

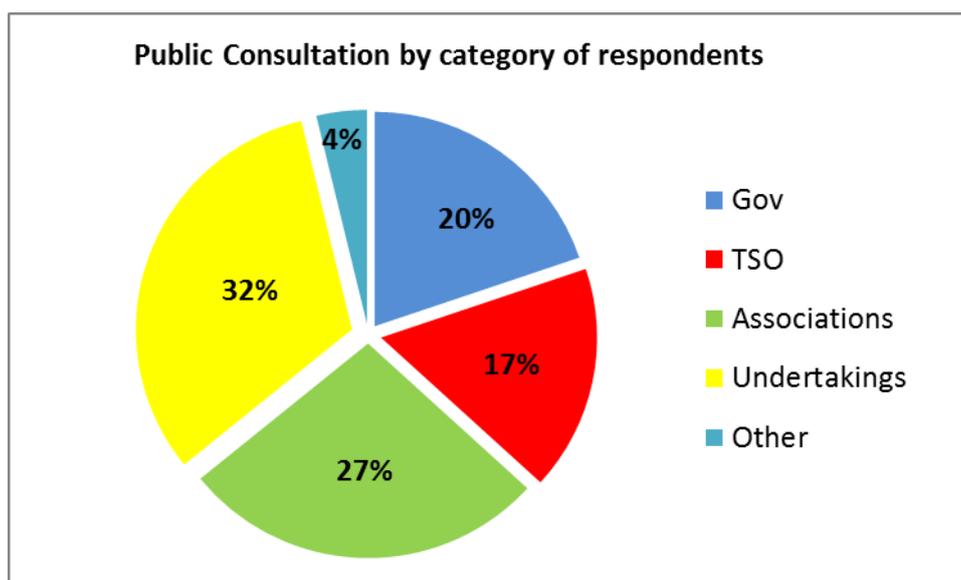


Brussels, 10/06/2015

Responses to the Public Consultation on the Revision of Regulation No 994/2010 on security of gas supply

I. Results of the Public Consultation

Questions on a possible revision of the Regulation No 994/2010 concerning measures to safeguard security of gas supply ('the Regulation') were submitted to a public consultation ('the Consultation') from 15 January 2015 to 8 April 2015. The overall response rate was high with about 100 contributions. A large share of responses was received from undertakings (32%) and associations (27%). The high response rate from national and pan-European associations means that the overall number of stakeholders who expressed their views in the Consultation and therefore its representativeness is even higher. Moreover, a majority of the EU Member States expressed their views in the public consultation as well as a majority of European TSOs.



II. Infrastructure

Adequacy of the current N-1 standard

- 1) A majority of stakeholders argue that N-1 rule is a **good proxy** for 'minimal level of infrastructure' to safeguard security of supply in the event of a technical failure.
- 2) However, a large group of stakeholders also pointed out that there is scope for **improvement** of the standard to make it more realistic. In their opinion, the standard in its current form is considered too narrow to capture various aspects of security of supply such as e.g. the consequences of a disruption and infrastructure variety. A

smaller group of stakeholders expressed the view that N-1 rule is fit for purpose and therefore should not be amended due to its simplicity and to avoid investments in additional redundancy.

- 3) As a result, stakeholders advocate for either: (i) changing the standard by completing or replacing the N-1 rule with other measures in order to better reflect the actual situation in the gas system in terms of primarily physical flows, or (ii) changes in the current N-1 methodology.
- 4) When it comes to completely **changing the current standard**, stakeholders suggest methodologies applied in the stress tests of 2014 or in the ENTSOG Winter Outlook as well as supplier diversity measures (e.g. access to gas hubs, number of gas sources or access to LNG). Some of the respondents suggested keeping N-1 as Infrastructure Standard, while its formula should consider the effectively available cross-border capacity.
- 5) With regard to **changes in the current methodology**, stakeholders broadly propose to take into account the actual level of gas stored and further technical considerations related to withdrawal rates, output capacity at cross border points and internal bottlenecks.

Need for more regional approach to infrastructure standard

- 6) The majority of stakeholders are in **favour of either regional or pan-European** (or both) approaches to the N-1 standard or an alternative infrastructure standard. According to the stakeholders, an additional regional assessment, complementary to the national level, could improve the overall ability to react and to prepare the necessary actions in the field of security of supply (e.g. sharing information, avoiding or mitigating infrastructure failure and preventing stranded assets).
- 7) However, a number of EU Governments and TSOs **oppose any binding commitment**, leaving a decision on regional approach to the free choice of the Member States. Furthermore, other submissions point out that a regional approach should apply only in specific circumstances, for example in case of interdependent Member States, single balancing zones, integrated markets, well-interconnected networks or harmonized balancing systems.
- 8) Another issue intensely commented on by the stakeholders is **how to set up the regions**. There are a number of stakeholders who believe that the list of regions as set out in Annex IV of the Security of Supply Regulation and Regional Initiatives Process is a good starting point. Other respondents propose to define regions on the basis of various criteria such as e.g. main supply corridors, commercially driven cross-border flows, common features and challenges, similar vulnerability to crisis scenarios, or cross-border capacity constraint. Many of the stakeholders submit that regions should not be predefined and that the allocation of regions should not be prescriptive. Some stakeholders suggest that the infrastructure standard should be applied on three identified market layers: virtual trading point, integrated market area and EU area.

Reverse flows

- 9) Many submissions to the public consultation highlighted the importance of reverse flows for security of supply. To this end, a number of submissions advocated for the implementation of reverse flows at **all interconnections**, including new interconnectors. Some stakeholders indicated an insufficient number or volume of reverse flows at the EU level, identifying also limiting factors such as odourisation and gas quality requirements. On the other hand, some other stakeholders oppose compulsory bi-directional flows on all the interconnectors invoking cost-benefit analysis and request the involvement of all Member States who benefit from the interconnection in the cost sharing.

Exemptions and review of exemptions

- 10) Opinions of stakeholders on the exemption regime were divided. Some of them called for limiting exemption possibilities to very specific, narrow cases, while others claimed that exemptions prevent stranded assets while an obligation to provide bi-directional flows does not always contribute to security of supply.
- 11) Most stakeholders are however in favour of also involving Member States located along the transportation **corridor** and that are affected by a given interconnection, even if they are situated beyond the immediate border, in the exemptions decision-making process.
- 12) From the point of view of governance, some stakeholders call for **more transparency** of the process, more explicit reference to the cost-benefit analysis and the participation of the Commission/ACER to ensure a global overview. Some of the stakeholders deemed as "inappropriate" delegating the decision-making power on exemptions to ACER.
- 13) A majority of stakeholders agree that the current timing of reviews (every two years) is sufficient, but some of the governments and TSOs argued for longer review periods (from three to five years). They argue that the general market environment does not normally change so rapidly so the current timeframe of two years is too short and does not allow for a comprehensive assessment. Moreover, the reviews are perceived as burdensome. Stakeholders that advocate longer review periods support the idea of carrying out *ad hoc* reviews under special circumstances.
- 14) A number of other stakeholders, including some governments, claim that existing procedures for exemptions should be maintained.

III. Supply standard

Is the supply standard still adequate?

- 15) The Supply Standard is a recurring topic for discussion because it concerns the very essence of the Member States' approach to secure supplies: who should be responsible and what are the means at their disposal?
- 16) Overall, a clear majority of stakeholders support the **current supply standard**, which is flexible and result-oriented rather than prescriptive. Comments in this respect focus rather on the impacts of a diverging definition of the protected customers, but they do not question the supply standard as such. There is a minimal support for an even more flexible approach opening compliance with the supply standard up to fuels other than

gas (e.g. from other indigenous sources) on the grounds that protected consumers need energy and not specifically gas.

- 17) As regards the **scenarios**¹, almost all replies considered the current scenarios contained in the Regulation as adequate and divergence only appears with regard to the inclusion of an additional scenario to cover geopolitical risks. Some of the respondents argue in favour of its inclusion given the tensions between Russia and Ukraine and refer to it as the Source -1 (S-1) scenario. It is however unclear from the replies received whether this scenario is actually meant as an additional enforceable obligation under the Supply Standard or rather a scenario to be considered by all Member States, for example, in the Risk Assessment. On the other hand, some stakeholders strongly advocate against having additional scenarios and notably those related to geopolitical risks as they are considered disproportionately costly and not an appropriate tool to deal with such risks.²
- 18) The discussion on the scenarios is directly linked to the use of increased standards. Few replies were in favour of **increasing the standards**. The underlying reasons for this conservative approach differ. A first group of stakeholders points to the costs for the end consumers and request the Commission to carry out a thorough impact assessment should it consider such increase. Some voices even suggest that such increase would send a wrong signal about the level of security of supply in the EU. Gas sellers and buyers warn about the risk of making gas an uncompetitive source.
- 19) A second group of stakeholders does not support increased standards in the Regulation because they want to retain the current possibility to define their own **national increased standards** tailor-made to their needs. In this case, the effect of increased standards in the market liquidity is acknowledged, but it is argued that national Competent Authorities should ensure that the increased standards do not affect the Internal Market or the security of supply of other Member States. No indication is provided as to how the Competent Authorities would do this.
- 20) With respect to the scope of undertakings obliged to ensure the supply standard, a clear majority of replies argue in favor of equal treatment for all undertakings although a modest number of stakeholders is open to considering some exemptions (e.g. for new entrants).

How should the Supply Standard be met?

- 21) One of the key debates on the revision of the Regulation evolves around the question *how* it is met in the various Member States. Approaches vary widely, from an extreme hands-off approach based on trust in a functioning market to a more interventionist regime with detailed obligations on gas undertakings that supply protected customers sometimes complemented by thorough ex-ante checks. The majority of Member States

¹ Natural gas undertakings must secure supplies to protected customers under severe conditions: in the event of a seven day temperature peak and for at least 30 days of high demand, as well as in the case of an infrastructure disruption under normal winter conditions.

² In concreto: it is for instance deemed unaffordable if not impossible to maintain gas volumes to completely replace missing Russian gas supplies in case of a prolonged disruption. Some respondents underline that such crisis would need to be dealt with politically, as the Commission did in the autumn of 2014.

have however adopted regimes located somewhere in between, for instance by requiring a certain percentage of the gas demand for protected customers to be stored by the undertakings responsible in an underground storage facility.

- 22) The Consultation responses unanimously agree that the disparate state of market functioning in the Member States makes it highly undesirable for the current flexibility to be replaced by a harmonized regime imposed top-down in a ‘one-size-fits-all’ approach.
- 23) The reasons behind this clear preference for a result-oriented approach at EU level are again diverse. While a block of stakeholders strongly opposes a prescriptive approach and favours instead systems purely based on market mechanisms (e.g. sanctions and incentives), another block defends prescriptive approaches set at national level. The latter accepts the result-oriented approach of the Regulation insofar as the flexibility to set increased national standards is maintained (article 8(2) of the current Regulation).

To what extent can the market be trusted in meeting the Supply Standard?

- 24) In terms of how the standard should be met, two main groups of responses stand out and are repeated across the board: first, there is general consensus that a **functioning market** is the best instrument to ensure a high level of security of supply. However, secondly, there is equally broad consensus that in areas where the market is not mature, **intervention is necessary if not inevitable**. This second point is often accompanied by a call for caution that interventionist measures should not unduly distort the market; something the Commission should (better) monitor and ensure. This means that non-market-based measures should be allowed to be introduced only after the exhaustion of market-based measures. In that context, criteria that national measures should adhere to and that are put forward by the Commission – such as a clear problem definition, proportionality and non-discrimination of the solution and transitionality/exit strategy of the measure – find strong support.

The role of Competent Authorities in meeting the Supply Standard

- 25) A question closely connected to the result-oriented approach is the role that national competent authorities should play in enforcing the supply standards. Current systems vary from cases where the competent authorities’ role is to set a framework of incentives, to competent authorities entrusted with an active verification of the measures envisaged by undertakings to comply with their supply standard obligations.
- 26) A majority seems to prefer an *ex-ante* role for the Competent Authority, although many do not indicate how such monitoring role could be played in systems without mandatory physical obligations. Some stakeholders within this majority have proposed a “monitoring” role (as opposed to checks) for the Competent Authorities. Such role would require the Competent Authority to monitor the security of supply situation on the basis of information on flows, capacity bookings and storage levels, for example, and possibly supported by supply outlooks. Only in case of doubts as regards the existence of measures or their feasibility would the competent authority request further information from undertakings. Some stakeholders have also suggested that the Competent Authorities limit their roles to verifying the financial ability of undertakings to cover protected customers’ needs.

- 27) A number of stakeholders consider the ex-ante control of the Competent Authorities impossible in functioning markets with liquid hubs and moreover inefficient (little added value and likely associated bureaucracy). The question whether and how the enormous amounts of gas contracts that are concluded on a daily basis on Europe's gas hubs can be checked by a Competent Authority as evidence of an undertaking meeting its supply standard obligations, is linked to a concern that with increasing trade it becomes less predictable whether a contract will be fulfilled and whether its holder actually meets its obligations. A number of stakeholders point out that hub-based contracts must be backed by physical means, contain security of supply guarantees and compensation clauses. Some responses point out that market participants are themselves thoroughly checked before obtaining a trading or supply license, having to meet credit requirements, and underline the reputational risk of an undertaking not meeting its standards.

Means to ensuring that the Supply Standard is met

- 28) In terms of what measures should be relied upon on, the consultation raised questions about various models, such as a complete hands-off and market-based approach as described above to the various more prescriptive measures that Member States going to intervene could envisage introducing, such as: storage related security of supply measures, diversification obligations, options to secure LNG supplies, or a joint purchasing mechanism.
- 29) The majority of respondents indicated that measures introduced to meet the supply standard should be **market-based** to the extent possible and thus favour most efficient flexibility tools, be it LNG, storage or other. Also, the choice of flexibility measures should not be prescribed but left to the market players to decide. Many respondents underline that obliging the use of one instrument (for example storage) could prevent the use of other means which may be more cost-efficient and equally effective.³
- 30) A significant number of stakeholders recognised that there could be a need to **differentiate between mature and non-mature markets** for meeting the supply standard. Certain stakeholders provided examples of the main decisive factors being the existence of liquid hubs, short vs. long-term contracts ratio or concentration on the upstream supply market.

The role of storage, LNG and joint mechanisms

- 31) Whilst the crucial role of **storage** in ensuring secure supplies is undisputed, a clear majority of respondents warn about strictly defined storage related security of supply measures such as strategic stocks or storage obligations on suppliers. Respondents in favour of strict storage obligations are usually the Competent Authorities that impose them. Various stakeholders suggest that there is a strong case for an ex-ante Commission check of such measures when they are proposed by Member States, in line with the above mentioned criteria.
- 32) Regarding **LNG**, there is a general agreement that it should play an important role as a source of flexibility in the EU gas market. Some respondents see LNG as a prime

³ DG Energy has commissioned a study assessing the various storage related SoS-measures in place in the Member States and their costs and benefits. The study is expected to be published in the summer of 2015.

response to emergency situations, including through immediate re-direction of vessels. In this context, other respondents while appreciating the flexibility of LNG note that in practice LNG is not always able to respond immediately to an emergency or in peak demand times due to market or physical constraints, which create a time lag of around two weeks. Furthermore, several stakeholders signalled a need to have a more long-term view on LNG, including a strengthened political dialogue of the EU with LNG exporters and improve interconnection between existing LNG terminals and consumption centres. Finally, there is some stakeholders who sees the need for a centralised LNG purchaser buying gas for a region.

- 33) According to a majority of stakeholders, other measures, such as **joint-purchasing mechanisms or common gas reserves**, should only be considered on a voluntary basis and in compliance with the Internal Market and EU competition rules. According to a majority of respondents, liquid and competitive gas markets are the best guarantee for the supply standard. Another important group of stakeholders signalled that crisis situations require coordinated responses between several Member States but there should be clear conditions under which such measures could be deployed, for example: to be triggered only once market measures have been exhausted or that the decision to trigger them should be coordinated at EU level. Finally, some of the stakeholders have not taken a clear stance because they would need more information on the functioning of such mechanisms to fully assess their applicability.

Tasking the TSO for extreme situations

- 34) Responses are divided on the question whether or not the TSO should have a supplying role in certain predefined circumstances, warning in particular that from an unbundling perspective it is undesirable that a TSO becomes active in gas trade and supply. However, those active in a market where such a regime is in place are very positive about it, noting that when the role is strictly contained and well-regulated *and* where it is ensured that the TSO takes the necessary measures in a market-based manner, the regime actually levels the playing field.

IV. Protected customers

Definition

- 35) There is a broad consensus that the definition of Protected Customers is too wide and leads to an inconsistent application across the EU. Most stakeholders agree to harmonisation on a regional or pan-European level. According to some respondents, the Commission should set the definition, which would provide a coherent approach across the EU or at least set minimum criteria. Other stakeholders signalled that a regional definition of Protected Customers would be fully justified in case of a truly regional approach applied to the security of supply.
- 36) At the same time, a significant number of respondents indicated that there are technical reasons why the definition may need to be broader, namely when the system does not allow for differentiation between protected and non-protected customers. In case technical issues prevent distinguishing between protected and non-protected customers, some respondents suggested a sanctions system for those who off-take gas despite the emergency.

Solidarity

- 37) A number of respondents have replied that adequately tailored solidarity agreements between Member States would be needed. Having the solidarity rules in place would decrease the risk of free riding by Member States with higher share of protected customers, which in turn would prevent or at least delay curtailing the flows between Member States.

V. Risks assessment and preventive action plans

Risk assessments, preventive actions plans and emergency plans

- 38) The majority of the respondents are of the opinion that the current format of the risk assessments and preventive action plans should be improved. Only a few answers are suggesting focusing on the implementation of the current rules without changing the Regulation.
- 39) A large group of the respondents favour **templates**; however, the templates should be flexible enough to be able to take into account the specificities of different Member States. The other half is arguing that due to the different situation on gas markets in each Member State a template would not be useful but rather a non-binding guidance or even no harmonisation at all. Most of the respondents who are in favour of harmonisation via templates or guidance consider useful also harmonised scenarios.
- 40) There is a general agreement to **reinforce regional co-operation**. However, there is a half-half division if the regional co-operation on regional risk assessments and the preventive action plans should be **voluntary or mandatory**, especially for the regions with limited diversity of supply sources. Very few stakeholders propose to introduce EU wide plans which would be developed by the Commission.
- 41) The majority of the respondents see the usefulness of **voluntary regional emergency plans** which should be complementary to the national plans.

Simplification of administrative procedures

- 42) In general, there is an agreement that simplification of administrative procedures is welcome. The **clear majority of respondents agree that an English translation** of the risk assessments and plans is necessary.
- 43) There is no clear view on the probable merging of the risk assessment and the plans. Various constellations are mentioned in the answers, namely merging all three documents in one, merging risk assessment with the preventive action plan as well as merging the preventive action plan with the emergency plan. Only few respondents who are favouring the introduction of regional plans are of the opinion that regional plans could replace the national plans.
- 44) Some of the respondents would like to increase the update interval of the risk assessment and the plans from two to four or five years due to the administrative burden and the fact that the gas infrastructure changes are not very frequent. Finally, the alignment of timelines is also mentioned in some answers.

VI. Declaration of an emergency

National emergencies

- 45) Many respondents argue against the definition of a **threshold-based mechanism** to trigger the declaration of the different crisis levels and would leave the decision to Member States. Many, however, do not exclude potential examination of the issue and some are in favour in case national differences in such indicators can be identified. Several respondents also proposed more specific indicators in this regard (e.g. system balancing position and system integrity; partial shortfall, disruption, failure of main supplier, etc.) separate for the alert and emergency levels. In any case, the definition of "functional markets" was considered challenging.
- 46) There is a very general agreement by most respondents that **non-market based interventions** by Member States should be limited to emergency situations only. Only few Eastern Member States showed support for use already in earlier stages. Similarly, many countries already have a national **appeal mechanism**. Appeal to the Commission or **binding Commission recommendations** are generally not supported. An ex-post evaluation by the Commission or a third party on whether the emergency level was correctly called upon, however, is welcomed by most.

Regional or EU-wide emergencies

- 47) Views are more divided on how **clear roles and responsibilities** are. Some clarifications would still be welcome, especially in relation to cooperation among TSOs in crisis situations. Specifying further TSO tasks through a network code has been brought up by several respondents. A large group of respondents would give a role of "adviser" or "honest broker" to ENTSOG, the other large group of stakeholders does not see any specific role for ENTSOG.
- 48) Many respondents consider the provision of information to **still functioning markets** about emergency situations useful. Introduction of rules are only supported in a few Central and Eastern Member States.
- 49) There is a clear majority of respondents that consider the current Regulation adequate and are not in favour of additional **alert and early warning levels on a regional level**, and practically none so at the EU level. Similarly, they support the use of existing tools (ENTSOG, GSE, GIE transparency platforms, REMIT) instead of a new information tool. Obligations regarding regional cooperation are only supported in some Central and Eastern Member States, mainly in order to ensure that Member States follow through their emergency plans.
- 50) Most respondents do not see the need for substantially increasing **Commission powers** apart from ensuring compliance with legislation. Some Eastern Member States see an added value of the Commission coordinating regional emergencies in order to ensure that borders are not closed or interconnection capacity reduced in emergencies. No added value is seen in the creation of another **emergency body**; existing structures, e.g. the Gas Coordination Group, can play that role.
- 51) Finally, many respondents support the idea of exploring the possibilities for the **alignment of TSO emergency procedures**, either following crisis exercises or through network codes, therefore without the need to change the current Regulation.

VII. Other issues

Transparency

- 52) Some respondents argued in their responses in favour of increased transparency of commercial gas contracts, which could have a positive impact on security of supply.
- 53) Under the current Regulation, it is already stipulated that for the sake of assessing the long-term supply outlook of the Union, gas companies are requested to notify the Competent National Authorities of certain details of supply contracts with suppliers from third countries, which have duration of more than one year. Competent Authorities have to notify the information in an aggregate form to the Commission.
- 54) In this context, some respondents proposed an ex-ante analysis of certain contracts with respect to their impact on security of supply. According to the proposal made, the review would be limited to the most sensitive contracts meeting particular criteria (e.g. market concentration index, dominant supplier, long-term duration, etc.).
- 55) To this end, some of them proposed also other transparency increasing measures, such as a guidance for companies regarding illegal contract clauses and enhanced transparency of gas prices (e.g. regional benchmarks) as a tool for increasing the bargaining power of gas buyers.