

New rules on security of gas supply

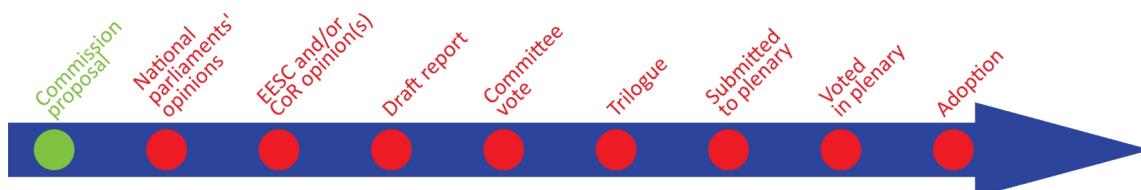
SUMMARY

On 16 February 2016 the European Commission proposed a new regulation on security of gas supply as part of its sustainable energy security package, in order to develop a stronger collective response to future supply risks, particularly concerning Russian gas arriving via the Ukrainian transit route. The Commission proposal would replace the existing regulation (in force since December 2010) and address weaknesses highlighted in an implementation report, EU gas stress tests and a public consultation.

The Commission proposal seeks to improve rather than overhaul the existing regulation, and keeps many of its key features intact. Major innovations include a solidarity principle that prioritises households and essential social services during an emergency situation; mandatory regional preventive action and emergency plans (rather than national plans) based on new templates; fewer exemptions on bidirectional capacity at cross-border interconnectors, in order to facilitate reverse gas flows; increasing the scope of contractual information provided to the Commission; involving the Contracting Parties of the Energy Community in security of gas supply measures; and exploring the options for voluntary joint purchasing of natural gas.

Proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010

<i>Committee responsible:</i>	Industry, Research and Energy (ITRE)	COM(2016) 52 of 16.02.2016
<i>Rapporteur:</i>	Jerzy Buzek (EPP, Poland)	<i>procedure ref.:</i> 2016/0030(COD)
<i>Next steps expected:</i>	Discussions in ITRE	Ordinary legislative procedure



<p>In this briefing:</p> <ul style="list-style-type: none"> • Introduction • Existing situation • The changes the proposal would bring • Preparation of the proposal • Parliament's starting position 	<ul style="list-style-type: none"> • Stakeholders' views • Advisory committees • Council • National parliaments • Legislative process • References
---	--

Introduction

On 25 February 2015 the European Commission adopted an [Energy Union strategy](#), accompanied by a list of legislative and non-legislative actions (see [updated roadmap](#)) to be undertaken during the current terms of the Commission and the European Parliament, including a revision of the 2010 regulation on security of gas supply.

On 16 February 2016 the Commission proposed a new regulation on security of gas supply as part of its [sustainable energy security package](#). This was accompanied by an impact assessment and informed by the findings of an implementation report (2014), EU-wide gas stress tests (2014), and a public consultation (2015). The legal basis for the new regulation is Article 194 of the Treaty on the Functioning of the EU (TFEU) (the same as the existing regulation), which lists security of energy supply as a shared competence of the EU and its Member States. The legislative proposal is currently under consideration by the Parliament and the Council.

Existing situation

The principal legislation concerning security of gas supply at EU level is [Regulation 994/2010](#), which repealed Council Directive 2004/67/EC. In July 2009 the European Commission submitted a legislative proposal, which was approved in Council and Parliament on first reading in October 2010. The regulation has been in force since 2 December 2010. The timing of the Commission's legislative proposal can be largely attributed to the consequences of the 2009 Russia-Ukraine gas dispute, which cut off several EU Member States (MS) from gas supplies in the middle of winter, and brought security of supply issues to the forefront of political debate. Yet the regulation was also a response to concerns about rising consumption and decreasing production of natural gas in Europe, which has increased the level of dependence on gas imports.

The 2010 regulation on security of gas supply establishes a framework for managing security of supply issues between natural gas undertakings (mainly companies), MS and their competent authorities in the gas sector, and the European Commission. The aim is to foster a coordinated response to crisis situations in a spirit of solidarity. The regulation sets out a common concept of **protected customers** whose gas supplies must be guaranteed during an emergency. Protected customers must include all households but MS can additionally include SMEs and essential social services (provided these do not represent more than 20% of final gas consumption), as well as district heating installations where no fuel switching is possible. The 2010 regulation establishes an **infrastructure standard** whereby MS must guarantee they can satisfy total gas demand in the event of a disruption of the single largest infrastructure (known as the N-1 standard). The regulation requires permanent bidirectional capacity to be established in all cross border interconnections between MS, allowing for physical **reverse flows** of gas. Individual exemptions are possible but must be justified by national competent

authorities after a cost-benefit analysis. Proposed exemptions must be communicated to the Commission, which can ask for the competent authority to amend its decision.

The 2010 regulation establishes a **supply standard** which requires national competent authorities and natural gas undertakings to ensure they can deliver supplies to all protected customers under severe conditions, defined as *either* a seven day temperature peak (statistical probability of once in 20 years); *or* at least 30 days of exceptionally high demand (same statistical probability); *or* at least 30 days without the single largest infrastructure working (average winter conditions). Competent authorities had to prepare a **risk assessment** of how they meet the supply and infrastructure standards (taking into account both national and regional circumstances), a **preventive action plan** to mitigate supply risks and an **emergency plan** to mitigate a serious gas supply disruption. Neighbouring MS were asked to consult each other to ensure that national plans do not have a negative impact on other countries connected to the same gas supply routes. MS could choose to develop joint plans at a regional level but were not obliged. National plans are to be updated every two years and submitted to the Commission, which discusses them in the framework of the **Gas Coordination Group**, a body set up by the regulation to coordinate security of gas supply measures. This is chaired by the Commission and composed of representatives from MS (in particular their competent authorities), the Agency for Cooperation of Energy Regulators (ACER), the European Network of Transmission System Operators for Gas (ENTSO-G), and representative associations for the natural gas industry and its consumers.

The 2010 regulation defines three **crisis levels** to be addressed in the emergency plans: early warning, alert and emergency level. It also specifies the role of the Commission and MS in the declaration of an **EU or regional emergency**, which *may* be activated at the request of a competent authority that has declared an emergency, and *must* be activated when at least two competent authorities declare an emergency. The regulation specifies the role of different actors and levels in a severe crisis situation, where the Commission would perform a coordinating role and seek to ensure **transparency and information exchange**, with the potential involvement of the Commission's Emergency Response Coordination Centre.

The changes the proposal would bring

The new [legislative proposal](#) from the Commission is designed to improve the existing regulation rather than completely overhaul it so many core features remain the same. The proposal retains the existing definition of protected customers and supply standard, but introduces a **solidarity principle** whereby MS that declare an emergency level can expect to receive gas from neighbouring MS whose supply standard would be temporarily lowered so as to exclude SMEs. This is to ensure that households and essential social services, wherever they are located in the EU, are given priority in an emergency situation. In all other situations, including early warning and alert levels, MS would retain the option to include SMEs in their supply standard. New non-market based measures to comply with the supply standard would become subject to an **impact assessment** and notified to the Commission, which would reach a decision on the proportionality of these measures, as well as their impact on the internal market and security of supply in other MS. The Commission could request amendments and its decision would be binding, so non-compliant measures would not enter into force.

The legislative proposal would strengthen regional cooperation on security of gas supply by introducing mandatory **regional prevention action and emergency plans**. These

would either replace or subsume the existing national plans, to ensure that the consequences of national choices on security of supply do not have a negative impact on other countries in the region. Regional plans would undergo a process of **peer review** organised by the Commission with significant input from the MS concerned. Regional plans would be reassessed every four years (less frequently than national plans under the existing regulation). EU Member States would be divided into **regions** based on their geographical proximity, common supply lines and the existing interconnection of their energy systems. The Commission has proposed a list of seven regions in the [Annexes](#).¹ Given the patchy and inconsistent information provided by some MS under their existing national plans (at least according to the Commission), the new regional plans would be aligned to **mandatory templates** that are also listed in the Annexes.

The **infrastructure standard** would remain the same but can now be assessed on either a national or a regional basis, and must take into account national hydraulic calculations (gas flows) and EU-wide simulations (e.g. stress tests) organised by ENTSO-G. The proposed legislation would make it more difficult for MS to obtain **exemptions on permanent bidirectional capacity** on cross-border interconnections. MS on both sides of an interconnection would need to make joint decisions on any exemption, which would be submitted to ACER for an opinion and ultimately to the Commission for a final decision. If granted the exemption would be temporary for a maximum of four years. Any further exemption would need to go through this process of approval once again.

The legislative proposal envisages an increase in the **scope of contractual information** that the Commission and competent authorities are automatically informed about. Natural gas undertakings would be obliged to notify the Commission and their competent authority about any **long-term supply contracts** (i.e. over 12 months) which account for more than 40% of natural gas consumption in the MS concerned, whenever such a contract is concluded or amended. Although long-term contracts signed before the new regulation comes into force would not be notified automatically, the Commission and competent authorities could still ask for any long-term contract to be notified, even if it has not been revised and even where it does not meet the 40% threshold, provided the request is duly justified on the grounds of security of supply.

In many areas the legislative proposal would be applied to the Contracting Parties of the **Energy Community**, a group of neighbouring countries which are part of the EU internal market in energy and have transposed considerable EU legislation in this field.² The proposed regulation would impose reciprocal obligations on MS and Contracting Parties concerning the cross-border dimension of their security of gas supply policies, and would thus need to be adopted by a Joint Act of the Energy Community. The explanatory memorandum of the Commission proposal makes it clear that the proposed regulation allows MS and natural gas companies to explore voluntary **joint purchasing mechanisms** as a way to address supply shortage situations. However, the proposed regulation contains no specific provisions on joint purchasing.

Preparation of the proposal

In October 2014, the European Commission summarised the findings of [stress tests](#) it carried out with ENTSO-G on the short-term resilience of the European gas sector. These assessed the consequences arising from different scenarios of disruption to gas supplies from Russia, in particular through the Ukrainian transit route. The stress tests indicated that the regions most affected by supply shortfalls were the Baltic area (Finland, Estonia, Latvia, and Lithuania) and south-eastern Europe. Concerning the

latter, serious risks were identified in some MS (Bulgaria, Romania, Greece) as well as several Contracting States of the Energy Community. Both regions rely heavily on imported Russian gas through a single supply route and in general have limited access to LNG (liquefied natural gas) imports and gas storage facilities. But according to the stress tests, they are not the only vulnerable ones. An extreme cold spell combined with prolonged supply disruption could lead to a serious loss of supply to Italy and central European countries (Austria, Germany, Czech Republic, Slovakia). This prompted the Commission to make several recommendations that were later taken up in the legislative proposal, including the need to further develop regional cooperation on security of gas supply; ensure that countries with an increased supply standard can temporarily reduce this in case of a regional or EU emergency; re-evaluate the current exemptions from physical reverse flow requirements at interconnectors; and cooperate more closely with Energy Community countries on security of gas supply.

The stress tests were accompanied by a [report](#) on implementation of the existing regulation on security of gas supply, which noted a series of weaknesses. MS had fundamentally different concepts of how to define the **supply standard**, with large discrepancies in the groups covered leading to unequal levels of protection across the EU.³ MS cited difficulties in interpreting the supply standard. The Commission was concerned about the **lack of detailed information** on consumption volumes and patterns, as highlighted during the gas stress tests. The report noted that the number of permanent bi-directional **interconnection** points between MS had increased substantially between 2009 and 2014 (from 24% to 40% of the total), largely due to commercial demand but also in response to incentives under the existing regulation. Yet the majority of interconnection points that were unidirectional in 2009 remain so because of exemptions granted under the regulation. Permanent bidirectional capacity therefore applies largely to new interconnections. The limitations on bidirectional flows make it very difficult to transport gas from north-western Europe (where supplies are diversified and MS have under-utilised LNG import capacity) to central-eastern Europe (where gas supplies are dependent on Russia and LNG import capacity is limited), a concern that is further elaborated in the [LNG and gas storage strategy](#), another plank of the Commission's sustainable energy security package.

The report indicated that greater **regional coordination** of preventive action and emergency plans was necessary but difficult to achieve under the existing regulation. Preventive action and emergency plans could be significantly improved by the inclusion of a detailed **template** in the regulation, which would align the consistency of information provided by MS. The report noted that the Commission has few powers in an emergency situation and little experience of how the **crisis response mechanisms** would actually work in practice. Since the regulation has come into force there has been no Union or regional emergency and few national emergencies. Yet in an immediate crisis, the report suggests the monitoring capabilities of the Commission would need to be improved, requiring some **access to commercially sensitive information**.

The Commission held a [public consultation](#) on revising the existing regulation on security of gas supply. The [consultation paper](#) was open for contributions between 15 January and 8 April 2015. The Commission published a [summary](#) of responses received. The consultation received around 100 contributions. Around a third of were businesses (32%) while over a quarter were associations. Transmission system operators (17%) and governments (20%) accounted for most of the remaining respondents.

The findings of the consultation informed the [impact assessment](#) and legislative proposal, which were published together on 16 February 2016. The impact assessment (see [executive summary](#)) presented five different policy options: a baseline scenario of no further action at EU level (Option 0), a non-legislative option involving enhanced implementation and soft law measures (Option 1), and three different legislative options (Options 2-4). Option 2 would involve enhanced coordination with an increased scope for tailor made solutions, Option 3 would involve enhanced coordination with some principles and standards set at EU level. Option 4 would involve full harmonisation of security of gas supply policy at EU level.

The impact assessment noted that most stakeholders supported Options 2 and 3 (which share many similarities), and concluded that Option 3 was the most effective and efficient option available. All the main features of Option 3 were adopted in the legislative proposal by the Commission. Option 3 was deemed to have very positive effects on stakeholders (including SMEs) and could contribute in a significant manner to completion of the single market. It would incur very limited costs, largely of an administrative nature. In the longer run the administrative burden would decrease because the new regional preventive action and emergency plans would be reassessed only every four years (rather than every two years with the existing national plans).

Parliament's starting position

In September 2010, the Parliament approved the existing regulation on security of gas supply on first reading. Its position was based on a report prepared by ITRE rapporteur Alejo Vidal-Quadras (EPP, Spain). In legislative amendments to the Commission proposal, the ITRE Committee [favoured](#) enhancing regional coordination of national prevention action and emergency plans, and proposed an Annex on regional cooperation (agreed in the Regulation). The ITRE Committee supported a higher common supply standard whereby MS could manage exceptionally high gas demand for up to 45 days (30 days was agreed in the regulation) and extreme temperatures during a seven day period statistically occurring every 20 years (agreed in the regulation). Parliament requested the reassessment of national preventive action and emergency plans every two years, using input from stress tests (agreed in the regulation).

The Parliament resolution of 15 December 2015, [Towards a European Energy Union](#) places much emphasis on security of gas supply, including its external dimensions. It calls on the Commission 'to examine how the current architecture of national preventive and emergency response measures could be improved at both regional and EU level', and supports much closer regional cooperation including with non-EU countries in the Energy Community. The resolution considers security of gas supply to be one of the most pressing issues faced by the Union and so calls for the existing security of gas supply regulation to be revised, gas stress tests to be carried out regularly and their recommendations fully implemented by the Commission and MS. The resolution also calls on the Commission to analyse the appropriateness and potential structure of a voluntary collective purchasing mechanism for natural gas.

Stakeholders' views

The Commission proposal received a mixed response from stakeholders. Associations representing the gas sector tend to be positive. [Eurogas](#) welcomes the Commission proposal as a balanced market-driven approach to security of gas supply, supports the stronger emphasis on regional cooperation to deliver diversification of supply, and

highlights the need for appropriate infrastructural investment. [Gas Infrastructure Europe](#) takes a similar approach but adds that the existing text places too little emphasis on ensuring the physical availability of gas. The [International Association of Oil and Gas Producers](#) (IOGP) supports the Commission for recognising the strategic importance of gas and the fundamental role of the market, but is concerned that the proposal for commercial information exchange on gas supply risks (contracts and other private agreements) would distort free competition. [Eurelectric](#) considers the proposal a good basis for discussion and strongly supports the emphasis on a regional approach to risk assessment and emergency management.

Environmental associations are more critical of the Commission proposal. [WWF](#) argues that using the diversification of gas imports to reinforce energy security is misplaced because renewable energy and greater energy efficiency are much more effective ways to achieve this goal and far more consistent with the EU's claims to be a 'climate leader'. [Greenpeace](#) raises very similar concerns and suggests use of natural gas should be strictly limited to prevent it from blocking the expansion of renewables. These points are reiterated by [Friends of the Earth](#), which also emphasises the current over-supply of natural gas and the existence of idle gas infrastructure across Europe.

Marco Giuli of the [European Policy Centre](#) supports the regionalisation of security of supply measures and the introduction of a mandatory solidarity principle that obliges neighbouring countries to share gas resources in the event of an emergency. However, he believes this top-down approach to resolving security of supply issues is likely to encounter political and legal obstacles in MS. Although external supply choices remain a national prerogative under Article 194 TFEU, this would be constrained by the new solidarity principle. The proposed regulation also faces implementation challenges because it still allows national variations in the definition of a protected consumer, and hinges on broader monitoring and implementation of the internal energy market.

Simone Tagliapietra and Georg Zachmann of [Bruegel](#) propose a more radical approach to addressing security of gas supply risks in Europe. They suggest the current focus on diversifying supply and reducing dependence on imported gas is expensive and does not constitute a systemic response. They believe supply risks could be more effectively addressed by developing an EU market for a gas security margin, which would include a combination of interruptible contracts, gas storage, domestic production, fuel switching measures, option contracts and swap contracts. The gas security margin would constitute a flexible market mechanism that could be easily activated in an emergency.

The [Council of European Energy Regulators](#) (CEER) developed a concept paper in 2015 on Security of Gas Supply, which is rather closer to the approach adopted by the Commission. CEER supports mandatory regional plans, a clearer definition of protected customers at EU level, and stronger solidarity mechanisms between Member States in an emergency situation. CEER also argues for a much clearer distinction in the legislation between actions aiming at *prevention* of a supply crisis (primarily market-based security of supply measures), and actions aiming at *mitigation* in the event of a serious supply interruption (allowing for state intervention via emergency plans).

Advisory committees

The European Economic and Social Committee and the Committee of the Regions are both consulted on the proposed regulation and may issue opinions on the subject.

Council

The Council of the European Union [debated](#) the Commission proposal that led to the current regulation on security of gas supply during its Transport, Telecommunications and Energy meeting on 7 December 2009. It supported the approach of the Commission but ministers also raised some concerns, in particular the need for a stronger application of the subsidiarity principle when determining the role of different market and non-market actors in ensuring security of supply. A majority of ministers supported increased flexibility in the infrastructure and supply standards in order to take account of national specificities, and suggested their implementation should be based on cost-benefit analyses with priority given to market-based instruments. The Council argued for a clearer definition of protected customers but one flexible enough to take into account national and local circumstances, especially in financial terms.

National parliaments

The proposed regulation is [under scrutiny](#) by parliaments in several Member States and has a subsidiarity deadline of 27 April 2016.

Legislative process

On 7 March 2016 the Parliament referred the legislative proposal to the Industry, Research and Energy (ITRE) Committee, which has appointed its chair, Jerzy Buzek (EPP, Poland) as rapporteur for the report. Six other committees have expressed their interest in issuing an opinion (AFET, ECON, ENVI, IMCO, TRAN, REGI).

References

[Measures to safeguard the security of gas supply](#), European Parliament, Legislative Observatory (OEIL).

Endnote

¹ The following list of regions is outlined in Annex 1 of the proposed regulation: **North-West** (UK, Ireland); **North-South Western Europe** (Belgium, France, Luxembourg, Spain, Netherlands, Portugal); **Southern Gas Corridor** (Bulgaria, Greece, Romania); **Central-East** (Czech Republic, Germany, Poland, Slovakia); **South-East** (Austria, Croatia, Hungary, Italy, Slovenia); **Baltic Energy Market I** (Estonia, Finland, Latvia, Lithuania); **Baltic Energy Market II** (Denmark, Sweden). Cyprus and Malta would not be attached to any region, since they are not interconnected.

² See EPRS briefing on the [Energy Community](#), A. Wilson, October 2015.

³ According to the 2014 implementation report, the supply standard varies widely across the EU: Three MS apply it only to households; three MS apply it to households and essential social services; two MS apply it to households and district heating where no fuel switching is available; nine MS apply it to households, essential social services and district heating; and three MS apply it to all consumers connected to the distribution network. Meanwhile, the supply standard proposed by five MS did not conform to the provisions of the Regulation.

Disclaimer and Copyright

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2016.

eprs@ep.europa.eu

<http://www.eprs.ep.parl.union.eu> (intranet)

<http://www.europarl.europa.eu/thinktank> (internet)

<http://epthinktank.eu> (blog)

