

# THE NEW SECURITY OF GAS SUPPLY REGULATION ON THE HORIZON - THE VIEW OF AUSTRIA, BULGARIA AND SLOVENIA

## BACKGROUND

On 16 February 2016, the European Commission ('EC') officially presented the new Energy Security Package, which aims at increasing the role of the EC in the energy sector by introducing (i) a new Regulation on measures safeguarding the security of the gas supply (2016/0030 (COD)), repealing the current one<sup>1</sup> ('SoS Regulation'); (ii) a new and revised Inter-Governmental Agreements Decision and two non-legislative communications on (iii) the EU strategy on liquefied natural gas and gas storage and (iv) the EU strategy on heating and cooling.

The new SoS Regulation introduces three new main approaches.

1. The first one establishes the solidarity principle as the only legally binding instrument in case of severe gas supply disruption in a specific Member State ('MS'). As part of the measures implementing this, the EC envisages the implementation of, among others, measures to provide better coordination among the MSs and improved common and simultaneous risk assessments and prevention methodologies. To facilitate this, the EC proposes the establishment of nine regions that would create preventive actions and emergency plans in case of a gas crisis. The nine regions approach is built on existing cooperation structures established by the MSs and the EC under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation).<sup>2</sup>
2. Secondly, the new provisions require each MS to take requisite measures such that, in the event that the gas infrastructure is disrupted, the technical capacity of the remaining infrastructure is able to satisfy the entire natural gas demand for the calculated area during a day of exceptionally high gas demand, which, as statistics show, takes place on average once every 20 years. The draft SoS Regulation also obliges the MSs to ensure permanent bi-directional physical capacity for the transportation of natural gas demands for all interconnectors between Members States.
3. Lastly, more transparency measures applicable to gas contracts are introduced, including an obligation that natural gas undertakings in each MS notify the EC and the respective authority in the MS in the event of the conclusion or amendment of a long-term supply contract that involves a market share significant to the security of supply, i.e. comprising of at least 40% of annual natural gas consumption in the MS.

<sup>1</sup> Regulation (EU) No 994/2010 of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC ('Regulation 994/2010').

<sup>2</sup> According to the EC, the following criteria have been taken into account when defining regional groups: supply patterns, existing and planned interconnections and interconnection capacity between MSs, market development and maturity; existing regional cooperation structures and the number of MSs in the region.

## AUSTRIA AND BULGARIA

Most of the MSs supported the new initiative, including the proposed approach of mandatory regional cooperation in pre-defined regions. However, two countries - Austria and Bulgaria - challenged the regional gas 'solidarity' plan.

Austria, already an important hub for gas imports to other EU countries with developed gas interconnections with neighbouring MSs, claimed that the criteria for composition of regions solely by the EC seemed to violate the principle of subsidiarity and interfered with the sovereignty of each Member State. On 30 March 2016 the second chamber of the Austrian Parliament, the Federal Council (*Bundesrat*), sent its reasoned opinion on the SoS Regulation draft insisting that if the idea of constituting "regions" to safeguard the security of gas supply was to be further pursued, uniform criteria had to be applied in the EU. Furthermore, the Federal Council also proposed that the formation of "regions" be subject to the approval of the MSs concerned.

For Bulgaria, the regional approach also raised concerns. On 20 June 2016, the Bulgarian parliament sent to the European Parliament a reasoned opinion on the proposed SoS Regulation, doubting whether the country can benefit from the proposed mandatory regional cooperation approach as it would be one of the most vulnerable EU countries in the event of a gas crisis. Bulgaria also expressed concerns about the alignment of the EC's approach with other forms of cooperation between MSs, e.g. the CESEC initiative (Austria, Bulgaria and Slovenia, together with Croatia, Greece, Hungary, Italy, Romania and Slovakia form the High Level Group on Central and South Eastern Europe Gas Connectivity set up in February 2015 to accelerate the integration of CEE and SEE gas markets). In addition, the parliament criticized the legislative proposal for potentially causing an unjustified administrative and financial burden for Bulgarian customers and suggested that Bulgaria should be exempt from the obligation to set new infrastructure with greater capacity before the requisite infrastructure with adjacent countries with the required capacity is built.

## SLOVENIA

During the preparation of the first SoS Regulation, the EC took into account the specific circumstances in Slovenia compared to other MSs, i.e. the fact that Slovenia has no natural gas storage facilities or LNG plants. For these reasons mainly, the current Regulation 994/2010 exempts Slovenia (along with Luxembourg and Sweden) from the requirement to fulfil "infrastructure criterion N-1", i.e. to ensure that in event that its largest gas infrastructure experiences a gas disruption, the technical capacity of the remaining infrastructure is able to satisfy the entire natural gas demand for the calculated area during a day of exceptionally high gas demand. This exemption is applicable until Slovenia has: (i) at least two interconnectors with other MSs, (ii) at least two different sources of supply and no gas storage facilities or (iii) an LNG facility on its territory.

## RECENT DEVELOPMENTS

The revision of the SoS regulation was an important topic on the agenda of the European authorities over the last months. Following intensive Energy Council policy debates on the SoS Regulation, the final Council's mandate was finalized at the Permanent Representatives Committee meeting on 1 February 2017. The informal inter-institutional

negotiations towards a first-reading agreement between the Parliament, the Council and the EC (the trilogues) started on 6 February 2017 and ended very recently - on 26 April 2017 when the Energy Council and the European Parliament publicly announced they had reached agreement on the proposal for a revised SoS Regulation. According to the mutually agreed upon text, the main key amendments in the draft Regulation will be:

- **Solidarity:** This principle will be used as a mandatory mechanism in extreme crisis scenarios as well as a last resort mechanism after all emergency measures have been exhausted by the affected MS. In the event of a severe natural gas crisis, neighbouring MSs would be required to help ensure the natural gas supply to protected customers of the affected MS. The MS providing assistance will be entitled to adequate compensation. The concept of "solidarity protected customer" has been introduced to include households and healthcare, emergency or security services and district heating installations delivering heat to households and essential social services.
- **Closer regional cooperation:** The related enhanced regional cooperation would be built on risk-based groups of MSs<sup>3</sup>. The SoS Regulation would specify the facilitation measures for the joint assessment of common security of supply risks and the development of an agreement on joint preventive and emergency measures between the MS's of these groups.<sup>4</sup> The EC will give support to members in the risk groups in preparation for prevention action plans and emergency plans.
- **Greater transparency:** Long-term gas supply contracts (i.e. with duration of more than one year) providing 28% (not 40%) or more of annual natural gas consumption in the affected MSs will be reported to a competent national authority<sup>5</sup> by the respective natural gas undertakings<sup>6</sup> upon their conclusion or modification. With respect to other commercial contracts related to the gas contracts, only details of the contract will be provided. Existing contracts will be reported 12 months after the regulation enters into force. The competent authority designated in the respective MS would assess the impact of the natural gas contract on security of the natural gas supply in the MS and in the region. If the competent authority has doubts about the

<sup>3</sup> In the initial EC proposal, Bulgaria was only included in the Southern Gas Corridor region, which hypothetically excluded the MS from being able to cooperate regionally and to pool resources with Austria and Slovenia (both countries are included in the South-East region). However, at the beginning of the trilogue negotiations, where the 'corridor approach' was introduced, Austria, Bulgaria and Slovenia were included together in two risk groups - the Eastern gas supply risk group: Ukraine (together with Croatia, Czech Republic, Germany, Greece, Hungary, Italy, Luxembourg, Poland, Romania and Slovakia); and the Southern Gas Corridor – Caspian along with Croatia, Greece, Hungary, Italy, Malta, Romania and Slovakia.

<sup>4</sup> It is envisaged that ENTSO-G will carry out a Union-wide simulation of supply and infrastructure scenarios which will also identify which MSs can provide a solution to address identified risks. A concept of Emergency Supply Corridors will be included in the simulations to be prepared by ENTSO-G.

<sup>5</sup> This would be a national governmental authority or NRA designated by the respective MS to ensure the implementation of the measures provided for in this Regulation.

<sup>6</sup> The SoS Regulation does not provide for a separate definition of a natural gas undertaking, thus it should have the meaning provided in Art. 2, (1) of the Gas Directive 2009/73/EC, i.e. a natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers.

impacts of such a contract on the security of gas supply in the MS and in the region, it would notify the EC.

## UPCOMING

**EU** - The next step would be for the European Parliament and the Council to formally approve the mutually agreed upon text of the Regulation. This is expected to happen later this year, as some earlier deadlines were initially set before the end of 2017<sup>7</sup>. Once endorsed by both co-legislators, the revised Security of Gas Supply Regulation will be published in the Official Journal of the Union and will enter into force 20 days afterwards.

**Austria, Bulgaria** - Following the queries outlined by Bulgaria and Austria earlier in the negotiation process, the final mutually agreed upon draft SoS Regulation does not envisage the 'regional approach' but rather the so-called 'corridor approach', which envisages regional cooperation to be built on risk-based groups of MSs. Despite some other concerns, raised in particular by Bulgaria, no new exemptions from the infrastructure standard criterion obligation were envisaged<sup>8</sup>, along with Slovenia. However, both Bulgaria and Austria are envisaged as part of the Southern Gas Corridor risk group, i.e. both countries would be able to benefit from the exemption of the obligations provided for in Article 6 (the common risk assessment preparation obligation) and Article 7 (establishment of preventive and emergency plans based on the prepared common risk assessment). Should these exemptions remain as currently drafted, the obligations would be applied for Bulgaria and Austria for new infrastructure as of the date the respective major infrastructure/pipeline enters the test operations phase.

**Slovenia** - In October 2016, the government of the Republic of Slovenia supported the draft SoS Regulation, which in its latest version continues to envisage derogation for Slovenia from the 'Infrastructure Standard' obligation. The definition is practically identical to the definition of the Regulation No 994/2010. The MS, however, is obliged to inform the EC of any change to the exempted conditions and the exception provided will cease to apply if at least one of the conditions is no longer fulfilled.

As mentioned, it is envisaged that ENTSO-G will carry out an EU-wide simulation of supply and infrastructure disruption scenarios, where, as part of its risk assessment, Slovenia would have to describe its situation with respect to the conditions mentioned above. On the basis of the information provided in the risk assessment, and if the respective conditions are still met, the Commission may decide that the exception can continue to apply for an additional four years<sup>9</sup>.

<sup>7</sup> The EU-wide simulation was scheduled initially to be performed by ENTSO-G before November 1, 2017.

<sup>8</sup> TYNDP 2016-2025 of the Bulgarian TSO provide for two N-1 scenarios. Under the basic scenario, in case of a gas disruption of the largest gas infrastructure (i.e. from Russia via Ukraine), the capacity of the remaining one would not be able to supply the necessary gas quantities during a day of exceptionally high gas demand. In the desired scenario, however, which envisages the upcoming PCI projects commencement, namely the Bulgaria-Romania (IRB, y2016), Bulgaria-Greece (IGB, y2018), and Bulgaria-Serbia (IBS; y2018) interconnectors, the N-1 criterion is expected to be achieved beginning with 2018, i.e. just after the SoS Regulation enters into force.

<sup>9</sup> According to the ENTSO-G TYNDP - 2017 Annex A2 and TYNDP 2016-2025, the Slovenian TSO plans in the next 2 to 3 years to put into operation: (i) the first bi-directional interconnection with the Hungarian gas transmission system (y2020); (ii) a new interconnection with the Croatian transmission system (y2019) and (iii) an increase in capacity and the establishment of a bi-directional flow for the existing interconnection

Once adopted and published in the Official Journal, the SoS Regulation will become directly enforceable in Austria, Bulgaria and Slovenia.

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with the Austrian TSO (y2020). Thus, it is possible that Slovenia, in the near future, will cease to benefit from the provided exception to the infrastructure standard.