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From:	General Secretariat of the Council
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Subject:	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 - Policy debate

Following approval by the Coreper, the Delegations will find in the Annex a Discussion note on the proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard security of gas supply and repealing Council Regulation 994/2010, prepared by the Presidency with a view to supporting the policy debate and providing guidance with a set of options for discussion amongst the Ministers at the Transport, Telecommunications, Energy Council, on 5 December 2016.

Please note that this text is identical to the text set out in document 14226/16 presented to Coreper on 25 November 2016.

It is recalled that delegations are invited to forward their contribution to the policy debate in writing, so that Ministers can focus on key messages.

Security of gas supply

Discussion note for the TTE (Energy) Council

On 16 February 2016 the European Commission presented in its 'winter package' the legislative **proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and repealing Council Regulation 994/2010.**

Strengthening the EU's ability to absorb the impacts of a potential gas disruption is at the heart of EU energy policy and is a key objective of the EU's Energy Union, which in its first dimension 'energy security, solidarity and trust' announced, as a concrete action, a revision of the EU's Gas Security of Supply Regulation (EU) No 994/2010.

The Commission's impact assessment of the new regulation emphasised that in the absence of further action, the EU's preparedness and capacity to respond effectively to a gas supply crisis would be limited.

The Slovak Presidency held several discussions in the Energy Working Party on the draft proposal, including key issues and a detailed examination of the Articles and proposed four revisions of the text (9739 REV 4). Unfortunately a final compromise could not be reached.

At the meeting of energy Ministers, the Presidency intends to hold a policy debate with a view to establishing a common understanding of the main principles for the final compromise, particularly concerning regional cooperation, solidarity and exchange of information on commercial gas contracts.

Regional cooperation (Article 3, Annex I)

The objective of the proposal is to construct a cost-effective and performant EU regional framework that would increase security of supply across the EU. Enhanced regional cooperation and coordination is an important tool for creating more solidarity and trust between Member States and for addressing the shortcomings of purely national approaches, which were confirmed by the results of the stress tests carried out in 2014.

I. Council

The discussion at the Council highlighted two main possible approaches towards regional cooperation neither of which has gathered enough support.

1. **Cooperation based on core regions.** Article 3 would define the criteria for the establishment of regions and would give the Member States the opportunity to join more than one region, while Annex I would list the pre-defined core regions. The Member States supporting this approach highlighted that the main benefits of such a comprehensive structure are in its flexibility, certainty and predictability. However, a number of delegations considered this kind of cooperation to be too prescriptive and less efficient in improving security of supply and would prefer a risk-based approach.
2. **Cooperation in the regions identified on the basis of risks.** The benefits of this kind of cooperation lie within a focused risk-based approach. The Commission would set up groups of Member States. Those groups would cooperate on major transnational risks, based on the identification of such risks by the Member States themselves and the work of ENTSO-G. The Member States in each group would prepare a joint risk assessment and assess if there is a need and a possibility to further develop common measures, through a mandatory exchange of information in the preparation of emergency and preventive action plans.

Some Member States highlighted the benefits of such approach: for each major transnational risk, all Member States needing to cooperate on that risk would be grouped together, and the “emergency supply corridor” concept proposed by Parliament would be included. However, a number of delegations highlighted uncertainty regarding how the final composition of the regions would be defined and organised, especially with risks that would affect a significant number of Member States, such as a disruption of the gas supply from large suppliers.

Regional cooperation was also discussed in the context of drawing up the preventive action and emergency plans. The Presidency text proposed reinstating National Preventive Action Plans and Emergency Plans with regional chapters. Those regional chapters would be agreed by all Member States within a given region. However, a number of Member States stressed that the focus for the reinforced regional cooperation should be the risk analysis and not a common drafting of plans. They preferred instead a mandatory exchange of information on planned measures that would be later taken on a national level.

The concept of regional cooperation was also thoroughly discussed at Coreper on 9 November. During the discussion neither of the above-mentioned approaches gained enough support to be fully reflected in the draft proposal. A compromise solution will therefore have to be found that could combine the main elements of the two approaches – the need for predictability and the need to take into account the various risks faced by the Member States.

II. European Parliament

The European Parliament supported the regional approach in the Commission proposal and complemented it with the additional element of emergency supply corridors based on an EU-wide simulation of supply and disruption scenarios prepared by ENTOS-G. The emergency supply corridors should improve the cooperation between the regions, provide qualitative and quantitative information and increase operational effectiveness in an emergency situation. The European Parliament considered the emergency supply corridors as an addition to Commission's regional approach.

III. Next Steps

Taking into account the above considerations, the Presidency is proposing two options containing elements from approaches 1 & 2 described above. The Presidency would like to ask the Ministers to express their views and choose the most preferable from the options below for the way forward:

A. Regional cooperation based on core regions with information exchange and coordination of measures among Member States.

Regional cooperation would be based on core regions as defined in Annex I of the Presidency compromise proposal and complemented by emergency supply corridors defined by ENTSO-G after the EU-wide simulation of supply and disruption scenarios. Measures included in the national Emergency and Preventive Action Plans, containing also regional chapters, would be coordinated within each region and, where appropriate, also consulted with Member States from neighbouring regions. Member States along the emergency supply corridors would share information and consult the members of the region in the process of drawing up national emergency and preventive action plans and during emergency situations. Each Member State would be able to join more than one region, given that the other Member States agree.

B. Regional cooperation based on risk-based groups and agreement between concerned Member States on measures to address specific risks.

Regional cooperation would be based on risk-based groups of Member States identified on the basis of the main risks for the EU's gas supply in particular: gas supply from Russia, North Sea, LNG, North Africa, and domestic production and specified in the Regulation. It should be ensured that such groups are truly operational. Such groups might be updated taking into account the result of ENTSO-G analysis. ENTSO-G would conduct simulation of the disruption scenarios and deliver qualitative and, in particular, quantitative data on impacts and possible solutions, including emergency supply corridors along the lines of existing infrastructure.

On that basis, Member States would conduct national Risk Assessments as well as common Risk Assessments with other Member States per source of relevant risk. On the basis of the relevant Risk Assessments, each Member State would prepare a national Preventive Action Plan and a national Emergency Plan. Both plans would contain measures to address risks identified in the Risk Assessments and regional chapters with possible cross-border measures to be agreed with the relevant other Member States, where necessary also taking into account the results of a cost-benefit analysis. Member States would share information and consult the members of their different groups in the process of the preparation of emergency and preventive action plans and during emergency situations.

Exchange of Information on Commercial Gas Contracts (Article 13)

During discussions in the Energy Working Party, delegations have clearly stressed the need to discuss the amount of information that is being provided. Gas undertakings inform the competent authorities and the Commission of all their gas supply contracts, in cases where these contracts /are concluded between the same supplier and the same buyer, the duration of the contracts exceeds one year and more than 40 % of the annual gas consumption in the Member State concerned.

I. Council

A number of Member States called for a stronger provision that would require information on all long-term gas contracts to be submitted, albeit only to the competent authority and/or National Regulatory Authority. The contracts should be assessed by the competent authority and/or by the National Regulatory Authority, especially as regards their impact on the security of gas supplies in the Member States and the region, as well as their conformity with EU law. In cases where the competent authority has doubts whether a contract is in accordance with the security of supply or puts the security of gas supply of a Member State, the region or of the Union as whole at risk, it would submit the contract to the Commission for further assessment. Some Member States considered that providing such information is not proportionate and out of the scope of such regulation.

II. European Parliament

The European Parliament acknowledged the importance of proper information exchange for risk assessment and for the prevention and mitigation of crises. The Parliament endorsed the proposal of the Commission and also included some more ambitious proposals. It stressed that relevant contracts will have to be automatically notified to the Commission and the competent authority upon conclusion or modification, as well as the prerogative of the competent authority and the Commission to request, in duly justified cases, the natural gas undertaking to provide the contract for assessment of its impact on security of supply.

III. Next Steps

Taking into account the above considerations, the Presidency would like to ask the Ministers to express their views and choose the most preferable from the options below for the way forward:

- A.** Long-term gas contracts which provide 40 % or more of annual natural gas consumption in the Member State concerned would be notified to competent authority. The contracts would be assessed by the competent authority, especially as regards their impact on the security of gas supplies in the Member State and the region. The competent authority and the Commission would also be able to request other information, excluding price information, regarding key gas supply contracts relevant to the security of supply even if they do not fulfil the 40 % criterion.

- B.** All long-term gas contracts/long-term gas contracts which provide more than [significantly lower than 40] % of annual natural gas consumption in the Member State concerned would be notified to the competent authority. These contracts would be assessed by the competent authority, especially as regards their impact on the security of gas supply in the Member State and the region. The competent authority would send to the Commission the result of its assessment. The Commission and other Member States would not have the right to request the notification of a contract.

Solidarity (Article 12)

I. Council

The general principle of solidarity was overwhelmingly supported at the Working Party and in Coreper. There is general agreement that solidarity triggers compensation. The Member State that requests solidarity would have to cover the costs incurred by the Member States that provides solidarity. Some Member States emphasised that the provision needed to be fully operational and further clarified, in particular regarding compensation. Solidarity could be limited or suspended on the basis of a mutual agreement between Member States.

Some Member States pointed out that the possibility to limit or suspend solidarity is in contradiction to the principle itself; others have welcomed this flexibility. Some Member States also stated that solidarity had to be applied to Member States that are indirectly connected (via a third country).

II. European Parliament

The European Parliament welcomed the introduction of the solidarity clause as a legally-binding principle of last resort. Solidarity should not be regarded as an alternative to market-based preventive action available in the EU internal gas market, nor should it substitute any country's own efforts to improve its resilience to supply disruptions by diversifying its suppliers, routes of supply and sources of energy and increasing its energy efficiency.

III. Next Steps

Taking into account the above considerations, the Presidency would like to ask the Ministers to express their views and choose the most preferable from the options below for the way forward:

- A.** Solidarity together with a mechanism for compensation is defined in detail and fully harmonised across the EU in the text of the Regulation.
- B.** Solidarity together with general principles regarding compensation are defined in the text of the Regulation while allowing Member States to take into account their specific national situation and possible different approaches to calculate compensation. To support Member States with information on good practices and relevant options, the Commission would elaborate guidelines in close cooperation with Member States and relevant stakeholders represented in the Gas Coordination Group.