

Position Paper

on the revision of the Security of Gas Supply Regulation (Gas SoS Regulation)

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The German Association of Energy and Water Industries (Bundesverband der Energie- und Wasserwirtschaft, BDEW), Berlin, represents around 1,800 companies. Its members range from local and municipal through regional and up to national and international businesses. They represent around 90 percent of the electricity production, over 60 percent of local and district heating supply, 90 percent of natural gas supply as well as 80 percent of drinking water extraction and around a third of wastewater disposal in Germany.

Summary

On 16 February 2016, the European Commission published, in the course of presenting the energy security package, the proposal for revising the Regulation (EU) No. 994/2010 concerning measures to safeguard the security of gas supply. The proposal is the result of a consultation process on the regulation, which the European Commission conducted through 2015 and in which BDEW intensively involved itself, with its statement of 1 April 2015 and further implementation proposals of 9 September 2015. BDEW would like to take the opportunity, with this position paper, to comment on the European Commission's draft revision of the Security of Gas Supply Regulation (Gas SoS Regulation) and to present further proposals.

BDEW believes that the following elements in the proposal for a Gas SoS Regulation require modification:

Regional cooperation (Art. 6 and Art. 7 as well as Annex I):

BDEW rejects the imposition of obligatory, top-down, regional prevention and emergency mechanisms in prescribed regions and advocates the possibility of topic oriented and issue related cross-national cooperation. A cooperation between several Member States in the identification and analysis of risks to the gas supply in general can help to ensure that the security of the supply of natural gas is viewed holistically and in a cross-border context and thus to encourage the examination of the possible impact of existing risks also beyond national boundaries. In order to effectively avoid and compensate for restrictions caused by specific events, joint prevention and emergency plans can potentially be helpful. In order that they are well-designed, certain requirements (similar level of market development; that existing gas flow directions are taken into account) must be fulfilled.

In terms of an obligatory arrangement of cross-border emergency mechanisms, however, the composition of the regions currently proposed, in particular the Central East region comprising Germany, Poland, the Czech Republic and Slovakia does not sufficiently take into account the criterion of physical gas flow directions in supply shortages across all regional partners.

Moreover, the respective grouping does not reflect the stage of market development which currently exists in the individual regional partners. The proposal for obligatory emergency cooperation in countries at such different stages of market development thus weakens incentives for market development and could, in certain circumstances, be counterproductive in

respect of security of supply. The proposed regional groupings also disrupt existing, regionally established market areas.

Solidarity (Art. 12):

The presented solidarity mechanisms between neighbouring Member States can provide support for the supply of households, essential social services and district heating installations in a Member State which finds itself in a state of emergency and are thus, in the opinion of BDEW, to be welcomed.

The fulfilment of existing rules regarding supply on the part of individual states as well as the creation of transparency regarding the fulfilment of these rules are, however, a requirement for solidarity in the case of emergency. A monitoring system covering the fulfilment of supply obligations on the level of the national states should be implemented to that end.

In addition, the necessary framework conditions for the design of cross-national agreements for solidarity payments, in particular in respect of an appropriate level of commercial compensation and associated liability questions must be clearly defined.

Exchange of information (Art. 13):

Information regarding prices in supply contracts does not help to assess the supply situation and raise the level of security of supply in a Member State or a part of the EU. Moreover, details regarding prices are sensitive commercial secrets which should therefore be exempt from the reporting and notification obligation (Art. 13 (6) (b) and (7)) which under the rules of the current Gas SoS Regulation are intended to be limited to gas industry information.

Under the REMIT reporting obligations, companies already provide authorities with comprehensive relevant information hence, in the interests of avoiding double reporting, the Commission should refrain from including a reporting obligation in the Gas SoS Regulation. The REMIT reports provide a suitable framework for giving the authorities access to all necessary information related to security of supply.

Protected customers

From the perspective of BDEW, it should be welcomed that the current proposed regulation aims for a further harmonisation of the definition of protected customers and thus for a uniform level of protection. This aim is served, in particular, by the notification obligation. The definition of protected customers should not be extended, however it does offer potential for a stronger cross-border harmonisation. Adjustments to the definition of protected customers beyond the existing provisions (e.g. rules regarding gas-fired power stations), should be undertaken on an individual, national state level but without affecting the EU-wide level of protection.

The rules under the Gas SoS Regulation in the definition of protected customers and the associated differentiation between groups of customers should, however, always preserve the practical implementability in the case of any adjustment of gas flows within the different network levels which may become necessary.

In this context, it should also be welcomed that the rules in Art. 12 on solidarity apply independent of the definitions of protected customers, rather they apply on the basis of a clearly prescribed level.

Infrastructure standard & reverse flow (Art. 4):

Reverse flow capacities can contribute to compensating for bottlenecks in the interconnection capacities between Member States. Investment in reverse flow capacities should be based on the proof of their contribution to security of supply or their contribution in the form of market efficiency increases substantiated by a cost-benefit analysis. A situational decision by Member States regarding an exemption from the obligation to implement reverse flow capacities should be respected.

1 Introduction

In the view of BDEW, there is no doubt that security of supply can best be provided at a high and efficient level by means of an open, liquid and transparent, well-connected EU internal market based on different sources of supply including storage facilities, intelligent solutions on the consumer side and a secure investment climate. The implementation of the rules of the third internal market package in all EU Member States is therefore a fundamental requirement for the achievement of a secure and efficient natural gas supply across borders in the European Union.

BDEW welcomes the fact that the Gas SoS Regulation proposal in its current form generally aims to preserve a market-based natural gas supply to customers for as long as possible. Non-market based measures should always only be employed once market-based options have been exhausted.

A further point to be welcomed is that the EU Commission proposal for the Gas SoS Regulation adheres to the proven three-stage mechanism for providing security of supply (1. companies, 2. Member States, 3. European Union). BDEW agrees that as part of this adherence, the secure supply of natural gas can be further enhanced through increased harmonisation and a stronger European coordination in respect of the implementation of the provisions in the Regulation in the Member States.

BDEW also especially welcomes the fact that the European Commission is clearly aiming to keep the effects of any measures to be taken on the price of natural gas to a minimum. Due to its favourable combustion properties and its high flexibility, natural gas is an energy source which offers huge potential in the fulfilment of climate protection targets whilst simultaneously providing security of energy supply in a multi-sectored energy supply system, which is increasingly characterised by flexibility. In order for natural gas to be able to fully realise its role in the energy system as a flexible and low-carbon energy source, the regulatory hurdles and negative effects on prices must be kept to a minimum.

2 BDEW core position in detail

2.1 Regional Cooperation

BDEW position on regional cooperation (Art. 6 and Art. 7 as well as Annex I)

- BDEW rejects the imposition of obligatory, top-down, regional prevention and emergency mechanisms in prescribed regions and advocates a topic oriented and event related approach to cross-national cooperation.
- The composition of the regions currently proposed, in particular the Central East region comprising Germany, Poland, the Czech Republic and Slovakia does not sufficiently take into account the criterion of physical gas flow directions in supply shortage situations across all regional partners.
- Moreover, the respective grouping does not reflect the stage of market development which currently exists in the individual regional partners. The proposal for obligatory emergency cooperation in countries at such different stages of market development thus

weakens incentives for market development and could, in certain circumstances, be counterproductive in respect of security of supply. The proposed regional groupings also disrupt existing, regionally established market areas.

Annex I of the proposed Gas SoS Regulation defines regions which were formed on the basis of the criteria specified in Art. 3 (7) and within which the states are obligated, under Art. 6 and Art. 7, to cooperate in respect of the creation of a joint risk assessment (Art. 6) and joint preventive action and emergency plans (Art. 7). Within the current proposal, Germany finds itself in a region with the EU Member States Poland, the Czech Republic and Slovakia.

In the opinion of BDEW, the desire to strengthen cooperation between EU Member States, as regards the identification of risks in natural gas supply, should be welcomed. Cross-border cooperation in the analysis of risks and the event related preparation of preventive and mitigation measures leads to an increase in the security of natural gas supply as this approach strengthens cross-border harmonisation and coordination between countries. Insofar as improvements can be made in relation to the gas supply, Member States should be able to join together and make such a cooperation a reality, where applicable even in the form of joint preventive and emergency plans.

Event related and topic oriented cross-border cooperation beneficial

Using this approach of mandating regional cooperation of emergency mechanisms in a pre-defined, rigid grouping of countries, as included in the proposal for the Gas SoS Regulation, is not expedient, however. Firstly, the resulting, considerable volume of regulation in the prescribed group of countries greatly detracts from a specific topic oriented and issue related approach of identifying risks across borders. A fact-oriented approach, based on specific events, to analyse the effects of existing risks across borders is more helpful, in the opinion of BDEW, than rigid groupings of countries. Facts for possible event related cooperation between Member States can be found in the following examples:

- Example 1: From Germany's perspective, cooperation with the Netherlands is necessary following the decline in L-gas production. Measures on how to deal with the reduction in L-gas quantities from the Netherlands should be closely coordinated with that country itself as well as with the other affected L-gas import countries in the Benelux region and France.
- Example 2: Member States which might not directly border one another but whose supply portfolios feature LNG in similarly high proportions could jointly design measures for the prevention and compensation of risks in LNG supply, but also for the coordinated deployment of LNG quantities in shortage situations and for cooperation in taking measures.

Neither example is included in the regional cooperation proposed in the draft Gas SoS Regulation or covered by the draft Regulation. Instead, on the basis of the presented draft, considerable effort would go into the design of risk assessments and preventive action and emergency plans in the prescribed regions, which, however, do not take similarly specific causes and events into account. BDEW therefore rejects the binding proposal for regional coopera-

tion in the form of joint preventive action and emergency plans as provided for in the current draft Gas SoS Regulation.

A common stage of market development is a prerequisite for functioning emergency mechanisms and a strengthening of the security of supply

The proposal to create regions also fails to take into account essential basic requirements when designing the regional cooperation, such as, in particular, a common level of market development as well as of the physical cross-border gas flows. This becomes particularly apparent in the example of the Central East region containing the countries Germany, Poland, the Czech Republic and Slovakia:

In the view of BDEW, security of supply can best be provided across borders at a high and efficient level by means of an open, transparent and liquid natural gas internal market. The implementation of the third internal market package, including the subsequent rules, in all EU Member States is therefore an essential requirement of a connected internal natural gas market in the European Union. The proposed approach to regional cooperation can, in this respect, lead to an intensification of activities of market participants in the other countries in a region, which can help with market maturity. For this to happen it must be possible for interested market participants to access the respective markets.

In particular, however, in the design of market-based and also of non-market based measures for the alleviation of shortage situations, a uniform level of market development in the affected countries is the most important condition. Art. 3 (7) (d) therefore specifically mentions market development as a criteria regarding the regional cooperation between countries. One cannot exclude the possibility that mandating cooperation between as yet relatively undeveloped regional partners in emergency situations can lead to constraints on market development. Such a mandatory cooperation in the scope of uniform emergency measures as per Art. 7 and Art. 9 in conjunction with the declaration of an emergency as per Art. 10 (1) (c) would have the consequence that in the case of an exhaustion of market based measures in one country, cross-border emergency measures in another country in the region would be drawn upon even if the supply of natural gas through the market in those countries due to corresponding precautions or even liquidity in the market place has not yet been exhausted. A harmonised level of market development is, however, decisive for the transition from market based to non-market based measures and thus for the functioning and uniform design of preventive action and emergency processes. The proposed mechanism would therefore considerably reduce the incentive for Member States to maintain the secure supply of natural gas as long as possible through a functioning market and to further strengthen the market through the implementation of corresponding market rules. Furthermore, it curbs the motivation of market participants to take individual precautions in the respective markets. In the medium to long term, this mechanism will therefore even lead to a weakening of the development of a cross-border, liquid and open internal natural gas market and thus of the security of gas supply.

In addition, the proposed regional groupings disrupt already existing, regionally established market areas. Such a rigid allocation of individual Member States to just one region each can lead to a focussing of trading activities in the respective region. This can lead to a further development of those markets to a certain extent, provided sufficient access to the markets of the region exists. At the same time, however, one cannot exclude the possibility that this proposal will weaken the trading activity on the existing, established markets and that artificial barriers to entry of the market will be promoted. Such a reduction in trading activity in existing, liquid markets leads to a weakening of the security of supply and promotes island formation in trading activities.

Regional cooperation must be organised in accordance with real gas flows in order to achieve a physical effect

Furthermore, the proposal at hand to create a region around Germany, Poland, the Czech Republic and Slovakia does not take into account the existing cross-border physical gas flow directions. The existing cross-national transmission capacities are mentioned as a criterion in Art. 3 (7) (b) of the proposal for the Gas SoS Regulation. Germany, as a natural gas hub in Europe, is very strongly connected to western EU Member States as well as, in the scope of the Pentalateral Energy Forum, with the Benelux countries - France, Austria and Switzerland - not only in terms of European trade but also in terms of infrastructure. Furthermore, the Baumgarten border interconnection point between Austria and Slovakia is a central transfer point in the European gas network, whilst no connection between Slovakia and Poland exists and only a very limited connection exists between Slovakia and the Czech Republic. The regions proposal in the draft Gas SoS Regulation does not take either of these aspects into account. A reliable design of emergency measures within the region, which are intended to have a physical effect in shortage situations therefore seems hardly possible or would need considerable investment in transport infrastructure, which would be extremely questionable from an economic perspective.

For the purpose of cross border support for a country threatened by a constraint of supply of respective groups of customers from surrounding Member States, the solidarity rules under Art. 12 - subject to the fulfilment of respective requirements - seem to be more expedient (on this point, see part 4). In the proposal for the regulation at hand, however, there is also a lack of clarity as to the extent to which the planned provisions for regional cooperation are connected to the solidarity and support in emergency situations as per Art. 12. In the view of BDEW, both instruments should be regarded separately. The crucial advantage of the presented solidarity mechanisms would be in the fact that the support for a country which is experiencing an emergency would not be bound by market contexts and corresponding measures, to which the aforementioned requirements would apply.

2.2 Solidarity

BDEW position on solidarity (Art. 12)

- Solidarity mechanisms between neighbouring Member States can provide support for the supply of households, essential social services and district heating installations in a Member State which finds itself in a state of emergency.
- The creation of transparency regarding the fulfilment of existing rules regarding supply on the part of individual states is a requirement for solidarity in the case of emergency. A monitoring system covering the fulfilment of supply obligations on the level of the national states should be implemented to that end.

In the newly created Art. 12 of the proposal for the Gas SoS Regulation, rules are prescribed which are intended to provide a secure supply to households, essential social services as well as district heating installations in the case of a threat to security of supply in a Member State through the solidarity and support of neighbouring countries. To this end, Art. 12 (3) mentions the obligation to implement relevant measures within the national legislation of the Member State whilst Art. 12 (4) mentions the obligation of neighbouring Member States to agree technical, legal and financial arrangements.

In the opinion of BDEW, the rules on solidarity set out in Art. 12 should generally be welcomed. The specified rules serve to carry the European principle of solidarity to the area of gas supply. The associated increase in security of supply represents an added benefit for all Member States and their populations.

In addition, the mechanism laid out in the current proposal gives some answers to open questions which arose from the existing provisions of the Gas SoS Regulation and which BDEW had pointed to: When is an undue restriction of the flow of gas said to occur when adjusting cross-border flows? When is a serious danger to the gas supply in a neighbouring Member State said to occur? How should cross-border export flows be handled in an emergency situation?

In this context, it should very much be welcomed, in the opinion of BDEW, that the proposal stipulates a uniform level for the groups of customers to be protected in the case of cross-border support as the "lowest common denominator".

In the opinion of BDEW, however, solidarity always goes hand in hand with the fulfilment of such requirements before an emergency situation occurs. The Gas SoS Regulation specifies, in Art. 5, clear requirements under the supply standard which must be fulfilled on a state level as precautionary steps. The fulfilment of those requirements and the creation of transparency regarding respective compliance are, in the opinion of BDEW, a precondition of a state legitimately being able to call upon solidarity measures in cases of emergency.

In order to create transparency, in the opinion of BDEW, a monitoring system should be implemented regarding compliance with the supply standard rules on a national level. The monitoring system should identify the corresponding national state's general framework conditions in respect of infrastructure, natural gas sources and market development.

In the opinion of BDEW, the intention behind the rules set out in Art. 12 are generally expedient in maintaining the supply to respective groups of customers in emergency situations by way of solidarity and support from neighbouring Member States. As solidarity in the EU is not only supposed to apply between neighbouring Member States, it is extremely important that gas flows in cases of shortage are also able to find their way via neighbouring Member States to where they are needed. Market signals can be used to ensure that a shortage situation in one country is indicated to the other countries, thus incentivising gas flows accordingly. For this process to function, the complete implementation of the rules of the third internal market package regarding the development of such a cross border, interconnected EU internal gas market is necessary.

A lack of clarity in the rules mentioned still exists, however, in respect of the specific design of the solidarity mechanisms. The proposal for the Gas SoS Regulation leaves the question open as to who will bear the responsibility for cross-border distribution of load in the event of a country requiring solidarity and support. In the opinion of BDEW, the triggering of solidarity mechanisms for the support of a neighbouring Member State should occur, in that those measures are declared on a political level. The coordination of the respective measures can then be provided by the competent authority. For this reason, in the opinion of BDEW, the respective rules regarding the financial and legislative organisation of the solidarity mechanisms should also be set on a cross-national level; liability related subsequent regulations should also be coordinated at a political level and harmonised between states. On this point, however, the provisions of the proposal for the Gas SoS Regulation as yet do not provide sufficient guiding or framework rules. This also affects, in particular, the question of how such arrangements can be agreed in respect of the prices which should apply in the case of solidarity measures being called upon.

2.3 Information exchange

BDEW position on exchange of information (Art. 13)

- Information regarding prices and price structures in supply contracts do not help to assess the supply situation and the level of security of supply in a country or a part of the EU. In the course of the presentation of the content of contractual agreements, business secrets must be preserved and must be clearly excluded from the reporting of supply contracts.
- Information which is necessary from a security of supply perspective for the assessment of the supply situation should only be made available to the European Commission via REMIT reports. Double reporting obligations in EU legislation should be avoided.
- In light of the already existing reporting obligations, the far-reaching intervention of imposing additional obligations to present complete contractual agreements is disproportionate to the gain in knowledge regarding the supply situation and should therefore be clearly rejected.

Art. 13 in the EU Commission proposal for the Gas SoS Regulation further extends the existing right to inspect supply agreements and the access to contractual information. Art. 13 (4) enables the competent authorities as well as, in a further step, the European Commission,

irrespective of any emergency situation, to obtain information regarding gas demand and supply, gas flows, production and storage from companies. Furthermore, the obligation to report the information contained in newly concluded contracts with a term of more than one year has been extended and the information contained not only has to be presented in aggregated form but the detail must now also be made available to the European Commission. For the conclusion of new contracts, amongst other things, Art. 13 (6) (b) provides for the obligation to notify the competent authorities of entire contracts (including price information) which relate to supplies from one country which cover over 40% of the portfolio of the Member State. Art. 13 (7) gives the European Commission the possibility, without limitation, of inspecting entire supply contracts, thus including the price information contained therein.

In the opinion of BDEW, information regarding gas supplies, which helps to assess the supply situation in country or a part of the European Union, in particular in an emergency situation, should - as already provided for with the regulations of the current Gas SoS Regulation - be made available to the competent authorities and thus also to the European Commission. This relates, in particular, to any information which contains details on the contracted volumes, delivery points as well as durations. In order to assess the supply situation, the competent authority of a country and the European Commission can create an exact picture of the supply situation in the individual parts of the EU.

The aforementioned gas market information which is specified in that form in Art. 13 (6) (a) is already presented to the authorities, however, by way of the reports required under the REMIT information obligations. In the opinion of BDEW, the implementation of any double reporting obligation of the same information in different legislation should be clearly avoided. In respect of a requirement for additional information based on security of supply aspects, for example related to information on contractually agreed flexibility options or on contractual rights of the supplier to interrupt gas delivery, an assessment should be made as to what extent further information could be obtained via the REMIT requests. In order to ensure that a reliable picture can be created on the basis of the information mentioned regarding the supply situation in the Member States or parts of the EU but at the same time to avoid additional reporting obligations and in particular double reporting on the part of the companies, adequate access by the European Commission to information related to security of supply from the REMIT reports should be provided. Price information as business secrets should be clearly excluded from the right to inspect information.

Through the draft rules in Art. 13 (6) (b), in particular however those in Art. 13 (7), the European Commission will, in contrast, be granted the possibility, also outside of emergencies, of viewing entire supply contracts as well as associated contracts in full. The requirements for inspection are not defined more closely in the existing proposal for the regulation. Furthermore, the requirements are subject, through the wording "duly justified circumstances", to legally unclear conditions. In light of the described reporting obligations and the resulting ability of authorities comprehensively to assess the supply situation in countries or parts of the EU, any further obligation to present anything up to complete contracts should be clearly rejected as this is, in the opinion of BDEW, clearly disproportionate to the additional knowledge gained thereby.

From the opinion of BDEW, it is extremely important that trade secrets are preserved in the scope of any inspection of commercial agreements. Price information does not contribute in any way to the ability to assess the supply situation or the level of security of supply in a country or in parts of the EU, hence such information should be clearly excluded from any right of inspection of contracts. BDEW is also particularly critical of the additional competence with which the European Commission is to be granted the right of inspection of contractual information through the rules in Art. 13 (7).

3 Further BDEW positions

3.1 Supply standard and protected customers

BDEW welcomes the fact that the existing scenarios specified in the supply standard as precautions for the supply of protected customers are to be preserved. In the view of BDEW, the time periods and conditions represent a suitable framework for the precautions that should be taken.

The requirements for the definition of protected groups of customers in the proposal for the Gas SoS Regulation provide, in the opinion of BDEW, a suitable framework for achieving an increasingly uniform level of protection, in particular for households, essential social services and district heating installations. The stipulated framework in the existing Gas SoS Regulation and the reform proposal should therefore not be extended. Rules which go beyond the prescribed level, such as in respect of gas power plants, which are of special significance for the electricity supply system of the respective Member State should, if at all, in contrast, be implemented individually in the relevant national legislation, separate from the EU-wide definition of protected customers. This should, however, have no effects whatsoever on the EU-wide, uniform level of the group of customers protected in the event of an emergency.

The rules under the Gas SoS Regulation in the definition of protected customers and the associated differentiation between groups of customers should, however, always remain practicable in the case of any adjustment of gas flows within the different network levels which may become necessary. In light of this, the prescribed framework could be drawn more narrowly than the existing provisions and SMEs¹, which cannot be differentiated, in the network topology practice, from protected customers in the event of an adjustment of gas flows, could be taken into account in the definition of protected customers. In particular, it is not possible to ensure an adjustment of gas flows is possible in the case of non-metered exit points, which could include SMEs. Such a narrow definition of the provisions in the Gas SoS Regulation would also lead to an even higher degree of harmonisation of a cross-border uniform level of protected customers.²

¹ According to Art. 2 (1a) in the proposal for the Gas SoS Regulation

² As far as the existing provisions of the current Gas SoS Regulation are concerned as well as the proposal for the reform of the regulation, there is also a need for modification, in the opinion of BDEW, in the German legislative framework (Sec. 53a German Federal Energy Industry Act): on grounds of practicability, BDEW believes that the group of protected customers under the German Federal Energy Industry Act should be extended to cover all

The notification obligation provided for in the proposal for the Gas SoS Regulation under Art. 5 (1) regarding the group of customers declared to be protected in a Member State, offers an additional possibility for achieving a uniform level of protected customers across Member States and should therefore generally be welcomed. This ensures that the national regulations regarding protected customers are consistent with the provisions of the Gas SoS Regulation and thus lead to a greater degree of harmonisation across the Member States. In that context, the created templates for preventive action plans should also include information on the volumes required to meet the demands of protected customers so that a validation of the group of customers declared to be protected is possible.

It is also to be welcomed in this context that the provisions in Art. 12 on solidarity measures to be provided to a Member State experiencing an emergency situation are to be designed independent of the respective level of protected groups of customers. In the opinion of BDEW, a uniform level of protection to be clearly stipulated in such mechanisms for households, essential social services and district heating installations is the right approach.

3.2 Infrastructure standard and reverse flow capacities

In the view of BDEW, it should be welcomed that, as per Art. 4 (1) of the present proposal for the Gas SoS Regulation, the national states remain responsible for the provision of the necessary infrastructure, in order to enable the entire gas demand to be satisfied even in the case of disruption of the single largest gas infrastructure. Beyond that, it is possible to calculate the N-1 standard also on a regional level (Art. 4 (3)), which means that the gas supply systems across several countries, who cooperate with one another in a particular area, can be viewed in a holistic way.

In the opinion of BDEW, however, that approach ignores existing bottlenecks in the cross-national transmission within a cooperating group of countries. In order for the cross-border solidarity and support for a country in an emergency to work, however, it is very important that real gas flows are able to achieve a physical effect.

In order to remedy existing bottlenecks in the interstate transmission capacity and to be able to achieve these physical gas flows in the event of an emergency, reverse flow capacities can make a contribution. In the opinion of BDEW, however, a prerequisite for investment in reverse flow capacity must be that their specific contribution in the form of a corresponding increase in security of supply or also through an increase in trading efficiency can be proven in a cost-benefit analysis. BDEW welcomes the fact that such an assessment in relation to reverse flow investment is to be stipulated in Annex III (2) of the proposal for the revised regulation. In the opinion of BDEW, however, the result of such an assessment must then actually be taken into account accordingly. If the affected Member States jointly decide in this context

customers for whom standard load profiles are used. In addition, customers who provide crucially important social services (health services and other social and welfare services) as well as local and district heating plants which provide household customers with heating and cannot change fuels, should be covered by the rules under Sec. 53a German Federal Energy Industry Act.

that they want to refrain from implementing reverse flow in a particular case, that decision should be respected, and the European Commission should not be able to change it, as provided for in Annex III (8).

3.3 Risk assessment

In the opinion of BDEW, it is to be welcomed that in the scope of the risk analysis, the realistic assessment of the existing infrastructure in the European Union will be continued and further expanded. This approach is followed in Art. 6 (1) (a), in that it takes into account the real capacity of storage facilities by considering the relevant levels of gas stored, as well as in Art. 6 (6), in that it extends the assessment through EU-wide gas flow simulations. In the opinion of BDEW, it is of great importance, when assessing the existing infrastructure, to also consider export flows, which these gas flow simulations are able to do.

At the same time, however, it should be noted that the concept of risk assessment in the existing proposal for the Gas SoS Regulation is far more comprehensive than is the case in the existing regulation. Whilst until now the focus was, in particular, on infrastructure assessment and its importance within the overall energy supply system in a Member State, the presented proposal greatly expands the potential threats on which the assessment must be based, aiming in particular at possible commercial, social, political and other risks (Art. 6 (1)). In the opinion of BDEW, it is difficult to identify such risks for the purposes of preventive measures, precisely and reliably in advance. The Gas SoS Regulation should not pursue the aim of completely covering and taking preventive action to counter all conceivable risks to the gas supply. In the opinion of BDEW, the risk assessment should continue to concentrate on the importance of gas supply to the overall energy supply system in specific events and place the focus clearly on measures to cope with possible crises.

3.4 Responsibility for the security of gas supply

BDEW generally welcomes the approach that a secure natural gas supply is the joint responsibility of natural gas companies, the Member States and the EU. It should be welcomed that the decision making approach based on that (1. companies, 2. Member States, 3. EU) has been preserved in the present proposal.

However, the proposal at hand only addresses natural gas companies as a whole and does not make any more detailed specification. A more precise definition of the areas of responsibility does seem necessary, in the opinion of BDEW, in particular, in order to be able to provide coordinated and targeted action in crisis situations. The following specification could be used to this end:

- Transmission and distribution system operators bear responsibility for the system stability and therefore contribute to the security of supply through the sustained provision of network integrity.
- Traders/suppliers bear responsibility for procurement and provision of the volumes and can also further support the security of supply through means of capacity products for network operators.

- Storage facility operators contribute to the security of supply, in particular at times of peak load, through the provision of storage volumes.

3.5 Energy Community

Art. 15 of the proposal for the Gas SoS Regulation is aimed at the application of individual rules of the regulation also to the Energy Community, provided the countries of the Energy Community adopt the respective rules.

The idea is also to further develop the connections to non-EU countries, in accordance with the already existing infrastructure connections, for the benefit of an increasing interconnection of the continental European natural gas supply. This should then also enable companies to develop and strengthen trading relationships to an increasing extent. An increasing connection of countries and markets of the Energy Community to the European natural gas supply system also goes hand in hand with mutual support in emergency situations.

In the opinion of BDEW, however, it is of crucial importance that the respective obligations which possibly arise from the regulations and any claims against the EU Member States which could be derived from them should be clearly communicated and laid out. The regulatory construct in the proposal for the Gas SoS Regulation is extremely opaque, however, and is as yet unable clearly to set out the resulting connections and possible consequences.

Furthermore, in the opinion of BDEW, it is necessary, for the solidarity and support in emergency situations, that advance preventive measures which can be taken by such non-EU Member States must be adhered to. This also applies for the development of markets for trading natural gas. As a result, the security of supply will also be strengthened across borders in the neighbouring countries of the Energy Community.

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