

## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) No 994/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 20 October 2010****concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having consulted the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Natural gas (gas) is an essential component in the energy supply of the European Union, constituting one quarter of primary energy supply and contributing mainly to electricity generation, heating, feedstock for industry and fuel for transportation.
- (2) Gas consumption in Europe has increased rapidly during the last 10 years. With decreasing domestic production, gas imports have increased even more rapidly, thus creating a higher import dependence and the need to

address security of gas supply aspects. In addition, some Member States find themselves on a gas island as a result of an absence of infrastructure connections with the rest of the Union.

- (3) Given the importance of gas in the energy mix of the Union, this Regulation aims at demonstrating to gas customers that all the necessary measures are being taken to ensure their continuous supply, particularly in case of difficult climatic conditions and in the event of disruption. It is recognised that these objectives should be achieved through the most cost-efficient measures in order not to affect the relative competitiveness of this fuel compared to other fuels.
- (4) Council Directive 2004/67/EC <sup>(3)</sup> established for the first time a legal framework at Community level to safeguard security of gas supply and to contribute to the proper functioning of the internal gas market in the case of supply disruptions. It established the Gas Coordination Group which has been useful to exchange information and define common actions between Member States, the Commission, the gas industry and consumers. The Network of Energy Security Correspondents endorsed by the European Council in December 2006 has improved the capacity to collect information and has provided early warning of potential threats to the security of energy supply. The new internal energy market legislation adopted by the European Parliament and the Council in July 2009 constitutes an important step to complete the internal energy market and has an explicit objective to enhance the Union's security of energy supply.
- (5) However, under the current measures regarding the security of gas supply that have been taken at Union level, Member States still enjoy a large margin of discretion as to the choice of measures. Where the

<sup>(1)</sup> Opinion of 20 January 2010 (not yet published in the Official Journal).

<sup>(2)</sup> Position of the European Parliament of 21 September 2010 (not yet published in the Official Journal) and decision of the Council of 11 October 2010.

<sup>(3)</sup> OJ L 127, 29.4.2004, p. 92.

security of supply of a Member State is threatened, there is a clear risk that measures developed unilaterally by that Member State may jeopardise the proper functioning of the internal gas market and the supply of gas to customers. Recent experience has demonstrated the reality of that risk. In order to allow the internal gas market to function even in the face of a shortage of supply, it is necessary to provide for solidarity and coordination in the response to supply crises, both concerning preventive action and the reaction to concrete disruptions of supply.

- (6) Low calorific gas is supplied in certain regions in the Union. Given its characteristics, low calorific gas cannot be used in appliances designed for high calorific gas. It is, however, possible to use high calorific gas in appliances designed for low calorific gas, provided that it has been converted into low calorific gas, for instance by adding nitrogen. The specificities of low calorific gas should be considered at national and regional levels and should be taken into account in the risk assessment and the Preventive Action and Emergency Plans at national and regional levels.
- (7) The diversification of gas routes and of sources of supply for the Union is essential for improving the security of supply of the Union as a whole and its Member States individually. Security of supply will depend in the future on the evolution of the fuel mix, the development of production in the Union and in third countries supplying the Union, investments in storage facilities and in the diversification of gas routes and of sources of supply within and outside the Union including Liquefied Natural Gas (LNG) facilities. In this context particular attention should be given to priority infrastructure actions as identified in the Commission communication of 13 November 2008 entitled 'Second Strategic Energy Review — An EU energy security and solidarity action plan', e.g. the southern gas corridor (Nabucco and Interconnector Turkey Greece Italy), a diversified and adequate LNG supply for Europe, effective interconnection of the Baltic region, the Mediterranean Energy Ring and adequate north-south gas interconnections within central and south-east Europe.
- (8) In order to reduce the impact of potential crises triggered by the disruption of gas supplies, Member States should facilitate the diversification of energy sources and gas delivery routes and supply sources.
- (9) A major disruption of gas supply to the Union can affect all Member States, the Union as a whole and Contracting Parties to the Treaty establishing the Energy Community<sup>(1)</sup>, signed in Athens on 25 October 2005. It can also lead to severe economic damage across the Union's economy. Likewise, the disruption of gas supply can have a severe social impact, in particular on vulnerable groups of customers.
- (10) Certain customers, including, inter alia, households and customers providing essential social services such as healthcare and childcare activities, educational activities and other social and welfare services as well as services indispensable for the functioning of a Member State, are particularly vulnerable and might need protection. A wide definition of such protected customers should not conflict with European solidarity mechanisms.
- (11) The Report on the Implementation of the European Security Strategy approved by the European Council in December 2008 highlights the growing reliance on imported energy as a significant additional risk for the Union's security of energy supply and stresses energy security as one of the new challenges for security policy. The internal gas market is a central element to increase the security of energy supply in the Union and to reduce the exposure of individual Member States to the harmful effects of supply disruptions.
- (12) For a well functioning internal gas market it is essential that measures taken to safeguard the security of gas supply do not unduly distort competition or the effective functioning of the internal gas market.
- (13) The failure of the single largest gas infrastructure, the so-called N – 1 principle, is a realistic scenario. Using the failure of such an infrastructure as a benchmark of what Member States should be able to compensate is a valid starting point for an analysis of the security of gas supply of each Member State.
- (14) Sufficient and diversified gas infrastructure within a Member State and across the Union, including in particular new gas infrastructure connecting current isolated systems forming gas islands to their neighbouring Member States, is essential for tackling supply interruptions. Common minimum criteria on security of gas supply should ensure a level playing field for security of gas supply while taking into account national or regional specificities and should create significant incentives to build the necessary infrastructure and to improve the level of preparedness in case of crisis. Demand-side measures such as fuel switching may have a valuable role to play in ensuring energy security where they can be applied quickly and reduce demand appreciably to react to a supply disruption. The efficient use of energy should be further promoted, in particular where demand-side measures are needed. The environmental impact of the proposed demand and supply-side measures should be taken into due account and preference should be given as far as possible to measures with the least impact on the environment while taking into account security of supply aspects.

<sup>(1)</sup> OJ L 198, 20.7.2006, p. 18.

- (15) Investments in new gas infrastructure should be strongly promoted and should be effected only after an appropriate environmental impact assessment, in accordance with the relevant legal acts of the Union. Such new infrastructure should enhance the security of gas supply while ensuring the proper functioning of the internal market in gas. Investments should as a matter of principle be made by undertakings and be based on economic incentives. Due account should be taken of the need to facilitate the integration of gas from renewable energy sources into the gas network infrastructure. Where an infrastructure investment is of cross-border nature the Agency for the Cooperation of Energy Regulators (the Agency) established by Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>(1)</sup> and the European Network of Transmission System Operators for Gas (the ENTSO for Gas) established by Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks<sup>(2)</sup> should be closely involved, within the areas of their respective competences, in order to take better account of the cross-border implications. It is recalled that, in accordance with Regulation (EC) No 713/2009, the Agency may issue opinions or recommendations on cross-border issues within its area of competence and activity. The Agency and the ENTSO for Gas, together with other market participants, play an important role in the establishment and implementation of the Union-wide 10-year network development plan which will include, inter alia, a European supply adequacy outlook and, regarding cross-border interconnections, should, inter alia, build on the reasonable needs of different network users.
- (16) The Competent Authorities or the Member States should ensure that the gas market is tested as one of the necessary steps in the course of the process leading to compliance with the infrastructure standard.
- (17) In carrying out the tasks specified in this Regulation, the Competent Authorities should closely cooperate with other relevant national authorities, in particular national regulatory authorities, as appropriate and without prejudice to their competences under Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas<sup>(3)</sup>.
- (18) Where new cross-border interconnections are needed or existing ones need to be extended, close cooperation between the Member States concerned, Competent Authorities and the national regulatory authorities, where they are not the Competent Authorities, should take place at an early stage.
- (19) Different sources of Union funding are available to support Member States to finance the necessary investment in production, infrastructure and energy-efficiency measures at regional and local level, notably loans and guarantees from the European Investment Bank or funding from regional, structural or cohesion funds. The European Investment Bank as well as the Union's external instruments such as the European Neighbourhood and Partnership Instrument, the Instrument for Pre-accession Assistance and the Financing Instrument for Development Cooperation can also finance actions in third countries in order to improve security of energy supply.
- (20) This Regulation should enable natural gas undertakings and customers to rely on market mechanisms for as long as possible when coping with disruptions. It should also provide for emergency mechanisms to be used when markets alone are no longer able to deal adequately with a gas supply disruption. Even in an emergency, market-based instruments should be given priority to mitigate the effects of the supply disruption.
- (21) Following the entry into force of the new internal energy market legislation adopted in July 2009, new provisions will apply to the gas sector, creating clear roles and responsibilities for Member States, national regulatory authorities, transmission system operators and the Agency, and improving the transparency of the market to enhance its functioning, the security of supply and the protection of customers.
- (22) The completion of the internal gas market and effective competition within that market offer the Union the highest level of security of supply for all Member States, provided that the market is allowed to function fully in the event of disruption of supply affecting a part of the Union, whatever the cause of the disruption. To this end, a comprehensive and effective common approach to security of supply is required, particularly transparency, solidarity and non-discriminatory policies compatible with the functioning of the internal market, avoiding market distortions and the undermining of market responses to disruptions.
- (23) Security of gas supply is a shared responsibility of natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission within their respective areas of activities and competence. Where appropriate, the national regulatory authorities, where they are not the Competent Authorities, should also contribute to security of gas supply within their areas of activities and competence in accordance with Directive 2009/73/EC. Moreover, customers using gas for electricity generation or industrial purposes may also have an important role to play in security of gas supply through their ability to respond to a crisis with demand-side measures, for instance interruptible contracts and fuel switching, as this directly impacts on the supply/demand balance.

<sup>(1)</sup> OJ L 211, 14.8.2009, p. 1.

<sup>(2)</sup> OJ L 211, 14.8.2009, p. 36.

<sup>(3)</sup> OJ L 211, 14.8.2009, p. 94.

- (24) The precise definition of the roles and responsibilities of all natural gas undertakings and Competent Authorities is therefore crucial in maintaining a well-functioning internal gas market, particularly in supply disruptions and crisis situations. Such roles and responsibilities should be established in such a way as to ensure that a three-level approach is respected which would involve first the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union. In the event of a supply crisis, market players should be given sufficient opportunity to respond to the situation with market-based measures. Where the reactions of market players are not sufficient, Member States and their Competent Authorities should take measures to remove or mitigate the effects of the supply crisis. Only where these measures are insufficient should measures be taken at regional or Union level to remove or mitigate the effects of the supply crisis. Regional solutions should be sought as far as possible.
- (25) In a spirit of solidarity, regional cooperation, involving public authorities and natural gas undertakings, will be widely established to implement this Regulation in order to optimise the benefits in terms of coordination of measures to mitigate the risks identified and to implement the most cost-effective measures for the parties concerned.
- (26) Sufficiently harmonised security of supply standards covering at least the situation that occurred in January 2009, taking into account the difference between Member States, should be established, taking into account public service obligations and customer protection measures as referred to in Article 3 of Directive 2009/73/EC. Such security of supply standards should be stable, so as to provide the necessary legal certainty, should be clearly defined, and should not impose unreasonable and disproportionate burdens on natural gas undertakings, including new entrants and small undertakings, or on end users. Those standards should also guarantee equality of access for natural gas undertakings of the Union to national customers. Measures necessary to ensure the fulfilment of the supply standard may include additional storage capacities and volumes, linepack, supply contracts, interruptible contracts or any other measures that have a similar effect, as well as the necessary technical measures to ensure the safety of gas supply.
- (27) It is essential in the interests of a well-functioning gas market that the necessary investments in indigenous production and infrastructures, such as interconnections, in particular those providing access to the gas network of the Union, equipment allowing physical bi-directional gas flows on pipelines as well as storage and LNG re-gasification facilities, be made by natural gas undertakings in good time, bearing in mind possible supply disruptions such as the one that occurred in January 2009. When forecasting the financial needs for gas infrastructure in relation to Union instruments, the Commission should give, as appropriate, priority to the infrastructure projects which support the integration of the internal gas market and security of gas supply.
- (28) Transmission system operators should not be prevented from considering the situation where investments enabling physical capacity to transport gas in both directions (bi-directional capacity) in cross-border interconnections with third countries could contribute to improving security of supply, especially in the case of third countries which ensure transit flows between two Member States.
- (29) It is important that gas supply be maintained particularly as regards household customers, as well as a limited number of additional customers, especially customers delivering essential social services, which can be defined by the Member States concerned, in cases in which the market cannot continue to supply them. It is essential that the measures to be taken during a crisis be defined in advance and respect safety requirements, including where protected customers are connected to the same distribution network as other customers. Such measures may involve the use of pro-rata reductions in proportion to the originally booked capacity in cases where capacity for access to infrastructure is reduced for technical reasons.
- (30) As a rule, the Competent Authorities should abide by their Emergency Plan. In duly justified exceptional circumstances they may take action which deviates from those Plans.
- (31) A large choice of instruments is available to comply with security of supply obligations. Those instruments should be used in national, regional and Union contexts, as appropriate, to ensure that they deliver a consistent and cost-effective result.
- (32) The security of supply aspects of long-term planning of investments in sufficient cross-border capacities and other infrastructures, ensuring the long-term ability of the system to guarantee security of supply and meet reasonable demands, are addressed by Directive 2009/73/EC. Meeting the security of supply standards may require a transitional period to allow the necessary investments to be made. The Union-wide 10-year network development plan drawn up by the ENTSO for Gas and supervised by the Agency is a fundamental tool to identify the required investments needed at Union level, inter alia, in order to implement the infrastructure requirements laid down in this Regulation.
- (33) The ENTSO for Gas and the Agency, as members of the Gas Coordination Group, should be fully involved, within their areas of responsibility, in the process of cooperation and consultations at Union level.

- (34) The Gas Coordination Group is the main body to be consulted by the Commission in the context of the establishment of the Preventive Action Plans and the Emergency Plans. It is recalled that the ENTSO for Gas and the Agency are members of the Gas Coordination Group and will be consulted in that context.
- (35) In order to ensure the highest level of preparedness in the event of supply disruption, Emergency Plans should be established by the Competent Authorities, after consulting the natural gas undertakings. Such plans should not be inconsistent with each other at national, regional or Union level. Their content should follow best practices among existing Plans and should define clear roles and responsibilities for all natural gas undertakings and Competent Authorities concerned. Joint Emergency Plans at regional level should be established where possible and necessary.
- (36) To strengthen solidarity between Member States in the event of a Union emergency and in particular to support Member States which are exposed to less favourable geographical or geological conditions, Member States should devise measures to exercise solidarity. Natural gas undertakings should devise measures such as commercial agreements, which may comprise increased gas exports or increased releases from storages. It is important to encourage the conclusion of arrangements between natural gas undertakings. The actions of the Emergency Plan should include mechanisms, where appropriate, ensuring fair and equitable compensation of the natural gas undertakings. Solidarity measures may be particularly appropriate between Member States for which the Commission recommends the establishment of joint Preventive Action Plans or Emergency Plans at regional level.
- (37) In the context of this Regulation, the Commission has an important role to play in the event of an emergency, be it at Union or regional level.
- (38) European solidarity should also, where needed, take the form of civil protection assistance provided by the Union and its Member States. Such assistance should be facilitated and coordinated by the Community Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom <sup>(1)</sup>.
- (39) The sovereign rights of Member States over their own energy resources are not affected by this Regulation.
- (40) Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection <sup>(2)</sup> lays down a process with a view to enhancing the security of designated European critical infrastructures, including certain gas infrastructures, in the Union. Directive 2008/114/EC together with this Regulation contribute to creating a comprehensive approach to the energy security of the Union.
- (41) Emergency Plans should be updated regularly and published. They should be subject to peer review and tested.
- (42) The Gas Coordination Group should act as adviser to the Commission to facilitate the coordination of security of supply measures in the event of a Union emergency. It should also monitor the adequacy and appropriateness of measures to be taken under this Regulation.
- (43) This Regulation aims at empowering natural gas undertakings and Competent Authorities of the Member States to ensure that the internal gas market works effectively for as long as possible in the event of a supply disruption, prior to measures being taken by Competent Authorities to address the situation in which the market can no longer deliver the required gas supplies. Such exceptional measures should be fully compliant with Union law and should be notified to the Commission.
- (44) Since gas supplies from third countries are central to the security of gas supply of the Union, the Commission should coordinate the actions with regard to third countries, working with the supplying and transiting third countries on arrangements to handle crisis situations and to ensure a stable gas flow to the Union. The Commission should be entitled to deploy a task force to monitor gas flows into the Union in crisis situations, in consultation with the third countries involved, and, where a crisis arises due to difficulties in a third country, to assume a mediation and facilitation role.
- (45) It is important that the conditions for the supply from third countries do not distort competition and are in accordance with internal market rules.
- (46) Where there is reliable information of a situation outside the Union that threatens the security of supply of one or several Member States and that may trigger an early warning mechanism between the Union and a third country, the Commission should inform the Gas Coordination Group without delay and the Union should take appropriate actions to try to defuse the situation.

<sup>(1)</sup> OJ L 314, 1.12.2007, p. 9.

<sup>(2)</sup> OJ L 345, 23.12.2008, p. 75.

- (47) In February 2009, the Council concluded that transparency and reliability should be increased through the meaningful exchange of information between the Commission and Member States on energy relations with third countries, including long-term supply arrangements, while preserving commercially sensitive information.
- (48) While rules contained in the Treaty on European Union and in the Treaty on the Functioning of the European Union, in particular the rules on competition, apply to services of general economic interest in so far as the application of such rules does not obstruct the performance of such services, Member States enjoy a wide discretion in providing for, commissioning and organising public service obligations.
- (49) Since the objective of this Regulation, namely to ensure the security of gas supply in the Union, cannot be sufficiently achieved by the Member States alone and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (50) Directive 2004/67/EC should be repealed,

HAVE ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter

This Regulation establishes provisions aimed at safeguarding the security of gas supply by ensuring the proper and continuous functioning of the internal market in natural gas (gas), by allowing for exceptional measures to be implemented when the market can no longer deliver the required gas supplies and by providing for a clear definition and attribution of responsibilities among natural gas undertakings, the Member States and the Union regarding both preventive action and the reaction to concrete disruptions of supply. This Regulation also provides transparent mechanisms, in a spirit of solidarity, for the coordination of planning for, and response to, an emergency at Member State, regional and Union levels.

#### Article 2

##### Definitions

For the purpose of this Regulation the definitions of Directive 2009/73/EC, Regulation (EC) No 713/2009 and Regulation (EC) No 715/2009 shall apply.

In addition the following definitions shall apply:

1. 'protected customers' means all household customers connected to a gas distribution network and, in addition, where the Member State concerned so decides, may also include:
  - (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.

As soon as possible and no later than 3 December 2011 Member States shall notify the Commission whether they intend to include points (a) and/or (b) in their definition of protected customers;

2. 'Competent Authority' means the national governmental authority or the national regulatory authority designated by each Member State to be responsible for ensuring the implementation of the measures set out in this Regulation. This is without prejudice to the ability of Member States to allow the Competent Authority to delegate specific tasks set out in this Regulation to other bodies. Such delegated tasks shall be performed under the supervision of the Competent Authority and shall be specified in the plans referred to in Article 4.

#### Article 3

##### Responsibility for security of gas supply

1. Security of gas supply is a shared responsibility of natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission, within their respective areas of activities and competence. Such shared responsibility requires a high degree of cooperation between them.
2. As soon as possible and no later than 3 December 2011, each Member State shall designate a Competent Authority that ensures the implementation of the measures provided for in this Regulation. Where appropriate, until the Competent Authority is formally designated, the national entities currently responsible for security of gas supply shall carry out the measures to be implemented by the Competent Authority in accordance with this Regulation. Those measures shall include the carrying out of the risk assessment referred to in Article 9, and, on the basis

of that risk assessment, the establishment of a Preventive Action Plan and an Emergency Plan, and the regular monitoring of security of gas supply at national level. Competent Authorities shall cooperate with each other to seek to prevent a supply disruption and to limit damages in such an event. Nothing shall prevent Member States from adopting implementing legislation, if needed, to comply with the requirements of this Regulation.

3. Each Member State shall notify to the Commission without delay the name of the Competent Authority, once designated, and, where appropriate, the names of the national entities responsible for security of gas supply acting as provisional Competent Authority in accordance with paragraph 2. Each Member State shall make such designations public.

4. When implementing the measures provided for in this Regulation, the Competent Authority shall establish the roles and responsibilities of the different actors involved in such a way as to ensure that a three-level approach is respected which involves first the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union.

5. The Commission shall, where appropriate, coordinate the action of the Competent Authorities at regional and Union levels, as set out in this Regulation, inter alia, through the Gas Coordination Group referred to in Article 12 or the crisis management group referred to in Article 11(4), in particular in the event of a Union or regional emergency as defined in Article 11(1).

6. The measures to ensure the security of supply contained in the Preventive Action Plans and in the Emergency Plans shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable, shall not unduly distort competition and the effective functioning of the internal market in gas and shall not endanger the security of gas supply of other Member States or of the Union as a whole.

#### *Article 4*

#### **Establishment of a Preventive Action Plan and an Emergency Plan**

1. The Competent Authority of each Member State, after consulting the natural gas undertakings, the relevant organisations representing the interests of household and industrial gas customers and the national regulatory authority, where it is not the Competent Authority, shall, without prejudice to paragraph 3, establish at national level:

(a) a Preventive Action Plan containing the measures needed to remove or mitigate the risks identified, in accordance with the risk assessment undertaken pursuant to Article 9; and

(b) an Emergency Plan containing the measures to be taken to remove or mitigate the impact of a gas supply disruption in accordance with Article 10.

2. Before adopting a Preventive Action Plan and an Emergency Plan at national level, the Competent Authorities shall, by 3 June 2012, exchange their draft Preventive Action Plans and Emergency Plans and consult each other at the appropriate regional level, and the Commission, with a view to ensuring that their draft Plans and measures are not inconsistent with the Preventive Action Plan and the Emergency Plan of another Member State and that they comply with this Regulation and with other provisions of Union law. Such consultation shall be carried out in particular between neighbouring Member States, notably between isolated systems forming gas islands and their neighbouring Member States, and may cover for instance those Member States identified in the indicative list of Annex IV.

3. Based on the consultations referred to in paragraph 2 and possible recommendations from the Commission, the Competent Authorities concerned may decide to establish joint Preventive Action Plans at regional level (joint Preventive Action Plans) and joint Emergency Plans at regional level (joint Emergency Plans), in addition to the Plans established at national level. In the case of joint Plans, the Competent Authorities concerned shall endeavour, where appropriate, to conclude agreements in order to implement regional cooperation. If necessary, these agreements shall be formally endorsed by Member States.

4. When establishing and implementing the Preventive Action Plan and the Emergency Plan at national and/or regional level, the Competent Authority shall take due account of the safe operation of the gas system at all times and address and set out in those Plans the technical constraints affecting the operation of the network, including the technical and safety reasons which may lead to the reduction of flows in the event of an emergency.

5. No later than 3 December 2012, the Preventive Action Plans and Emergency Plans, including, where applicable, joint Plans, shall be adopted and made public. Such Plans shall be notified to the Commission without delay. The Commission shall inform the Gas Coordination Group. Competent Authorities shall ensure the regular monitoring of the implementation of such Plans.

6. Within 3 months of the notification by the Competent Authorities of the Plans referred to in paragraph 5:

(a) the Commission shall assess those Plans, in accordance with point (b). In order to do so, the Commission shall consult the Gas Coordination Group on those Plans and duly take its opinion into account. The Commission shall report its assessment of the Plans to the Gas Coordination Group; and

(b) where the Commission, based on these consultations:

- (i) assesses that a Preventive Action Plan or an Emergency Plan is not effective to mitigate the risks as identified in the risk assessment, it may recommend to the Competent Authority or Competent Authorities concerned to amend the relevant Plan;
- (ii) considers that a Preventive Action Plan or an Emergency Plan is inconsistent with the risk scenarios or with the Plans of another Competent Authority, or that it does not comply with the provisions of this Regulation or other provisions of Union law, it shall request that the relevant Plan be amended;
- (iii) considers that the Preventive Action Plan endangers the security of gas supply of other Member States or of the Union as a whole, it shall decide to require the Competent Authority to review that Preventive Action Plan and may present specific recommendations for amending it. The Commission shall give detailed reasons for its decision.

7. Within 4 months of notification of the Commission's request referred to in paragraph 6(b)(ii), the Competent Authority concerned shall amend its Preventive Action Plan or Emergency Plan and notify the amended Plan to the Commission, or shall inform the Commission of the reasons for which it does not agree with the request. In the event of disagreement, the Commission may, within 2 months of the reply of the Competent Authority, withdraw its request or convene the Competent Authorities concerned and, where the Commission deems it necessary, the Gas Coordination Group, in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any amendments to the Plan. The Competent Authority shall take full account of the position of the Commission. Where the final decision of the Competent Authority diverges from the Commission's position, the Competent Authority shall provide and make public, together with that decision and the Commission position, the reasoning underlying such decision within 2 months of receipt of the position of the Commission. Where applicable, the Competent Authority shall without delay make the amended Plan public.

8. Within 3 months of notification of the Commission's decision referred to in paragraph 6(b)(iii), the Competent Authority concerned shall amend its Preventive Action Plan and notify the amended Plan to the Commission, or shall inform the Commission of the reasons for which it does not agree with the decision. In the event of disagreement, the Commission may, within 2 months of the reply of the Competent Authority, decide to amend or withdraw its request. If the Commission maintains its request, the Competent Authority concerned shall amend the Plan within 2 months of the notification of the Commission's decision, taking utmost account of the Commission's recommendations

referred to in paragraph 6(b)(iii), and shall notify it to the Commission.

The Commission shall inform the Gas Coordination Group and duly take into account their recommendations when drafting its opinion on the amended Plan, which shall be delivered within 2 months of the notification of the Competent Authority. The Competent Authority concerned shall take utmost account of the Commission's opinion and within 2 months of receipt of the Commission's opinion shall adopt and make public the resulting amended Plan.

9. The confidentiality of commercially sensitive information shall be preserved.

#### *Article 5*

#### **Content of the national and joint Preventive Action Plans**

1. The national and joint Preventive Action Plans shall contain:

- (a) the results of the risk assessment as laid down in Article 9;
- (b) the measures, volumes, capacities and the timing needed to fulfil the infrastructure and supply standards, as laid down in Articles 6 and 8, including where applicable, the extent to which demand-side measures can sufficiently compensate, in a timely manner, for a supply disruption as referred to in Article 6(2), the identification of the single largest gas infrastructure of common interest in the case of application of Article 6(3) and any increased supply standard under Article 8(2);
- (c) obligations imposed on natural gas undertakings and other relevant bodies, including for the safe operation of the gas system;
- (d) the other preventive measures, such as those relating to the need to enhance interconnections between neighbouring Member States and the possibility to diversify gas routes and sources of supply, if appropriate, to address the risks identified in order to maintain gas supply to all customers as far as possible;
- (e) the mechanisms to be used for cooperation with other Member States for preparing and implementing joint Preventive Action Plans and joint Emergency Plans, as referred to in Article 4(3), where applicable;
- (f) information on existing and future interconnections, including those providing access to the gas network of the Union, cross-border flows, cross-border access to storage facilities and the physical capacity to transport gas in both directions (bi-directional capacity), in particular in the event of an emergency;
- (g) information on all public service obligations that relate to security of gas supply.

2. The national and joint Preventive Action Plans, in particular the actions to meet the infrastructure standard as laid down in Article 6, shall take into account the Union-wide 10-year network development plan to be elaborated by the ENTSO for Gas pursuant to Article 8(10) of Regulation (EC) No 715/2009.

3. The national and joint Preventive Action Plans shall be based primarily on market measures, and shall take into account the economic impact, effectiveness and efficiency of the measures, the effects on the functioning of the internal energy market and the impact on the environment and on consumers, and shall not put an undue burden on natural gas undertakings, nor negatively impact on the functioning of the internal market in gas.

4. The national and joint Preventive Action Plans shall be updated every 2 years, unless circumstances warrant more frequent updates, and shall reflect the updated risk assessment. The consultation provided for between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plan.

#### Article 6

##### Infrastructure standard

1. Member States or, where a Member State so provides, the Competent Authority shall ensure that the necessary measures are taken so that by 3 December 2014 at the latest, in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure, determined according to the  $N - 1$  formula as provided in point 2 of Annex I, is able, without prejudice to paragraph 2 of this Article, to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years. This is without prejudice, where appropriate and necessary, to the responsibility of system operators to make the corresponding investments and to the obligations of transmission system operators as laid down in Directive 2009/73/EC and Regulation (EC) No 715/2009.

2. The obligation to ensure that the remaining infrastructure has the capacity to satisfy total gas demand, as referred to in paragraph 1, shall also be considered to be fulfilled where the Competent Authority demonstrates in the Preventive Action Plan that a supply disruption may be sufficiently compensated for, in a timely manner, by appropriate market-based demand-side measures. For that purpose, the formula provided in point 4 of Annex I shall be used.

3. Where appropriate, according to the risk assessment referred to in Article 9, the Competent Authorities concerned may decide that the obligation set out in paragraph 1 of this Article shall be fulfilled at a regional level, instead of at national level. In that event, joint Preventive Action Plans pursuant to Article 4(3) shall be established. Point 5 of Annex I shall apply.

4. Each Competent Authority shall, after consulting the relevant natural gas undertakings, report to the Commission without delay any non-compliance with the obligation set out in paragraph 1 and inform the Commission of the reasons for such non-compliance.

5. The transmission system operators shall enable permanent bi-directional capacity on all cross-border interconnections between Member States as early as possible and at the latest by 3 December 2013, except:

(a) in the case of connections to production facilities, to LNG facilities and to distribution networks; or

(b) where an exemption has been granted in accordance with Article 7.

By 3 December 2013, the transmission system operators shall adapt the functioning of the transmission systems in part or as a whole so as to enable physical gas flows in both directions on cross-border interconnections.

6. Where bi-directional capacity already exists or is under construction for a particular cross-border interconnection, the obligation referred to in the first subparagraph of paragraph 5 shall be deemed to be met for that interconnection except where an enhancement of capacity is requested by one or more Member States for security of supply reasons. Where such a request for enhancement is made, the procedure set out in Article 7 shall apply.

7. Member States or, where a Member State so provides, the Competent Authority, shall ensure that, as a first step, the market is always tested in a transparent, detailed and non-discriminatory manner to assess whether the investment in infrastructure needed to fulfil the obligations set out in paragraphs 1 and 5 is required by the market.

8. National Regulatory Authorities shall take into account the efficiently incurred costs of fulfilling the obligation set out in paragraph 1 and the costs of enabling permanent bi-directional capacity so as to grant appropriate incentives when fixing or approving, in a transparent and detailed manner, the tariffs or methodologies in accordance with Article 41(8) of Directive 2009/73/EC and Article 13 of Regulation (EC) No 715/2009. In so far as an investment for enabling bi-directional capacity is not required by the market and where this investment incurs costs in more than one Member State or in one Member State for the benefit of one or more other Member States, the national regulatory authorities of all Member States concerned shall jointly decide on cost allocation before any investment decision is taken. The cost allocation shall in particular take into account the proportion of the benefits of the infrastructure investments for the increase of security of supply of the Member States concerned. Article 8(1) of Regulation (EC) No 713/2009 shall apply.

9. The Competent Authority shall ensure that any new transmission infrastructure contributes to the security of supply through the development of a well-connected network, including, where appropriate, by means of a sufficient number of cross-border entry and exit points according to market demand and the risks identified. The Competent Authority shall, where appropriate, assess in the risk assessment where internal bottlenecks exist and whether national entry capacity and infrastructures, in particular transmission networks, are capable of adapting the national gas flows to the scenario of the disruption of the single largest gas infrastructure identified in the risk assessment.

10. Luxembourg, Slovenia and Sweden shall, by way of exception, not be bound by, but shall endeavour to meet, the obligation set out in paragraph 1 of this Article, while ensuring the gas supplies to protected customers in accordance with Article 8. That exception shall apply for as long as:

- (a) in the case of Luxembourg: it has at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities or an LNG facility on its territory;
- (b) in the case of Slovenia: it has at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities or an LNG facility on its territory;
- (c) in the case of Sweden: it has no gas transit to other Member States on its territory, an annual gross inland gas consumption of less than 2 Mtoe and less than 5 % of total primary energy consumption from gas.

Those three Member States shall ensure, in a transparent, detailed and non-discriminatory manner, regular market testing for investments in infrastructure and make public the results of those tests.

The Member States referred to in the first subparagraph shall inform the Commission of any change in respect of the conditions set out in that subparagraph. The exception laid down in the first subparagraph shall cease to apply where at least one of those conditions is no longer fulfilled.

By 3 December 2018, each of the Member States referred to in the first subparagraph shall transmit a report to the Commission describing the situation with respect to the respective conditions set out in that subparagraph and the prospects for the compliance with the obligation in paragraph 1, taking into account the economic impact of meeting the infrastructure standard, the results of the market testing and the gas market development and gas infrastructure projects in the region. On the basis of the report and if the respective conditions set out in the first subparagraph of this paragraph are still met, the Commission may decide that the exception set out in the first subparagraph can continue to apply for 4 more

years. In the event of a positive decision, the procedure set out in this subparagraph shall be repeated after 4 years.

#### Article 7

#### Procedure for enabling bi-directional capacity or seeking exemption

1. For each cross-border interconnection between Member States, except for those exempted under Article 6(5)(a) and except where bi-directional capacity already exists or is under construction and no enhancement has been requested by one or more Member States for security of supply reasons, transmission system operators shall, not later than 3 March 2012, submit to their Member States or, where Member States so provide, their Competent Authorities or their regulatory authorities (together referred to in this Article as the 'authorities concerned'), after consulting with all other transmission system operators concerned:

- (a) a proposal for bi-directional capacity concerning the reverse direction (reverse flow capacity); or
- (b) a request for an exemption from the obligation to enable bi-directional capacity.

2. The proposal for reverse flow capacity or the request for exemptions referred to in paragraph 1 shall be based on an assessment of market demand, projections for demand and supply, technical feasibility, the costs of reverse flow capacity, including the consequent reinforcement of the transmission system, and the benefits for security of supply, taking also into account, where appropriate, the possible contribution of reverse flow capacity to meeting, together with other possible measures, the infrastructure standard set out in Article 6 in the case of the Member States benefiting from the reverse flow capacity.

3. The authority concerned receiving the proposal or exemption request shall notify the authorities concerned of the other Member States that could, according to the risk assessment, benefit from reverse flow capacity and the Commission of the proposal or the exemption request without delay. That authority concerned shall give those authorities concerned and the Commission the possibility to issue an opinion within a period of 4 months following receipt of that notification.

4. Within 2 months of the expiry of the period referred to in paragraph 3, the authority concerned, on the basis of the criteria referred to in paragraph 2 and of the risk assessment carried out in accordance with Article 9, and taking utmost account of the opinions received in accordance with paragraph 3 of this Article, and taking into account aspects that are not strictly economic, such as security of gas supply and the contribution to the internal gas market, shall:

- (a) grant an exemption if reverse flow capacity would not significantly enhance the security of supply of any Member State or region or if the investment costs would significantly outweigh the prospective benefits for security of supply; or
- (b) accept the proposal for reverse flow capacity; or
- (c) require the transmission system operator to amend its proposal.

The authority concerned shall notify its decision without delay to the Commission, together with all relevant information showing the reasons for the decision, including the opinions received in accordance with paragraph 3 of this Article. The authorities concerned shall endeavour to ensure that mutually dependent decisions which concern the same interconnection or interconnected pipelines do not contradict each other.

5. Within 2 months of receipt of that notification, and where there are discrepancies between the decision of the authority concerned and the opinions of other authorities concerned, the Commission may require that the authority concerned amend its decision. That period may be extended by 1 month where additional information is sought by the Commission. Any proposal by the Commission requiring amendment to the decision of the authority concerned shall be made on the basis of the elements and criteria set out in paragraph 2 and point (a) of paragraph 4, taking into account the reasons for the decision of the authority concerned. The authority concerned shall comply with the request by amending its decision within a period of 4 weeks. In the event that the Commission does not act within that 2-month period, it shall be deemed not to have raised objections to the decision of the authority concerned.

6. Where additional reverse flow capacity is needed according to the results of the risk assessment carried out in accordance with Article 9, the procedure set out in paragraphs 1 to 5 of this Article shall be repeated upon the request of a transmission system operator, an authority concerned or the Commission.

7. The Commission and the authority concerned shall preserve the confidentiality of commercially sensitive information at all times.

#### Article 8

##### Supply standard

1. The Competent Authority shall require the natural gas undertakings, that it identifies, to take measures to ensure gas

supply to the protected customers of the Member State in the following cases:

- (a) extreme temperatures during a 7-day peak period occurring with a statistical probability of once in 20 years;
- (b) any period of at least 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years; and
- (c) for a period of at least 30 days in case of the disruption of the single largest gas infrastructure under average winter conditions.

The Competent Authority shall identify the natural gas undertakings referred to in the first subparagraph by 3 June 2012 at the latest.

2. Any increased supply standard going beyond the 30-day period referred to in points (b) and (c) of paragraph 1 or any additional obligation imposed for reasons of security of gas supply shall be based on the risk assessment referred to in Article 9, shall be reflected in the Preventive Action Plan and shall:

- (a) comply with Article 3(6);
- (b) not unduly distort competition or hamper the functioning of the internal market in gas;
- (c) not impact negatively on the ability of any other Member State to supply its protected customers in accordance with this Article in the event of a national, Union or regional emergency; and
- (d) comply with the criteria specified in Article 11(5) in the event of a Union or regional emergency.

In a spirit of solidarity, the Competent Authority shall identify in the Preventive Action Plan and the Emergency Plan how any increased supply standard or additional obligation imposed on natural gas undertakings may be temporarily reduced in the event of a Union or regional emergency.

3. After the periods defined by the Competent Authority in accordance with paragraphs 1 and 2, or under more severe conditions than those defined in paragraph 1, the Competent Authority and natural gas undertakings shall endeavour to maintain, as far as possible, the gas supply, in particular for protected customers.

4. The obligations imposed on natural gas undertakings for the fulfilment of the supply standards laid down in this Article shall be non-discriminatory and shall not impose an undue burden on those undertakings.

5. Natural gas undertakings shall be allowed to meet these obligations at a regional or Union level, where appropriate. The Competent Authority shall not require the standards laid down in this Article to be met based on infrastructure located only within its territory.

6. The Competent Authority shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the internal market in gas and at a price respecting the market value of the supplies.

#### Article 9

##### Risk assessment

1. By 3 December 2011, each Competent Authority shall make a full assessment, on the basis of the following common elements, of the risks affecting the security of gas supply in its Member State by:

- (a) using the standards specified in Articles 6 and 8, showing the calculation of the  $N - 1$  formula, the assumptions used, including those for the calculation of the  $N - 1$  formula at regional level, and the data necessary for such calculation;
- (b) taking into account all relevant national and regional circumstances, in particular market size, network configuration, actual flows, including outflows from the Member State concerned, the possibility of physical gas flows in both directions including the potential need for consequent reinforcement of the transmission system, the presence of production and storage and the role of gas in the energy mix, in particular with respect to district heating and electricity generation and for the operation of industries, and safety and gas quality considerations;
- (c) running various scenarios of exceptionally high gas demand and supply disruption, such as failure of the main transmission infrastructures, storages or LNG terminals, and disruption of supplies from third country suppliers, taking into account the history, probability, season, frequency and duration of their occurrence as well as, where appropriate, geopolitical risks, and assessing the likely consequences of these scenarios;
- (d) identifying the interaction and correlation of risks with other Member States, including, inter alia, as regards inter-

connections, cross-border supplies, cross-border access to storage facilities and bi-directional capacity;

- (e) taking into account the maximal interconnection capacity of each border entry and exit point.

2. Where Article 4(3) applies, the Competent Authorities concerned shall also perform a joint risk assessment at regional level.

3. Natural gas undertakings, industrial gas customers, the relevant organisations representing the interests of household and industrial gas customers as well as Member States and the national regulatory authority, where it is not the Competent Authority, shall cooperate with the Competent Authority and provide it upon request with all necessary information for the risk assessment.

4. The risk assessment shall be updated for the first time at the latest 18 months after adoption of the Preventive Action and Emergency Plans referred to in Article 4, and thereafter every 2 years before 30 September of the relevant year unless circumstances warrant more frequent updates. The risk assessment shall take account of progress made in investments needed to cope with the infrastructure standard defined in Article 6 and of country-specific difficulties encountered in the implementation of new alternative solutions.

5. The risk assessment, including updated versions, shall be made available to the Commission without delay.

#### Article 10

##### Emergency Plans and Crisis Levels

1. The national and joint Emergency Plans shall:

- (a) build upon the crisis levels set out in paragraph 3;
- (b) define the role and responsibilities of natural gas undertakings and of industrial gas customers including relevant electricity producers, taking account of the different extents to which they are affected in the event of gas supply disruptions, and their interaction with the Competent Authorities and where appropriate with the national regulatory authorities at each of the crisis levels defined in paragraph 3;
- (c) define the role and responsibilities of the Competent Authorities and of the other bodies to which tasks have been delegated as referred to in Article 2(2) at each of the crisis levels defined in paragraph 3 of this Article;

- (d) ensure that natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level;
- (e) identify, if appropriate, the measures and actions to be taken to mitigate the potential impact of a gas supply disruption on district heating and the supply of electricity generated from gas;
- (f) establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows;
- (g) designate a crisis manager or team and define its role;
- (h) identify the contribution of market-based measures, notably those listed in Annex II, for coping with the situation at alert level and mitigating the situation at emergency level;
- (i) identify the contribution of non-market based measures planned or to be implemented for the emergency level, notably those listed in Annex III, and assess the degree to which the use of such non-market based measures is necessary to cope with a crisis, assess their effects and define the procedures to implement them, taking into account the fact that non-market based measures are to be used only when market-based mechanisms alone can no longer ensure supplies, in particular to protected customers;
- (j) describe the mechanisms used to cooperate with other Member States for each crisis level;
- (k) detail the reporting obligations imposed on natural gas undertakings at alert and emergency levels;
- (l) establish a list of predefined actions to make gas available in the event of an emergency, including commercial agreements between the parties involved in such actions and the compensation mechanisms for natural gas undertakings where appropriate, taking due account of the confidentiality of sensitive data. Such actions may involve cross-border agreements between Member States and/or natural gas undertakings.

2. The national and joint Emergency Plans shall be updated every 2 years, unless circumstances warrant more frequent updates, and shall reflect the updated risk assessment. The consultation provided for between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plans.

3. The three main crisis levels shall be as follows:

- (a) early warning level (early warning): when there is concrete, serious and reliable information that an event may occur which is likely to result in significant deterioration of the supply situation and is likely to lead to the alert or the emergency level being triggered; the early warning level may be activated by an early warning mechanism;
- (b) alert level (alert): when a supply disruption or exceptionally high gas demand occurs which results in significant deterioration of the supply situation, but the market is still able to manage that disruption or demand without the need to resort to non-market measures;
- (c) emergency level (emergency): in the event of exceptionally high gas demand, significant supply disruption or other significant deterioration of the supply situation and in the event that all relevant market measures have been implemented but the supply of gas is insufficient to meet the remaining gas demand so that non-market measures have to be additionally introduced with a view, in particular, to safeguarding supplies of gas to protected customers according to Article 8.

4. The national and joint Emergency Plans shall ensure that cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible in the event of an emergency. The Plans shall be in accordance with Article 3(6) of this Regulation and shall not introduce any measure unduly restricting the flow of gas across borders.

5. When the Competent Authority declares any of the crisis levels referred to in paragraph 3, it shall immediately inform the Commission and provide it with all the necessary information, in particular with information on the action it intends to take. In the event of an emergency which may result in a call for assistance from the Union and its Member States, the Competent Authority of the Member State concerned shall without delay notify the Commission's Civil Protection Monitoring and Information Centre.

6. When the Competent Authority declares an emergency, it shall follow the pre-defined action as defined in its Emergency Plan and shall immediately inform the Commission in particular of the action it intends to take in accordance with paragraph 1. In duly justified exceptional circumstances, the Competent Authority may take action deviating from the Emergency Plan. The Competent Authority shall immediately inform the Commission of any such action and shall provide a justification therefore.

7. The Member States and, in particular, the Competent Authorities shall ensure that:

- (a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time;
- (b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and
- (c) 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.

8. The Commission shall verify, as soon as possible, but in any case within 5 days of receiving the information of the Competent Authority referred to in paragraph 5, whether the declaration of an emergency is justified in accordance with point (c) of paragraph 3 and whether the measures taken follow as closely as possible the actions listed in the Emergency Plan and are not imposing an undue burden on natural gas undertakings and are in accordance with paragraph 7. The Commission may, at the request of a Competent Authority, natural gas undertakings or on its own initiative, request the Competent Authority to modify the measures where they are contrary to the conditions established in paragraph 7 and in the first sentence of this paragraph. The Commission may also request the Competent Authority to lift the declaration of emergency where it considers that such declaration is not or no longer justified according to point (c) of paragraph 3.

Within 3 days of the notification of the Commission's request, the Competent Authority shall modify the measures and notify the Commission thereof, or shall inform the Commission of the reasons for which it does not agree with the request. In that case, the Commission may within 3 days amend or withdraw its request or, in order to consider the issue, convene the Competent Authority or, where appropriate, the Competent Authorities concerned, and, where the Commission deems it necessary, the Gas Coordination Group. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Competent Authority shall take full account of the position of the Commission. Where the final decision of the Competent Authority diverges from the Commission's position, the Competent Authority shall provide the reasoning underlying such decision.

#### Article 11

##### Union and regional emergency responses

1. At the request of a Competent Authority that has declared an emergency and following the verification in accordance with

Article 10(8), the Commission may declare a Union emergency or a regional emergency for a specifically affected geographical region. At the request of at least two Competent Authorities that have declared an emergency and following the verification in accordance with Article 10(8), and where the reasons for these emergencies are linked, the Commission shall declare, as appropriate, a Union or regional emergency. In all cases, the Commission, using the means of communication most appropriate to the situation, shall gather the views of, and take due account of all the relevant information provided by, the other Competent Authorities. When it assesses that the underlying basis for the Union or regional emergency no longer justifies a declaration of emergency, the Commission shall declare an end to the Union or regional emergency. In all cases, the Commission shall give its reasons and inform the Council of its decision.

2. The Commission shall convene the Gas Coordination Group as soon as it declares a Union or regional emergency. During the Union or regional emergency, at the request of at least three Member States, the Commission may restrict participation in the Gas Coordination Group, for an entire meeting or part thereof, to the representatives of the Member States and the Competent Authorities.

3. In a Union or regional emergency as referred to in paragraph 1, the Commission shall coordinate the action of the Competent Authorities, taking full account of relevant information from, and the results of, the consultation of the Gas Coordination Group. In particular, the Commission shall:

- (a) ensure the exchange of information;
- (b) ensure the consistency and effectiveness of action at Member State and regional levels in relation to the Union level;
- (c) coordinate the actions with regard to third countries.

4. The Commission may convene a crisis management group composed of the crisis managers referred to in Article 10(1)(g), of the Member States concerned by the emergency. The Commission, in agreement with the crisis managers, may invite other relevant stakeholders to participate. The Commission shall ensure that the Gas Coordination Group is regularly informed about the work undertaken by the crisis management group.

5. The Member States and in particular the Competent Authorities shall ensure that:

- (a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time, notably the flow of gas to the affected markets;

(b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and

(c) 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.

6. Where, at the request of a Competent Authority or a natural gas undertaking or on its own initiative, the Commission considers that, in a Union or regional emergency, an action taken by a Member State or a Competent Authority or the behaviour of a natural gas undertaking is contrary to paragraph 5, the Commission shall request that Member State or Competent Authority to change its action or to take action in order to ensure compliance with paragraph 5, informing it of the reasons therefore. Due account shall be taken of the need to operate the gas system safely at all times.

Within 3 days of notification of the Commission's request, the Member State or the Competent Authority shall change its action and notify the Commission or shall set out to the Commission the reasons for which it does not agree with the request. In that case, the Commission may within 3 days amend or withdraw its request or convene the Member State or the Competent Authority and, where the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Member State or the Competent Authority shall take full account of the position of the Commission. Where the final decision of the Competent Authority or the Member State diverges from the Commission's position, the Competent Authority or the Member State shall provide the reasoning underlying such decision.

7. The Commission, after consulting the Gas Coordination Group, shall establish a permanent reserve list for a monitoring task force consisting of industry experts and representatives of the Commission. This monitoring task force may be deployed outside the Union when necessary and shall monitor and report on the gas flows into the Union, in cooperation with the supplying and transiting third countries.

8. The Competent Authority shall provide to the Commission's Civil Protection Monitoring and Information Centre the information on any need for assistance. The Civil Protection Monitoring and Information Centre shall assess the overall situation and provide advice on the assistance that

should be provided to the most affected Member States, and where appropriate to third countries.

#### Article 12

##### Gas Coordination Group

1. A Gas Coordination Group is established to facilitate the coordination of measures concerning security of gas supply. The Group shall be composed of representatives of the Member States, in particular of their Competent Authorities, as well as the Agency, the ENTSO for Gas and representative bodies of the industry concerned and those of relevant customers. The Commission shall, in consultation with the Member States, decide on the composition of the Group, ensuring it is fully representative. The Commission shall chair the Group. The Group shall establish its rules of procedure.

2. In accordance with this Regulation, the Gas Coordination Group shall be consulted and shall assist the Commission in particular on the following issues:

- (a) security of gas supply, at any time and more specifically in the event of an emergency;
- (b) all information relevant for security of gas supply at national, regional and Union levels;
- (c) best practices and possible guidelines to all the parties concerned;
- (d) the level of security of supply, benchmarks and assessment methodologies;
- (e) national, regional and Union scenarios and testing the levels of preparedness;
- (f) the assessment of the Preventive Action Plans and the Emergency Plans and the implementation of the measures foreseen therein;
- (g) the coordination of measures to deal with an emergency within the Union, with third countries that are Contracting Parties to the Treaty establishing the Energy Community and with other third countries;
- (h) assistance needed by the most affected Member States.

3. The Commission shall convene the Gas Coordination Group on a regular basis and shall share the information received from the Competent Authorities whilst preserving the confidentiality of commercially sensitive information.

## Article 13

**Information exchange**

1. Where Member States have existing public service obligations that relate to security of gas supply, they shall make these public by 3 January 2011. Any subsequent updates or additional public service obligations that relate to security of gas supply shall also be made public as soon as adopted by Member States.

2. During an emergency, the natural gas undertakings concerned shall make available in particular the following information to the Competent Authority on a daily basis:

- (a) daily gas demand and supply forecasts for the following 3 days;
- (b) daily flow of gas at all cross-border entry and exit points as well as all points connecting a production facility, a storage facility or an LNG terminal to the network, in mcm/d;
- (c) the period, expressed in days, for which it is expected that gas supply to the protected customers can be ensured.

3. In the event of a Union or regional emergency, the Commission is entitled to request that the Competent Authority provide it without delay with at least:

- (a) the information set out in paragraph 2;
- (b) information on the measures planned to be undertaken and already implemented by the Competent Authority to mitigate the emergency, and information on their effectiveness;
- (c) the requests made for additional measures to be taken by other Competent Authorities;
- (d) the measures implemented at the request of other Competent Authorities.

4. The Competent Authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

5. After an emergency, the Competent Authority shall, as soon as possible and at the latest 6 weeks after the lifting of the emergency, provide to the Commission a detailed assessment of the emergency and the effectiveness of the imple-

mented measures, including an assessment of the economic impact of the emergency, the impact on the electricity sector and the assistance provided to, and/or received from, the Union and its Member States. Such assessment shall be made available to the Gas Coordination Group and shall be reflected in the updates of the Preventive Action Plans and the Emergency Plans.

The Commission shall analyse the assessments of the Competent Authorities and shall inform the Member States, the European Parliament and the Gas Coordination Group of the results of its analysis in aggregate form.

6. In order to allow the Commission to assess the situation of the security of supply at Union level:

- (a) by 3 December 2011 at the latest, Member States shall communicate to the Commission the existing inter-governmental agreements concluded with third countries which have an impact on the development of gas infrastructures and gas supplies. When concluding new inter-governmental agreements with third countries which have such an impact, the Member States shall inform the Commission;
- (b) for existing contracts by 3 December 2011 at the latest, as well as for new contracts or in the event of changes to existing contracts, natural gas undertakings shall notify the Competent Authorities concerned of the following details of contracts with a duration of more than 1 year concluded with suppliers from third countries:
  - (i) contract duration;
  - (ii) contracted volumes in total, on an annual basis and the average volume per month;
  - (iii) in the event of an alert or emergency, contracted maximal daily volumes;
  - (iv) contracted delivery points.

The Competent Authority shall notify these data in aggregate form to the Commission. In the event of new contracts being concluded or changes being made to existing contracts, the whole set of data shall be notified again in aggregate form on a regular basis. The Competent Authority and the Commission shall ensure the confidentiality of the information.

*Article 14***Monitoring by the Commission**

The Commission shall carry out continuous monitoring of, and reporting on, security of gas supply measures, notably through an annual assessment of the reports referred to in Article 5 of Directive 2009/73/EC, and the information relating to the implementation of Article 11 and Article 52(1) of that Directive and, once available, the information provided in the risk assessment and the Preventive Action Plans and Emergency Plans to be established in accordance with this Regulation.

By 3 December 2014 at the latest, the Commission, on the basis of the report referred to in Article 4(6) and after consulting the Gas Coordination Group shall:

- (a) draw conclusions as to possible means to enhance security of supply at Union level, assess the feasibility of carrying out risk assessments and establishing Preventive Action Plans and Emergency Plans at Union level and report to the European Parliament and the Council on the implementation of this Regulation, including, inter alia, the progress made on market interconnectivity; and
- (b) report to the European Parliament and the Council on the overall consistency of Member States' Preventive Action Plans and Emergency Plans as well as their contribution to solidarity and preparedness from a Union perspective.

The report shall include, where appropriate, recommendations for improvement of this Regulation.

*Article 15***Repeal**

Without prejudice to the obligations of Member States concerning the deadlines for transposition and application of Directive 2004/67/EC, that Directive is repealed from 2 December 2010 with the exception of Article 4(1) and (2) of that Directive which shall apply until the Member State concerned has defined protected customers in accordance with Article 2(1) of this Regulation and has identified the natural gas undertakings in accordance with Article 8(1) of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 20 October 2010.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
O. CHASTEL

Notwithstanding the first paragraph of this Article, Article 4(1) and (2) of Directive 2004/67/EC shall no longer apply after 3 June 2012.

*Article 16***Derogation**

This Regulation shall not apply to Malta and Cyprus for as long as no gas is supplied on their respective territories. For Malta and Cyprus the deadlines implied by point (1) of the second paragraph of Article 2 and Article 3(2), Article 4(2) and (5), Article 6(1) and (5), Article 8(1) and Article 9(1), and Article 13(6)(a) and (b) shall apply as follows:

- (a) for point (1) of the second paragraph of Article 2, Article 3(2), Article 9(1) and Article 13(6)(a) and (b): 12 months;
- (b) for Article 4(2) and Article 8(1): 18 months;
- (c) for Article 4(5): 24 months;
- (d) for Article 6(5): 36 months;
- (e) for Article 6(1): 48 months;

from the day gas is first supplied on their respective territories.

*Article 17***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 6(8), the first sentence of Article 10(4), Article 10(7)(c) and Article 11(5)(c) shall apply from 3 March 2011.

## ANNEX I

## CALCULATION OF THE N – 1 FORMULA

## 1. Definition of the N – 1 formula

The N – 1 formula describes the ability of the technical capacity of the gas infrastructure to satisfy total gas demand in the calculated area in the event of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

Gas infrastructure includes the gas transmission network including interconnectors as well as production, LNG and storage facilities connected to the calculated area.

The technical capacity<sup>(1)</sup> of all remaining available gas infrastructure in the event of disruption of the single largest gas infrastructure should be at least equal to the sum of the total daily gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

The results of the N – 1 formula, as calculated below, should at least equal 100 %.

## 2. Calculation method of the N – 1 formula

$$N - 1[\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max}} \times 100, N - 1 \geq 100 \%$$

## 3. Definitions of the parameters of the N – 1 formula:

'Calculated area' means a geographical area for which the N – 1 formula is calculated, as determined by the Competent Authority.

*Demand-side definition*

'D<sub>max</sub>' means the total daily gas demand (in mcm/d) of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

*Supply-side definitions*

'EP<sub>m</sub>': technical capacity of entry points (in mcm/d), other than production, LNG and storage facilities covered by P<sub>m</sub>, S<sub>m</sub> and LNG<sub>m</sub>, means the sum of the technical capacity of all border entry points capable of supplying gas to the calculated area.

'P<sub>m</sub>': maximal technical production capability (in mcm/d) means the sum of the maximal technical daily production capability of all gas production facilities which can be delivered to the entry points in the calculated area.

'S<sub>m</sub>': maximal technical storage deliverability (in mcm/d) means the sum of the maximal technical daily withdrawal capacity of all storage facilities which can be delivered to the entry points of the calculated area, taking into account their respective physical characteristics.

'LNG<sub>m</sub>': maximal technical LNG facility capacity (in mcm/d) means the sum of the maximal technical daily send-out capacities at all LNG facilities in the calculated area, taking into account critical elements like offloading, ancillary services, temporary storage and re-gasification of LNG as well as technical send-out capacity to the system.

'I<sub>m</sub>' means the technical capacity of the single largest gas infrastructure (in mcm/d) with the highest capacity to supply the calculated area. When several gas infrastructures are connected to a common upstream or downstream gas infrastructure and cannot be separately operated, they shall be considered as one single gas infrastructure.

<sup>(1)</sup> According to Article 2(1)(18) of Regulation (EC) No 715/2009, 'technical capacity' means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network.

#### 4. Calculation of the N – 1 formula using demand-side measures

$$N - 1[\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max} - D_{eff}} \times 100, N - 1 \geq 100 \%$$

##### *Demand-side definition*

'D<sub>eff</sub>' means the part (in mcm/d) of D<sub>max</sub> that in case of a supply disruption can be sufficiently and timely covered with market-based demand-side measures in accordance with Article 5(1)(b) and Article 6(2).

#### 5. Calculation of the N – 1 formula at regional level

The calculated area referred to in point 3 shall be extended to the appropriate regional level where applicable, as determined by the Competent Authorities of the Member States concerned. For the calculation of the N – 1 formula at regional level, the single largest gas infrastructure of common interest shall be used. The single largest gas infrastructure of common interest to a region is the largest gas infrastructure in the region that directly or indirectly contributes to the supply of gas to the Member States of that region and shall be defined in the joint Preventive Action Plan.

The regional N – 1 calculation can only replace the national N – 1 calculation, where the single largest gas infrastructure of common interest is of major importance for the gas supply of all Member States concerned according to the joint risk assessment.

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## ANNEX II

**LIST OF MARKET-BASED SECURITY OF GAS SUPPLY MEASURES**

In developing the Preventive Action Plan and the Emergency Plan the Competent Authority shall take into account the indicative and non-exhaustive list of measures set out in this Annex. The Competent Authority shall duly take into account the environmental impact of the measures proposed when developing the Preventive Action Plan and the Emergency Plan and shall give preference, as far as possible, to those measures which have the least impact on the environment while taking into account security of supply aspects.

*Supply-side measures:*

- increased production flexibility,
- increased import flexibility,
- facilitating the integration of gas from renewable energy sources into the gas network infrastructure,
- commercial gas storage — withdrawal capacity and volume of gas in storage,
- LNG terminal capacity and maximal send-out capacity,
- diversification of gas supplies and gas routes,
- reverse flows,
- coordinated dispatching by transmission system operators,
- use of long-term and short-term contracts,
- investments in infrastructure, including bi-directional capacity,
- contractual arrangements to ensure security of gas supply.

*Demand-side measures:*

- use of interruptible contracts,
  - fuel switch possibilities including use of alternative back-up fuels in industrial and power generation plants,
  - voluntary firm load shedding,
  - increased efficiency,
  - increased use of renewable energy sources.
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## ANNEX III

**LIST OF NON-MARKET BASED SECURITY OF GAS SUPPLY MEASURES**

In developing the Preventive Action Plan and the Emergency Plan the Competent Authority shall consider the contribution of the following indicative and non-exhaustive list of measures only in the event of an emergency:

*Supply-side measures:*

- use of strategic gas storage,
- enforced use of stocks of alternative fuels (e.g. in accordance with Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products <sup>(1)</sup>),
- enforced use of electricity generated from sources other than gas,
- enforced increase of gas production levels,
- enforced storage withdrawal.

*Demand-side measures:*

- Various steps of compulsory demand reduction including:
  - enforced fuel switching,
  - enforced utilisation of interruptible contracts, where not fully utilised as part of market measures,
  - enforced firm load shedding.

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<sup>(1)</sup> OJ L 265, 9.10.2009, p. 9.

## ANNEX IV

**REGIONAL COOPERATION**

In accordance with Article 194 of the Treaty on the Functioning of the European Union and as underlined in Article 6 of Directive 2009/73/EC and Article 12 of Regulation (EC) No 715/2009, regional cooperation reflects the spirit of solidarity and is also an underlying concept of this Regulation. Regional cooperation is required in particular for the establishment of the risk assessment (Article 9), the Preventive Action Plans and the Emergency Plans (Articles 4, 5 and 10), the infrastructure and supply standards (Articles 6 and 8) and the provisions for Union and regional emergency responses (Article 11).

The regional cooperation under this Regulation builds on existing regional cooperation involving natural gas undertakings, Member States and national regulatory authorities to enhance, among other objectives, the security of supply and the integration of the internal energy market, such as the three regional gas markets under the Gas Regional Initiative, the Gas Platform, the High Level Group of the Baltic Energy Market Interconnection Plan, and the Security of Supply Coordination Group of the Energy Community. However, the specific security of supply requirements are likely to foster new cooperation frameworks, and existing areas of cooperation will have to be adapted in order to guarantee the best efficiency.

In the light of the increasingly interconnected and interdependent markets and the completion of the internal gas market, cooperation between the following Member States, as an example and among others, including between parts of neighbouring Member States, can enhance their individual and collective security of gas supply:

- Poland and the three Baltic States (Estonia, Latvia and Lithuania),
- the Iberian Peninsula (Spain and Portugal) and France,
- Ireland and the United Kingdom,
- Bulgaria, Greece and Romania,
- Denmark and Sweden,
- Slovenia, Italy, Austria, Hungary and Romania,
- Poland and Germany,
- France, Germany, Belgium, the Netherlands and Luxembourg,
- Germany, the Czech Republic and Slovakia,
- others.

Where necessary and appropriate, regional cooperation between Member States may be extended to strengthen cooperation with neighbouring Member States, in particular in the case of gas islands, notably with a view to enhancing interconnections. Member States may also be part of different cooperation clusters.

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