

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

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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, and any 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

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Commission, within their respective remits. Such shared responsibility requires very close cooperation between those parties. However, customers using gas for electricity generation or industrial purposes may also have an important role to play in the security of gas supply, as they can respond to a crisis by taking demand-side measures, such as interruptible contracts and fuel switching, which have an immediate impact on the balance of demand and supply. Moreover, the security of gas supply to certain customers using gas for electricity generation may also be considered to be essential in some cases. In an emergency, it should be possible for a Member State to prioritise gas supply to such customers under certain conditions even over the gas supply to protected customers. In exceptional circumstances gas supply to some of such customers prioritised in an emergency over protected customers may also continue in a Member State providing solidarity to avoid severe damage to the functioning of the electricity or gas system in that Member State. Such a specific measure should be without prejudice to Directive 2005/89/EC of the European Parliament and of the Council⁽¹⁰⁾.

- (26) The competent authorities should cooperate closely with other relevant national authorities, in particular national regulatory authorities, when carrying out the tasks specified in this Regulation.
- (27) The infrastructure standard should oblige Member States to maintain a minimum level of infrastructure such as to ensure a degree of redundancy in the system in the event of a disruption of the single largest gas infrastructure. As an analysis conducted on the basis of the N – 1 formula constitutes a purely capacity-based-approach, the results of N – 1 formula should be complemented with a detailed analysis that also captures gas flows.
- (28) Regulation (EU) No 994/2010 requires transmission system operators to enable permanent physical bi-directional capacity on all cross-border interconnections unless an exemption has been granted from that obligation. It aims to ensure that the possible benefits of permanent bi-directional capacity are always taken into account when a new interconnection is planned. However, bi-directional capacity can be used to supply gas both to the neighbouring Member State and to others along the gas supply corridor. The benefits to the security of gas supply of enabling permanent physical bi-directional capacity need to be seen from a broader perspective, in a spirit of solidarity and enhanced cooperation. A comprehensive cost-benefit analysis that takes account of the whole transportation corridor should be conducted when considering whether to implement bi-directional capacity. The competent authorities concerned should be required to re-examine the exemptions granted under Regulation (EU) No 994/2010 on the basis of the results of the common risk assessments. The overall objective should be to have a growing bi-directional capacity and keep one-directional capacity in future cross-border projects to a minimum.
- (29) Capacity at an interconnection point to a Member State may compete with capacity at exit points from the gas grid into a gas storage facility. As a consequence, a situation could arise where firm booking of exit capacity into storage reduces the technically available capacity to be allocated at the interconnection point. In order to ensure a higher level of energy security in an emergency, this Regulation should provide for a clear priority rule. Any booked capacity at interconnection points should be given

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priority over competing capacity at an exit point into a storage facility, thereby enabling the transmission system operator to allocate the maximum technical capacity at the interconnection point in order to enable higher gas flows into the neighbouring Member State which has declared an emergency. This may have the consequence that gas injections into storage cannot take place or can take place only with reduced volumes despite being firmly booked in advance. To compensate for the resulting financial loss, this Regulation should provide for a fair compensation to be applied directly and promptly between the affected system users. The transmission system operators concerned should cooperate in accordance with the relevant legal acts in order to apply that priority rule.

- (30) Council Directive 2008/114/EC⁽¹¹⁾ lays down a process with a view to enhancing the security of designated European critical infrastructures, including certain gas infrastructure, in the Union. Directive 2008/114/EC together with this Regulation contributes to creating a comprehensive approach to the energy security of the Union.
- (31) This Regulation lays down security of supply standards that are sufficiently harmonised and cover at least the situation that occurred in January 2009 when gas supply from Russia was disrupted. Those standards take account of the difference between Member States, public service obligations and customer protection measures, as referred to in Article 3 of Directive 2009/73/EC. 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. They should also guarantee equal access for the Union natural gas undertakings to national customers. Member States should establish measures that will, in an effective and proportionate manner, ensure that natural gas undertakings comply with such a standard, including the possibility to establish fines on suppliers, where they consider it to be appropriate.
- (32) The roles and responsibilities of all natural gas undertakings and competent authorities should be defined precisely in order to keep the internal gas market functioning properly, particularly in the event of supply disruptions and crises. Such roles and responsibilities should be established in such a way so as to ensure that a three-level approach is respected which would involve, first, the relevant natural gas undertakings and industry, second, Member States at national or regional level, and third, the Union. This Regulation should enable natural gas undertakings and customers to rely on market-based mechanisms for as long as possible when coping with disruptions. However, it should also provide for mechanisms that can be deployed when markets alone are no longer able to deal adequately with a disruption of gas supply.
- (33) In the event of a disruption of gas supply, market players should be given sufficient opportunity to respond to the situation with market-based measures. Where market-based measures have been exhausted and they are still insufficient, Member States and their competent authorities should take measures to remove or mitigate the effects of a disruption of gas supply.
- (34) Where Member States plan to introduce non-market-based measures, the introduction of such measures should be accompanied by a description of their economic impact.

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This ensures customers have the information they need about the costs of such measures and ensures that the measures are transparent, especially as regards their impact on the gas price.

- (35) The Commission should have the power to ensure that new preventive non-market-based measures do not endanger the security of gas supply of other Member States or in the Union. Given that such measures can be particularly damaging to the security of gas supply, it is appropriate that they enter into force only when they are approved by the Commission or have been amended in accordance with a Commission decision.
- (36) Demand-side measures, such as fuel switching or reducing the gas supply to large industrial customers in an economically efficient order, may have a valuable role to play in ensuring the security of gas supply, if they can be applied quickly and significantly reduce demand in response to a disruption of gas supply. More should be done to promote efficient energy use, particularly where demand-side measures are needed. The environmental impact of any demand and supply-side measures proposed should be taken into account, with preference being given, as far as possible, to measures that have least impact on the environment. At the same time, aspects of the security of gas supply and competitiveness should be taken into account.
- (37) It is necessary to ensure the predictability of the action to take in the event of an emergency, allowing all market participants sufficient opportunity to react to and prepare for such circumstances. As a rule, the competent authorities should therefore act in accordance with their emergency plan. In duly justified exceptional circumstances, they should be allowed to take action which deviates from those plans. It is also important to make the way in which emergencies are declared more transparent and predictable. Information on the system balancing position (the overall status of the transmission network), the framework for which is set out in Commission Regulation (EU) No 312/2014⁽¹²⁾, may play an important role in that regard. That information should be available to the competent authorities and, where they are not the competent authorities, the national regulatory authorities, on a real time basis.
- (38) As demonstrated in the context of the October 2014 stress test exercise, solidarity is needed to ensure the security of gas supply in the Union. It spreads effects out more evenly and reduces overall effects of a severe disruption. The solidarity mechanism is designed to address extreme situations in which supply to solidarity-protected customers as an essential need and a necessary priority is at stake in a Member State. Solidarity ensures cooperation with more vulnerable Member States. At the same time, solidarity is a measure of last resort that applies only in an emergency and only under restrictive conditions. If an emergency is declared in a Member State, a gradual and proportionate approach should therefore be applied to ensure the security of gas supply. The Member State that declared the emergency should, in particular, first implement all emergency measures provided for in its emergency plan in order to ensure gas supply to its solidarity protected customers. At the same time, all Member States which have introduced an increased supply standard should temporarily reduce it to the normal supply standard to make the gas market more liquid, in the event that the Member State declaring the emergency indicates that cross-border action is required. If those two

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sets of measures fail to provide the necessary supply, solidarity measures by directly connected Member States should be taken to ensure gas supply to solidarity protected customers in the Member State experiencing the emergency, at that Member State's request. Such solidarity measures should consist in ensuring that the gas supply to customers other than solidarity protected customers in the territory of the Member State providing solidarity is reduced or does not continue, in order to free up gas volumes, to the extent necessary and for as long as the gas supply to solidarity protected customers in the Member State requesting solidarity is not satisfied. Nothing in this Regulation should be understood as requiring or enabling a Member State to exercise public authority in another Member State.

- (39) Solidarity measures should also be taken as a last resort where a Member State is connected to another Member State via a third country unless flows are restricted through the third country, and where there is agreement of the relevant Member States, who should involve, as appropriate, the third country through which they are connected.
- (40) Where solidarity measures are taken as a last resort, the reduction or discontinuation of gas supply in the Member State providing solidarity should, where necessary for the Member State to comply with its solidarity obligations, and in order to avoid discriminatory treatment, be applicable to all customers which are not solidarity protected customers, irrespective of whether they receive gas directly or through solidarity protected district heating installations in the form of heating. The same should be ensured vice versa as regards customers, which are not solidarity protected customers in the Member State receiving gas under the solidarity mechanism.
- (41) Where solidarity measures are taken as a last resort, it is preferable that the gas consumption in the Member State providing solidarity is, as a first step, reduced on a voluntary basis, by means of market-based measures, such as voluntary demand-side measures or reversed auctions, in which certain customers such as industrial customers would indicate to the transmission system operator or another authority responsible the price at which they would reduce or stop their gas consumption. If market-based measures are found to be insufficient to address the deficit in required gas supply, and given the importance of solidarity measures as a last resort, the Member State providing solidarity should as a second step, be able to make use of non-market-based measures, including curtailment of certain groups of customers, in order to comply with its solidarity obligations.
- (42) Solidarity measures of a last resort should be provided on the basis of compensation. The Member State providing solidarity should be paid fair compensation promptly by the Member State receiving solidarity, including for the gas delivered into its territory and all other relevant and reasonable costs incurred when providing solidarity. Solidarity measures of a last resort should be subject to the condition that the Member State requesting solidarity undertakes to pay such fair and prompt compensation. This Regulation does not harmonise all aspects of fair compensation. Member States concerned should adopt the necessary measures, in particular technical, legal and financial arrangements, to implement the provisions on prompt and fair compensation between them.

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- (43) When taking solidarity measures pursuant to the provisions of this Regulation, Member States are implementing Union law and are therefore bound to respect fundamental rights guaranteed by Union law. Such measures may therefore give rise to an obligation for a Member State to pay compensation to those affected by its measures. Member States should therefore ensure that national compensation rules are in place which are in conformity with Union law, in particular with fundamental rights. Moreover, it should be ensured that the Member State receiving solidarity ultimately bears all reasonable costs incurred from the said obligation on the Member State providing solidarity to pay compensation and further reasonable costs incurred from the payment of compensation pursuant to the said national compensation rules.
- (44) Since there may be more than one Member State providing solidarity to a requesting Member State, there should be a burden-sharing mechanism. Under that mechanism, the Member State requesting solidarity should, after consulting all Member States concerned, seek the most advantageous offer on the basis of cost, speed of delivery, reliability and diversification of supplies of gas from different Member States. The Member States should provide such offers on the basis of voluntary demand-side measures as much as and for as long as possible, before resorting to non-market-based measures.
- (45) This Regulation introduces, for the first time, such a solidarity mechanism between Member States as an instrument to mitigate the effects of a severe emergency within the Union including a burden-sharing mechanism. The Commission should therefore review the burden-sharing mechanism and the solidarity mechanism in general in the light of future experience with their functioning, and propose, where appropriate, modifications thereto.
- (46) Member States should adopt the necessary measures for the implementation of the provisions concerning the solidarity mechanism, including by the Member States concerned agreeing on technical, legal and financial arrangements. Member States should describe the details of those arrangements in their emergency plans. The Commission should prepare legally non-binding guidance concerning the key elements that should be included in such arrangements.
- (47) For as long as a Member State can cover the gas consumption of its solidarity protected customers from its own production and therefore does not need to request solidarity, it should be exempt from the obligation to conclude technical, legal and financial arrangements with other Member States for the purpose of it receiving solidarity. This should not affect the obligation of the relevant Member State to provide solidarity to other Member States.
- (48) There should be a safeguard for the event that the Union might incur costs by virtue of a liability, other than for unlawful acts or conduct pursuant to the second paragraph of Article 340 TFEU, in respect of measures that Member States are required to take pursuant to the provisions of this Regulation on the solidarity mechanism. Regarding such instances, it is appropriate that the Member State receiving solidarity reimburse the costs of the Union.

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- (49) 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 Union Civil Protection Mechanism established by Decision No 1313/2013/EU aiming to strengthen the cooperation between the Union and the Member States and to facilitate coordination in the field of civil protection in order to improve the effectiveness of systems for preventing, preparing for, and responding to natural and man-made disasters.
- (50) To assess the security of gas supply of a Member State or in part or the whole of the Union, access to the relevant information is essential. In particular, Member States and the Commission need regular access to information from natural gas undertakings regarding the main parameters of the gas supply, including accurate measurements of the available stored reserves, as a fundamental input in the design of security of gas supply policies. On reasonable grounds, irrespective of a declaration of an emergency, access should also be possible to additional information needed to assess the overall gas supply situation. That additional information would typically be non-price-related gas delivery information, such as minimum and maximum gas volumes, delivery points or conditions for the suspension of gas deliveries.
- (51) An efficient and targeted mechanism for access by Member States and the Commission to key gas supply contracts should ensure a comprehensive assessment of relevant risks that can lead to a disruption of gas supply or interfere with the necessary mitigating measures should a crisis nevertheless occur. Under that mechanism, certain key gas supply contracts should be automatically notified, irrespective of the origin of the gas, within or outside the Union, to the competent authority of the most affected Member States. New contracts or modifications should be notified immediately after their conclusion. In order to ensure transparency and reliability, existing contracts should also be notified. The notification obligation should also cover all commercial agreements that are relevant for the execution of the gas supply contract, including relevant agreements that may be related to infrastructure, storage and any other aspect important for the security of gas supply.
- (52) Any obligation to notify a contract automatically to the competent authority needs to be proportionate. Applying that obligation to contracts between a supplier and a buyer covering the equivalent of 28 % or more of yearly gas consumption in the national market strikes the right balance in terms of administrative efficiency and transparency and lays down clear obligations for market participants. The competent authority should assess the contract for security of gas supply purposes and submit the results of the assessment to the Commission. If the competent authority has doubts as to whether a contract puts the security of gas supply of the Member State or a region at risk it should notify the contract to the Commission for assessment. This does not mean that other gas supply contracts are not relevant to the security of gas supply. Accordingly, where the competent authority of the most affected Member State or the Commission considers that a gas supply contract which is not subject to automatic notification under this Regulation might, due to its specificity, the customer group served, or its relevance for the security of gas supply, put at risk the security of gas supply of a Member State, of

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a region or of the Union, the competent authority or the Commission should be able to request that contract in order to assess its impact on the security of gas supply. It could, for example, be requested in the event of changes in the pattern of the gas supply to a given buyer or buyers in a Member State which would not be expected if the markets were functioning normally and which could affect the gas supply of the Union or parts of it. Such mechanism will ensure that the access to other key gas supply contracts relevant for the security of supply is guaranteed. Such a request should be reasoned, taking into account the need to limit the administrative burden of that measure as much as possible.

- (53) The Commission may propose that the Member States amend the risk assessments and the preventive action plans and the emergency plans so as to take account of the information obtained from the contracts. The provisions of this Regulation should be without prejudice to the right of the Commission to launch infringement proceedings in accordance with Article 258 TFEU and to enforce competition, including State aid, rules.
- (54) All contracts or contractual information received in that framework, including the assessments by the competent authority or the Commission, should remain confidential, in particular in order to protect commercially sensitive information and the integrity and proper functioning of the system of information exchange. Such confidentiality can also be relevant for public security given the importance an essential commodity such as gas may have for Member States. Moreover, meaningful and comprehensive assessments by the competent authorities or the Commission will contain, in particular, information relating to public security, commercial information or reference thereto. It is therefore necessary to ensure the confidentiality of the assessments. It is equally important that those who receive confidential information in accordance with this Regulation are bound by the obligation of professional secrecy. The Commission, competent authorities and national regulatory authorities, bodies or persons which receive confidential information pursuant to this Regulation should ensure the confidentiality of the information which they receive.
- (55) There should be a proportionate system of crisis management and information exchange based on three crisis levels: early warning, alert and emergency. Where the competent authority of a Member State declares one of the crisis levels, it should immediately inform the Commission as well as the competent authorities of the Member States to which the Member State of that competent authority is directly connected. In the case of a declaration of an emergency, the Member States in the risk group should also be informed. The Commission should declare a regional or Union emergency at the request of at least two competent authorities that have declared an emergency. To ensure an appropriate level of information exchange and cooperation in the case of regional or Union emergency the Commission should coordinate the action of the competent authorities, taking full account of relevant information from, and the results of, the consultation of the GCG. The Commission should declare an end to the regional or Union emergency if, after an assessment of the situation, it concludes that a declaration of an emergency is no longer justified.

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- (56) The GCG should act as an adviser to the Commission to help coordinate security of gas 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, including the consistency of preventive action plans and emergency plans drawn up by different risk groups.
- (57) A gas crisis could extend beyond Union borders, also comprising Energy Community Contracting Parties. As a Party to the Energy Community Treaty, the Union should promote amendments to that Treaty with the aim of creating an integrated market and a single regulatory space by providing an appropriate and stable regulatory framework. In order to ensure that an efficient crisis management on borders between the Member States and the Contracting Parties exists in the meantime, they are invited to closely cooperate when preventing, preparing for and handling a gas crisis.
- (58) Since gas supplies from third countries are central to the security of gas supply in the Union, the Commission should coordinate action with regard to third countries, work with supplying and transit countries on arrangements to handle crisis situations and 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 after consulting Member States and the third countries involved and, where a crisis arises from difficulties in a third country, to act as mediator and facilitator. The Commission should report regularly to the GCG.
- (59) Where there is reliable information on a situation outside the Union that threatens the security of gas supply of one or several Member States and that may trigger an early warning mechanism involving the Union and a third country, the Commission should inform the GCG without delay and the Union should take appropriate action to try to defuse the situation.
- (60) Since the objective of this Regulation, namely to safeguard the security of gas supply in the Union, cannot be sufficiently achieved by Member States acting on their own, but can rather, by reason of its scale and effects, 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 set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (61) In order to allow for a swift Union response to changing circumstances with regard to the security of gas supply, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the composition of the risk groups as well as templates for the risk assessments and for the preventive action plans and the emergency plans. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽¹³⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts,

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and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (62) Member States' right to determine the conditions for exploiting their energy resources in accordance with Article 194(2) TFEU is not affected by this Regulation.
- (63) Regulation (EU) No 994/2010 should be repealed. However, in order to avoid legal uncertainty, the preventive action plans and the emergency plans drawn up pursuant to that Regulation should remain in force until the new preventive action plans and emergency plans drawn up pursuant to this Regulation are adopted for the first time,

HAVE ADOPTED THIS REGULATION:

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- (1) [OJ C 487, 28.12.2016, p. 70.](#)
- (2) Position of the European Parliament of 12 September 2017 (not yet published in the Official Journal) and decision of the Council of 9 October 2017.
- (3) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ([OJ L 211, 14.8.2009, p. 55.](#))
- (4) 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 and repealing Directive 2003/55/EC ([OJ L 211, 14.8.2009, p. 94.](#))
- (5) Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators ([OJ L 211, 14.8.2009, p. 1.](#))
- (6) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ([OJ L 211, 14.8.2009, p. 15.](#))
- (7) 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 and repealing Regulation (EC) No 1775/2005 ([OJ L 211, 14.8.2009, p. 36.](#))
- (8) 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 ([OJ L 295, 12.11.2010, p. 1.](#))
- (9) Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism ([OJ L 347, 20.12.2013, p. 924.](#))
- (10) Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment ([OJ L 33, 4.2.2006, p. 22.](#))
- (11) 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 ([OJ L 345, 23.12.2008, p. 75.](#))
- (12) Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks ([OJ L 91, 27.3.2014, p. 15.](#))
- (13) [OJ L 123, 12.5.2016, p. 1.](#)

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