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PROGRESS REPORT

from: General Secretariat of the Council

to: Coreper/Council

No. Cion prop.: 11892/09 ENER 253 CODEC 963

Subject: 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
- Progress report

1. The Commission submitted the abovementioned proposal to the Council and the European Parliament on 17 July 2009. In view of the priority which the European Council has given to this dossier (see European Council presidency conclusions 11225/2/09, p. 13, and 15265/09, p. 10) the presidency is aiming at a first reading agreement with the European Parliament in the course of this semester.¹ This objective is shared by the EP side.
2. Two informal contacts with the European Parliament were held on 29 April and 6 May 2010, both followed by a technical meeting, where the following issues were addressed:
 - Infrastructure standard (Articles 6, 6a and Annex I)
 - Content of the Plans and risk assessment (Article 5, Article 9(1+1a), Article 8)
 - Other technical issues (Annexes II, III and IV)
 - Technical aspects of the supply standard and related issues (Article 7 and Article 9(2-7))
 - Technical aspects of Articles 12 to 16.

¹ The current Council text, together with the Commission proposal and the ITRE position, is reflected in a 4-column document in 8304/4/10 REV 4.

These meetings which lasted 150 and 100 minutes respectively took place in a constructive atmosphere; they were chaired by the ITRE chairman Herbert REUL who was assisted by the rapporteur Alejo VIDAL-QUADRAS. The shadow rapporteurs Claude TURMES, Miloslav RANSDORF and Konrad SZYMANSKI (first meeting) as well as Hannes SWOBODA (second meeting) were also present. The Council was represented by the chair of the Energy Working Party.

On the whole, the rapporteur declared himself to be satisfied with the Council approach. He noted however that in particular with regard to the reverse flow obligation, the text proposed by the Council (Article 6a) was too complex and was lacking a Union level approach, the Commission being involved too late. With regard to Article 7, the rapporteur noted that the Council text has designed the supply standard as a minimum standard, with the consequent possibility of increased standards, and has at the same time a more extended definition of protected customers (Article 2(1)). The rapporteur expressed concerns that these two aspects taken together might entail a risk of lack of capacity to implement the solidarity principle in case of an emergency; the question of minimum and increased standards should therefore be discussed together with the definition of protected customers. The rapporteur also noted that the whole timeline of the Regulation including all the deadlines which have been changed in the Council text would need to be addressed as part of the overall compromise.

A number of other aspects which were more issues of drafting or understanding were addressed and clarified at the two abovementioned technical meetings.

The coming informal triologue meeting on 2 June 2010 is intended to address the issues which have remained open at the first two meetings as well as the political aspects of notably the following issues:

- Definition of protected customers and related issues of the supply standard (Art. 2(1) and Art. 7(1+1a))
- Competences of Commission, Member States and other stakeholders (Articles 2(2), 3, 4, 9(6), 10 and 11, including EP amendments 25, 86 + 94 on the role of the High Representative)
- General issues (Article 1) and overall timeline of the proposal.

A last informal triologue is scheduled for 22 June 2010.

3. In parallel to the first informal EP contacts, the Council position was developed further by the Working Party on the issues intended for the last two informal dialogues. The following issues appeared to be of concern for one or the other delegation:
- a) In view of the concept of the supply standard as a minimum standard (Art. 7(1)) and the possibility of increased standards (Art. 7(1a)), in particular one delegation would prefer a more narrow definition of protected customers (Art. 2(1)).
 - b) The Council text provides that a risk assessment is carried out and that Preventive Action and Emergency Plans are established at national and, where appropriate, at regional level (Articles 4 and 8), the principle of solidarity being in particular reflected in the cooperation between undertakings, Competent Authorities and Member States. One delegation requests that both the carrying out of a risk assessment and the establishment of such Plans be also done at Union level, providing *inter alia* for additional measures at Union level for the case of a Union Emergency, with a view to reflecting in a more specific and more concrete way the solidarity principle. The Commission and the other delegations consider that experience with and a first assessment of national and/or regional risk assessments and Plans is needed before going to the Union level.
 - c) There is broad understanding that, in general and also in case of a crisis, market measures are having priority and that the use of non-market based measures should only intervene additionally with a view, in particular, to safeguarding supplies of gas to protected customers in a crisis situation. Notably one delegation, supported by some others, considers that the use of certain non-market measures should, as an exception, also be allowed as an additional measure where the infrastructure standard is complied with through demand side measures (Art. 6(2)).
 - d) The Council text provides that the Competent Authorities have to identify those natural gas undertakings which have to ensure the supply of gas to the protected customers in specific cases, i.e. which will be responsible for ensuring the supply standard (Art. 7(1)).
 - e) The Council text provides that the Commission can declare, under certain circumstances, a Union or regional Emergency while involving closely the Competent Authorities (Art. 10(1)). One delegation considers that the declaration of a Union or regional Emergency should be up to the Council. Another delegation has doubts about the concept of a regional Emergency.