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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL concerning measures to safeguard the security of gas
supply and repealing Regulation (EU) No 994/2010
- Preparation for the next informal trilogue

I. INTRODUCTION

On 16 February 2016, the Commission submitted to the Council a proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010¹.

II. PRESIDENCY PROPOSAL FOR A REVISED MANDATE ON ARTICLES 2 AND 12

With the view to the second informal trilogue with the European Parliament, scheduled for 2 March, delegations will find in the Annex the revised Articles 2 and 12, reflecting discussion at the first trilogue, technical meetings and the Council Working Party meetings.

The Presidency has examined carefully the proposal from the European Parliament, the comments provided by delegations and considered that the revised text represents a way forward to continue negotiations on Article 2 and 12.

¹ 6225/16 ADD 1, ADD 2, ADD 3

In Article 2, additional paragraph (1a) was introduced. Article 12 was revised entirely based on the proposal from the European Parliament with the addition of key elements from the Council's initial mandate.

III. CONCLUSION

On that basis the Permanent Representatives Committee is invited to:

- give the Presidency a revised mandate on Articles 2 and 12 as set out in Annex to this Note, which will supplement the initial Council mandate (5844/17) to be used as the basis for further negotiations with the European Parliament.

The Presidency will report to the Committee on the outcome of the second informal trilogue meeting and submit, where necessary, an adjusted text for analysis and possible agreement by this Committee.

*Article 2***Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Directive 2009/73/EC² and Article 2 of Regulation (EC) No 715/2009 of the European Parliament and of the Council³ shall apply.

The following definitions shall also apply:

- (1) 'protected customer' means a household customer connected to a gas distribution network and, in addition, where the Member State concerned so decides, may also mean one or more of the following:
 - (a) a small or medium-sized enterprise, provided that it is connected to a gas distribution network, or an essential social service, provided that it is connected to a gas distribution or transmission network, and provided that such enterprises or services do not represent jointly more than 20 % of the total annual final gas consumption in that Member State;
 - (b) a district heating installation to the extent that it delivers heating to household customers or to the enterprises or services referred to in point (a) provided that such installation is not able to switch to other fuels and is connected to a gas distribution or transmission network;

² 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).

³ 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).

(1a) 'solidarity protected customer' means:

household customers connected to a gas distribution network, and, in addition, shall also mean one or more of the following:

- a) a district heating installation if it is a 'protected customer' as specified in point 1(b) of this Article in the relevant Member State and to the extent that it delivers heat to households or essential social services,
 - b) an essential social service to the extent that it is a 'protected customer' in the relevant Member State as specified in points 1(a) and 2 of this Article, but not including educational and public administration services.
- (2) 'essential social service' means healthcare, essential social care, emergency, security, educational or public administration service;
- (3) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 39(1) of Directive [2009/73/EC](#);
- (4) 'competent authority' means a national governmental authority or a national regulatory authority designated by a Member State to ensure the implementation of the measures provided for in this Regulation.

Article 12

Solidarity

1. Where a Member State has declared an emergency in accordance with point (c) of Article 10(1) and indicated that cross-border action is required, any increased supply standard or additional obligation under Article 5(2) imposed on natural gas undertakings in other Member States in the same risk group shall be temporarily reduced to the level established in Article 5(1).
2. If a Member State has requested the application of the solidarity measure pursuant to this Article, a Member State connected directly to the requesting Member State or, where the Member State so provides, its competent authority or transmission system operator or distribution system operator shall as far as possible without creating unsafe situations, take the necessary measures to ensure that the gas supply to customers other than solidarity protected customer in its territory does not continue to the extent necessary and for as long as the gas supply to solidarity protected customer in the Member State which requested the application of the solidarity measure is not satisfied. The Member State that requested the application of the solidarity measure shall ensure that the relevant volume of gas is effectively delivered to solidarity protected customer in its territory.

In exceptional circumstances and upon a duly justified request by the relevant electricity or gas transmission system operator to its competent authority, the gas supply may also continue to certain critical gas-fired power plants in the Member State providing solidarity where the lack of gas supply to such plants would result in severe damages in the functioning of the electricity system or would hamper the production and/or transportation of gas.

3. A Member State shall provide the solidarity measure referred to in paragraph 2 also to another Member State to which it is connected through a connection with a third country unless flows are restricted through the third country. Such extension of the measure shall be subject to mutual agreement of the relevant Member States who shall involve, as appropriate in view of implementing of paragraph 2, the third country through which they are connected.
4. The solidarity measure referred to in paragraph 2 is of last resort and shall apply only if the Member State that has requested the application of the solidarity measures:
 - (a) has not been able to cover the deficit in gas supply to its solidarity protected customers despite the application of the measure referred to in paragraph 1,
 - (b) has exhausted all market based measures and all measures provided in its emergency plan,
 - (c) has notified an explicit request to the Commission and to the competent authorities of all Member States connected either directly or via a third country, accompanied by a description of the implemented measures referred to in point (b).
 - (d) commits to the Member State concerned to pay fair and prompt compensation as referred to in paragraph 8.
5. Where market-based measures prove insufficient to address the deficit in gas supply to solidarity protected customer in the Member State that has requested the application of the solidarity measure, the Member State to which the request for the application of the solidarity measure has been addressed may introduce non-market based measures in order to comply with the obligations laid down in paragraph 2 of this Article.

6. If there is more than one Member State that could provide solidarity to a requesting Member State, the requesting Member State shall seek supplies of gas from the different helping Member States on the basis of gas prices and other costs that would lead to the lowest overall compensation, unless a different solution is justified by reasons such as speed of delivery, reliability, diversification of supply across the potentially helping Member States.

By way of derogation from the first subparagraph, any Member State providing solidarity which has delivered a total of 40% of the total annual amount of gas consumed by its customers not protected as solidarity protected customer according to the most recently available data, may suspend its gas deliveries to any Member State requesting solidarity. This shall not apply if the requesting Member State cannot find another effective solution, and shall not affect the provision of gas deliveries from the remaining Member States concerned in accordance with the first subparagraph.

7. The competent authority of the Member State that requested the application of the solidarity measure shall immediately inform the Commission and the competent authorities of the Member States concerned when gas supply to solidarity protected customer in its territory is satisfied or where the obligations under paragraph 2 are, based on its needs, reduced or suspended at the request of the receiving Member State.
8. Solidarity under this regulation shall only be provided on the basis of compensation. The Member State requesting solidarity shall promptly pay or ensure prompt payment to the Member State or relevant public or private entity providing solidarity a fair compensation that covers:
 - (a) the gas delivered into the territory of the requesting Member State;
 - (b) all other relevant and reasonable costs incurred when providing solidarity, including, where appropriate, costs of such measures, that may have been established in advance;

- (c) reimbursement for any compensation resulting from judicial proceedings, arbitration proceedings and settlements and related costs of such proceedings involving the Member State providing solidarity vis-a-vis entities involved in providing such solidarity.

The Member State providing solidarity shall ensure that the received compensation be promptly passed on to the relevant entities involved. Member States receiving and providing solidarity shall implement the provisions of this Article concerning compensation in conformity with the Treaties, the Charter of Fundamental Rights of the European Union and the applicable international obligations.

- 9. The obligations of paragraph 2 shall apply subject to the technically safe and reliable operation of the gas system of a Member State providing solidarity and the limit of the maximum interconnection export capability of the relevant Member State infrastructure towards the Member State that requested solidarity. Technical, legal and financial arrangements may reflect such circumstances in particular those under which the market will deliver up to maximum interconnection capacity.
- 10. The competent authorities shall adopt the necessary measures, including those agreed in technical, legal and financial arrangements, to ensure in accordance with paragraph 2 that gas is supplied to solidarity protected customers in the Member State that requested the application of the solidarity measure in accordance with paragraph 4. The technical, legal and financial arrangements shall be agreed among the Member States which are connected directly or, in accordance with paragraph 3, through a connection with a third country, and shall be described in their respective emergency plans. Such arrangements may cover, among others, the following elements:
 - (a) operational safety of networks,
 - (b) gas prices to be applied and/or the methodology for their setting, taking into account the impact on the functioning of the market,

- (c) use of interconnections, including bi-directional capacity and underground gas storage,
- (d) gas volumes or the methodology for their setting,
- (e) categories of costs that will have to be covered by a fair and prompt compensation that may include damages for curtailed industry,
- (f) indication of the method how the fair compensation could be calculated.

The financial arrangement agreed between Member States in advance of solidarity being requested shall contain provisions that allow for the calculation of the compensation of all relevant and reasonable costs incurred when providing solidarity and an undertaking that such compensation will be paid.

Any compensation mechanism shall provide incentives to participate in market-based solutions such as auctions and demand response mechanisms. It shall not create perverse incentives, including in financial terms, for market players to postpone their action until non-market based measures are applied. All compensation mechanisms or at least their summary shall be included in the emergency plans.

For as long as a Member State can cover the gas consumption for its customers protected under paragraph 2 from its own production, it shall to this extent be exempted from the obligation to conclude technical, legal and financial arrangements with Member States with which it is connected directly or, in accordance with paragraph 3, through a connection with a third country for the purpose of it receiving solidarity. This shall not affect the obligation of such a Member State to provide solidarity to other Member States pursuant to this Article.

11. The Commission shall by 1 December 2017 and after consulting the Gas Coordination Group provide guidance for the key elements of the technical, legal and financial arrangements especially on how to apply the elements described in paragraph 10 in practice.

12. Where Member States do not agree on the necessary technical, legal and financial arrangements by 1 November 2018, the Commission may, in consultation with the competent authorities concerned, propose a framework for such measures setting out the necessary principles to make them operational which shall build on the Commission's guidance set out in paragraph 11. Member States shall finalise their arrangements by 1 March 2019 taking utmost account of the Commission's proposal.
13. The application of this Article shall not be affected if Member States fail to agree or finalise their technical, legal and financial arrangements. In such a situation the Member States concerned shall agree on the necessary ad hoc measures and the Member State requesting solidarity shall make a commitment in accordance with paragraph 4(d).
14. The obligations laid down in paragraphs 1 and 2 of this Article will cease to apply immediately when the declaration of emergency is lifted or the Commission concludes, in accordance with the first subparagraph of Article 10(5), that the declaration of an emergency is not or no longer justified.
