

Opinion 4/24

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 submitted by the competent authority of Georgia to the Energy Community Secretariat

1. Procedure

Article 8(2)(a) 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”). In accordance with Article 9(11) of the Regulation, the PAP shall be updated every four years or more frequently if the circumstances so warrant or at the Energy Community Secretariat’s request.

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”) and in accordance with Article 9 of the Regulation. The national risk assessment should fully assess the risks affecting the security of gas supply based on the common elements, which include, inter alia, running various scenarios of exceptionally high gas demand and supply disruption.

The PAP (and the emergency plans) shall be made public and notified to the Secretariat (Article 8(7) of the Regulation). The Secretariat shall inform the Security of Supply Coordination Group about the notification of the plans and publish them on its website.

Within four months of the notification by the competent authorities, the Secretariat shall assess the plans taking into account the views expressed in the Security of Supply Coordination Group. The Secretariat shall issue an opinion to the competent authority with the recommendation to review a PAP or emergency plan if one or more of the circumstances identified in Article 8(8) of the Regulation apply.

The Ministry of Economy and Sustainable Development, Georgia's competent authority, notified the Secretariat of its national risk assessment on 12 September 2024, pursuant to Article 7 of the Regulation.

On 20 September 2024, the Ministry of Economy and Sustainable Development notified the Secretariat of its PAP.

The Secretariat discussed the national risk assessment with Georgian authorities and received clarifications.

After having assessed the PAP, in view of the criteria mentioned in Articles 9 of the Regulation and the templates attached as Annex V and VI to the Regulation, based on Article 8(8) of the Regulation, the Secretariat shares its assessment of the PAP in the following.

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 PAP

The PAP largely follows the templates attached to the Regulation. It is detailed and comprehensive in many aspects, including the description of the Georgian gas market and the gas infrastructure system and the calculation of gas infrastructure and supply standards in various configurations.

Nevertheless, the Secretariat considers that the PAP does not fulfill some requirements in the Regulation. Most notably, before its adoption, the PAP needs to be updated to reflect the Secretariat's opinion.

a. Lack of risk assessment conclusions and credibility/commitment in implementing the preventive measures

The PAP shall contain the risk assessment results, as required by Article 9(1)(a) and Article 2(b) of Annex VI of the Regulation.

Article 8(2)(a) of the Regulation provides 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.*” At the same time, Article 8(4) of the Regulation specifies that the competent authorities shall ensure the regular monitoring of the implementation of the preventive action plan.

Although the risk assessment methodology, risk groups, risk probabilities, and impact components are thoroughly detailed, the conclusions from the risk assessment, including a summary of scenarios, are missing. Furthermore, while the specific preventive measures outlined in the annex are linked to the risks identified in the assessment, most are presented as recommendations rather than concrete actions, lacking the confidence and clarity that the competent authority will definitively plan to implement them. As a result, the competent authority cannot effectively ensure the PAP's implementation tracking and monitoring, as it needs binding commitments.

The PAP evaluates the outcomes of implementing preventive measures for comparison purposes, including the long-term measures intended for implementation after 2028. Whilst that should not be the primary focus of the four-year plan, it raises the question of compliance with the low-emission strategy adopted in 2023, which aims for net-zero emissions by 2050.

Lack of clarity of whether measures are “market-based” or simply “other” should be eliminated. The non-market measures should be explained and justified. Some measures lack timelines, whereas others may be more appropriate as emergency measures.

The Secretariat considers that the PAP should be amended to include the risk assessment conclusions and ensure that the preventive measures are unequivocal, classified, and enforceable.

b. Missing components of the PAP

Article 9(1)(b) of the Regulation refers to the requirement for the PAP to reflect the information described in the second subparagraph of Article 6(1), pursuant to which, where a Contracting Party includes in its definition of protected customers the categories referred to in point (5)(a) or (b) of Article 2, it shall specify the gas consumption volumes corresponding to customers

belonging to those categories and the percentage that each of those groups of customers represents in total annual final gas consumption.

Article 9(d) of the Regulation refers to obligations imposed on natural gas undertakings, electricity undertakings where appropriate, and other relevant bodies likely to have an impact on the security of gas supply, such as obligations for the safe operation of the gas system.

While the definition of protected customers and their total annual consumption are provided, the breakdown of consumption by categories and percentages on an annual basis is missing.

The section on public service obligations applies only to the description of legal provisions in the law regarding their potential imposition and the eligible categories. The document does not clarify whether such obligations have been officially imposed on (any) gas undertakings.

c. 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 PAP. 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 section on public consultation in the PAP does not adequately reflect the outcomes of discussions on the PAP. Instead, it primarily summarizes survey conclusions, which focus on disconnection issues rather than the content of the PAP itself.

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.

d. Supply and infrastructure standards

Article 6 of the Regulation stipulates that "[T]he competent authority shall require the natural gas undertakings that it identifies, to take measures to ensure the gas supply to the protected customers of the Contracting Party in each of the following cases" and its Article 9 requires that the PAP "*contains the measures, volumes, and capacities needed to fulfil the infrastructure and gas supply standards laid down in Articles 5 and 6*".

Though gas volumes for protected customers are described in detail, the description of measures adopted to comply with the said standards is absent - the PAP lacks addresses of such measures, their impact, and nature (market and non-market categories). The PAP establishes a series of infrastructure standards variables for different scenarios. The parameters used for the calculation shall be clearly described and justified. However, the PAP does not clearly and unequivocally define the conclusive figures.

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 PAP do not comply with certain provisions of the Regulation.

The Secretariat requests the Ministry of Economy and Sustainable Development to amend the PAP, taking duly into consideration the concerns expressed by the Secretariat in this opinion, and notify the Secretariat of the amended PAP 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 Georgia 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 PAP. The Ministry of Economy and Sustainable Development 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, 20 December 2024

A handwritten signature in black ink, appearing to read "Artur Lourenço".

Director
Energy Community Secretariat