

CEER priorities for the Revision of Regulation 994/2010 concerning measures to safeguard security of gas supply

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1 Introduction

This paper provides an outline of the views and suggestions by European national energy regulatory authorities (NRAs) as regards security of gas supply policy, where it interacts with the design and functioning of natural gas markets. It includes priorities for amendments to the European Commission's proposal for a revised Security of Supply (SoS) Regulation, published on 16 February 2016¹.

The Council of European Energy Regulators (CEER) has long been interested in security of supply. In 2015, CEER issued a response to the European Commission's public consultation². CEER complemented this work in its Concept Paper on Europe's Gas Security of Supply³, with policy recommendations concerning measures to safeguard security of gas supply in both the mitigation and prevention stages.

At this stage of the legislative process, CEER would like to contribute with concrete recommendations which build on CEER's previously advocated view to 'prevent first, then mitigate'. CEER promotes using market-based instruments as long as possible (in the prevention phase), before moving into the mitigation phase (of state interventions via emergency plans).

As argued in CEER's earlier papers (cf. response and concept), CEER fully endorses the role of markets in order to deliver secure gas supplies. In the European gas market model, Member States do not contract gas for their citizens; instead a market approach is applied whereby gas is bought by gas companies in order to meet their contractual commitments with end-users. Moreover, in this market-driven supply of gas, national borders disappear since gas companies operate their contracts and trade gas internationally. This market policy is further encouraged and facilitated by the Third Energy Package and the Network Codes as well as the TEN-E Regulation (Regulation 347/2013).

Full implementation of these legislative packages is a major priority for CEER, in order to move to an effective internal gas market which delivers access to gas according to market principles, and thus contributes to security of gas supply. That being said, the maturity of the market (its organisation and functioning) largely determine the duration of the prevention phase in which gas disruptions are still handled by the market. A well-functioning gas market will ensure a more market-based approach for SoS. In order to encourage the process to move to mature and resilient gas markets everywhere in Europe, it is important to limit possible distortive interference of direct SoS measures as much as possible. Ensuring coherence between the implementation of a European SoS policy and the Third Energy Package and the TEN-E regulation, and making use of synergies between them, is a key concern for CEER.

¹ https://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v10.pdf

² http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/2015/C15-GWG-118-03_EC_SoS_consultation_CEER_final_150407.pdf

³ http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/2015/C15-GWG-122-04_SoS%20concept%20paper_21072015.pdf

If a gas disruption persists after all market tools have been exhausted, the situation can be considered severe and a state mitigation policy will intervene for security of gas supply reasons, as well as for safety reasons and to prevent an escalation of the gas emergency to other key areas (e.g. risk of electricity black-outs). Interconnectivity between Member States and access to liquid gas hubs are the major preventive action points. Once an emergency situation is declared, the infrastructure should allow cross-border solidarity which is based on proportionality, non-discrimination and the coverage of compensation costs.

2 Priority topics

CEER has identified the following priority areas for amendments:

NRA involvement in the implementation of the SoS Regulation

In order to guarantee a coherent implementation of the important European legislative packages (Third Energy Package: NRA responsible; TEN-E Regulation: NRA responsible; SoS Regulation: Competent Authority responsible), CEER believes that NRAs should be involved in the implementation of the SoS regulation as well, and this according to a legal basis. Obviously, these legislative packages are complementary to each other and should be seen in the context of the European Commission's overall efforts to ensure open, competitive and well-connected gas markets.

In general, CEER believes that NRAs can contribute significantly to security of supply considering their role as guardians of market functioning and based on their comprehensive market knowledge. Since NRAs are in many cases not the competent authority for SoS, we encourage the European legislators to strengthen their role in this Regulation. This could be done by involving NRAs in certain tasks that lie close to the competence and knowledge of NRAs:

- Assisting the competent authorities in the drafting of the various plans;
- delegating the task of conducting the entire impact assessment of non-market based measures including the measures to comply with the supply standard and the measures for the increased supply standard acc. to Article 8(4) to NRAs, if the Member State so decides; and
- including NRAs as members or observers in the Gas Coordination Group. This organisational structure of cooperation offers further guarantees for a coherent and efficient implementation of the different gas-related legal acts and synergies throughout Europe.

Regional approach

- **Two-step approach for plans**

CEER supports a mandatory regional approach when drafting the plans. However, CEER believes that regional cooperation, as a first step, should start at the national level (drafting of a national risk assessment, preventive action plan, and emergency plan), which would be complemented by a coordinated regional plan or a coordination of regional elements within the national plans as a second step.

During the legislative process, there should be a discussion on whether the regional dimension should be addressed by drafting separate regional plans or whether the regional aspects should be integrated within the national plans (see proposal for approach of national plans containing regional elements in Annex 1). Regulators could see the value in both approaches, with the main objective being to ensure communication and coordination between countries.

- **Top down composition of regions**

According to Article 12, the principle of solidarity is applied to neighbouring countries. CEER advocates that the application of this principle should be widened to Member States indirectly connected through a non-EU Member State⁴. On the other hand, the plans (risk assessment, preventive action plan, and emergency plan) detailing the interventions in case of emergency should be drafted at regional level in the top-down composition of regions according to Annex I of the current proposal.

In order to be coherent and to enable regional cooperation where it is really needed, we suggest introducing the principle that the regional dimension should be coordinated with the neighbouring countries (directly or indirectly connected through a non-EU Member State). This would either require an amendment of the composition of the regions in Annex I or a more flexible approach towards the definition of the regions.

This neighbourhood approach would avoid the risk of duplication that the European Commission's proposal of the regional set up would bring, whilst ensuring the objective of securing a regional vision being properly reflected in plans. Oversight to ensure this process operates well could be the peer reviews and consultation processes foreseen in the European Commission's proposal.

Already existing larger regions (e.g. BEMIT) should not be hampered to continue their cooperation.

Definition of preventive non-market based measures

Article 8(4) introduces the concept of "preventive non-market measures". However, no definition is given. The only reference can be found in Annex VII, which includes a non-exhaustive list of non-market based SoS measures for the event of an emergency (not in the prevention phase). The European Commission and the co-legislators are asked to provide a definition of such preventive non-market measures in order to avoid confusion when implementing the regulation.

Solidarity Principle

Disconnecting the supply of gas of non-protected customers has a considerable impact and should only be invoked as a last resort when all other measures described in the emergency plan have been exhausted.

If one Member State has declared an emergency and protected customers in that Member State can no longer be supplied, gas supply companies in other Member States could still be in a position to sell gas to companies and/or consumers in the Member State that has declared an emergency, without the need for state intervention. As long as there is still access to gas on a functioning market, no specific solidarity measures are needed since buying and selling on the market is still possible. Intervening at this stage would hamper market functioning and jeopardise the important role of price signals for supply and demand equilibria.

The applicability of the solidarity-clause should therefore be subject to the condition that the Member State who is calling for solidarity meets all its duties under the Regulation, in particular that the use of all measures described in the respective emergency plan is proven and that the technical and commercial terms of the agreement in the emergency plan are met, and is really in a situation of no access to gas sources on any market covering the total need for the protected customers of the Member State calling for solidarity.

⁴ E.g. Italy and France are connected through a pipeline passing Switzerland (non-EU Member State). Italy and France should thus cooperate at regional level, even if they do not share an interconnection point.

Reverse Flows

Regulation 994/2010 entered into force before Regulation 347/2013 (TEN-E Regulation). The TEN-E Regulation presents detailed investment procedures and responsibilities, especially regarding the mechanisms related to the PCI-status and investment requests for cross border cost allocation. CEER believes that in this respect it needs to be ensured that the Reverse Flow obligation is coherent with Article 12 of the TEN-E Regulation. Ideally, the investment procedure foreseen in the SoS proposal should be fully coherent with the investments procedures foreseen in the TEN-E Regulation.

CEER suggests to refer to the procedures laid down in Regulation 347/2013 in Article 4(6) that should be applicable for Reverse Flow projects applying or not for a PCI status. When a project promoter plans to enable bi-directional capacity and submits an investment request for cross border cost allocation, the provisions of Article 12 of Regulation 347/2013 shall be applied. This reference ensures that the correct procedure is being followed: First, the concerned NRAs receive the request for cross border cost allocation and have 6 months' time to take a joint decision. In case they do not find an agreement, the case is referred to the Agency who takes a binding decision within three months.

Annex III, laying down the procedure for enabling bi-directional capacity or seeking exemption is very complicated, adds administrative burden and even bears some contradictions, e.g. potential inconsistency with the TEN-E regulation. Therefore we advocate replacing this new procedure by the procedure laid down in Article 7 of the current Regulation 994/2010. The proposal should also favour certainty of regulation therefore exemptions in place under Reg. 994/2010 should remain in force. The proposal should avoid establishing parallel mechanisms for considering a Reverse Flow project: the one proposed in the revised SoS Regulation for projects not applying for a PCI status and the one foreseen in the TEN-E regulation for projects applying for a PCI status. Coherence is necessary in order to avoid distortive behaviour of promoters by selecting the procedures that best fit them. There is also a regulatory concern in this respect since the NRA is responsible for these investment procedures in the TEN-E regulation while in the proposal it would be the Competent Authority (CA) which is not necessarily the NRA.

Infrastructure standard: 'N-1' formula

The current N-1 formula has a shortcoming since there is no link between the nominator and denominator and unequal technical entry/exit capacities at many Interconnection Points (IPs). Exit-capacities at the border are not considered and therefore there is a danger that the value of the N-1 standard is too high by considering all the entry capacity at the border available for the national market. Subsequently the N-1 index is over-estimated since downstream markets are not covered.

Not only the risk assessment, but also the N-1 formula should consider the amount of gas in storage at the last weeks of the winter season when storage could be almost empty or during days which are statistically the coldest ones in the country or region, e.g. mid-January, or February.

Annex 1 Alternative approach for regional cooperation

An alternative approach to regional cooperation (honouring the European Commission's intention to ensure that regional cooperation is meaningful and effective and that the issues identified in the stress tests are adequately addressed) could be to maintain national plans but introduce a stronger focus on effective cooperation to ensure that regional security of supply aspects are properly addressed in each national plan as they are being developed and reviewed. In addition to this requirement, there would be enhanced oversight (from other relevant Member States and the European Commission) of the cross-border parts of the plans. This would help to ensure that regional cooperation is not a "box-ticking exercise".

At a high level, an example of this process is:

- CAs draft national plans with support of NRAs (risk assessment, preventive action plan and emergency plan).
- National plans must include a detailed section on the regional context and cross-border arrangements in place with relevant Member States (e.g. application of solidarity in case of an emergency). CAs must cooperate in the drafting of their respective regional sections.
- CAs must notify the draft plans to other CAs who can provide comments to the plans
- CAs must take these comments into account prior to submitting the final plans to the European Commission.

This approach must follow a cooperative and coordinated approach with the concerned parties, including NRAs.

Annex 2 List of abbreviations

Term	Definition
Agency	Agency for the Cooperation of Energy Regulators
CA	Competent Authorities
CEER	Council of European Energy Regulators
ENTSO	European Network of Transmission System Operators
IP	Interconnection Point
NRA	National Regulatory Authority
SoS	Security of Supply
TEN-E	Trans European Energy Networks

About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. CEER's members and observers (from 33 European countries) are the statutory bodies responsible for energy regulation at national level.

One of CEER's key objectives is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest. CEER actively promotes an investment-friendly and harmonised regulatory environment, and consistent application of existing EU legislation. Moreover, CEER champions consumer issues in our belief that a competitive and secure EU single energy market is not a goal in itself, but should deliver benefits for energy consumers.

CEER, based in Brussels, deals with a broad range of energy issues including retail markets and consumers; distribution networks; smart grids; flexibility; sustainability; and international cooperation. European energy regulators are committed to a holistic approach to energy regulation in Europe. Through CEER, NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat. This report was prepared by the Security of Supply Task Force of CEER's Gas Working Group.

More information at www.ceer.eu.