Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (Text with EEA relevance)

REGULATION (EU) 2017/1938 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2017

concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010

(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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Natural gas (gas) remains an essential component of the energy supply of the Union. A large proportion of such gas is imported into the Union from third countries.

(2) A major disruption of gas supply can affect all Member States, the Union and Contracting Parties to the Treaty establishing the Energy Community, signed in Athens on 25 October 2005. It can also severely damage the Union economy and can have a major social impact, in particular on vulnerable groups of customers.

(3) This Regulation aims to ensure that all the necessary measures are taken to safeguard an uninterrupted supply of gas throughout the Union, in particular to protected customers in the event of difficult climatic conditions or disruptions of the gas supply. Those objectives should be achieved through the most cost-effective measures and in such a way that gas markets are not distorted.

(4) Union law, in particular Directive 2009/72/EC of the European Parliament and of the Council[(3)], Directive 2009/73/EC of the European Parliament and of the Council[(4)], Regulation (EC) No 713/2009 of the European Parliament and of the Council[(5)], Regulation (EC) No 714/2009 of the European Parliament and of the Council[(6)], Regulation (EC) No 715/2009 of the European Parliament and of the Council[(7)] and Regulation (EU)No 994/2010 of the European Parliament and of the Council[(8)], has

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already had a significant positive impact on the security of gas supply in the Union, both in terms of preparation and mitigation. Member States are better prepared to face a supply crisis now that they are required to establish preventive action plans and emergency plans, and they are better protected now that they have to meet a number of obligations regarding infrastructure capacity and gas supply. However, the Commission's report on the implementation of Regulation (EU) No 994/2010 of October 2014 highlighted areas in which improvements to that Regulation could further bolster the security of gas supply in the Union.

(5) The Commission's communication of 16 October 2014 on the short-term resilience of the European gas system analysed the effects of a partial or complete disruption of gas supplies from Russia and concluded that purely national approaches are not very effective in the event of severe disruption, given their scope, which is by definition limited. The stress test showed how a more cooperative approach among Member States could significantly reduce the impact of very severe disruption scenarios in the most vulnerable Member States.

(6) Energy security constitutes one of the objectives of the Energy Union Strategy, as set out in the Commission's communication of 25 February 2015 on a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, which also emphasised the ‘energy efficiency first’ principle and the need to fully implement existing Union energy legal acts. The communication highlighted the fact that the Energy Union rests on solidarity, enshrined in Article 194 of the Treaty on the Functioning of the European Union (TFEU), and trust, which are necessary features of energy security. This Regulation is intended to boost solidarity and trust between the Member States and put in place the measures needed to achieve those aims. When assessing the preventive action plans and the emergency plans established by the Member States, the Commission should also be able to draw the attention of the Member States to the objectives of the Energy Union.

(7) An internal gas market that operates smoothly is the best guarantee of the security of gas supply across the Union and to reduce the exposure of individual Member States to the harmful effects of disruptions of gas supply. Where a Member State's security of gas supply is threatened, there is a risk that measures developed unilaterally by that Member State may jeopardise the proper functioning of the internal gas market and damage the gas supply to customers in other Member States. To allow the internal gas market to function even in the face of a shortage of supply, provision must be made for solidarity and coordination in the response to supply crises, as regards both preventive action and the reaction to actual disruptions of gas supply.

(8) A truly interconnected internal energy market with multiple entry points and reverse flows can be created only by fully interconnecting its gas grids, by building up liquefied natural gas (LNG) hubs in the Union's Southern and Eastern regions, by completing the North-South and Southern Gas corridors and by further developing domestic production. Therefore, an accelerated development of interconnections and projects aiming to diversify supply sources, as already shortlisted in the Energy Security Strategy, is necessary.

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(9) So far, the potential for more efficient and less costly measures through regional cooperation has not been fully exploited. This has to do not only with better coordination of national mitigation actions in emergency situations, but also with national preventive measures, such as national storage or policies related to LNG, which can be strategically important in certain regions of the Union.

(10) In a spirit of solidarity, regional cooperation, involving both public authorities and natural gas undertakings, should be the guiding principle of this Regulation, to mitigate the identified risks and optimise the benefits of coordinated measures and to implement the most cost-effective measures for Union consumers. Regional cooperation should gradually be complemented with a stronger Union perspective, allowing recourse to all available supplies and tools in the entire internal gas market. Union-level assessment of the emergency supply corridors should be incorporated into the regional cooperation.

(11) A risk-based approach to assessing the security of supply and establishing preventive and mitigating measures enables efforts to be coordinated and brings significant benefits in terms of the effectiveness of measures and optimisation of resources. This applies particularly to measures designed to guarantee a continued supply, under very demanding conditions, to protected customers, and to measures to mitigate the impact of an emergency. Assessing correlated risks jointly in risk groups which is both more comprehensive and more precise, will ensure that Member States are better prepared for any crises. Moreover, in an emergency, a coordinated and pre-agreed approach to the security of supply ensures a consistent response and reduces the risk of negative spill-over effects that purely national measures could have in neighbouring Member States.

(12) For the purpose of the risk-based approach, risk groups should be defined based on the major transnational risks to the security of gas supply in the Union. Such risks were identified in the Commission's communication of 16 October 2014 on the short-term resilience of the European gas system and the assessment included in the latest Ten-Year Network Development Plan (TYNDP) developed by the European Network of Transmission System Operators for Gas (ENTSOG). To allow for a more precise and better focused assessment for the purposes of this Regulation, the risk groups should be composed on the basis of the main gas supply sources and routes.

(13) To provide input to the common and national risk assessments, ENTSOG, in consultation with the Gas Coordination Group (GCG) and with the European Network of Transmission System Operators for Electricity (ENTSO-E), should carry out a Union-wide simulation of gas supply and infrastructure disruption scenarios. Such a simulation should be repeated at least every two years. As a means of strengthening regional cooperation by providing information about gas flows as well as providing technical and operational expertise, the Regional Coordination System for Gas (ReCo System for Gas), established by ENTSOG and composed of standing expert groups, should be involved in carrying out simulations. ENTSOG should ensure an appropriate level of transparency and access to the modelling assumptions used in its scenarios.

(14) The Commission should be empowered to update the composition of the risk groups by means of a delegated act based on the evolution of the major transnational risks to

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the security of gas supply in the Union and its impact on Member States, taking into account the result of the Union-wide simulation and the discussion within the GCG.

(15) In order to make the regional cooperation feasible, Member States should agree on a cooperation mechanism within each risk group. Such a mechanism should be developed sufficiently in time to allow for conducting the common risk assessment and discussing and agreeing on appropriate and effective cross-border measures, which will require the agreement of each Member State concerned, to be included in the regional chapters of the preventive action plans and the emergency plans, after consulting the Commission. Member States are free to agree on a cooperation mechanism best suited to a given risk group. The Commission should be able to have a facilitating role in the overall process and share best practices for arranging regional cooperation such as a rotating coordination role within the risk groups for the preparation of the different documents or establishing dedicated bodies. In the absence of an agreement on the cooperation mechanism, the Commission should propose a suitable cooperation mechanism for a given risk group.

(16) When conducting the common risk assessment, competent authorities should assess all relevant risk factors which could lead to the materialisation of the major transnational risk for which the risk group was created, including disruption of gas supply from the single largest supplier. Those risk factors should be addressed by appropriate cross-border measures agreed by the competent authorities of the Member States concerned. The cross-border measures should be included in the regional chapters of the preventive action plans and the emergency plans. In addition, the competent authorities should conduct a comprehensive national risk assessment and assess natural, technological, commercial, financial, social, political and market-related risks, andany other relevant ones. All risks should be addressed by effective, proportionate and non-discriminatory measures to be developed in the preventive action plans and the emergency plans. The results of the common and national risk assessments should also contribute to the all hazard risk assessments provided for in Article 6 of Decision No 1313/2013/EU of the European Parliament and of the Council[9] and should be fully taken into account in the national risk assessments.

(17) To ensure maximum preparedness, so as to avoid a disruption of gas supply and mitigate its effects should it nevertheless occur, the competent authorities of a given risk group should, after consulting stakeholders, establish preventive action plans and emergency plans that will contain regional chapters. They should be designed so as to address national risks in a way that takes full advantage of the opportunities provided by regional cooperation.The plans should be technical and operational in nature, their function being to help prevent the occurrence or escalation of an emergency or to mitigate its effects. The plans should take the security of electricity systems into account and should be consistent with the Energy Union's strategic planning and reporting tools.

(18) When establishing and implementing the preventive action plans and the emergency plans, the competent authorities should, at all times, take account of the safe operation of the gas system at regional and national levels. They should address and set out in

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those plans the technical constraints affecting the operation of the network, including any technical and safety reasons for reducing flows in the event of an emergency.

(19) The Commission should assess the preventive action plans and the emergency plans duly taking into account the views expressed in the GCG and recommend their review, in particular if the plans do not effectively address the risks identified in the risk assessment, if they distort competition or hamper the functioning of the internal energy market, if they endanger the security of gas supply of other Member States or if they do not comply with the provisions of this Regulation or other Union law. The competent authority of the Member State should take account of the Commission's recommendations. Where, following the final position of the competent authority, the Commission concludes that the measure in question would endanger the security of gas supply of another Member State or the Union, the Commission should continue the dialogue with the Member State concerned for it to agree to amend or withdraw the measure.

(20) The preventive action plans and the emergency plans should be updated regularly and published. To ensure that the emergency plans are always up-to-date and effective, Member States should carry out at least one test between the updates of the plans by simulating high and medium-impact scenarios and responses in real time. The competent authorities should present the test results at the GCG.

(21) Mandatory comprehensive templates including all the risks to be covered by the risk assessment and all the components of the preventive action plans and the emergency plans are needed to facilitate the risk assessment and preparation of the plans and their assessment by the Commission.

(22) To facilitate communication between Member States and the Commission, the risk assessments, the preventive action plans, the emergency plans and all other documents and information exchanges provided for in this Regulation should be notified using a secure and standardised electronic notification system.

(23) Certain customers, including households and customers providing essential social services are particularly vulnerable and may need protection against the negative effects of disruption of gas supply. A definition of such protected customers should not conflict with the Union solidarity mechanisms.

(24) It is appropriate to narrow down the definition of customers protected under the solidarity mechanism. This is required by the obligation of Member States to provide solidarity in the case of extreme circumstances and for essential needs. The definition of solidarity protected customers should therefore be limited to households while still being able to include, under specific conditions, certain essential social services and district heating installations. It is therefore possible for Member States to treat, in accordance with that framework, healthcare, essential social care, emergency and security services as solidarity protected customers, including where those services are performed by a public administration.

(25) Responsibility for the security of gas supply should be shared by natural gas undertakings, Member States, acting through their competent authorities, and the