

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

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INTRODUCTION

On 16 October 2014, the Commission published its Stress Test Communication analysing the effects of a possible partial or complete disruption of gas supplies from Russia¹. One of the key conclusions of the stress test exercise was that increased cooperation and coordination can substantially mitigate the impacts of a disruption. As part of the stress test publication a report on the implementation of the Gas Security of Supply Regulation (EU) No. 994/2010 (hereafter, 'the Regulation') was adopted².

The report demonstrated that the Regulation has already produced important beneficial effects on Europe's gas security of supply situation, both in terms of preparation and mitigation. For instance, Member States are now better prepared to face a supply crisis thanks to the need to prepare and coordinate plans and they are better protected thanks to the need to install bilateral flows on cross-border pipeline connections and meet a determined supply and infrastructure standard.

¹ http://ec.europa.eu/energy/stress_tests_en.htm

² http://ec.europa.eu/energy/doc/nuclear/2014_energystressstests_securityofgassupplyseglulation_report.pdf

At the same time, the Report also highlighted areas in which improvements can further bolster Europe's supply security. Revising the Regulation does not mean that implementation of the existing Regulation can be suspended: the Commission will continue to push for better implementation of the provisions by assessing notified plans as well as the effects of implemented measures. Finally, the Report highlighted several sections where improvement of the Regulation itself can lead to more effective management of supply crises. The Report concludes that: *"there is scope to strengthen the EU's preparedness and capacity to respond effectively to gas supply crises further. The Commission services are of the view that the lessons of recent risks to security of supply in the EU, i.e. risks caused by extreme weather conditions such as the prolonged cold spell in 2012 or geopolitical risks having an impact on EU energy security such as the 2014 crisis in Ukraine, should be pulled together in a review of possible improvements to Regulation 994/2010."*³

This Consultation Document **aims to identify the areas where improvements to the Regulation are required** and what the various options and their impacts are.

Setting the framework

In order to set the right framework for the possible revision of the Regulation, the necessary point of departure is that Europe's least vulnerable areas are those where there are a substantial number of suppliers, from different sources and through different routes, active on a functioning and liquid wholesale market. The most vulnerable areas on the other hand often first and foremost suffer from a lack of infrastructure needed to enjoy diversification of supply and to develop a functioning market.

The extent to which the market can be relied upon to ensure security of supply impacts to a very large degree the need for and the nature of security of supply measures. It must be borne in mind that despite the fact that the process of revising the Regulation has been inspired primarily by the risk of a disruption of Russian supplies, this risk is – as demonstrated by the stress test exercise – not equally large in all parts of Europe.

Therefore, a **one-size-fits-all approach is not appropriate**. On the contrary, a degree of flexibility needs to be foreseen in order to adapt the measures applied and their timing, depending on the functioning of the gas market in the respective Member States and regions (e.g. availability of gas from diverse sources or connection to other markets). In order to secure gas supply in the most effective and efficient way in all areas of Europe it is thus necessary to take into account the different level of exposure to a supply crisis and to define the appropriate measures both in advance and during a crisis.

While the Stress Test Communication has shown that functioning markets are the key to secure gas supplies, it has also shown that well-coordinated actions by Member States, in

³ http://ec.europa.eu/energy/doc/nuclear/2014_energystresstests_securityofgassupplyseglulation_report.pdf, page 25

particular in case of an emergency, can significantly increase supply security. The Consultation therefore also aims at verifying to what extent the coordination of national security of supply measures can be improved. This concerns not only better coordination of national *mitigation* actions in case of an emergency, but also of national *preventive* measures, such as proposals for better coordination of national storage or LNG policies, which can be of strategic importance in certain regions. It will also explore specific measures to foster solidarity between Member States in security of supply matters⁴.

Set-up of the Consultation

The set-up of this Consultation Document is drafted in a way that follows the existing structure of the Regulation based on two pillars: **prevention and mitigation**. On the prevention side, the questions put forward not only aim to gain insight in whether improving existing provisions is necessary, but also give room to test new ideas, most notably with regard to the application of measures in satisfying the *supply standard*. On the mitigation side, the objective is to ensure that Member States are prepared to manage an emergency situation and in doing so consider efficient coordinated solutions rather than adopting a purely national approach, resorting to radical counter-effective measures impacting neighbouring countries.

PART I

PREVENTION

1. Infrastructure

Physical connection between production and consumption areas is a prerequisite for European security of supply. The Regulation contains two main elements that aim to ensure a sufficient degree of infrastructure: the N-1 Infrastructure Standard and the obligation to install physical reverse flow capabilities at interconnection points.

a. The Infrastructure Standard N-1

The N-1 infrastructure standard is an indicator to verify if a given system may be overly reliant on a single pipeline or underground storage facility. The rule – based on the example from the electricity sector – obliges those Member States who are dependent on a single import pipeline, underground storage facility or other type of essential infrastructure, to make sure that demand on extremely cold days can be covered even if the main infrastructure fails. In some cases more than one country is exposed to a given critical infrastructure (e.g. a common import pipeline). For this reason a *regional approach* to N-1 seems to be more adequate.

⁴ For instance by making the obligation under Article 11(5) (a) and (b) more operational ("Member States shall not unduly restrict the flow of gas within the internal market and avoid measures that endanger the situation in Member States in a crisis situation").

The N-1 rule must be complied with from 3 December 2014. At that time, most of the Member States had identified critical infrastructure in their Emergency Plans and complied with the standard. However, there were six Member States including the three exempted countries (SE, LU, SI) – that do not reach the required standard.

An often heard criticism is that the standard does not in itself increase security of supply even if it gives that impression. In fact, the standard only produces effects in that it is used as element of the supply standard (see Part I.4 below). The following questions aim at gathering views as to the added value and appropriateness of the N-1 standard in its current form.

Questions

- 1. Is the current N-1 rule fit to ensure a sufficient level of infrastructure for security of supply purposes or do you believe that an alternative measure replacing the N-1 standard should be investigated? (e.g. broader infrastructure adequacy assessment at regional or pan-European level similar to e.g. ENTSOG Winter Outlook)?*

The implementation of the N-1 infrastructure standard in each MS is the minimum requirement to guarantee an adequate level of infrastructure necessary for securing the supply in these MS even in case of technical outage. So, using the N-1 standard is a first good indicator to ensure a sufficient level of infrastructure.

Nevertheless fulfilling the N-1 infrastructure does not automatically say that supply is secure in any case, as the whole chain from production site(s) to each MS has to be considered in an evaluation. This can be done by deeper demand/supply evaluations with a pan-European focus like it was conducted with the EU stress tests in 2014 and the ENTSOG Winter Outlook.

If these evaluations lead to investment requirements for new and/or redundant infrastructure for securing supply in other neighbouring MS, a cross-border cost allocation towards the beneficiary MS could be applied on a case by case basis. In any case incentive regulation should take into account capacity oversupply of TSOs in one MS for securing supply in other MS by applying fair cost-allocation and benchmarking methods for those cases.

Before any development is taken towards a regional or broader scope the regulatory framework and investment conditions have to be clarified. Therefore, a national scope is currently preferred.

- 2. Is a regional approach to N-1 needed? If so, in which cases would it be appropriate and how should regions be defined?*

In regions (more than one MS) with only one common upstream connection, a regional

approach could be helpful to understand possible N-1 effects. Anyhow binding decisions should not be taken on this basis. In praxis it can only be applied to countries without capacity limitations between the countries in the region or as a complement to the national N-1 of each country of the region. Binding decisions or investments can only result from national obligation due to regulatory and legal framework. Commercially additional investment and operation cost could be allocated to the beneficiary MS (see also answer 1). The establishment of additional regional groups/areas has to be avoided. GRIP and N-1 regions should be compatible/identical.

b. Reverse Flows

The Regulation obliges all new interconnectors to be bi-directional and obliges TSO that relevant existing cross border points should be bi-directional by 3 December 2013 (i.e. allowing physical reverse flows). This is an important and often cost-effective instrument allowing for major redirection of gas supplies in case of important gas supply disruptions from the usual direction. Bi-directional capability also seriously enhances security of supply of a Member State concerned and can be an efficient solution for increasing interconnection capacity and facilitating trade.

The necessity and justification for the introduction of each reverse flow is determined by a procedure involving neighbouring Member States. Competent Authorities may grant an exemption in case the bi-directional capacity would not significantly enhance the security of supply of any Member State or region, or if the investment costs would significantly outweigh the prospective benefits for security of supply. The Commission has the power to require the amendment of the Competent Authority's decision in case there is a discrepancy with the opinions of the other Competent Authorities concerned.

As reported in the aforementioned review on the implementation of the Regulation, the share of bi-directional cross-border interconnection points within the EU has increased, but **some major interconnection points in the EU remain not equipped with bi-directional capability**. The majority of interconnection points which were unidirectional in 2009 remain so. At the same time, there may be good reasons in cases where exemptions were granted.

Questions

- 3. Do you believe that reverse flow is offered at all points where it is needed? If not, why (what are the main obstacles)? At what points could it increase supply security in a tangible manner?*

In Germany sufficient bidirectional cross-border points exist.

Basically Germany currently fulfils the N-1 infrastructure standard without any additional reverse flow project. In first line full cross-border interoperability should be granted (e.g. by solving gas quality issues like odourisation).

Some Reverse flow projects are part of the German NDP but are not based on pure N-1 calculation, but on H-gas demand/supply outlooks and assumptions for the distribution of H-gas sources. However, these projects can increase security of supply in the long term due to diversification of H-gas supply options.

4. *As concerns exemptions from the reverse flow obligation⁵:*

- a. *Should these provisions be clarified and/or strengthened?*

It is clear that reverse flow capability is required between Member States. However requiring reverse flow on all interconnection points is not necessary and a thorough (cost/benefit) analysis should be carried out.

- b. *Should the relevant authority analyse the benefits of reverse flows along the whole transportation corridor?*

The relevant authority should take regional aspects into account but this should be focussed on possible bottlenecks nearby i.e. not the whole of Europe.

- c. *Should affected Member States even beyond the immediate borders be involved in the assessment?*

Following the approach of market liquidity is the best tool to improve security of supply. Reverse flow projects should focus on improving the liquidity between corresponding/neighbouring markets and potential reverse flow projects should be analysed regarding their effects in directly connected market.

5. *Is the current review possibility - every two years, in the framework of the revised Risk Assessment - sufficient or should there be more regular checks whether market conditions justify an exemption?*

The dynamics in the gas market are not such that changes can't be foreseen with a two year time horizon. A review in conjunction with the RA seems sufficient. Results of the risk assessments should be, amongst others, one input to the also biannually prepared TNYDP.

⁵ See notably Article 7(4) (a) of the Regulation.

2. Improving Risk Assessments and harmonising Preventive Action Plans

Risk Assessments serve to analyse exceptionally high gas demand and supply disruption scenarios and to categorize the threats and hazards into high-, medium- and low-risks. It also examines the fulfilment of the infrastructure and supply standards, and it should identify the interaction and correlation of risks with other Member States in a cross-border dimension. The Risk Assessment is the basis for both the Preventive Actions Plan and the Emergency Plan, because the specific measures described in the latter must address the various threats and hazards identified.

The Preventive Action Plans aim to identify those measures that help to avoid or at least reduce the probability of the occurrence of the identified risks. The measures included in the Preventive Action Plans must be market-based as they cover a period of 'business as usual' in which the regular market is still functioning and able to supply customers.

The current Regulation provides for rather general descriptions of the specific information required. Experience has shown that Risk Assessments and Preventive Action Plans of Member States are very heterogeneous in terms of content, scenarios and focus and they are not harmonized. This often makes the cooperation between Member States difficult and inefficient. There is a need to improve the quality, usability and Member State interoperability of Risk Assessments and Preventive Action Plans.

Also the administrative handling of the different plans (including the Emergency Plans under Article 10) has proved complex, in particular when it came to the implementation of the key idea of the Regulation, namely the **coordination** of the plans. Missing translation rules and the different timing of the submission of national plans made the exchange of plans with neighbours difficult in practice, leading often only to rudimentary consultation.

As announced in the report on the implementation of the Regulation, the Commission considers proposing measures to improve the content as well as the consistency of the Risk Assessments and Preventive Action Plans, for instance by providing templates that include mandatory elements to be filled in by every Member State. These elements should allow for an adequate description of the situation of each Member State, allowing for comparison and thus potentially forming the basis for increased cooperation.

Questions

- 6. Are the Risk Assessments and Preventive Action Plans in the current format satisfactory means for identifying and preparing for supply risks? What core elements could a possible template for the Risk Assessment and a Preventive Action Plan contain (e.g. concrete harmonised scenarios to be addressed, similar to the Energy Stress Tests, etc.)?*

In order to facilitate the comparison of national risk assessments as well as preventive action plans these information should be published in English. An analysis of dependencies between preventive action plans on European level is required. Risk Assessment on European level is favoured for e.g. geopolitical risks analogue to EU-stress tests e.g. via a risk catalogue containing, E&P incidences, lack of LNG, probability analysis analogue to ENTSOG winter outlook.

7. *How can the existing cooperation obligation be improved?*

- a. *Do you think that regional plans for Risk Assessments and Preventive Action Plans should be obligatory in the EU or at least in certain regions? If you believe that regional plans should be introduced: how should the regions be defined (e.g. criteria, who should coordinate the process)?*

In order to facilitate the comparison of national risk assessments as well as preventive action plans these information should be published in English. An Analysis of countries effected by the same risk could be helpful in order to elaborate regional solutions where possible e.g. common infrastructure investments (storage/LNG). A cost-benefit analysis for preventive measures, investments or actions should be undertaken as well as options for possible cross-border cost allocation.

- b. *Should – at least in vulnerable regions – an obligation to agree on how to share gas in case of a supply crisis with neighbours with whom a common supply infrastructure is shared be included in the plans?*

Governments are in charge to advice TSOs how cross-border points (exports) have to be handled in crisis situations. TSOs can support upfront liquid diversified markets by establishing/providing well meshed and secure networks.

8. *Do you have proposals to simplify the administrative procedure for the Risk Assessments and Preventive Action Plans (and Emergency Plans), e.g. in terms of translation or alignment of the timelines? Should Risk Assessments, Preventive Action Plans (and, possibly, the Emergency Plans) be merged into one document and the procedural rules aligned respectively?*

A merger of documents would be helpful in order to increase transparency and develop a better understanding of neighbouring initiatives.

3. The "Supply Standard" for protected customers

The "supply standard", as set out in Articles 8 and 2(1) of the Regulation, aims at ensuring that Europe's most vulnerable "protected customers", as defined in Article 2(1) of the Regulation⁶, continue to be supplied with gas even under highly demanding situations, such as prolonged periods of extreme cold, a failure of a major supply infrastructure or disruptions from a major upstream supplier⁷. It aligns the minimum (and maximum) levels of protection for vulnerable or protected customers⁸ in all Member States. The supply standard thus ideally makes these circumstances "business as usual" for protected customers – but at the very least dampens their impact. Therefore, the moment at which non-market-based emergency measures have to be resorted to is postponed and the market can function better because the responsibilities are clear.

There is a large degree of discretion on the part of the Member States regarding the implementation of the supply standard. What is clear is that it is the Competent Authorities that have to identify the undertakings on which the various obligations are imposed. It is however left to the Member States to decide in which way the standard is imposed and how it is (deemed to have been) met. "Measures" to implement the supply standard can therefore range from no additional rules (given an existing balancing and other regulatory and legal regime), to a system of (incentive-driven) penalties/fines, to storage obligations, strategic stocks or LNG-related measures.

The questions regarding the Supply Standard can be divided into three categories: a) questions about the level of protection set by the current standard, b) questions about the way in which the standard is enforced and c) questions about the measures that are foreseen to be applied in order to meet the standard.

3.1 Questions about the level of protection set by the current Supply Standard

This first group of questions aims to ascertain views on the general role and effectiveness of the (harmonized) supply standard in contributing to security of gas supply in the EU.

Questions

9. *Do you think the current supply standard is defined and set appropriately with a view to ensuring that the objective of securing supplies to protected customers is met, taking into account sufficiently of differences in terms of vulnerability between Member States? Please substantiate your reply. In case you do not think that the supply standard is defined*

⁶ DSO-connected households and, if provided by Member States, SME's and district heating installations within certain limits.

⁷ Arguably, disruptions of supply from a major source may have the same effect as the latter if the "major supply infrastructure" is inextricably tied to a single source. This was effectively the case in 2009 when gas flow from Russia via Ukraine ceased for reasons other than a technical failure.

⁸ See below, Section 4.

or set appropriately: what alternative design/tools could be envisaged to ensure the gas supply to protected customers? Please substantiate your reply.

The cases for ensuring gas supply are defined appropriately, but should take seasonal requirements into account. For example the 7-day peak demand may be multiplied with a factor between 0 and 1 giving the probability of occurrence in the respective month.

The subset of protected customers must be defined equally in all member states in order to create the same burden of obligations for ensuring gas supply. Otherwise, the obligation will distort the common market.

10. *Do you think that the scenarios defined for the calculation of the standard in Article 8(1) (a) to (c) are still valid (for all Member States) or should they be modified? Please substantiate your reply.*

The cases for ensuring gas supply in Article 8 (1) are still valid.

11. *Do you think that increased standards (e.g. manifested in longer and more severe disruption scenarios) would be beneficial or could ultimately jeopardize the security of supply in other Member States by reducing the liquidity in gas markets? Please substantiate your reply.*

Increased standards are not necessary. A period of 30 days is sufficient for the market to adapt to the new situation and e. g. to attract LNG. A period of e. g. 60 days would reduce the market liquidity and raise the commodity price as higher gas volumes have to be contracted at production, storage (incl. LNG) or import point.

3.2 Questions about implementation and enforcement of the Supply Standard

The current supply standard is "result-oriented" in the sense that it imposes a certain level of protection to be ensured in all Member States without prescribing how to achieve it⁹. Thus, the standard ensures a common protection level for all EU citizens while acknowledging the existing differences between Member States' situations and approaches to security of supply.

An often heard criticism of the supply standard is that it is difficult to implement and hard for Competent Authority to assess whether it is actually met. For instance, it can be questioned how feasible it is to *ex ante* ensure that an undertaking is actually able to deliver on **his** obligation. Competent Authorities have stressed in this respect that gas markets have changed from a system of long-term contracts between few players to a system of liquid gas trades via hubs in large regions of the EU. The Report on the Implementation of the Regulation is clear that: "*Very often basic information to verify the fulfilment of the standard is missing – in particular the level of consumption of protected customers within the total gas demand (e.g. for SMEs, where a 20% cap applies). Information on the legal rules to implement the*

⁹ This is the reason why the existing supply standard cannot be regarded as an EU gas storage obligation.

standard remains rudimentary. Data on the final use of gas and demand variations in different temperatures – is often absent as well. Member States have pointed to difficulties in interpreting the supply standard as one of the reasons for the missing information. Discussions in the Gas Coordination Group have highlighted that some Member States struggle with the practical implementation and enforcement of the supply standard".

In implementing the standard some Member States have opted for the introduction of a system of detailed ex ante checks of the means and instruments proposed by the undertakings whereby they often resort to "indirect" implementation modalities via specific measures, which will be discussed further below. Other Member States have adopted regimes that rely on the ability of the market to deliver supplies under the scenarios described.

Questions

12. Do you think that the result-oriented approach should be maintained or should the supply standard become more prescriptive in how the implementation and enforcement should be carried out? Please substantiate your reply, taking into account the effects on prices, liquidity, competition and security of supply.

The result-oriented approach should be maintained. The responsibilities of the different “natural gas undertakings”, however, must be clearly fixed according to their market role. Transmission system operators are regulated under the control of the NRAs. If the NRA or the relevant competent authority has to control the compliance with the security of supply, its competence must be extended to control the suppliers as well.

13. To what extent can a more active role of the Competent Authorities in the monitoring of the supply standard contribute to resolve the identified issues, notably should the Competent Authorities permanently verify that measures/means to meet the standard put forward by undertakings are appropriate? If so, how can this practically be realised, without unnecessarily limiting cross-border trades and liquidity?

In Germany the NRA should establish a market monitoring with regard to the supply standards. In order to ensure the gas supply under all cases an obligation for the suppliers should be introduced proving to the NRA that the necessary gas amount is contracted at production, storage (incl. LNG) or import points.

14. Should all undertakings be treated equally or should for instance small undertakings be exonerated from the obligation to comply with the supply standard? Please substantiate your reply.

Obligations to comply with the supply standards must be equally for all suppliers of protected customers. Otherwise, it would distort the competition between supplying companies.

3.3 Questions about the measures used to meet the Supply Standard

As underlined in the introductory chapter of this paper, market functioning and security of supply mutually reinforce each other: a market will function better where a transparent and non-discriminatory security of supply framework is in place and the security of supply level increases where a well-functioning, liquid wholesale market is able to attract multiple suppliers and investments where they are needed most.

In countries where the market functions well, undertakings that have to meet the supply standard tend to rely on contracts rather than physical means (such as storage) to demonstrate compliance to their Competent Authorities. The theory is that in a well-functioning market in times of scarcity and high demand prices will rise and will thus attract additional supplies to alleviate the stress. In such cases therefore the implementation and enforcement of the supply standard leads to either no or only very limited and well-circumscribed further specific measures instituted by Member States. An example of such a regime is the UK's "VOLL"¹⁰-regime, see Box 1 below.

Box 1 – The gas security of supply significant code review¹¹ in Great Britain¹²

In Great Britain, reforms have been developed to ensure that imbalance prices in a gas emergency provide appropriate incentives on gas shippers to balance supply and demand. These reforms ensure that imbalance prices remain dynamic throughout an emergency, with no cap on prices. If smaller consumers (e.g. domestic households) are interrupted, this would be treated as a balancing action by the system operator, and priced at an estimate of the Value of Lost Load. Funds recovered through imbalance charges would be used to make payments to interrupted consumers.

These reforms focus on improving the efficiency of price signals and transferring risks from consumers to shippers. Incorporating the cost of an emergency into market prices can create appropriate incentives on market participants (including storage users) to deliver supply security. It ensures that the most efficient actions are taken and that the strength of the incentive is proportionate to the risk of an emergency.

(Source: CEER)

Questions

¹⁰ VOLL = Value of Lost Load.

¹¹ The significant code review introduces the concept of Value of Lost Load (VoLL) into the regime in Great Britain. VoLL can be defined as the price that consumers would be willing to pay to maintain gas supply. In theory, if gas prices increased above this level, consumers would rather have their supply curtailed or disconnected than receive an additional unit of gas. More information can be found at:

<https://www.ofgem.gov.uk/gas/wholesale-market/market-efficiency-review-and-reform/gas-significant-code-review>

¹² This Box is from CEER's Public Consultation on the draft CEER Vision on Regulatory Arrangements for the Gas Storage Market (http://www.ceer.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/CEER_Vision_Gas_Storage/CD).

15. *Do you think the supply standard should be met by the undertakings responsible as a “going concern” in the context of their regular, day-to-day supply activities? Please substantiate your reply.*

Obligations to comply with the supply standards must be met in the day-to-day activities equally for all suppliers of protected customers.

16. *To what extent can normal market conditions be relied upon by the undertakings responsible to ensure that they will meet the supply standard even in case of supply disruptions? ()*

If a member state fulfils the N-1 criterion the market will theoretically continue functioning even in case of a disruption. The calculation of the N-1 criterion, however, assumes that the storage has a certain filling level and that at all remaining import points gas is available. Without the respective obligatory contracts this will not necessarily be the case.

17. *How can the ability of undertakings to supply protected customers be checked in a “hub-based” gas world in practice, in particular:*

a. *To what extent can (long and/or short term) spot market contracts be checked in a “hub-based” gas world in practice?*

Spot market contracts (short term) on a hub can by no means be checked, because in the German balancing system it cannot be traced who is the physically delivering party and how this party closes its open positions. A network user’s inputs and off-takes are not known in total before the day that follows the actual gas transport. Long term contracts at hubs, i.e. physically settled forward deals can be checked if the delivering party holds the respective gas amount in storage.

b. *How can a monitoring system avoid detrimental effects from disproportionate guarantees/certificates for future supplies?*

A monitoring system following a model with guarantees/certificates for supplying protected customers must be non-discriminatory to all parties, especially to all sizes of supplying companies. A “de minimis” exemption from the obligation would distort the competition between suppliers. The obligation for guarantees/certificates must be re-adjusted regularly depending on the actual supply portfolio and, of course, depending on seasonal effects. For the summer months, for example, less guarantees/certificates are needed.

- c. *Under what circumstances can a monitoring system based on incentives/sanctions (i.e. without ex ante checks and guarantees) such as described in Box 1 be effective? If so, what role should competent authorities have under this approach?*

Network users must balance their inputs against their off-takes. Market-based balancing rules financially incentivise network users to do so under normal market conditions. In case of a crisis, however, “free riders” that have contracted insufficient gas to supply protected customers may fail to balance their off-takes pushing the other network users in the solidarity to supply the free rider’s protected customers. Additional to the existing market-based balancing rules such free riders must be penalized severely since their behaviour will do great harm to the supply of non-protected gas customers, i. e. mainly industry and cross border flows in Germany. A respective penalty will be an effective deterrence from undermining the guarantees/certificates system.

18. *In order to protect the level playing field on the market, it may be appropriate to entrust the transmission system operator with the role of supplier of last resort under certain predefined circumstances and in compliance with strict criteria. To what extent would such an approach be commendable in your home market (please indicate which market that is)?*

Under certain well defined conditions, e. g. N-1 disruption or extreme cold spell the network users may fail to balance their inputs against their off-takes. For these cases in Germany it would be very helpful to have the transmission system operators to hold a certain gas amount in storage. This “stability reserve” will be used as an extended linepack or a last resort balancing service when no other balancing actions are possible. The costs of the storage capacities and the initial filling could be included in the TSO’s tariffs.

19. *The current supply standard obligation under Article 8 and 2(1) of the Regulation is a national obligation. Is the current approach sufficiently open to cross-border solutions or could a "regional" approach to the supply standard for protected customers be considered in the Regulation?*

The subset of protected customers must be defined equally in all member states in order to create the same burden of obligations for ensuring gas supply. Otherwise, the obligation will distort the common market. The supply standard obligations, however, should remain at national level since the market structures (diversification, regulatory regime, state or private owned companies, storage capacity, amount of suppliers etc.) differ significantly in the member states. Where absolutely necessary (e.g. in NetConnect Germany between Bavaria and Tyrol) the obligations are already today regarded together.

On the other side of the spectre there are Member States in which a functioning market cannot reasonably be relied upon, for instance because there are very few suppliers active and there is an non-level playing in the flexibility tools these suppliers can reasonably get hold of. In such regimes, more physical measures to ensure the availability of gas are often required. These often relate to **storages**¹³. A variety of different government measures relating to storage are applied in the EU.

Storage measures

In some systems, for instance, in France and Poland, **storage obligations** are imposed on shippers obliging them to have certain level of stocks available at specified times (e.g. at the beginning of the heating season)¹⁴. See Box 2 for a description of the French system. **Box 2 - Storage obligations in France**¹⁵

Ministerial order No. 2014-328 of 12 March 2014 provides that, every year, normative consumption profiles associated to each category of final consumers are defined, and used to calculate the rights of each supplier to get access to a certain quantity of storage capacity, based on its portfolio.

Every year, by 1 November, all suppliers have to store a volume of gas amounting to no less than 80% of their storage capacity rights related to their consumers connected to the distribution network. The storage capacity rights take into account both the volume and the withdrawal rate needed.

¹³ An idea put forward in the stress test communication related to lowering the storage tariffs as a market based way of incentivizing storage use. This issue is however taken up in the context of the Tariffs Network Code development and will therefore not be subject to questions in this document.

¹⁴ CEER describes storage obligations as follows: "Storage obligations place an obligation on market participants to procure storage based on their customers or portfolios and ensure that a certain level of gas is in store at a specified time. The rationale for introducing storage obligations is to alleviate a presumed failure of the market to properly anticipate on the need for storage in case of tension between supply and demand. The drawback of storage obligations is that they may distort price signals and the economic valuation of storage based, among other things, on seasonal price spreads in wholesale markets. The risk is that price volatility is reduced, thus distorting the price signals and the efficient functioning of the market. Storage obligations could act as a barrier to entry for new market players, perpetuate market concentration or stifle competition. Such obligations, where necessary, should therefore be used and designed carefully in order to minimise restrictions on when injections/withdrawals from storage facilities can take place, which could prevent market participants from responding efficiently to market signals. Such restrictions could hamper market participants' ability to manage their portfolios, distort the merit order for flexibility and prevent storage from being fully optimised. Storage obligations can reduce the market value of storage, which may have a negative impact on security of supply."

¹⁵ This Box is from CEER's Public Consultation on the draft CEER Vision on Regulatory Arrangements for the Gas Storage Market (http://www.ceer.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/CEER_Vision_Gas_Storage/CD).

The Ministerial order No. 2014-328 also provides that Transmission System Operators (TSOs) have priority access to storage capacity through a specific contract for flexibility and security, in order to comply with their public service obligations.

Another measure, less frequently used due to the significant costs¹⁶ of such system, is the so-called **strategic stock**, which refers to the stockpiling of natural gas which is destined to be used exclusively in emergency situations, hence inaccessible under normal market conditions. Box 3 explains the way in which a strategic stock has been implemented in Italy.

Box 3 – Strategic storage in Italy¹⁷

Legislative Decree No. 164/2000 (which started the liberalisation process of the Italian gas market) defines the strategic storage as the storage aimed at facing potential shortages or reductions in supply or crisis situations of the gas system. According to Article 12, paragraph 11-bis of the above mentioned Decree, as amended by the Legislative Decree No. 93/11, and Article 1, paragraph 1, of the Ministerial Decree of 29 March 2012, costs underlying the strategic storage service shall be borne by gas producers and importers on the basis of a share of their produced and/or imported gas volumes. That share is defined annually by the Ministry of Economic Development taking into account the capacity developments of both import infrastructure and national production. Charges to be applied to producers and importers are defined by the Italian national regulatory authority, AEEGSI (Resolution No. 149/2012/R/gas) through a variable unit called CST that is paid by the above parties to storage operators. The total amount of strategic storage is settled by the Ministry of Economic Development on an annual basis and in consultation with the Emergency and Monitoring Committee of the natural gas system. For the storage year 1/04/2014 – 31/03/2015, the total amount is 4.620 mln Smc.

Increased reliance on LNG

A possible alternative to storage measures is an increased reliance on LNG. The Stress Test Communication has shown that access to LNG supplies will be crucial in case of a sustained supply crisis and highlighted that: "*LNG is clearly the import source with the biggest potential as LNG terminals in the EU have sufficient capacity to allow new LNG volumes to be shipped in. From a commodity perspective, the global spot LNG market is large enough to provide additional volumes and so is the shipping sector. In addition, recent drops in Asian LNG*

¹⁶ Stockpiling of natural gas is expensive: the cost per unit of energy is much higher than for oil (approximately 16.7 MEUR per PJ, compared to 3.33 of oil). Source: Study on natural gas storage in the EU, European Commission DG TREN, 2008; this calculation does not include the possible development of new storage facilities for pure strategic stock purposes which may become necessary should the current storage capacity (available to the market) not be sufficient.

¹⁷ This Box is from CEER's Public Consultation on the draft CEER Vision on Regulatory Arrangements for the Gas Storage Market

(http://www.ceer.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/CEER_Vision_Gas_Storage/CD).

prices have made LNG a more economic alternative for the EU. Nevertheless, given that in times of disruptions and scarcity the price of LNG will rise, acquiring spot cargoes may be expensive. Moreover, it may require at least one week for a shipment to arrive in the crisis area." Thus, LNG has clear advantages, but important question marks surround its true added value.

Diversification obligation

Another possible measure to implement the supply standard which does not relate to storage is a "**diversification obligation**", i.e. an obligation on shippers to diversify their supply portfolio in case the overall gas supplies to the country from a single source surpass a certain threshold (e.g. 60% in Spain).

Common "pooling" mechanism

Finally, there are new ideas being proposed aimed at implementing the supply standard in a **more coordinated** manner at a broader regional or EU-wide level. For instance, a **common / coordinated reserve "pooling" mechanism** at regional or EU level has been put forward. Such schemes could include for instance the joint construction and/or use of storage or LNG infrastructure, the joint purchase of LNG flexibility options, pre-agreed price contracts or storage capacities, with the aim of ensuring a greater efficiency as well as potentially profiting the combined buying power. Such capacities could be acquired to ensure meeting the supply standard or they can be held in reserve for emergency situations.

Joint purchasing

It has also been proposed to consider **joint purchasing** mechanisms in crisis situations as a tool to secure gas *in case of an emergency*¹⁸. The possibility to allow for joint purchasing agreements in crisis situations is meant to facilitate the quick access to gas volumes in case of a physical supply interruption (e.g. agreements between wholesalers aiming at filling strategic storage or acquiring extra LNG volumes in case of a crisis). Such mechanism must, however, respect the limits of EU competition rules.

Questions

20. *Please provide your substantiated view relative to the various implementation forms of the supply standard currently in use throughout the EU today. Please indicate your experience with these measures (i.e. storage obligations, strategic stocks, diversification obligations) and consider factors such as overall costs, effectiveness, enforceability, impact on market, competition and prices and compatibility with other SoS measures.*

¹⁸ Such a possibility, limited to a crisis situation, has to be distinguished from proposals to allow joint purchasing of gas under normal market conditions. Such a proposal concerns general aspects of competition law and market functioning and is not subject of this consultation.

The safeguarding of the supply standard should reflect the respective member state's market structure. The way of implementation should be in the national responsibility because a "one size fits all solution" throughout Europe does not exist. In any case, however, the implementation must allow an enforcement of the supply standard for protected customers via checkable and sufficient supply and transportation contracts. The mere existence of storage and diversified import points is not sufficient. For Germany storage obligations are a most appropriate and effective means because Germany has large gas storage capacities; also diversity of supply is an effective means. Due to the geographical distribution of the storage sites, however, the transmission system operators must be able to control where gas is withdrawn in case of a crisis situation.

21. *Which role could LNG play in situations where the market cannot be relied upon to fulfil the supply standard:*

- a. *Can it play a role in effectively addressing an emergency situation? If so, in what form?*

With a certain time lag LNG can help to solve an emergency situation by diversifying the supply route. Even if LNG will not physically arrive in Germany it will help to significantly reduce the export gas flows from Germany to the member states that operate a regasification terminal. With adequate interconnection LNG could flow from the MS with regasification capacities to MS without LNG terminals.

- b. *What are the main barriers for LNG to play such a role (e.g. destination clauses, transparency, price)?*

On the short term time scale LNG can play a minor role only in emergency situations, because up to now the lion's share of LNG is traded on long-term basis. Within a period of 30 days period, however, it should be possible to redirect additional LNG volumes if the European market is willing to pay a competitive price. But even when large LNG amounts are arriving in Europe it could be difficult to transport the volumes to each point in eastern and south-eastern Europe due to infrastructure restrictions. One such restriction is the odourisation of gas preventing LNG from French terminals to be transported in eastern direction. Further restrictions could arise in Europe from insufficient reverse-flow capacities. A respective extension of the European network would lead to prohibitively high costs which have to be paid by the final customers in beneficiary countries.

22. *The range of available measures to ensure the supply standard is much wider in mature markets than in non-mature markets, where further regulatory interventions may be required:*

- a. *Do you agree that there could be a need to differentiate between mature and non-mature markets for meeting the supply standard? If so, how should mature and non-mature markets be defined?*

No, the supply standards must be defined in the same manner for all countries in order to avoid different threshold values that trigger solidarity actions. Otherwise, countries with a wider definition of protected customers would come in the role of a free rider in relation to countries with a very strict definition of protected customers. In order not to distort the internal energy market the common set of rules and obligations have to establish international level playing fields.

- b. *Do you think that an obligation of diversification for those Member States that are highly dependent on one single supplier should be considered and what would be an appropriate level of diversification (e.g. a percentage or a minimum number of sources)?*

The introduction of a diversification obligation of gas sources is not the business of the transmission system operators, but of the MS if a market test is not successful.

23. *How can regional solutions be fostered where they are more efficient than individual national solutions? Should legal measures (e.g. obligation to evaluate regional solutions) be considered? How should the costs of such regimes be shared?*

Where member states are affected by the same risk, e. g. a disruption of a common supply source, regional solutions could be introduced. Storage obligations, however, can be introduced in every country individually as storage capacities are available throughout the market. In some cases of infrastructure investments the existing rules of cost benefit analysis for Projects of Common Interest or Incremental Capacity could be applied.

24. *How could a coordinated gas reserve mechanism be designed:*

The implementation of the European Regulation is the basis for well-functioning markets which are primary tools for a better security of supply. Coordination and pooling should not hinder the development of market based solutions.

- a. *How could a mechanism that pools gas storage ("virtual" shared reserve) across Member States be designed? Please describe such mechanism in detail.*

All suppliers should have a guaranteed access to gas for protected customers that is available on short notice. This availability should be certificated by an independent agency. Typically, the gas will be in a storage, but not necessarily in the supplier's country. If the supplier's obligatory reserve is abroad the needed cross border capacities must be booked as well according to the seasonal profile of the supply standard.

- b. *Is there a need for joint gas or LNG purchasing agreements between different gas companies? Do you see rather benefits or risk of such joint purchases in an emergency situation?*

Joint purchasing agreements between network users undermine the market liberalization as well as competition. Anti-trust rules should forbid such agreements. LNG purchasing agreements should be open to all market participants. In an emergency situation the quick purchase of LNG is rather a way back to market functioning initiated by suppliers than an emergency measure paid by the government.

- c. *Should such mechanisms be regional or is there a case for an EU-wide mechanism? Who would be the actors in such systems and what would be their role (companies, Member States, EU)?*

See previous point.

If badly designed, non-market-based measures may have an adverse effect on market functioning and, in markets where the market is not mature yet, they may even prevent the market from developing. For instance, the storage obligation regime as described above could act as a barrier to entry for new market players or have the effect of strengthening the position of the historical incumbent supplier. Intelligent regulation may, however, prevent such side-effects, for instance by ensuring the measures comply with certain criteria related to their proportionality, necessity and openness.

25. *Do you agree with the possible conditions for non-market-based measures listed below? Which conditions would you add or delete?*

General remark: The given questions are suggestive of an exclusive application of non-market-based measures in case the supply of protected customers is disrupted. This is generally not true. From the system operators' point of view there are firm entry and exit contracts with network users. The contractual relationship or firmness does not depend on the degree how "protected" the exit point or the respective customer is. Thus, all measures

described in Annex III of the SoS-regulation are applicable to any firm entry or exit contracts. Before a member state reaches the necessity to enforce non-market-based measures to supply protected customers, first it will have to use a wide range of non-market-based measures to shed the load of non-protected customers which means to break the firm exit contracts. By German law industrial customers, some gas fired power plants, storage injections and cross border exit points are non-protected and, thus will be interrupted by non-market-based measures first of all. It is a deficit of the current SoS-regulation that this process will not necessarily lead to the declaration of the emergency level, while only an interruption of protected customers will do so. This deficit leaves open questions: Who is responsible for the enforcement of non-market-based measures if the emergency level is not declared? What curtailment of cross-border exit points is “unduly”?

- *they can only be used when it is demonstrated that gas traders are not able to provide the necessary supply standard.*

The supply standards of Article 8 refer to protected customers only. In Germany the protected customers, however, are a subset of the firm connected customers of less than 50%. Thus, non-market-based measures will be needed long before the point at which network users are violating the supply standards, in order to reduce the load of the non-protected customers. As a consequence the trigger for the application of non-market-based measures should be the point in time when the market is not able to provide the necessary balancing actions to the transmission system operators any longer and when this fact is officially approved and declared by the competent authority. At that point the emergency level must be declared. Due to the German balancing regime it is not possible to decide ex-ante which gas traders are not able to provide gas for their customers. This can be achieved only ex-post when the inputs and off-takes are collected and confirmed. Non-market-based measures, therefore, will affect all network users, on the supply side as well as on the demand side, at domestic points as well as at cross border points.

- *they can only be used at a national level if no solutions for shared use of storage resources with other Member States is possible.*

As long as market-based measures in one country can avoid the application of non-market-based measures in a neighbouring country they should be used. In a functioning internal market that should be an automatism, i. e. the markets will collapse more or less simultaneously in neighbouring countries.

Booking of gas storage capacity abroad and cross border capacity for emergency situations is always possible in the internal European market. (Exception: France because of odourisation.) Non-market-based measures on the supply side in one country must, of course, respect strategic gas storages of other countries. The contractual relationship

between the storage system operator and its customer must be very clear at that point in order to prevent the national authorities to use the gas for national purposes. If one country withdraws its strategic gas reserve from another country, however, it is not impossible that the resulting cross border flow is curtailed by non-market-based measures on the demand side since the system operator of the exit point cannot know the purpose of the gas flow. For this reason an obligatory communication between neighbouring transmission system operators and competent authorities must be installed before cross border flows are curtailed.

- *it should be ensured that the measure is open to participation of suppliers from other countries.*

Applying non-market-based measures the inputs and off-takes of all network users, independent from which country, will be adjusted to the given situation. If a supplier from country A fails to supply its protected customers in country B the non-market-based measures of country B will, of course, protect the customer. Supplier A will be penalized irrespective of its country if the failure is not a force majeure case.

If vice versa country A is not able to supply its protected customers the cross border flows from neighbouring country B to A must be adjusted in a way that protected customers in both countries are supplied. For this reason an obligatory communication between neighbouring transmission system operators and competent authorities must be installed before cross border flows are curtailed.

If a supplier in another country receives gas from a non-market-based measure it has to be clear how the supplier's and the sender's balancing portfolios are working because the Network Code on Gas Balancing does not apply in emergency situations.

- *the capacities should be acquired on a non-discriminatory basis (tender) and should take into account cross-border sources of flexibility.*

It is not clear what capacity should be acquired by whom in this condition and what cross-border flexibilities will be available in an emergency case.

In case a country books strategic gas storage abroad it must, of course, book the adequate cross border capacity.

If a supplier in another country receives gas from a non-market-based measure the supplier has to book – probably intra-day – the respective (bundled) cross border capacity. It has to be clear how the supplier's and the sender's balancing portfolios are working because the Network Code on Gas Balancing does not apply in emergency situations (Article 2 para. 4).

- *the TSO(s) is most likely to be the best placed person to acquire such means given his control over the system, overview of the flows and independence.*

The transmission system operators should be enabled to execute a last resort balancing service from storage (see point 18).

If cross border flows are to be adjusted by non-market based measures the international transmission system operators will communicate among themselves, will give advice to the competent authority and will implement the non-market base measure after confirmation by the authority.

If gas is to be transferred abroad in order to help protected customers abroad the transmission system operators will communicate among themselves and provide information concerning cross border gas flows to the competent authorities. The competent authorities must confirm non-market-based cross border flows and instruct the transmission system operators to remove gas from certain balancing portfolios and inject gas in certain other portfolios abroad or implement other specific emergency measures that allow tracing the ownership of the gas.

26. *Should the distinction between market-based and non-market-based measures be further clarified? Should the use of non-market-based measures be restricted, for instance by being made subject to the fulfilment of certain criteria and regulatory oversight?*

The distinction between the market-based and non-market based measures themselves according to Annexes II and III is clear. Anyhow, it should be clarified that demand-side measures in Annex III (with the exception of enforced firm load shedding) as a key element for a flexible market through the suppliers belong to the market-based measures in Annex II. Furthermore, it has to be clarified at what point in time a market stops functioning and when it starts functioning again. This period must be officially declared by the competent authority. Only within this period and after confirmation and instruction by the competent authority the transmission system operators can break existing entry/exit contracts, i.e. apply non-market-based measures.

PART II

MITIGATION

4. Protected Customers and Solidarity

As explained above, the Supply Standard is there to ensure that the 'protected customers' are supplied even under critical conditions. In other words, they provide for a **minimum degree** of protection of vulnerable customers in the EU.

It is important to note that provisions concerning protected customers in the Regulation also contain certain **limits to the freedom of Member States** to declare customers as protected: the group of customers that can be declared as "protected" is restricted to the neediest consumers. While protection of DSO-connected **households** is mandatory under the

Regulation, Member States have a limited margin of discretion to add other customer groups to the group of protected customers. Member States may include (1) SMEs and essential social services provided that they do not represent more than 20% of the final gas use in the country and/or (2) district heating installations to the extent that they deliver heating to households or other protected customers and are not able to switch to other fuels.

The main underlying reason for this definition of a **maximum protection level** is the idea of solidarity: exchanges of gas in critical times to countries where gas is most needed can only happen if Member States do not declare their entire gas consumption as "protected"¹⁹. Article 7 and 2(1) of the Regulation therefore incorporate an inbuilt solidarity mechanism. It provides for a certain harmonisation of the different national maximum protection levels in order to keep cross-border flows possible in times of scarce gas supplies. The Review Report on Regulation 994/2010 however demonstrated that the group identified as protected customers largely differs among Member States and that the majority of Member States go beyond the category of households and use the flexibility of the Regulation to include either or both of the possible additional categories (SMEs and social services and/or district heating).

This divergence could have a negative impact on the possibility for cross-border measures to arise as solidarity with the protected customers in a neighbouring country can only come about when the groups in both countries are reasonably aligned and result in a comparable level of protection. If Member States keep all their gas for themselves in case of a crisis without considering possible needs from Member States, gas will not flow where it is needed most. As the Stress Tests demonstrated, increased cooperation and coordination can greatly enhance the efficiency in dealing with a disruption, reducing costs and allowing the market to work longer by ensuring the regionally most cost-effective measures are applied.

A possible measure could be an obligation for Member States for a stepwise approach in case of a supply crisis, according to which should first provide gas to their protected customers, but they would first need to verify whether protected customers in neighbouring countries are still at risk of not being supplied before further gas should be provided to domestic non-protected customers. Such a mechanism could be considered an implementation if the solidarity obligation contained in Article 11(5) ("don't limit gas flows unduly, putting neighbours at risk"). It could provide for a mechanism in which gas could still flow to where it is most needed in a crisis situation and the situation that borders are closed while protected customers are not being served in neighbouring countries - without endangering domestic protected customers in the exporting country.

¹⁹ An additional reason for this limitation is the practical consideration to limit the necessary volumes for the supply standard obligation, i.e. the smaller the protected consumption volumes, the longer reserves or emergency measures can sustain supplies.

Additionally (or alternatively), coordination obligations could be introduced (EU wide or in vulnerable regions) according to which Member States would have to negotiate bilateral agreements on how to deal with imminent disruptions of protected customers (in terms of measures, sharing of costs, procedures, role and responsibilities, and agreeing on a jointly acceptable supply standard). Such measures could also prevent that some member states neglect their protection and simply "free-ride" on the protection measures of their neighbours.

Questions

27. *Concerning the definition of protected customers:*

a) *Do you believe that there is a need for a more harmonized definition of protected customers and their consumption? Please substantiate your answer.*

FNB Gas believes that in order to establish a fair level playing field with regard to security of supply provisions and call for solidarity a certain level of protected customer groups should not be enlarged. The Regulation should be open to offer the option of including other social services to the group of protected customers.

b) *Should the definition of protected customers be stricter in order to avoid that single Member States declare almost all customers as protected?*

Yes, it should be avoided that single Member States declare almost all customers as protected. See also answer a).

c) *What do you think about a regional definition of protected customers (e.g. in closely interdependent areas)?*

FNB Gas is not in favour of a regional definition of protected customers, where such a regional approach is not pre-defined due to technical reasons but prefers the strict application of all EU provisions at a member-state level.

28. *In some 'meshed' distribution grids it is technically difficult to make a physical separation between protected and non-protected customers: What could be a solution to limit the protection to the actually protected customers (e.g. orders to non-protected DSO-connected customers not to consume gas, shielded by sanctions, etc.)?*

FNB gas believes that TSOs/DSOs have to come to an agreement how this process is to be handled e.g. as far as communication is concerned. Therefore a target or result-oriented approach is needed. Possible instruments might be an active DSO or supplier demand side

management as well as the use of capacity reducing mechanisms. DSOs are responsible for informing non protected customers in their network to stop consuming gas

29. Do you see merits in laying down one or more of the following solidarity measures:

- a. *an obligation on Member States to agree upfront on bilateral or multilateral crisis measures to deal with imminent disruptions of protected customers (e.g. sharing of costs, roles and responsibilities, etc.), in order to prevent alleged "free-riding";*

Upfront agreements are quite difficult to elaborate due to a huge range of possible supply disruption scenarios. Therefore FNB Gas sees the need for flexibility. The better way to keep security of supply on the today's high level respectively in order to improve it is a functioning market with less state intervention as possible.

- b. *a prohibition for Member States to close their borders or reduce interconnection capacity in case protected customers on the other side of the border are still at risk (combined with efficient provisions against "free-riding" such as upfront agreements, see a))?*

FNB Gas does not believe that prohibitions would have surplus value e.g. in cases of incidents and dangers for life and limb. Non-market based adjustments of cross-border gas flows in crisis situations have to be operable and agreed upon between the adjacent TSOs and the relevant national authorities. In any case a binding cross-border communication approach is required in which also rules for cross-border gas flow reductions are defined in order to avoid long-term legal cross-border disputes afterward.

- c. *What other solidarity measures do you believe can improve levels of security of supply without unnecessarily impacting market functioning?*

Because national legal frameworks are not known by market actors in neighbouring countries prerequisites are rules to clarify cost allocation, any market and legal impact (liability) especially with cross border effects have to be clarified upfront.

5. Emergency Plans

The Regulation obliges Member States to prepare and notify to the Commission Emergency Plans, which must be updated every two years²⁰. The Emergency Plan focuses on those

²⁰ Or if necessary even more frequently. The Emergency Plans were to be updated by the end of 2014.

situations when the amount of gas provided by the market is not enough to cover all demand; it governs the roles and responsibilities, the information exchange schemes and the course of action to be taken by the authorities, gas supply companies, transmission system operators, consumers and other players.

National Emergency Plans must be exchanged and consulted between Member States to ensure that the national measures are feasible and compatible. In its Report on the implementation of the Regulation the Commission noted that although almost all Competent Authorities exchanged and consulted their draft plans with each other, these consultations were carried out merely to "tick the box" and without substantial dialogues between the Member States. In addition, there was little focus on common or coordinated actions in the case of a supply disruption and the cross-border impact of national measures were not taken into account to the necessary extent.

A way to ensure focus on a region as a whole and to enable the identification of common and correlated risks which more than one Member State might face would be the establishment of Regional Emergency Plans by Member State Competent Authorities. This would ensure that there are no (national) measures endangering the gas supply situation in another Member State or restrict the cross-border access to relevant infrastructure as well as avoid the situation when several national policies aim at the very same source or route of gas in a supply shortfall. The (Regional) Emergency Plans could consist of national and regional chapters with cross-border relevance.

The Stress Test conducted by the Commission in summer 2014 provided positive experience regarding regional risk assessment and planning²¹. The question remains how to define the regions and who should determine their composition.

In the past practical difficulties such as language difficulties or significant time difference in the establishment of the plans hindered cooperation. Also the depth of analysis, level of data and robustness of the plans varied significantly. In order to draw up (Regional) Emergency Plans in a consistent, coherent and comparable manner the Commission could provide a template for mandatory use by the Competent Authorities, as also proposed for the RAs and PAs.

The Commission's tools to coordinate actions are under the existing Regulation limited and it has currently a mainly facilitating role. In order to detect crucial flaws or inconsistencies in the plans a proposal could be to increase the role of the Commission, for instance by obliging it to undertake a consistency check of the regional plans.

²¹ The Baltic States and Finland as well as the UK and Ireland are providing joint Emergency Plans (and Preventive Action Plans).

Questions

30. Do you agree that the development of emergency plans at regional level would be an appropriate way to ensure consistency and to enable preparation to react to common and correlated risks? How should the regions for security of gas supply be best defined? Please substantiate your reply.

a) Should mandatory regional emergency plans complement the national emergency plans or replace them?

b) Do you think that a template for regional emergency plans would ensure that more detailed and relevant information is provided (e.g. similar to the template used in the recent Energy Stress Tests)?

We agree with the Commission that language difficulties hinder cooperation. Therefore, it should be mandatory to publish national emergency plans in English in a public place for market actors and national authorities. This would be helpful for a better understanding of the situation of the adjacent MS and the effects of national and cross border measures. Only if a lack of information shows up, regional templates could be helpful to fill this gap of information. In order not to increase the complexity of the processes, emergency plans at regional level should be only made if National Emergency Plans are not sufficient to assess the situation. However, a voluntary approach where needed is welcome (dependency of countries/regions from one supply source or infrastructure). If a lack of information shows up, regional templates could be helpful to fill this gap of information.

6. Declaring an Emergency

a. National Emergencies

The Regulation foresees a definition and a number of possible national "crisis levels", with three different levels indicating the severity or likelihood of the crisis in each Member State ("Early Warning", "Alert", "Emergency"). The declaration of early warning and alert levels before an emergency level is meant to put affected stakeholders, Member States and the Commission on alert, but can currently not trigger non-market based interventions. When undertakings are no longer able to procure and transport enough gas to the market, the Competent Authority must declare an emergency and may put in place "non-market based" measures which administratively reduce gas consumption to the level of available supply.

When the Competent Authority declares any of the crisis levels, it shall immediately inform the Commission and provide it with all the necessary information in particular on the action it intends to take. The Competent Authority should follow the predefined action of the Emergency Plan. This is to ensure predictability and proper preparation for the affected market players and it ensures that no arbitrary and unexpected actions are taken²². The

²² In duly justified exceptional circumstances, the Competent Authority may take action deviating from the Emergency Plan, in which case it shall inform the Commission immediately and provide justification.

Commission shall verify within max. 5 days, whether the emergency declaration is justified and may request the Competent Authority to modify the measures and/or to lift the declaration of emergency when it considers it unjustified²³. This request has currently no binding effect.

Experience with the crisis levels is limited, as since the entry into force of the Regulation the national crisis levels have been declared on two occasions and national emergency was declared only in one Member State. Nevertheless, the Commission's implementation report identified areas where improvement of the current framework is necessary.

In order to limit distortive effects that security of supply measures can have on the market it must be ensured that *emergencies* are declared only when a true emergency situation occurs, because this moment determines where the market ends and where the non-market based security of supply regime takes over. To ensure this, the Commission considers whether a common threshold set in the legislation should define the moment at which an emergency may be declared. Another option would be to introduce a definition of a "functioning market".

To be in the position of truly ensuring consistency of national measures, it seems important that the Commission has all necessary factual information at hand to take informed and efficient decision, in particular as the Commission has the responsibility to verify – within 5 days – whether the national declaration of emergency has been made according with the Regulation. To that end the Commission could be provided with more sophisticated information tools and investigatory powers not only in an actual emergency, but also *before an emergency*. It may also be considered to give the Commission's recommendations on national measures a more binding character.

Questions

31. *Do you agree with the introduction of a threshold based mechanism or more specific indicators to trigger the declaration of the different crisis levels? Please substantiate your answer.*

A threshold-based mechanism could be difficult to define because of the diversity of situations. Nevertheless, it is to be welcomed, if there is a more detailed definition of a "non-functioning market".

32. *Should the right for Member States to intervene in markets through non market-based measures be extended to alert-level situations or remain limited to emergency situations? Should the list of possible non market-based measures in Annex III of the Regulation be changed or clarified?*

To distinguish the actions by the National Authority/MS from actions by the market, the

²³ See Article 10(8) and (7) of the Regulation.

right to intervene in markets through non-marked-based measures should remain limited to emergency situations. It should be clarified as well that in an emergency case only the national authority is empowered and obligated to undertake non-market-based measures. It should also be clarified that demand-side measures in Annex III (with the exception of enforced firm load shedding) as a key element for a flexible market through the suppliers belonging to the marked-based measures in Annex II.

33. *Should the declaration of national emergencies be subject to an appeal mechanism, e.g. to the Commission? Should the Commission's recommendation on the national measure have a binding character?*

The declaration of national emergencies should not be subject to an appeal mechanism. The Commission's recommendation on the national measure should not have a binding character. The Commission should promote that the states cooperate with each other in an emergency case.

b. Regional or EU-Wide Emergencies

In the existing Gas Security of Supply Regulation the Commission is tasked to monitor the security of supply situation at Union level. Upon a request of several Competent Authorities that face a gas crisis simultaneously, the Commission **can declare a Union emergency or a regional emergency** for a specifically affected geographical area (the Commission has some discretion to decide which of the two emergency levels to declare), which triggers the possibility to use non-market based measures and confers a **specific coordination function to the Commissions**.

The question has arisen whether the declaration of a "Union emergency" means an automatic emergency situation in *all* Member States, i.e. whether it would automatically enable the introduction of non-market based measures in those Member States where the market is still working. The aim is to allow markets working as long as possible, which also enables the Member State in emergency to procure the necessary gas in the still functioning neighbouring markets. Such considerations could be considered in the preventive and emergency plans (while the existence of physical infrastructure is crucial). Non-market based measures should be only introduced in the Member States which declared national emergency. At the same time these Member States could invite the Commission to declare regional emergency which would make sure that the foreseen solidarity mechanisms are implemented in all involved countries.

The Commission is held to convene the Gas Coordination Group as soon as it declares a Union or regional emergency and **coordinate the action of the Competent Authorities**, in particular via exchange of information and ensuring the consistency and effectiveness of action at Member State and regional level in relation to the Union level as well as coordinating the actions with regard to Third countries. In particular, the Commission needs

to verify that national measures **do not unduly restrict cross-border flows or security of supply in other Member States**²⁴.

It has been questioned whether the Commission has, under the current regime of the Regulation, **sufficient tools to get the information** at its disposal needed to monitor and recommend appropriate measures in a timely manner. The Commission welcomes in this respect the ENTSOG project establishing an early warning system which could be the basis to further develop information exchange and coordination of actions, corresponding to the defined regions, see ENTSOG Early Warning System (EWS) with an Early Warning Team East (EWT-E) currently; an expansion to other geographical areas, at least North-West Europe, is proposed.

Different solutions have been suggested who should carry out the monitoring functions (e.g. Member States, regional bodies, Commission), and to what extent cooperation ENTSO-G and other associations is needed.

Questions

34. Is the current allocation of responsibilities and tasks among the Commission, Member States, TSOs and natural gas undertakings in a Union or regional emergency in the Regulation clear enough? Do you see a specific role for ENTSOG or the Gas Coordination Group in a Union or regional emergency? Please substantiate your answer.

The allocated responsibilities and tasks should be clearly defined between TSO and suppliers. In particular, it should be clarified that the suppliers are also responsible in the event of n-1 to supply their customers. It should be also clarified in an emergency case that the competent authority is responsible to make decisions about non-market measures (Annex III). Responsibilities and tasks among the Commission and Member States are already defined.

In case of an emergency at the GCG meetings decisions are prepared and coordinated, which will be implemented by competent authorities and have a direct impact on the private business of the TSO. Therefore, the emergency-affected TSO should be involved directly. Participation by ENTSOG as an International non-profit Association cannot replace the hearing of TSOs. The Early Warning Team developed by the TSOs and with ENTSOG could be a possibility of coordinated participation in the GCG. The involving of TSOs ensures that the Commission can carry out its task of coordination quickly and effectively.

²⁴ See Article 11(5) of the Regulation.

35. *Should clearer rules be introduced on the consequences of declaring regional emergency for those Member States where the market is still functioning?*

In Union wide and regional emergencies, it needs clear transnational rules, who assumes the risk, who is liable for potential damages and reimbursement of costs (e.g. commodity) in particular for non-marked-based measures. Such clear rules prevent a declaration of a regional emergency, if the market is still functioning.

36. *The Regulation currently foresees the possibility to declare only an "emergency" at regional or Union level: Do you see a need for an additional regional/EU-wide "early warning" or "alert" level?*

In case of first signs of a potential crisis, an early information and communication path towards the Commission by TSOs would be beneficial. It gives the possibility to take coordinate action before an EU or regional emergency level is announced. A link to the ENTSOG early warning team could be the first step to establish an additional process.

37. *Should the Commission have more sophisticated information tools (e.g. a broader vision of actual gas flows in certain regions) and investigative powers in and before a regional /EU-wide emergency at its disposal in order to have the necessary information available to assess the cross-border effects of the national measures?*

The information requirements previously defined in the regulation are sufficient. The Early Warning System by the TSOs enables to analyse cross-border effects of national measure and to provide this information to the Commission. (see also answer 36)

38. *Should an obligation for the regional coordination of decisions in a regional /EU-wide emergency be created?*

Regional coordination of decisions without or with minimum impacts to the adjacent MS should not be created in a regional / EU-wide emergency.

39. *Are the Commission powers in case of a regional or EU-emergency sufficient or should they be increased in view of the experience with previous crises? Do we need a separate emergency body for the coordination at regional or European level?*

From the perspective of FNB Gas it requires no extension of the existing mandates of the Commission in emergency situations. However, during the crisis a quick response is important for effective coordination. A prerequisite for this is the direct involvement of the affected TSOs in the GCG. Therefore, the composition of the GCG should be driven

by the crisis to be solved. It could be helpful to split the GCG in a political arm and an operational arm, which solve the emergency case.

40. Should the emergency procedures of different transmission system operators be aligned in order to ensure more effective and efficient response to cross-border emergencies?

European requirements should be established, which ensure that non-market-based adjustments of cross-border flows in an emergency case can be implemented at the operational level. Therefore it needs a binding Europe-wide exchange of information between the TSOs, National Authorities and the Commission with the objective that no measures are introduced, which unduly restrict the flow of gas within the internal market at any time. One instrument could be the Early Warning System by the TSOs. In addition, arrangements should be developed for cost allocation and liability, particularly in the context of solidarity mechanisms.

NEXT STEPS

The questions and reflections in this consultation paper reflect our current thoughts on ensuring approaching security of gas supply in the internal market. We invite comments on all the questions directly raised and any other reflections which respondents may have.

Based on the responses we receive, and on further reflections and engagement with Member States and stakeholders, we will consider which additional measures are needed including in the form of legislative amendments.

Please submit your response to this public consultation **by 8.April 2015** at the latest to the following e-mail address: ener-sos-revision@ec.europa.eu. The Commission intends to publish a findings document summarizing the main outcomes of this consultation. The Commission will preserve the confidentiality of the responses it receives.