

Comments of the
**Competent Authorities of
Belgium, Denmark, Germany and the Netherlands**

to the European Commission's Consultation Paper
on the Revision of Regulation (EU) No 994/2010
concerning measures to safeguard security of gas supply and
repealing Council Directive 2004/67/EC

xx. April 2015

While *EU gas security of supply regulation 994/2010* has worked well in a number of ways, we agree that there are also some shortcomings which should be addressed in the upcoming revision of the Regulation. We therefore welcome the Commission's intentions to revise the Regulation and to invite Member States and stakeholders to contribute to the drafting process.

General Remarks

We reconfirm the points made in the Non-Paper of the Belgian, Danish, German, Luxemburg and Dutch members of the EU Gas Coordination Group of 26 January on the possible revision and of regulation and stress in particular that

- the main instruments of the regulation **should continue to be market-based**, thus supportive of the EU's endeavours to achieve a well-functioning internal market for gas.
- the fact that gas is owned by and traded between private companies without government involvement should be clearly reflected in the design of the renewed regulation.
- **market players should be encouraged to make the necessary (contractual) arrangements** to provide their customers with gas on a commercial basis also when there is a disruption in the supply.
- in case companies decide to combine their purchasing activities, this should be market-based and comply with trade and competition law. It must not lead to a preferential position when it comes to capacity allocation in the transport grid.
- the use of and access to storage and LNG-facilities should also in principle be market-based.
- the revised regulation should take into account the significant differences between Member States with regard to the role of gas.
- there is a need for a definition of protected customer which is more harmonised, but also allows for greater flexibility when it comes to the gas supply to critical installations of non-protected customers.
- the technical feasibility of in-depth monitoring tasks by Competent Authorities should be thoroughly investigated as it seems of very limited added value in a liberalised market. Additional administrative burden should be avoided.
- we support initiatives in relation to the revision of the Regulation to improve energy efficiency and fuel-switching to renewable energy from natural gas. Energy savings is a cost-effective tool to improve energy security and so is fuel-switching.

Core points

1. Infrastructure

Infrastructure standard N-1

The Regulation is directed primarily at the gas infrastructure and addresses only to a very limited extent the issue of gas volumes (or commodities). The infrastructure standard (N-1) should be made a more realistic formula by taking into account also export/transit, both capacities and flows, and also storage performance. Alternatively it can be replaced by other assessments of the infrastructure situation such as ENTSOG's Winter Outlook which also looks at cross-border flows and exports.

While we agree that the issue of sufficient capacity to cover the gas peak demand needs (transport, storage, LNG, etc.) is important, we also see a need for the regulation to focus more on the availability of the associated gas volumes to cover those needs.

While we believe that regional cooperation could be enhanced, we believe that no regional approach to N-1 or upfront legal obligation for a regional infrastructure is needed. As the definition of a region is not clear some Member States might end up in several regions which would create confusion. In the end we feel it should be up to them to decide whether they want to engage in a regional N-1-standard.

Reverse Flow

We believe that the gas bottlenecks in Europe are appropriately addressed in the Infrastructure Package (PCIs). Reverse flow facilities at all interconnection points would neither make economic sense nor contribute to security of supply. The existing procedures for exemptions should be maintained and the cases examined on an individual cost-benefit-orientated basis. We do not see a need for more regular reviews. Where obstacles to gas flows exist such as differences in gas quality these should be addressed.

Neither competent authorities nor system authorities are in a position to analyse the benefits of reverse flows along the entire "transportation corridor" as market demand and concrete shipping decisions depend not only on the gas contracts but also on short-term strategic decisions of private companies.

2. Improving Risk Assessments and harmonising Preventive Action and Emergency Plans

Risk assessments, preventative action and emergency plans

We welcome initiatives to streamline the preventive action and emergency plans (e.g. elaborate templates for the format and the content as a guidance) as this could be helpful to find information in the consultation process and for the regional cooperation in general. It may be especially helpful to have a common template for data. However, given the differences amongst member states it should still be at the discretion of the member state how to draft a plan which meets the requirements of the regulation. It should be kept to the discretion of member states to draft regional plans.

As the availability of comprehensible national preventive action and emergency plans is a precondition for any meaningful bilateral and regional consultation and cross-border cooperation in the case of crisis, **English translations should be made compulsory** for practical reasons. The English translations should also be published in order to make them available any time to all the stakeholders in the gas sector.

A requirement to combine the preventive action and emergency plans in one document would be welcomed as this could simplify the process, avoid duplication and ensure that the two components are more coherent and ready at the same time. As the risk assessment is not foreseen for publication it should be kept a separate document.

The administrative burden should be reduced by setting more realistic timelines for Member States and the European Commission. Since the Commission has only reacted to (some of) the adopted Preventive Action and Emergency Plans and not to the drafts which were submitted for consultation according to Art. 4 (2) this last obligation should be dropped.

The main instruments in the preventive action and emergency plans should continue to be market-based, thus supportive of the EU's endeavours to achieve a well-functioning internal market for gas.

Nevertheless, if, the monitoring of the gas market in a certain Member State clearly indicates that (1) a significant supply disruption is unavoidable and (2) market participants are not able to cope with this situation, then non-market based measures might be applied proactively by a member state.

3. The "Supply Standard" for protected customers

Definition/scenarios of supply standard

We believe that both the basic elements of the definition for the supply standard and the scenarios in Article 8 (1) a) to c) are still appropriate.

While we believe that regional cooperation could be enhanced, we believe that no regional approach to the supply standard or upfront legal obligation is needed. As the definition of a region is not clear and the vast differences in the field of gas consumption a regional approach seems difficult. Some Member States might end up in several regions which would create additional confusion. In the end it should be up to the discretion of the member states to decide on these issues. Any differentiation of rules for gas undertakings by size should comply with EU competition law.

Enforcement of supply standard

Gas is delivered by private companies and e.g. traded at gas hubs without public interference. This has led to divergence between physical gas and trade flows. This should be taken into account for the interpretation of the supply standard. In large markets with numerous national

and foreign players it is impossible for the Competent Authorities to continuously monitor and control that the natural gas undertakings meet the requirements.

The supply standard should nevertheless be met by the gas undertakings as an ongoing concern. But the system should remain result-oriented rather than prescriptive. The technical feasibility of continuous in-depth monitoring tasks of the supply standard by Competent Authorities seems doubtful and the permanent supervision of very limited added value in a liberalised European internal market with a huge number of players. It would also create enormous administrative burden. It should be investigated whether member states with a rigid, prescriptive approach have in the past benefited from higher security of supply and higher storage volumes compared to those who have a result-oriented approach. A monitoring system based on incentives/sanctions seems in principle more rational. The role competent authorities could have under such an approach requires further study.

Requirement of diversification for countries with one single supplier

May be considered further while taking into account the feasibility and the cost.

Supplier of last resort

The Netherlands have already entrusted the TSO as supplier of last resort in the case of peak demand as a result of extremely cold temperatures, and in the case of bankruptcy of a supplier. In Germany this role is assumed by the largest shipper in a supply area while the TSO has a strong role to maintain the system stability with all the competences needed to directing and channelling gas flows taking into account the protected customers. We see no reason for European harmonisation. The choice to have a supplier of last resort should be left to the Member States.

Storages

We call for initiatives to ensure that the market is given the right incentives to use gas storage and LNG facilities in an optimal way by ensuring that the level of gas in storage is sufficient to meet the needed gas demand in case of emergency situations. We disapprove of centralised EU rules of management of these facilities other than allowed under the third EU Energy Package. Market players in the EU should be encouraged to use these facilities and to make necessary (contractual) arrangements to provide their customers with gas on a commercial basis also when there is a disruption in the supply.

A consequence of creating “strategic reserve supplies” can be that they distort the market for commercial storages and reduce the attractiveness of commercial storages. As the situation with regard to security of supply and the role of storages varies largely across Europe, a cost-benefit and risk analysis by the competent authority in the member state is necessary. The option of creating (legal) obligations for strategic gas reserve supplies should therefore remain to be a decision at the discretion of the Member state. A one size fits all approach does not appear appropriate.

LNG

LNG can play an important role, because it provides an opportunity for diversification, and function as a backup when imported pipeline gas or domestic gas is not available. However, also LNG is contracted and spot cargoes are likely not to be immediately available in sufficient quantities in the event of supply crisis.

The main barriers for LNG are that it comes from countries far from Europe and producers will sell it to the markets where prices are highest. Usually this is not the European market, and therefore availability in Europe is not straightforward.

4. *Protected Customers and Solidarity*

European Solidarity

In case of an emergency situation it is vital for neighbouring countries that no restrictions are introduced on gas flow at cross-border interconnections, unless necessary to protect the stability of the grid or to provide for the protected customers. The revision of the Regulation should deal with this issue in order to allow for cross-border trade to function also in a crisis situation. This requires a uniform definition for protected customers within the EU. Member States should however have the possibility to decide for a higher and broader protection level, provided that this is covered at the national level (not part of EU solidarity).

Uniform Definition of protected costumers

A harmonised definition of “protected customers” is a prerequisite to enhance cross-border emergency management and European solidarity in crisis situations. We believe that there should be one definition of protected customers throughout the EU which should cover the “vital demand” for gas for private households, district heating plants which deliver to households and essential social services (including health care) as these customers need gas for heating and cooking and are normally not able to switch to other fuels. Small companies and stores may also be included into the definition of protected customers as they are often technically inseparable from in a “meshed” grid which supplies households. If they are not to be included it could be investigated how to make this separation technically possible and whether the benefit of this outweighs the costs.

A more flexible approach towards non-protected customers

Some industrial consumers are completely dependent on gas as some of their installations do not allow for fuel-switching. In these cases a full disruption of the gas supply will cause severe damage to the production assets and may put the continuity of the activity at risk.

In order to avoid this, it should be possible for a Member State to have these consumers provided with a minimum amount of gas in order to safeguard the functioning of their critical installations. This should however be covered at the national level (not part of EU solidarity).

Responsibility and efforts to reduce demand

Solidarity goes hand in hand with responsibility. We find that more focus on reducing demand prior to an emergency situation is needed in order to ensure a well-functioning gas market as

long as possible and to avoid entering into emergency law. Member States who so desire should have the possibility to introduce incentives to encourage a larger share of customers which agree to be switched off by the TSO in an early warning or alert level in order to increase flexibility for mitigation in the case of shortages and to avoid entering into emergency law too quickly. Furthermore, the revision could include an obligation for Member States to investigate possibilities to reduce gas demand for e.g. heating purposes in households in an emergency situation.

The challenge is to establish the most socio-economical way to deal with the heterogeneous group of non-protected consumers. The revision could therefore include the possibility for member states to have in place a market-based system to increase the share of non-protected commercial customers which based on a compensation regime agree to be shut off by the TSO in the case of shortages. This would increase flexibility for TSOs to rapidly discharge load.

While it is a huge problem for some industries if the entire supply of gas is suddenly interrupted in case of an emergency situation others have the possibility to switch to other fuels or can otherwise deal with interruptions. This could be achieved by introducing e.g. a market based auction approach to identify partly or fully commercially interruptible customers and compensate them economically for their flexibility. This would maximize the economic benefits for the entire group of potentially non-protected customers.

5. Emergency Plans

See above (item 2)

6. Declaring an Emergency

Regional co-operation

We also agree that strengthening the regional co-operation is an important tool to improve the security of gas supply on regional and Union level. Enhance the regional cooperation could be further strengthened by identifying best practices (e.g. existing regional groups – Pentilateral forum). Neighbouring TSOs should conclude **mandatory cross border emergency agreements** for each interconnection point. This could be part of the interconnection agreements foreseen for in the Network Code on Interoperability and Data Exchange Rules.

The role of Commission, Member States, TSO and gas undertakings

We find that the current regulation has an appropriate division of responsibilities between the Commission, Member States, TSO's and gas undertakings. While the Commission's active role in monitoring and coordinating the security of gas supply situation in the current geo-political situation, including the risk of serious interruption of gas supplies to Europe, is appreciated, it may however need some clarification. The Commission's monitoring and coordination are important tools for Member States, TSO's and gas undertakings for being able to take the necessary national actions prompt in order to limit the damage to society of a serious interruption of gas supplies.

Commission Consultation on the Revision of Regulation EU No 994/2010

There are major differences between Member States with regard to the role of gas in the national energy mix, number of gas suppliers and the liquidity of the gas market. Therefore, the Regulation should take the national circumstances into account and be more flexible. Uniform rules may not contribute to enhancing security of supply and create unnecessary administrative and financial burden.

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