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EUROPÄISCHEN UNION**

**Brüssel, den 24. Juni 2010 (25.06)  
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für die Delegationen

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Betr.: Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates über Maßnahmen zur Gewährleistung der sicheren Erdgasversorgung und zur Aufhebung der Richtlinie 2004/67/EG (**Erste Lesung**)

- Informationen des Vorsitzes über die Ergebnisse des informellen Trilogs
- Analyse des endgültigen Kompromisstextes im Hinblick auf eine Einigung

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1. Am 17. Juli 2009 hat die Europäische Kommission den obengenannten Vorschlag vorgelegt, der sich auf Artikel 95 EGV (nunmehr Artikel 194 Absatz 2 AEUV) stützt. Der Ausschuss für Industrie, Forschung und Energie des EP hat seinen Bericht am 18. März 2010 angenommen. Sowohl der Vorsitz als auch das EP streben eine Einigung in erster Lesung in diesem Halbjahr an.
2. Bei dem informellen Trilog am 22. Juni 2010 wurde mit dem Europäischen Parlament ein endgültiger Kompromisstext vereinbart, der in einer Fachsitzung am 23. Juni 2010 weiter geprüft wurde.

3. Die wichtigsten Elemente des endgültigen Kompromisstextes:

**a) Geschützte Verbraucher** (Artikel 2 Absatz 1, S. 16 und Artikel 7 Absatz 1, S. 28)

Trotz weiterer Diskussionen über die Bestimmungen über die geschützten Verbraucher ist es dem Vorsitz gelungen, den vom Rat vorgeschlagenen Text hinsichtlich der Begriffsbestimmung der geschützten Verbraucher (Artikel 2 Absatz 1) und des Mindestversorgungsstandards (Artikel 7 Absatz 1) sicherzustellen.

**b) Rolle der Kommission bei der Vorbereitung des Präventions- und des Notfallplans** (Artikel 4 Absätze 5, 6 und 6a, S. 20 - 21)

In Anbetracht des Anliegens des EP, eine stärkere europäische Dimension sicherzustellen und der Kommission eine wichtigere Rolle zuzuweisen, gibt der Kompromisstext (Artikel 4 Absätze 5 und 6a (S. 20 - 21) der Kommission die Möglichkeit, die Änderung eines Notfallplans zu fordern, wenn die Versorgungssicherheit anderer Mitgliedstaaten aufgrund des Plans aufs Spiel gesetzt wird, und Empfehlungen auszusprechen, in welchem Sinne er geändert werden soll. Außerdem wird in Artikel 4 Absatz 6 (S. 20) klargestellt, dass das Verfahren der namentlichen Kritisierung sowohl für den Präventions- als auch für den Notfallplan gilt. Außerdem wurden die Gesamtfristen für die Verfahren des Artikels 4 verkürzt (in Absatz 5 von 6 auf 3 Monate und in Absatz 6a von 4 + 3 auf 3 + 2 Monate).

**c) Durchführung des Notfallplans** (Erwägungsgrund 18 a, S. 11, Artikel 9 Absatz 5, S. 34)

Im Kompromisstext wird deutlicher zwischen (a) dem Regelfall, einem vereinbarten Notfallplan zu folgen, und (b) der Möglichkeit, in gerechtfertigten Ausnahmefällen vom Plan abzuweichen, unterschieden.

**d) Pläne auf Unionsebene** (Artikel 14 S. 40)

Die in den Plänen enthaltenen Aspekte der Solidarität und des Zusammenhalts in der Union werden hervorgehoben, indem die Kommission in Artikel 14 aufgefordert wird, über die Kohärenz und den Beitrag der Präventions- und Notfallpläne der Mitgliedstaaten zur Solidarität und Bereitschaft aus Sicht der Union Bericht zu erstatten.

**e) Bedingungen für Lieferungen aus Drittländern** (Erwägungsgrund 30 a, S. 14)

Abgesehen von dem bereits vereinbarten Erwägungsgrund ist die Kommission bereit, eine Erklärung über die Bedingungen für Lieferungen aus Drittländern und Wettbewerb abzugeben.

**f) Frühwarnsystem und Krisensituation** (Erwägungsgrund 30b, S. 14)

Im neuen Erwägungsgrund 30b werden die Situationen, in denen die Versorgungssicherheit bedroht ist, und die Frühwarnmechanismen behandelt.

**g) Notfall auf Unionsebene und regionaler Notfall** (Erwägungsgrund 23a, S. 13 in Bezug auf Artikel 10 Absatz 1, S. 35)

Auf Bedenken hin, dass es bei bestimmten "regionalen" Notfällen an angemessener Unterstützung/Beteiligung der Kommission mangeln könnte, wurde ein neuer Erwägungsgrund 23a vereinbart, um regionale Notfälle und Notfälle auf Unionsebene gleichzustellen.

**h) Aufhebung der geltenden Richtlinie** (Artikel 15, S. 41)

Indem in dem überarbeiteten Text die Abstimmung zwischen der geltenden Richtlinie und der neuen Verordnung klarer herausgestellt wird, wird die Rechtsunsicherheit hinsichtlich der Verpflichtungen für die Erdgasunternehmen beseitigt.

- 4 Die Delegationen erhalten beiliegend den konsolidierten Entwurf der Verordnung, der dem Gesamtkompromisspaket entspricht, das aus dem informellen Trilog mit dem Europäischen Parlament vom 22. Juni 2010 hervorgegangen ist. Neuer Text gegenüber der Vorfassung ist unterstrichen; Streichungen sind mit [.] gekennzeichnet. Außer diesem Text wird die Kommission zwei Protokollerklärungen vorlegen: eine zu dem obigen Buchstaben e) und die andere zur Abänderung 35, in der die langfristigen Maßnahmen zur Sicherung der Erdgasversorgung behandelt werden.
5. Der Vorsitz ist der Auffassung, dass dieser Kompromisstext im Einklang mit dem vom AStV am 15. Juni 2010 erteilten Mandat steht, und ersucht den Ausschuss der Ständigen Vertreter, diesem Text als Grundlage für eine Einigung in erster Lesung mit dem Europäischen Parlament zuzustimmen.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**concerning measures to safeguard security of gas supply  
and repealing Directive 2004/67/EC**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,<sup>1</sup>

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>5</sup>,

Whereas:

- (1) Natural gas (hereinafter: gas) is an essential component in the energy supply of the Union, constituting one quarter of primary energy supply and contributing mainly to power generation, heating, feedstock for industry and fuel for transportation.
- (2) Gas consumption in Europe has increased rapidly during the last ten years. With decreasing domestic production, gas imports have increased even more rapidly, thus creating a higher import dependence and the need to address security of supply aspects.

In addition, some Member States find themselves in a 'gas island' as a result of an absence of infrastructure connections with the rest of the Union.

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<sup>1</sup> Legal bases to be adapted to the TFEU

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ C , , p. .

- (2a) Given the importance of gas in the EU energy mix, this regulation aims at demonstrating to the gas customers that all the necessary measures are taken to ensure their continuous supply, particularly in case of difficult climatic conditions and in case of disruption. It is recognised that these objectives should be achieved through the most cost efficient measures in order not to affect the relative competitiveness of this fuel compared to other fuels.
- (3) Council Directive 2004/67/EC established for the first time a legal framework at Community level to safeguard security of natural gas supply and to contribute to the proper functioning of the internal gas market also in the case of supply disruptions. It established the Gas Coordination Group which has shown to be useful to exchange information and define common actions between Member States, the Commission, the gas industry and consumers. The Network of Energy Security Correspondents (NESCO) endorsed by the European Council in December 2006 has improved the capacity to collect information and has provided early warning of potential threats to the security of energy supply. The new internal energy market legislation adopted by the Council in June 2009 constitutes an important step to complete the internal energy market and has an explicit objective to enhance the Union's security of energy supply.
- (4) However, under the current measures regarding the security of gas supply that have been taken at Union level, Member States still enjoy a large margin of discretion as to the choice of measures. Where the security of supply of a Member State is threatened, there is a clear risk that measures developed unilaterally by that Member State may jeopardise the proper functioning of the internal gas market and the supply of gas to customers. Recent experience has demonstrated the reality of that risk. To allow the internal gas market to function even in the face of a shortage of supply, it is therefore necessary to provide for solidarity and coordination in the response to supply crises, both concerning preventive action and the reaction to concrete disruptions of supply.

- (4a) Low calorific gas is supplied in certain regions in the Union. Because of its characteristic low calorific gas cannot be used in appliances designed for high calorific gas. It is however possible to use high calorific gas in appliances designed for low calorific gas, provided that it has been converted into low calorific gas, for instance by adding nitrogen. The specificities of low calorific gas should be considered at the national and regional level and be taken into account in the risk assessment and the Preventive Action and Emergency plans on a national and regional level.
- (5) The diversification of gas routes and sources for the Union is essential to improving the security of supply of the Union as a whole and its Member States individually. Security of supply will depend in the future on the evolution of the fuel mix, the development of production in the Union and in third countries supplying the Union, investments in storage facilities and in the diversification of routes and sources of supply within and outside the Union including Liquefied Natural Gas facilities.
- In this context particular attention should be given to priority infrastructure actions as identified in 2nd Strategic Energy Review, e.g. the Southern gas corridor (Nabucco and Interconnector Turkey Greece Italy), a diversified and adequate LNG supply for Europe, effective interconnection of the Baltic region, the Mediterranean Energy Ring, adequate North-South gas interconnections within Central and South-East Europe.
- (5a) In order to reduce the impact of potential crises triggered by the disruption of gas supplies, the Member States should facilitate the diversification of energy sources and gas delivery routes and supply sources.
- (6) A major disruption of gas supply to the Union can affect all Member States, the Union as a whole and Contracting Parties of the Energy Community Treaty and lead to severe economic damage across the Union economy. Likewise, the disruption of gas supply can have severe social impacts in particular on vulnerable groups of customers.
- (6a) Certain customers including inter alia households and customers providing essential social services, such as health care and child care activities, educational activities and other social and welfare services as well as services indispensable for the functioning of the Member State, are particularly vulnerable and might need protection. A wide definition of such protected customers should not conflict with European solidarity mechanisms.

- (7) The December 2008 report on the implementation of the European Security Strategy highlights the growing reliance on imported energy as a significant additional risk for the Union 's security of energy supply and stresses energy security as one of the new challenges for security policy. The internal gas market is a central element to increase the security of energy supply in the Union and to reduce the exposure of individual Member States to the harmful effects of supply disruptions.
- (7a) For a well functioning internal gas market it is essential that measures taken to safeguard the security of gas supply do not unduly distort competition or its effective functioning.
- (8) The failure of the largest single gas infrastructure, the so-called N-1 principle, is a realistic scenario. Using the failure of such infrastructure as a benchmark of what Member States should be able to compensate is a valid starting point for an analysis of the security of gas supply of each Member State.
- (9) Sufficient and diversified gas infrastructure within a Member State and across the Union including in particular new infrastructure connecting current isolated systems forming gas islands to their neighbouring Member States is essential for tackling supply interruptions. Common minimum criteria on security of gas supply should ensure a level playing field for security of gas supply while taking into account national or regional specificities and should create significant incentives to build the necessary infrastructure and to improve the level of preparedness in case of crisis. Demand side measures such as fuel switching may have a valuable role to play in ensuring energy security where they can be applied quickly and reduce demand appreciably to react to a supply disruption. The efficient use of energy should be further promoted, in particular where demand side measures are needed. The environmental impact of the proposed demand and supply-side measures should be taken into due account and preference should be given as far as possible to measures with the least impact on the environment while taking into account security of supply aspects.

(10) Investments in new gas infrastructure should be strongly promoted and should be effected only after an appropriate environmental impact assessment, in line with the relevant EU legislation . Such new infrastructure should enhance the security of gas supply while ensuring the proper functioning of the internal market in natural gas. Investments should as a matter of principle be made by undertakings and be based on economic incentives. Due account should be taken of the need to facilitate the integration of gas from renewable energy sources into the gas network infrastructure. Where an infrastructure investment is of cross-border nature the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>1</sup> ("ACER") and the European Network of Transmission System Operators for Gas ("ENTSO-G") should be closely involved within the framework of their respective competences in order to take better account of the cross-border implications.

It is recalled that according to Regulation 713/2009, the Agency for the Cooperation of Energy Regulators may issue opinions or recommendations on cross-border issues within its area of competence and activity. ACER and ENTSO for Gas, together with other market participants, play an important role in the establishment and implementation of the Community-wide 10 year network development plan which will include inter alia a European adequacy outlook and, regarding cross-border interconnections, should inter alia build on the reasonable needs of different network users.

(10a) The Competent Authorities or Member States should ensure that the market is tested as one of the necessary steps in the course of the process leading to the compliance with the infrastructure standard.

(10b) In carrying out tasks specified in this Regulation, the Competent Authorities should closely co-operate with other relevant national authorities, in particular national regulatory authorities, as appropriate and without prejudice to their competences according to Directive 2009/73/EC.

(10c) Where new cross-border interconnections are needed or existing ones need to be extended, close cooperation of the Member States concerned, Competent Authorities and, where they are not the Competent Authorities, the regulatory authorities should take place at an early stage.

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<sup>1</sup> OJ L 211, 14.8.2009, p.1.

- (11) Different sources of Union funding are available to support Member States to finance the necessary investment in production, infrastructure and energy efficiency measures at regional and local level, notably loans and guarantees from the European Investment Bank or funding from regional, structural or cohesion funds. The European Investment Bank as well as the Community external instruments such as ENPI, IPA and DCI can also finance actions in third countries in order to improve security of energy supply.
- (12) This Regulation should enable natural gas undertakings and customers to rely on market mechanisms for as long as possible when coping with disruptions. It should also provide for emergency mechanisms to be used when markets alone are no longer able to deal adequately with a gas supply disruption. Even in an Emergency, market-based instruments should be given priority to mitigate the effects of the supply disruption.
- (13) Following the adoption of the third internal energy market package, new provisions will apply to the gas sector, creating clear roles and responsibilities for Member States, regulators, transmission system operators and ACER, as well as improving the transparency of the market to the benefit of its well-functioning, the security of supply and the protection of customers.
- (14) The completion of the internal gas market and effective competition within that market offers the Union the highest level of security of supply for all Member States, provided that the market is allowed to work fully in case of disruption of supply affecting a part of the *Union*, whatever the cause of the disruption. To this end, a comprehensive and effective common approach to security of supply is required, particularly transparency, solidarity and non-discriminatory policies compatible with the functioning of the internal market, avoiding market distortions and the undermining of market responses to disruptions.
- (14a) Security of gas supply is a shared responsibility of the natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission within their respective areas of activities and competence. Where appropriate, the national regulatory authorities where they are not the Competent Authorities should also contribute to security of gas supply within their areas of activities and competence in line with Directive 2009/73/EC. Moreover, the customers using natural gas for power generation or industrial purposes may also have an important role to play in security of gas supply through their ability to respond to a crisis with demand-side measures, e.g. interruptible contracts and fuel switching, as this directly impacts on the supply/demand balance .

- (15) The precise definition of the roles and responsibilities of all natural gas undertakings and Competent Authorities is therefore crucial in maintaining the well-functioning of the internal market, particularly in supply disruptions and crisis situations.

The roles and responsibilities should be established in a way so as to ensure that a three-level approach is respected which would first involve the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union. In the event of a supply crisis, market players should be given sufficient opportunity to respond to the situation by market-based measures. If the reactions of market players are not sufficient, Member States and their Competent Authorities should take measures to remove or mitigate the effects of the supply crisis. Only if these measures are insufficient should measures be taken at regional or Union level to remove or mitigate the effects of the supply crisis.

Regional solutions should be sought as far as possible.

- (15a) In the spirit of solidarity, regional cooperation, involving public authorities and gas undertakings, will be widely established to implement this Regulation in order to optimise the benefits in terms of coordination of measures to mitigate the risks identified and to implement the most cost-effective measures for the parties concerned.

- (16) Sufficiently harmonised security of supply standards covering at least the situation that occurred in January 2009, taking into account the difference between Member States, should be established, taking into account public service obligations and customer protection measures as referred to in Article 3 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas<sup>1</sup>. Such security of supply standards should be stable so as to provide the necessary legal certainty, clearly defined, and not impose unreasonable and disproportionate burdens on natural gas undertakings, including new entrants and small undertakings, and on end users. These obligations should also guarantee equality of access for natural gas undertakings of the Union to national customers. Measures necessary to ensure the fulfilment of the supply standard may include additional storage capacities and volumes, linepack, supply contracts, interruptible contracts or any other measures that have similar effect as well as the necessary technical measures to ensure the safety of gas supply.

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<sup>1</sup> OJ

(17) It is essential for the well-functioning of the market that the necessary investments in indigenous production and infrastructures, such as interconnections, in particular those providing access to the EU gas network, equipment allowing physical bidirectional flows on pipelines, storage, and LNG re-gasification facilities, are made by the natural gas undertakings in time, bearing in mind possible supply disruptions such as the one that occurred in January 2009.

When forecasting the financial needs for gas infrastructure in relation with Union instruments, the Commission should give, as appropriate, priority to the infrastructure projects which support the integration of the internal gas market and security of gas supply.

(17a) TSOs should not be prevented from considering the situation where enabling physical capacities in both directions in cross-border interconnections with third countries could contribute to improving security of supply, especially in the case of third countries which ensure transit flows between two Member States.

(18) It is important that gas supply is maintained particularly as regards household customers, as well as a limited number of additional customers, especially customers delivering essential social services, which can be defined by the Member States concerned, in cases in which the market cannot continue to supply them. It is essential that the measures to be taken during a crisis are defined in advance of any crisis and respect safety requirements, including where protected customers are connected to the same distribution network as other customers. Such measures may contain the use of pro-rata reductions in proportion to the originally booked capacity for the case of capacity for access to infrastructure being reduced for technical reasons.

(18a) As a rule the Competent Authorities should abide by their Emergency Plan. In duly justified exceptional circumstances they may take actions deviating from those Plans.

(19) A large choice of instruments is available to comply with security of supply obligations. These instruments should be used in a national, regional and Union context, as appropriate, to ensure that they deliver a consistent and cost-effective result.

- (20) The security of supply aspects of long-term planning of investments in sufficient cross-border capacities and other infrastructures, ensuring the long-term ability of the system to guarantee security of supply and meet reasonable demands, are addressed by Directive 2009/73/EC. Meeting the security of supply standards may require a transitional period to allow the necessary investments to be made. The 10-year network development plan drawn up by the ENTSO-G and supervised by ACER is a fundamental tool to identify the required investments needed at Union level, inter alia in order to implement the infrastructure requirements laid down in this Regulation.
- (21) The ENTSO-G and ACER, as members of the Gas Coordination Group, should be fully involved in the process of cooperation and consultations at Union level within their areas of responsibility.
- (21a) The Gas Coordination Group is the main body to be consulted by the Commission in the context of the establishment of the Preventive Action Plans and the Emergency Plans. It is recalled that the European Network of Transmission System Operators for Gas ("ENTSO-G") and the Agency for the Cooperation of Energy Regulators ("ACER") are members of the Gas Coordination Group and will be consulted in that context.
- (22) In order to ensure the highest level of preparedness in case of supply disruption, Emergency Plans should be established by the Competent Authorities, after consultation of the natural gas undertakings. Such plans should not be inconsistent with each other at national, regional and Union level. Their content should follow best practices among existing plans and should define clear roles and responsibilities for all concerned natural gas undertakings and Competent Authorities. Joint emergency plans at regional level should be established where possible and necessary.

- (23) To strengthen the solidarity between Member States in the case of a Union Emergency and in particular to support Member States which are exposed to less favourable geographical or geological conditions, Member States should devise measures to exercise solidarity. Natural gas undertakings should devise measures such as commercial agreements, which may comprise increased gas exports or increased releases from storages. It is important to encourage the conclusion of arrangements between natural gas undertakings. The actions of the Emergency Plan should include mechanisms, where appropriate, ensuring fair and equitable compensation of the natural gas undertakings. Solidarity measures may be particularly appropriate between Member States for which the Commission recommends the establishment of joint preventive actions plans or emergency plans at regional level.
- (23a) In the context of this Regulation it is emphasized that the Commission has an important role to play in case of an Emergency, be it at regional or Union level.
- (24) European solidarity should also, where needed, take the form of civil protection assistance provided by Union and its Member States. Such assistance should be facilitated and coordinated by the Union Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom<sup>1</sup>.
- (25) The sovereign rights of Member States over their own natural resources are not affected by this Regulation.
- (26) Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection<sup>2</sup> lays down a process with a view to enhancing the security of designated European Critical Infrastructures, including certain gas infrastructures, in the Community. Directive 2008/114/EC together with the present Regulation contribute to creating a comprehensive approach to the energy security of the Union.
- (27) Emergency Plans should be updated regularly and published. They should be subject to peer review and tested.

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<sup>1</sup> OJ L 314, 1.12.2007, p. 9

<sup>2</sup> OJ L 345, 23.12.2008, p. 75.

- (28) The Gas Coordination Group, established by Directive 2004/67/EC of 26 April 2004 concerning the measures to safeguard security of natural gas supply<sup>1</sup>, should act as adviser to the Commission to facilitate the coordination of security of supply measures in the case of a Union emergency. It should also monitor the adequacy and appropriateness of measures to be taken according to this Regulation.
- (29) This Regulation aims at empowering natural gas undertakings and Competent Authorities of the Member States to ensure that the internal gas market works effectively for as long as possible in the case of a supply disruption, prior to measures being taken by Competent Authorities to address the situation in which the market can no longer deliver the required gas supplies. Such exceptional measures should be fully compliant with Union rules and should be notified to the Commission.
- (30) Since gas supplies from third countries are central to the security of gas supply of the Union, the Commission should coordinate the actions with regard to third countries, working with producer and transit countries on arrangements to handle crisis situations and to ensure a stable gas flow to the Union. The Commission should be entitled to deploy a task force to monitor gas flows into the Union in crisis situations, in consultation with the third countries involved, and, where a crisis arises due to difficulties in a third country, to assume a mediation and facilitation role.
- (30a) It is important that the conditions for the supply from third countries do not distort competition and are in line with the internal market rules.
- (30b) Where there is reliable information of a situation outside the Union that threatens the security of supply of one or several Member States and that possibly triggers an early warning mechanism, the Commission should inform the Gas Coordination Group without delay and the Union should take appropriate actions to try to diffuse the situation.
- (31) In February 2009, the Energy Council concluded that transparency and reliability should be increased through meaningful exchange of information between the Commission and Member States level on energy relations, including long term supply arrangements, with third countries while preserving commercially-sensitive information.

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<sup>1</sup> OJ L 127, 29.4.2004, p. 92.

- (31a) While rules contained in the Treaties, in particular rules on competition, apply to services of general economic interest, in so far as the application of such rules does not obstruct their performance, Member States enjoy a wide discretion in providing, commissioning and organizing Public Service Obligations.
- (32) Since the objectives of the action to ensure the security of gas supply in the Union cannot be sufficiently achieved by the Member States only and can therefore, by reason of the scale or effects of the action, better be achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (33) Directive 2004/67/EC should be repealed.

HAVE ADOPTED THIS REGULATION:

## **Article 1**

### **Subject-matter**

This Regulation establishes provisions aimed at safeguarding the security of gas supply by ensuring the proper and continuous functioning of the internal market in natural gas, by allowing for exceptional measures to be implemented when the market can no longer deliver the required gas supplies and by providing for a clear definition and attribution of responsibilities among the natural gas undertakings, the Member States and the Union regarding both preventive action and the reaction to concrete disruptions of supply. This Regulation also provides transparent mechanisms, in the spirit of solidarity, for the coordination of planning for, and response to, an emergency at Member States', regional and Union level.

## **Article 2**

### **Definitions**

For the purpose of this Regulation the definitions of Directive 2009/73/EC<sup>1</sup> (the "Gas Directive"), Regulation 2009/715/EC and the Regulation 2009/713/EC<sup>2</sup> (the "Agency Regulation") shall apply. In addition the following definitions shall apply:

1. "protected customers" means all household customers connected to a gas distribution network and, in addition, if the Member State concerned so decides, may also include
  - i) small and medium-sized enterprises, provided that they are connected to a gas distribution network, and essential social services, provided that they are connected to a gas distribution or transmission network, and provided that all these additional customers do not represent more than 20 % in the final use of gas, and/or
  - ii) district heating installations to the extent they deliver heating to household customers and the customers referred to in point i) provided that these installations are not able to switch to other fuels and are connected to a gas distribution or transmission network.

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<sup>1</sup> Directive 2009/73/EC of the European Parliament and of the Council amending the Directive 2003/55/EC concerning the common rules for the internal market in natural gas (OJ L [ ]).

<sup>2</sup> Regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators (OJ L [ ]).

As soon as possible and no later than 12 months after the entry into force of the Regulation Member States shall notify the Commission whether they intend to include i) and/or ii) in their definition of protected customers.

2. “Competent Authority” means the national governmental authority or the national regulatory authority designated by each Member State to be responsible for ensuring the implementation of the measures set out in this Regulation. This is without prejudice to the ability of Member States to allow the Competent Authority to delegate specific tasks set out in this Regulation to other bodies than the Competent Authority. These tasks shall be performed under the supervision of the Competent Authority and shall be specified in the plans referred to in Article 4.

### **Article 3**

#### **Responsibility for security of gas supply**

1. Security of gas supply is a shared responsibility of the natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission within their respective areas of activities and competence. This requires a high degree of cooperation between them.
2. As soon as possible, but at the latest 12 months after entry into force, each Member State shall designate a Competent Authority that ensures the implementation of the measures provided for in this Regulation. Where appropriate, until the Competent Authority is formally designated, the national entities currently responsible for security of gas supply shall carry out the measures to be implemented by the Competent Authority according to this Regulation. The measures shall include the carrying out of the risk assessment as defined in Article 8, and, on the basis of the risk assessment, the establishment of a Preventive Action Plan, the establishment of an Emergency Plan, and the regular monitoring of security of gas supply at national level. Competent Authorities shall cooperate with each other to seek to prevent a supply disruption and to limit damages in that event. Nothing shall prevent Member States from adopting implementing legislation if needed to fulfil the requirements of this Regulation.

3. Each Member State shall notify to the Commission without delay the Competent Authority after its designation and, where appropriate, the national entities responsible for security of gas supply acting as provisional Competent Authority in line with paragraph 2 and shall make this designation public.
4. When implementing the measures of this Regulation, the Competent Authority shall establish the roles and responsibilities of the different actors involved in a way so as to ensure that a three level approach is respected which first involves the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union.
5. The Commission shall, where appropriate, coordinate the actions of the Competent Authorities at the regional and Union level, as set out in this Regulation, inter alia through the Gas Coordination Group referred to in Article 11 or the crisis management group referred to in Article 10(3a), in particular in the case of a regional or Union Emergency as defined in Article 10(1).
6. The measures to ensure the security of supply contained in the Preventive Action Plans and in the Emergency Plans shall be clearly defined, transparent, proportionate, non-discriminatory, verifiable, shall not unduly distort competition and the effective functioning of the internal market in natural gas and shall not endanger the security of gas supply of other Member States or of the Union as a whole.

#### **Article 4**

##### **Establishment of Preventive Action Plan and Emergency Plan**

1. The Competent Authority of each Member State, after consultation of the natural gas undertakings, of the relevant organisations representing the interests of household and industrial gas customers and of the national regulatory authority, where it is not the Competent Authority, shall, without prejudice to paragraph 3, establish at national level:
  - (a) A Preventive Action Plan containing the measures needed to remove or mitigate the risks identified, in accordance with the risk assessment undertaken pursuant to Article 8; and
  - (b) An Emergency Plan containing the measures to be taken to remove or mitigate the impact of a gas supply disruption in accordance with Article 9.

2. Before adopting those Preventive Action and Emergency Plans at national level, the Competent Authorities shall, at the latest 18 months after entry into force of this Regulation, exchange their draft Plans and consult each other at the appropriate regional level and with the Commission with a view to ensuring that their draft Plans and measures are not inconsistent with the Preventive Action and Emergency Plans of other Member States and comply with the provisions of this Regulation and other provisions of Union law. Such consultation shall be carried out in particular between neighbouring Member States, notably between isolated systems forming gas islands and their neighbouring Member States, and may cover for instance those identified in the indicative list of Annex IV.
3. Based on these consultations and possible recommendations of the Commission, the Competent Authorities concerned may decide to establish joint Preventive Action Plans and Emergency Plans at regional level, in addition to the Plans established at national level. In the case of joint Plans at regional level, the Competent Authorities concerned shall endeavour, where appropriate, to conclude agreements in order to implement the regional cooperation. If necessary, these agreements shall be formally endorsed by Member States.
- 3a. When establishing and implementing the Preventive Action Plan and Emergency Plan at national and/or regional level, the Competent Authority shall take due account of the safe operation of the gas system at all times and address and set out in those Plans the technical constraints affecting the operation of the network including the technical and safety reasons which may lead to the reduction of flows in case of Emergency.
4. Within 24 months after entry into force, the Preventive Action and Emergency Plans, including, where applicable, joint Preventive Action and Emergency Plans shall be adopted, made public and notified to the Commission without delay. The Commission shall inform the Gas Coordination Group. The Competent Authority shall ensure the regular monitoring of the implementation of the Plans.

5. Within three months after the notification of the Preventive Action and Emergency Plans by the Competent Authorities:
- (i) the Commission shall assess those Plans, in accordance with Paragraph 5(ii). In order to do so, the Commission shall consult the Gas Coordination Group on those Plans and duly take into account its opinion. The Commission shall report its assessment of the Competent Authorities' Plans to the Gas Coordination Group, and
  - (ii) Where the Commission, based on these consultations,
    - (a) assesses that a Preventive Action or Emergency Plan is not effective to mitigate the risks as identified in the risk assessment, it may recommend to the Competent Authority or Competent Authorities concerned to amend the Plan.
    - (b) considers that a Preventive Action Plan or an Emergency Plan is inconsistent with the risk scenarios or the Plans of other Competent Authorities, or that it does not comply with the provisions of this Regulation or other provisions of Union law, it shall request the amendment of the Plan.
    - (c) considers that the Preventive Action Plan endangers the security of gas supply of other Member States or of the Union as a whole it shall decide to require the Competent Authority to review the Plan and may present specific recommendations for amending it. The Commission shall give detailed reasons for its decision.
6. Within 4 months from notification of the Commission's request referred to in paragraph 5, littera (b), the Competent Authority concerned shall amend its Plan and notify the amended Plan to the Commission or shall set out to the Commission why it does not agree with the request. In that case, the Commission may, within 2 months from the notification of the Competent Authority, withdraw its request or convene the Competent Authorities concerned and, if the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any amendments to the Plans. The Competent Authority shall fully take account of the position of the Commission. Where the final decision of the Competent Authority differs from the Commission's position, the Competent Authority shall provide and make public, together with that decision and the Commission position, the reasoning underlying such decision within 2 months from receipt of the position of the Commission. Where applicable, the Competent Authority shall make public the amended version without delay.

- 6a. Within three months from notification of the Commission's decision referred to in paragraph 5, littera ©, the Competent Authority concerned shall amend its Plan and notify the amended Plan to the Commission or shall set out to the Commission why it does not agree with the decision. If within 2 months after the Competent Authority's reply not to amend the Plan the Commission decides not to amend or withdraw its request, the Competent Authority concerned shall amend the Plan within two months after the notification of the Commission's decision, taking utmost account of the Commission's recommendation referred to in paragraph 5, littera ©, and notify it to the Commission.

The Commission shall inform the Gas Coordination Group and duly take into account their recommendations when drafting its opinion on the amended Plan, which shall be delivered within 2 months from the notification of the Competent Authority. The Competent Authority concerned shall take utmost account of the Commission's opinion and within 2 months of the receipt of the Commission's opinion shall adopt and make public the resulting amended Plan.

7. The confidentiality of commercially sensitive information shall be respected.

## **Article 5**

### **Content of the Preventive Action Plan**

1. The national and joint Preventive Action Plans shall contain:
- (a) the results of the risk assessment as laid down in Article 8;
  - (b) the measures, volumes, capacities and the timing needed to fulfil the infrastructure and supply standards, as laid down in Articles 6 and 7, including where applicable, the extent to which demand side measures can sufficiently and timely compensate a supply disruption as referred to in Article 6(2), the definition of the single largest infrastructure of common interest in the case of application of Article 6(3) and any increased supply standard under Article 7(1a);
  - © obligations imposed on natural gas undertakings and other relevant bodies, including for the safe operation of the gas system;

- (d) the other preventive measures, such as the need to enhance interconnections between neighbouring Member States and the possibility to diversify routes and sources of supply, if appropriate, to address the risks identified in order to maintain gas supply to all customers as far as possible;
  - (db) the mechanisms to be used for cooperation with other Member States for preparing and implementing joint Preventive Action and Emergency Plans, as referred to in art. 4.3, where applicable;
  - (e) information on existing and future interconnections, including those providing access to the EU gas network, cross-border flows, cross-border access to storage facilities and the physical capacity to transport gas in both directions, in particular with respect to the event of an Emergency;
  - (f) information on all public service obligations that relate to security of gas supply.
2. The Preventive Action Plan, in particular the actions to meet the infrastructure standard as laid down in Article 6, shall take into account the ten year network development plan to be elaborated by the ENTSO-G pursuant to Article 8(10) of Directive 2009/73/EC.
  3. The Preventive Action Plan shall be based primarily on market measures, and shall take into account the economic impact, effectiveness and efficiency of the measures, the effects on the functioning of the internal energy market and the impact on the environment and on consumers, and shall not put an undue burden on natural gas undertakings, nor negatively impact on the functioning of the internal market in natural gas.
  4. The Preventive Action Plan shall be updated every two years, unless required more often by circumstances, and reflect the updated risk assessment. The consultation foreseen between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plan

## Article 6

### Infrastructure standard

1. Member States or, where a Member State so provides, the Competent Authority shall ensure that the necessary measures are taken so that by [4 years after entry into force] at the latest, in the event of a disruption of the single largest gas supply infrastructure, the capacity of the remaining infrastructure, determined according to the N-1 formula as provided in point 2 of Annex I, is able, without prejudice to paragraph 2, to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand statistically occurring once every twenty years. This is without prejudice, where appropriate and necessary, to the responsibility of system operators to make the corresponding investments and to the obligations of transmission system operators as laid down in Directive 2009/73/EC and Regulation (EC) No 715/2009.
2. The obligation to ensure that the remaining infrastructure has the capacity to satisfy total gas demand, as referred to in paragraph 1, shall also be considered to be fulfilled where the Competent Authority demonstrates in the Preventive Action Plan that a supply disruption may be sufficiently and timely compensated for by appropriate market-based demand side measures. For that purpose, the formula as provided in point 4 of Annex I shall be used.
3. Where appropriate according to the risk assessment referred to in Article 8, the Competent Authorities concerned may decide that the obligation set out in paragraph 1 shall be fulfilled at a regional level instead of a national level. In that case, joint Preventive Action Plans pursuant to Article 4(3) shall be established. Point 5 of Annex I shall apply.
4. Each Competent Authority shall, after consultation of the relevant natural gas undertakings, report to the Commission without delay any non-compliance with the obligations set out in paragraphs 1 to 3 and inform on the reasons for that non-compliance.
5. The transmission system operators shall enable permanent physical capacity to transport gas in both directions on all cross-border interconnections between Member States as early as possible and at the latest within three years from the entry into force of this Regulation, except
  - (i) in cases such as connections to production facilities, to LNG facilities and to distribution networks or

(ii) where an exemption has been granted according to Article 6a.

Within that three year period, the gas transmission system operators shall adapt the functioning of the transmission systems in part or as a whole so as to enable bi-directional gas flows on cross-border interconnections.

6. Where reverse flow already exists or is under construction for a particular cross-border interconnection, the obligation, referred to in paragraph 5, shall be deemed to be met for that interconnection except where an enhancement of capacity is requested by one or more Member States for security of supply reasons. Where such a request for enhancement is made, the procedure set out in Article 6a shall apply.
7. Member States or, where a Member State so provides, the Competent Authority shall ensure that as a first step the market is always tested in a transparent, detailed and non-discriminatory manner *to* assess whether the investment in infrastructure needed to fulfil the obligations set out in paragraphs 1 and 5 is required by the market.
8. National Regulatory Authorities shall take into account the efficiently incurred costs of fulfilling the obligations set out in paragraphs 1 and 3 and the costs of enabling the permanent physical capacity to transport gas in both directions so as to grant appropriate incentive when fixing or approving, in a transparent and detailed manner, the tariffs or methodologies in line with Article 41(8) of Directive 2009/73/EC and Article 13 of Regulation (EC) 715/2009. In so far as an investment for implementing reverse flows is not required by the market and where this investment incurs costs in more than one Member State or in one Member State for the benefit of one or more other Member States, the national regulatory authorities of all Member States concerned shall jointly decide on cost allocation before any investment decision is taken. The cost allocation shall in particular take into account the proportion of the benefits of the infrastructure investments for the increase of security of supply of the Member States concerned. Article 8(1) of Regulation (EC) No 713/2009 shall apply.

9. The Competent Authority shall ensure that any new transmission infrastructure contributes to the security of supply through the development of a well connected network, including where appropriate by means of a sufficient number of cross border entry and exit points according to the market demand and the risks identified. The Competent Authority shall assess, where appropriate, in the risk assessment where internal bottlenecks exist and whether national entry capacity and infrastructures, in particular transmission networks, are capable of adapting the national gas flows to the scenario of the disruption of the single largest gas supply infrastructure identified in the risk assessment.
10. As an exception, Luxembourg, Slovenia and Sweden shall endeavour to meet the obligations set out in paragraphs 1 and 2, while ensuring the gas supplies to protected customers according to Article 7, as long as:
- Luxembourg and Slovenia have at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities or an LNG facility in their territories.
  - Sweden has no gas transit to other Member States in its territory, an annual gross inland gas consumption of less than 2 Mtoe and less than 5% of total primary energy consumption from natural gas.

These three Member States shall ensure, in a transparent, detailed and non-discriminatory manner, regular market testing for investments in infrastructure and make public the result of these tests.

The Member States referred to in the first subparagraph shall inform the Commission of any change of the above-mentioned conditions. This provision shall not apply anymore where at least one of the conditions referred to in the first subparagraph is not fulfilled.

Eight years from the entry into force of this Regulation, the Member States referred to in the first sub-paragraph shall transmit a report to the Commission describing the situation with respect to the above-mentioned conditions and the prospects for the compliance with the obligations in paragraph 1 and 2, taking into account the economic impact of meeting the infrastructure standard, the results of the market testing and the gas market development and gas infrastructure projects in the region.. On the basis of the report and if the conditions set out in the first sub-paragraph are still met, the Commission may decide that those Member States can continue to proceed as set out in the first sentence of the first sub-paragraph for four more years. In case of a positive decision this procedure shall be repeated after four years.

## **Article 6a**

### **Procedure for establishing reverse flow capacity or seeking exemption**

1. For each cross-border interconnection between Member States, except for those exempted in Article 6(5)(i) and except where reverse flow capacity already exists or is under construction and no enhancement has been requested by one or more Member States for security of supply reasons, within 15 months of the entry into force of the regulation, transmission system operators shall submit to their Member States or, where Member States so provide, their Competent Authorities or their Regulatory Authorities (referred to in this Article as 'concerned authorities'), after consulting with all other concerned transmission system operators :
  - i) a proposal for reverse flow capacity, or
  - ii) a request for an exemption from the obligation to enable reverse flow.
2. The proposal for reverse flow capacity or the request for exemptions referred to in paragraph 1 shall be based on an assessment of market demand, projections for demand and supply, the technical feasibility, the costs of the reverse flow capacity, including the consequent reinforcement of the transmission system, and the benefits for security of supply, taking also into account, where appropriate, the possible contribution of reverse flow to meeting, together with other possible measures, the infrastructure standard set out in Article 6 of the Member States benefiting from the reverse flow capacity.

3. The concerned authority receiving the proposal or exemption request shall notify the concerned authority of the other Member States that, according to the risk assessment, could benefit from the reverse flow capacities and the Commission, of the proposal or the exemption request without delay, and give them the possibility to issue an opinion within a period of four months following receipt of that notification.
4. Within two months of the period referred to in paragraph 3, the concerned authority, on the basis of the criteria referred to in paragraph 2, the risk assessment carried out in line with Article 8, taking utmost account of the opinions received in accordance with paragraph 3, taking into account aspects that are not strictly economic, such as security of gas supply and the contribution to the internal gas market, shall:
  - a) grant an exemption if bidirectional flow capacity would not significantly enhance the security of supply of any Member State or region or that the investment costs would significantly outweigh the prospective benefits for security of supply, or
  - b) accept the proposal for reverse flow capacity, or
  - c) require the transmission system operator to amend its proposaland shall notify its decision without delay to the Commission, together with all relevant information showing the basis of the decision, including the opinions received in accordance with paragraph 3. The concerned authorities shall endeavour to ensure that decisions which concern the same interconnection or interconnected pipelines and which are mutually dependent are not contradicting each other.

5. Within two months from the receipt of that notification, and where there are discrepancies between the decision of the concerned authority and the opinions of other concerned authorities involved, the Commission may require that the concerned authority amends its decision. This period may be extended by one additional month where additional information has been sought by the Commission. Any proposal by the Commission requiring amendment to the concerned authority 's decision shall be made on the basis of the elements and criteria set out in paragraph 2 and point a of paragraph 4, taking into account the reasons for the concerned authority 's decision. The concerned authority shall comply with the request by adjusting its decision within a period of four weeks. In the event that the Commission has not acted within that 2 month period, it shall be deemed not to have raised objections to the decision of the concerned authorities involved.
6. Where additional reverse flow capacity is needed according to the results of the risk assessment carried out in line with Article 8, the procedure set out in paragraphs 1 to 5 shall be repeated upon request from a transmission system operator, a concerned authority or the Commission.
7. The Commission and the concerned authority shall preserve the confidentiality of commercially sensitive information at all times.

## **Article 7**

### **Supply standard**

1. The Competent Authority shall require natural gas undertakings to take the measures<sup>1</sup> to ensure the gas supply to the protected customers of the Member State in the following cases:
  - a) extreme temperatures during a seven days peak period statistically occurring once every twenty years;
  - b) any period of at least 30 days of exceptionally high gas demand, statistically occurring once every twenty years; and
  - c) for a period of at least 30 days in case of the disruption of the largest infrastructure under average winter conditions.

For the purpose of the first subparagraph, the Competent Authority shall identify the natural gas undertakings at the latest 18 months after entry into force.

- 1a. Any increased supply standard going beyond 30 days for the periods referred to in points b and c of paragraph 1 or any additional obligation imposed for reasons of security of gas supply shall be based on the risk assessment referred to in Article 8, be reflected in the Preventive Action Plan and shall
- comply with Article 3.6;
  - not unduly distort competition or hamper the functioning of the internal market in natural gas;
  - not impact negatively on the ability of any other Member State to supply their protected customers according to Article 7 in the event of a national, regional or Union emergency; and
  - comply with the criteria specified in Article 10.3b in a Union or regional emergency.

In the spirit of solidarity, the Competent authority shall identify in the Preventive Action and Emergency Plans how any increased supply standard or additional obligation imposed on natural gas undertakings may be temporarily reduced II in the event of a regional or Union emergency.

- 1b. After the periods defined by the Competent Authority according to paragraph 1 and 1a, or under more severe conditions than those defined in paragraph 1, the Competent Authorities and natural gas undertakings shall endeavour to maintain as far as possible the supply, in particular, for the protected customers.
2. The obligations imposed on natural gas undertakings for the fulfilment of the supply standards as laid down in this Article shall be non-discriminatory and shall not impose an undue burden on these undertakings.
3. The natural gas undertakings are allowed to meet these obligations on a regional or Union level where appropriate. The Competent Authorities shall not require that these standards are met based on infrastructure located only within their territory.
4. The Competent Authority shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the internal market in natural gas and at a price respecting the market value of the supplies.

## Article 8

### Risk assessment

1. By 12 months after entry into force each Competent Authority shall fully assess, on the basis of the following common elements, the risks affecting the security of gas supply in its Member State by:
  - a) using the standards specified in Articles 6 and 7, showing the calculation of the N-1 formula, the assumptions used, including for the calculation of the N-1 formula at regional level, and the data necessary for such calculation;
  - b) taking into account all relevant national and regional circumstances, in particular market size, network configuration, actual flows, including outflows from the Member State concerned, the possibility of reverse flows including the potential need for consequent reinforcement of the transmission system, the presence of production and storage and the role of gas in the energy mix, in particular with respect to district heating and power generation and for the operation of industries, and safety and gas quality considerations;
  - c) running various scenarios of exceptionally high gas demand and supply disruption, such as failure of main transmission infrastructures, storages or LNG terminals, and disruption of supplies from third country suppliers, taking into account the history, probability, season, frequency and duration of their occurrence as well as, where appropriate, geopolitical risks, and assessing the likely consequences of these scenarios;
  - d) identifying the interaction and correlation of risks with other Member States, including *inter alia* as regards interconnections, cross-border supplies, cross-border access to storage facilities and the physical capacity to transport gas in both directions;
  - e) taking into account the maximal interconnection capacity of each border entry and exit points
- 1a. Where Article 4(3) is applied, the Competent Authorities concerned shall also perform a joint risk assessment at regional level.

2. The natural gas undertakings, industrial gas customers, the relevant organisations representing the interests of household and industrial gas customers as well as Member States and the national regulatory authority, where it is not the Competent Authority, shall cooperate with the Competent Authority and provide it upon request with all necessary information for the risk assessment.
3. The risk assessment shall be updated for the first time at the latest 18 months after the adoption of the Plans referred to in Article 4, and thereafter every two years before 30 September of that year unless required more often by circumstances, and take account of progress made in investments needed to cope with the infrastructure standard defined in Article 6 and of country specific difficulties encountered in the implementation of new alternative solutions.
4. The risk assessment, including updated versions, shall be made available to the Commission without delay.

## **Article 9**

### **Emergency Plan and Crisis Levels**

1. The national or joint Emergency Plans shall:
  - (1) Build upon the crisis levels according to paragraph 2;
  - (2) Define the role and responsibilities of the natural gas undertakings and of the industrial gas customers including relevant electricity producers, taking account of the different extents to which they are affected in the event of gas supply disruptions, and their interaction with the Competent Authorities and where appropriate with the national regulatory authorities at each of the crisis levels defined in paragraph 2;
  - (3) Define the role and responsibilities of the Competent Authorities and of the other bodies to which tasks have been delegated as referred to in Article 2(2) at each of the crisis levels defined in paragraph 2;
  - (3a) Ensure that natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level.

- (3b) identify, if appropriate, the measures and actions to be taken to mitigate the potential impact of a gas supply disruption on the supply of electricity generated from gas and district heating.
  - (4) Establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows;
  - (5) Designate a crisis manager or team and define its role;
  - (6) Identify the contribution of the market based measures, notably those listed in Annex II, for coping with the situation in the Alert level and mitigating the situation in the Emergency level.
  - (7) Identify the contribution of the non-market based measures planned or to be implemented for the Emergency level, notably those listed in Annex III and assess the degree to which the use of non-market based measures is necessary to cope with the crisis, assess their effects and define the procedures to implement them, non-market based measures only being used when market-based mechanisms alone can no longer ensure supplies in particular to protected customers;
  - (8) Describe the mechanisms used to cooperate with other Member States for each crisis level;
  - (9) Detail the reporting obligations imposed on the natural gas undertakings in the Alert and Emergency level;
  - (10) Establish a list of predefined actions to make gas available in the case of an Emergency, including commercial agreements between the parties involved in such actions and the compensation mechanisms for natural gas undertakings where appropriate, taking due account of the confidentiality of sensitive data. Such actions may involve cross-border agreements between Member States and/or natural gas undertakings.
- 1a. The Emergency Plan shall be updated every two years, unless required more often by circumstances, and reflect the updated risk assessment. The consultation foreseen between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plan.

2. The three main crisis levels shall be as follows:
  - (1) Early warning level (Early Warning): when there is concrete, serious and reliable information, which may be triggered by an Early Warning Mechanism, that an event may occur which is likely to deteriorate significantly the supply situation and is likely to lead to the Alert or the Emergency level being triggered;
  - (2) Alert level (Alert): when a supply disruption or exceptionally high gas demand occurs which significantly deteriorates the supply situation, but the market is still able to manage that disruption or demand without the need to resort to non-market measures;
  - (3) Emergency level (Emergency): in the event of exceptionally high gas demand or significant supply disruption or other significant deterioration of the supply situation and in the event that all relevant market measures have been implemented but the supply of gas is insufficient to meet remaining gas demand so that non-market measures have to be additionally introduced with a view, in particular, to safeguarding supplies of gas to protected customers according to Article 7.
3. The Emergency Plan shall ensure that cross-border access to infrastructure in line with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible in the event of an Emergency. The Emergency Plan shall be in line with Article 3(6) and shall not introduce any measure unduly restricting the flow of gas across the borders.
4. When the Competent Authority declares any of the crisis levels, it shall immediately inform the Commission and provide it with all the necessary information, in particular with information on the actions it intends to take. In the event of an emergency which may result in a call for assistance from the Union and its Member States the Competent Authority of the Member State concerned shall without delay notify the Commission's Civil Protection Monitoring and Information Centre.

5. When the Competent Authority declares an Emergency it shall follow the pre-defined actions as defined in its Emergency Plan and shall immediately inform the Commission in particular of the actions it intends to take according to Article 9(1). In duly justified exceptional circumstances the Competent Authority may take actions deviating from the Emergency Plan. The Competent Authority shall immediately inform the Commission of any such action deviating from the Emergency Plan and provide justification therefor.
- The Commission may convene the Gas Coordination Group; where the Emergency has or may have effects on at least one other Member State, it shall convene the Gas Coordination Group.
- 5a. The Member States and in particular the Competent Authorities shall ensure:
- (i) that no measures are introduced which unduly restrict the flow of gas within the internal market at any time;
  - (ii) that no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State and
  - (iii) that cross-border access to infrastructure in line with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.
6. The Commission shall verify, as soon as possible, but in any case within five days whether the declaration of an Emergency is justified according to paragraph 2(3) and whether the measures taken follow as closely as possible the actions as listed in the Emergency Plan and are not imposing an undue burden on the natural gas undertakings and are in line with paragraph 5a. The Commission may, at the request of a Competent Authority, natural gas undertakings or on its own initiative, request the Competent Authority to modify the measures where they are contrary to the conditions established in the first sentence, and to lift the declaration of Emergency if the Commission considers that it is not or no longer justified according to point 3 of paragraph 2.

Within three days from notification of the Commission's request, the Competent Authority shall change its action and notify the Commission or shall set out to the Commission why it does not agree with the request. In that case, the Commission may within three days amend or withdraw its request or convene the Competent Authority or, where appropriate, the Competent Authorities concerned, and, if the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Competent Authority shall fully take account of the position of the Commission. Where the final decision of the Competent Authority differs from the Commission's position, the Competent Authority shall provide the reasoning underlying such decision.

## **Article 10**

### **Union and regional emergency responses**

1. At the request of one Competent Authority that has declared an Emergency following the verification in accordance with Article 9(6), the Commission may declare a Union Emergency or a regional Emergency for a specifically affected geographical region. At the request of at least two Competent Authorities that have declared an Emergency following the verification in accordance with Article 9(6), and where the reasons for these Emergencies are linked, the Commission shall declare, as appropriate, a Union Emergency or a regional Emergency. In all cases, the Commission, using the means of communication most appropriate to the situation, shall gather the views and take due account of all the relevant information of the other Competent Authorities. When it assesses that the underlying basis for the Union Emergency or a regional Emergency is no longer sufficient, the Commission shall declare an end of the Union Emergency or the regional Emergency. In all cases, the Commission shall give its reasons and inform the Council of its decision.
2. The Commission shall convene the Gas Coordination Group as soon as it declares Union Emergency or a regional Emergency. During the Union or Regional Emergency, at the request of at least three Member States, the Commission may restrict the participation in the Gas Coordination Group, for an entire meeting or part thereof, to the representatives of the Member States and the Competent Authorities.

3. In a Union or a regional Emergency as referred to in paragraph 1, the Commission shall coordinate the actions of the Competent Authorities, taking full account of relevant information from and the results of the consultation of the Gas Coordination Group. In particular the Commission shall:
  - a) ensure the exchange of information,
  - b) ensure the consistency and effectiveness of the actions at Member State and regional level in relation to the Union level,
  - c) coordinate the actions with regard to third countries.
- 3a. The Commission may convene a crisis management group composed of the crisis managers, as referred to in point 5 of Article 9(1), of the Member States concerned by the Emergency. The Commission, in agreement with the crisis managers, may invite other relevant stakeholders to participate. The Commission shall ensure that the Gas Coordination Group is regularly informed about the work undertaken by the crisis management group.
- 3b. The Member States and in particular the Competent Authorities shall ensure:
  - (i) that no measures are introduced which unduly restrict the flow of gas within the internal market at any time, notably the flow of gas to the affected markets;
  - (ii) that no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State and
  - (iii) that cross-border access to infrastructure in line with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.
4. If, at the request of a Competent Authority or a natural gas undertaking or on its own initiative, the Commission considers that in a Union or regional Emergency, an action taken by a Member State or a Competent Authority or the behaviour of a natural gas undertaking is contrary to paragraph 3b, the Commission shall request the Member State or the Competent Authority to change its action or to take action in order to ensure compliance with paragraph 3b, informing of the reasons why it considers that the Member State or the Competent Authority needs to do so. Due account shall be taken of the need to operate the gas system safely at all times.

Within three days from notification of the Commission's request, the Member State or the Competent Authority shall change its action and notify the Commission or shall set out to the Commission why it does not agree with the request. In that case, the Commission may within three days amend or withdraw its request or convene the Member State or the Competent Authority and, if the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Member State or the Competent Authority shall fully take account of the position of the Commission. Where the final decision of the Competent Authority or the Member State differs from the Commission's position, the Competent Authority or the Member State shall provide the reasoning underlying such decision.

5. The Commission, after consultation of the Gas Coordination Group, shall establish a permanent reserve list for a monitoring task force consisting of industry experts and representatives of the Commission. This monitoring task force may be deployed outside the Union when necessary and shall monitor and report on the gas flows into the Union, in cooperation with the supplying and transiting countries.
6. The Competent Authority shall provide to the Commission's Civil Protection Monitoring and Information Centre the information on any need for assistance. The Civil Protection Monitoring and Information Centre shall assess the overall situation and provide advice on the assistance that should be provided to the most affected Member States, and where appropriate to third countries.

## **Article 11**

### **Gas Coordination Group**

1. A Gas Coordination Group is established to facilitate the coordination of measures concerning the security of supply. The Group shall be composed of representatives of the Member States, in particular of their Competent Authorities, as well as ACER, ENTSO-G and representative bodies of the industry concerned and those of relevant customers. The Commission shall, in consultation with the Member States, decide on the composition of the Group, ensuring it is fully representative. The Commission shall chair the Group. The Group shall establish its rules of procedure.

2. In accordance with the provisions of this Regulation, the Gas Coordination Group shall be consulted and shall assist the Commission in particular on the following issues
  - (a) security of gas supply, at any time and more especially in times of Emergency;
  - (b) all information relevant for security of gas supply at national, regional and Union levels;
  - © best practices and possible guidelines to all the parties concerned;
  - (d) the level of security of supply, benchmarks and assessment methodologies;
  - (e) national, regional and Union scenarios and testing the levels of preparedness;
  - (ea) the assessment of the Preventive Action Plans and the Emergency Plans and the implementation of the measures foreseen in those plans;
  - (f) coordination of measures to deal with Emergency within the Union, Energy Community Treaty Countries and with third Countries;
  - (h) assistance needed by the most affected Member States.
3. The Commission shall convene the Gas Coordination Group on a regular basis and share the information received from the Competent Authorities whilst ensuring the confidentiality of commercially sensitive information.

## **Article 12**

### **Information exchange**

1. Where Member States have existing public service obligations that relate to security of gas supply, Member States shall make public these within 1 month of the Regulation being in force. Any subsequent updates or additional public service obligations that relate to security of gas supply shall also be made public as soon as adopted by Member States.
2. The natural gas undertakings concerned shall make available to the Competent Authority, during the Emergency, in particular the following information on a daily basis:
  - (a) daily gas demand and supply forecasts for the following three days;
  - (b) daily flow of gas at all cross-border entry and exit points as well as all points connecting a production facility, a storage facility or an LNG terminal to the network, in mcm/d;
  - © period, expressed in days, during which it is expected that gas supply to the protected customers can be ensured.

3. The Commission is entitled, in the case of a Union or regional Emergency, to request the Competent Authority to provide it without delay at least:
  - (a) the information as laid down in paragraph 2
  - (b) information on the measures planned to be undertaken and already implemented by the Competent Authority to mitigate the Emergency, and their effectiveness;
  - © the requests made for additional measures to be taken by other Competent Authorities;
  - (d) the measures implemented at the request of other Competent Authorities.
4. The Competent Authorities and the Commission shall ensure the confidentiality of commercially sensitive information.
5. After an Emergency, the Competent Authority shall, as soon as possible and at the latest six weeks after the lifting of the Emergency, provide to the Commission a detailed assessment of the Emergency and the effectiveness of the implemented measures, including the assessment of economic impact of the Emergency, the impact on the electricity sector and the assistance provided to and/or received from the Union and its Member States. Such assessment shall be made available to the Gas Coordination Group and shall be reflected in the revisions of the Preventive Action Plans and the Emergency Plans.

The Commission shall analyse the assessments of the Competent Authorities and inform the Member States, the European Parliament and the Gas Coordination Group of its results in aggregated form.

6. In order to allow the Commission to assess the situation of the security of supply at Union level:
  - a) by 12 months after entry into force of this regulation at the latest Member States shall communicate to the Commission the existing inter-governmental agreements concluded with third countries which have an impact on the development of gas infrastructures and gas supplies; when concluding new inter-governmental agreements, the Member States shall inform the Commission;

- b) by 12 months after entry into force of this regulation at the latest as well as for new contracts or in case of changes to existing contracts natural gas undertakings shall notify the Competent Authorities concerned of the following details of the contracts with a duration of more than one year concluded with suppliers from third countries:
- Contract duration
  - Contracted volumes in total, on an annual basis and the average volume per month;
  - in the event of an Alert or Emergency, contracted maximal daily volumes ;
  - Contracted delivery points.

The Competent Authority shall notify these data in aggregate form to the Commission. In case of conclusion of new contracts and changes, the whole data should be notified again in aggregated form on a regular basis. The Competent Authority and the Commission shall ensure the confidentiality of the information.

## **Article 14**

### **Monitoring by the Commission**

The Commission shall carry out continuous monitoring of and reporting on security of gas supply measures, notably through an annual assessment of the reports of Member States referred to in Article 5 of Directive 2009/73/EC, and the information related to the implementation of Articles 11 and 52(1) of Directive 2009/73/EC and, once available, the information provided in the risk assessment and the Plans to be established according to this Regulation.

At the latest four years after entry into force the Commission, on the basis of the report to in Article 4(5) and after consulting the Gas Coordination Group:

- shall draw conclusions as to possible means to enhance security of supply at Union level, assess the feasibility of carrying out risk assessments and establishing Preventive Action Plans and Emergency Plans at Union level and shall report to the European Parliament and the Council on the implementation of this Regulation, including inter alia the progress made for market interconnectivity;
- shall also report to the European Parliament and the Council on the overall consistency of Member States' Preventive Action Plans and Emergency Plans as well as their contribution to solidarity and preparedness from a Union's perspective.

The report shall include, where appropriate, recommendations for improvement of this Regulation.

## **Article 15**

### **Repeal**

Without prejudice to the obligations of Member States concerning the deadlines for transposition and application of Directive 2004/67/EC, that Directive is repealed from the date of entry into force of this Regulation with the exception of Article 4(1) and (2) of that Directive which shall apply until the Member State concerned has defined protected customers in accordance with Article 2(1) of this Regulation and has identified the natural gas undertakings in accordance with Article 7(1) of this Regulation, but not later than 18 months after the said entry into force.

## **Article 15a**

### **Derogation**

This Regulation shall not apply to Malta and the Republic of Cyprus for as long as no natural gas is supplied on their territories. The time periods established in Articles 2(1), 3(2), 4(2), 4(4), 6(1), 6(5), 7(1), 8(1) and 12(6) shall apply to Malta and the Republic of Cyprus from the day natural gas was first supplied on their territories.

## **Article 16**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 6(8), 9(3) and 10(3b)(iii) shall apply from 3 March 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

## ANNEX I: CALCULATION OF THE N-1 FORMULA

### 1. Definition of the N-1 formula

The N-1 formula describes the ability of the gas infrastructure's technical capacity to satisfy total gas demand in the calculated area in case of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with a statistical probability of once in twenty years.

Gas infrastructure includes the natural gas transmission network including interconnectors as well as production, LNG and storage facilities connected to the calculated area.

The technical capacity<sup>1</sup> of all remaining available gas infrastructure in the event of disruption of the single largest gas infrastructure should be at least equal to the sum of the total daily gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in twenty years.

The results of the N-1 formula, as calculated below, should at least equal 100%.

### 2. Calculation method of the N-1 formula

$$N-1 [\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max}} \times 100, \quad N-1 \geq 100\%$$

### 3. Definitions of the parameters of the N-1 formula:

"Calculated area" means a geographical area for which the N-1 formula is calculated, as determined by the Competent Authority.

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<sup>1</sup> According to Article 2(18) of Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks "technical capacity" means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network.

### Demand-side definition

D<sub>max</sub> – means the total daily gas demand (in mcm/d) of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in twenty years.

### Supply-side definitions

EP<sub>m</sub> – Technical capacity of entry points (in mcm/d), other than production, LNG and storage facilities covered by P<sub>m</sub>, S<sub>m</sub> and LNG<sub>m</sub>, means the sum of the technical capacity of all border entry points capable of supplying gas to the calculated area;

P<sub>m</sub> – Maximal technical production capability (in mcm/d) means the sum of the maximal technical daily production capability of all gas production facilities which can be delivered to the entry points in the calculated area;

S<sub>m</sub> – Maximal technical storage deliverability (in mcm/d) means the sum of the maximal technical daily withdrawal capacity of all storage facilities which can be delivered to the entry points of the calculated area, taking into account their respective physical characteristics;

LNG<sub>m</sub> – Maximal technical LNG facility capacity (in mcm/d) means the sum of the maximal technical daily send-out capacities at all LNG facilities in the calculated area, taking into account critical elements like offloading, ancillary services, temporary storage and re-gasification of LNG as well as technical send-out capacity to the system;

I<sub>m</sub> – means the technical capacity of the single largest gas infrastructure (in mcm/d) with the highest capacity to supply the calculated area. When several gas infrastructures are connected to a common upstream or downstream gas infrastructure and cannot be separately operated, they shall be considered as one single gas infrastructure.

### 4. Calculation of the N-1 formula using demand-side measures (referred to in Article 6(2))

$$N-1 [\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max} - D_{eff}} \times 100 \quad N-1 \geq 100\%$$

### Demand-side definition

D<sub>eff</sub> - means the part (in mcm/d) of D<sub>max</sub> that in case of a supply disruption can be sufficiently and timely covered with market-based demand side measures in accordance with point b of Article 5(1) and Article 6 (2).

5. Calculation of the N-1 formula at regional level (referred to in Article 6(3))

The calculated area referred to in point 3 shall be extended to the appropriate regional level where applicable, as determined by the Competent Authorities of the Member States concerned. For the calculation of the N-1 formula at regional level, the single largest infrastructure of common interest shall be used. The single largest infrastructure of common interest to a region is the largest infrastructure in the region that directly or indirectly contributes to the supply of gas to the Member States of that region and shall be defined in the joint Preventive Action Plan.

The regional n-1 calculation can only replace the national n-1 calculation, where the largest infrastructure of common interest is of major importance for the supply of all concerned Member States according to the joint risk assessment.

## **ANNEX II: LIST OF MARKET BASED SECURITY OF GAS SUPPLY MEASURES**

In developing the Preventive and Emergency Plans the Competent Authority shall take into account the indicative and non-exhaustive list of measures set out in this Annex. The Competent Authority shall take into due account the environmental impact of the measures proposed when developing the Preventive Action and Emergency Plans and shall give preference, as far as possible, to those measures which have the least impact on the environment while taking into account security of supply aspects.

### **Supply side**

- Increased production flexibility
- Increased import flexibility
- Facilitating the integration of gas from renewable energy sources into the gas network infrastructure
- Commercial gas storage – withdrawal capacity and volume of gas in storage
- LNG terminal capacity and maximal send-out capacity
- Diversification of supplies and routes
- Reverse flows
- Coordinated dispatching by transmission system operators
- Use of long-term and short-term contracts
- Investments in infrastructure
- Contractual arrangements to ensure security of gas supply

### **Demand side**

- Use of interruptible contracts
- Fuel switch possibilities including use of alternative back-up fuels in industrial and power generation plants
- Voluntary firm load shedding
- Increased efficiency
- Increased use of renewable energy sources

## **ANNEX III: LIST OF NON-MARKET BASED SECURITY OF GAS SUPPLY MEASURES**

In developing the Preventive and Emergency Plans the Competent Authority shall consider the contribution of the following indicative and non-exhaustive list of measures only in the case of an Emergency:

### **Supply side**

- Use of strategic gas storage
- Enforced use of stocks of alternative fuels (e.g. in line with the provisions of the oil stocks Directive)
- Enforced use of electricity generated from sources other than gas
- Enforced increase of production levels
- Enforced storage withdrawal

### **Demand side**

- Various steps of compulsory demand reduction including:
- Enforced fuel switching
- Enforced utilisation of interruptible contracts, where not fully utilised as part of market measures,
- Enforced firm load shedding

## ANNEX IV: REGIONAL COOPERATION

In accordance with article 194 TFEU and as underlined in Article 6 of Directive 2009/73/EC and Article 12 of Regulation (EC) No 715/2009, regional cooperation is an expression of the principle of solidarity and is also an underlying concept of this Regulation. Regional cooperation is required in particular for the establishment of the risk assessment (Article 8); the Preventive and Emergency Action Plans (Articles 4, 5 and 9), the infrastructure and supply standards (Articles 6 and 7) and the provisions for the Union and regional emergency responses (Article 10).

The regional cooperation under this Regulation builds on existing regional cooperation involving natural gas undertakings, Member States and national regulatory authorities to enhance, among other objectives, also the security of supply and the integration of the internal energy market, such as the three Regional gas markets under the Gas Regional Initiative, the Gas Platform, the High Level Group of the Baltic Energy Market and Interconnection Plan, the Security of Supply Coordination Group of the Energy Community. However, the specific security of supply requirements are likely to foster new cooperation frameworks, and existing areas of cooperation will have to be adapted in order to guarantee the best efficiency.

In the light of the increasingly interconnected and interdependent markets and the completion of the internal gas market, cooperation of the following Member States, as an example and among others, including between parts of neighbouring Member States, can enhance their individual and collective security of gas supply:

- Poland and the three Baltic States,
- the Iberian Peninsula (Spain, Portugal) and France
- Ireland and United Kingdom,
- Bulgaria, Greece, Romania,
- Denmark and Sweden,
- Slovenia, Italy, Austria, Hungary, Romania
- Poland and Germany,
- France, Germany, Belgium, Netherlands and Luxembourg,
- Germany, Czech Republic, Slovakia,
- others.

Where necessary and appropriate, the regional cooperation among them may be extended to strengthen cooperation with neighbouring Member States, in particular in the case of energy islands, notably with a view to enhancing interconnections. Member States may also be part of different cooperation clusters.