclusions and links these conclusions to adopt preventive measures. The Secretariat recommends that each preventive measure, which is well elaborated in the PAP, be adopted per identified risk and described in terms of its own impact on national and regional markets

The Secretariat draws attention to the need for coherence between the PAP and Risk assessment, which will establish preventive measures for each risk situation examined. A risk-based approach to assessing the security of supply and establishing preventive and mitigating measures enables coordinated efforts. It brings significant benefits in terms of the effectiveness of measures and optimization of resources.

Classification of measures

Article 9(3) of the Regulation requires the PAP to be based primarily on market-based measures and not to put undue burden on natural gas undertakings or negatively impact the functioning of the single market in gas. Contracting Parties, particularly their competent authorities, shall ensure that all preventive non-market-based measures, adopted on or after entry into force of the Regulation, comply with the criteria laid down in the first subparagraph

of Article 6(2) of the Regulation.

The Secretariat considers that some measures indicated in the PAP may not qualify as market-only and thus takes the view that the final PAP should provide a more granular separation between market- and non-market-based measures in order to allow assessment of compliance with the Regulation's requirements. Annex VIII of the Regulation specifies a non-exhaustive list of non-market-based measures, creating security stocks as one of them.

Lack of information on stakeholders' consultation

Article 8(2) of the Regulation requires the competent authority of each Contracting Party to consult "*the natural gas undertakings, the relevant organizations representing the interests of household and industrial gas customers, including electricity producers, electricity transmission system operators, and, where it is not the competent authority, the national regulatory authority*" on the establishment of the Plans. Annex VI point 9 of the Regulation requires describing the consultation mechanism used and the results of the consultations with the respective groups of stakeholders in the PAP.

The notified Moldovan PAP does not contain such descriptions and only lists the stakeholders involved in the consultation procedures on aspects of the Plans, thus precluding assessment of measures. The PAP indicates that a public consultation will still be undertaken.

The Secretariat considers that the PAP needs to be amended to include information on the consultation mechanism used and the results of the stakeholders' consultation before its adoption.

b. Emergency Plan (EP)

Classification of measures

According to Article 10(1), the EP shall identify the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at the emergency level and the contribution 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. Non-market-based measures are to be used only when market-based mechanisms alone can no longer ensure supplies, in particular to protected customers.

A measure of using totally or partially the security stocks at the alert level does not represent a market-based measure and should be considered for the emergency level only.

The Secretariat considers that the EP needs to be amended to comply with Article 10(1) of the Regulation with regard to non-market-based measures.

Lack of information on non-market-based measures

Section 2 of Annex VII of the Regulation provides that for non-market-based measures at the emergency level, an assessment of the necessity of such measures to cope with a crisis, including the degree of their use, must be provided. In addition, justification of the measure's compliance with the conditions laid down in Article 11(6) of the Regulation is required.

The EP does not contain such information.

The Secretariat considers that the EP needs to be amended to provide the necessary information on non-market-based measures.

Lack of clarity on measures

According to Article 10(1)(o) of the Regulation, the EP shall establish a list of predefined actions to make gas available in an emergency. The competent authority may only deviate from the predefined actions set out in the EP in duly justified exception circumstances (Article 11(4) of the Regulation). Consequently, the list of predefined actions to be included in the EP must be complete. This is particularly important to ensure transparency regarding the measures to be applied in the case of a crisis and to allow all stakeholders, including neighboring countries, to prepare appropriately.

Measure 4 of the EP is to “*impose certain public service obligations on energy sector undertakings in accordance with the provisions of sectoral laws in the field of natural gas and electricity in order to ensure the security of electricity and/or natural gas supply of the Republic of Moldova.*”

The Secretariat therefore takes the view that the measure must be amended to be clearly defined, transparent and verifiable, as required by Article 8(1) of the Regulation.

Lack of information on stakeholders' consultation

Article 8(2) of the Regulation requires the competent authority of each Contracting Party to consult “the natural gas undertakings, the relevant organizations representing the interests of household and industrial gas customers, including electricity producers, electricity transmission system operators, and, where it is not the competent authority, the national regulatory authority” on the establishment of the Plans.

The notified Moldovan EP does not contain such descriptions and only lists the stakeholders involved in the consultation procedures on aspects of the Plans, thus precluding assessment of measures.

The Secretariat considers that the EP needs to be amended to include information on the consultation mechanism used and the results of the stakeholders' consultation before its adoption.

3. Conclusion

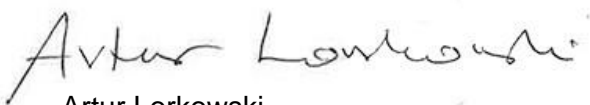
Based on the above assessment, and in view of Article 8(8)(d) of the Regulation, the Secretariat concludes that some elements of the Plans do not comply with certain provisions of the Regulation.

The Secretariat requests the Ministry of Energy to amend the Plans, taking duly into consideration the concerns expressed by the Secretariat in the present opinion, and notify the Secretariat of the amended Plans within three months pursuant to Article 8(9) of the Regulation.

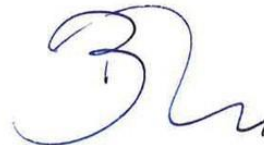
The Secretariat's assessment expressed in this opinion is without prejudice to any position it may take vis-à-vis the Republic of Moldova as regards the compatibility of national measures with Energy Community law, including in the context of Dispute Settlement Procedures.

The Secretariat will publish this opinion. The Secretariat does not consider the information contained herein to be confidential, in particular as it relates to the publicly available Plans. The Ministry of Energy is invited to inform the Secretariat 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.

Vienna, 16 July 2024

Handwritten signature of Artur Lorkowski in blue ink.

Artur Lorkowski
Director

Handwritten signature of Dirk Buschle in blue ink.

Dirk Buschle
Deputy Director/Legal Counsel