



Brussels, 24.6.2016  
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Mr Josef SALLER  
President of the Bundesrat  
Dr Karl Renner-Ring 3  
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*Dear President,*

*The Commission would like to thank the Bundesrat for its Reasoned Opinion on the proposal for a Regulation concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 {COM(2016) 52 final} and on the proposal for a Decision on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy and repealing Decision No 994/2012/EU {COM(2016) 53 final}.*

*The Commission has carefully considered the subsidiarity concerns raised by the Bundesrat in its Reasoned Opinion and is pleased to offer the following clarifications.*

*The proposal for a Regulation on the Security of Gas Supply ('Gas SoS Regulation') {COM(2016) 52 final} introduces mandatory regional cooperation for conducting risk assessments and drawing up the Emergency and Preventive Action Plans. It also contains measures for regions defined on the basis of the criteria listed in Article 3(7). The existing Regulation (EU) No 994/2010<sup>1</sup> provides for voluntary regional cooperation between Member States. By introducing mandatory regional cooperation in pre-defined regions in the field of security of supply, the Commission seeks to address the shortcomings of the Regulation (EU) No 994/2010, which led to sub-optimal results as regards Member States' risk preparedness in case of a disruption in gas supply.*

*The proposed approach is not entirely new. It builds on existing regional cooperation structures established by the Member States and the Commission, particularly the regional groups set up under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation)<sup>2</sup>. However, since the Gas SoS Regulation and the TEN-E Regulation have different objectives, the size and composition of the regional groups have been adapted to make them fit for purpose in the field of security of supply.*

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<sup>1</sup> OJ L 295, 12.11.2010, pp. 1-22.

<sup>2</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulation (EC) No 713/2009, (EC) 714/2009 and (EC) No 715/2009, OJ EU L 115 of 25.4.2013, p. 39.

*The following criteria, defined in Article 3(7) of the Gas SoS Regulation, have been taken into account when defining regional groups: supply patterns, existing and planned interconnections and interconnection capacity between Member States, market development and maturity; existing regional cooperation structures and the number of Member States in a region, which should be limited to keep arrangements workable.*

*Member States are actively involved in the decision-making process for determining the regions through their participation in the ongoing legislative process, namely the discussions in the Energy Working Party in the Council.*

*Article 3(7) of the Gas SoS Regulation empowers the Commission to adopt a delegated act in order to modify the regions. At the same time, Article 3(7) imposes limits on the Commission's power to amend the regions by stating that such amendment can only take place when the circumstances warrant a need for change and it has to be based on the criteria set out in Article 3(7).*

*In addition, delegated acts are subject to the control of the legislator, as they only enter into force if the European Parliament or the Council have expressed no objection. When preparing and drawing up delegated acts, the Commission will ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council and carry out appropriate and transparent consultations well in advance, including at expert level. This allows for control by the Member States over the exercise of the delegation.*

*The Commission acknowledges that the power to adopt delegated acts according to Article 3(7) should be mentioned in article 18 of the Gas SoS Regulation as is the case for articles 6(3) and 7(3). This omission can be rectified in the legislative process.*

*As to the proposal on establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy {COM(2016) 53 final}, the Commission shares the Bundesrat's view that the Commission's early involvement may be advantageous as legal problems can already be eliminated during the negotiations. The introduction of an ex-ante assessment has been identified in the assessment accompanying the proposal as the only efficient way to ensure full compatibility of intergovernmental agreements (IGAs) with EU law, which is not provided for by the current ex-post system.*

*As regards the concerns raised by the Bundesrat with respect to Member States' sovereignty and possible administrative burdens, the Commission would like to underline that the result of the proposed ex-ante check would not be a legally binding decision by the Commission. The assessment by the Commission would only have a suspensory effect for a limited period of time of twelve weeks maximum which can be shortened in accordance with Article 5(3) of the proposal. Moreover, the basis for such an ex-ante check of IGAs would be strictly limited to the relevant provisions of the EU acquis. Under the proposed framework, Member States would also remain free to finalise the negotiations and sign IGAs as long as they fully respect EU law. Such an ex-ante control would, therefore, not constitute a judgment passed on the political opportunity of negotiating IGAs but a control of the negotiated IGA's legality. This is fully in line with the Treaties, especially articles 4*

*and 194 of the Treaty on the Functioning of the European Union (TFEU) which establish a shared competence between the EU and its Member States in the field of energy.*

*With respect to proportionality, the Commission would like to stress that not all IGAs fall under the scope of the current Decision No 994/2012/EU<sup>3</sup> nor would they under the proposed framework. Only those IGAs which have an impact on the operation or functioning of the internal energy market or on the EU's security of energy supply would need to be notified. Such non-binding instruments could be easily communicated to the Commission by electronic means, for instance via the CIRCABC database, which would considerably limit the administrative burden for both the Member States and the Commission.*

*The points made in this reply are based on the initial proposals presented by the Commission which are currently in the legislative process, involving both the European Parliament and the Council in which your government is represented.*

*The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Maroš Šefčovič  
Vice-President*

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<sup>3</sup> OJ L 299, 27.10.2012, pp. 13–17.