



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0424 (COD)**

Brussels, 20 July 2023

WK 10120/2023 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	Non-paper on solidarity and security of supply of the hydrogen and decarbonisation package

Following the Energy Working Party held on 13th July, delegations will find in the Annex a non-paper on solidarity and security of supply of the hydrogen and decarbonisation package, prepared by the Commission.

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NON-PAPER ON SOLIDARITY AND SECURITY OF SUPPLY ARTICLE 67 OF THE GAS DECARBONISATION AND HYDROGEN PACKAGE

Disclaimer: this non-paper is an informal courtesy document not reflecting the final views of the Commission

I. Introduction

The co-legislators have invited the Commission to provide a technical assessment in order to facilitate the interinstitutional negotiations on Article 67. This non-paper recapitulates the main elements of background in this respect and provides a number of technical considerations to the attention of the co-legislators.

II. Background

In the Commission's proposal of December 2021, the Commission introduced provisions on solidarity and security of supply in Article 67 of the Hydrogen and Decarbonised Gas Package (hereafter Gas Package), by amending the Gas Security of Supply Regulation (EU) 2017/1938 (hereafter SoS Regulation).

In particular, the Commission proposed to enhance the approach to ensuring the operational provisions for solidarity – from relying on bilateral agreements to the application of default rules in absence of bilateral agreements. The reason for this new approach was the unsatisfactory progress in concluding the bilateral agreements, which left the EU at great risk in case of a gas emergency, with only 7 out of 40 bilateral agreements signed. Furthermore, those provisions are essential to the gas security of supply architecture of the EU and **the amendment of the SoS Regulation via the Gas Package was - and still is - considered to be the most efficient solution to complete the gas security of supply architecture of the EU.**

The deterioration of the security of supply situation throughout 2022 following the Russian invasion of Ukraine created the **urgency to frontload the necessary long-term improvements of the solidarity provisions.** Ultimately, this culminated in an agreement among Member States in Chapter IV of the Solidarity Regulation (EU) 2022/2576 (hereafter Council Solidarity Regulation). The aforementioned Regulation expires on 29 December 2023, which would expose the EU to the same vulnerabilities as before the crisis.

The improved solidarity rules are not merely a crisis measure temporarily agreed upon in 2022 under challenging circumstances. Already before the energy crisis of 2022, it was recognised that there was a gap in our security of supply architecture. **Improved solidarity rules provide a long-term solution to a critical structural vulnerability that has been identified already prior to the war in Ukraine.**

Furthermore, since the agreement on the Council Solidarity Regulation, the Commission has tested the solidarity provisions on Security of Supply with Member States during the dry-run solidarity exercise in Ispra (Italy), and collected feedback from the EU Gas Coordination Group. **The EU now benefits from actual feedback on the implementation of those measures.**

III. Gas solidarity provisions – technical assessment of possible ways forward

a. Default solidarity rules

Default solidarity rules are at the core of both the December 2021 proposals and the solidarity provisions agreed in the Council Solidarity Regulation. Member States have largely failed to bilaterally agree on the necessary technical, legal and financial provisions necessary for solidarity to function in case of a severe emergency. This difficulty to reach an agreement resulted in 25 infringement procedures. Without default rules, the toolbox for the EU to deal with a severe gas crisis would be incomplete and ineffective.

It is important to start discussions between the co-legislators based on the provisions of the Council Solidarity Regulation, to build on the experience and feedback of the last winter to discuss the content of the provisions. In this regard, it is important to consider that each Member State could potentially find itself in the situation of solidarity provider or solidarity requester. Ultimately, the objective is to have a solution which overcomes the obstacles encountered in concluding solidarity bilateral agreements

b. LNG solidarity

In 2022, the gas system has undergone significant changes in reaction to the Russian invasion of Ukraine, making LNG the EU's number one supply source. The Council Solidarity Regulation extended solidarity obligations to Member States with LNG facilities, as opposed to the current framework, where solidarity provisions only apply to pipeline gas since it was the main transport source of natural gas.

Not recognising the profound changes the EU's gas system has undergone during the crisis, by not including LNG solidarity, would greatly diminish the credibility and the effectiveness of the whole system. Therefore, it is of crucial importance to extend the solidarity provisions to include solidarity provided via LNG, while discussing the practical implementation.

c. Critical gas volumes for electricity

Recent experience has shown that the gas and electricity systems are profoundly intertwined, meaning that security of supply for both sectors cannot be treated completely separately from one another. The Solidarity Regulation therefore introduced provisions to extend solidarity to include critical gas volumes for electricity security of supply. These provisions help avoid that a gas crisis would also become an electricity crisis. The critical gas volumes identified in Annex I of the Solidarity Regulation were calculated on the basis of ENTSO-E simulations of the situation on the electricity market in Q4 2022.

While it is paramount to avoid cascading effects from the gas to electricity sector, excessive volumes under protected customers should be prevented. Inflating the protected volumes would both make the solidarity mechanism less effective, while also increasing the likelihood that solidarity may be requested.

Avoiding that a gas crisis would also become an electricity crisis is an essential provision to keep under the solidarity mechanism. Nevertheless, further methodological and conceptual improvements on how to ensure – and where necessary update - an adequate level of protection, while not diluting the effectiveness of solidarity, could be explored by the co-legislators.

d. Compensation for solidarity

The Gas Security of Supply Regulation stipulates that solidarity has to be provided on the basis of 'fair compensation'. However, agreeing on the necessary financial compensation mechanisms has proven to be an obstacle to concluding bilateral solidarity agreements.

While a limitation of indirect costs is essential, different ways of achieving the goal of limiting excessive costs and ensuring a degree of certainty surrounding compensation could be explored by the co-legislators.

e. Other provisions

The possibility to reduce non-essential consumption of protected customers had been introduced in the Solidarity Regulation to provide more flexibility to Member States to achieve demand reduction in times of crises. This provision can facilitate demand reduction in those Member States who may have an atypical composition of gas consumption, with e.g. a large share of household consumption. This provision is useful to keep beyond the expiration of the Solidarity Regulation, as it provides key flexibility without additional constraints.

In addition, safeguards for cross-border flows were introduced in the Solidarity Regulation. More specifically, this provision would strengthen and simplify an existing procedure of Article 12 of the Gas Security of Supply Regulation, where a back and forth between Commission and Member States may take precious time during an emergency.