

New rules on security of gas supply

SUMMARY

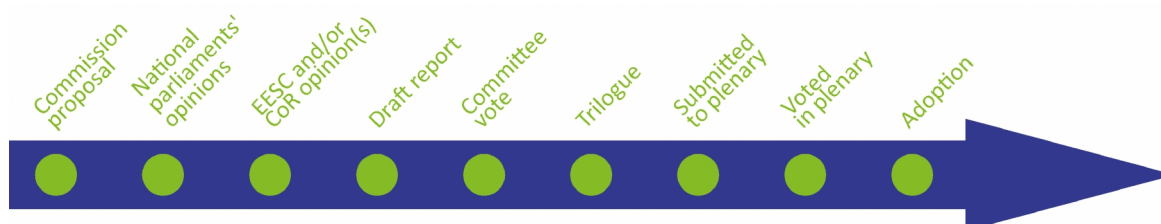
In February 2016, the European Commission proposed a new regulation on security of gas supply in order to develop a stronger collective response to future supply risks.

Major innovations in the Commission proposal include a solidarity principle that prioritises households and essential social services during an emergency situation; mandatory regional preventive action and emergency plans based on new templates; fewer exemptions on bidirectional capacity, in order to facilitate reverse gas flows; an increase in the scope of contractual information relating to security of supply that is provided to the Commission and national authorities; and further involvement of the contracting parties of the Energy Community in security of gas supply measures.

The ITRE Committee approved its report in October 2016, the Council adopted a general approach in December 2016. Trilogue negotiations began in February 2017 and agreement was reached in April 2017. The agreed text was formally endorsed by the Parliament in September and by the Council in October 2017), and entered into force on 1 November 2017.

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 16.2.2016
<i>Rapporteur:</i>	Jerzy Buzek (EPP, Poland)	<i>procedure ref.:</i> 2016/0030(COD)
<i>Procedure completed.</i>	Regulation (EU) 2017/1938 OJ L 280, 28.10.2017, pp. 1-56	Ordinary legislative procedure



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Introduction

On 16 February 2016 the Commission proposed a new regulation on security of gas supply as part of its [sustainable energy security package](#). This proposal 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 proposed regulation is Article 194 of the Treaty on the Functioning of the European Union, the same basis as the existing regulation. Article 194 lists security of energy supply as a shared competence of the EU and its Member States.

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 discussion.

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** that 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, under average winter conditions. Competent authorities have to prepare a **risk assessment** of how they meet the supply and infrastructure standards

(taking into account 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 are asked to consult each other to ensure their national plans do not have a negative impact on other countries connected to the same gas supply routes. MS can choose to develop joint plans at a regional level but are not obliged to do so. 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 EU 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 to ensure **transparency and information exchange**, with the potential involvement of its 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 would 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.

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 existing national plans, in order to ensure that the consequences of national choices on security of supply do not have a negative impact on neighbouring countries. Regional plans would undergo a process of **peer review** organised by the Commission, with significant input from the MS concerned. They would be aligned to **mandatory templates**, in order to overcome the problem of patchy and inconsistent information supplied by different MS. Regional plans would be reassessed every four years (so less frequently than national plans under the existing regulation). For this purpose MS would be divided into pre-defined **regions**, based on their geographical proximity, common supply lines and the existing interconnection of their energy systems. The Commission prepared a list of seven regions in the [annexes](#) to the proposal.

The **infrastructure standard** would remain the same but could now be assessed on either a national or a regional basis, and would have to 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 have to make joint decisions on any exemption, submit this to ACER for an opinion and thereafter 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 proceed again through the same process of approval.

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 or competent authorities could still ask for any long-term contract to be notified, even if this 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.¹ 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 therefore need to be adopted by a joint act of the Energy Community. The explanatory memorandum of the Commission proposal makes it clear that the revised regulation would allow 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 mechanisms.

Preparation of the proposal

In October 2014, the European Commission summarised the findings of [stress tests](#) it carried out with ENTSOG 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, 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 have limited access to liquefied natural gas (LNG) imports and gas storage facilities. Yet they are not the only vulnerable countries. 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). The stress tests 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 an [implementation report](#) on the 2010 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.² MS cited

difficulties in interpreting the supply standard. The Commission was concerned about the **lack of detailed information** on consumption volumes and patterns, a problem highlighted during the gas stress tests. Although the number of permanent bi-directional **interconnection** points between MS increased substantially between 2009 and 2014 (from 24 % to 40 % of the total), the majority of interconnection points that were unidirectional in 2009 remained so because of exemptions granted under the existing regulation. Permanent bidirectional capacity therefore applies largely to new interconnections. The report indicated that greater **regional coordination** of preventive action and emergency plans was necessary but difficult to achieve with the existing regulation. Preventive action and emergency plans could be significantly improved by including 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 work in practice – since the regulation has come into force, there has been no Union or regional emergency and few national emergencies. 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 received around 100 contributions and published a [summary](#) of responses. Around a third of respondents 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 subsequent [impact assessment](#) and legislative proposal, both published on 16 February 2016. The impact assessment (see [executive summary](#)) considered various options and supported the option of enhanced coordination between Member States with some principles and standards set at EU level.

Stakeholders' views

The Commission proposal received a mixed response from stakeholders. Associations representing the gas sector tended to be positive. [Eurogas](#) welcomed the Commission proposal as a balanced market-driven approach to security of gas supply, supported the stronger emphasis on regional cooperation to deliver diversification of supply, and highlighted the need for appropriate infrastructural investment. [Gas Infrastructure Europe](#) took a similar approach but added that the Commission proposal put too little emphasis on ensuring the physical availability of gas. The [International Association of Oil and Gas Producers](#) (IOGP) supported the Commission in recognising the strategic importance of gas and the fundamental role of the market, but expressed concern that the proposal for commercial information exchange on gas supply risks (contracts and other private agreements) would distort free competition. [Eurelectric](#) considered the proposal a good basis for discussion and strongly supported the emphasis on a regional approach to risk assessment and emergency management. In 2015 the [Council of European Energy Regulators](#) (CEER) published a concept paper whose recommendations were quite close to the approach subsequently adopted by the Commission. CEER supported mandatory regional plans, a clearer definition of protected customers at EU level, and stronger solidarity mechanisms between Member States in an emergency.

Environmental associations were more critical of the Commission proposal. [WWF](#) argued 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](#) raised very similar concerns and suggested use of natural gas should be strictly limited to prevent it from blocking the expansion of renewables. These points were reiterated by [Friends of the Earth](#), which also emphasised the current over-supply of natural gas and the existence of idle gas infrastructure across Europe.

Advisory committees

On 22 September 2016 the European Economic and Social Committee (EESC) issued an [opinion \(TEN/588\)](#) (rapporteur: Graham Watson, Various interests – Group III, UK), which argued that the Commission proposal is not well aligned with the broader environmental and climate change goals of the Energy Union. The Committee of the Regions did not issue an opinion.

Parliamentary analysis

On 21 April 2016, EPRS published an [Initial Appraisal](#) of the Commission's impact assessment on the legislative proposal. This argued that the Commission proposal could have considered more carefully its social and environmental impacts (and not only its economic impacts) and provided more quantitative data to assess the administrative burden. According to the Initial Appraisal, the proposed regulation did not fully assess the impact of the new solidarity principle on SMEs, whose gas supplies might be interrupted in case the principle is exercised, and did not offer more substantial analysis on how the proposed regulation would help to complete the single market in energy.

National parliaments

The proposed regulation was [scrutinised](#) by parliaments in 20 EU Member States. Reasoned opinions from the Austrian Federal Council and the Bulgarian National Assembly suggested the proposal may be incompatible with the subsidiarity principle.

Legislative process

Parliament referred the legislative proposal to the Industry, Research and Energy (ITRE) Committee. Jerzy Buzek (EPP, Poland) was appointed rapporteur. On 13 October 2016 the ITRE Committee approved its report (55 votes in favour, 5 against) with supporting opinions from the Committees for Foreign Affairs (AFET) and Regional Policy (REGI).

The ITRE report supports the general thrust of the Commission proposal, in particular its focus on strengthening regional cooperation. It proposes to complement this through an in-depth analysis of **Emergency Supply Corridors** in all scenarios of supply disruption. These corridors would serve to facilitate gas imports between the different regions. The report proposes a **uniform definition of protected customer** across the EU. This would encompass households, essential social services and certain district heating installations (but would no longer include SMEs). Member States could still choose to include SMEs in their supply standard (providing conditions are met, including overall market share), but SMEs would no longer be protected customers under any emergency scenario. Concerning the preparation of regional preventive action and emergency plans, as well as the establishment of regional cooperation mechanisms, the report introduces an **obligation for the Commission to act** if Member States are unable to do so. In terms of notification requirements to the Commission related to **long-term gas supply contracts**, the report proposes to identify the relevant contracts on the basis of whether a MS is dependent on a third country outside the EEA for over 40 % of its total annual gas

imports, and would extend this notification obligation to cover commercial agreements relevant for executing the gas supply contract, as well as changes in the gas price. The Commission would be encouraged to use its competition law powers to enforce contract modifications. The Commission would also be empowered to set up **voluntary demand aggregation mechanisms** if an alert or emergency level is raised. The ITRE report strongly emphasises the importance of improving energy efficiency, reducing gas demand, and promoting renewable energy sources, in order to overcome security of gas supply risks.

The [Energy Council meeting on 6-7 June 2016](#) debated the Commission proposal. The proposal was subsequently discussed in several meetings of the Energy Working Party. Although no final compromise was reached at this level, the possible options were summarised in a [discussion note](#) prepared for a policy debate on the regulation during the [Energy Council meeting on 5 December 2016](#). On this occasion, Member States reached a decision, allowing the Slovak Presidency to draft a [compromise proposal](#).

The Council agreed that regional groups should be identified on the basis of transnational risk assessments, carried out by Member States themselves with input from ENTSO-G. The composition of regional groups would vary according to risk. Member States would also continue to carry out national risk assessments. The Council agreed that commercial long-term gas contracts accounting for 40 % or more of annual natural gas consumption in a Member State would be notified to the competent authority. The latter, as well as the Commission, could request relevant information (except on price) concerning other gas contracts that do not meet the 40 % threshold. Finally, the Council agreed that the regulation should define general principles for the solidarity mechanism, including the issue of compensation. These principles should emphasise that solidarity is a last-resort mechanism, to be used only after emergency measures are exhausted, and should allow Member States to take account of their national situation.

Informal interinstitutional trilogue negotiations started in February 2017 and concluded with a provisional agreement in April 2017. The [agreed text](#) was approved by the ITRE committee on 30 May 2017 and subsequently endorsed by the Parliament (12 September 2017) and the Council (9 October 2017), allowing the final act to be signed on 25 October 2017. The agreed text incorporates numerous changes proposed by the Parliament and Council, varying in significant ways from the Commission proposal.

The agreed text introduces the principles of **'solidarity protected customer'** and **'emergency supply corridors'** in the regulation (Article 2). Emergency supply corridors become a key part of the overall risk assessment (Article 6). **Greater involvement for ENTSO-G** is foreseen in the event of an emergency crisis, to regularly assess major transnational risks, and to update the composition of regional groups (Article 4). The list of seven regional groups in the Commission proposal has been replaced with **eleven groups defined on the basis of supply country risks** (Annex 1). Each group belongs to one of three broad risk categories (Eastern gas, North Sea gas, North African gas). Individual Member States are included in risk groups (one or more) that are directly relevant to their supply situation. The agreed text **retains the national preventive action and emergency plans**, rather than subsuming these into regional plans (as in the Commission proposal). In order to foster greater regional cooperation, these national plans will now include **mandatory regional chapters**, to be prepared and agreed jointly by all Member States in the risk group concerned, with the Commission playing a facilitating role (Article 7). These regional chapters should consider joint access to gas storage as well as LNG infrastructure. The agreed text allows the possibility for a Member State to **prioritise the**

gas supply to certain critical gas-fired power plants over the supply to certain categories of protected customers. However, such a possibility must be envisaged and jointly agreed in the regional chapters of the national preventive action and emergency plans, and should only be enacted on reasonable grounds. The agreed text introduces considerably more detail about the **operation of the solidarity mechanism** (Article 12), which should be activated only when all market-based measures have been exhausted; on the basis of an explicit and justified request to the Commission and national competent authorities; and must include a commitment to pay **fair and prompt compensation**. With regard to the **information exchange** (Article 13), the agreed text specifies that all contracts with a supplier (or its affiliates) responsible for at least 28 % of annual natural gas consumption in a given Member State must be automatically communicated to the Commission and the relevant competent authorities (except for price information). Other contracts of concern for security of gas supply may also be requested by the Commission and national competent authorities (except for price information). The agreed text also introduces a **binding legal obligation on professional secrecy** (Article 13a) for anybody that handles commercially sensitive information under the terms of this regulation.

The [new regulation](#) was published in the Official Journal on 28 October 2017 and entered into force on 1 November 2017, except for provisions relating to the solidarity mechanism (these will apply from 1 December 2018). The Commission (DG Energy) subsequently issued an [implementation roadmap](#) for the new regulation. The Commission is required to submit a report on effective application of the new regulation by 1 September 2023, which can include recommendations to amend it (Article 16).

References

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

[Security of Gas Supply: Initial Appraisal of a Commission Impact Assessment](#), European Parliamentary Research Services (EPRS), April 2016.

Endnotes

¹ See EPRS briefing on the [Energy Community](#), A. Wilson, October 2015.

² 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 at the time of the report did not conform to the provisions of the Regulation.

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