

Legislative initiatives in the field of energy security for gas¹

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Good morning Ladies and Gentlemen.

Before setting out my views on the European legislative initiatives in the field of gas supply security, I would like to give you a brief overview of what you can expect:

After briefly illustrating the position of gas in the European energy mix, I will set out the main elements of current EU legislation which are of relevance for European gas security, in particular against the backdrop of the Russia-Ukraine gas crisis in January 2009. I am limiting my presentation mainly to EU internal legislation, and will only shortly mention the EU approach towards third countries. Finally I will present the main features and challenges of the proposed Regulation on the security of gas supply which is currently on the table of the Council of the European Union and of the European Parliament and for whose presentation this conference comes very timely.

I. Setting the scene

My next slide illustrates the importance of gas in the EU energy mix: Roughly one quarter of EU energy consumption relies on gas and, as you can see on the next slide, around 60 % of this gas is imported from third countries. Those gas imports are coming from a relatively small number of countries (4th slide please): These are essentially Russia with 42 %, Norway with 24 % and Algeria with 18 %. This is the situation seen from the *EU level*. We are having quite different *national* situations regarding on the one hand the use of gas and its position in the national primary fuel mix (going from 2 % in Sweden up to 40 % in the Netherlands²); and on the other hand, Member States are relying on very

¹ The opinions expressed in this paper are solely those of the author. In no case should they be considered or construed as representing an official position of the Council.

² Eurostat data from 2007

different sources, depending notably on their geographical situation or their historical background.

II. The existing legislative framework

a) Directive 2004/67 on the security of gas supply

This Directive provides a *very flexible* framework for Member States to develop their national security of supply measures. The main elements of that Directive are the following:

- MSs had to define the roles and responsibilities of the different gas market players. They did this following quite different approaches.
- MSs had to adopt security of supply standards which were designed as minimum standards, covering at least cold weather periods of one in 20 winters, and which for the rest could be based to a large extent on national circumstances.
- The scope of these standards included, as a minimum, household customers to be protected in a crisis situation, but MSs were free to extend the scope to SMEs and other customers without fuel switching possibility. Eight MSs have used this possibility.
- The Directive obliges MSs to prepare national emergency measures and gives them a large choice of instruments, based on a non-exhaustive list of measures, including for example withdrawal from storage, interruptible demand, fuel switch, import and production flexibility, diversification of sources, cooperation between TSOs across borders, and others. An essential feature of these measures is that MSs have to give market players sufficient opportunity to provide an initial response to the crisis situation. At the moment of the January 2009 crisis, however, some MSs had not yet detailed plans in place, and the level of preparedness of MSs varied significantly.
- Going to the Community level the now well-known Gas Coordination Group was established on the basis of the Directive in November 2006

and proved to be a useful coordination instrument in the January 2009 crisis.

- Finally, the current Directive provides for a Community response mechanism in case of a major supply disruption - defined as a loss of 20% of gas imports - which is based on a three level approach:
 1. The first response is to be left to the gas industry;
 2. As a second step, MSs can take measures at national level;
 3. Only in a third step, should all this prove to be insufficient, measures at Community level would be activated.
- In the January 2009 gas crisis, the Early Warning mechanism which had been put in place in the context of the EU-Russia energy dialogue was useful as a first step. The principle of the three level approach of the Directive seemed to work well, and different measures were used by gas undertakings and MSs. There were however a number of shortcomings which became apparent; I will give some examples:
 1. There was a lack of consistency and comparability between the various definitions and measures of the different Member States.
 2. Where emergency planning existed, the emphasis was on small, practical steps at a local or national level, focussed on short term measures such as the use of gas storage, and there was a lack of options to diversify supplies.
 3. There was not enough information available regarding in particular cross-border gas flows and a lack of transparent information on the flow of gas into the EU.
 4. There was inadequate coordination between TSOs which seemed to have still a more national view of their market and caused difficulties to neighbouring States.

5. Arrangements between MSs and companies to collaborate were used and proved to be essential, but there was no strategy at EU level nor a regional strategy among the affected MSs.
6. In many cases, demand side management proved to be insufficient.
7. There were shortcomings in the pipeline network. In concrete terms: There seemed to be finally more a lack of infrastructure and interconnections than a lack of gas itself.

With the hope to overcome those shortcomings, the proposal for a security of gas supply Regulation which I will address in detail in a little while was tabled in July 2009.

b) Third package: internal gas market Directive 2009/73/EC and the Regulation on access to gas transmission networks

Since a well functioning internal gas market is considered as the fundamental basis for the security of gas supply, let me now turn to the third internal market package, in particular the two gas specific instruments; when these instruments are fully implemented in the MSs, the situation will gradually improve. The reinforced cooperation between TSOs and Regulators and notably the 10-year network development plan which has to be put in place will certainly also be useful tools for enhancing security of supply.

- c) I have already mentioned the Early Warning mechanism between the EU and Russia which is just an example of how the existing internal regulatory framework can be complemented by external action towards third countries. Here, the EU aims *inter alia* at diversifying source countries and transport routes or at cooperation on different levels, including technical cooperation, cooperation between industries, administrations and governments.

III. The proposed Regulation on measures to safeguard security of gas supply

The discussion on this proposal is still ongoing; my analysis is therefore only preliminary. Let me first address the main features of the proposal:

- Since the three step approach of the current Directive as well as the priority for market based measures have in principle proved to be adequate, quite a lot of Member States are advocating in favour of maintaining such an approach. It is of particular importance that in the event of a crisis, be it national, be it at regional or Union level, the rules of the internal market legislation continue to be respected and the gas market continues functioning. Cross-border access to pipelines and storage agreed among operators must be maintained according to the contractual obligations. For the case of gas shortages, MSs will need to oblige gas undertakings and/or industrial customers, through their Preventive Action and Emergency Plans, to take the appropriate measures, e.g. interruptible contracts or fuel switching possibilities, so that gas supply to protected customers can be ensured. Only in case of an Emergency - which in the current text can be declared at the moment where market measures are insufficient to deal with the supply disruption - Member States/their Competent Authorities can impose non-market measures on undertakings.
- Let me now turn to the aspect of solidarity which has always been claimed as an important element of the proposal.

What is meant with solidarity and how is it in concrete terms reflected in the text? The first expression of solidarity can be found in the obligation which is put on the C.A. to consult the other C.A.s concerned at the appropriate regional level, and also the Commission, on the draft Preventive Action and Emergency Plans in order to avoid inconsistencies between the different national Plans and to avoid measures which could negatively impact on other MSs.

Solidarity resides also in the obligation, for Member States and operators, to cooperate and to comply with the internal market rules and their contractual obligations also in Emergency situations, in particular, but not only, if those obligations concern gas flows into the markets affected by the crisis. Measures such as shutting down interconnectors to keep the gas inside one national market should no longer be taken.

It becomes clear from these elements that solidarity does not mean a free ride for one or the other country.

- The principle of having two obligatory security of supply standards in the Regulation points into the same direction. Most Member States seem now broadly to agree to the related obligations, i.e. complying with a supply standard for protected customers and an infrastructure standard based on the N-1 principle. It is important to note that this infrastructure standard is not necessarily to be complied with only through infrastructure capacity; also demand side measures can be used to fulfil this obligation where their effectiveness is demonstrated in the Preventive Action Plan, on the basis of a risk assessment. Discussion is at this stage however still ongoing on the details of the N-1 calculation and whether the supply standard could only be a minimum standard.
- Linked to the supply standard is also the question which group of customers should benefit from the protection, i.e. how broad or narrow should be the definition of protected customers. This issue is still under discussion in the Council. The broader the scope of the protection is, the more public service obligations will be needed, and the emergency level will need to be triggered earlier than with a narrow scope where only household customers would be protected.
- In the same way, also the trigger for a Union Emergency is linked to the definition of protected customers: an early declaration of national Emergency can, on certain conditions, also trigger an early Union

Emergency. Concrete additional criteria for this trigger (at the request of one or more C.A.s, or loss of a certain amount of gas, be it from imports or an EU internal disruption) are still under discussion.

What would be the implications of a Union Emergency? The Commission would take on its coordinating role, assisted by the Gas Coordination Group. It would be up to the MSs and in particular the C.A.s to ensure that the measures which would be introduced on the basis of the national Emergency Plans do not restrict the flow of gas nor put at risk the security of supply of another MS and that they are in line with the cross-border access rules of the gas access Regulation. No additional obligations on MSs or undertakings which would go beyond the measures of the Plans are foreseen in the proposal.

- Finally, the need for regional cooperation is not only *recognised* by MSs, there is a widespread *request* for such cooperation. It is however clear from the discussion in the Council bodies that this cooperation – which will remain voluntary – has to be implemented in a flexible way. It can be partly based on existing cooperation schemes, but will have to be organised on its own merits, based notably on the risk assessments and the consultation on the Preventive and Emergency Plans. According to the current text, this cooperation will include the possibility of joint regional risk assessments, joint Plans and the joint fulfilment of the N-1 standard.

Let me conclude that, all in all, the described provisions should strike a balance between responsibility at national level and solidarity at Union level.