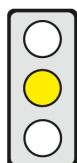


KEY ISSUES

Objective of the Regulation: Security of the gas supply in the EU will be increased.

Affected parties: Whole economy, particularly the natural gas sector.



Pro: (1) The fact that preventive measures have to be approved by the Commission, restricts the scope for Member States to operate protectionist energy policies.

(2) The solidarity principle ensures that gas flows to Member States affected by an emergency will not be obstructed due to higher national supply standards in neighbouring Member States.

Contra: (1) Mandatory regional preventive action and emergency plans are unsuitable and disproportionate for effectively preventing or removing disruptions in supply.

(2) The Regulation must stipulate more clearly that all information from gas supply contracts is to be kept confidential.

CONTENT

Title

Proposal COM(2016) 52 of 16 February 2016 for a **Regulation** concerning measures to **safeguard security of gas supply** and repealing Council Regulation 994/2010

Brief Summary

► Context and objectives

- In 2013, 65% of gas consumed in the EU had to be imported [SWD(2016) 25, p. 4]. The proportion of which imported from Russia was [COM(2014) 330, see [cepPolicyBrief](#)
 - 27% in the EU as a whole and
 - 100% in Bulgaria, Estonia, Finland, Latvia, Lithuania and Slovakia.
- A "stress test" of the EU gas system in the summer of 2014 indicated that a "severe disruption" of Russian gas supplies would cause major interruptions in supply across the whole EU which, notably in Eastern Europe, would have "severe economic and social impacts" (p. 5).
- Possible causes of disruption to the gas supply in the EU are
 - the interruption of gas supplies from Russia and other third countries,
 - the lack of gas infrastructure such as pipelines, storage and liquefied natural gas terminals and
 - national strategies by the Member States to prevent disruptions in supply.
 The Commission proposes measures to remedy these defects.

► Reverse flow obligation

- Transmission system operators must, in principle, ensure that transmission systems are able to transport natural gas to all border interconnectors in both directions (reverse flow, Art. 4 (4)).
- Transmission system operators can apply for a temporary exemption from the reverse flow obligation of up to a maximum of four years. For this they must prove, by way of a cost-benefit analysis, that a newly created reverse flow (Annex III No. 4)
 - does not enhance the security of supply in any Member State along the "gas supply corridor" or
 - the costs of the necessary investment outweigh the benefits for security of supply.
- The two Member States concerned will take a joint decision on the granting of an exemption (Annex III No. 4).
- The Commission can require modifications to the decision and, in this regard, will "take into account" the objections of other Member States along the gas supply corridor (Annex III No. 8).

► Secure gas supply for "protected customers"

- Gas companies must ensure that private households are protected against disruptions in supply. Member States can extend the group of "protected customers" to include the following gas consumers insofar as they are connected to a gas distribution network (Art. 2 (2) and (3)):
 - small and medium-sized enterprises,
 - "essential social services" such as health, emergency and security services, as well as
 - district heating installations only running on gas which supply other "protected customers" with heat.
- The Member States must ensure that the supply of "protected customers" by the gas companies is guaranteed in the following situations ("supply standard", Art. 5 (1)):

- where "extremely" low temperatures prevail for seven consecutive days, such as occurs with a statistical probability of once in 20 years;
- where there is exceptionally high gas demand over a period of 30 days, such as occurs with a statistical probability of once in 20 years;
- where the single largest gas infrastructure – e.g. an important gas transmission system – fails, under average winter conditions, for a period of at least 30 days.
- Member States can decide to implement higher supply standards provided this does not have a negative impact on the security of supply of protected customers in other Member States (Art. 5 (2) (b)).

► **Regional risk assessment, prevention and emergency plans**

- Every Member State will be assigned to one of a total of nine "regions". Every four years, the Member States in a region must jointly (Art. 6 and 7)
 - make an assessment of all risks to the security of supply in their region,
 - establish a "preventive action plan" with measures to mitigate the risks to a secure gas supply in the region and
 - draw up an "emergency plan" containing measures to mitigate the impact of disruptions in supply.
- The measures of the preventive action plan (Art. 8 (3) - (6))
 - must not include any interventionist measures ("non-market based measures"),
 - must be based on a cost-benefit analysis and approved by the Commission if it has a negative impact on the functioning of the EU internal gas market.
- The emergency plan governs the duties and responsibilities of gas companies and Member States with regard to the following three "crisis levels" (Art. 9 in conjunction with Art. 10):
 - early warning level: a significant deterioration in the gas supply is likely;
 - alert level: a significant deterioration in the gas supply occurs which can still be remedied by way of market-based measures;
 - emergency level: a significant deterioration in the gas supply occurs which can no longer be remedied by way of market-based measures;

► **Solidarity principle**

- All Member States must maintain solidarity with a Member State that has declared an emergency ("solidarity principle"): In order to guarantee the gas supply to private households, essential social services and district heating installations in the Member State affected by the emergency, the other Member States must (Art. 12 (1) - (3)):
 - "temporarily" bring increased supply standards down to the EU supply standard,
 - redirect gas supplies, not supplied to households, essential social services or district heating installations in their territory, to the Member State affected by the emergency situation, provided they are "directly connected" to it via a gas transmission system.
- The directly connected Member States must jointly agree the technical, legal and financial arrangements for any necessary redirection of the gas flows in an emergency and include them in the regional emergency plans (Art. 12 (4)). This relates e.g. to the gas prices to be applied to emergency deliveries.

► **Disclosure of gas supply contracts**

- For the assessment of the security of supply of a Member State, a region or the EU, gas companies must notify all Member States and the Commission about the details of gas supply contracts with a duration of more than one year, particularly (Art. 13 (6) (a))
 - the exact contract duration,
 - daily, monthly and annual supply volumes and
 - conditions for the suspension of gas deliveries, e.g. default on payment.
- Gas companies must submit the gas supply contracts in full, to the Member States and the Commission, "immediately" after their conclusion or modification, where they (Art. 13 (6) (b))
 - have a duration of more than one year,
 - are concluded or modified following entry into force of this Regulation and
 - individually or cumulatively with other gas supply contracts with the same supplier provide more than 40% of yearly natural gas consumption in a country.
- The Member States and the Commission may request the submission of gas supply contracts if they believe that these contracts may jeopardise the security of supply of a Member State, a region or the EU (Art. 13 (7)).
- The Member States and the Commission must preserve the confidentiality of "commercially sensitive information".

Main Changes to the Status Quo

- New is the fact that risk assessment and the development of preventive action and emergency plans no longer takes place at national but at regional level.
- New is the fact that non-market-based preventive actions must be based on a cost-benefit analysis and approved by the Commission.
- New is the solidarity principle.

- ▶ New is the fact that certain gas supply contracts which are of importance to the gas supply of a Member State, must be submitted to the Member States and the Commission prior to conclusion.

Statement on Subsidiarity by the Commission

Gas markets cover several Member States and therefore require EU legislation. Severe disruptions to the gas supply in a Member State often have an impact on neighbouring Member States. EU regulatory conditions will also ensure that measures by individual Member States to prevent national disruptions in supply will not have a disproportionately negative impact on the gas trade in the EU internal market.

Policy Context

In its Communication on the resilience of the gas system, [COM(2014) 654, see [cepPolicyBrief](#)], the Commission criticises the fact that national measures to secure the gas supply take insufficient account of the impact on neighbouring countries. In its Communications on security of the energy supply [COM(2014) 330, see [cepPolicyBrief](#)] and the Energy Union [COM(2015) 80, see [cepPolicyBrief](#)] the Commission called for stronger measures to prevent disruptions in supply at regional and European level.

The proposal for a Regulation is part of the energy security package which also includes a proposal on intergovernmental agreements between Member States and third countries in the field of energy [COM(2016) 53], a Communication on an EU strategy on liquefied natural gas and gas storage [COM(2016) 49] and a Communication on the EU Strategy on Heating and Cooling [COM(2016) 51].

Legislative Procedure

16 February 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Energy (leading)
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: Theresa Griffin (S&D Group, UK)
Federal Ministries:	Economic Affairs and Energy
Committees of the German Bundestag:	Economic Affairs and Energy (leading), EU Affairs, Consumer Protection, Environment.
Decision-making mode in the Council:	Qualified majority (adoption by a 55% majority of the Member States representing at least 65% of the population).

Formalities

Legislative competence:	Art. 194 TFEU (Energy)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

By way of gas transmission pipelines which can transport natural gas in both directions at border interconnectors (reverse flow capacity), the gas supplies in the EU can be diversified which will reduce the dependence, particularly of central and Eastern European countries, on Russia as the biggest gas supplier. It must, however, remain possible for transmission system operators to be granted exemptions from the reverse flow obligation because in individual cases compliance with these obligations can result in high costs without materially increasing security of the gas supply.

Since the development of reverse flow capacity at certain border interconnectors can also affect the security of supply of other **Member States along the entire gas supply corridor**, the latter **must** – as the Commission rightly proposes – **have an influence on the decision to grant an exemption to the reverse flow obligation**. The Regulation must, however, make it clear that Member States that profit from the development of reverse flow capacity must also bear a corresponding share of the costs.

The fact that preventive measures, which negatively affect the functioning of the EU internal gas market, **have to be** based on a cost-benefit analysis and **approved by the Commission, restricts the scope for Member States to operate protectionist energy policies** under the guise of increased energy security.

It is appropriate that the Member States and the Commission should be informed of the details of gas supply contracts which are important for the security of supply of Member States because that is the only way they can assess the effectiveness of preventive action and emergency plans.

The Regulation must specify more clearly, how the information contained in the contracts can be used by the Member States and the Commission without compromising contractual confidentiality. It must stipulate **that all information from gas supply contracts is to be kept confidential**.

Impact on Efficiency and Individual Freedom of Choice

Better cross-border coordination in establishing the preventive action and emergency plans is appropriate because, in many cases, severe disruption to the gas supply in a Member State also has an effect on neighbouring Member States. Nevertheless, **mandatory joint regional preventive action and emergency plans** should be rejected. Not only do they involve more red tape but they **are also unsuitable for effectively preventing or removing cross-border disruptions in supply** because the division of the Member States into regions, as proposed by the Commission, does not effectively reflect the many different interconnections between them. The central European countries in particular are directly connected to numerous other Member States via gas transmission pipes and are therefore important for several regions of the EU. Rather than mandatory regionalisation, Member States should therefore be obliged to consult with those Member States to which they are directly connected, prior to adopting national preventive action and emergency plans.

The solidarity principle is appropriate: In the extreme emergencies described in the Regulation, it must be ensured that in the Member State affected, essential social services – e.g. hospitals – and district heating installations take priority over companies in other Member States when it comes to being supplied with gas. **The proposed design of the solidarity obligation ensures that the required gas flows to the Member State affected by an emergency are not hindered due to higher national standards** or gas supplies to companies **in neighbouring Member States**.

The Regulation rightly provides that, in an emergency, directly connected Member States have to manage the financial arrangements for any necessary redirection of gas flows themselves. This prevents the casual acceptance of emergencies by Member States in the expectation of solidarity from neighbouring Member States.

Impact on Growth and Employment

Negligible.

Impact on Europe as a Business Location

Negligible.

Legal Assessment

Legislative Competency

Unproblematic. The EU can take measures to ensure security of the energy supply (Art. 194 (1) (b) TFEU).

Subsidiarity

Unproblematic. EU-wide legislation on the gas supply is more effective at EU level (Art. 5 (3) TEU).

Proportionality with respect to Member States

Regional prevention and emergency plans are unsuitable for effectively preventing or removing disruptions in supply. They are therefore disproportionate (Art. 5 (4) TEU). In this regard, a requirement for Member States to consult with neighbouring countries, prior to adopting their preventive action and emergency plans, would be sufficient and, since it represents less drastic intervention in the sovereignty of Member States, it would also be proportionate.

Conclusion

The Member States along a gas supply corridor must have influence over the decision on granting an exemption to the reverse flow obligation. The fact that preventive measures by the Commission have to be approved restricts the scope for Member States to operate protectionist energy policies. The Regulation must stipulate more clearly that all information from gas supply contracts is to be kept confidential. Mandatory regional preventive action and emergency plans are unsuitable and disproportionate for effectively preventing or removing disruptions in supply. The solidarity principle ensures that gas flows to Member States affected by an emergency will not be obstructed due to higher national supply standards in neighbouring Member States.