



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 October 2003

13166/03

**Interinstitutional File:
2002/0220 (COD)**

**ENER 267
CODEC 1288**

NOTE

from : General Secretariat

to : Delegations

No. prev. doc. : 12810/03 ENER 254 CODEC 1231

No. Cion prop. : 12228/02 ENER 196 CODEC 1133 (COM(2002) 488 final)

Subject : Proposal for a Directive of the European Parliament and of the Council
concerning measures to safeguard security of natural gas supply

Delegations will find attached the above proposal as revised by the Presidency in the light of delegations' comments, made in particular at the meeting of 30 September of the Energy Working Party.

Presidency suggestion concerning the
Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL
concerning measures to safeguard security of natural gas supply
(Text with EEA relevance)

Article 1

Objective

This Directive establishes measures aimed at ensuring an adequate level for the security of gas supply [in conjunction with the proper functioning of the internal market for gas]¹. It establishes a common framework within which Member States shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive internal European market for gas; clarify the general roles and responsibilities of the different market actors and implement specific non-discriminatory procedures to safeguard security of gas supply.

Article 2

Definitions

For the purpose of this Directive:

1. "long-term gas supply contract" means a gas supply contract with a duration of more than **seven** years;
2. "major supply disruption" shall mean a situation where the Community would risk to lose more than [20%] of its gas supply from third countries for a period exceeding 60 days. ²

Article 3

Policies for securing gas supply

1. In establishing their general policies with respect to ensuring adequate levels of security of gas supply, Member States shall define the roles and responsibilities of the different market actors in achieving these policies, and specify the minimum standards that must be complied with by the actors on the gas market of the Member State in question. The standards shall be implemented in a non-discriminatory and transparent way and shall be published.

¹ Wording in brackets to be deleted if the legal base will be Article 100.

² Coherence between this definition and Article 10(1) has to be ensured.

2. Member States shall take the appropriate steps to ensure that the measures referred to in this Directive **including those taken pursuant to Articles 4 and 10** do not place an unreasonable and disproportionate burden on [...] gas market players ³ and are compatible with the requirements of a competitive European market for gas.
[...]⁴
3. A non exhaustive indicative list of measures for the security of gas supply is given in the Annex.

Article 4

Security of supply for specific customers

1. Member States shall ensure that supplies for [...] household customers inside their **respective** territory are protected to an appropriate extent **at least in the event** of:
- a) a **partial** disruption of [...] national gas supplies during **a period to be determined by Member States taking into account national circumstances**;
 - b) extremely cold temperatures during a nationally determined peak period;
 - c) extreme **weather conditions** during statistically determined exceptional peak periods occurring every [twenty] years [...].
2. Member States may extend the protection measures implemented pursuant to paragraph 1 **in particular** to small and medium sized enterprises and other customers that cannot switch their gas consumption to other energy sources, including measures for the security of their national electricity system if it depends on gas supplies.

³ Should a reference to "new market entrants and companies with small market share" be added it might be worthwhile to insert the following definitions into Article 2:

"new market entrant" shall mean an undertaking that has been active for a period not exceeding two years from the date on which it concludes its first gas sales contract within the Member State concerned and which has small market share."

"small market share" shall mean a share of less than [2] % of the national gas market."

⁴ It is recalled that the Commission has always the possibility to issue recommendations.

3. In order to achieve the security of supply standards referred to in paragraph 1, a combination of measures shall be used which shall include, but are not limited to, one or more of the measures listed in the Annex.

[...]

Article 5

Measures for gas storage

1. Member States, having due regard to the geological conditions of their territory and the economic and technical feasibility, may take the necessary measures to ensure that gas storage facilities located within their territory contribute to an appropriate degree to achieving the security of supply standards referred to in Articles 4 and 10.
2. If an adequate level of interconnection exists, Member States may take the appropriate measures in co-operation with another Member State to achieve the security of supply standards established by this Directive using gas storage facilities located within that **other** Member State.
3. [...] Member States shall, initially not later than two years after the entry into force of this Directive and every two years thereafter, **set or require the industry to set** national indicative minimum targets for future contribution of storage, either located within or outside the territory of the Member State, to security of supply. [...] **These targets [...] shall be published.**⁵

Article 6

Reporting

1. In the report published by Member States pursuant to Article 5 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003, Member States shall **also** cover the following:
 - a) the competitive impact of the measures taken pursuant to Articles 3 and 4 [...] on all gas market players;

⁵ A recital could be added stating that no investment obligations would result from this provision.

- b) the levels of storage capacities [and if applicable, the measures taken and to be taken in order to achieve the indicative minimum targets for future contribution of storage to security of supply];
- c) the extent of long-term gas supply contracts concluded by companies established and registered on their territory, and in particular their remaining duration, based on information provided by the companies concerned, but excluding commercially sensitive information, and the degree of liquidity⁶ of the gas market;
- d) the regulatory frameworks to provide **adequate** incentives for new investment in exploration and production, storage, LNG and transport of natural gas, taking into account also the disposition of Article 22 of the Directive 2003/55/EC as far as implemented by the Member State.

2. This information shall be considered by the Commission in the reports that it issues pursuant to Article 31 of Directive 2003/55/EC [] in the light of the consequences of that Directive for the Community as a whole and the overall efficient and secure operation of the internal gas market.

Article 7

Monitoring

1. The Commission shall monitor, on the basis of the reports referred to in Article 6(1):
- a) the degree of new long-term gas supply import contracts from third countries;
 - b) the existence of adequate liquidity⁷ of gas supplies;
 - c) the level of working gas and of the withdrawal capacity of gas storage;
 - d) the level of interconnection of the national gas systems of Member States.

[The Commission may issue recommendations on appropriate measures to be taken by Member States in this respect if an insufficient degree of supply contracts on a Community level, a lack of interconnection among Member States, or an insufficient level of working gas or withdrawal capacity of gas storage on a Community level would lead to a situation where a clear lack of gas supply would result in the absence of further actions. Member States shall inform the Commission of the manner in which the recommendations are implemented.]

⁶ To be understood in terms of trade and commerce.

⁷ To be understood in terms of trade and commerce.

2. Where it concludes that the measures taken by Member States [in relation to the recommendations referred to in paragraph 1] are inadequate with regard to the long-term security of gas supply, the Commission may submit appropriate proposals, in accordance with the Treaty.
3. The Commission shall, within four years of the entry into force of this Directive, submit a review report to the European Parliament and the Council on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.

Article 8

Gas Coordination Group

1. **A Gas Coordination Group is hereby established in order to facilitate the coordination of security of supply measures.**
2. **This Group shall be composed of the representatives of Member States and representative bodies of the industry concerned and of energy consumers, under the chairmanship of the Commission.**
3. **The Group shall adopt its rules of procedure.**

Article 9

Measures at national level

1. For the events referred to in Article 4(1), Member States shall adopt **in advance** and, if appropriate, update national emergency measures **and shall** communicate **these** to the Commission.
2. Member States shall indicate to the Commission the events referred to in Article 4(1) **which they consider** cannot be adequately managed with national measures and **which would** require action at Community level.

Article 10

Measures for the event of major supply disruptions at Community level

1. If an event [] occurs that is likely to develop into a major supply disruption, **the Commission shall convene as soon as possible, at the request of a Member State or on its own initiative, the Gas Coordination Group established under Article 8.**
2. **The Gas Coordination Group shall examine, and, where appropriate, assist the Member States in coordinating the measures taken at national level to deal with the supply disruption.**
3. In carrying out its work, the **Gas Coordination Group** shall take full account of:
 - a) the measures taken by the gas industry as a first response to the major supply disruption,
 - b) the measures taken by Member States, pursuant to Articles 4 and 5 and
 - c) a negative event indicated by a Member State according to Article 9 paragraph 2, that cannot be managed at national level.
- 4 **Where the measures taken at national level referred to in paragraph 3 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may issue recommendations to Member States to take the necessary measures to provide specific assistance to those Member States particularly affected by the gas supply disruption.**

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- ⁸ Should the following paragraph 4a be added to Article 10 standard provisions for a regulatory committee would be inserted e.g. after Article 8:

"4a. Where the measures taken by Member States in response to the recommendations mentioned in paragraph 4 are inadequate in the light of market developments, and/or where the economic consequences of the major supply disruption become extremely severe, the Commission may in conformity with the procedure laid down in Article 8a, paragraph 3, ask Member States to take specified measures to provide necessary assistance to those Member States particularly effected by the gas supply disruption."

5. Any measures adopted by the Commission pursuant to this Article shall contain provisions aimed at ensuring fair and equitable compensation of the undertakings concerned by the measures to be taken by the gas industry.

[...]

[...] ⁹

[...]

Article 11

Monitoring of implementation

1. The Commission shall closely monitor the manner in which Member States implement this Directive, and in particular the effectiveness of the instruments used with regard to Article 3, 4 and 5 and their effect on the internal gas market and the development of competition on the gas market within the European Community.
2. In the light of the results of this monitoring, where appropriate, the Commission shall, no later than [1 July 2007] issue recommendations or present proposals regarding further measures to enhance security of supply.

Article 12

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by two years after the entry into force of this Directive. They shall forthwith inform the Commission thereof.

"Article 8a Regulatory Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period foreseen in Article 5, paragraph 6 of Council Decision 1999/468/EC shall be three months, except for Article 10 (5) where it shall be one week.
3. The Committee shall adopt its rules of procedure."

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. [Where the implementation of this Directive would cause substantial problems in a Member State, the Member State in question may **derogate** from the provisions in articles 4, and 5, until the national share of natural gas exceeds [7,5%] of this Member State's final energy consumption.]

Article 13

Entry into force

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

Article 14

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President

⁹ The Presidency considers that the former paragraph 7 is already covered by the amended version of Article 3(2).

Indicative non exhaustive list of measures to enhance the security of gas supply

- increase of working gas in storage
- increase of withdrawal capacity in gas storage
- provision of pipeline capacity enabling diversion of gas supplies to affected areas
- system flexibility
- development of interruptible demand
- [...] use of alternative back-up fuels in industrial and power generation plants
- increase of cross-border capacities
- [...] co-operation between transmission system operators of neighbouring Member States for co-ordinated dispatching
- increase of domestic production of gas
- [...] production flexibility
- [...] import flexibility
- diversification of sources of gas supply
- long term contracts
- promotion of new investments in infrastructure for gas import via regasification terminals and pipelines

[...] ¹⁰

¹⁰ The former Annex 2 has been deleted because there is no longer any reference to it in the text.