



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
The Director

16. 05. 2017

Brussels,
ENER/B2/BK/cs/ s(2017) 2764069

Mr Iulian Iancu
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Cc:
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Subject: Draft amendments to Emergency Ordinance 64/2016

Dear Mr Iancu,

I am contacting you with regard to the draft amendments to the Emergency Ordinance 64/2016 proposed by the Committee for Industry and Services of the Romanian Chamber of Deputies. In a meeting with Mr Dominique Ristori and representatives of the Romanian government on 21 March, you had signalled your intention to modify the Emergency Ordinance. The amendments in question were also the topic of a debate in the Committee attended by my colleague Mr Benedikt Klauser. On this occasion, you inquired about the Commission's view on these amendments. Therefore, I would like to highlight a number of potential issues that my services have identified in the current draft.

General remarks

As a point of general concern, I would like to emphasise that the gas market reforms introduced by the Emergency Ordinance are crucial for several reasons.

Firstly, said law abolished regulatory barriers to the export of natural gas from Romania to other Member States. These export restrictions had led the Commission to initiate infringements proceedings against Romania (No 2012/2114) which are still pending. Moreover, President Juncker himself took note last year of Romania's commitment to take all necessary actions, in cooperation with all relevant authorities in Romania, for removing as soon as possible any legal, regulatory and commercial provisions that could be considered as barriers to physical and commercial gas flows. The imminent abolition of such barriers allowed for a rapid signature of the Connecting Europe Facility grant agreement for the Bulgaria-Romania-Hungary-Austria transmission corridor (BRUA) in the value of EUR 179 million. Therefore, any amendments to the Emergency Ordinance should conserve this important objective of the law.

Secondly, the Emergency Ordinance has abolished the regulated price paid to producers of gas in Romania. This constitutes an important step towards the full liberalisation of Romanian gas markets. Open and competitive gas markets will enable Romania to realise its full potential as a gas trading location and source of security of supply in the region. However, the resulting alignment of price levels with European wholesale markets may affect Romanian consumers. According to EU rules Member States may introduce measures to adequately protect vulnerable consumers against energy poverty.

Furthermore I would like to comment on a number of substantive elements in the proposed draft amendments.

Obligation to market all domestically produced gas via OPCOM

The Emergency Ordinance stipulates that Romanian gas producers shall market a share of 30% of domestically produced natural gas via one of the existing gas trading platforms, i.e. OPCOM S.A. or the Romanian Commodities Exchange BRM. The draft amendments substitute this requirement with an obligation to market all domestically produced natural gas exclusively via OPCOM. This proposal seems problematic for two reasons.

Firstly, whereas a moderately sized gas release requirement as envisaged by the Emergency Ordinance can be helpful to “jump-start” illiquid markets, extending this obligation to the entirety of gas produced in Romania may be excessive and may have unintended consequences on market functioning. This is particularly true in the present situation where the technical preconditions for effective trading, such as the full implementation of gas Network Codes, are not yet in place.

Secondly, the concentration by statute of 100% of gas trading through OPCOM is not recommended in view of the more liquid trading environment currently provided by BRM. Indeed, while concentrating liquidity on one trading place may have beneficial effects on market functioning, it needs to be balanced with the interest of allowing for competition among trading platforms, which in itself may also contribute to improving conditions for efficient and liquid gas trading in Romania. Moreover, the granting of such exclusive rights to OPCOM may also pose competition law concerns.

The organisation of balancing markets

The draft amendments introduce a number of definitions and new rules on the organisation of balancing markets and the granting of a licence for a balancing market operator. However, the draft amendments do not provide sufficient clarity on the intended re-design of the market. In this regard, it should also be noted that the

organisation of balancing markets falls within the exclusive competence of the national regulatory authority pursuant to Article 41(6)(b) of Directive 2009/73/EC. Further technical rules on gas balancing are set out in the Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (BAL NC). To the extent that the implementation of the BAL NC requires specific provisions in primary national law, it is therefore recommended to consult with the national regulatory authority (NRA).

The temporary suspension of gas exports

As indicated above, the abolition of export restrictions is an essential element of the Emergency Ordinance 64/2016. The draft amendments currently envisage a new competence of the NRA to temporarily suspend the export of natural gas in the event of a crisis. However, such safeguard measures are subject to strict requirements pursuant to Article 46 of Directive 2009/73/EC and Article 10 of Regulation (EU) No 994/2010 concerning measures to safeguard security of gas supply. The power envisaged by the draft amendment in question would appear to be incompatible with these requirements as well as with Article 40(c) Directive 2009/73/EC which requires that the NRA takes reasonable measures to achieve the objective of eliminating restrictions on trade in natural gas between Romania and other Member States.

In view of the above, it is my recommendation to reconsider the draft amendments to Emergency Ordinance 64/2016 in relation to the issues identified.

As regards the implementation of gas Network Codes, my services are ready to assist the Romanian authorities. To this end, a workshop for stakeholders, followed by a technical meeting with the Ministry of Energy, Transgaz and ANRE has been scheduled for 8-9 June which you are most welcome to attend.

Yours sincerely,



Klaus-Dieter Borchardt