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Gas Supply in the EU

Status and Outlook

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EU legislation relating to the gas supply was comprehensively reformed between 2016 and 2019. cep gives the following assessment of the reform:

- Non-discriminatory access to gas pipelines and other gas infrastructure in the EU boosts competition among gas suppliers, reduces gas prices and increases security of the gas supply.
- Extending the EU internal gas market rules to include pipelines used purely for importing gas, is not economically justified because it is unclear why these pipelines would have a negative impact on competition in the internal gas market or on security of the gas supply in the EU.
- Assessment, by the Commission, of intergovernmental agreements (IGAs) between Member States and third countries prior to their conclusion, may expose breaches of EU law at an early stage.
- The new “solidarity principle” ensures that gas flows to Member States affected by an emergency will not be impeded due to higher supply standards in neighbouring Member States.

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1 Introduction

One of the aims of EU energy policy is to ensure security of the energy supply [Art. 194 (1) (b) TFEU]. Natural gas [1] is essential for a secure energy supply. The Member States only have small gas reserves, however, and have to import – mainly via gas pipelines – on average 70% of their gas requirement from Russia and other third countries.[2]

With its strategy for a "resilient Energy Union"[3], the EU principally has two approaches to increasing security of the gas supply in the EU: Firstly, non-discriminatory access to gas pipelines and other gas infrastructure - such as gas storage - aims to boost competition in the internal gas market thereby reducing the influence of third countries - particularly Russia - on gas supply in the EU. Secondly, the risk of a gas-supply crisis will be reduced by precautions taken in the Member States - e.g. expansion of cross-border gas pipelines in the EU.[4]

Regulation of competition in the internal gas market is essentially governed by the Internal Gas Market Directive [2009/73/EC][5]. It provides for the unbundling of previously vertically integrated electricity companies, ensuring non-discriminatory network access and regulation of the charges for use of gas pipelines ("Internal Gas Market Rules"). A change to this [6] Directive was passed in 2019. It relates in particular to the gas pipeline project "Nord Stream 2", via which Russian gas is to be supplied across the Baltic Sea to Germany, bypassing transit countries.[7] The Decision on intergovernmental agreements (IGAs), reformed in 2017 [(EU) 684/2017][8], prohibits Member States from entering into IGAs with third countries that are in breach of the Internal Gas Market Rules.

In order to reduce the risk of crises in the gas supply, the Secure Gas Supply Regulation, reformed in 2017, [(EU) 2017/1938][9] required Member States to safeguard themselves – e.g. with the aid of preventive action and emergency plans – against crises in the gas supply and specifies requirements on cross-border "solidarity" in the event of a gas-supply crisis.

This cepInput first describes the gas supply in the EU (Section 2) and then considers the EU legislation to safeguard competition in the internal gas market (Section 3) and to prevent disruption to the gas supply (Section 4).

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1 Hereinafter referred to as "gas".

2 Eurostat (2018), Energy dependence – gas, last update: 17 August 2018

3 EU Commission (2015), Communication COM(2015) 80 of 25 February 2015 on A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy p. 5; see cep**PolicyBrief** 2015-08.

4 Ibid., p. 5 et seq.

5 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 [hereinafter: "Internal Gas Market Directive (2009)"].

6 Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending the Internal Gas Market Directive (2009) [hereinafter: "Internal Gas Market Directive (2019)".

7 Lang, K.-O. / Westphal, K. (2016), Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Stiftung Wissenschaft und Politik.

8 Decision (EU) 2017/684 of the European Parliament and of the Council of 5 April 2017 on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy, [hereinafter: "IGA Decision (2017)"]; see cep**PolicyBrief** 15/2016.

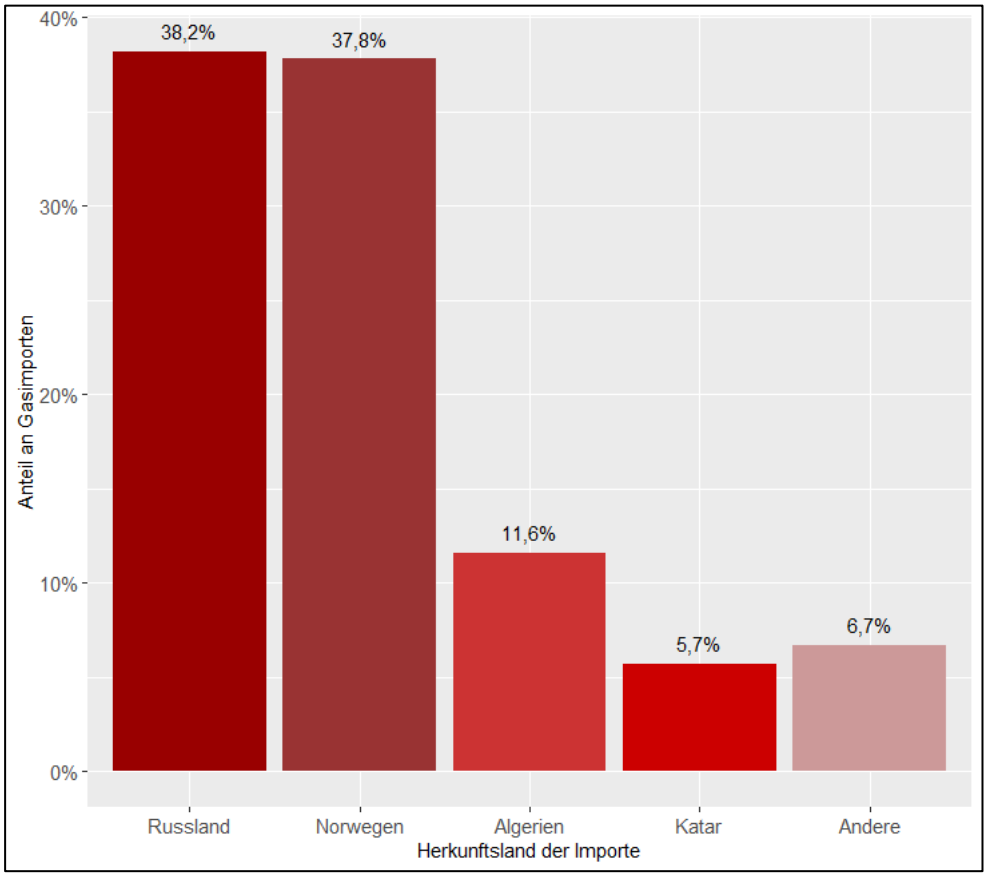
9 Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply [hereinafter: "Secure Gas Supply Regulation (2017)"]; see cep**PolicyBrief** 2016-12.

2 Gas Supply in the EU

In 2016, EU gas consumption was 505 billion cubic metres. Gas thus makes up approx. 23% of the EU energy mix and is the second most important fuel in the EU after oil.[10] Despite the huge growth in renewable energy, this percentage has seen only a marginal reduction in the last ten years. Gas is mainly used for generating electricity and heat. Since the EU's reserves are declining, an ever-increasing proportion of the gas consumed has to be imported.[11]

Gas is predominantly imported via gas transmission pipelines from third countries that are adjacent to the EU. Russian gas has the largest share of the imports with 38.2%, closely followed by Norway with 37.8%. In addition, just under 12% comes from Algeria and just under 6% is brought in by ship from Qatar as Liquefied Natural Gas, LNG (see Fig. 1).[12]

Fig. 1: **Share of gas imports by country of origin (2017)**



Source: our own graph based on Eurostat (2018)[13]

[10] Eurostat (2018), Complete energy balances - annual data, last update: 31 May 2018

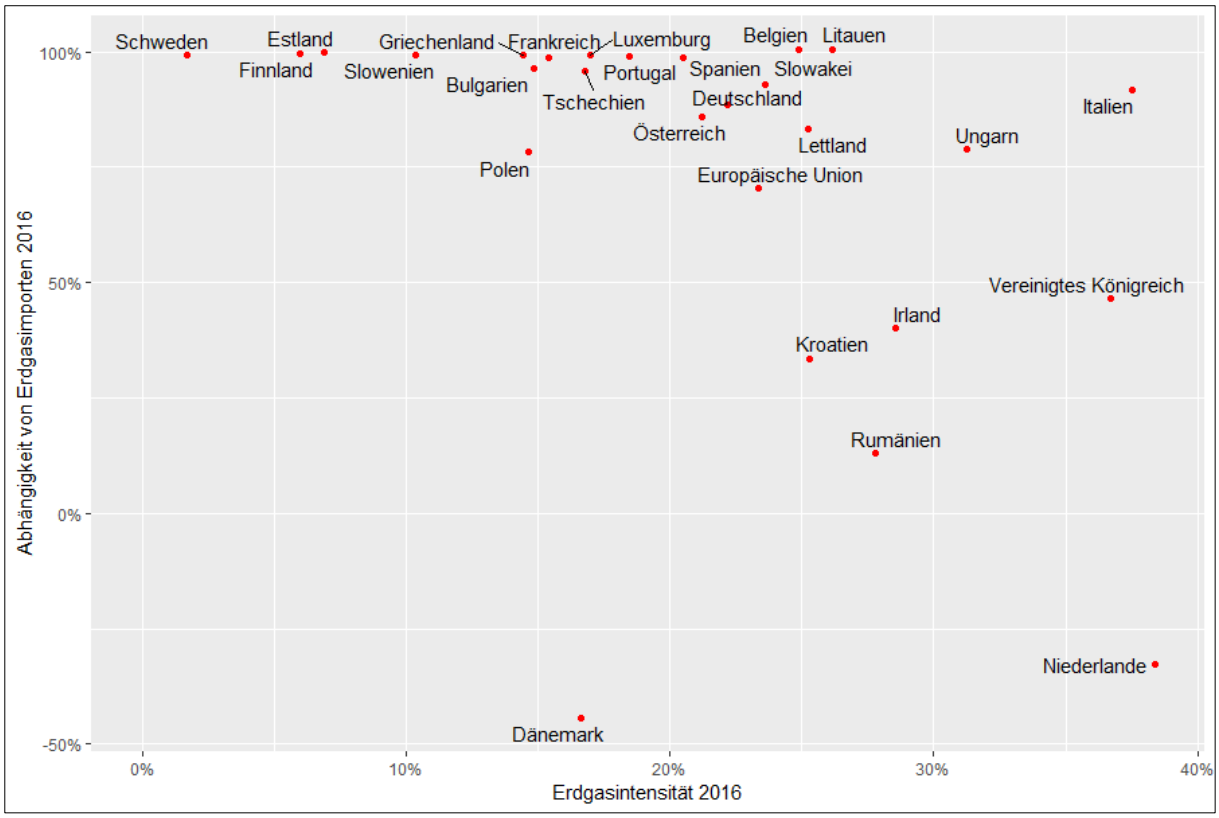
[11] Lang, K.-O., Westphal, K. (2016), Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Stiftung Wissenschaft und Politik, p. 21.

[12] Eurostat (2018), Statistics Explained. File: Oil and Gas Partners (the data relates to 2017).

[13] Ibid., p. 26.

The importance of gas imports for safeguarding the energy supply varies greatly among the Member States (see Fig. 2). Firstly, Member States differ as regards the amount of gas that has to be imported. Secondly, they differ with regard to the proportion of gas in the overall energy mix (gas intensity). Thus, Denmark and the Netherlands have significant gas reserves of their own and are not therefore dependent on imports; in fact, they are net exporters. All other Member States are dependent on imports for their gas consumption. Whilst Croatia, Romania and the United Kingdom are able to cover 50% of their consumption with their own reserves, dependence on imports in many other Member States is 100%, i.e. the country's entire gas consumption must be imported. This is particularly problematic where, as in Italy, gas makes up a relatively large proportion of the energy mix. On the other hand, there are Member States such as Sweden and Finland that are almost completely dependent on gas imports but where gas only makes up a small proportion of the energy mix.[14]

Fig. 2: Dependence on gas imports and gas intensity in the EU



Source: our own graph based on Eurostat (2018)[15]

Even though, due to the various import channels, the EU gas supply is diversified, this does not apply equally to all Member States because there is significant dependence on a single gas provider particularly in central and eastern European countries. Thus, Bulgaria, Estonia, Finland, Slovakia and the Czech Republic obtain over 90% of their requirement from Russia.[16]

14 Eurostat (2018), Simplified energy balances - annual data, last update: 31 May 2018

15 Ibid.

16 Eurostat (2018), Supply, transformation and consumption of gas - annual data, last update: 1 June 2018; Eurostat (2018), Imports - gas - annual data, last update: 1 June 2018

3 Safeguarding competition in the internal gas market

The EU's target of creating an internal gas market that guarantees both competitive gas prices and a high level of security of supply, requires gas pipelines and other gas infrastructure to be accessible not only to one gas supplier but also to its competitors. Due to the recurring conflicts between Russia and the Ukraine and the associated gas supply crises in the eastern EU Member States during the winters of 2006 and 2009, the EU is also seeking to limit the importance of Russian gas for the EU energy supply and to increase the geographic diversity of gas imports.[17]

The Commission therefore takes a critical view of the infrastructure projects, initiated by Gazprom, the Russian gas export monopolist, to supply Russian gas to the EU - e.g. "Nord Stream 1", "Nord Stream 2" and "South Stream". Progressive regulation of the internal gas market is thus also intended to counteract the dominant market position of the Russian state-owned enterprise, Gazprom, as regards the operation of gas pipelines and gas supply in the EU.[18]

3.1 Internal Gas Market Directive (2009)

The Internal Gas Market Directive (2009) brings in three "Internal Gas Market Rules"[19]: Firstly, it requires the "unbundling" of "vertically integrated" gas companies. This means that the operation of gas pipelines must be separated from gas production and sales. Secondly, it provides for non-discriminatory access to national gas pipelines which must be monitored by independent national authorities. The operators of gas pipelines may, however, refuse non-discriminatory access if they have already agreed to the exclusive use of their pipelines in long-term contracts concluded prior to publication of the Internal Gas Market Directive (2009).[20] Thirdly, charges for the use of gas pipelines must be defined in a transparent and competitive way which must also be monitored by independent national authorities.

Member States can apply to the Commission for an exemption from the Internal Gas Market Rules with regard to new gas pipelines. They must, however, prove that the gas pipelines would not otherwise be built and that the exemption applied for does not distort competition in the internal gas market.[21]

In deciding whether to exempt new gas pipelines from the Internal Gas Market Rules, the Commission has broad scope for discretion and may prohibit exclusive access to gas pipelines. Thus, it decided that, until October 2016, Gazprom could only have exclusive use of 50% of the capacity of the "Baltic Sea Pipeline Link" (OPAL), with which the gas supplied to Germany via "Nord Stream 1" is transported onwards to the Czech Republic.[22]

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17 EU Commission (2015), Communication COM(2015) 80 of 25 February 2015 on A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy p. 5; see cep**PolicyBrief** 2015-08.

18 Lang, K.-O., Westphal, K. (2016), Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Stiftung Wissenschaft und Politik, p. 16.

19 Internal Gas Market Directive (2009), Art. 32 et seq. The requirements for unbundling, non-discriminatory access and the regulation of network tariffs are hereinafter referred to collectively as "Internal Gas Market Rules".

20 Internal Gas Market Directive (2009), Art. 32 in conjunction with Art. 48.

21 Ibid., Art. 36.

22 Lang, K.-O., Westphal, K. (2016), Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Stiftung Wissenschaft und Politik, p. 17.

3.2 Change to the Internal Gas Market Directive ("Lex Nord Stream 2")

The Internal Gas Market Directive was amended in 2019. This was due to the "Nord Stream 2" gas pipeline which is already under construction.

3.2.1 Context: The controversy surrounding "Nord Stream 2"

As is already the case with "Nord Stream 1", "Nord Stream 2" aims to supply Russian gas directly to Germany across the Baltic Sea. Thus, Gazprom would not only be the gas supplier but also, via Nord Stream AG, operator of the gas pipeline. "Nord Stream 2" means that the transport of Russian gas across the Ukraine becomes less important.[23] For this reason, not only Ukraine, but also other transit countries - such as Poland - decided against construction. In addition, the Commission fears that "Nord Stream 2" will increase dependency on Russian gas imports and is therefore out of line with the aims of the "Energy Union".[24]

The Commission is also of the opinion that not only the internal European gas pipelines between Member States but also those between the EU and third countries basically fall under the rules of the Internal Gas Market Directive (2009) which means that here too gas supply and operation of gas pipelines are not allowed to come from a single source. According to the Commission, however, there are no express EU law provisions relating to gas pipelines and thus "legal loopholes" exist. In order to close these loopholes in relation to the "Nord Stream 2" legislation, it requested a mandate from the European Council to negotiate with Russia to establish basic principles for the operation of "Nord Stream 2".[25]

The European Council Legal Service did not, however, accept the Commission's line of argument. In its unpublished report[26] it stated that: "Nord Stream 2" did not weaken either security of supply or competition on the European internal gas market. That an additional import pipeline could in fact increase security of supply in the event of political crises in transit countries. And - contrary to the Commission's claims - there were no "legal loopholes" in the legislation on gas pipelines to or from third countries as offshore gas pipelines fell under the international law of the sea.[27] Thus the European Council did not issue the mandate to the Commission.

In November 2017, as a result of the critical stance of the European Council Legal Service, the Commission submitted a proposal [28] to amend the Internal Gas Market Directive (2009) which envisaged extending the Internal Gas Market Rules to include offshore gas pipelines between the EU and third countries. In February 2019, after fierce debate, the European Parliament, Council and Commission agreed on a common position on a reformed Internal Gas Market Directive (2019).

3.2.2 The Internal Gas Market Directive (2019)

The Internal Gas Market Directive (2019) provides that gas pipeline sections to and from third countries that are located in the territory of Member States must comply with the Internal Gas Market

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23 Ibid., p. 6.

24 EU Commission (2017), Commission asks Member States for a negotiating mandate for Nord Stream 2 agreement with Russia, Press Release of 9 June 2017.

25 Ibid.

26 Oxford Institute for Energy Studies (2017), The Council Legal Service's assessment of the European Commission's negotiating mandate and what it means for Nord Stream 2.

27 Ibid.

28 EU-Commission (2017), Proposal COM(2017) 660 of 8 November 2017 for a Directive of the European Parliament and of the Council amending Directive 2009/73/EU concerning common rules for the internal market in natural gas.

Rules. In the case of offshore gas pipelines to or from third countries, these requirements apply in the territorial waters of the Member State in which the gas pipeline connects to the EU gas network ("first affected Member State").[29] The first affected Member States can exempt pipelines that are already in existence.[30] This is not possible for new offshore gas pipelines such as "Nord Stream 2", however. As a result of this, and due to the topicality of the gas pipeline project, the reform of the Internal Gas Market Directive is also referred to as "Lex Nord Stream 2".

3.3 Intergovernmental agreements (IGAs)

Between 2008 and 2010 – and thus in some cases prior to entry into force of the Internal Gas Market Directive (2009) – the Russian government concluded intergovernmental agreements (IGAs) with Bulgaria, Greece, Croatia, Austria, Serbia, Slovenia and Hungary on the completion of the "South Steam" gas pipeline project. "South Stream" was to transport 63 billion cubic metres of gas across the Black Sea to Bulgaria and from there over land ("onshore") to Austria and Italy. The purpose of the IGAs was to exempt onshore connection pipelines from the Internal Gas Market Rules.[31]

In 2012, in reaction to this, the Commission adopted the IGA Decision (2012).[32] This stated that Member States had to submit all existing IGAs and, after their entry into force following ratification, new IGAs, to the Commission for an assessment as to their compatibility with EU law ("ex-post assessment").[33] By 2016, Member States registered 124 IGAs with the Commission. Of these, according to the Commission, 17 were in breach of EU law – in particular the Internal Gas Market Rules – including the IGAs relating to completion of the South Stream Project.[34] The Commission therefore called on the Member States involved to terminate or renegotiate these agreements. When the Commission finally brought two infringement proceedings against Bulgaria, the country stopped construction of the gas pipeline. The "South Stream" Project was cancelled in December 2014.[35]

As a result of the protracted legal disputes between the Commission and the Member States involved in the "South Stream" project, the IGA Decision (2012) was replaced by the IGA Decision (2017). It aims to prohibit, at an early stage, efforts by Member States and third countries to evade the Internal Gas Market Rules by way of IGAs.[36]

The IGA Decision (2017) stipulates that Member States must inform the Commission "at the earliest possible moment" if they intend to enter into negotiations with third countries to conclude new IGAs or to amend existing ones. They also have to keep the Commission "regularly" informed of the progress of the negotiations.

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29 Internal Gas Market Directive (2019), Recital 9.

30 Ibid., Art. 49a.

31 Lang, K.-O., Westphal, K. (2016), Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Stiftung Wissenschaft und Politik, p. 17.

32 Decision 994/2012/EU of the European Parliament and of the Council of 25 October 2012 on establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries [hereinafter: "IGA Decision (2012)"].

33 IGA Decision (2012), Art. 3 (1), (2) and (5).

34 EU Commission (2016), Impact Assessment SWD(2016)27 accompanying the Proposal for a Decision of the European Parliament and of the Council on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy, p. 9.

35 Lang, K.-O., Westphal, K. (2016), Nord Stream 2 – Versuch einer politischen und wirtschaftlichen Einordnung, SWP-Studie, Stiftung Wissenschaft und Politik, p. 17.

36 IGA Decision (2017), Art. 5.

Where the IGA relates to the gas or oil supply, it must undergo an "ex-ante assessment" by the Commission. For this purpose, the Member State must send the draft IGA to the Commission, together with all annexes and accompanying documentation ("notify"), before concluding formal negotiations with a third country on the "main" elements of the IGA.[37]

The Commission must inform the Member State within five weeks of any doubts it may have as to the compatibility of the draft IGA with EU law (five-week time limit). Within twelve weeks, it must provide the Member State with an opinion specifying which parts of the draft IGA are not compatible with EU law (twelve-week time limit). When concluding the IGA, the Member State must "take utmost account" of the Commission's opinion. It cannot therefore agree to the IGA prior to expiry of the five-week time limit. Where the Commission expresses doubts as to the compatibility of the draft IGA within the five-week time limit, the Member State cannot agree to the IGA prior to expiry of the twelve-week time limit.[38]

3.4 Assessment

Uniform application of the Internal Gas Market Rules is essential for competition in the internal gas market and for security of supply in the EU because gas can only flow unhindered in the EU if gas suppliers have no influence on the operation of individual gas pipelines. Otherwise gas suppliers could exercise their market power and prevent competitors from entering the market. This means that all gas suppliers must have non-discriminatory access to internal European gas pipelines and that the charges imposed for using the pipelines must be established in a transparent and competitive manner.

From an economic perspective, however, it is unclear why these Internal Gas Market Rules also have to apply to gas pipelines used for importing gas from third countries ("Lex Nord Stream 2")[39] as these pipelines differ in one significant respect from interconnectors within the EU: import pipelines are not used to transport gas within the internal market but to import gas into the internal market in the first place. The way in which gas reaches the internal market from third countries is, however, basically irrelevant for its functionality and for security of supply in the EU. In fact, the prerequisites for ensuring that gas can flow freely within the EU and traded at uniform prices are a sufficiently comprehensive gas pipeline network inside the EU and strict application of the Internal Gas Market Rules.

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37 Ibid. Art. 3 (1) and (2)

38 Ibid., Art. 5.

39 The extent to which it is sensible to build "Nord Stream 2" is hotly debated from various perspectives. These include strategic geographical and security-related considerations regarding the relationship between the EU and Russia as well as the USA's commercial interest in exporting liquid, gas obtained from fracking, to the EU. This Input expressly refrains from any assessment of these aspects but concentrates exclusively on the impact of import pipelines on security of supply in the EU.

The ability to exempt existing import pipelines from the legislation suggests that the Directive is primarily intended to prevent a politically undesirable gas pipeline project that cannot be stopped legally by other means. In this regard, it is unclear why the construction of "Nord Stream 2" would - as the Commission claims - weaken security of supply and competition in the internal gas market. In fact, the quantity of gas that can potentially be delivered to the EU increases along with the number of import pipelines. A mounting gas supply will increase competition overall and tend to result in lower gas prices in the EU. In addition, new import pipelines will reduce the market power of transit countries who set the transit charges and have, until now, had a monopoly over gas transit in certain parts of the EU. Increasing competition for the cheapest transit charges will also lead to a reduction in gas import prices. The fear that the dominance of the European market by individual large gas suppliers - such as Gazprom - would increase as a result of additional import pipelines, is unfounded because in the internal gas market, the price depends on the size of the market share of individual companies and not on the amount of gas that can potentially be supplied to the EU by one supplier.

It is also unclear why the construction of "Nord Stream 2" would reduce security of the gas supply in the central and eastern European Member States and the Ukraine. On the contrary: the more import pipelines that exist, the more gas supply routes there will be in the EU. If one of these routes fails due to a natural disaster or political tensions, the gas supply can be maintained via an alternative route. Although the construction of additional import pipelines reduces revenue from gas transit, which is why e.g. Poland and the Ukraine reject Nord Stream 2, it is contrary to the spirit of the EU internal market if transit states are able to obtain monopolistic revenues whilst other Member States can only obtain gas from a third country via one specific transit route.

In any case, it is hard to see why a separate "Lex Nord Stream 2" is required. Gas imports from Russia via the Baltic corridor rely on the onward transport of the gas which arrives on Germany's Baltic coast. The gas which is transported onwards via interconnectors in other Member States is thus already regulated by the Internal Gas Market Rules. Thus - as apparent in the case of Nord Stream 1 - a large part of the overall corridor indirectly falls under the control of EU legislation.

Intergovernmental agreements (IGAs) must not infringe EU law - e.g. the Internal Gas Market Rules. In order to ensure that this is the case, an ex-ante assessment of the IGAs is necessary, before they are concluded. The ex-ante assessment of IGAs stipulated in the IGA Decision (2017) may prevent Member States from agreeing IGAs with third countries, that infringe EU law. This increases legal certainty and reduces the risk of failure - e.g. in the planning of cross-border gas pipeline projects. An ex-ante assessment may also prevent the situation where Member States are put under pressure by third countries to sign IGAs which do not comply with EU law, due to their dependency on gas imports from such third countries. The twelve-week time limit for ex-ante assessment may prevent delays in realising e.g. gas pipeline projects due to legal disputes following final conclusion of IGAs.[40]

4 Avoiding disruption to the gas supply

The Secure Gas Supply Directive [2004/67/EC][41] of 2004 was the first legislation to be passed at EU level aimed at safeguarding security of the gas supply. It established the "Gas Coordination Group"

[40] Bonn, M. / Reichert, G. (2016), Energy Agreements with Third Countries, cep**PolicyBrief** 2016-15, p. 3.

[41] Directive 2004/67/EC of the European Parliament and of the Council of 26 April 2004 concerning measures to safeguard security of natural gas supply [hereinafter: "Secure Gas Supply Directive (2004)"].

which, in an emergency, facilitates the exchange of information and the establishment of common measures between Member States, the Commission, the gas industry and consumers.[42]

In reaction to the Russian-Ukrainian "gas dispute" in January 2009, which resulted in disruption to the delivery of gas through the Ukraine to the EU, the provisions on security of the gas supply were significantly extended. Under the Secure Gas Supply Regulation of 2010 [(EU) 994/2010],[43] every Member State had to comply with a "supply standard for protected customers" (see Section 4.1) and an "infrastructure standard" (see Section 4.2) as well as carry out a risk assessment and establish a preventive action plan and an emergency plan to remove and/or mitigate gas supply crises (see Section 4.3). Adopted in 2017, the Secure Gas Supply Regulation (2017), again amended the rules on security of the gas supply in the EU and added a "solidarity principle" (see Section 4.4). In addition, the Secure Gas Supply Regulation (2017) provided for rules on the disclosure of gas supply contracts (see Section 4.5).

4.1 Supply standard for protected consumers

Gas providers must ensure that "protected consumers" are protected against disruption to the gas supply.[44] Protected consumers are all household customers that are already connected to a gas distribution network. Member States can expand the definition of protected consumers to include small and medium-sized companies, "essential social services" – e.g. hospitals – and gas-powered district heating installations.[45] Member States must ensure that "protected consumers" are supplied with gas in at least the following cases ("EU Supply Standard"):[46]

- seven consecutive days of extreme temperatures such as occur with a statistical probability of once in 20 years,
- a period of 30 days of exceptionally high gas demand, such as occurs with a statistical probability of once in 20 years,
- a period of 30 days in the case of disruption of the single largest gas infrastructure - e.g. gas pipelines and gas storage facilities - "under average winter conditions".

Member States can decide to implement higher national supply standards provided this does not have a negative impact on the security of supply of protected consumers in other Member States or unduly distort competition on the internal gas market.[47]

4.2 Infrastructure standard

Member States must ensure that their gas infrastructure - in particular their gas pipelines - have sufficient capacity to avoid disruptions in supply ("infrastructure standard"). The infrastructure standard requires compliance with two conditions:

Firstly, Member States must meet the "N-1 Standard" which requires that in the event of disruption to the largest infrastructure - e.g. gas pipelines - the remaining gas infrastructure ("N-1") is sufficient to

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42 Secure Gas Supply Directive (2004), Art. 7.

43 Regulation (EU) 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard the security of gas supply and repealing Council Directive 2004/67/EC [hereinafter: "Secure Gas Supply Regulation (2010)"].

44 Secure Gas Supply Regulation (2010) Art. 8, Secure Gas Supply Regulation (2017) Art. 6.

45 Ibid., Art. 2.

46 Secure Gas Supply Regulation (2010) Art. 8 (1), Secure Gas Supply Regulation (2017) Art. 6 (1).

47 Secure Gas Supply Regulation (2010) Art. 8 (2), Secure Gas Supply Regulation (2017) Art. 6 (2).

cover an exceptionally high gas demand in the country. The standard applicable is gas consumption in a period of extremely cold weather occurring with a statistical probability of once in 20 years.[48]

Secondly, gas pipeline operators must ensure "reverse flow" on all cross-border gas pipelines so that gas pipelines on all border interconnectors can transport gas in both directions. This aims to reduce dependence on unilateral supply routes.[49] Gas pipeline operators can, however, request the two neighbouring Member States for an exemption to the reverse-flow obligation where they provide proof by way of a cost-benefit analysis that the costs of reverse-flow capacity significantly exceed its benefits.[50] Since November 2017, the cost-benefit analysis undertaken for an exemption from the reverse-flow obligation has had to take account of the interests of the Member States along the entire transport corridor.[51] Where a reverse-flow capacity is established that is uneconomic for those Member States that are directly affected but is necessary to ensure security of supply for another Member State in the transport corridor, the Member States involved must agree on the cost allocation in advance.[52]

4.3 Risk assessment, preventive action plan and emergency plan

Since the adoption of the Secure Gas Supply Regulation (2010), Member States have had to carry out a comprehensive assessment, every two years, of the risks to security of the gas supply, and must take account of the infrastructure standard and the supply standard.[53] Every Member State must also develop a preventive action plan and an emergency plan.[54] National preventive action plans must contain measures to mitigate the risks to a secure gas supply and they must not put an undue burden on gas companies or negatively impact on the functioning of the "internal gas market".[55] Emergency plans regulate the tasks and responsibilities of gas companies and authorities at three "crisis levels":[56]

1. early warning level: a significant deterioration in the gas supply is likely;
2. alert level: a significant deterioration in the gas supply has occurred which can still be remedied by way of state intervention with market-based measures;
3. emergency level: a significant deterioration in the gas supply has occurred which can no longer be remedied by way of market-based measures.

According to the Secure Gas Supply Regulation (2017), Member States must additionally now carry out risk assessments at regional level every four years and establish emergency plans and preventive action plans.[57] For this purpose, Member States will be divided into one or more of a total of 13 regional "risk groups" according to their gas supply routes.[58]

48 Secure Gas Supply Regulation (2010) Art. 6 (1), Secure Gas Supply Regulation (2017) Art. 5 (1).
49 Secure Gas Supply Regulation (2010) Art. 7 (1), Secure Gas Supply Regulation (2017) Art. 5 (4) and (5) in conjunction with Annex III.
50 Ibid.
51 Secure Gas Supply Regulation (2017) Art. 5 (4) and (5) in conjunction with Annex III.
52 Ibid. Art. 5 (7).
53 Ibid., Art. 9.
54 Secure Gas Supply Regulation (2010), Art. 4.
55 Ibid., Art. 5.
56 Ibid. Art. 10 (3).
57 Secure Gas Supply Regulation (2017), Art. 7 (2) and (7), Art. 9 (10) and Art. 10 (11).
58 Ibid., Annex I.

4.4 Solidarity principle

Since December 2018, if an emergency has occurred in a Member State and all market-based measures and all measures contained in its Emergency Plans have been exhausted, the Secure Gas Supply Regulation (2017) requires the Member States, that are "directly connected" to the state via a gas pipeline, to support the state ("solidarity principle"). They must reroute gas supplies to the affected Member State in order to safeguard the gas supply to private households, essential social services and district heating installations.[59]

Member States, that are directly connected with one another via a gas pipeline, 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. In particular, the amount of compensation for the gas supplies rerouted to cope with the emergency, must be established.[60]

4.5 Disclosure of gas supply contracts

Since December 2011, gas companies have had to notify the competent national authorities of all new and modified contracts with a duration of more than one year that have been concluded with third countries. The information includes e.g. the precise duration of the contract and agreed yearly supply volumes. The authorities give a summary of this information to the Commission so that it can assess the security of supply situation in the EU.[61]

Since December 2018, pursuant to the Secure Gas Supply Regulation (2017), gas companies have also had to disclose the conditions in which the gas supplier may suspend gas deliveries and whether a contract, individually or in combination with other gas supply contracts with the same supplier, covers more than 28% of a country's gas consumption. In addition, gas companies must now "immediately" submit to the competent authorities any gas supply contracts, concluded or modified after October 2017, with a duration of more than one year, if this contract, individually or in combination with other gas supply contracts with the same supplier, covers more than 28% of a country's gas consumption.[62] Member States and the Commission can also 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 of several Member States or the EU as a whole.[63] In this regard, Member States and the Commission must preserve the confidentiality of "commercially sensitive information".[64]

4.6 Assessment

It is appropriate that, under the Secure Gas Supply Regulation (2017), Member States are still permitted to establish a supply standard for "protected consumers" which goes beyond the requirements of the EU because, firstly, disruption to the gas supply can have different social and economic consequences depending on the Member State; secondly, citizens' preferences on how to combat disruption to the gas supply may differ depending on the Member State.[65]

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59 Ibid., Art. 13 (1) - (3).
60 Ibid., Art. 13 (3), (8) and (10)
61 Secure Gas Supply Regulation (2010), Art. 13 (6).
62 Secure Gas Supply Regulation (2017), Art. 14 (6).
63 Ibid. Art. 14 (7).
64 Ibid. Art. 14 (12).
65 Bonn, M. / Reichert, G. (2015), Resilience of the Gas System, cep**PolicyBrief** 2015-02, p. 3.

"Reverse-flow capacity", which means that gas can be transported across borders against the main direction of flow, allows for diversification of gas supplies in the EU. As a result, the dependence of central and eastern European countries on Gazprom as the dominant gas supplier, can be reduced. It is, however, right that exemptions from the general "reverse-flow obligation" are still permitted because in individual cases reverse-flow capacity may result in higher 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 in other Member States along the entire gas supply corridor, these Member States must - as the Secure Gas Supply Regulation (2017) stipulates - have an influence on the decision to grant an exemption to the reverse flow obligation. It is likewise appropriate that those Member States who profit from the development of reverse flow capacity, also have to bear a share of the costs.[66]

The mandatory establishment of regional preventive action and emergency plans is appropriate because, in many cases, severe disruption to the gas supply in one Member State also has an effect on neighbouring Member States. Since the central European countries, in particular, are directly connected to several other Member States via gas pipelines and are therefore important for security of the gas supply in several regions of the EU, the Secure Gas Supply Regulation (2017) rightly allocates them to several regional "risk groups".

The "solidarity principle", applicable since December 2018, ensures that protected consumers, such as private households and hospitals in a Member State that is affected by a gas supply crisis, have priority over companies in other Member States when it comes to the gas supply. The provisions of the Secure Gas Supply Regulation (2017), regarding the duty of solidarity, ensure that higher national supply standards in neighbouring Member States do not stand in the way of the gas flows required for solidarity. Compensation payments for gas supplies that are rerouted in an emergency, prevent Member States from casually risking an emergency in the hope of solidarity from neighbouring Member States.[67]

The notification requirement for all gas supply contracts with a "cross-border dimension" and a duration of more than one year, is essential for the Commission's assessment of the effectiveness of preventive action and emergency plans.[68]

66 Bonn, M. / Reichert, G. (2016), Security of the Gas Supply, cep**PolicyBrief** 2016-12, p. 3.
67 Ibid., p. 4.
68 Ibid.

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