Measures to safeguard security of gas supply

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The Committee on Industry, Research and Energy adopted the report drawn up by Alejo Vidal-Quadras (EPP, ES) on the proposal for a regulation of the European Parliament and of the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC. It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Three level approach: the committee states that roles and responsibilities should be established in such a way as to ensure that a three-level approach is respected which would first involve the relevant undertakings and industry, then Member States at national or regional level, and then the Union. In the event of a supply disruption, market players should be given sufficient opportunity to respond to the situation by market-based measures such as those listed in Annex II. If the reactions of market players are not adequate, Member States and their Competent Authorities should take measures such as those listed in Annex III to remove or mitigate the effects of the supply disruption. Only if these measures are inadequate should measures be taken at regional or Union level to remove or mitigate the effects of the supply disruption. Regional solutions should be preferred to Union action as far as possible.

Subject-matter: Members stressed that the proposal must establish exceptional measures to be implemented when the market can no longer deliver the required gas supplies, as well as measures aimed at safeguarding the security of gas supply by ensuring the proper and continuous functioning of the internal market for gas.

Competent authority: the definition of competent authority is amended to show that the tasks of the latter include ensuring the security of gas supply as well as enforcing and implementing the measures and Plans set out in the Regulation.

Responsibility for security of gas supply: Members inserted an amendment stating that the Commission together with the Competent Authority shall ensure that no clauses having the effect of a **destination clause** exist in contracts for natural gas concluded between Member States or their natural gas undertakings and third countries. This is without prejudice to the competences of competition authorities. They note that contracts concerning gas supplies from third countries should not contain provisions violating EU internal market rules, notably restrictions to re-export or clauses that have the same effect as destination clauses.

Long-term security of supply measures: Members stress the importance of diversification throughout the text. A new clause is inserted stating that one year after entry into force of the legislation, the Commission shall, as an element in the development of a long-term supply strategy, present a report on instruments and measures to increase the diversification of gas supply sources for the Union and the routes of supply into the Union. The report shall include proposals to the different Member States concerning activities and measures in order to enhance security of gas supply, including an assessment of the role of LNG installations and an overview of storage capacities for gas in different Member States. In addition, the report shall make an assessment of existing regional cooperation and include recommendations for improvement in the joint preventive and emergency action plans. Any regional cooperation for the purpose of the implementation of the Regulation shall be conducted by the Competent Authorities of the Member States, involving the natural gas undertakings, the regulatory authorities and the industrial consumers and in close cooperation with the Commission. Such regional cooperation shall promote, and must not conflict with, general principles of European solidarity.

Lastly the Union shall work together with supply and transit third countries to share best practices in energy efficiency, for example in the framework of existing energy cooperation agreements such as the Energy Charter Treaty.

Establishment of Preventive Action Plan and Emergency Plan: a new clause states that where the regulatory authority is not the Competent Authority, it shall be formally involved in the processes of establishing the Preventive Action Plan and the Emergency Plan. The Competent Authority shall take utmost account of the assessments made by the regulatory authority insofar as they refer to network-related regulatory issues in particular concerning the development of the impact assessment regarding the fulfilment of infrastructure standards with regard to future approval of tariffs and consistency with network development plans.

Where Member States have existing public service obligations that relate to security of supply, the Competent Authorities shall publish them not later than 2 months after the entry into force of the Regulation and update as necessary, following adoption of their Preventative and Emergency Plans.

Furthermore, Members add that the Competent Authority shall review the Preventive Action Plan and the Emergency Plan every two years on the basis of altered assessments of the risks affecting the security of gas supply.

Content of the Preventive Action Plan: where the Member State so decides on the basis of the risk assessment, the Plan must contain a description of obligations to supply relevant customers, that are connected to the gas distribution network and that deliver important public services such as schools and hospitals. Those obligations must not affect their ability to supply the protected customers in the event of a crisis. These additional obligations must not conflict with the principles of European or regional solidarity towards countries with supply problems. The Plan must also contain the mechanisms used for cooperation with other Member States for preparing regional preventive action plans.

The committee specifies that, in addition, the Preventive Action Plan shall be based on, and consistent with, the ten-year network development plan to be drawn up by the ENTSO-G, and the actions to meet the infrastructure standard shall be binding on system operators.

The Plan must be based primarily on market measures, and take into account the economic impact and effectiveness and efficiency of the measures adopted, their effects on the functioning of the internal energy market, the impact on consumers, the environmental impact and relevant international situations and developments, particularly in major supply and transit countries.

Lastly, Members state that the Commission shall develop an **EU preventive action plan** building on all national and regional plans, identifying possible crisis scenarios and the most efficient measures to mitigate such crisis in order to guarantee efficient coordination of actions during a Union emergency.

Infrastructure standard: in the event of a disruption of the largest gas supply infrastructure, the remaining infrastructure (N-1) should have the technical capacity to satisfy total daily gas demand of the calculated area during a day of exceptionally high gas demand statistically occurring once every twenty years. The Commission proposal had specified a period of sixty days of exceptionally high gas demand during the coldest period statistically occurring every twenty years. The report adds the following:

- the lack of access to the integrated EU gas network and the dependence on one single third country gas supplier shall be considered as non-compliance with the N-1 standard;
- within two years from the entry into force of the Regulation, the transmission system operators and owners shall enable permanent physical capacity to transport gas in both directions on all interconnections, other than for those connecting EU production facilities, to LNG facilities or interconnection points with distribution networks. The level of the bi-directional flow capacity shall

be reached in a cost efficient way, with aspects that are not strictly economic, such as security of supply and contribution to the internal market, being taken into account as part of the assessment and at least take into account the capacity required to meet the supply standard set in the text;

- Competent Authorities may request the Commission to issue a decision to exempt a specific interconnection from the obligation of bi-directional flow. The Commission may grant the exemption, if enabling bi-directional flow capacity would not significantly enhance the security of supply of any of the Member States concerned, or if the investment costs significantly outweigh the prospective benefits to security of supply in any of those Member States. The Commission shall take utmost account of the results of the risk assessment carried out by the Competent Authority. Such decisions may be reviewed if circumstances change;
- National Regulatory Authorities shall introduce **appropriate incentives** and take into account the efficiently incurred costs of fulfilling the N-1 standard and the costs of enabling the permanent physical capacity to transport gas in both directions in their approval of tariffs or their methodologies in a transparent and detailed manner;
- with regard to costs incurred in more than one Member State or in one Member State for the benefit of other Member States, the Commission may propose **appropriate EU instruments for the financing of interconnections**. Such decisions shall be taken on a case-by-case basis, taking into account notably the lack of financial viability of the interconnection and the clear added value in terms of the security of gas supply for one or more of the Member States concerned.

Supply standard: there must be measures to ensure the gas supply to the protected customers in the case of a) extreme temperatures during a seven days peak period statistically occurring once every twenty years; and b) any period of forty five days (rather than sixty days) of exceptionally high gas demand during the coldest weather periods statistically occurring every twenty years. Members note that the longest crisis experienced lasted approximately two weeks.

Members add that the production facilities required to maintain supplies (such as power stations, refineries, gas storage facilities) shall be enabled to operate with as little hindrance as possible in order to guarantee supplies of natural gas, electricity and heat. The prescribed limit values may be exceeded to an extent to be determined. Modification of the conditions imposed by water legislation shall be permitted to an extent to be determined. In this context, dangers to the environment shall be avoided.

Risk assessment: a new clause states that the Commission shall fully assess the risks to the security of gas supply at Union level and adopt and publish a report to be presented to the Competent Authorities, the Gas Coordination Group, ACER, ENTSO-G and to the European Parliament.

Members add that in the risk assessment, the Member States may lay down, on the basis of a technical and economic analysis, obligations to supply customers, other than protected customers, that are already connected to the gas distribution network and that deliver important public services such as schools and hospitals. Those obligations must not affect their ability to supply the protected customers in the event of a crisis and must not conflict with the principles of European or regional solidarity towards countries with supply problems.

Following the recommendation of the Commission, the risk assessment shall also be carried out at regional level.

Emergency plans: the national and regional Emergency Plans must define the role and responsibilities of all relevant market participants, taking account of the different extents to which they are affected in the event of gas supply disruptions and not solely the natural gas undertakings and of the industrial customers.

The report adds that the **Commission shall develop a Union Emergency Plan** identifying possible inconsistencies between national and regional plans as well as possible coordination measures to be taken

by the Commission during a Union emergency. It shall also describe the mechanisms used to activate mediation with third countries.

At the Early Warning Level and the Alert Level, the committee specifies that the market is expected to solve the problem without the intervention of the Competent Authority. The report defines the Emergency level as a supply disruption or an exceptionally high demand where market-based mechanisms alone can no longer ensure supplies to protected customers. The Competent Authority is required to intervene within the framework of the Emergency Plan. Market-based mechanisms and non-market-based mechanisms may operate alongside each other in this phase. The Emergency Plan shall also identify the necessary measures and actions to be taken to mitigate the impact of a gas supply disruption on the **supply of electricity** generated from gas and district heating to protected customers.

Where the Commission is notified by the Competent Authority that an early warning level has been declared in a Member State or where a threat of disruption of gas supplies might have a clear geopolitical dimension, the Union, represented at the highest level, shall take appropriate diplomatic actions having regard to the special role given by the Lisbon Treaty to the Vice-President/ High Representative.

The Commission shall verify within three days (rather than one week as apecified by the Commission) whether the declaration of an Emergency fulfils the criteria indicated.

The report adds the following:

- if the Competent Authority of the Member State in Emergency decides exceptionally to take measures not provided for in the Plans, the Commission shall verify whether itis justified, and may seek the advice of the Gas Coordination Group on this matter;
- the Commission may, in particular, ask the Competent Authority to modify measures imposing an undue burden on natural gas undertakings and to lift its declaration of Emergency if the Commission considers it not or no longer justified;
- non-market based measures imposed on natural gas undertakings in the event of an emergency, including at regional or Union levels, shall ensure fair and equitable compensation in favour of the natural gas undertakings affected by such measures'
- the Emergency Plan shall be updated every two years on the basis of the results of the risk assessment.

Community emergency responses: the report states that the Commission may declare a **Union Emergency** at the request of one Competent Authority. It shall declare a Union Emergency where more than one Competent Authority has declared Emergency following verification in accordance with the text or where the Union loses more than **20% of its daily gas import from third countries** as calculated by ENTSO-G(rather than 10% as proposed by the Commission.) It shall declare a Union Emergency for specifically affected geographical regions, defined in accordance with the provisions in the text comprising more than one Member State where one Competent Authority from the concerned region has declared an emergency or where the affected geographical region loses more than 10% of its daily gas import from third countries as calculated by ENTSO-G.

Gas Coordination Group: Members stress the need to involve the Gas Coordination Group throughout the text. In order to achieve solidarity at regional level, the Gas Coordination Group shall create specific sub-groups addressing security of supply issues at regional level.

Information exchange: the Commission shall analyse the assessments of the Competent Authorities on Emergency and inform the Member States, the European Parliament and the Gas Coordination Group of its results in aggregated form.

Monitoring and reporting of security of gas supply: the committee deleted from the obligation to report data on progress made in investments needed to cope with N-1, country specific difficulties encountered in the implementation new alternative solutions. It stated that the communication of confidential information may seriously harm the commercial interests of undertakings, undermine the implementation of contracts, lead to market distortions and even be prejudicial to security of supply (notably as regards the necessity to preserve the bargaining power of EU gas suppliers in their negotiations with external producers).

A new clause is inserted specifying that the Commission shall establish a system of continuous monitoring of and reporting on security of gas supply, which shall include the following measures: (a) preparation of annual reports concerning observance of the rules governing the internal market in the energy sector, notably as regards transparency and compliance with EU competition law by third-country companies, especially main suppliers, together with all of their subsidiaries; (b) assessment of the impact of vertically integrated energy companies from third countries on the internal market and implementation of the principle of reciprocity; c) application of appropriate measures designed to prevent uncontrolled investment by state-owned foreign companies in the Union's energy sector, in particular the gas and electricity transmission networks; (d) monitoring of contracts for natural gas concluded between Member States and third countries as regards their conformity with EU internal market rules. The Commission shall enforce the abolition of any clauses having the effect of a destination clause in so far as they are prohibited by EU law.

Monitoring by the European Commission: the Commission shall carry out continuous monitoring and reporting of security of gas supply measures, including monitoring of contracts for gas supply concluded between Member States and third countries, in order to ensure that comply with the rules of the EU internal market, security of supply and competition law.

The committee adds that in order to enable Member States lacking infrastructure to reach N-1 standard, the Commission shall monitor the achievements on market interconnectivity and, after consulting the Gas Coordination Group, propose **possible instruments to improve the market**.

Lastly, a new clause states that the EU institutions shall give particular **priority to the Nabucco gas pipeline project** as regards its political profile and financing.

Amendments to Annex: the report makes amendments to Annex I with regard to calculation of the N-1 indicator and of the N1 formula, giving supply side and demand side definitions for each. It also makes some amendments to Annex II and inserts a **new Annex IIIa on regional cooperation**.