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## **CONTRIBUTION**

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**From:** General Secretariat of the Council  
**To:** Working Party on Energy

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**Subject:** HU comments on solidarity in the Hydrogen and Gas Regulation (WK 12559/23)

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Delegations will find in the annex the HU comments on solidarity in the Hydrogen and Gas Regulation (WK 12559/23).

Article 13  
Solidarity

2. A Member State ~~shall~~ ~~may~~ also provide the solidarity measure to another Member State to which it is connected via ~~another Member State, or~~ a third country unless flows are restricted through the third country ~~for another Member State~~. Such an extension of the measure ~~may~~ ~~shall~~ be subject to the agreement of the relevant Member States, who shall involve, as appropriate, the third country through which they are connected.

[Note from the Presidency: the part of the text below in *bold and italics* is already in line 800 to 804 of the General Approach]

3. *A solidarity measure shall be taken as a last resort and shall apply only if the requesting Member State has:*

*(a) declared an emergency state under Article 11;*

*(b) not been able to cover the deficit in gas supply to its solidarity protected customers despite the application of the measure referred to in Article 11(3) [or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 11(7a), the essential volumes of consumption of gas to its solidarity protected customers;]*

*(c) exhausted all market-based measures ('voluntary measures'), all non-market based measures ('mandatory measures') and other measures contained in its emergency plan;*

*(d) notified an explicit request to the Commission and to the competent authorities of all Member States with which it is connected either directly or pursuant to paragraph 2 via a third country [or another Member State], accompanied by a description of the implemented measures referred to in point (b) of this paragraph;*

*[(3a) The Member States which are obliged to provide solidarity pursuant to paragraph 1 shall be entitled to deduct from the solidarity offer the supplies to its solidarity protected customers ~~to the extent essential volumes are affected~~ or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 11(7a), the supplies of the essential volumes of consumption of gas of its solidarity protected customers.]*

*(8a) Where two Member States have not agreed on the necessary technical, legal and financial arrangements by way of a solidarity agreement under paragraph 10, the delivery of gas pursuant to the obligation in paragraph 1 in the event of an emergency shall be subject to the conditions set out in this paragraph.*

The compensation for the solidarity measure shall not exceed reasonable costs and, unless both the Member State requesting solidarity and the Member State providing solidarity agree otherwise, it shall in any event include:

(a) the price for gas in the Member State providing solidarity;

(b) the storage and transport costs, including possible fees resulting from the deviation of LNG cargoes to the interconnection point requested;

(c) litigation costs for related judicial or arbitration proceedings involving the Member State providing solidarity;

Commented [REDACTED]: Hungary does not support indirect solidarity. As a possible compromise we propose indirect solidarity as an option for Member States wishes to apply this.

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Commented [REDACTED]: It is very important for us to remain this as an option for MS.

Commented [REDACTED]: In our view this part of the sentence is unnecessary. In our understanding in the first case the deduction will be the full consumption of solidarity consumers, in the second half, the essential consumption will be subject to deduction.

(d) other indirect costs that are not covered by the price for gas, such as the negative spread of the price for gas in the Member State providing solidarity and the market price in the hub from which the gas is actually sourced, the reimbursement of financial or other damages resulting from enforced firm load shedding of customers related to the provision of solidarity, provided that those indirect costs do not exceed 100 % of the price for gas.

Commented [REDACTED]: the difference of the spread between two markets should also be reflected here.-

Unless the Member State requesting solidarity and the Member State providing solidarity agree on another price, the price for the gas supplied to the Member State requesting solidarity shall correspond to the [day-ahead market price in the Member State providing solidarity the day preceding the request for solidarity or the corresponding day-ahead market price at the closest accessible exchange, at the closest accessible virtual trading point, or at an agreed hub over the day preceding the request for solidarity.]

Compensation for the gas volumes delivered in the context of a solidarity request shall be paid directly by the Member State requesting solidarity to the Member State providing solidarity or the entity both Member States indicate in their response to the solidarity request and the confirmation of receipt and of the volume to be taken.

The Member State to which the request for a solidarity measure is addressed shall provide the solidarity measure as soon as possible and no later than the indicated delivery time for the request. A Member State may refuse to provide solidarity to a Member State requesting solidarity only if it demonstrates that:

Commented [REDACTED]: In our view this is confusing for the TSO of the solidarity requesting Party. We understand and do not question the principle to help as soon as possible, this could go to Preamble, but indicated delivery time is much more clear for the market participants in practice.

- (a) it does not have enough gas for the volumes referred to in Article 2(6); or
- (b) it does not have sufficient interconnection capacity available, as set out in Article 13(7), and it does not have the possibility to provide sufficient volumes of LNG or flows are restricted through a third country or other Member State;

In addition to the default rules provided for in this paragraph, Member States may agree on technical arrangements and coordination of the provision of solidarity.

This paragraph shall be without prejudice to existing arrangements for the safe and reliable operation of the gas system.

(8b) Where two Member States have not agreed on the necessary technical, legal and financial arrangements by way of a solidarity agreement pursuant to paragraph 10, the Member State requesting the application of the solidarity measures shall issue a solidarity request to another Member State, indicating at least the following information:

- (a) contact details of the competent authority of the Member State;
- (b) contact details of the relevant transmission system operators of the Member State (if relevant);
- (c) contact details of the third party acting on behalf of the Member State (if relevant);
- (d) delivery period including timing of the first possible delivery and the anticipated duration of deliveries;
- (e) delivery and interconnection points;
- (f) gas volume in kWh for each interconnection point;
- (g) gas quality.

The solidarity request shall be sent simultaneously to Member States potentially being able to provide solidarity measures, to the Commission and to the crisis managers designated pursuant to Article 10(1), point (g).

The Member States receiving a solidarity request shall send a response that indicates the contact details referred to in paragraph 1, points (a), (b) and (c), and the volume and quality that can be supplied to the interconnection points at the time requested as referred to in paragraph 1, points (d) to (g). The response shall indicate the volume resulting from possible curtailment, or where it is strictly indispensable, release of strategic stocks if the volume that can be supplied by voluntary measures is insufficient.

Solidarity requests shall be submitted at least **[24-72 hours]** before the indicated delivery time for gas transported by pipeline.

The response to solidarity requests shall be effective within **[12-24 hours]**. The confirmation of receipt and of the volume to be taken by the Member State requesting solidarity shall be effective within **[four-24 hours]** of receipt of the solidarity offer.

The request may be submitted for a period of one day or several days, and the response shall match the requested duration.

Where there are several Member States providing solidarity and bilateral solidarity arrangements are in place with one or several of them, those arrangements shall prevail between the Member States having agreed bilaterally. The default rules provided for in this paragraph shall only be applicable in relation to the other Member States providing solidarity.

**{The Commission may facilitate the implementation of solidarity agreements, in particular by means of a template accessible on a secured online platform to enable real-time transmission of requests and offers.}**

**Commented [REDACTED]:** We propose longer deadlines already indicated in existing emergency regulation 2276/2022. We understand that some bilateral agreements contain shorter deadlines, but in our view shorter deadlines will jeopardize the application of such measures, as government level decisions are also involved, those decisions are not made in couple of hours.

10. By 1 December 2024<sup>18</sup>, the Member States shall **make their best endeavours** to adopt the necessary measures, including those agreed in technical, legal and financial arrangements, to ensure that gas is supplied to solidarity protected customers in the requesting Member State in accordance with paragraphs 1 and 2. The technical, legal and financial arrangements shall be agreed among the Member States which are directly connected or, in accordance with paragraph 2, via a third country **[or another Member State]**, and shall be described in their respective emergency plans. Such arrangements may cover, among others, the following elements:

- (a) the operational safety of networks;
- (b) gas prices to be applied and/or the methodology for their setting, taking into account the impact on the functioning of the market;
- (c) the use of interconnections, including bi-directional capacity and underground gas storage;
- (d) gas volumes or the methodology for their setting;
- (e) categories of costs that will have to be covered by a fair and prompt compensation, that may include damages for curtailed industry;
- (f) an indication of the method how the fair compensation could be calculated.

The financial arrangement agreed between Member States before solidarity is requested shall contain provisions that allow for the calculation of the fair compensation of at least all relevant and reasonable costs incurred when providing solidarity and an undertaking that such compensation will be paid.

Any compensation mechanism shall provide incentives to participate in market-based solutions such as auctions and demand response mechanisms. It shall not create perverse incentives, including in financial terms, for market players to postpone their action until non-market-based measures are applied. All compensation mechanisms or at least their summary shall be included in the emergency plans.

[Note from the Presidency: the part of the text below in *bold and italics* is already in line 809 of the General Approach]

***Where a solidarity measure has been provided in accordance with paragraphs 1 and 2, the final amount of the compensation that has been paid by the requesting Member State shall be subject to ex-post control by the Regulatory Authority of the providing Member State and the requesting Member State, within three months of the lifting of the emergency. [Where the national regulatory authorities have not reached an agreement on the calculation of the final amount of compensation, they shall inform the Commission and the Agency [ACER] without delay. In that case, or upon a joint request from the national regulatory authorities, the Agency shall calculate the appropriate level of compensation for the indirect costs occurred as a result of***

**Commented [REDACTED]:** Indirect solidarity is only acceptable as voluntary optional choice of MS.

the provision of solidarity within three months of the date of referral to the Agency. Before performing such a calculation, the Agency shall consult the national regulatory authorities. The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Agency. That additional period shall begin on the day following receipt of the complete information]. *The Requesting Member State shall be consulted and give its opinion on the conclusion of the ex-post control. Following the consultation with the Requesting Member State, the authority which exercises this ex-post control is entitled to require a rectification of the amount of the compensation, taking into account the opinion of the Requesting Member State. The conclusions of this ex-post control shall be transmitted to the European Commission, which will take them into consideration in its report on the emergency pursuant to Article 14(3).*

11. For as long as a Member State can cover the gas consumption for its solidarity protected customers from its own production, it shall be exempt from the obligation to conclude technical, legal and financial arrangements with Member States with which it is directly connected or, in accordance with paragraph 2, via a third country [or another Member State], for the purpose of receiving solidarity. Such an exemption shall not affect the obligation of the relevant Member State to provide solidarity to other Member States pursuant to this Article.

**Commented** [REDACTED]: Hungary is flexible towards the inclusion of ACER procedure. The question is, whether the relevant undertakings or the Member States will be able to start judicial procedure after the ACER procedure. If yes, the ACER procedure does not seem to be a safety net over open ended compensation...