

DISCUSSION PAPER

THE MAIN ELEMENTS OF THE COMMISSION GUIDANCE ON TECHNICAL, LEGAL AND FINANCIAL ARRANGEMENTS ON SOLIDARITY

Note - The purpose of this document is to help steer and structure the discussion to be held at the Gas Coordination Group meeting on 22nd March. This paper has no legal value.

The proposal¹ for a revised Regulation on security of gas supply contains a new Article 12 on solidarity. The Article, as it stands currently, refers to a mechanism to be applied in very specific cases to ensure the security of gas supply across the Union. On the basis of such provisions, the gas supply to a subset of protected customers – definition harmonized across the Union – in a Member State for as long as and to the extent that the same group of consumers cannot be supplied with gas in another Member State to which it is directly connected (or through a third country). The necessary arrangements, i.e. technical, legal and financial, for the application of this provision need to be agreed between the relevant Member States and each Competent Authority must adopt the necessary measures so as to create a framework where the application of the solidarity provisions is enabled within its territory, i.e. gas can be supplied to the Member State where the supply of households, essential social services and district heating is at stake. The Commission is tasked with drafting guidance on these arrangements.

The present document starts with the main principles of the solidarity mechanism which for the most part are already included in the text of Article 12. It then tries to identify the different elements of a solidarity arrangement under the headings 'Technical', 'Legal' and 'Financial'. The purpose of this paper is to identify all potential elements that such a guidance document should cover. Following the identification of these elements, work can continue on providing the necessary level of detail, possible ways of implementing, examples and best practices for each of these elements.

Solidarity – Article 12

"The Commission shall by 1 December 2017 and after consulting the Gas Coordination Group provide for legally non-binding guidance for the key elements of the technical, legal and financial arrangements especially on how to apply the elements described in paragraph 3 in practice." (Article 12 para 4a)

I. Principles of solidarity

1. It is a last resort mechanism
2. Member States should have the right not to ask for solidarity or reduce or suspend it based on their own needs
3. It should be based as much as possible on market-based options
4. It should not introduce perverse incentives
5. Compensation costs should be paid by the beneficiaries
6. Compensation should be in conformity with the Treaties, the Charter of Fundamental Rights of the European Union and applicable international obligations
7. Proportionality in terms of burden and associated costs

¹ COM(2016) 52 final

8. The right framework should be created so as to provide certainty and security to the actors involved
9. Transparency in advance about the likely amounts of gas that could be covered under this provision

Q: What other principles should be added?

II. Technical, legal and financial arrangements

The different elements of a bilateral arrangement covering technical, legal and financial aspects of solidarity are already partly covered by Article 12, references are made to the respective paragraphs in the current text; others can be added as required.

1. Technical

a. Operational safety of networks (para 3a),

Description of technical possibilities and constraints

- i. Maximum interconnection export capability (para 3c)
- ii. If applicable: capacity through third country / agreement on it (para 1b)

b. Gas volumes or the methodology for their setting (para 3 d).

This section can provide information about the potential maximum volumes of gas that Member States may request and the minimum level to which they can get when providing solidarity. It also informs about the 40% threshold

- i. Identification of 'solidarity protected customers' and their annual gas consumption in both Member States (Article 2)
- ii. Critical gas fired power plants and associated annual gas volumes, if applicable (para 1a)
- iii. Volumes freed up by reduction of the increased supply standard, if applicable (para 1)
- iv. Domestic production, if applicable
- v. 40% total annual amount of gas consumed by non-protected customers (para 1e)
- vi. Volumes above can be set at the beginning of each gas year / at different intervals based on latest available data

c. Technical solutions (para 3c)

Technical solutions and arrangements can be made with regards to the different infrastructure elements in a given Member State that will allow enumerating possible helping measures, technical constraints but also a better estimation of costs for the use of each measure

- i. Use of interconnections
- ii. Use of bi-directional capacity
- iii. System pressure arrangement
- iv. Underground gas storage, access, priority
- v. Release of strategic storage

- vi. Gas swaps
- vii. gas – electricity swap...
- viii. ...

2. Legal

- a. Concerned Member States and identification of third country, if applicable (para 1b)
- b. Competent authority, contact person to whom the notification requesting solidarity needs to be sent

3. Financial

These arrangements need to as much as possible identify the potential cost categories, how to best determine the cost of each of these elements and what potential procedures can be implemented to make sure the payment of compensation takes place between the relevant entities

- a. Gas prices to be applied and/or methodology for their setting, taking into account the impact on the functioning of the market (para 3 b). Compensation mechanism shall provide incentives to participate in market-based solutions such as auctions and demand side response (para 3). Examples:
 - i. when helping MS still has a functioning market: market price
 - ii. market based measures for as long as possible when additional amounts of gas need to be freed up, examples:
 - prices set in advance by auction,
 - tender for demand side measures (e.g. month-ahead),
 - buy back auction (ACER for more details)
 - etc.
 - iii. release of strategic storage:
 - market price at release or
 - price of gas when stored + cost of storage until that point,
 - etc
 - iv. administrative:
 - value of loss load calculation,
 - NRA sets a methodology,
 - past experience,
 - use of a proxy?
- b. Categories of costs that will have to be covered by a fair and prompt compensation (para 3 e); compensation elements (para 1g); definition of what is 'fair'
 - i. All other relevant and reasonable costs incurred, including cost of measures established in advance:
 - Transport cost
 - In case of strategic storage release / storage obligation / reduction of increased supply standard – the cost of such measures for the relevant volume of gas, unless already reflected in the price of gas (point a)iii above)

- Damages for curtailed industry, unless already reflected in the price of gas
 - Others?
 - ii. Reimbursement for any compensation resulting from judicial proceedings, arbitration proceedings and settlements and related costs of such proceedings involving the MS providing solidarity vis-a-vis entities involved in providing such solidarity
 - Proof of costs incurred
- c. Indication of the method how the fair compensation could be calculated (para 3 f);
 - i. Simple sum
 - ii. Including time value of money
 - iii. the question of exchange rate
 - iv. Depends on the specific technical solution
 - v. other
- d. Provisions that allow for the calculation of the compensation of all relevant and reasonable costs and an undertaking that it will be paid (para 3)
- e. Arrangements for payment
 - i. Who pays who:
 - Ms to MS;
 - Competent Authority,
 - NRA;
 - TSO or market operator;
 - Companies directly between themselves;
 - Separate dedicated entity;
 - Depends on the technical solution (e.g DMS or forced curtailment);
 - other

Q: *Are there any more elements that such arrangements should or could potentially cover?*

Are there any more ideas / examples under each of the points?

What is the level of detail Commission should provide in the guidance?