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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**concerning measures to safeguard the security of gas supply and repealing Regulation**  
**(EU) No 994/2010**

(Text with EEA relevance)

{SWD(2016) 25 final}

{SWD(2016) 26 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The purpose of the draft regulation is to ensure that all Member States put in place appropriate tools to prepare for and manage the effects of a gas shortage due to a disruption in supply or exceptionally high demand. There are three levels of responsibility for the security of the gas supply. It is natural gas undertakings, subject to market mechanisms, that bear the primary responsibility for the gas supply. In the event of market failure in a given Member State, the competent authorities of that Member State and of the Member States in the region are responsible for taking appropriate measures to secure the gas supply to protected customers. At another level, the European Commission provides general coordination and ensures that the measures taken are consistent with one another.

To meet this objective, the draft regulation proposes stronger regional coordination, with certain principles and standards being set at EU level. The approach proposed is that Member States should cooperate closely within their regions when conducting regional risk assessments. To ensure EU-wide consistency, regional risk assessments will be conducted on the basis of an EU-wide simulation, with common standards and a specific scenario. Risks identified through regional risk assessments will be addressed in regional preventive action plans and emergency plans, to be peer-reviewed and approved by the Commission.

To ensure that risk assessments and plans are comprehensive and consistent with one another, the Regulation sets out mandatory templates listing aspects that must be taken into account when conducting the risk assessment and drawing up the plans. Regional cooperation must be improved, as a disruption of the gas supply can easily affect several Member States at the same time. National risk assessments and plans are not well suited to tackling such situations.

The Regulation also improves the application of the supply standard to protected customers (mainly households) and the infrastructure standard (the possibility of supplying gas even if the largest infrastructure is not available). It enables permanent bi-directional capacity. Finally, it proposes the introduction of additional transparency measures concerning gas supply contracts; as such contracts may affect security of supply in the EU.

Five years after the adoption of Regulation 994/2010, the security of the gas supply remains a highly topical issue, given the tensions prevailing between Ukraine and Russia. Efforts are being made at national and EU level to enhance the security of gas supplies for the winter of 2015/2016 and beyond.

Stronger regional cooperation between the Member States does not imply creating any new institutional structures.

- **Consistency with existing policy provisions in the policy area**

The main policy documents relevant for the security of supply are:

## 1. European Energy Security Strategy<sup>1</sup>

## 2. Framework Strategy for a resilient Energy Union with a forward-looking climate change policy<sup>2</sup>

The proposed draft regulation implements the policy proposals presented in the Energy Union Strategy and in the Energy Security Strategy.

- **Consistency with other European Union policies**

The proposal contributes to internal energy market legislation by prioritising market-based measures.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The draft regulation proposes measures to safeguard the security of the gas supply in the European Union. The legal basis for the regulation is therefore Article 194 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The EU action is framed under Article 194 TFEU, which recognises that a certain level of coordination, transparency and cooperation is necessary as regards EU Member States' policies on security of supply, to ensure that the energy market functions properly and that there is a secure supply of gas within the European Union.

The increasing interconnection of the EU gas markets and the 'corridor approach'<sup>3</sup> for enabling the reverse flows on gas interconnectors call for coordinated measures. Without such coordination, national security of supply measures are likely to adversely affect other Member States or the security of supply at EU level. The risk of a major disruption of gas supplies to the EU is not restricted by national borders and could affect several Member States, whether directly or indirectly. Situations like the cold spell of 2012 and the 2014 stress test demonstrated the vital importance of coordinated action and solidarity. The need for EU action is clear, given the evidence that national approaches both result in sub-optimal measures and aggravate the impact of a crisis. A measure taken in one country can cause a shortage of gas in neighbouring countries. For instance, the restrictions Bulgaria imposed in February 2012 on exporting electricity adversely affected the electricity and gas sectors in Greece.

So far, not enough has been done to exploit the potential for more efficient and less costly measures through regional cooperation, which is detrimental to EU consumers. While the stress test has shown that functioning markets are vitally important to secure gas supplies, it has also shown that well-coordinated measures taken by Member States, particularly in the

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<sup>1</sup> Communication from the Commission to the European Parliament and the Council, COM (2014) 330 final.

<sup>2</sup> Communication from the Commission to the European Parliament and the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, COM(2015) 80 final.

<sup>3</sup> Corridor approach means that all Member States along a gas transmission pipeline should assess all the potential benefits beyond their borders for permanent gas reverse flow on a pipeline

event of an emergency, can significantly boost supply security. This concerns better coordination not only of national mitigation measures in the event of an emergency, but also of national preventive measures, such as proposals for better coordination of national storage or LNG policies, which can be strategically importance in certain regions. Cooperation should also be extended to specific measures to foster solidarity between Member States in security of supply matters.

Action at EU level could be also needed in certain situations (e.g. EU-wide and regional emergencies) where the security of supply in the EU cannot be sufficiently achieved by the Member States alone and can therefore, by reason of the scale or efforts of the action, be better achieved at EU level.

- **Proportionality**

The regulation is designed to achieve a high enough level of preparedness before a crisis occurs and to mitigate the impact on customers of an unexpected event causing an interruption of the gas supply. To meet this objective, it proposes stronger regional coordination, with some principles and standards being set at EU level. The proposed approach is based on close cooperation between Member States within a particular region when conducting a risk assessment at regional level. To ensure consistency throughout the EU, regional risk assessments are to be conducted on the basis of an EU-wide simulation, with common standards and a specific scenario. Risks identified through regional risk assessments will be addressed in regional Preventive Action Plans and Emergency Plans, to be peer-reviewed and approved by the Commission.

The draft regulation does not propose a full harmonisation with all measures being prescribed at EU level.

Stronger regional cooperation, with certain standards being set at EU level, is necessary to sufficiently address the deficiencies of the current system (national risk assessment and national plans) and enables problems to be solved at regional level, without being unnecessarily prescriptive. The approach proposed in the draft regulation is therefore proportionate (see also Impact Assessment, pp. 34-46 and p. 50).

- **Choice of the instrument**

The existing legal act in this area is Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC. The purpose of the proposed legal act is to improve and beef up the measures and procedures laid down in the existing regulation. That is why it was decided that the appropriate instrument was a regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations of/fitness checks on existing legislation**

In accordance with the monitoring obligation laid down in Article 14 of Regulation 994/2010, the Commission drew up a report in 2014<sup>4</sup> assessing the implementation of the Regulation

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<https://ec.europa.eu/energy/sites/ener/files/documents/SWD%202014%20325%20Implementation%20of%20the%20Gas%20SoS%20Regulation%20en.pdf>

and possible ways of improving security further. The report gives a detailed assessment of the many tools referred to in the Regulation, focusing on how Member States have implemented them and how each has helped improve security of supply of the EU and its preparedness.

This report showed that the Regulation had already done much to improve the security of Europe's gas supply, both in terms of preparation and mitigation. Member States are now better prepared to face a supply crisis, as they are required to make a full risk assessment and, on the basis of the results, to draw up preventive action and emergency plans. Member States have also increased their level of protection thanks to the need to meet an EU-wide supply and infrastructure standard.

At the same time the report demonstrated that there are still serious reasons for concern as regards cooperation between Member States (the predominantly national measures they take are not well suited to tackling gas supply problems); application of the supply standard to protected customers (mainly households) and the infrastructure standard. Moreover, gas supply contracts between natural gas companies and non-EU suppliers are not sufficiently transparent. These shortcomings stand in the way of an effective response at moments of crisis.

The stress test conducted in the summer of 2014 showed that a severe disruption of gas supplies from the east (i.e. Russia) would still have a major impact throughout the EU. Some areas, particularly in Eastern Europe, would still suffer severe economic and social consequences in the event of a gas shortage. Moreover the cold spell of 2012 saw wholesale day-ahead gas prices rise by over 50% on European hubs by comparison with the levels registered before the cold weather. In Italy, prices rose from €38/MWh to €65/MWh, while in the UK, Germany and Austria prices reached €38/MWh from levels of €23/MWh<sup>5</sup>.

The current situation is the result of a variety of problems of different magnitude, including behavioural biases (a purely national approach to security of supply), external factors (the behaviour of non-EU suppliers) and technical issues (a shortage of appropriate infrastructure, or inadequate protection for infrastructure).

The regulation proposes measures to tackle the deficiencies detected.

- **Stakeholder consultations**

The public consultation of stakeholders held from 15 January to 8 April 2015 produced 106 responses. This means it can be considered very wide-reaching.<sup>6</sup> Though most respondents came from the private sector and consumer, regulatory or industry associations, a relatively large number of public-sector authorities also took part.

The consultation followed the dual structure of the existing Regulation, which is based on prevention and mitigation. The questions on prevention were designed to find out whether there was a need to improve the legal provisions in force. However, they also allowed some scope for testing new ideas, especially as regards the application of measures to meet the supply standard. The questions on mitigation sought to establish whether Member States were prepared to manage an emergency situation and, in doing so, consider efficient coordinated

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<sup>5</sup> Source: European Commission

<sup>6</sup> See for a list of respondents:

<https://ec.europa.eu/energy/sites/ener/files/documents/List%20of%20stakeholders%20FOR%20PUBLICATION%20-%20updated%2018%2006.pdf>

solutions, rather than adopting a purely national approach and resorting to counterproductive measures affecting their neighbours.

As regards the outcome, most public authorities focused on shortcomings in cooperation between Member States, while private companies and associations insisted that priority should be given to market measures in tackling security of supply issues. The Commission took these opinions into account, proposing closer regional cooperation and a clear priority for market-based measures when addressing risks to security of supply. The various stakeholders' opinions were also reflected in the assessment and impact of the policy options in sections 6 and 7 of the Impact Assessment.

- **Collection and use of expertise**

External consultants were used for different topics during the preparation of this proposal. A study was conducted on possible underground gas storage measures and their impact<sup>7</sup>, as well as input from the JRC received to support the Impact Assessment with analyses. A further study comparing approaches to boost the EU's bargaining power on natural gas markets<sup>8</sup> has provided input into certain policy options related to how to meet the supply standard (common purchasing schemes).

- **Impact assessment**

All proposed measures were supported by the Impact Assessment.

The Impact Assessment Board issued a positive opinion on 16 December 2015.

The Impact Assessment looked at four policy options:

1. Stronger implementation and soft law measures
2. Better coordination and tailored solutions
3. Better coordination, with some principles/standards being set at EU level
4. Full harmonisation

Options 1 and 2 have not been taken up, because of their poor performance record in terms of effectiveness and efficiency. They did not do enough to improve on the deficiencies of the current system, identified thanks to the ex-post evaluation (report drawn up in 2014) and the stress test conducted in the summer of 2014.

Option 4 includes some approaches that are more effective than options 1 and 2. However, some are no more effective than those available under option 3. Moreover, they cost more, and some may be counterproductive. That is why option 4 has not been taken up either.

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<sup>7</sup> Study on the role of gas storage in internal market and in ensuring security of supply, prepared by REF4E, Mercados, E-Bridge for DG Energy. <https://ec.europa.eu/energy/sites/ener/files/documents/REPORT-Gas%20Storage-20150728.pdf>

<sup>8</sup> "Economic analysis of costs and benefits of different approaches to enhancing the bargaining power of EU buyers in the wholesale markets of natural gas". The Commission will publish the study on its internet page.

The final proposal is to take option 3, the most effective package. It is the best option as regards both effectiveness and efficiency. The following effects were considered.

### *1. Costs and impact on prices*

The overall impact on costs and prices will be very limited. Some proposals are designed to avoid unnecessary costs and exploit synergies in measures to improve security of supply. This should reduce the overall costs of the security of supply framework for all consumers. Measures such as the regional risk assessments, regional plans or the provisions regarding contracts will not increase costs significantly. There might have impact on the administrative burden.

The policy tools likely to affect costs more are the refinement in the N-1 calculations and the reverse flow obligations. As regards the N-1 standard, however, refining the formula is unlikely to make a compliant Member State non-compliant, which would trigger mandatory investment. The possibility to take demand-side measures in order to meet the N-1 standard remains. A fine-tuned N-1 could lead to higher investment, but this would be based on an assessment of the Member State concerned and a better picture of the actual capacity situation. It therefore seems a cost-effective measure, given the benefits associated with improved diagnosis of the sector through minimum investment (e.g. real contribution of storage thanks to a more realistic estimate of withdrawal rates depending on the level of gas stored). The hydraulic calculation<sup>9</sup> should not imply any additional costs either, as transmission system operators (TSOs) have the tools to carry out such assessments. The EU-wide simulations can be carried out by ENTSOG as part of the annual summer and winter supply outlook required by Regulation (EC) No715/2009. They may help identify cost-effective measures to minimise any adverse effects.

### *2. Impact on stakeholders, especially small and medium-sized businesses*

Overall, option 3 should be good for market participants and consumers. Better supervision of the supply standard measures will ensure transparent and cost-effective compliance. Many industry respondents to the public consultation stated that they wanted more transparency and fully justified measures subject to regular review or testing.

Small and medium-sized businesses will continue to be 'protected customers' if a Member State so decides, so this option will not adversely affect them. Under this option, the main difference is that they will not necessarily be covered by the **solidarity principle**. It is worth recalling, however, that the point of this principle is to ensure a continued supply to households and essential social services in emergencies. This mechanism is a last resort, intended only for use in situations of extreme gas shortage. While the revised Regulation is designed to avoid such situations, we must nonetheless be prepared for them.

### *3. Completing the internal market*

Option 3 is likely to help make the single energy market operate better. The proposed measures will significantly reduce the risk of a situation in which national measures to ensure security of supply distort competition or result in discrimination against non-nationals. Firstly, mandatory impact assessments of new non-market measures to be adopted by the Member

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<sup>9</sup> Hydraulic calculation is a result of a simulation using a mathematical model that describes the transport of gas in a network (national or regional) taking into account its topology and physical characteristics. The model considers pressure constraints at delivery points and demand profiles. The simulation of the N-1 scenario with a hydraulic model allows knowing whether the gas available in the system is able to reach all the delivery points in case of disruption of the largest gas infrastructure.

States should prevent harmful measures from entering into force and being included in the plans. Existing measures will also be subject to scrutiny by the other Member States within a given region. This should help avoid a situation in which measures taken in one country have negative spill-over effects in neighbouring countries. Secondly, the peer review process and Commission supervision should help identify and eliminate any problems arising from measures to guarantee security of supply.

- **Regulatory fitness and simplification**

The proposal will increase administrative burden to a limited extent. One of the main sources of administrative burden would be the need to draw up regional risk assessments and regional preventive action plans and emergency plans. However, since Option 3 builds on the existing mandatory regional consultation on the plans and sets out a clearer framework for result-oriented regional cooperation and coordination, the administrative burden will not increase vastly. This solution is both technically and legally feasible, as shown by the joint UK-Ireland preventive action plans and the joint report drawn up by the Baltic States and Finland on the 2014 stress test.

To implement the Plans in good time, responsibilities and timeframes must be clearly defined. This can be achieved in different ways. In some cases, for instance, there is a secretariat, while some Member States have opted in the past for a rotating allocation of responsibilities for a given plan. The Commission is ready to provide guidance and facilitate the process as needed, as it has done during the stress test for the Focus Groups and in the BEMIP focus group for regional cooperation between the Baltic States and Finland.

The administrative burden is bound to increase, even if regional plans replace national ones, thereby avoiding duplication of tasks. It could be also argued that agreeing on the plans at regional level is likely to be more time-consuming and require additional arrangements. For that reason, and to limit the additional burden, the regional risk assessment and regional plans could be updated every four years, instead of every two years, as is the case under the existing Regulation.

The plans under this Regulation should be consistent with the Energy Union's strategic planning and reporting tools. However, the emergency plans and preventive action plans to be developed under this Regulation are not policy documents setting out strategic policy choices. They are technical in nature, their purpose being to prevent emergencies from breaking out or escalating and to mitigate their effects.

- **Fundamental rights**

Not applicable.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the EU budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor how Member States implement the changes introduced by the Gas Security of Supply Regulation. Increased involvement, along with supervisory and monitoring powers, should ensure better EU-wide compliance with the rules. Where needed,



the Commission will offer to help Member States implement the necessary changes in the law by means of workshops with all Member States, or bilateral meetings, if any of them so request. If necessary, the Commission will pursue the procedure set out in Article 258 TFUE, should any Member State fail to fulfil its duty to implement and apply Union Law.

The Commission will also permanently monitor the security of supply in the EU and report regularly to the Gas Coordination Group.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The revised Regulation contains the following components:

1. Better regional cooperation and coordination, as the most cost-effective approach to improving security of supply across the EU:

- Mandatory regional preventive action plans and emergency plans ('the plans') and regional risk assessments to be prepared jointly, on the basis of mandatory templates in the annexes to the Regulation.

- As a basis for regional cooperation, Annex I to the Regulation contains a proposal illustrating the composition of the regions, based on the criteria set out in Article 3(7) (i.e. as proposed in the map under option 2 in the Impact Assessment). In the Commission's view, this proposal is the best way to ensure a secure gas supply in the event of an emergency. As far as possible, it builds on existing regional cooperation structures set up by the Member States and the Commission, particularly the regional groups set up under Regulation 347/2013 on guidelines for trans-European energy infrastructure<sup>10</sup> (TEN-E Regulation). However, since this Regulation and the TEN-E Regulation have different objectives, the size and composition of the regional groups have been altered. For the purposes of this Regulation, the following criteria, defined in Art. 3(7), should be taken into account when defining regional groups: supply patterns; existing and planned interconnections and interconnection capacity between Member States; market development and maturity; existing regional cooperation structures; and the number of Member States in a region, which should be limited, to keep arrangements workable.

For instance, the North Western region (the UK and Ireland) builds on existing cooperation between the two countries. The rationale for the proposed design of the majority of the regions (Southern Gas Corridor, Central-East, South-East, Baltic Energy Market I and II) is the supply pattern in the event of disruption of the supply from Russia. The make-up of the region North-South Western Europe (Belgium, France, Luxembourg, Spain, the Netherlands and Portugal) reflects the fact that the gas market in this part of the EU is mature and well developed. This may prove to be the best way of avoiding an emergency, or, should one arise, of mitigating its impact.

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<sup>10</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulation (EC) No 713/2009, (EC) 714/2009 and (EC) No 715/2009, OJ EU L 115 of 25.4.2013, p. 39.

- The regional plans are subject to peer review. The Commission arranges this, selecting the members of each peer review team (one per region) from among candidates put forward by Member States. It participates in the peer reviews as an observer.

- The Gas Coordination Group discusses the plans on the basis of the outcome of the peer review, to ensure that plans for different regions are consistent with one another.

- At the end of the process, the Commission may request amendments to the plans by Commission decisions and eventually approve the plans.

## 2. More detailed obligations to ensure that the necessary infrastructure is available:

- The N-1 calculation must be accompanied by a national hydraulic calculation and EU-wide simulations to be performed by ENTSOG, similar to the simulations it performed for the stress tests in the summer 2014.

- On reverse flows, all interconnection points must be equipped with permanent reverse flow capacity unless they are granted an exemption.

i) The decisions, either to grant an exemption or to decide on the capacity level to be built, shall be taken jointly by the competent authorities on both sides of the interconnection point ('joint decision') after consulting with other Member States along the gas supply corridor, the Commission and ACER.

ii) ACER has to issue an opinion on the competent authorities' joint decision.

iii) The Commission may take a decision, taking into account ACER's opinion, requiring amendments to the joint decision of the competent authorities. The Commission's power to adopt a decision in this area will no longer be restricted to the cases of disagreement between some Member States.

iv) If there is no joint decision within a certain period of time, ACER draws up a decision containing a proposal for an exemption or a given reverse flow capacity. ACER's decision provides the basis for a Commission decision containing the terms for an exemption or a given capacity.

v) Existing exemptions must to be reviewed in line with the new procedure.

## 3. Improved risk assessment and risk prevention

- Better access to information:

i) Limited increase in the scope of contractual information of which the Commission is automatically informed under existing arrangements (i.e. daily, monthly and yearly gas volumes, as a minimum). Such information will no longer be supplied in aggregated form.

ii) Competent authorities will be empowered to ask natural gas companies, ahead of an emergency but under duly justified circumstances (e.g. in the event of a possible threat), for additional information, including contractual information. The Commission may request access to such information and may also trigger requests by competent authorities. The provision was introduced on the basis of the Commission's experiences in the winter of 2014-15. The Commission observed a reduction in the gas supply from Russia to some EU gas

companies. However, it received only limited information on the basis of which to assess this development, as the competent authorities had no legal basis for asking the gas companies concerned to provide such specific information, given that the situation did not qualify as an emergency.

iii) Natural gas companies will be required to notify the national competent authority and the Commission automatically of contracts relevant for security of the gas supply, as soon as they have been signed or amended. Contracts relevant to security of supply are long-term contracts (i.e. valid for more than one year) that provide, either individually or together with other contracts concluded with the same supplier or its affiliates, more than 40% of the yearly natural gas consumption in the Member State concerned to one natural gas company or its affiliates.

iv) Automatic notification is triggered when a contract that meets the threshold criterion is concluded or amended. However, even contracts that do not meet this criterion may be relevant to assessing the security of the gas supply situation. Although the market has developed in such a way that very long-term contracts are now rare, they still exist. If a long-term contract is concluded just before this Regulation enters into force, it will not be covered by the automatic obligation to notify the national competent authority and the Commission. If, in addition, such a contract contains a clause linking the price to the hub price, it may not be amended for a number of years. In other words, the automatic obligation to notify amendments will not apply either.

In view of this situation, the Commission and the competent authorities need the power to ask for contracts to be notified, even if they have not been revised or do not meet the threshold criterion. Therefore, in duly justified cases such as those outlined above, the Commission or the competent authorities may ask for notification of contracts if such contracts are needed to make a comprehensive assessment of the impact of a contractual framework on the security of supply situation in a Member State, a region or the EU as a whole, and in particular for risk assessments, preventive action plans and emergency plans.

Since the request made by the competent authorities or the Commission may cover the contract in its entirety, the competent authorities may also receive information about prices. The Commission can then use the information from the contracts to assess the security of supply situation in the EU as a whole and, in particular, to assess the preventive action plans and emergency plans. If the natural gas company does not comply with the obligation to notify, the Commission may start infringement proceedings against the Member State whose competent authorities have the power to receive or request the contract.

The fact that the Commission will henceforth have better access to information on commercial contracts does not in any way affect its ongoing monitoring of the gas market. It will intervene if market abuses are identified.

- Obligation to assess in the risk assessment all relevant risks, such as natural disasters, technological, commercial, financial, social, political and market-related risks. The plans should set out effective, proportionate and non-discriminatory measures to address all relevant risks. The purpose of this obligation is to improve transparency and encourage the sharing of best practice.

4. Increased supervision of obligations to supply gas to certain categories of consumers, even under demanding conditions (the **supply standard**.)

- No change to the supply standard defined in the current Regulation, which guarantees uninterrupted gas supplies to protected customers for a minimum of 7 or 30 calendar days, depending on the scenario defined, even in the event of scarce gas supplies and/or exceptionally high demand.

- Better Commission supervision of existing national measures, to comply with the supply obligation (through the Commission's decisions on the plans) to avoid under-protection or over-protection, which could adversely affect more vulnerable Member States.

- New non-market-based measures to comply with the supply standard are subject to a public impact assessment and must be notified to the Commission, which assesses their proportionality and their impact on the internal market and on other Member States' security of supply. The Commission may adopt a decision requesting amendments to the measures, which cannot enter into force if they do not comply with the Commission's decision.

#### 5. The Regulation explicitly incorporates the new **solidarity principle**.

- If, as the Regulation allows, a Member State applies a higher supply standard, which may reduce gas flows from one country to another, thereby aggravating the security of supply situation in a neighbouring Member State, the raised supply standard must be restored to the EU default level (which guarantees service to all protected customers) in the event of an emergency.

- Application of the solidarity principle on the basis of technical and administrative arrangements agreed between Member States will be mandatory. Customers others than households, essential social services and district heating cannot continue to be supplied with gas in a given Member State - even if it is not in an emergency situation - as long as households, essential social services and district heating are not being supplied in another Member State in emergency to which the first country's transmission network is connected.

6. The definition of protected customers will be maintained (i.e. small and medium-sized enterprises can be considered protected customers if a Member State so decides). However, Member States will have to introduce measures, as part of their plans, to address technical issues and avoid non-eligible customers consuming gas intended for protected customers. Member States may decide on the nature of these measures.

7. Application of the Regulation between the Energy Community Contracting Parties and the EU Member States. The revised Regulation will include EU Member States' specific obligations with cross-border character towards Contracting Parties and should be followed by the adoption within the Energy Community of a Joint Act adopting and integrating the Regulation in the Energy Community and introducing reciprocal obligations on the side of the Energy Community Contracting Parties in the relations with the Member States. These obligations will only apply upon a Commission's decision confirming the applicability of reciprocal obligation between each Contracting Party and the Member States. The obligations will concern the framework for risk assessments, risk prevention and emergency measures.

.8. As regards joint purchasing mechanisms, the Regulation makes it clear that Member States and natural gas companies are free to explore the potential benefits of purchasing natural gas collectively to address supply shortage situations. Such mechanisms should be in line with WTO and EU competition rules, in particular with Commission guidelines on horizontal cooperation agreements.



Proposal for a

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

**concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>11</sup>,

Having regard to the opinion of the Committee of the Regions<sup>12</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Natural gas (gas) remains an essential component of the energy supply of the Union. A large proportion of such gas is imported into the Union from third countries.
- (2) A major disruption of the gas supply can affect all Member States, the Union as a whole and Contracting Parties to the Treaty establishing the Energy Community, signed in Athens on 25 October 2005. It can also severely damage the Union economy and can have a major social impact, particularly on vulnerable groups of customers.
- (3) This Regulation aims to ensure that all the necessary measures are taken to safeguard an uninterrupted supply of gas throughout the Union, in particular to protected customers in the event of difficult climatic conditions or disruptions of the gas supply. These objectives should be achieved through the most cost-effective measures and in such a way that energy markets are not distorted.
- (4) Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply has already had a significant positive impact on the Union situation as regards the security of the gas supply, both in terms of preparation and mitigation. Member States are better prepared to face a supply crisis now that they are required to draw up plans including preventive and emergency measures, and they are better protected now that they have to meet a number of obligations regarding infrastructure capacity and gas supply. However, the implementation report of Regulation (EU) No 994/2010 of October 2014 highlighted

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<sup>11</sup> OJ C , , p. .

<sup>12</sup> OJ C , , p. .

areas in which improvements to that Regulation could further bolster the Union supply security.

- (5) The Commission's Communication on the short-term resilience of the European gas system from October 2014<sup>13</sup> analysed the effects of a partial or complete disruption of gas supplies from Russia and concluded that purely national approaches are not very effective in the event of severe disruption, given their scope, which is by definition limited. This stress test showed how a more cooperative approach among Member States could significantly reduce the impact of very severe disruption scenarios in the most vulnerable Member States.
- (6) The Commission Communication 'Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy'<sup>14</sup> from February 2015, highlights the fact that the Energy Union rests on solidarity and trust, which are necessary features of energy security. This regulation should aim to boost solidarity and trust between the Member States and should put in place the measures needed to achieve these aims, thus paving the way for implementing the Energy Union.
- (7) An internal gas market that operates smoothly is the best guarantee of security of energy supply across the Union and to reduce the exposure of individual Member States to the harmful effects of supply disruptions. Where a Member State's security of supply is threatened, there is a risk that measures developed unilaterally by that Member State may jeopardise the proper functioning of the internal gas market and damage the gas supply to customers in other Member States. To allow the internal gas market to function even in the face of a shortage of supply, provision must be made for solidarity and coordination in the response to supply crises, as regards both preventive action and the reaction to actual disruptions of supply.
- (8) So far, the potential for more efficient and less costly measures through regional cooperation has not been fully exploited. This has to do not only with better coordination of national mitigation actions in emergency situations, but also of national preventive measures, such as national storage or policies related to liquefied natural gas (LNG), which can be strategically important in certain regions.
- (9) In a spirit of solidarity, regional cooperation, involving both public authorities and natural gas undertakings, should be the guiding principle of this Regulation, to identify the relevant risks in each region and optimise the benefits of coordinated measures to mitigate them and to implement the most cost-effective measures for Union consumers.
- (10) Certain customers, including households and customers providing essential social services, are particularly vulnerable and may need social protection. A definition of such protected customers should not conflict with the Union solidarity mechanisms.
- (11) Responsibility for security of gas supply should be shared by natural gas undertakings, Member States, acting through their competent authorities; and the Commission, within their respective remits. Such shared responsibility requires very close cooperation between these parties. However, customers using gas for electricity generation or industrial purposes may also have an important role to play in security of

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<sup>13</sup> COM(2014) 654 final

<sup>14</sup> Communication from the Commission to the European Parliament and the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, COM(2015) 80 final.

gas supply, as they can respond to a crisis by taking demand-side measures such as interruptible contracts and fuel switching, which have an immediate impact on the supply/demand balance.

- (12) As stipulated by Directive 2009/73/EC of the European Parliament and of the Council<sup>15</sup>, the competent authorities should cooperate closely with other relevant national authorities, in particular national regulatory authorities, when carrying out the tasks specified in this Regulation.
- (13) The infrastructure standard should oblige Member States to maintain a minimum level of infrastructure such as to ensure a degree of redundancy in the system in the event of a disruption of the single largest infrastructure. As an analysis by reference to the N-1 indicator constitutes a purely capacity-based-approach, the results of N-1 should be complemented with a detailed analysis that also captures gas flows.
- (14) Regulation (EU) No 994/2010 requires transmission system operators to enable permanent bi-directional capacity on all cross-border interconnections unless an exemption has been granted from this obligation. It aims to ensure that the possible benefits of permanent bi-directional capacity are always taken into account when a new interconnector is planned. However, bi-directional capacity can be used to supply gas both to the neighbouring Member State and to others along the gas supply corridor. The benefits for security of supply of enabling permanent bi-directional capacity thus need to be seen in a broader perspective, in a spirit of solidarity and enhanced cooperation. A cost-benefit analysis that takes account of the whole transportation corridor should therefore be conducted when considering whether to implement bi-directional capacity. The competent authorities should accordingly be required to re-examine the exemptions granted under Regulation (EU) 994/2010 on the basis of the results of the regional risk assessments.
- (15) Council Directive 2008/114/EC<sup>16</sup> lays down a process with a view to enhancing the security of designated European critical infrastructure, including certain gas infrastructure, in the Union. Directive 2008/114/EC together with this Regulation contributes to creating a comprehensive approach to the energy security of the Union.
- (16) The Regulation lays down security of supply standards that are sufficiently harmonised and cover at least the situation that occurred in January 2009 when gas supply from Russia was disrupted. These standards take account of the difference between Member States, public service obligations and customer protection measures, as referred to in Article 3 of Directive 2009/73/EC. Security of supply standards should be stable, so as to provide the necessary legal certainty, should be clearly defined, and should not impose unreasonable and disproportionate burdens on natural gas undertakings. They should also guarantee equal access for the Union natural gas undertakings to national customers.
- (17) A regional approach to assessing risks and defining and adopting preventive and mitigating measures enables efforts to be coordinated, bringing significant benefits in terms of the effectiveness of measures and optimisation of resources. This applies particularly to measures designed to guarantee a continued supply, under very

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<sup>15</sup> 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 and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p.94).

<sup>16</sup> 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 (OJ L 345, 23.12.2008, p. 75).



demanding conditions, to protected customers, and to measures to mitigate the impact of an emergency. Assessing correlated risks at regional level, which is both more comprehensive and more precise, will ensure that Member States are better prepared for any crises. Moreover, in an emergency, a coordinated and pre-agreed approach to security of supply ensures a consistent response and reduces the risk of negative spill-over effects that purely national measures could have in neighbouring Member States.

- (18) The regions are to be defined, as far as possible, on the basis of existing regional cooperation structures set up by the Member States and the Commission, in particular the regional groups set up under Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure<sup>17</sup> (the TEN-E Regulation). However, since this Regulation and the TEN-E Regulation have different aims, the respective regional groups may differ in size and design.
- (19) For the purpose of this Regulation, the following criteria should therefore be taken into account when defining the regional groups: supply patterns, existing and planned interconnections and interconnection capacity between Member States, market development and maturity, existing regional cooperation structures, and the number of Member States in a region, which should be limited to ensure that the group remains of a manageable size.
- (20) In order to make the regional cooperation feasible, Member States should establish a cooperation mechanism within each region. Such mechanism or mechanisms should be developed sufficiently in time to allow for conducting the risk assessment and drawing up meaningful plans at regional level. Member States are free to agree on a cooperation mechanism best suited for a given region. The Commission should have a facilitating role in the overall process and share best practises for arranging regional cooperation such as a rotating coordination role within the region for the preparation of the different documents or establishing dedicated bodies. In absence of an agreement on the cooperation mechanism, the Commission may propose a suitable cooperation mechanism for a given region.
- (21) When conducting a comprehensive risk assessment to be prepared at regional level, competent authorities should assess natural, technological, commercial, financial, social, political and market-related risks, and any other relevant ones, including, where appropriate, the disruption of the supplies from the single largest supplier. All risks should be addressed by effective, proportionate and non-discriminatory measures to be developed in the preventive action plan and the emergency plan. The results of the risk assessments should also contribute to the all hazard risk assessments foreseen under article 6 of Decision No 1313/2013/EU<sup>18</sup>.
- (22) To provide input to the risk assessments, the European Network of Transmission System Operators for Gas ('ENTSO for gas'), in consultation with the Gas Coordination Group and with the European Network of Transmission System Operators for Electricity (ENTSO-E), should carry out Union-wide simulations similar to the stress test conducted in 2014.

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<sup>17</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulation (EC) No 713/2009, (EC) 714/2009 and (EC) No 715/2009 (OJ EU L 115 of 25.4.2013, p. 39).

<sup>18</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 24).

- (23) To ensure maximum preparedness, so as to avoid a supply disruption and mitigate its effects should it nevertheless occur, the competent authorities of a given region must draw up preventive action plans and emergency, after consulting stakeholders. Regional plans should take account of the specific characteristics of each Member State. They should also clearly define the roles and responsibilities of the natural gas undertakings and the competent authorities. National measures to be designed should take fully account of the regional measures set out in the preventive action plan and emergency plan. They should be so designed as to address national risks in a way that takes full advantage of the opportunities provided by regional cooperation. The plans should be technical and operational in nature, their function being to help prevent the occurrence or escalation of an emergency and to mitigate its effects. The plans should take the security of electricity systems into account and be consistent with the Energy Union's strategic planning and reporting tools.
- (24) The roles and responsibilities of all natural gas undertakings and competent authorities should therefore be defined precisely in order to keep the internal gas market functioning properly, particularly in the event of supply disruptions and crises. Such roles and responsibilities should be established in such a way as to ensure that a three-level approach is respected which would involve first the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union. This Regulation should enable natural gas undertakings and customers to rely on market mechanisms for as long as possible when coping with disruptions. However, it should also provide for mechanisms that can be deployed when markets alone are no longer able to deal adequately with a gas supply disruption.
- (25) In the event of a supply crisis, market players should be given sufficient opportunity to respond to the situation with market-based measures. Where market measures have been exhausted and they are still insufficient, Member States and their competent authorities should take measures to remove or mitigate the effects of the supply crisis.
- (26) Whenever Member States plan to introduce non-market-based measures, such measures should be accompanied by a description of their economic impact. This ensures customers have the information they need about the costs of such measures and ensures that the measures are transparent, especially as regards their share in the gas price.
- (27) In March 2015, the European Council called for options for voluntary demand aggregation mechanisms to be assessed in full compliance with World Trade Organisation ('WTO') law and Union competition rules. This would enable Member States and natural gas undertakings to explore the potential benefits of collective purchasing of natural gas as a way of addressing supply shortage situations in line with those rules.
- (28) Demand-side measures, such as fuel switching or reducing the gas supply to large industrial consumers in an economically efficient order, may have a valuable role to play in ensuring energy security, if they can be applied quickly and significantly reduce demand in response to a supply disruption. More should be done to promote efficient energy use, particularly where demand-side measures are needed. The environmental impact of any demand and supply-side measures proposed must be taken into account, with preference being given, as far as possible, to measures that have least impact on the environment. At the same time, security of supply and competitiveness aspects must be taken into account.

- (29) When drawing up and implementing the preventive action plan and the emergency plan, the competent authorities should, at all times, take account of the safe operation of the gas system at regional and national levels. They must address and set out in those plans the technical constraints affecting the operation of the network, including any technical and safety reasons for reducing flows in the event of an emergency.
- (30) Low calorific gas is supplied in certain regions in the Union. Given its characteristics, it 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 specific characteristics of low calorific gas should be considered at national and regional levels and should be taken into account in the risk assessment and the preventive action and emergency plans.
- (31) It is necessary to ensure the predictability of the action to take in the event of an emergency, allowing all market participants sufficient opportunity to react and also prepare for such circumstances. As a rule, the competent authorities should therefore abide by their emergency plan. In duly justified exceptional circumstances, they should be allowed to take action which deviates from those plans. It is also important to make the way in which emergencies are announced more transparent and predictable. Information on the system balancing position (the overall status of the transmission network), the framework for which is set out in Commission Regulation (EU) No 312/2014<sup>19</sup>, may play an important role in this regard. That information should be available to competent authorities and the national regulatory authorities, if the latter are not the competent authority on a real time basis.
- (32) The preventive action plans and emergency plans should be updated regularly and published. They should be subject to peer review. The peer review process allows for early identification of inconsistencies and measures that could endanger other Member States' security of supply, thereby ensuring that plans from different regions are consistent with one another. It also enables Member States to share best practice.
- (33) To ensure that the emergency plans are always up-to-date and effective, Member States should carry out tests between the updates of the plans by simulating high and medium-impact scenarios and responses in real time. The competent authorities should present the test results at the Gas Coordination Group.
- (34) Mandatory comprehensive templates including all the risks to be covered by the risk assessment and all the components of the preventive action plans and emergency plans are needed to facilitate the risk assessment and preparation of the plans, their peer review and their assessment by the Commission.
- (35) To facilitate communication between Member States and the Commission, the risk assessments, the preventive action plans, the emergency plans and all other documents and information exchanges covered by this Regulation must be notified using a standard electronic notification system.
- (36) As demonstrated by the October 2014 stress test, solidarity is needed to ensure security of supply across the Union and to keep overall costs to a minimum. If an emergency is declared in any Member State, a two-step approach should be applied to strengthen solidarity. Firstly, all Member States which have introduced a higher

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<sup>19</sup> Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (OJ L 91, 27.3.2014, p.15).

supply standard should reduce it to default values to make the gas market more liquid. Secondly, if the first step fails to provide the necessary supply, further measures by neighbouring Member States, even if not in an emergency situation, should be triggered to ensure the supply to households, essential social services and district heating installations in the Member State experiencing the emergency. Member States should identify and describe the details of these solidarity measures in their emergency plans, ensuring fair and equitable compensation of the natural gas undertakings.

- (37) European solidarity should also, where needed, take the form of civil protection assistance provided by the Union and its Member States. Such assistance should be facilitated and coordinated by the Union Civil Protection Mechanism established by Decision No 1313/2013/EU of the European Parliament and of the Council<sup>20</sup> aiming to strengthen the cooperation between the Union and the Member States and to facilitate coordination in the field of civil protection in order to improve the effectiveness of systems for preventing, preparing for, and responding to natural and man-made disasters.
- (38) To assess the security of supply situation of a given Member State or region or of the Union, access to the relevant information is essential. In particular, Member States and the Commission need regular access to information from natural gas undertakings regarding the main parameters of the gas supply as a fundamental input in the design of the security of supply policies. Under duly justified circumstances, irrespective of a declaration of emergency, access should also be possible to additional information needed to assess the overall gas supply situation. That additional information would typically be non-price-related gas delivery information, e.g. minimum and maximum gas volumes, delivery points or supply margins. It could, for example, be requested in the event of changes in the pattern of the gas supply to a given buyer or buyers in a Member State which would not be expected if the markets were functioning normally and which could affect the gas supply of the Union or parts of it.
- (39) In March 2015, the European Council concluded that gas supply contracts with suppliers from third countries should be made more transparent and compatible with the Union energy security provisions. In this context an efficient and targeted mechanism for Member States' access to key gas supply contracts should ensure a comprehensive assessment of relevant risks that can lead to a supply disruption or interfere with the necessary mitigating measures should a crisis nevertheless occur. Under that mechanism certain key gas supply contracts should be automatically notified, immediately after their conclusion, to the Member States. However, any obligation to notify a contract automatically needs to be proportionate. Applying this obligation to contracts between a supplier and a buyer covering 40% of the national market strikes the right balance in terms of administrative efficiency and lays down clear obligations for market participants. This does not mean that other gas supply contracts are not relevant to security of supply. Accordingly, Member States should have the right to request other contracts which might negatively affect security of supply of a Member State or region or of the Union as a whole. The Commission should have the same access to the gas supply contracts as Member States, given its role in assessing the consistency and effectiveness of the preventive action plans and emergency plans to address risks to security of supply at national, regional and EU level. The Commission may call on the Member States to amend the plans so as to

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<sup>20</sup> Decision No 1313/2013/EU of the European parliament and of the Council of 17 December 2013 on a Union Civil protection Mechanism (OJ L 347, 20.12.2013, p. 24).

take account of the information obtained from the contracts. The confidentiality of commercially sensitive information should be ensured. Improved Commission access to information on commercial contracts should not affect the Commission's ongoing efforts to monitor the gas market, and the Commission should intervene if violations of the Union law are identified. The provisions of this Regulation should be without prejudice to the right of the Commission to launch infringement proceedings in accordance with Article 258 of the Treaty on the Functioning of the European Union (TFEU) and to enforce competition rules, including state aid.

- (40) The Gas Coordination Group should act as an adviser to the Commission to help coordinate security of supply measures in the event of a Union emergency. It should also monitor the adequacy and appropriateness of measures to be taken under this Regulation, including the consistency of preventive action plans and emergency plans drawn up by different regions and reviewed by teams of peers.
- (41) One of the Union goals is to strengthen the Energy Community that would ensure effective implementation of the Union energy acquis, energy market reforms and incentivising investments in the energy sector by closer integration of the Union and Energy Community energy markets. This entails also introducing common crisis management by proposing preventive and emergency plans at the regional level including the Energy Community Contracting Parties. Furthermore, the Commission Communication on the short term resilience of the European gas system from October 2014 refers to the need to apply internal energy market rules on the flow of energy between the Union Member States and the Energy Community Contracting Parties. In this regard, in order to ensure an efficient crisis management on borders between the Union Member States and the Contracting Parties, the necessary arrangements following the adoption of a Joint Act should be set so that specific cooperation with any individual Energy Community Contracting Party can take place once the required mutual provisions have been duly put into place..
- (42) Since gas supplies from third countries are central to the security of the Union gas supply, the Commission should coordinate action with regard to third countries, work with supplying and transit countries on arrangements to handle crisis situations and 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 from difficulties in a third country, to act as mediator and facilitator.
- (43) Where there is reliable information on a situation outside the Union that threatens the security of supply of one or several Member States and that may trigger an early warning mechanism involving the Union and a third country, the Commission should inform the Gas Coordination Group without delay and the Union should take appropriate action to try to defuse the situation.
- (44) The Member States acting on their own cannot satisfactorily achieve the objective of this Regulation, namely to guarantee a secure gas supply within the Union. Given the scale or effects of the action, it is better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (45) To allow for a swift Union response to changing circumstances as regards security of gas supply, the power to adopt acts in accordance with Article 290 of the Treaty on the

Functioning of the European Union should be delegated to the Commission in respect of amendment of regions and templates for risk assessment and plans. It is particularly important that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, it should ensure that relevant documents are simultaneously sent to the European Parliament and the Council, in good time and in the appropriate manner.

- (46) Regulation (EU) No 994/2010 should be repealed. To avoid a gap, the preventive action plans and emergency plans drawn up under Regulation (EC) No 994/2010 should remain in force until the new preventive action plans and emergency plans drawn up under this Regulation are adopted for the first time.

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 ("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 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 a spirit of solidarity, for the coordination of planning for, and response to, an emergency at Member State, regional and Union levels.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Directive 2009/73/EC<sup>21</sup> and Article 2 of Regulation (EC) No 715/2009 of the European Parliament and of the Council<sup>22</sup> shall apply.

The following definitions shall also apply:

- (1) 'protected customer' means a household customer connected to a gas distribution network and, in addition, where the Member State concerned so decides, may also mean one or more of the following:
  - (a) a small or medium-sized enterprise, provided that it is connected to a gas distribution network, or an essential social service, provided that it is connected to a gas distribution or transmission network, and provided that such enterprises or services do not represent jointly more than 20 % of the total annual final gas consumption in that Member State;
  - (b) a district heating installation to the extent that it delivers heating to household customers or to the enterprises or services referred to in point

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<sup>21</sup> 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 and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

<sup>22</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

- (a) provided that such installation is not able to switch to other fuels and is connected to a gas distribution or transmission network;
- (2) 'essential social service' means a healthcare, emergency or security service;
- (3) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 39(1) of Directive 2009/73/EC.

### *Article 3*

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

1. Security of gas supply shall be a shared responsibility of natural gas undertakings, Member States, notably through their competent authorities, and the Commission, within their respective areas of activities and competence.
2. Each Member State shall designate a national governmental authority or a national regulatory authority as its competent authority that ensures the implementation of the measures provided for in this Regulation. Competent authorities shall cooperate with each other in the implementation of this Regulation. Member States may allow the competent authority to delegate specific tasks set out in this Regulation to other bodies. Delegated tasks shall be performed under the supervision of the competent authority and shall be specified in the plans referred to in Article 7. The declaration of any of the crisis levels referred to in Article 10(1) may be only delegated to a public authority.
3. Each Member State shall notify to the Commission without delay the name of the competent authority and any changes thereto. Each Member State shall make the name of the competent authority public.
4. When implementing the measures provided for in this Regulation, the competent authority shall establish the roles and responsibilities of the different actors involved in such a way as to ensure that a three-level approach is respected which involves first 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 action of the competent authorities at regional and Union levels, as set out in this Regulation, inter alia, through the Gas Coordination Group referred to in Article 14 or the crisis management group referred to in Article 11(4), in particular in the event of a regional or Union emergency as defined in Article 11(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 and verifiable, shall not unduly distort competition and the effective functioning of the internal market in gas and shall not endanger the security of gas supply of other Member States or of the Union as a whole.
7. The composition of regions for the purposes of the regional cooperation as provided for in this Regulation shall be based on following criteria:
  - (a) geographical proximity;
  - (b) existing and planned interconnections and interconnection capacity between Member States as well as the supply patterns;
  - (c) possibility to pool resources and balance risks for security of gas supply across the region;

- (d) market development and maturity;
- (e) manageable number of Member States in each region;
- (f) to the extent possible, existing regional co-operation structures.

The list of the regions and their composition is set out in Annex I.

The Commission shall be empowered to adopt delegated acts in accordance with Article 18 to amend Annex I based on the criteria set out in the first subparagraph of this paragraph if the circumstances warrant a need for a change of a region.

#### *Article 4*

#### **Infrastructure standard**

1. Each Member State or, where a Member State so provides, the competent authority shall ensure that the necessary measures are taken so that in the event of a disruption of the single largest gas infrastructure, the technical capacity of the remaining infrastructure, determined according to the  $N - 1$  formula as provided in point 2 of Annex II, is able, without prejudice to paragraph 2 of this Article, to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years. This is without prejudice 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 technical 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 compensated for, in a timely manner, by appropriate market-based demand-side measures. For that purpose, the formula provided in point 4 of Annex II shall be used.
3. Where appropriate, according to the risk assessment referred to in Article 6, the competent authorities of neighbouring Member States may agree to jointly fulfil the obligation set out in paragraph 1 of this Article. In such case the competent authorities shall provide in the preventive action plan the calculation of the  $N-1$  formula together with an explanation how the agreed arrangements fulfil this obligation. Point 5 of Annex II shall apply.
4. The transmission system operators shall enable permanent physical capacity to transport gas in both directions ("bi-directional capacity") on all interconnectors between Member States, except:
  - (a) in the case of connections to production facilities, to LNG facilities and to distribution networks; or
  - (b) where an exemption from that obligation has been granted.

For the procedure to enable or enhance permanent bi-directional capacity on an interconnector or to obtain or prolong an exemption from that obligation Annex III shall apply.
5. National regulatory authorities shall take into account the efficiently incurred costs of fulfilling the obligation set out in paragraph 1 and the costs of enabling permanent bi-directional capacity so as to grant appropriate incentives when fixing or approving, in a transparent and detailed manner, the tariffs or methodologies in



accordance with Article 41(8) of Directive 2009/73/EC and Article 13 of Regulation (EC) No 715/2009.

6. In so far as an investment for enabling or enhancing permanent bi-directional capacity is not required by the market and where that investment incurs costs in more than one Member State or in one Member State for the benefit of another Member State, 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 as well as investments already made in the infrastructure in question.
7. 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 market demand and the risks identified. The competent authorities shall assess in the risk assessment whether internal bottlenecks exist and whether national entry capacity and infrastructures, in particular transmission networks, are capable of adapting the national and cross border gas flows to the scenario of the disruption of the single largest gas infrastructure at national level and the single largest gas infrastructure of common interest to the region identified in the risk assessment.
8. Luxembourg, Slovenia and Sweden shall, by way of exception, not be bound by, but shall endeavour to meet, the obligation set out in paragraph 1 of this Article, while ensuring the gas supplies to protected customers in accordance with Article 5. That exception shall apply for as long as:
  - (a) in the case of Luxembourg: it has at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities on its territory;
  - (b) in the case of Slovenia: it has at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities or an LNG facility on its territory;
  - (c) in the case of Sweden: it has no gas transit to other Member States on its territory, an annual gross inland gas consumption of less than 2 Mtoe and less than 5 % of total primary energy consumption from gas.

Luxembourg, Slovenia and Sweden shall ensure, in a transparent, detailed and non-discriminatory manner, regular market testing for investments in infrastructure and make public the results of those tests. They shall inform the Commission of any change in respect of the conditions set out in that subparagraph. The exception laid down in the first subparagraph shall cease to apply where at least one of those conditions is no longer fulfilled.

By 3 December 2018, Luxembourg, Slovenia and Sweden shall transmit a report to the Commission describing the situation with respect to the respective conditions set out in that subparagraph and the prospects for the compliance with the obligation in paragraph 1, 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 respective conditions set out in the first subparagraph are still met, the Commission may decide that the exception can continue to apply for four more years. In the event of a

positive decision, the procedure set out in this subparagraph shall be repeated after four years.

*Article 5*  
**Supply standard**

1. The competent authority shall require the natural gas undertakings, that it identifies, to take measures to ensure the supply of gas to the protected customers of the Member State in each of the following cases:
  - (a) extreme temperatures during a 7-day peak period occurring with a statistical probability of once in 20 years;
  - (b) any period of at least 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years;
  - (c) for a period of at least 30 days in case of the disruption of the single largest gas infrastructure under average winter conditions.

No later than 31 March 2017 Member States shall notify the Commission their definition of protected customers, the annual gas consumption volumes of the protected customers and the percentage they represent of the total annual final gas consumption in that Member State. Where a Member State includes in its definition of protected customers the categories referred to in point (a) or (b) of Article 2 (1) it shall specify in the notification to the Commission the gas consumption volumes corresponding to consumers belonging to those categories and the percentage that each of those groups of consumers represents in terms of the annual final use of gas.

The competent authority shall identify the natural gas undertakings referred to in the first subparagraph and specify them in the preventive action plan. Any new measures envisaged to ensure the supply standard shall comply with the procedure established in Article 8(4).

Member States may comply with the obligation laid down in the first subparagraph by replacing the gas with different source of energy to the extent that the same level of protection is achieved.

2. Any increased supply standard going beyond the 30-day period 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 6, shall be reflected in the preventive action plan and shall:
  - (a) comply with Article 3(6);
  - (b) not impact negatively on the ability of any other Member State to supply its protected customers in accordance with this Article in the event of a national, regional or Union emergency; and
  - (c) comply with the criteria specified in Article 11(5) in the event of a regional or Union emergency.

A justification of the compliance of the measures referred to in the first subparagraph with the conditions set out in that paragraph shall be included in the preventive action plan. Additionally, any new measure referred to in the first subparagraph shall comply with the procedure established in Article 8(4).

3. After the periods defined by the competent authority in accordance with paragraphs 1 and 2, or under more severe conditions than those defined in paragraph 1, the

competent authority and natural gas undertakings shall endeavour to maintain, as far as possible, the gas supply, in particular for protected customers.

4. The obligations imposed on natural gas undertakings for the fulfilment of the supply standards laid down in this Article shall be non-discriminatory and shall not impose an undue burden on those undertakings.
5. Natural gas undertakings shall be allowed to meet their obligations under this Article at a regional or Union level, where appropriate. The competent authorities shall not require the standards laid down in this Article to be met based on infrastructure located only within its territory.
6. The competent authorities shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the internal energy market and at a price respecting the market value of the supplies.

#### *Article 6*

#### **Risk assessment**

1. The competent authorities of each region as listed in Annex I shall jointly make an assessment at regional level of all risks affecting the security of gas supply. The assessment shall take into account all relevant risks such as natural disasters, technological, commercial, social, political and other risks. The risk assessment shall be carried out by:
  - (a) using the standards specified in Articles 4 and 5. The risk assessment shall describe the calculation of the N – 1 formula at national level and include a calculation of the N-1 formula at regional level. The risk assessment shall also include the assumptions used, including those for the calculation of the N – 1 formula at regional level, and the data necessary for such calculation. The calculation of the N-1 formula at national level shall be accompanied by a simulation of the disruption of the single largest infrastructure using a hydraulic model as well as a calculation of the N-1 formula considering the level of gas in storages at 30% and 100% of the total capacity;
  - (b) taking into account all relevant national and regional circumstances, in particular market size, network configuration, actual flows, including outflows from the Member States concerned, the possibility of physical gas flows in both directions 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 mixes, in particular with respect to district heating and electricity 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, taking into account the history, probability, season, frequency and duration of their occurrence and assessing their likely consequences, such as:
    - (i) disruption of the infrastructure relevant for the security of supply, notably transmission infrastructure, storages or LNG terminals, including the largest infrastructure identified for the calculation of N-1 formula, and
    - (ii) disruption of supplies from third country suppliers, as well as, where appropriate, geopolitical risks;

- (d) identifying the interaction and correlation of risks among the Member States in the region and with other Member States, as appropriate, including, inter alia, as regards interconnections, cross-border supplies, cross-border access to storage facilities and bi-directional capacity;
  - (e) taking into account the maximal interconnection capacity of each border entry and exit point and various filling levels for storage.
2. The competent authorities within each region shall agree on a cooperation mechanism to conduct the risk assessment within the deadline provided for in paragraph 5 of this Article. Competent authorities shall report to the Gas Coordination Group on the agreed cooperation mechanism for conducting the risk assessment 18 months before the deadline for the adoption of the risk assessment and the updates of the risk assessment. The Commission may have a facilitating role overall in the preparation of the risk assessment, in particular for the establishment of the cooperation mechanism. If competent authorities within a region do not agree on a cooperation mechanism, the Commission may propose a cooperation mechanism for that region.
- Within the agreed cooperation mechanism each competent authority shall share and update one year before the deadline for the notification of the risk assessment all necessary national data necessary for the preparation of the risk assessment, notably for running the various scenarios referred to in point (c) of paragraph 1.
3. The risk assessment shall be prepared in accordance with the template in Annex IV. The Commission shall be empowered to adopt delegated acts in accordance with Article 18 to amend those templates.
4. 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 authorities and provide it upon request with all necessary information for the risk assessment.
5. The risk assessment once agreed by all Member States in the region shall be notified to the Commission for the first time no later than on 1 September 2018. The risk assessment shall be updated every four years unless circumstances warrant more frequent updates. The risk assessment shall take account of progress made in investments needed to cope with the infrastructure standard defined in Article 4 and of country-specific difficulties encountered in the implementation of new alternative solutions. It shall also build on the experience acquired through the simulation of the emergency plans contained in Article 9 (2).
6. By 1 November 2017 ENTSO for Gas shall carry out a Union wide simulation of supply and infrastructure disruption scenarios. The scenarios shall be defined by ENTSO for Gas in consultation with the Gas Coordination Group. The competent authorities shall provide ENTSO for Gas with the necessary data for the simulations such as peak demand values, production capacity and demand side measures. The competent authorities shall take into account the results of the simulations for the preparation of the risk assessments, preventive action plans and emergency plans. The Union-wide simulation of supply and infrastructure disruption scenarios shall be updated every four years unless circumstances warrant more frequent updates.

## *Article 7*

### **Establishment of a preventive action plan and an emergency plan**

1. The competent authorities of the Member States of each region as listed in Annex I, after consulting the natural gas undertakings, the relevant organisations representing the interests of household and industrial gas customers, including electricity producers, and the national regulatory authorities, where they are not the competent authorities, shall establish jointly:
  - (a) a preventive action plan containing the measures to be adopted to remove or mitigate the risks identified in the region, including risks of purely national dimension, in accordance with the risk assessment undertaken pursuant to Article 6 and in accordance with 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 the region, including events of purely national dimension, in accordance with Article 9.
2. The competent authorities within each region shall agree on a cooperation mechanism sufficiently in time to establish the plans and allow for their notification and for the notification of the updated plans.

The measures necessary to remove and mitigate risks of a purely national dimension as well as the measures to be taken to remove or mitigate the impact of events which, due to their limited size, are to be addressed at national level only, shall be developed by each competent authority of the region and included in the plans developed at regional level. Such national measures shall not hamper in any way the effectiveness of measures at regional level. Each competent authority shall also identify areas for regional cooperation and possible joint measures. The national measures together with the proposals for regional cooperation shall be shared with other competent authorities in the region one year before the deadline for the notification of the plans.

Competent authorities shall regularly report to the Gas Coordination Group on the progress achieved on the preparation and adoption of the preventive action plans and the emergency plans. In particular competent authorities shall report to the Gas Coordination Group on the agreed cooperation mechanism 18 months before the deadline for the adoption of the plans and the updates of the plans. The Commission may have a facilitating role overall in the preparation of the plans, in particular for the establishment of the cooperation mechanism. If competent authorities within a region do not agree on a cooperation mechanism, the Commission may propose a cooperation mechanism for that region. They shall ensure the regular monitoring of the implementation of such plans.

3. The preventive action plan and the emergency plan shall be developed in accordance with the templates contained in Annex V. The Commission shall be empowered to adopt delegated acts in accordance with Article 18 to amend those templates.
4. The preventive action plans and emergency plans shall be adopted by all Member States in the region, made public and notified to the Commission no later than on 1 March 2019. Such notification shall take place once the plans have been adopted by all Member States in the region. The Commission shall inform the Gas Coordination Group about the notification of the plans and publish them on the Commission website.
5. Within four months of the notification by the competent authorities, the Commission shall assess those plans duly taking into account the peer review and the views

expressed in the Gas Coordination Group. Annex VI shall apply for the procedure to carry out peer reviews.

The Commission shall issue an opinion to the competent authorities of the region with the recommendation to review the relevant preventive action plan or emergency plan if the plan is considered to contain one of the following elements:

- (a) is not effective to mitigate the risks as identified in the risk assessment;
  - (b) is inconsistent with the risk scenarios assessed or with the plans of another region;
  - (c) may distort competition or hamper the functioning of the internal energy market;
  - (d) does not comply with the provisions of this Regulation or other provisions of Union law;
  - (e) endangers the security of gas supply of other Member States or of the Union as a whole.
6. Within three months of notification of the Commission's opinion referred to in paragraph 4, the competent authorities concerned shall notify the amended plan to the Commission, or shall inform the Commission of the reasons for which they do not agree with the recommendations.

In the event of disagreement, the Commission may, within three months of the reply of the competent authorities, take a decision requiring the amendment of the relevant plan. The competent authorities shall adopt and publish the plan within three months of the notification of Commission decision.

7. The confidentiality of commercially sensitive information shall be preserved.
8. The preventive action plans and emergency plans developed under Regulation (EU) No 994/2010, updated as appropriate, shall remain in force until the preventive action plans and emergency plans referred to in paragraph 1 are established for the first time.

#### *Article 8*

#### **Content of the preventive action plans**

1. The preventive action plan shall contain:
- (a) the results of the risk assessment and a summary of the scenarios considered as laid down in point (c) of Article 6(1);
  - (b) the definition of protected customers in each Member State of the region and the information described in the second subparagraph of Article 5(1);
  - (c) the measures, volumes and capacities needed to fulfil the infrastructure and supply standards in each Member State of the region, as laid down in Articles 4 and 5, including where applicable, the extent to which demand-side measures can sufficiently compensate, in a timely manner, for a supply disruption as referred to in Article 4(2), the identification of the single largest gas infrastructure of common interest in the case of application of Article 4(3), the necessary gas volumes per category of protected customers and per scenario as referred to in Article 5(1) and any increased supply standard under Article 5(2), including a justification of the compliance with the conditions set in Article

- 5(2) and a description of a mechanism to temporarily reduce any increased supply standard or additional obligation in accordance with Article 12;
- (d) obligations imposed on natural gas undertakings and other relevant bodies likely to have an impact on security of gas supply, such as obligations for the safe operation of the gas system;
  - (e) the other preventive measures designed to address the risks identified in the risk assessment, such as those relating to the need to enhance interconnections between neighbouring Member States and the possibility to diversify gas 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;
  - (f) information on the economic impact, effectiveness and efficiency of the measures contained in the plan, including the obligations referred to in point (k);
  - (g) description of the effects of the measures contained in the plan on the functioning of the internal energy market as well as national markets, including the obligations referred to in point (k);
  - (h) description of the impact of the measures on the environment and on consumers;
  - (i) the mechanisms to be used for cooperation with other Member States, including the mechanisms for preparing and implementing preventive action plans and emergency plans;
  - (j) information on existing and future interconnections, including those providing access to the gas network of the Union, cross-border flows, cross-border access to storage and LNG facilities and the bi-directional capacity, in particular in the event of an emergency;
  - (k) 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 4, shall take into account the Union-wide 10-year network development plan to be elaborated by the ENTSO for Gas pursuant to Article 8(10) of Regulation (EC) No 715/2009.
  3. The preventive action plan shall be based primarily on market measures and shall not put an undue burden on natural gas undertakings, or negatively impact on the functioning of the internal market in gas.
  4. The Member States shall carry out an impact assessment on all preventive non-market based measures to be adopted after the entry into force of this Regulation, including the measures to comply with the supply standard set out in Article 5(1) and the measures for the increased supply standard set out in Article 5(2). Such impact assessment shall cover at least the following:
    - (a) impact of the proposed measure on the development of the national gas market and competition at national level;
    - (b) impact of the proposed measures on the internal gas market;

- (c) potential impact on the security of gas supply of neighbouring Member States, notably for those measures that could reduce the liquidity in regional markets or restrict flows to neighbouring Member States;
- (d) the costs and benefits of the measures, assessed against alternative market based-measures;
- (e) assessment of necessity and proportionality of the measure in comparison with possible market based measures;
- (f) openness of the measure, in order to ensure equal possibilities for all market participants;
- (g) phase-out strategy, the expected duration of the envisaged measure and an appropriate review calendar.

The analysis referred to in points (a) and (b) shall be carried out by the national regulatory authorities.

5. The impact assessment and the adopted measures shall be published by the competent authority and shall be notified to the Commission. Within four months of the notification the Commission shall take a decision and may require the Member States to amend the adopted measures. That period shall begin on the day following the receipt of a complete notification. The period may also be extended with the consent of both the Commission and the Member State.

The Commission may take a decision requiring the amendment or withdrawal of a measure where a measure is:

- (a) likely to distort the Union internal market;
- (b) likely to distort the development of the national gas market;
- (c) not necessary or proportionate to ensure security of supply; or
- (d) likely to jeopardize the security of supply of other Member States.

The adopted measure shall only enter into force when it is approved by the Commission or has been amended in accordance with the Commission decision.

6. The preventive action plan shall be updated every four years after 1 March 2019, unless circumstances warrant more frequent updates or at the Commission's request. The updated plan shall reflect the updated risk assessment and the results of the tests carried out in accordance with Article 9 (2). Article 7(3) to (7) shall apply to the updated plan.

#### *Article 9*

#### **Content of the emergency plan**

1. The emergency plan shall:
  - (a) build upon the crisis levels set out in Article 10(1);
  - (b) define the role and responsibilities of natural gas undertakings and of industrial gas customers including relevant electricity producers, taking account of the different extent 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 Article 10(1);



- (c) 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 3(2) at each of the crisis levels defined in Article 10(1);
  - (d) ensure that natural gas undertakings and industrial gas customers including relevant electricity producers are given sufficient opportunity to respond at each crisis level;
  - (e) identify, if appropriate, the measures and actions to be taken to mitigate the potential impact of a gas supply disruption on district heating and the supply of electricity generated from gas;
  - (f) establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows;
  - (g) designate a crisis manager or team and define its role;
  - (h) identify the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at emergency level;
  - (i) identify the contribution of non-market based measures planned or to be implemented for the emergency level, and assess the degree to which the use of such non-market based measures is necessary to cope with a crisis. The effects of the non-market based measures shall be assessed and procedures for their implementation defined. Non-market based measures are to be used only when market-based mechanisms alone can no longer ensure supplies, in particular to protected customers, or for the application of Article 12;
  - (j) describe the mechanisms used to cooperate with other Member States for each crisis level;
  - (k) detail the reporting obligations imposed on natural gas undertakings at alert and emergency levels;
  - (l) describe the technical or legal arrangements in place to prevent undue gas consumption of non-protected customers who are connected to a gas distribution or transmission network;
  - (m) describe the technical and financial arrangements in place to apply the solidarity obligations laid down in Article 12;
  - (n) establish a list of predefined actions to make gas available in the event 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.
2. The measures, actions and procedures contained in the emergency plan shall be tested at least twice between its regular four-year updates referred to in paragraph 3. In order to test the emergency plan, Member States shall simulate high and medium impact scenarios and responses in real time in accordance with their emergency plan. The results of the tests shall be presented at the Gas Coordination Group by the competent authorities.
  3. The emergency plan shall be updated every four years after 1 March 2019, unless circumstances warrant more frequent updates or at the Commission's request. The updated plan shall reflect the updated risk assessment and the conclusions of the tests

carried out in accordance with paragraph 2. Article 7(3) to (7) shall apply to the updated plan.

4. The emergency plan shall ensure that cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible in the event of an emergency and shall not introduce any measure unduly restricting the flow of gas across borders.

#### *Article 10*

#### **Declaration of crisis**

1. The three crisis levels shall be as follows:
  - (a) early warning level (early warning): when there is concrete, serious and reliable information that an event may occur which is likely to result in significant deterioration of the supply situation and is likely to lead to the alert or the emergency level being triggered; the early warning level may be activated by an early warning mechanism;
  - (b) alert level (alert): when a supply disruption or exceptionally high gas demand occurs which results in significant deterioration of the supply situation, but the market is still able to manage that disruption or demand without the need to resort to non-market measures;
  - (c) emergency level (emergency): in the event of exceptionally high gas demand, 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 the 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 5.
2. When the competent authority declares any of the crisis levels referred to in paragraph 1, it shall immediately inform the Commission and provide it with all the necessary information, in particular with information on the action 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 Emergency Response Coordination Centre.
3. When the competent authority declares an emergency, it shall follow the pre-defined action as set out in its emergency plan and shall immediately inform the Commission and the competent authorities in the region in particular of the action it intends to take. In duly justified exceptional circumstances, the competent authority may take action deviating from the emergency plan. The competent authority shall immediately inform the Commission and the competent authorities in the region of any such action and shall provide a justification therefore.
4. The Member States and, in particular, the competent authorities shall ensure that:
  - (a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time;
  - (b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and

(c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the emergency plan.

5. The Commission shall verify, as soon as possible, but in any case within five days of receiving the information of the competent authority referred to in paragraph 2, whether the declaration of an emergency is justified in accordance with point (c) of paragraph 1 and whether the measures taken follow as closely as possible the actions listed in the emergency plan and are not imposing an undue burden on natural gas undertakings and are in accordance with paragraph 4. 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 referred to in the first sentence of this paragraph. The Commission may also request the competent authority to lift the declaration of emergency where it considers that such declaration is not or no longer justified according to point (c) of paragraph 1.

Within three days of the notification of the Commission request, the competent authority shall modify the measures and notify the Commission thereof, or shall inform the Commission of the reasons for which it does not agree with the request. In that case, the Commission may within three days amend or withdraw its request or, in order to consider the issue, convene the competent authority or, where appropriate, the competent authorities concerned, and, where the Commission deems it necessary, the Gas Coordination Group. The Commission shall set out its detailed reasoning for requesting any changes to the action. The competent authority shall take full account of the position of the Commission. Where the final decision of the competent authority diverges from the Commission position, the competent authority shall provide the reasoning underlying such decision.

#### *Article 11*

#### **Regional and Union emergency responses**

1. At the request of a competent authority that has declared an emergency and following the verification in accordance with Article 10(5), the Commission may declare a regional or Union emergency. At the request of at least two competent authorities that have declared an emergency and following the verification in accordance with Article 10(5), and where the reasons for these emergencies are linked, the Commission shall declare, as appropriate, a regional or Union emergency. In all cases, the Commission, using the means of communication most appropriate to the situation, shall gather the views of, and take due account of all the relevant information provided by the other competent authorities. When it assesses that the underlying basis for the regional or Union emergency no longer justifies a declaration of emergency, the Commission shall declare an end to the regional or Union 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 a regional or Union emergency. During the regional or Union emergency, at the request of at least three Member States, the Commission may restrict 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 regional or Union emergency, the Commission shall coordinate the action 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 action at Member State and regional levels in relation to the Union level;
  - (c) coordinate the actions with regard to third countries.
4. The Commission may convene a crisis management group composed of the crisis managers referred to in point (g) 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.
5. The Member States and in particular the competent authorities shall ensure that:
  - (a) 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;
  - (b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and
  - (c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the emergency plan.
6. Where, at the request of a competent authority or a natural gas undertaking or on its own initiative, the Commission considers that, in a regional or Union emergency, an action taken by a Member State or a competent authority or the behaviour of a natural gas undertaking is contrary to paragraph 5, the Commission shall request that Member State or competent authority to change its action or to take action in order to ensure compliance with paragraph 5, informing it of the reasons therefor. Due account shall be taken of the need to operate the gas system safely at all times.

Within three days of notification of the Commission request, the Member State or the competent authority shall change its action and notify the Commission or shall set out to the Commission the reasons for which 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, where 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 take full account of the position of the Commission. Where the final decision of the competent authority or the Member State diverges from the Commission position, the competent authority or the Member State shall provide the reasoning underlying such decision.
7. The Commission, after consulting 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 third countries.

8. The competent authority shall provide to the Commission's Emergency Response Coordination Centre (ERCC) the information on any need for assistance. ERCC shall assess the overall situation and advise on the assistance that should be provided to the most affected Member States, and where appropriate to third countries.

*Article 12*  
**Solidarity**

1. Where a Member State has declared the emergency crisis level in accordance with Article 10(1) any increased supply standard or additional obligation imposed on natural gas undertakings in other Member States under Article 5(2) shall be temporarily reduced to the level established in Article 5(1).
2. As long as the supply to households, essential social services and district heating installations in the Member State having declared the emergency is not satisfied, despite the application of the measure in paragraph 1, the gas supply to customers other than households, essential social services and district heating installations in any other Member State, directly connected to the Member State which declared the emergency, shall not continue to the extent necessary to supply the households, essential social services and district heating installations in the Member States having declared the emergency.

The first subparagraph shall apply to essential social services and district heating installations to the extent they are covered by the definition of protected customers in the respective Member State.

3. The competent authorities shall adopt the necessary measures, so that gas not supplied to customers other than households, essential social services and district heating installations in their territory in the situation described in paragraph 2 can be supplied to the Member State in the emergency situation described in the same paragraph for the supply to households, essential social services and district heating installations in that Member State.
4. The technical, legal and financial arrangements for the application of paragraph 3 shall be agreed among the Member States which are directly connected to each other and described in the emergency plans of their respective regions. Such arrangements may cover, among others, gas prices to be applied, use of interconnectors, including bi-directional capacity, gas volumes and the coverage of compensation costs. Market-based measures such as auctions shall be preferred for the implementation of the obligation laid down in paragraph 3. In case the technical, legal and financial arrangements necessary to apply paragraph 3 are amended, the relevant emergency plan shall be updated accordingly.
5. Paragraph 2 shall apply as of 1 March 2019.
6. If the Member States do not agree on the necessary technical, legal and financial arrangements, the Commission may propose a framework for such measures in its opinion and decision on the plans.

*Article 13*  
**Information exchange**

1. During an emergency, the natural gas undertakings concerned shall make available in particular the following information to the competent authority 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 million cubic meters per day (mcm/d);
  - (c) the period, expressed in days, for which it is expected that gas supply to the protected customers can be ensured.
2. In the event of a regional or Union emergency, the Commission is entitled to request that the competent authority provide it without delay with at least:
  - (a) the information set out in paragraph 1;
  - (b) information on the measures planned to be undertaken and already implemented by the competent authority to mitigate the emergency, and information on their effectiveness;
  - (c) the requests made for additional measures to be taken by other competent authorities;
  - (d) the measures implemented at the request of other competent authorities.
3. 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 an assessment of the economic impact of the emergency, the impact on the electricity sector and the assistance provided to 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 updates of the preventive action plans and the emergency plans.

The Commission shall analyse the assessments of the competent authorities and shall inform the Member States, the European Parliament and the Gas Coordination Group of the results of its analysis in an aggregated form.
4. In duly justified circumstances irrespective of a declaration of emergency, the competent authority may require gas undertakings to provide the information referred to in paragraph 1 or additional information necessary to assess the overall situation of the gas supply in the Member State or other Member States, including contractual information. The Commission may request from the competent authorities the information provided by natural gas undertakings.
5. Where the Commission considers that the gas supply in a region or the Union as whole is affected or is likely to be affected it may require the competent authorities to collect and submit to the Commission information necessary to assess the situation of the gas supply in the Union. The Commission may share its assessment with the Gas Coordination Group.
6. In order for the Competent Authorities and the Commission to assess the situation of the security of supply at national, regional and Union level, natural gas undertakings shall notify:
  - (a) to the competent authorities concerned the following details of gas supply contracts with a duration of more than 1 year:
    - (i) contract duration;

- (ii) contracted volumes in total, on an annual basis and the average volume per month;
  - (iii) contracted maximum daily volumes in the event of an alert or emergency;
  - (iv) contracted delivery points;
  - (v) minimum daily, monthly and yearly gas volumes;
  - (vi) conditions for the suspension of gas deliveries.
- (b) to the competent authority and to the Commission immediately after their conclusion or modification the gas supply contracts with a duration of more than 1 year concluded or modified after [*OP: Please insert the date of entry in force of this Regulation*] that individually or cumulatively with other contracts with the same supplier or its affiliates provide more than 40% of yearly natural gas consumption in the Member State concerned. The notification obligation shall not apply to the modifications related only to the gas price. The notification obligation shall also apply to all commercial agreements relevant for the execution of the gas supply contract.

The competent authority shall notify the data listed in point (a) of the first subparagraph to the Commission by the end of September each year.

7. In duly justified circumstances, where the competent authority or the Commission considers that a gas supply contract not covered by paragraph 6(b) of this Article might affect the security of supply of a Member State, region or of the Union as whole, the competent authority of the Member State where the natural gas undertaking who has concluded the contract operates or the Commission may request the natural gas undertaking to provide the contract for the assessment of its impact on security of supply. The request may cover also any other commercial agreements relevant for the execution of the gas supply contract.
8. The competent authority shall take into account the information received under this article in the preparation of the risk assessment, preventive action plan and emergency plan or their respective updates. The Commission may adopt a decision requesting the competent authority to amend the plans on the basis of the information received under this article.
9. The competent authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

#### *Article 14*

#### **Gas Coordination Group**

1. A Gas Coordination Group is established to facilitate the coordination of measures concerning security of gas supply. The Group shall be composed of representatives of the Member States, in particular of their competent authorities, as well as the Agency for the Cooperation of Energy Regulators (the "Agency"), the ENTSO for Gas 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 adopt its rules of procedure.

2. 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 specifically in the event of an emergency;
  - (b) all information relevant for security of gas supply at national, regional and Union levels;
  - (c) 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;
  - (f) the assessment of the preventive action plans and the emergency plans and the implementation of the measures foreseen therein;
  - (g) the coordination of measures to deal with an emergency within the Union, with third countries that are Contracting Parties to the Treaty establishing the Energy Community and with other 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 shall share the information received from the competent authorities whilst preserving the confidentiality of commercially sensitive information.

#### *Article 15*

#### **Cooperation with the Energy Community Contracting Parties**

1. The second sentence of Article 3(2), Article 3(6), Article 4(3), (4) and (6), Article 5(2), point (d) of Article 6(1), points (b) and (e) of Article 7(5), points (e), (g), (i), of Article 8(1), point (b) and (c) of Article 8(4), points (j) and (m) of Article 9(1), Article 9(4), Article 10(4), Article 11(5) and Article 12 shall create obligations for the Member States towards an Energy Community Contracting Party subject to the following procedure:
  - (a) the Ministerial Council of the Energy Community adopts and integrates this Regulation in the Energy Community by means of a Joint Act on security of supply introducing reciprocal obligations on the side of Energy Community Contracting Parties in the relations with the Member States,
  - (b) the Energy Community Contracting Party implements the Joint Act and duly notifies the full implementation to the Energy Community Secretariat, including a request for the application of this paragraph for its part and
  - (c) the Energy Community Secretariat notifies the implementation and a request to the Commission to confirm the applicability of reciprocal obligations between the requesting Energy Community Contracting Party and the Member States.

Following the notification of the Energy Community Secretariat, the Commission takes a decision confirming the applicability of reciprocal obligations between the Member States and the Energy Community Contracting Party in view of application of this paragraph, indicating the date as of which these mutual obligations apply.
2. After the Commission decision referred to in paragraph 1 is taken, the representatives of the Energy Community Contracting Party in question shall be invited to participate



in the meetings of the Gas Coordination Group when matters directly affecting this Contracting Party and falling within the scope of paragraph 1 are discussed.

#### *Article 16*

### **Monitoring by the Commission**

The Commission shall carry out continuous monitoring of the security of gas supply measures and report regularly to the Gas Coordination Group.

The Commission, on the basis of the assessments referred to in Article 7(5) shall, when appropriate, draw conclusions as to possible means to enhance security of supply at Union level and report to the European Parliament and the Council on the implementation of this Regulation, including, where necessary, recommendations for improvement of this Regulation.

#### *Article 17*

### **Notifications**

The risk assessment, the preventive action plans, the emergency plans and all other documents shall be notified to the Commission electronically through the CIRCABC platform.

All correspondence in connection with a notification shall be transmitted electronically.

#### *Article 18*

### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 6(3) and Article 7(3) shall be conferred on the Commission for an undetermined period of time from the [*OP: please insert the date of entry into force of the this Regulation*].
3. The delegation of power referred to in Article 6(3) and Article 7(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 6(3) and Article 7(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 19*  
**Derogation**

This Regulation shall not apply to Malta and Cyprus for as long as no gas is supplied on their respective territories. For Malta and Cyprus the obligations laid down in, and the choices those Member States are entitled to make pursuant to, the following provisions shall be fulfilled and made within the specified time after the date when gas is first supplied on their respective territories:

- (a) for point (1) of the second paragraph of Article 2, Article 3(2), Article 6(6) and point (a) of Article 13(6): 12 months;
- (b) for Article 5(1): 18 months;
- (c) for Article 7(4): 24 months;
- (d) for Article 4(4): 36 months;
- (e) for Article 4(1): 48 months.

*Article 20*  
**Repeal**

Regulation (EU) No 994/2010 is repealed.

References made to the repealed Regulation shall be construed as references to this Regulation and read in accordance with the correlation table in Annex VIII.

*Article 21*  
**Entry into force**

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

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*