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THE EUROPEAN UNION**

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NOTE

from : General Secretariat of the Council
to : Delegations
Subject : 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

Delegations will find attached a revised version of the abovementioned proposal, taking Member States' oral and written comments into account. Changes compared to the previous version as in 5338/3/10 REV 3 have been underlined, deletions are marked as [.]; legal-linguistic changes are highlighted in *italics*.

Moreover, a number of text changes stemming from the ITRE compromise amendments have been introduced, they are shown in ***bold italics***.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

[Recitals to be examined at a later stage]

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation establishes measures aimed at safeguarding the security of gas¹ supply² by ensuring the proper and continuous functioning of the internal market in natural gas, **by establishing exceptional measures to be implemented when the market can no longer deliver the required gas supplies** and by providing for a clear definition and attribution of responsibilities among the natural gas undertakings, the Member States and the Union regarding both preventive action and the reaction to concrete disruptions of supply. This Regulation also provides **transparent** mechanisms for the coordination of planning for, and response to, an emergency at Member States, regional and Union level.

¹ *The following recital is proposed:*

"Low calorific gas is supplied in certain regions in the Union. Because of its characteristic low calorific gas cannot be used in appliances designed for high calorific gas. It is however possible to use high calorific gas in appliances designed for low calorific gas, provided that it has been converted into low calorific gas, for instance by adding nitrogen. The specificities of low calorific gas should be considered at the national and regional level and be taken into account in the risk assessment and the Preventive Action and Emergency plans on a national and regional level."

² *A reference to gas islands could be inserted in recital 9 as follows:*

"Sufficient gas infrastructure within a Member State and across the Union including new infrastructure connecting current isolated systems forming gas islands to their neighbouring Member States is essential for tackling supply interruptions. ..."

Article 2

Definitions

For the purpose of this Regulation the definitions of Directive 2009/73/EC¹ (the "Gas Directive"), Regulation 2009/715/EC and the Regulation 2009/713/EC² (the "Agency Regulation") shall apply.

In addition the following definitions shall apply:

1. "protected customers" means all household customers connected to a gas distribution network and in addition, if the Member State concerned so decides, may also include
 - i) small and medium-sized enterprises and essential social services³ provided that these additional customers are connected to a gas distribution network and do not represent more than [10] % in the final use of gas, and/or
 - ii) district heating installations exclusively for the delivery of heating to household customers and the customers referred to in point i) provided that these installations are not able to switch to other fuels and are connected to a gas distribution or transmission network.
2. "Competent Authority" means the national governmental authority or the national regulatory authority designated by each Member State to be responsible for ensuring the implementation of the measures set out in this Regulation. This is without prejudice to the ability of Member States to allow the Competent Authority to delegate specific tasks set out in this Regulation to other bodies than the Competent Authority. These tasks shall be performed under the supervision of the Competent Authority and shall be specified in the plans referred to in Article 4.

¹ Directive 2009/xxx/EC of the European Parliament and of the Council amending the Directive 2003/55/EC concerning the common rules for the internal market in natural gas (OJ L []).

² Regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators (OJ L []).

³ *The following recital (to be added after recital 6) is proposed with a view to clarifying the term "essential social services": "Certain customers including *inter alia* households and customers providing essential social services, such as health care and child care activities, educational activities and other social and welfare services, are particularly vulnerable and might need protection."*

Article 3

Responsibility for security of gas supply

[.]¹

1. Each Member State shall designate **on transparent terms** a Competent Authority that ensures the implementation of the measures provided for in this Regulation. The measures shall include the carrying out of the risk assessment as defined in Article 8, and, on the basis of the risk assessment, the establishment of a Preventive Action Plan, the establishment of an Emergency Plan, and the regular monitoring of security of gas supply at national level. Competent Authorities shall cooperate with each other to seek to prevent a supply disruption and to limit damages in that event. Nothing shall prevent Member States from adopting implementing legislation imposing obligations on natural gas undertakings and industrial customers.
2. Each Member State shall notify to the Commission the designated Competent Authority by [12 months from entry into force] at the latest.

¹ *The former paragraph 1 is proposed as a recital which could also explain the role of the NRA and of industrial customers in security of supply:*

"Security of gas supply is a shared responsibility of the natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission within their respective areas of activities and competence. Where appropriate, the national regulatory authorities where they are not the Competent Authorities should also contribute to security of gas supply within their areas of activities and competence since they are in charge of creating the framework for the development of efficient and competitive energy markets. In this respect, they have a specific role to play as regards notably cross border cost allocation and the fixing or approval of tariffs, in line with Directive 2009/73/EC. Moreover, the customers using natural gas for power generation or industrial purposes have a certain role to play in security of gas supply. Their ability to respond to a crisis through measures, such as interruptible contracts and fuel switching, directly impacts on the supply/demand balance and the ability to supply protected customers and to mitigate damage to the economy in case of a disruption. For these reasons, a high degree of cooperation between all those actors at national, regional and Union level is required".

3. When implementing the measures of this Regulation, the Competent Authority shall establish the roles and responsibilities of the different actors involved in a way so as to ensure that a three level approach is respected which first involves the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union. A high degree of cooperation between all the actors at national, regional and Union level is required.¹
4. The Commission shall, where appropriate, coordinate the actions of the Competent Authorities at the regional and Union level, as set out in this Regulation, *inter alia* through the Gas Coordination Group referred to in Article 11 or the crisis management group referred to in Article 10(3a), in particular in the case of a regional or Union Emergency as defined in Article 10(1).
5. The measures to ensure the security of supply contained in the Preventive Action Plans and in the Emergency Plans shall be clearly defined, transparent, proportionate, non-discriminatory, verifiable, and shall not unduly distort competition and the effective functioning of the internal market in natural gas.

Article 4

Establishment of Preventive Action Plan and Emergency Plan

1. The Competent Authority of each Member State, after consultation of the natural gas undertakings, of the relevant organisations representing the interests of household and industrial customers and of the national regulatory authority, where it is not the Competent Authority, shall, without prejudice to paragraph 3, establish at national level:

¹ *The following addition is suggested to recital 15:*

"The roles and responsibilities should be established in a way so as to ensure that a three level approach is respected which would first involve the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union. In the event of a supply crisis, market players should be given sufficient opportunity to respond to the situation by market-based measures. If the reactions of market players are not sufficient, Member States and their Competent Authorities should take measures to remove or mitigate the effects of the supply crisis. Only if these measures are insufficient should measures be taken at regional or Union level to remove or mitigate the effects of the supply crisis. Regional solutions should be sought as far as possible."

- (a) A Preventive Action Plan containing the measures needed to remove or mitigate the risks identified, in accordance with the risk assessment undertaken pursuant to Article 8; and
 - (b) An Emergency Plan containing the measures to be taken to remove or mitigate the impact of a gas supply disruption in accordance with Article 9.
- 1a. When establishing and implementing the Preventive Action Plan and Emergency Plan at national and/or regional level, the Competent Authority shall take due account of the safe operation of the gas system at all times and address and set out in those Plans the technical constraints affecting the operation of the network.¹
 2. Before adopting those Preventive Action and Emergency Plans at national level, the Competent Authorities shall, at the latest [24 months after entry into force], exchange their draft Plans and consult each other at the appropriate regional level and with the Commission with a view to ensuring that their draft Plans and measures are not inconsistent with the Preventive Action and Emergency Plans of other Member States and comply with the provisions of this Regulation and other provisions of Union law. Such consultation shall be carried out in particular between neighbouring Member States, [...] notably between isolated systems forming gas islands and their neighbouring Member States, and may cover for instance those identified in the indicative list of Annex IV [...]. [...] *transferred to Article 5(1)*
 3. Based on these consultations and possible recommendations of the Commission, the Competent Authorities concerned may decide to establish joint Preventive Action Plans and Emergency Plans at regional level, in addition to the Plans established at national level.

¹ See in this context the additions to recitals 16 and 18 suggested on p. 12

4. Within [30 months after entry into force], the Preventive Action and Emergency Plans, including, where applicable, joint Preventive Action and Emergency Plans and amended versions of the Plans according to paragraph 6, shall be adopted, made public and notified to the Commission without delay. [...] The Competent Authority shall ensure the regular monitoring of the implementation of the Plans.
5. Within six months after the notification of the Preventive Action and Emergency Plans by the Competent Authorities, the Commission shall assess those Plans. The Commission shall consult the Gas Coordination Group¹ on those Plans.

Where the Commission, based on these consultations, assesses that a Preventive Action or Emergency Plan is not effective to mitigate the risks as identified in the risk assessment, it may recommend to the Competent Authority or Competent Authorities concerned to amend the Plan.

Where the Commission, based on these consultations, considers that a Plan is inconsistent with the risk scenarios or the Plans of other Competent Authorities, or that it does not comply with the provisions of this Regulation or other provisions of Union law, it shall request the amendment of the Plan.

¹ *The following recital is suggested:*

"The Gas Coordination Group is the main body to be consulted by the Commission in the context of the establishment of the Preventive Action Plans and the Emergency Plans. It is recalled that the European Network of Transmission System Operators for Gas ("ENTSO-G") and the Agency for the Cooperation of Energy Regulators ("ACER") are members of the Gas Coordination Group and will be consulted in that context."

6. Within [4] months from notification of the Commission's request referred to in the third subparagraph of paragraph 5, the Competent Authority concerned shall amend its Plan and notify the amended Plan to the Commission or shall set out to the Commission why it does not agree with the request. In that case, the Commission may amend or withdraw its request or convene the Competent Authorities concerned and, if the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any amendments to the Plans. The Competent Authority shall fully take account of the position of the Commission. Where the final decision of the Competent Authority differs from the Commission's position, the Competent Authority shall provide and make public, together with that decision and the Commission position, the reasoning underlying such decision.
7. The confidentiality of commercially sensitive information shall be respected.

Article 5

Content of the Preventive Action Plan

1. The national and joint Preventive Action Plans shall contain:
- (a) the ***results of the*** risk assessment as laid down in Article 8;
 - (b) the measures, volumes, capacities and the timing needed to fulfil the infrastructure and supply standards, as laid down in Articles 6 and 7, including ***diversification of sources of supply***, and, where applicable, the extent to which demand side measures can sufficiently and timely compensate a supply disruption as referred to in Article 6(2),;
 - (c) obligations imposed on natural gas undertakings and other relevant bodies, including the safe operation of the gas system;
 - (d) the other preventive measures, including the need to enhance interconnections between neighbouring Member States ***and those interconnections providing access to the EU gas network***, to address the risks identified in order to maintain gas supply to all customers as far as possible;

(da) the mechanisms used for cooperation with other Member States for preparing regional Preventive Action Plans;

(e) information on interconnections, cross-border supplies, cross-border access to storage facilities and the physical capacity to transport gas in both directions, in particular with respect to the event of an Emergency;

(f) information on all public service obligations that relate to security of gas supply.

2. The Preventive Action Plan, in particular the actions to meet the infrastructure standard as laid down in Article 6, shall take into account the ten year network development plan to be elaborated by the ENTSO-G pursuant to Article 8(10) of Directive 2009/73/EC.
3. The Preventive Action Plan shall take into account the economic impact,[.] effectiveness **and efficiency of the measures**, the effects on the functioning of the internal energy market and [.] the impact on the environment and on consumers, and shall not put an undue burden on natural gas undertakings, nor negatively impact on the functioning of the internal market in natural gas.
4. The Preventive Action Plan shall be updated every two years, unless required more often by circumstances, and reflect the updated risk assessment.

Article 6

Infrastructure standard¹

1. Member States shall ensure that the necessary measures are taken so that by [[4] years after entry into force] at the latest, in the event of a disruption of the single largest gas supply infrastructure, the capacity of the remaining infrastructure, determined according to the N-1 formula as provided in point 2 of Annex I, is able, without prejudice to paragraph 2, to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand statistically occurring once every twenty years. This is without prejudice to the primary responsibility of system operators to make the corresponding necessary investments.

¹ *The following recital is proposed:*

"Gas is an important fuel in the EU energy mix. The present regulation aims at demonstrating to the gas customers that all the necessary measures are taken to ensure their continuous supply, particularly in case of difficult climatic conditions and in case of disruption. It is recognised that these objectives should be achieved through the most cost efficient measures in order not to affect the relative competitiveness of this fuel compared to other fuels."

2. The obligation to ensure that the remaining infrastructure has the capacity to satisfy total gas demand shall also be considered to be fulfilled where the Competent Authority demonstrates in the Preventive Action Plan that a supply disruption may be sufficiently and timely compensated for by demand side measures. For that purpose, the formula as provided in point 4 of Annex I shall be used.
3. Where appropriate according to the risk assessment referred to in Article 8, the Competent Authorities concerned may decide that the obligation set out in paragraph 1 shall be fulfilled at a regional level instead of a national level. In that case, joint Preventive Action Plans pursuant to Article 4(3) shall be established. Point 5 of Annex I shall apply.
4. Each Competent Authority shall, ***after consultation of the relevant natural gas undertakings***, report to the Commission without delay any non-compliance with the obligation set out in paragraph 1 and inform on the reasons for that non-compliance.
5. The transmission system operators shall enable permanent physical capacity to transport gas in both directions on all cross-border interconnections as early as possible and at the latest within [three] years from the entry into force of this Regulation, except
 - (i) in cases such as connections to production facilities, to LNG facilities, to distribution networks and to third countries, or
 - (ii) where an exemption has been granted according to paragraphs 9, 10 and 11.

Within that [three] year period, the gas transmission system operators shall adapt the functioning of the transmission systems in part or as a whole so as to enable bi-directional gas flows.

6. Within [15 months] of the entry into force of the regulation, transmission system operators shall submit to their Member States, after consulting with other concerned transmission system operators, for each cross-border interconnection except for those exempted in paragraph 5 (i):
 - i) a proposal for installing new reverse flow capacity or enhancing or keeping the existing level of reverse flow capacity at each interconnection, or

ii) a request for an exemption from the obligation to enable reverse flow.

Where reverse flow already exists, this obligation only applies where there is either market demand for enhancing the capacity or where a benefiting Member State indicates that it needs or might need an enhancement for security of supply reasons.

7. The submission referred to in paragraph 6 shall be based on an assessment of market demand, projections for demand and supply, [.] the technical feasibility, the costs of the reverse flow installation and of the adaptations of the transmission system, and the benefits for security of supply, taking also into account the capacity required to meet the supply standard set out in Article 7 of the Member State benefiting from the reverse flow installation.
8. The Member State shall notify the other Member States that could benefit from the reverse flow, of the proposal or the exemption request without delay, and give them the possibility to issue an opinion within a period of [four] months time starting with the receipt of the notification. The Member State shall also notify the Commission of the exemption requests without delay.
9. Within two months after having received the opinions referred to in paragraph 8, the Member State shall, on the basis of the criteria referred to in paragraph 7, the risk assessment carried out in line with Article 8 and the opinions received,
- a) grant an exemption for a defined period of time if it decides that the addition of bidirectional flow capacity would not significantly enhance the security of supply of any Member State or region *or that the investment costs significantly outweigh the prospective benefits for security of supply,* or
- b) accept the proposal for reverse flow capacity of the transmission system operator, or
- c) require the transmission system operator to amend its proposal, in particular where according to the opinions received, additional reverse flow capacity is necessary for security of supply reasons.

[.]

10. Where the Member State grants an exemption or where the Member State considers that the reverse flow capacity does not need to be at the level required by another Member State, the Member State shall notify the decision on the exemption without delay to the Commission, together with all relevant information on which the decision is based.
11. Within two months from the receipt of a notification the Commission may require that the Member State concerned amends its decision. This request shall be made on the basis of the elements and criteria set out in paragraph 9. The two months period may be extended by [one] additional month where additional information is sought by the Commission. The Member State shall comply with the request by adjusting its decision within a period of [four weeks].
12. At the expiry of the exemption period or where additional reverse flow capacity is needed according to the results of the risk assessment carried out in line with Article 8, the procedure set out in [.] paragraphs 6 to 11 shall be repeated upon request from a transmission system operator, a Member State or the Commission.

The Commission and the Member States shall preserve the confidentiality of commercially sensitive information at all times.

13. The Competent Authority shall ensure that any new transmission infrastructure contributes to the security of supply through the development of a well connected network by means of a sufficient number of cross border entry and exit points according to the market demand and the risks identified.

14. National Regulatory Authorities shall take into account the *efficiently incurred* costs of fulfilling the obligation set out in paragraph 1 and the costs of enabling the permanent physical capacity to transport gas in both directions when fixing or approving, *in a transparent manner*, the tariffs or methodologies in line with Article 41(8) of Directive 2009/73/EC and Article 13 of Regulation (EC) 715/2009. Member States shall ensure that it is always tested first whether the investment in infrastructure needed to fulfil the obligation set out in paragraph 5 is required by the market. Where an investment for implementing reverse flows is not required by the market and in the case of costs incurred in more than one Member State or in one Member State for the benefit of one or more other Member States, the national regulatory authorities of all Member States concerned shall jointly decide on cost allocation before any investment decision is taken. The cost allocation shall in particular take into account the proportion of the benefits of the infrastructure investments for the increase of security of supply of the Member States concerned. Article 8(1) of Regulation (EC) No 713/2009 shall apply.

Article 7

Supply standard

1. Competent Authorities shall require natural gas undertakings which play a role in the supply of protected customers to take the measures¹ to ensure the gas supply to the protected customers of the Member State in the case of the following periods statistically occurring once every twenty years:

¹ *The following addition is proposed to recital 16:*
Measures necessary to ensure the fulfilment of the supply standard may include additional storage capacities and volumes, linepack, supply contracts, interruptible contracts or any other measures that have similar effect as well as the necessary technical measures to ensure the safety of gas supply."

The following addition is proposed to recital 18:

"(18) It is important that gas supply is maintained, particularly as regards household customers, as well as other protected customers such as [schools and hospitals], in cases in which the market cannot continue to supply them. It is essential that the measures to be taken during a crisis are defined in advance of any crisis and respect safety requirements, including where protected customers are connected to the same distribution network as other customers."
"

- a) extreme temperatures during a seven days peak period; and
- b) any period between [45 and 60] days of exceptionally high gas demand.

- 1a. In addition to the obligation set out in paragraph 1, Competent Authorities shall require natural gas undertakings which play a role in the supply of protected customers to take the measures to ensure the gas supply to the protected customers for a period between 45 and 60 days also in case of the disruption of the largest infrastructure. *After that period, or under more severe conditions than those defined in paragraph 1, the natural gas undertakings shall endeavour to maintain as far as possible the supply for the protected customers.*
2. The obligations imposed on natural gas undertakings for the fulfilment of the supply standard as laid down in paragraph 1 shall be non-discriminatory and shall not impose an undue burden on these undertakings.
3. The Competent Authorities shall allow the natural gas undertakings to meet these obligations on a regional or Union level where appropriate and shall not require that these standards are met based on infrastructure located only within its territory.
4. The Competent Authority shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the internal market in natural gas and at a price respecting the market value of the supplies.

Article 8

Risk assessment

1. By [[18] months after entry into force] each Competent Authority shall fully assess, on the basis of the following common elements, the risks affecting the security of gas supply in its Member State by:
 - a) using the standards specified in Articles 6 and 7, showing the calculation of the N-1 formula, the assumptions used and the data necessary for such calculation;

- b) taking into account all relevant national and regional circumstances, in particular market size, network configuration, actual flows, including outflows from the Member State concerned, the possibility of reverse flows including potential need for reinforcement of the transmission system, the presence of production and storage and the role of gas in the energy mix, in particular with respect to district heating and power generation ***and for the operation of industries which are particularly sensitive to fluctuations in supply***,, and safety and gas quality considerations;
 - c) running various scenarios of exceptionally high gas demand and supply disruption, such as failure of main transmission infrastructures, storages or LNG terminals, and disruption of supplies from third country suppliers, taking into account the history, probability, season, frequency and duration of their occurrence ***as well as geopolitical risks***, and assessing the likely consequences of these scenarios;
 - d) identifying the interaction and correlation of risks with other Member States, including *inter alia* as regards interconnections, cross-border supplies, cross-border access to storage facilities and the physical capacity to transport gas in both directions;
 - e) taking into account the maximal interconnection capacity of each border entry and exit points
- 1a. Where Article 4(3) is applied, the Competent Authorities concerned shall also perform a joint risk assessment at regional level.
2. The natural gas undertakings, the relevant organisations representing the interests of household and industrial customers including relevant electricity producers as well as industrial customers including operators of district heating and electricity producers, Member States and the national regulatory authority, where it is not the Competent Authority, shall cooperate with the Competent Authority and provide it upon request with all necessary information for the risk assessment.

3. The risk assessment shall be updated for the first time at the latest [18 months] after the adoption of the Plans referred to in Article 4, and thereafter every two years before 30 September of that year unless required more often by circumstances, and take account of progress made in investments needed to cope with the infrastructure standard defined in Article 6 and of country specific difficulties encountered in the implementation of new alternative solutions.

Article 9

Emergency Plan and Crisis Levels

1. The national or *joint* Emergency Plans shall:
 - (1) Build upon the crisis levels according to paragraph 2;
 - (2) Define the role and responsibilities of the natural gas undertakings and of the industrial customers including relevant electricity producers, ***taking account of the different extents to which they are affected in the event of gas supply disruptions***, and their interaction with the Competent Authorities and where appropriate with the national regulatory authorities at each of the crisis levels defined in paragraph 2;¹
 - (3) Define the role and responsibilities of the Competent Authorities at each of the crisis levels defined in paragraph 2;
 - (3a) Ensure that market players are given sufficient opportunity to respond at each crisis level.
 - (4) Establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows;
 - (5) Designate a crisis manager or team and define its role;
 - (6) Identify the contribution of the market based measures, notably those listed in Annex II, for coping with the situation in the Alert level and mitigating the situation in the Emergency level;

¹ See addition to recital 15 (linked to Article 3, p. 3)

- (7) Identify the contribution of the non-market based measures planned or to be implemented for the Emergency level, notably those listed in Annex III and assess the degree to which the use of non-market based measures is necessary to cope with the crisis, assess their effects and define the procedures to implement them, ***non-market based measures only being used when market-based mechanisms alone can no longer ensure supplies in particular to protected customers***;
- (8) Describe the mechanisms used ***and the roles of market participants in relation to cooperation*** with other Member States for each crisis level;
- (9) Detail the reporting obligations imposed on the natural gas undertakings in the Alert and Emergency level;
- (10) Establish a list of predefined actions to make gas available in the case of an Emergency, including the compensation mechanisms where appropriate and commercial agreements between the parties involved in such actions, taking due account of the confidentiality of sensitive data. Such actions may involve cross-border agreements between Member States and/or natural gas undertakings.

1a. The Emergency Plan shall be updated every two years, unless required more often by circumstances, and reflect the updated risk assessment.¹

2. The three main crisis levels shall be as follows:

- (1) Early warning level (Early Warning): when there is concrete, serious and reliable information, which may be triggered by an Early Warning Mechanism, that an event may occur which is likely to deteriorate significantly the supply situation and is likely to lead to the Alert or the Emergency level being triggered;
- (2) Alert level (Alert): when a supply disruption or exceptionally high gas demand occurs which significantly deteriorates the supply situation, but the market is still able to manage that disruption or demand without the need to resort to non-market measures;

¹ Paragraph 1a has been added in order to make Article 9 consistent with Article 12(5).

- (3) Emergency level (Emergency): in the event of exceptionally high gas demand or the disruption of the single largest gas infrastructure with the highest capacity or when an event occurs that significantly deteriorates the supply situation and when all market measures used by natural gas undertakings are not sufficient so that non-market measures have to be introduced as a complement in order to meet gas demand in particular of protected customers [.]
3. The Emergency Plan shall ensure that cross-border access to infrastructure in line with Regulation (EC) No 715/2009 is maintained as far as possible also in the event of an Emergency. The Emergency Plan shall not introduce any measure unduly restricting the flow of gas across the borders.
4. 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 the event of an emergency which may result in a call for assistance from the Union and its Member States the Competent Authority of the Member State concerned shall without delay notify the Commission's Civil Protection Monitoring and Information Centre.
5. When the Competent Authority declares an Emergency it shall follow as closely as possible the pre-defined actions as defined in its Emergency Plan and shall immediately inform the Commission in particular of the actions it intends to take according to Article 9(1). The Commission may convene the Gas Coordination Group; where the Emergency has or may have effects on at least one other Member State, it shall convene the Gas Coordination Group.
6. The Commission shall verify within [five] days whether the declaration of an Emergency is justified according to paragraph 2(3) and whether the measures taken follow as closely as possible the actions as listed in the Emergency Plan and are not imposing an undue burden on the natural gas undertakings or hampering the functioning of the internal market in natural gas or putting at risk the security of supply of another Member State. The Commission may, at the request of a Competent Authority, natural gas undertakings or on its own initiative, request the Competent Authority to modify the measures where these measures impose an undue burden on natural gas undertakings or do not follow as closely as possible the predefined actions of the Emergency Plan and to lift its declaration of Emergency if the Commission considers that it is not or no longer justified.

7. Any measures deviating from the pre-defined actions of the Emergency Plan shall, as appropriate, be supplemented by provisions aimed at ensuring fair and equitable compensation of the market players affected by the measures taken.

Article 10

Union and regional emergency responses

1. The Commission may declare a Union Emergency at the request of one Competent Authority where that Competent Authority has declared an Emergency, and give its reasons for so doing. [...] It shall declare a Union Emergency where at least two Competent Authorities have declared an Emergency following the verification in accordance with Article 9(6). At the request of at least one Competent Authority and where that Competent Authority has declared an Emergency, the Commission may declare a regional Emergency for specifically affected geographical regions comprising more than one Member State and give its reasons for so doing.
2. The Commission shall convene the Gas Coordination Group as soon as it declares Union Emergency or a regional Emergency. During the Union Emergency, at the request of at least three Member States, the Commission may restrict the participation in the Gas Coordination Group, for an entire meeting or part thereof, to the representatives of the Member States and the Competent Authorities.
3. In a Union or a regional Emergency as referred to in paragraph 1, the Commission shall coordinate the actions of the Competent Authorities, taking full account of relevant information from and the results of the consultation of the Gas Coordination Group. In particular the Commission shall:
 - a) ensure the exchange of information,
 - b) ensure the consistency and effectiveness of the actions at Member State and regional level in relation to the Union level,
 - c) coordinate the actions with regard to third countries.

- 3a. The Commission may convene a crisis management group composed of the crisis managers, as referred to in point 5 of Article 9(1), of the Member States concerned by the Emergency. The Commission, in agreement with the crisis managers, may invite other relevant stakeholders to participate.
- 3b. The Member States and in particular the Competent Authorities shall ensure:
- (i) that no measures are introduced which unduly restrict the flow of gas within the internal market at any time, notably the flow of gas to the affected markets; [.]
 - (ii) that no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State and
 - (iii) that cross-border access to infrastructure in line with Regulation (EC) No 715/2009 is maintained as far as possible.
4. If, at the request of a Competent Authority or a natural gas undertaking or on its own initiative, the Commission considers that in a Union or regional Emergency, an action taken by a Member State or a Competent Authority or a lack of action is contrary to paragraph 3b, the Commission shall require the Member State or the Competent Authority to change its action or to take action. Due account shall be taken of the need to operate the gas system safely at all times.

Within three days from notification of the Commission's request, the Member State or the Competent Authority shall change its action and notify the Commission or shall set out to the Commission why it does not agree with the request. In that case, the Commission may amend or withdraw its request or convene the Member State or the Competent Authority and, if the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Member State or the Competent Authority shall fully take account of the position of the Commission. Where the final decision of the Competent Authority or the Member State differs from the Commission's position, the Competent Authority or the Member State shall provide the reasoning underlying such decision.

5. The Commission, ***after consultation of the Gas Coordination Group***, shall establish a permanent reserve list for a monitoring task force consisting of industry experts and representatives of the Commission. This monitoring task force may be deployed outside the Union when necessary and shall monitor and report on the gas flows into the Union, in cooperation with the supplying and transiting countries.
6. The Competent Authority shall provide to the Commission's Civil Protection Monitoring and Information Centre the information on any need for assistance. The Civil Protection Monitoring and Information Centre shall assess the overall situation and provide advice on the assistance that should be provided to the most affected Member States, and where appropriate to third countries.

Article 11

Gas Coordination Group

1. A Gas Coordination Group is established to facilitate the coordination of measures concerning the security of supply. The Group shall be composed of representatives of the Member States, the Competent Authorities, ACER, ENTSO-G and representative bodies of the industry concerned and relevant customers. The Commission shall, in consultation with the Member States, decide on the composition of the Group, ensuring it is fully representative. The Commission shall chair the Group. The Group shall establish its rules of procedure.
2. ***In accordance with the provisions of this Regulation***, the Gas Coordination Group shall be consulted and shall assist the Commission in particular on the following issues
 - (a) security of gas supply, at any time and more especially in times of Emergency;
 - (b) all information relevant for security of gas supply at national, regional and Union levels;
 - (c) best practices and possible guidelines to all the parties concerned;
 - (d) the level of security of supply, benchmarks and assessment methodologies;
 - (e) national, regional and Union scenarios and testing the levels of preparedness;

- (ea) the assessment of the Preventive Action Plans and the Emergency Plans and the implementation of the measures foreseen in those plans;
 - (f) coordination of measures to deal with Emergency within the Union, Energy Community Treaty Countries and with third Countries;
 - (h) assistance needed by the most affected Member States.
3. The Commission shall convene the Gas Coordination Group on a regular basis and share the information received from the Competent Authorities whilst ensuring the confidentiality of commercially sensitive information.

Article 12

Information exchange

1. Where Member States have existing public service obligations that relate to security of gas supply, Member States shall publish these within [1] month of the Regulation being in force and update as necessary following adoption of their Preventative and Emergency Plans.
2. The natural gas undertakings concerned shall make available to the Competent Authority₂ during the Emergency₂ in particular the following information on a daily basis:
 - (a) daily gas demand and supply forecasts for the following three days;
 - (b) daily flow of gas at all cross-border entry and exit points as well as all points connecting a production facility, a storage facility or an LNG terminal to the network, in mcm/d;
 - (c) period, expressed in days, during which it is possible to ensure gas supply to the protected customers.
3. The Commission is entitled, in the case of a Union or regional Emergency, to request the Competent Authority to provide it without delay at least:
 - (a) the information as laid down in paragraph 2
 - (b) information on the measures planned to be undertaken and already implemented by the Competent Authority to mitigate the Emergency, and their effectiveness;

- (c) the requests made for additional measures to be taken by other Competent Authorities;
 - (d) the measures implemented at the request of other Competent Authorities.
4. The Competent Authorities and the Commission shall ensure the confidentiality of commercially sensitive information.
 5. After an Emergency, the Competent Authority shall within a reasonable timeframe provide to the Commission a detailed assessment of the Emergency and the effectiveness of the implemented measures, including the assessment of economic impact of the Emergency, the impact on the electricity sector and the assistance provided to and/or received from the Union and its Member States. Such assessment shall be made available to the Gas Coordination Group and shall be reflected in the revisions of the Preventive Action Plans and the Emergency Plans.
 6. By [[12] months after entry into force] at the latest in order to allow the Commission to assess the situation of the security of supply at Union level:
 - a) Member States shall communicate to the Commission the existing inter-governmental agreements concluded with third countries which have an impact on the development of gas infrastructures and supplies; before concluding new inter-governmental agreements, the Member States shall inform the Commission ;
 - b) Natural gas undertakings shall notify the Competent Authorities concerned of the following details of the [.] contracts with a duration of more than one year concluded with suppliers from third countries:
 - Contract duration
 - Contracted volumes in total, on an annual basis and the average volume per month;
 - in the event of an Alert or Emergency, contracted maximal daily volumes ;
 - Contracted delivery points.

The Competent Authority shall notify these data in aggregate form to the Commission. The Competent Authority and the Commission shall ensure the confidentiality of the information.

Article 14

Monitoring by the Commission

By [...] the Commission, having assessed the notified Plans and after consulting the Gas Coordination Group, shall draw conclusions as to possible means to enhance security of supply at Union level, assess the feasibility of carrying out risk assessments and establishing Preventive Action Plans and Emergency Plans at Union level and shall report to the European Parliament and the Council on the implementation of this Regulation, including inter alia the progress made for market interconnectivity. The report shall include, where appropriate, recommendations for improvement of this Regulation.

Article 15

Repeal

Directive 2004/67/EC is repealed.

Article 15a

Derogation

This Regulation shall not apply to Malta and the Republic of Cyprus for as long as no natural gas is supplied on their territory. The time periods established in Articles 3(2), 4(2), 4(4), 8(1) and 12(6) shall apply to Malta and the Republic of Cyprus from the day of the official notification to the Commission that natural gas is being supplied.

Article 16

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 6(7), 9(3) and 10(3b) shall apply from 3 March 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX I: CALCULATION OF THE N-1 FORMULA

1. Definition of the N-1 formula

The N-1 formula describes the ability of the gas infrastructure's technical capacity to satisfy total gas demand in the calculated area in case of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand statistically occurring once every twenty years.

Gas infrastructure includes the natural gas transmission network including interconnectors as well as production, LNG and storage facilities connected to the calculated area.

The technical capacity¹ of all remaining available gas infrastructure in the event of disruption of the single largest gas infrastructure should be at least equal to the sum of the total daily gas demand of the calculated area during a day of exceptionally high *gas* demand statistically occurring once every twenty years.

The results of the N-1 formula, as calculated below, should at least equal 100%.

2. Calculation method of the N-1 formula

$$N - 1 [\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max}} \times 100, \quad N - 1 \geq 100\%$$

3. Definitions of the parameters of the N-1 formula:

"Calculated area" means a geographical area for which the N-1 formula is calculated.

¹ According to Article 2(18) of Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks "technical capacity" means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network.

Demand-side definition

Dmax – means the total daily gas demand (in mcm/d) of the calculated area during a day of exceptionally high gas demand statistically occurring once every twenty years.

Supply-side definitions

EPm – [.] Technical capacity of entry points (in mcm/d), other than production, LNG and storage facilities covered by Pm, Sm and LNGm, means the sum of the technical capacity of all border entry points capable of supplying gas to the calculated area;

Pm – Maximal technical production capability (in mcm/d) means the sum of the maximal technical daily production capability of all gas production facilities which can be delivered to the entry points in the calculated area;

Sm – Maximal technical storage deliverability (in mcm/d) means the sum of the maximal technical daily withdrawal capacity of all storage facilities which can be delivered to the entry points of the calculated area, taking into account their respective physical characteristics;

LNGm – Maximal technical LNG facility capacity (in mcm/d) means the sum of the maximal technical daily send-out capacities at all LNG facilities in the calculated area, taking into account critical elements like offloading, ancillary services, temporary storage and re-gasification of LNG as well as technical send-out capacity to the system;

Im – means the technical capacity of the single largest gas infrastructure (in mcm/d) with the highest capacity to supply the calculated area. When several gas infrastructures are connected to a common upstream or downstream gas infrastructure and cannot be separately operated, they shall be considered as one single gas infrastructure.

4. Calculation of the N-1 formula using demand-side measures (referred to in Article 6(2))

$$N - 1 [\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max} - D_{eff}} \times 100, \quad N - 1 \geq 100\%$$

Demand-side definition

Deff - means the fraction (in mcm/d) of Dmax that in case of a supply disruption can be sufficiently and timely covered with demand side measures in accordance with point b of Article 5(1) and Article 6 (2).

5. Calculation of the N-1 formula at regional level (referred to in Article 6(3))

The calculated area referred to in point 3 shall be extended to the appropriate regional level where applicable. For the calculation of the N-1 formula at regional level, the single largest infrastructure of common interest shall be used. The single largest infrastructure of common interest to a region is the largest infrastructure in the region that directly or indirectly contributes to the supply of gas to the Member States of that region.

ANNEX II: LIST OF MARKET BASED SECURITY OF GAS SUPPLY MEASURES

In developing the Preventive and Emergency Plans the Competent Authority shall take into account the following indicative and non-exhaustive list of measures:

Supply side

- Increased production flexibility
- Increased import flexibility
- Commercial gas storage – withdrawal capacity and volume of gas in storage
- LNG terminal capacity and maximal send-out capacity
- Diversification of supplies and routes
- Reverse flows
- Coordinated dispatching by transmission system operators
- Long-term and short-term contracts
- Investments in infrastructure
- Contractual arrangements to ensure security of gas supply

Demand side

- Interruptible contracts
- Fuel switch possibility – alternative back-up fuels in industrial and power generation plants
- Increased efficiency
- Increased use of renewable energy sources

ANNEX III: LIST OF NON-MARKET BASED SECURITY OF GAS SUPPLY MEASURES

In developing the Preventive and Emergency Plans the Competent Authority shall consider the contribution of the following indicative and non-exhaustive list of measures only in the case of an Emergency:

Supply side

- Strategic gas storage
- Forced fuel switch
 - Use of stocks of alternative fuels (e.g. in line with 90 days of oil stocks obligation)
 - Use of electricity generated from other sources other than gas
- maximising storage withdrawal and production

Demand side

- Various steps of compulsory demand reduction
- including full utilisation of interruptible contracts and fuel switching possibilities, where not fully utilised as part of market measures, and firm load shedding

ANNEX IV: REGIONAL COOPERATION

In accordance with article 194 TFEU and as underlined in Article 6 of Directive 2009/73/EC and Article 12 of Regulation (EC) No 715/2009, regional cooperation is a major expression of the principle of solidarity and is also an underlying concept of this Regulation. Regional cooperation is required in particular for the establishment of the risk assessment (Article 8); the Preventive and Emergency Action Plans (Articles 4, 5 and 9), the infrastructure and supply standards (Articles 6 and 7) and the provisions for the Union and regional emergency responses (Article 10).

The regional cooperation under this Regulation builds on existing regional cooperation involving natural gas undertakings, Member States and national regulatory authorities to enhance, among other objectives, also the security of supply and the integration of the internal energy market, such as the three Regional gas markets under the Gas Regional Initiative, the Gas Platform, the High Level Group of the Baltic Energy Market and Interconnection Plan, the Security of Supply Coordination Group of the Energy Community. However, the specific security of supply requirements are likely to foster new cooperation frameworks, and existing areas of cooperation will have to be adapted in order to guarantee the best efficiency.

In the light of the increasingly interconnected and interdependent markets and the completion of the internal gas market, cooperation of the following Member States, as an example and among others, including between parts of neighbouring Member States, can enhance their individual and collective security of gas supply:

- Poland and the three Baltic States,
- the Iberian Peninsula (Spain, Portugal) and France
- Ireland and United Kingdom,
- Bulgaria, Greece, Romania,
- Denmark and Sweden,
- Slovenia, Italy, Austria, Hungary, Romania
- Poland and Germany,
- France, Germany, Belgium, Netherlands and Luxembourg [.]
- Germany, Czech Republic, Slovakia,
- others.

Where necessary and appropriate, the regional cooperation among them may be extended to strengthen cooperation with neighbouring Member States, in particular in the case of energy islands, notably with a view to enhancing interconnections. Member States may also be part of different cooperation clusters.

New Recital: "In the spirit of solidarity, regional cooperation, involving public authorities and gas undertakings, will be widely established to implement this Regulation in order to optimise the benefits in terms of coordination of measures to mitigate the risks identified and to implement the most cost effective measures for the parties concerned."
