

Position Paper

on the Regulation on the Security of Natural Gas Supply (SoS Regulation).

European Regulation on the Security of Gas Supply

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1 Summary

The European Commission presented an evaluation report on the Regulation on the Security of Natural Gas Supply (SoS Regulation) on 16 October 2014, in the scope of the publication of the stress test results (gas supply situation in winter 2014/15). In that report, the implementation of the regulation is assessed and approaches for a reform are identified. The new EU Commission, in office since 1 November 2014, has announced a swift revision of the regulation. In order to prepare for the possible revision of the SoS Regulation, a consultation was launched by the European Commission on 15 January 2015.

This paper sets out the position of BDEW in respect of possible changes to the Natural Gas SoS Regulation and is intended to serve as the basis for a constructive discussion on this important topic.

One of the aims behind the liberalisation of the natural gas markets, which has been continued by the EU in the rules of the third internal market package, was to ensure a secure supply of natural gas. From the perspective of BDEW, there can be no doubt that - as has been the case up to now - the secure supply of natural gas can best be provided through an open, liquid, well-connected and transparent European natural gas market with a range of sources, including storage facilities, intelligent solutions on the consumer side and certainty in the investment environment. The rules of the third internal market package should therefore be completely implemented in all EU member states.

In the opinion of BDEW, the efficient management and expansion of the energy infrastructure in Europe has a key role to play wherever it is required for a functioning internal market. Furthermore, the internal market should be strengthened through an increase in transparency on the basis of existing reporting duties, for example in respect of compliance with the supply standard.

BDEW supports a common European energy policy regarding energy producers from non-EU countries. Politics should, however, continue to adopt a purely supporting role, whilst the companies should have responsibility for negotiating their contracts with partners from non-EU states in future also, in accordance with the liberalised internal market. Therefore, from the perspective of BDEW, no body is needed to organise the purchase of natural gas or other energy sources centrally.

Exhaust existing rules of the Natural Gas SoS Regulation

Generally it should be stressed that the Natural Gas SoS Regulation already provides a broad range of instruments for the achievement of EU-wide infrastructure and supply standards. The decision on the choice of measures should continue to be made at a national level due to the differing conditions in the individual EU member states in relation to market size, dependence on imports, natural gas consumption and gas infrastructure. The proven three stage decision making approach (1st stage: natural gas companies, 2nd stage: member states, 3rd stage: EU) should therefore be maintained. As far as the definition of protected consumers and of the supply standard is concerned, however, each member state should demonstrate transparently that the requirements of the Natural Gas SoS Regulation are met or complied with.

Preserve market mechanisms for as long as possible

To further strengthen the internal market, measures to provide security and emergency relief within the scope of the Natural Gas SoS Regulation should be designed to ensure they preserve market mechanisms as long as possible in the event of a disruption to supply. The introduction of additional emergency mechanisms at a European level should be avoided unless there is a demonstrable necessity and unless an assessment has been made as to the positive effects on security of supply.

Equal treatment is the basis for solidarity

In the opinion of BDEW, an EU member state should only qualify for solidarity assistance once it has adequately fulfilled the supply standard. In developing solidarity mechanisms between the EU member states, compliance with the existing provisions of the Natural Gas SoS Regulation regarding the member states' definition of the group of protected customers is an important step in ensuring that the solidarity requirements on member states during a Europe-wide or regional shortfall do not lead to an unequal treatment of the same type of customer groups. The provisions within the Natural Gas SoS Regulation already form a suitable basis for ensuring that the definition of protected final consumers of gas is as uniform and harmonised as possible on a European level. The provisions should therefore be maintained in their current form.

European coordination in the implementation of the SoS Regulation is to be welcomed

Improved European coordination in respect of the implementation of the provisions of the Natural Gas SoS Regulation (risk assessments, emergency and preventive action plans) is to be welcomed. To achieve this, the European Commission and the Gas Coordination Group, GCG, should be provided with more precise information as to how each member state ensures that, for example, cross border gas flows within the internal market are not (or not unduly) restricted.

In order to improve coordination, it is also necessary for the results of all EU states to be published simultaneously - at least also in English - in particular in respect of the calculation of national infrastructure and supply standards and the consumption assumptions on which they are based as well as in respect of origins of and routes of supply. This could be accomplished, for example, through the creation and publication of a summary of the risk assessments as well as the preventive action and emergency plans by the European Commission.

2 BDEW position in detail

2.1 Security of supply in regulated market conditions

With the Natural Gas SoS Regulation, rules were introduced to guarantee a secure supply of natural gas in order to ensure that the internal market for natural gas works smoothly and is not interrupted. This involved enabling extraordinary measures for use in situations in which the market could no longer provide the necessary natural gas supplies and producing a clear definition and allocation of the responsibilities of natural gas companies, member states and

the European Union for the purposes of prevention and also as a reaction to specific disruptions to supply. These requirements (in particular regarding infrastructure and supply standards) shall be examined in detail by each EU member state in the scope of the national risk assessments. In order to comply with those rules, market based and non-market based measures (Annexes II and III) shall, in line with the Natural Gas SoS Regulation, be assessed and where appropriate implemented and set forth accordingly in the preventive action plan.

2.1.1 Availability of capacity: infrastructure standard & reverse flow

The infrastructure standard describes the obligation of EU member states to ensure that any infrastructure which remains, after disruption of the single largest infrastructure, has sufficient capacity to satisfy a level of daily peak load which has a statistical probability of occurring once every twenty years.

Implementation of the provisions on the infrastructure standard strengthens the EU internal market.

Analyses of the EU internal market reveal that the EU member states or regions which would e.g. be especially affected by a disruption to the Ukrainian transit route are those which do not sufficiently meet the infrastructure standard due to a high dependency on one import route. Even just the consistent implementation of the existing requirements of the Natural Gas SoS Regulation on the level of the EU member states would enable the EU internal market to be significantly strengthened. **In order to strengthen the internal market, the EU member states should therefore ensure they fully implement the requirements regarding the infrastructure standard.** Therefore, an expansion of the gas infrastructure is to be encouraged as part of the necessary action to be taken. However, one must avoid implementing unnecessary and redundant investments as otherwise refinancing problems concerning the already existing infrastructure could not be ruled out. The provisions in the European legal framework on infrastructure (PCI) from 2012 should be sufficient in this context.

Reverse flow can help countries meet the infrastructure standard

Setting up physical reverse flow capacities at selected points can contribute to the strengthening of the infrastructure and thus to the achievement of the infrastructure standard. **The EU member states should therefore create or further develop the possibility for physical reverse flows wherever this serves to achieve the infrastructure standard. The existing rules on cost allocation have proven to be effective and should therefore be maintained.**

Calculation method often does not reflect reality

In the scope of the infrastructure standard, gas demand (D_{max}), for example, is often interpreted as meaning "total domestic gas consumption". As such, the formula totally ignores all export flows. Within the internal market, however, situations of capacity dependency exist between certain nation states which are consequently not taken into account by the infrastructure standard. For example, Sweden is reliant on the use of import capacity from Denmark. A secure supply of natural gas in Switzerland is absolutely dependent on the use of German export capacity at the border interconnection point at Wallbach.

In the opinion of BDEW, therefore, the availability of capacity and situations involving cross border dependency within the EU internal market should be taken into account in the requirements governing the infrastructure standard.

2.1.2 Securing the commodity: supply standard

According to the Natural Gas SoS Regulation, the competent authority in each member state is obligated to define the group of natural gas companies which have a duty to ensure the supply of natural gas to protected customers in the respective member state in the following three cases:

1. extreme temperatures during a seven day peak period with a statistical probability of once in 20 years;
2. a period of exceptionally high gas demand of at least 30 days, occurring with a statistical probability of once in 20 years;
3. for a period of at least 30 days in case of the disruption of the single largest gas infrastructure under average winter conditions.

Greater specification of supply obligations required

In the Natural Gas SoS Regulation, the choice of what measures to employ to secure the gas volumes for protected customers is left to the obligated companies.

In the opinion of BDEW, it should remain in the responsibility of the EU member states to decide on measures for guaranteeing the supply of protected customers. However, each member state should be obligated to provide transparency as to which specific measures it is using to ensure compliance with the supply standard on a national level and how effective those measures are. The basis for this could be, for example, adequate natural gas supply and demand balances, storage levels and capacities. In this way, the probability of a neighbouring state claiming solidarity for the supply of protected customers in another EU member state could be minimised and reduced only to cases in which it is objectively justified. A transparent presentation of compliance with the supply standard enables a more accurate estimation of the probability of an EU member state being called upon to provide solidarity to supply protected customers in a neighbouring state experiencing a crisis. In the opinion of BDEW, an EU member state should qualify for solidarity assistance once it has adequately fulfilled the supply standard.

Extreme scenarios as per the Natural Gas SoS Regulation do provide a suitable framework

Generally, the time periods in the scenarios described in the Natural Gas SoS Regulation represent a suitable framework. In the supply standard, however, the seasonal consumption structure of protected customers should be taken into account to a greater extent. In this context, for example, it is not necessary in summer months to be able to guarantee the same level of supply to protected customers as would be required in winter for peak demand over a period of 30 days occurring with a statistical probability of once every 20 years.

2.2 Security and emergency measures

With the Natural Gas SoS Regulation, in the spirit of solidarity, mechanisms for planning and coordination in emergency situations on the level of EU member states, on the regional level and EU level were defined, in addition to the requirements for a regulated operation of the market (infrastructure and supply standard). The competent authority in each individual EU member state is obligated under Article 10 of the Natural Gas SoS Regulation to create a national emergency plan with measures to eliminate or mitigate the consequences of a disruption of the natural gas supply.

2.2.1 Solidarity in the EU by defining protected customers

On a European level, one cannot totally exclude the possibility that situations might arise in which "non-protected" customers in a member state have to have their use of gas restricted in order to secure the supply of protected customers of a neighbouring state. However, the definition of protected customers is not equally broad in all EU member states. The wording of the Natural Gas SoS Regulation specifically allows such differences.

According to the Natural Gas SoS Regulation, the expression "protected customer" refers to all household customers which are connected to a natural gas distribution network and may also include, if the member state concerned so decides, the following customers:

- a) small and medium-sized enterprises, provided that they are connected to a gas distribution network, and essential social services, provided that they are connected to a gas distribution or transmission network, and provided that all these additional customers do not represent more than 20% of the final use of gas; and/or
- b) district heating installations to the extent that they deliver heating to household customers and to the customers referred to in point (a) provided that these installations are not able to switch to other fuels and are connected to a gas distribution or transmission network.

Solidarity requires equal treatment

The 10th recital in the preamble to the Natural Gas SoS Regulation states: "A wide definition of such protected customers should not conflict with European solidarity mechanisms."

In the opinion of BDEW, to achieve equal treatment in the case of solidarity measures between EU member states becoming necessary, strict compliance with the requirements of the Natural Gas SoS Regulation must be observed when the group of protected customers is defined by each nation. Therefore, an extensive examination is required as to whether the existing national regulations are in line with the European framework definition. BDEW believes that an examination of the national regulations and where necessary a modification thereof would lead, as far as possible, to a uniform or harmonised definition of protected customers in the member states.

The existing slight margin for discretion in the definition of protected customers does make sense due to the individual circumstances existing in the member states; in addition, it does not unduly impede equal treatment in emergency situations. **As far as BDEW is concerned, therefore, no change to the provisions in the Natural Gas SoS Regulation is required.**

However, BDEW does advocate revising the definition of protected customers in Germany, firstly for reasons of practicality and secondly in the context of solidarity assistance and amending Sec. 53a German Federal Energy Industry Act accordingly. Specifically, BDEW proposes extending the group of protected customers to include all customers for whom the GasNZV (German Gas Grid Access Ordinance) prescribes the application of standardised load profiles (maximum annual withdrawal of 1.5 million kWh and maximum withdrawal rate of 500 kWh/h). Furthermore, local and district heating plants (e. g. CHP plants), which supply household customers with heating and cannot switch to other fuels as well as customers who provide essential social services, such as services in the health system together with other social and public welfare services, should be included within the group of protected customers.

This extension of the definition proposed by BDEW is in line with the requirements of the Natural Gas SoS Regulation.

2.2.2 Adjustment of cross-border gas flows

In Germany, transmission system operators are entitled and at the same time obligated, under respective rules in Sec. 16 (2) German Federal Energy Industry Act to adjust gas feed-in and withdrawal, without a contractual basis, in their respective networks as required to maintain system stability. This includes, amongst other things, limiting or fully interrupting gas flows at border interconnection points. At a national level, export flows do not form a part of the group of protected customers. Consequently, there comes a point where the network operators have to prioritise restriction or interruption of those flows over restrictions to the supply of protected customers or defined system-relevant gas-fired power stations.

However, the member states, in particular the competent authority, has an obligation under the Natural Gas SoS Regulation to ensure that

- no measures are introduced which unduly restrict the flow of gas within the internal market at any time;
- no measures are introduced that are likely to endanger seriously the gas supply situation in another member state; and
- cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.

It is unclear when gas flows within the internal market are deemed to be unduly restricted;

It is unclear when the gas supply situation in another member state is deemed to be seriously endangered.

It is unclear from what point the cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 in accordance with the Emergency Plan is deemed to be no longer maintained.

A clear approach to handling export flows can thus not be deduced from the aforementioned provisions of the Natural Gas SoS Regulation.

The Natural Gas SoS Regulation does prescribe a general principle of solidarity in respect of protected customers, however how this should be implemented on an operational level is not described. There is no transparency as to how the interruption or restriction measures affect the natural gas supply of the neighbouring EU member state and whether, for example, an interruption will lead to a supply shortage for protected customers in the neighbouring country.

There is no rule requiring gas supply companies, in particular transmission system operators, to exchange information in advance of any action to determine which measures would unduly restrict the internal market. In the case of crisis, the only information available to TSOs is that which they have as a result of bilateral agreements they have entered into voluntarily.

It is unclear how liability is allocated in the case of cross-border damage resulting from non-market-based measures being applied at border interconnection points, in particular where such measures are employed for the purpose of securing the supply of protected customers in the neighbouring country. No mechanism exists to provide a proper allocation of the costs thereby incurred.

In the opinion of BDEW, European rules should be created which ensure that non-market-based adjustments of cross-border gas flows in shortage situations can be implemented on an operational level. For this purpose, a binding cross-border communication process between the transmission system operators and where appropriate the competent authorities should be introduced, containing obligations to exchange information with the objective of preventing an undue restriction of gas flows within the internal market. A proper restriction at border interconnection points in relation to inland restrictions should be examined and defined on a case by case basis within the communication process.

Furthermore, rules should be developed regarding cost allocation as well as liability, in particular in connection with solidarity assistance.

In order to ensure the principle of solidarity is applied to the treatment of protected customers, compliance with the provisions of the Natural Gas SoS Regulation regarding the member states' definition of protected customers is an important step (see 2.2.1). In the opinion of BDEW, an EU member state should also qualify for solidarity assistance once it has adequately fulfilled the supply standard.

2.2.3 Allocation of measures to the responsible stakeholders

In Germany, Sec. 16 (2) of the Federal Energy Industry Act grants network operators authority to employ sovereign measures stipulated in the Natural Gas SoS Regulation (Annex III):

- enforced increase of gas production levels,
- enforced storage withdrawal and
- enforced firm load shedding.

It should now be examined whether this allocation of authority by the German legislator is the most effective way of achieving the relevant objectives - aside from covering short-term tech-

nical disruptions. Under the Natural Gas SoS Regulation, the use of sovereign, non-market-based interventions is the responsibility of the competent authority (quote from Natural Gas SoS Regulation, Annex III: "the Competent Authority shall consider the contribution of the following [...] list of measures only in the event of an emergency").

In the opinion of BDEW, a clear allocation of the measures to be employed in shortage situations to the responsible stakeholders is absolutely necessary. To this end, it must be ensured that

- 1. in gas shortage situations (i.e. the market area as a whole is under-supplied) which can no longer be managed using market-based measures (Annex II), an emergency will be declared as per the Natural Gas SoS Regulation/Emergency Plan for Gas.**
- 2. in the scope of the emergency level, only the competent authority will be entitled and obligated to employ or enforce the implementation of non-market-based measures (Annex III) according to the Natural Gas SoS Regulation, in particular**
 - enforced increase of gas production levels,**
 - enforced storage withdrawal and**
 - enforced firm load shedding**

in order to remedy a gas shortage situation.

2.2.4 Coordination of measures in shortage situations

The Natural Gas SoS Regulation defines a Gas Coordination Group, GCG. However, it is unclear how the GCG will be able to fulfil its respective consulting and coordination functions in reality.

In the opinion of BDEW, the procedural cooperation should be specified in the scope of the GCG such that the consulting function can be utilised in shortage situations and provide an adequate contribution to crisis management.

3 Assessment of the current contributions to the discussion

In the current discussion surrounding the forthcoming revision of the Natural Gas SoS Regulation various development possibilities have been presented by the European Commission, among others, and BDEW addresses these below.

3.1 Standard formats for the development of consistent preventive action and emergency plans

In its report on the national implementation of the Natural Gas SoS Regulation, the European Commission established that the quality of the emergency and preventive action plans as well as of the risk assessments varies widely. Furthermore, according to the Commission the plans are too focussed on the national level. The Commission therefore proposes the introduction of a binding standard format. Regional cooperations should also be further enhanced through regional plans and risk assessments.

BDEW welcomes more intensive European coordination (e. g. via the GCG) in the scope of updating the national risk assessments and the respective preventive action and emergency plans. **In order to improve coordination, in particular of the emergency plans prior to an emergency situation, BDEW believes that it would be beneficial, as a first step, if all plans as well as the results of the risk assessments in respect of the calculations of the respective national infrastructure and supply standards and the assumptions on which they were based were available publicly, at least also in English. Furthermore, a uniform system of risk analysis should be used as a basis in order to enable a comparability of the results.**

3.2 Extension of the extreme scenarios regarding the supply standard to 60 days

In the current discussion, one proposal is to extend scenarios 2 and 3 (see 2.1.2) on which the supply standard is based from 30 to 60 days.

Generally, the time periods for the scenarios under the Natural Gas SoS Regulation provide a suitable framework. In the supply standard, however, the seasonal consumption structure of protected customers should be taken into account to a greater extent. In this context, for example, it is not necessary in summer months to be able to guarantee the same level of supply to protected customers as would be required in winter for peak demand over a period of 30 days occurring with a statistical probability of once every 20 years.

In the opinion of BDEW, the focus should initially be placed on providing greater detail regarding the duty of care and thus the responsibility to implement the supply standards. Each member state should be obligated to provide transparency as to which specific measures it is using to ensure compliance with the supply standard on a national level and how effective those measures are. The basis for this could be, for example, adequate natural gas supply and demand balances, storage levels and performance.

3.3 Assessment of a Crisis Coordination Centre at EU level

The European Commission proposes, in its evaluation report on the Natural Gas SoS Regulation, to explore the introduction of a so-called Crisis Coordination Centre. The Crisis Coordination Centre should, according to the Commission, be responsible for monitoring European gas flows and within this role be given the necessary tools to:

- undertake real-time monitoring of the gas flows (based on the data of the TSO dispatching centres);
- provide secure communication and information exchange channels between the European Commission, EU member states, TSOs and where appropriate traders/suppliers;
- provide advice or even binding instructions to TSOs in crisis situations regarding the use of emergency measures.

According to the Natural Gas SoS Regulation, the European Commission already has to coordinate the measures of the competent authorities in the case of a Union-wide or regional emergency. In this context, the Commission is urged to consult the GCG regarding, among others, the following questions:

- security of gas supply - at any time and in particular in an emergency situation;
- all information relevant for the national, regional and Union-wide security of gas supply;
- proven procedures and possible guidelines for all affected parties;
- level of security of supply, benchmarks and evaluation methods;
- national, regional and Union-wide scenarios and assessment of the degree of preparedness;
- assessment of the preventive action and emergency plans and the implementation of the measures they foresee;
- coordination of the emergency measures within the Union, with third countries, the parties to the Treaty Establishing the Energy Community and with other third countries;
- help for the most affected member states.

Furthermore, the Commission can convene a crisis management group as per the Natural Gas SoS Regulation, comprising the crisis managers of the member states affected by an emergency situation and where necessary other relevant stakeholders.

As far as BDEW is concerned, no extension of the European Commission's mandate in terms of crisis situations is required. Rather, the procedural cooperation should be specified in the scope of the GCG such that the consulting function can actually be utilised in shortage situations and provide an adequate contribution to crisis management.

4 Annex: BDEW on the consultation questions of the European Commission

4.1 Prevention

4.1.1 Infrastructure

1. *Is the current N-1 rule fit to ensure a sufficient level of infrastructure for security of supply purposes or do you believe that an alternative measure replacing the N-1 standard should be investigated (e.g. broader infrastructure adequacy assessment at regional or pan-European level similar to e.g. ENTSOG Winter Outlook)?*

In order to strengthen the internal market, the EU member states should in particular also fully implement the requirements regarding the infrastructure standard. Insofar as it is required for the achievement of the standard, an expansion of the gas infrastructure is also to be encouraged. However, one must avoid implementing unnecessary and redundant investment as otherwise, amongst other things, refinancing problems concerning the already existing infrastructure could not be ruled out. The possibility for physical reverse flows should be created or further developed wherever this serves to achieve the infrastructure standard. In the opinion of BDEW, the availability of capacity and situations involving cross-border dependency within the internal market should be taken into account in the requirements governing the infrastructure standard.

2. *Is a regional approach to N-1 needed? If so, in which cases would it be appropriate and how should regions be defined?*

Generally, the requirements of the Natural Gas SoS Regulation and thus also of the infrastructure standard should be met on the level of the EU member states. However, there are exceptional situations, for example in Ireland and the UK, which justify a regional approach. In principle, the infrastructure standard must serve the purpose of creating sufficient technical redundancy within the infrastructure through appropriate infrastructure investment.

3. *Do you believe that reverse flow is offered at all points where it is needed? If not, why (what are the main obstacles)? At what points could it increase supply security in a tangible manner?*

In Germany, the possibility for physical reverse flows has been created and is maintained at the appropriate points.

4. *As concerns exemptions from the reverse flow obligation:*

a) *Should these provisions be clarified and/or strengthened?*

No.

b) *Should the relevant authority analyse the benefits of reverse flows along the whole transportation corridor?*

Yes, a thorough analysis in this area should generally be used as the basis for the decision on having an exemption from the obligation to enable physical reverse flows.

- c) *Should affected Member States even beyond the immediate borders be involved in the assessment?*

Yes, the reverse flow decisions can significantly influence the EU internal market across several countries.

5. *Is the current review possibility - every two years, in the framework of the revised Risk Assessment - sufficient or should there be more regular checks whether market conditions justify an exemption?*

The two-year cycle of reviews is sufficient.

4.1.2 Improvement of the risk assessments and harmonisation of the preventive action plans

6. *Are the Risk Assessments and Preventive Action Plans in the current format satisfactory means for identifying and preparing for supply risks? What core elements could a possible template for the Risk Assessment and a Preventive Action Plan contain (e.g. concrete harmonised scenarios to be addressed, similar to the Energy Stress Tests, etc.)?*

In order to improve coordination, BDEW believes that it would be beneficial as a first step and possibly sufficient if the preventive action plans as well as the results of the risk assessments in respect of the calculations of the respective national infrastructure and supply standards and the assumptions on which they were based were available publicly, at least also in English. Furthermore, a uniform system of risk analysis should be used as a basis in order to enable a comparability of the results.

7. *How can the existing cooperation obligation be improved?*

- a) *Do you think that regional plans for Risk Assessments and Preventive Action Plans should be obligatory in the EU or at least in certain regions? If you believe that regional plans should be introduced: how should the regions be defined (e.g. criteria, who should coordinate the process)?*

Generally, the requirements of the Natural Gas SoS Regulation and thus also of the creation of a risk assessment and a preventive action plan should be met at the level of the EU member states. However, there are exceptional situations, for example in Ireland and the UK, which justify a regional approach. In such cases, the overall requirements should be extended to apply to the selected region as a whole. In addition to the standards, it would then be consistent to implement and develop the risk report and the plans at a regional level.

- b) *Should – at least in vulnerable regions – an obligation to agree on how to share gas in case of a supply crisis with neighbours with whom a common supply infrastructure is shared be included in the plans?*

If a regional approach is chosen, within the region a cross-national handling of the requirements of the Natural Gas SoS Regulation must be ensured. This applies in particular in connection with the infrastructure standard and the protected customers as well as in connection with the supply standard.

8. *Do you have proposals to simplify the administrative procedure for the Risk Assessments and Preventive Action Plans (and Emergency Plans), e.g. in terms of translation or alignment of the timelines? Should Risk Assessments, Preventive Action Plans (and, possibly, the Emergency Plans) be merged into one document and the procedural rules aligned respectively?*

An integration of the risk report and the prevention plan seems to make sense as a direct connection should be created between the content of those instruments.

4.1.3 Supply standard

4.1.3.1 Level of protection

9. *Do you think the current supply standard is defined and set appropriately with a view to ensuring that the objective of securing supplies to protected customers is met, sufficiently taking into account differences in terms of vulnerability between Member States? Please substantiate your reply. In case you do not think that the supply standard is defined or set appropriately: what alternative design/tools could be envisaged to ensure the gas supply to protected customers? Please substantiate your reply.*

In the opinion of BDEW, each member state should be obligated to provide transparency as to which specific measures it is using to ensure compliance with the supply standard on a national level and how effective those measures are. The basis for this could be, for example, adequate natural gas supply and demand balances, storage levels and performance.

10. *Do you think that the scenarios defined for the calculation of the standard in Article 8(1) (a) to (c) are still valid (for all Member States) or should they be modified? Please substantiate your reply.*

Generally, the time periods in the scenarios described in the Natural Gas SoS Regulation represent a suitable framework. In the supply standard, however, the seasonal consumption structure of protected customers should be taken into account to a greater extent. In this context, for example, it is not necessary in summer months to be able to guarantee the same level of supply to protected customers as would be required in winter for peak demand over a period of 30 days occurring with a statistical probability of once every 20 years.

11. *Do you think that increased standards (e.g. manifested in longer and more severe disruption scenarios) would be beneficial or could ultimately jeopardize the security of*

supply in other Member States by reducing the liquidity in gas markets? Please substantiate your reply.

Generally, the time periods in the scenarios represent a suitable framework. In the opinion of BDEW, the focus initially should be placed on providing greater detail regarding the duty of care and thus the responsibility to implement the supply standards. Each member state should be obligated to provide transparency as to which specific measures it is using to ensure compliance with the supply standard on a national level and how effective those measures are. The basis for this could be, for example, adequate natural gas supply and demand balances, storage levels and performance.

4.1.3.2 Implementation and enforcement

12. *Do you think that the result-oriented approach should be maintained or should the supply standard become more prescriptive in how the implementation and enforcement should be carried out? Please substantiate your reply, taking into account the effects on prices, liquidity, competition and security of supply.*

In the opinion of BDEW, it should remain in the responsibility of the EU member states to decide on measures for guaranteeing the supply of protected customers. However, each member state should be obligated to provide transparency as to which specific measures it is using to ensure compliance with the supply standard on a national level and how effective those measures are. The basis for this could be, for example, adequate natural gas supply and demand balances, storage levels and performance.

13. *To what extent can a more active role of the Competent Authorities in the monitoring of the supply standard contribute to resolve the identified issues, notably should the Competent Authorities permanently verify that measures/means to meet the standard put forward by undertakings are appropriate? If so, how can this practically be realized, without unnecessarily limiting cross-border trades and liquidity?*

Continuous monitoring would be a conceivable way to create transparency regarding adherence to the supply standard. However, it should be left to the member states to set out how the supply standard will be met.

14. *Should all undertakings be treated equally or should for instance small undertakings be exonerated from the obligation to comply with the supply standard? Please substantiate your reply.*

The Natural Gas SoS Regulation should treat all suppliers of protected customers equally.

4.1.3.3 Measures to achieve the standard

15. *Do you think the supply standard should be met by the undertakings responsible as a “going concern” in the context of their regular, day-to-day supply activities? Please substantiate your reply.*

Yes, the supply standard should be met at all times through the cooperation of all market participants.

16. *To what extent can normal market conditions be relied upon by the undertakings responsible to ensure that they will meet the supply standard even in case of supply disruptions?*

The BDEW believes there can be no doubt that - as has been the case until now - the secure supply of natural gas can best be provided through an open, liquid, well-connected and transparent European natural gas market with different sources of supply including storage facilities, intelligent solutions on the demand side and with a certain investment climate.

As a rule, the market will provide protection against supply interruptions. However, if market failure nevertheless occurs, the defined security and crisis mechanisms will take effect.

17. *How can the ability of undertakings to supply protected customers be checked in a "hub-based" gas world in practice, in particular:*

- a) *To what extent can (long and/or short term) spot market contracts be checked in a "hub-based" gas world in practice?*
- b) *How can a monitoring system avoid detrimental effects from disproportionate guarantees/certificates for future supplies?*
- c) *Under what circumstances can a monitoring system based on incentives/sanctions (i.e. without ex ante checks and guarantees) such as described in Box 1 be effective? If so, what role should competent authorities have under this approach?*

The supply of protected end consumers is also based on commercial contracts. Monitoring the ability to comply with commercial agreements requires checks of contracts concluded across the entire supply chain from producer to end consumer. As these contracts are concluded in a competitively organised market situation with liquid trading points (VTPs) increasingly at short notice, such checks are inherently becoming increasingly difficult.

18. *In order to protect the level playing field on the market, it may be appropriate to entrust the transmission system operator with the role of supplier of last resort under certain predefined circumstances and in compliance with strict criteria. To what extent would such an approach be commendable in your home market (please indicate which market that is)?*

The Natural Gas SoS Regulation should allow for national solutions, but not exclude or preempt them. If a member state uses measures within the meaning of the requirements of the Regulation, these must be set forth in the preventive action plan.

19. *The current supply standard obligation under Article 8 and 2(1) of the Regulation is a national obligation. Is the current approach sufficiently open to cross-border solutions*

or could a "regional" approach to the supply standard for protected customers be considered in the Regulation?

Generally, the requirements of the Natural Gas SoS Regulation and thus also of the supply standard should be met on the level of the EU member states. There are, however, exceptional situations, for example in Ireland and the UK, which justify a regional approach. In such cases, the overall requirements should be extended to apply to the selected region as a whole. It would then be consistent to fulfil the supply standard on a regional level also thus enabling cross-border solutions.

20. Please provide your substantiated view relative to the various implementation forms of the supply standard currently in use throughout the EU today. Please indicate your experience with these measures (i.e. storage obligations, strategic stocks, diversification obligations) and consider factors such as overall costs, effectiveness, enforceability, impact on market, competition and prices and compatibility with other SoS measures.

Insofar as individual member states, taking into account the individual circumstances of that member state as far as market size, dependence on imports, natural gas consumption and gas infrastructure, decide to implement a supply obligation as a short term remedy for a local gas scarcity situation, this should be designed to be as market-based as possible. In particular, supply obligations should be issued in line with the rules of the EU internal market, should be non-discriminatory as regards the market participants, they should not lead to unreasonable additional costs for consumers, should not lead to unintended behaviour on the part of market participants, which could potentially counteract the intention of the measures and they should not cause market roles to be conflated. Gas storage facilities also play a central role in the supply efforts.

21. Which role could LNG play in situations where the market cannot be relied upon to fulfil the supply standard:

a) Can it play a role in effectively addressing an emergency situation? If so, in what form?

Sources of supply are chosen through means of a functioning internal market. As such, LNG volumes are also available on a commercial market basis. How quickly LNG is available in crisis situations is dependent on the logistics supply chain.

b) What are the main barriers for LNG to play such a role (e.g. destination clauses, transparency, price)?

European LNG import capacities have not been fully utilised in recent years due to price developments.

22. The range of available measures to ensure the supply standard is much wider in mature markets than in non-mature markets, where further regulatory interventions may be required:

- a) *Do you agree that there could be a need to differentiate between mature and non-mature markets for meeting the supply standard? If so, how should mature and non-mature markets be defined?*

The requirements of the supply standard should apply equally to all member states. In the opinion of BDEW, it should remain in the responsibility of the EU member states to decide on measures for guaranteeing the supply of protected customers.

Depending on the maturity of the market, the measures chosen could differ. Mature markets differ from less mature markets in, amongst other things, the level of competition. The different levels can be seen, for example, in the number of market participants, competition on the wholesale market, the number of suppliers, sufficient diversification in the infrastructure as well as in the sources and routes of supply.

- b) *Do you think that an obligation of diversification for those Member States that are highly dependent on one single supplier should be considered and what would be an appropriate level of diversification (e.g. a percentage or a minimum number of sources)?*

Sources of supply are chosen through means of a functioning internal market. Therefore, an expansion of the gas infrastructure (diversification of sources and routes of supply) is to be encouraged as part of the necessary action to be taken, in the interests, amongst other things, of security of gas supply.

23. *How can regional solutions be fostered where they are more efficient than individual national solutions? Should legal measures (e.g. obligation to evaluate regional solutions) be considered? How should the costs of such regimes be shared?*

The Natural Gas SoS Regulation defined minimum requirements of a secure natural gas supply. It is primarily the gas supply companies who are responsible for the necessary measures and the necessary investment. The member states have merely a secondary role with the role of the EU in third place behind that. The proven three-stage community mechanism should be maintained for the measures to be implemented under the Natural Gas SoS Regulation. The existing instruments should be applied individually in accordance with the rules in the respective member state.

There are exceptional situations, for example in Ireland and the UK, which justify a regional approach. In these cases, the costs should be borne by the parties for whom this approach produces a benefit.

24. *How could a coordinated gas reserve mechanism be designed:*

- a) *How could a mechanism that pools gas storage ("virtual" shared reserve) across Member States be designed? Please describe such mechanism in detail.*

To further strengthen the internal market, measures to provide security and emergency relief within the scope of the Natural Gas SoS Regulation should

be designed to ensure they preserve market mechanisms as long as possible in the event of a disruption to supply. The introduction of additional emergency mechanisms at a European level should be avoided unless there is a demonstrable necessity and unless an assessment has been made as to the positive effects on security of supply.

- b) *Is there a need for joint gas or LNG purchasing agreements between different gas companies? Do you see rather benefits or risk of such joint purchases in an emergency situation?*

BDEW supports a common European energy policy regarding energy producers from non-EU countries. Politics should, however, continue to adopt a purely supporting role, whilst the companies should have responsibility for negotiating their contracts with partners from non-EU states in future also, in accordance with the liberalised internal market. Therefore, from the perspective of BDEW, no body is needed to organise centrally the purchase of natural gas or other energy sources.

- c) *Should such mechanisms be regional or is there a case for an EU-wide mechanism? Who would be the actors in such systems and what would be their role (companies, Member States, EU)?*

Companies should continue to have responsibility in future for negotiating their contracts with partners from non-EU states, in accordance with the liberalised internal market.

25. *Do you agree with the possible conditions for non-market-based measures listed below? Which conditions would you add or delete?*

- *they can only be used when it is demonstrated that gas traders are not able to provide the necessary supply standard.*
- *they can only be used at a national level if no solutions for shared use of storage resources with other Member States is possible*
- *it should be ensured that the measure is open to participation of suppliers from other countries.*
- *the capacities should be acquired on a non-discriminatory basis (tender) and should take into account cross-border sources of flexibility.*
- *the TSO(s) is most likely to be the best placed person to acquire such means given his control over the system, overview of the flows and independence.*

Agreement with criteria 1-4. As far as the 5th criterion is concerned, the TSO is the party which implements the non-market-based measures. In emergency situations, the implementation should in part occur on the basis of rules set out by the competent authority (see Chapter 2.2.3.). The TSOs make the necessary information available.

Furthermore, the following aspects should be taken into account when considering or introducing non-market-based measures:

- no conflation of market roles,
- avoidance of unintended behaviour on the part of market participants, which could counteract the intention of the non-market-based measures.
- avoidance of unreasonable additional costs for end customers.

26. *Should the distinction between market-based and non-market-based measures be further clarified? Should the use of non-market-based measures be restricted, for instance by being made subject to the fulfilment of certain criteria and regulatory oversight?*

It should generally be stressed that the Natural Gas SoS Regulation already provides a broad range of instruments for the achievement of EU-wide infrastructure and supply standards. The decision on the choice of measures should continue to be made at a national level due to the differing conditions in the individual EU member states in relation to market size, dependence on imports, natural gas consumption and gas infrastructure. The proven three-stage community mechanism (1st stage: natural gas companies, 2nd stage: member states, 3rd stage: EU) should therefore be maintained.

4.2 Crisis precautions and crisis management

4.2.1 Protected customers and solidarity

27. *Concerning the definition of protected customers:*

- a) *Do you believe that there is a need for a more harmonized definition of protected customers and their consumption? Please substantiate your answer.*

As far as BDEW is concerned, no change to the provisions in the Natural Gas SoS Regulation is required. In order to achieve equal treatment in the case of solidarity measures between EU member states becoming necessary, however, strict compliance with the requirements of the Natural Gas SoS Regulation must be observed when the group of protected customers is defined by each nation. Therefore, an extensive examination is required as to whether the existing national regulations are in line with the European framework definition.

- b) *Should the definition of protected customers be stricter in order to avoid that single Member States declare almost all customers as protected?*

The existing slight margin for discretion in the definition of protected customers does make sense due to the individual circumstances existing in the member states; in addition, it does not unduly impede equal treatment in emergency situations. As far as BDEW is concerned, therefore, no change to the provisions in the Natural Gas SoS Regulation is required. However, an extensive examination is required as to whether the existing national regulations are in line with the European framework definition.

- c) *What do you think about a regional definition of protected customers (e.g. in closely interdependent areas)?*

Generally, the requirements of the Natural Gas SoS Regulation and thus also the definition of protected customers should be met on the level of the EU member states. There are, however, exceptional situations, for example in Ireland and the UK, which justify a regional approach. In such cases, the overall requirements should be extended to apply to the selected region as a whole. It would then be consistent to define protected customers at a regional level.

28. *In some 'meshed' distribution grids it is technically difficult to make a physical separation between protected and non-protected customers: What could be a solution to limit the protection to the actually protected customers (e.g. orders to non-protected DSO-connected customers not to consume gas, shielded by sanctions, etc.)?*

In order to achieve equal treatment in the case of solidarity measures between EU member states becoming necessary, however, strict compliance with the requirements of the Natural Gas SoS Regulation must be observed when the group of protected customers is defined by each nation.

29. *Do you see merits in laying down one or more of the following solidarity measures:*

- a) *an obligation on Member States to agree upfront on bilateral or multilateral crisis measures to deal with imminent disruptions of protected customers (e.g. sharing of costs, roles and responsibilities, etc.), in order to prevent alleged "free-riding";*
- b) *a prohibition for Member States to close their borders or reduce interconnection capacity in case protected customers on the other side of the border are still at risk (combined with efficient provisions against "free-riding" such as upfront agreements, see a))?*
- c) *What other solidarity measures do you believe can improve levels of security of supply without unnecessarily impacting market functioning?*

In the opinion of BDEW, European rules should be created which ensure that non-market-based adjustments of cross-border gas flows in shortage situations can be implemented on an operational level. For this purpose, a binding cross-border communication process between the transmission system operators and where appropriate the competent authorities should be introduced, containing obligations to exchange information with the objective of preventing an undue restriction of gas flows within the internal market. A proper restriction at border interconnection points in relation to inland restrictions should be examined and defined on a case by case basis within the communication process.

Furthermore, rules should be developed regarding cost allocation as well as liability, in particular in connection with solidarity assistance.

4.2.2 Emergency plans

30. *Do you agree that the development of emergency plans at regional level would be an appropriate way to ensure consistency and to enable preparation to react to common and correlated risks? How should the regions for security of gas supply be best defined? Please substantiate your reply.*

a) *Should mandatory regional emergency plans complement the national emergency plans or replace them?*

In order to improve coordination, in particular of the emergency plans prior to an emergency situation, BDEW believes that it would be beneficial as a first step and possibly sufficient if all plans, as well as the results of the risk assessments in respect of the calculations of the respective national infrastructure and supply standards and the assumptions on which they were based were available publicly, at least also in English.

b) *Do you think that a template for regional emergency plans would ensure that more detailed and relevant information is provided (e.g. similar to the template used in the recent Energy Stress Tests)?*

See 30. a).

4.2.3 Declaration of an emergency

31. *Do you agree with the introduction of a threshold based mechanism or more specific indicators to trigger the declaration of the different crisis levels? Please substantiate your answer.*

The transition from alert level to emergency level should be clearly defined. In the opinion of BDEW, it is important to ensure that in gas shortage situations (i.e. a market area as a whole is under-supplied) which can no longer be managed using market-based measures (Annex II), an emergency level will be declared as per the Natural Gas SoS Regulation and the Emergency Plan for Gas.

32. *Should the right for Member States to intervene in markets through non market-based measures be extended to alert-level situations or remain limited to emergency situations? Should the list of possible non market-based measures in Annex III of the Regulation be changed or clarified?*

An intervention by the competent authorities of the EU member states with non-market-based measures should remain limited to the emergency level only. In the opinion of BDEW, it should be ensured that in the scope of the emergency level, only the competent authority will be entitled and obligated to employ or enforce the implementation of non-market-based measures (Annex III) according to the Natural Gas SoS Regulation, in particular

- enforced increase of gas production levels,
- enforced storage withdrawal and
- enforced firm load shedding

in order to remedy a gas shortage situation.

33. *Should the declaration of national emergencies be subject to an appeal mechanism, e.g. to the Commission? Should the Commission's recommendation on the national measure have a binding character?*

As far as BDEW is concerned, no extension of the European Commission's mandate in terms of crisis situations is required.

34. *Is the current allocation of responsibilities and tasks among the Commission, Member States, TSOs and natural gas undertakings in a Union or regional emergency in the Regulation clear enough? Do you see a specific role for ENTSOG or the Gas Coordination Group in a Union or regional emergency? Please substantiate your answer.*

The defined allocation of responsibilities on a European level in the scope of the Natural Gas SoS Regulation is clear and appropriate. However, the procedural cooperation should be specified in the scope of the GCG so that the consulting function to the European Commission can actually be utilised in shortage situations and provide an adequate contribution to crisis management.

35. *Should clearer rules be introduced on the consequences of declaring regional emergency for those Member States where the market is still functioning?*

No, rather the procedural cooperation should be specified in the scope of the GCG such that the consulting function can actually be utilised in shortage situations and provide an adequate contribution to crisis management.

36. *The Regulation currently foresees the possibility to declare only an "emergency" at regional or Union level: Do you see a need for an additional regional/EU-wide "early warning" or "alert" level?*

When initial indications of a potential crisis are apparent, information at an early stage would be helpful. However, this early warning should not necessarily be designated a crisis level or formalised in any way.

37. *Should the Commission have more sophisticated information tools (e.g. a broader vision of actual gas flows in certain regions) and investigative powers in and before a regional /EU-wide emergency at its disposal in order to have the necessary information available to assess the cross-border effects of the national measures?*

The information obligations already defined in the Natural Gas SoS Regulation are sufficient.

38. *Should an obligation for the regional coordination of decisions in a regional /EU-wide emergency be created?*

BDEW welcomes more intensive European coordination (e. g. via the GCG) in the scope of updating the national risk assessments and the respective preventive action and emergency plans. In order to improve coordination, in particular of the emergency plans prior to an emergency situation, however, BDEW believes that it would be beneficial as a first step and possibly sufficient if all plans, as well as the results of the risk

assessments in respect of the calculations of the respective national infrastructure and supply standards and the assumptions on which they were based were available publicly, at least also in English.

39. *Are the Commission powers in case of a regional or EU-emergency sufficient or should they be increased in view of the experience with previous crises? Do we need a separate emergency body for the coordination at regional or European level?*

As far as BDEW is concerned, no extension of the European Commission's mandate in terms of crisis situations is required. Rather the procedural cooperation should be specified in the scope of the GCG such that the consulting function can actually be utilised in shortage situations and provide an adequate contribution to crisis management.

40. *Should the emergency procedures of different transmission system operators be aligned in order to ensure more effective and efficient response to cross-border emergencies?*

In the opinion of BDEW, European rules should be created which ensure that non-market-based adjustments of cross-border gas flows in shortage situations can be implemented on an operational level. For this purpose, a binding cross-border communication process between the transmission system operators and where appropriate the competent authorities should be introduced, containing obligations to exchange information with the objective of preventing an undue restriction of gas flows within the internal market. A proper restriction at border interconnection points in relation to inland restrictions should be examined and defined on a case by case basis within the communication process.

Furthermore, rules should be developed regarding cost allocation as well as liability, in particular in connection with solidarity assistance.

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