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**NOTE**

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Subject : Proposal for a Regulation of the EP and of the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/CE  
- Progress report

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Delegations will find attached a progress report on the abovementioned proposal ([Annex I](#)) as well as a set of three questions ([Annex II](#)) with a view to structuring the policy debate at the coming TTE (Energy) Council.

The progress report was prepared on the basis of delegations' oral and written comments and reflects the current state of discussion, with a view to facilitating further work on the above proposal. It is submitted under the Secretariat's responsibility, without prejudice to future development in delegations' positions.

The questions for the policy debate are without prejudice to other important topics that Ministers might wish to address. In order to keep the debate as focused as possible, delegations at the Council are invited to concentrate their intervention to their key messages and provide additional elements in writing.

**Proposal for a Regulation of the EP and of the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/CE**

Progress report

**I. INTRODUCTION**

The Commission submitted, on 17 July 2009, a proposal for a Regulation to the Council and the European Parliament concerning the measures to safeguard security of gas supply, based on Article 95 EC Treaty. The Council is consulting the European Economic and Social Committee and the Committee of the Regions, the consultation of the latter being optional. The Committee of the Regions has already indicated that it will not submit an opinion.

The Working Party on Energy has had a first reading of the proposal.

The Commission has submitted its proposal in the light of the Russian-Ukrainian gas crisis of January 2009 and in response to the call of the European Council for an accelerated revision of the existing Directive on measures to safeguard security of natural gas supply, with a view to having the Community better prepared for the event of a possible future gas supply disruption. In this sense, the proposal aims notably at defining more clearly the roles and responsibilities of all actors involved, including the gas industry, Member States and the Community Institutions, to deal with a supply disruption in the short term and to provide for the necessary infrastructure in the longer term.

**II. COMMENTS ON THE PROPOSAL**

The proposal was considered to come very timely and was in general welcomed by most delegations, some delegations expressing at this stage a general or a number of specific (scrutiny) reservations. The main concerns and comments of delegations relate to the points and issues described below.

1. A number of delegations expressed doubts on the correct choice of the legal base (Art. 95 [114]<sup>1</sup> [/ Art. 194] vs. Art. 100 [122]) and agreed that it would be best to address this issue again after the entry into force and on the basis of the Lisbon Treaty. Some delegations also had doubts on the nature of the instrument: those delegations would have preferred a Directive instead of a Regulation, in particular since a number of obligations of the proposal would require additional national legislation.
2. As for the general aim of the proposed Regulation, many delegations agreed that the primary aim should be the safeguarding of security of gas supply while the functioning of the internal gas market should be only secondary. Several delegations underlined at the same time that it should be made very clear that the main emphasis was on market based measures for ensuring security of supply, non-market based measures coming only in as a last resort. A few delegations proposed reflecting the solidarity aspect in the objective of the proposal, while some others wished to see a reference to the principles of proportionality and subsidiarity.
3. There was broad agreement that security of supply is a shared responsibility of a number of different actors, but that the list of those actors needs to be completed in different provisions of the proposal and that more clarity and further discussion is needed regarding the role and involvement of some of these actors, *e.g.* of industrial gas consumers or of Member States and the Commission. Some delegations thought that it should be made clearer that the main responsibility for ensuring gas supply security was on gas undertakings and that it could be a good idea to establish a hierarchy of roles and responsibilities.
4. As regards the role and the rather extended powers which the proposal confers on the Commission, views were somewhat divided. While several delegations considered that the Commission's powers should be reduced since they had doubts whether they were in line with the Treaty (Article 100 [122]), notably as regards the evaluation of emergency situations in Member States and Community emergency responses, one delegation in particular thought that the Commission should have the same role and obligations at Community level which Member States have at national level, *e.g.* for the establishment of Preventive Action Plans (PAP), Emergency Plans (EP) or risk assessment (see point 9). On the other hand, the idea was expressed that the role which the proposal gives to the Commission regarding notably the establishment of PAP and EP could be replaced with a peer review.

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<sup>1</sup> Article numbers in square brackets refer to the Lisbon Treaty (TFEU)

5. The introduction of infrastructure (N-1) and supply standards of a binding nature was welcomed by most delegations. A few delegations however had some doubts since they did not consider the last January gas crisis as an infrastructure but as a commodity problem. The Commission did not share this point of view. While the definitions for both standards will need further discussion and revision, the relation between infrastructure and supply standards and in particular the mingling of the two was put into question. Many delegations agreed that the responsibility for ensuring the fulfilment of both standards should not be on the Competent Authorities but on gas undertakings. Several delegations also highlighted the importance of demand side measures for the fulfilment of the infrastructure standard (N-1).
6. A number of comments and questions were raised with respect to the obligation for facilitating bi-directional gas flows, such as:
  - This obligation should be made subject to cost-effectiveness or economic viability and a significant contribution to security of gas supply;
  - Exceptions to this obligation should be decided by national authorities, not by the Commission;
  - Cost-allocation is considered to be problematic and needs clarification, including, if appropriate, with respect to third countries.
7. Moreover, a number of delegations requested additional incentives and financing possibilities at Community level for the fulfilment of the N-1 standard and the reverse flow obligations, noting i.a. that some of the related investments have a public good dimension and may therefore call for tailor-made financing mechanisms.
8. In the context of the two energy security standards, the question of the necessity for and the details of a general definition for Protected Customers was also raised.

9. The proposal provides that Member States establish Preventive Action Plans (PAP) and Emergency Plans (EP) and carry out regular risk assessments. While these obligations are in principle not put into question, some doubts on the Commission's role were expressed and several delegations were in favour of a closer involvement of the Gas Coordination Group and/or of Member States themselves. Moreover, while some delegations consider that a more frequent risk assessment would be necessary, others see the need for further clarifying the interaction of national and Community levels when the PAP are established, taking into account the link with the provisions of the internal gas market Directive as regards the network development plans. Certain delegations also underlined that no disproportionate and unreasonable burden should be put on gas undertakings.
10. The principle of regional cooperation in general and for the establishment of PAP and EP as well as for complying with the infrastructure and the supply standards in particular was welcomed and its importance stressed, but much more clarification is needed how this principle could be implemented in practice. Some delegations underlined that the implementation of the N-1 standard would be only possible for them if it was considered at a regional level.
11. While there is broad agreement on the principle of three crisis levels (Early Warning, Alert, Emergency), with one delegation requesting a fourth level (for the restoration of a normal situation), the exact definitions of these crisis levels will need further discussion and clarification, notably with respect to the criteria triggering the different levels.
12. More discussion will also be needed on the criteria triggering a Community emergency: While some delegations are in favour of a higher threshold and/or other, more qualitative criteria, leaving it up to the Commission to decide whether a Community emergency is given or not, others propose binding triggers, with notably one delegation requesting the explicit introduction of the three crisis levels also at Community level. Regarding qualitative triggers, the Commission agreed with several delegations that not only a disruption of the supply from a third country should be covered, but also technical incidents or losses within the Community. It was also said that emergency measures at Community level should only be envisaged where national measures are insufficient to solve the crisis and that the proposal should provide for a compensation mechanism for gas undertakings.

13. Several delegations are of the view that the specific bodies which are proposed to be established (crisis management group, monitoring task force) could in one way or the other be linked to the Gas Coordination Group. There was broad agreement on the important role of the Gas Coordination Group which, in the view of some delegations, could even be further strengthened, *e.g.* involving it more closely in the establishment of PAP and EP and in the declaration of a Community emergency. As to its composition, Member States should as a matter of principle be members of that group.
14. With respect to information exchange, monitoring and reporting, several delegations asked on the one hand for more consistency between the different information and reporting obligations of the proposed Regulation and requested on the other hand to avoid any duplication of reporting obligations in relation with the internal gas market Directive. Doubts and concerns were expressed on the level of detail of the information to be given to the Competent Authority or to the Commission, in particular during an emergency, and especially as regards the notification by gas undertakings of the details of contracts with third countries; such notification could only be conceivable in aggregate form. In any case, the confidentiality of commercially sensitive data needs to be ensured.
15. Certain delegations requested derogations for Member States without a gas network; the specific situations of those Member States being an energy island as well as of producer countries not being able to fulfil the infrastructure standard should be taken into account.
16. More discussion will also be needed on the non-exhaustive lists of measures - market based and non market-based -, including the role of strategic gas storage. Further comments of delegations concerned the different implementation deadlines of the proposal which were in general felt to be too short, and the addition of safety considerations in a number of the proposed provisions.

### Questions for the policy debate

1. The proposal involves a number of different actors such as Member States, the Commission and market actors with different roles contributing to ensuring the security of gas supply.

*Do delegations consider that there is a good balance between the roles and responsibilities of these different actors as set out in the proposed Regulation?*

2. Infrastructure and supply standards play a key role in the proposal regarding both domestic security of supply and solidarity within the EU. The proposed Regulation includes *inter alia* the obligation to meet those two standards.

*Do delegations agree that the principle of mandatory infrastructure and supply standards is an essential element of the proposal, including with respect to the N-1 rule, it being understood that national circumstances and specificities will have to be taken into account ?*  
*Do delegations consider that the implementation of those standards will be eased if Member States were willing to take concrete commitments at bilateral/regional level ?*

3. An essential element of the enhanced security of supply that is expected to result from the implementation of the proposed legislative instrument concerns "protected customers". In this respect Member States have quite varying practices.

Given the consequences in terms of cost and extent of the measures to be taken depending on the breadth of the definition of "protected customers" and thus the differentiated impact on the functioning of gas markets, *do delegations agree to having one common, precise definition of "protected customers" in the legislative instrument ?*