



Fostering energy markets, empowering **consumers**.

**CEER response to European Commission
Consultation paper of the Revision of
Regulation (EU) No 994/2010 concerning
measures to safeguard security of gas
supply and repealing Council Directive
2004/67/EC**

**Ref: C15-GWG-118-03
7-April-2015**

Introduction

As the representative body for Europe's energy regulators, the Council of European Energy Regulators (CEER) welcomes the opportunity to respond to the European Commission Consultation paper of the Revision of Regulation (EU) No 994/2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC.

This document sets out CEER's response to the European Commission Revision of Regulation (EU) No 994/2010¹ concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC consultation document. It draws upon the work that is currently being progressed by CEER and individual National Regulatory Authorities (NRAs).

The response is divided into two sections. The first section focuses on general remarks which we consider should be given further consideration in the draft consultation. The second section provides detailed comments on the questions addressed in European Commission public consultation paper.

¹ [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](#)

1 CEER general remarks

1.1 A completed internal energy market – a crucial framework for our SoS

In order to ensure efficient and effective security of supply (SoS) strategy in Europe CEER believes that a clear distinction between the “prevention phase” and “mitigation phase” is crucial.

The completion of the internal energy market will deliver well-functioning spot and forward markets and should be considered as the primary objective for any EU SoS strategy. Well-functioning markets will set the framework for SoS: they optimise flows by signalling scarcity and promoting efficient use of assets through price signals. One of the building blocks for a functioning market is transparency and well defined rules.

The revision of Regulation (EU) No 994/2010 should take into account the landscape of the EU gas market. For example, European gas demand is in decline, which means all potential measures should be evaluated carefully to see if they are economically viable.

We recall that a supply disruption distribution network customers implies enormous costs (re-connection can take months, can have severe safety impacts, i.e. explosions in buildings).

1.1.1 What to do

- i. **Ensure that Network Code on Gas Balancing of Transmission Networks provisions are working**

Implementation of the Balancing Network Code² creates the appropriate framework in which SoS is accommodated in the market as it requires that shippers (suppliers) to inject gas into the network according to the offtakes of their customers. As long as the network is in balance gas flows to all customers are guaranteed. This market framework looks very suitable to incorporate SoS requirements (via e.g. balancing obligations, imbalance fees, etc.) into the market mechanism where the shadow cost of SoS (e.g. VoLL) gets a market price. It is appropriate to place (ideally) market-based measures in the prevention phase on market areas/regions³ and shippers/suppliers and non-market-based measures in the mitigation phase on coordinated Member States actions within market areas/ regions.

Balancing Network Code plays currently a key role in the design of the EU balancing regimes and deserves particular attention in this exercise of reviewing Regulation (EU) No 994/2010. Therefore, the full implementation of the 3rd Package and the network codes should be one of the most

² [Commission Regulation \(EU\) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks](#)

³ CEER believes that Member States are no longer the only appropriate spatial reference to discuss SoS in a competitive environment in Europe. It looks more adequate to refer to market areas. Here we may distinguish 3 layers corresponding to the move towards Internal Energy Market: 1) the Virtual Trading Point (VTP) area (Bal-zone, EE-zone), 2) integrated market area (coupled markets without access barriers and having correlated and converged wholesale gas prices, which does not necessarily mean trading regions or market mergers but markets with strong correlation, e.g. according to competition law) and 3) the EU area (in reference to EU-borders, the involvement of Energy Community countries and the relation to producing/transiting third countries).

important tasks to be fulfilled by the Member States according to a simultaneous maximum internalisation of SoS. The success of this implementation will largely determine the borderline between prevention (market-based SoS) and mitigation (state intervention via emergency plans). Some regions will more rapidly move to the mitigation stage in case of an incident than others since market conditions (e.g. gas supply sources and routes) as well as maturity differ across the EU. This varying reality should be reflected in the Regulation (EU) No 994/2010 revision without unintended consequences on the process to achieve well-functioning EU gas markets.

The potential SoS responsiveness of the markets should be supported at a maximum level by the regulatory framework (e.g. implementation of the network codes) to ensure that the market is able to accommodate demand as long as possible.

ii. Ensure that SoS objectives are transparent and clear to the market

The SoS objective, as well as on triggers for when to move to mitigation actions, must be clear and transparent to the market. It is important to internalise SoS requirements in the gas supply chain from consumers through the market to the producers as an explicit service requirement. Of course, the market may reveal a price premium according to the SoS requirements and suppliers may face contractual penalty clauses in case of failure. By incorporating this cost into the market through, for instance, appropriate balancing incentives, market participants can achieve an efficient level of security of supply. In most EU Member States this means SoS can be considered a regulated service for so-called protected customers (given the public character of SoS provision to e.g. to households) and a negotiated service between supplier and customer for large gas consumers which have the ability to specify their SoS needs according to varying SoS price premiums. Once appropriate imbalance incentives are introduced, in response the market will optimise its portfolio (e.g. interruptible supply contracts).

The current development and timely implementation of network codes will help to harmonise the applied rules in market areas, thus being a prerequisite to integrate markets. Particularly in areas where no well-functioning markets (e.g. according to European Gas Target Model: Review and update criteria⁴ (further in the text referred as GTM2) and self-assessments of Member States) can be achieved, regional cooperation beyond the national borders will be required to achieve greater market development. Based on a Cost Benefit Analysis (CBA), an integration of these markets should be evaluated in order to establish one liquid and transparent market. Depending on the particularities of cross-border market integration, market-based SoS will also be integrated cross-border (e.g. a common balancing regime).

Markets need well-defined and clear obligations when SoS regulation imposes specific measures - which should be evidence based (e.g. CBA). Indeed, NRAs and competent authorities must be transparent with the market on the level of gas which is appropriate to meet SoS requirements, as it is not only linked with market functioning but also with investment in infrastructures, where they are not sufficient.

⁴ [ACER European Gas Target Model: Review and update, January 2015](#)

1.1.2 How to do it

Prevention phase

Market monitoring will provide evidence that the market takes appropriate actions to safeguard SoS and to avoid as much as efficiently possible emergency situations. It is thus at the heart of guaranteeing SoS.

“Obligations of results” (e.g. to meet a “1 in 20 year” rule for households) rather than “Obligations of efforts” (e.g. at least 3 different supply sources) in order to allow the market to choose the most efficient means to achieve the results. Member States may define supply standards, in particular for households, while the market participants should decide themselves how to meet the respective obligation, e.g. how to structure and source their portfolio.

Risk assessments, preventive action plans and emergency plans remain necessary in a SoS policy. They will clarify to market participants what happens before, during and after an emergency. According to these monitoring reports, obligations of results may be complemented with obligations of efforts if the market fails to deliver sufficient gas supply security. “Obligations of efforts” should be considered as a remedy of imperfections in the market functioning or to cope with particularities in the gas supply circumstances (e.g. single supplier markets) and should preferably be considered as temporary in a transition to a more developed market functioning.

We advocate a more coherent approach between the development and implementation of the regulatory framework (see e.g. the Network Codes) for market functioning and the regulatory framework for security of supply (see e.g. the activities of the European Commission Gas Coordination Group (GCG)).

A lack of coherence may sometimes be observed between the role given to markets (more and more cross-border and regional) when market regulation is developed and the role given to states (Member States) when SoS is discussed (e.g. role of Member States in current Regulation (EU) No 994/2010). Obviously, Member States are not anymore in the supply chain for gas and gas is not delivered to Member States as such. Gas supply companies contract gas and deliver it to markets (Virtual Trading Points (VTPs) and customers. Indeed, Member States do not have a gas supply portfolio but gas companies do and they manage it internationally. Coherence is needed and in this respect, in addition to the two stage approach of prevention (market) and mitigation (state emergency plans) it would be welcome that the “new” regulation gives an explicit and complementary role to the Ministry (Member States), as regards to market intervention and state measures, and the NRA, as guardian of market functioning, no matter who of both is chosen as Competent Authority (CA) (regulation should specify the collaboration between both).

The use of Liquefied Natural Gas (LNG) terminals and Underground Gas Storage (UGS) should be considered in order to verify whether market shortcomings or failures may be observed leading to an inefficient use of these facilities from a gas security point of view (cf. the importance of monitoring and the different plans: Risk Assessments (RA), Preventive Action Plans (PAP), Emergency Plans (EP). If this is the case, remedies in the regulatory framework should be suggested. CEER is currently drafting a report on the role of LNG and storage in regional SoS. Also the relationship between short term gas sourcing at the trading places (VTP) and long term gas contracts of gas supply companies should be considered. This relationship is of key importance for market liquidity

(SoS) and an efficient balance of both contracts must be guaranteed on a market level. Since third countries are more and more important to supply Europe, a dialogue between Europe and these countries becomes more important to facilitate commercial transactions of the European gas supply companies to source gas in these countries according to negotiated contractual conditions.

Mitigation phase

Where there is an immature market or insufficient liquidity to reveal this cost, some form of intervention may be necessary (e.g. setting of the imbalance fees). However, market interventions have a cost and this must be fully assessed. Any intervention must not hinder the development of a market (i.e. each intervention should be reviewed regularly and should have an exit strategy).

1.2 An innovative role for the European Commission

The European Commission should support efforts of Member States, NRAs and Transmission System Operators (TSOs) towards cross border cooperation when market mergers or trading regions are identified as the most cost efficient solution. The process of a self-evaluation for each market area, which is foreseen in the GTM2, could lead to certain developments. However, in some cases political or legal incentives to launch concrete infrastructure projects in order to foster market integration could be needed.

CEER supports the idea of regional cooperation in relation to SoS as interventions in one market area may affect neighbouring market areas. Thus, cooperation is a necessary process since market areas are increasingly integrated across borders. Member States should work together when drafting regional RA, PAP and EP to ensure that they're not relying on the same molecule of gas in an emergency situation.

Our suggestion is that the European Commission develops a RA, PAP and EP at EU-level (related to energy policy, producing and transiting third countries, e.g. Energy Community countries), besides and in coherence with, decentralised national and coordinated regional plans. Obviously, once continuity of gas supplies at the EU borders is guaranteed, gas supply within the EU will largely be a matter of sufficient transmission capacity and market functioning. In case a region struggles for consensus about the content of a regional plan, the European Commission could help by appointing a SoS-mediator.

2 Detailed commentary – CEER answers to questions addressed in the public consultation

This section provides detailed CEER comments on all 40 questions addressed in the European Commission public consultation paper.

PART I

PREVENTION

1. Infrastructure

a. *The Infrastructure Standard N-1*

Question 1: Is the current N-1 rule fit to ensure a sufficient level of infrastructure for security of supply purposes or do you believe that an alternative measure replacing the N-1 standard should be investigated? (e.g. broader infrastructure adequacy assessment at regional or pan-European level similar to e.g. ENTSOG Winter Outlook)?

The availability of transmission capacity according to the N-1 rule seems reasonable to cope with technical failures of the main gas infrastructure, provided that sufficient commodity is available. It is important to remember that the N-1 rule is only about the capacity of existing infrastructure which should be able to meet peak demand. Scenario calculations do not have effects on the N-1 calculation but more on the principle of ensuring SoS. However, it should be clear who is responsible for building spare capacity and how costs are recovered. Any investment in infrastructure should be recovered through the tariffs if the investment is considered to be efficient by an NRA. In case an investment is only to ensure that gas can flow in case of an emergency (thus, not covered by market demand), it seems more appropriate that such an investment applies for the Projects of Common Interest (PCI) status. Looking to the European Infrastructure Package (EIP), PCIs seem to be the right instrument to deal with such investments. Transparency is needed and the “N-1 principle” may be included as a requirement in the definition of the level of firmness of firm capacity (firm capacity is still firm when the most important infrastructure fails).

However, the current N-1 formula has a major shortcoming since there is no link between the nominator and denominator and unequal technical entry/exit capacities at many Interconnection Points (IPs).

Exit-capacities are not considered and therefore there is a danger that the value of the N-1 standard is too high and subsequently the SoS concerning infrastructure is exaggerated:

Transit countries: Infrastructure standards can be too high because exit-capacities are not covered by the N-1 formula. Using only the technical maximum capacity at entry points, but not the capacity which is (contractually) determined for end customers, exaggerates the system’s flexibility to provide security of supply for end customers as (major) parts of the capacity will be used for border-to-border transmission.

- An export component should be introduced: this could be the connection between national N-1 calculations and input for the regional approach: exports and imports in

neighbouring and connected member states should be matched. There are two ways to include exit capacity in the calculation of the N-1 standard:

- Subtracting exit capacities from the nominator to get the net available capacity; or
- Adding exit capacities to the denominator, then N-1 compares the entry capacities at the nominator to the exit capacities at the denominator
- A part of domestic production could also be dedicated for exports, this should be taken into account when calculating N-1
- A part of storage capacity could also be dedicated for exports, this should be taken into account when calculating N-1

According to the Regulation, the N-1 infrastructure formula is calculated by taking into account the technical capacity of the single largest gas infrastructure with the highest capacity to supply the calculated area (I_m)⁵. This rigid definition of the most important infrastructure does not take into account the utilisation level of the asset and therefore the true anticipated impact of an outage. Moreover, it does not take into account the outage probability.

To remedy this shortcoming an alternate approach would be to change the “largest infrastructure” to “the most critical infrastructure”. The latter could be defined not simply on the merit of a deterministic number such as the technical capacity but by factoring in the contracted capacity and the outage probability. We believe that such criteria would provide a better representation of the level of risk associated with each entry point and therefore the outcome of the N-1 calculation would represent infrastructure adequacy more accurately.

To assess if the system can ensure continuous supply, the calculation of N-1 should be combined with the supply requirements (applied to all costumers) and should be updated on a regular basis. An additional proposal is to calculate the N-1 two times, at the beginning of and near the end of a winter period, to reflect technical storage withdrawal capacities⁶. The current formula only considers storage capacity at the beginning of the winter season, giving only a picture of the first day of the cold season without having a real meaning for the last weeks of the winter season when storage could be almost empty.

Furthermore, the N-1 principle should be valid for the whole supply chain including the regional and the EU-level.

The existing N-1 principle is strictly technical and therefore not quite adequate to assess responsiveness of a given gas system in time of crisis brought on by geopolitical factors. Such factors (e.g. sudden disruption in supplies from eastern direction occurring at the same time on more than one key gas infrastructure elements) should be taken into account when aiming to change the N-1 principle.

There are physical limitations between EU countries as well as inside a given country treated as an entry/exit system. This should be taken into account while analysing a given system for the

⁵ ‘ I_m ’ means the technical capacity of the single largest gas infrastructure (in mcm/d) with the highest capacity to supply the calculated area. When several gas infrastructures are connected to a common upstream or downstream gas infrastructure and cannot be separately operated, they shall be considered as one single gas infrastructure.

⁶ These depend on the injected working gas volume and the respective pressure level within the storage facility.

purposes of the N-1 principle. An area considered in the N-1 principle should be free of transmission limitations and if it is not, this should be clearly stated in N-1 analysis. Such limitations should be treated as an indication for where additional interconnection capacity between member states is needed for security of supply.

Question 2: Is a regional approach to N-1 needed? If so, in which cases would it be appropriate and how should regions be defined?

In general, regional approach to N-1 should be supported.

The European Commission Communication on the Energy Union Package⁷ of 25 February 2015 should also be taken into account: "...A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy clearly supports preventive and emergency plans at regional and EU level. Solidarity among Member States, in particular in times of supply crisis, has to be strengthened." These issues and the experience from implementing the Regulation should be taken into account when proposing a revision of the Security of Gas Supply Regulation.

Decisions concerning the shape of these regions should be made at Member States level with a supporting/coordinating role for the European Commission. The ACER Gas Target Model will also be helpful, as it features criteria for defining what a market zones, e.g. a minimum of 3 sources of supply in a given region and advanced plans concerning creating one trading region without physical congestions.

The infrastructure standard (e.g. N-1) should be applied on the three identified market layers (VTP area, integrated market area, EU area) this means that N-1 should in principle be applicable on national, regional and EU-level. However, in general it is important to ensure that each Member State of a specific area fulfils firstly the national N-1 and secondly the regional SoS requirements. The national N-1 approach seems not to be sufficient for smaller Member States which depend on only one supply route as they do not have the possibility to build or enhance infrastructure in the upstream market. In the case of cross-border merged markets leading to a new integrated entry/exit zone and balancing zone, the N-1 standard may be applied on the integrated market level.

The interruption of the single largest infrastructure in one Member State will probably have negative effects on several downstream markets. Transparency between Member States on the calculation of N-1, with a harmonised formula, contributes to coherence in times of disruption. Thus, a regional approach is needed to understand which markets could be affected and to what extent in order to identify and engage concrete coordination processes. The provision in Article 6 (3) in combination with Article 9 should be strengthened and the regional approach should be obligatory for the calculation of the infrastructure standard. However, the separate national calculation shall remain and serve as input for the regional approach. When calculating the N-1 at the regional level, the formula should take into account the net capacity (rather than the maximum capacity) in order to

⁷ [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank A Framework Strategy For A Resilient Energy Union With A Forward-Looking Climate Change Policy](#)

avoid any double-counting related to entry-exit flows at the interconnections. A suggestion would be to compare entry capacities to exit capacities.

A regional approach could be the definition of regions according to the integrated market area. This means the area where all market players have easy access to gas (e.g. no congestion) at a converged wholesale gas price (potentially covering multiple VTPs). If price divergences are observed between areas then distinct market areas should be defined. Of course, these areas are dynamic and it is the aim to achieve a single EU market area. Regardless of the approach chosen, some countries may fall within multiple regions. It should be noted the role that LNG can play in linking regions/ markets/hubs with no other physical links.

Another approach for the definition of regions could be to follow the typical physical gas flow pattern or transportation corridors, whilst a more ambitious approach could be through the European Commission or ENTSOG analysis to evaluate how much entry capacity is needed in each market in the EU and neighbouring countries (including the Energy Community) to meet the infrastructure criteria of the Gas Target Model and the technical infrastructure standard. The results should identify necessary capacities along specific transportation corridors, as entry and exit capacities should be mirrored at adjacent markets. These could serve as capacity targets and the corridors could serve as corresponding regions for the N-1 regional approach.

Going one step further, the relevant TSOs should develop joint expansion projects along the corridors and feed them into the PCI process. It should then be easier for the European Commission to evaluate and choose the best projects to reach capacity targets and it would probably also avoid the mass of separate project announcements and the need to integrate and bundle those separated projects to a few reasonable projects.

b. Reverse Flows

Question 3: Do you believe that reverse flow is offered at all points where it is needed? If not, why (what are the main obstacles)? At what points could it increase supply security in a tangible manner?

In principle, reverse flow is one of the main preconditions for SoS and is needed on VTP-level (EE-zone, BAL-zone) and regional (integrated market area) level. Reverse flow projects should potentially contribute significant volumes to adjacent markets. However reverse flow is not necessary on all individual IPs.

CEER recommends an assessment, including a CBA, of reverse flows when supply sources (production, storage or LNG facilities) are located in the market area of the flow direction according to a roadmap developed on EU level. When not required by the market but needed for SoS reasons, a project could be part of the PCI list. The costs and benefits of reverse flow projects for security of supply (i.e. those which are not triggered by incremental capacity signals) should be assessed in detail by the relevant authorities within the region, who are best placed to do so.

Further, it has to be assured that there are available supply sources and sufficient entry capacity is built, otherwise a reverse flow would be useless. We suggest evaluating implemented reverse flow projects to assess whether the capacities built are sufficient in terms of contribution to the SoS of

adjacent markets. Building of additional reverse flow should be evidence based and according to a CBA (including the net benefits of SoS, market integration , competition, sustainability) with, in case of insufficient investment cost recovery by capacity subscriptions, a market friendly mechanism to recover the investment costs from countries which benefit from the additional reverse flow. In general reverse flow should be as much as possible market-driven in order to be cost effective.

Question 4: As concerns exemptions from the reverse flow obligation:

a. Should these provisions be clarified and/or strengthened?

The existing rules are in principle sufficient. However, reverse-flow decisions should be as much as possible market-driven in order to guarantee not only SoS but benefit market integration. The necessity of carrying out a CBA should be stated more precisely, because this provides a basis on which to determine whether or not a reverse flow exemption can be provided. CEER recommends that the procedural rules should be amended so that a mandatory, transparent and public consultation has to be conducted in order to guarantee that all relevant stakeholders can participate in the process. The affected Member States (including NRAs given the focus on market driven investment) should be involved in the CBA before any consultation on the findings. The proposal by the European Commission in their Energy Union paper to delegate reverse flow exemption decisions from CAs to ACER seems inappropriate under these circumstances.

b. Should the relevant authority analyse the benefits of reverse flows along the whole transportation corridor?

Yes, applications for exemptions from the reverse flow obligation and the respective CBA should consider effects on the VTP, regional and EU level which are already a requirement under the current legal framework. The relevant authorities have to take their decision on the basis of the application and the responses of the public consultation.

c. Should affected Member States even beyond the immediate borders be involved in the assessment?

Yes, there should be a public consultation to allow all relevant stakeholders to be involved. Any change in the transmission system in one Member State may have substantial impact on the regional system, beyond even bordering Member State. For this reason we fully support a coordinated approach to this issue on a regional level. In case arguments raised in the consultation process were not considered properly, the European Commission already has the possibility to require the authorities to amend their decision under the current legal framework.

Question 5: Is the current review possibility - every two years, in the framework of the revised Risk Assessment - sufficient or should there be more regular checks whether market conditions justify an exemption?

The current review may even be too ambitious. Experience has shown that changes in market developments do not take place at such high speed and revisions take time. It would be a waste if a revision is performed and shortly after that already a new revision is launched. We suggest amending the rules for the review of the SoS documents from two to four years, having in mind the upcoming regional approach and the national preparations. But we additionally suggest including an evidence-based ad-hoc review possibility triggered by the European Commission or competent authorities in case of substantial changes of market conditions.

2. Improving Risk Assessments and harmonising Preventive Action Plans

Question 6: Are the Risk Assessments and Preventive Action Plans in the current format satisfactory means for identifying and preparing for supply risks? What core elements could a possible template for the Risk Assessment and a Preventive Action Plan contain (e.g. concrete harmonised scenarios to be addressed, similar to the Energy Stress Tests, etc.)?

In 2014, the outcome of the stress tests across concluded that Member States should be included in updates of RA and PAP.

RA and PAP should be prepared on both national and regional level (as well as on EU level in reference to EU-borders and the relation with producing/transiting third countries). In order to prepare such documents at regional level accessible data and harmonised definitions of terms and principles (e.g. cross-border solidarity) are necessary.

For practical reasons, preparing one document consisting of both the PAP and Emergency Plan would be more efficient. Preparing two separate documents at regional level would be more time-consuming.

The coordinating role of the EC could be to assess abovementioned documents in terms of coherence and to suggest relevant changes, but without issuing binding decisions. In these documents, confidential information should be minimised but it is possible that some information has to remain confidential. While the European Commission has a coordinating role, it should be up to Member States what measures shall be applied to ensure coherence between national RAs and PAPs. In this context the agreement on solidarity principles between the Member States is important, e.g. the management of the nominations at cross-border exists in case of a system failure as well as the guarantee of minimal gas flows at cross-border exits (according to existing contracts) in case of an emergency.

The provisions for Risk Assessments and Preventive Actions Plans, if carried out accurately and properly, are already useful to identify and prepare for supply risks. As mentioned above, the RA and PAP should be established not only on a VTP basis (EE-zone, BAL-zone), but also on a regional level (integrated market area. Member States and NRA (incl. CA) involvement should be

mandatory when creating the plans. If Member States fail to agree upon the content of a regional plan, the EC should step in and pick up a coordinating role via the SoS-mediator in order to mediate and solve upcoming issues.

A standard template and methodology (approach) should be adopted. The RA should include all relevant data already set in the current Regulation, clearly defined and with concrete numbers.

CEER recommends including a calculation and evaluation of one average and one peak gas consumption winter scenario in the template. These scenario calculations should also include the effects on the relevant downstream markets. Those effects should be analysed by the relevant competent authorities on regional level.

Question 7: How can the existing cooperation obligation be improved?

- a. *Do you think that regional plans for Risk Assessments and Preventive Action Plans should be obligatory in the EU or at least in certain regions? If you believe that regional plans should be introduced: how should the regions be defined (e.g. criteria, who should coordinate the process)?*

RA and PAP (as well as EP) on national, regional and EU-level should be mandatory. Decisions concerning shape of given region should be made at Member States level with supporting/coordinating role of European Commission, who should be authorised to check if coherency of PAPs and EPs. This is important for Member States with central locations in Europe who may be the part of several regions.

RA and PAP should be elaborated on the following levels: VTP area (EE-zone, BAL-zone), regional (integrated market area) and EU area (RA and PAP with regard to third-countries, producing and transit).

- b. *Should – at least in vulnerable regions – an obligation to agree on how to share gas in case of a supply crisis with neighbours with whom a common supply infrastructure is shared be included in the plans?*

The issue of gas sharing in case of a supply crisis should not be set as a legal obligation in a EU regulation but may be part of intergovernmental arrangements between Member States as part of an emergency plan. However, “gas sharing” seems not an appropriate notion. In an emergency, supply contracts to downstream countries should be respected to the maximum possible extent to ensure disruptions are not passed downstream. However, where insufficient gas supplies are being delivered, Member States should have plans in place to define minimal gas flows to downstream. These minimal gas flows at the cross-border exits should be compatible with the shut-off plans in the involved countries. Such mechanism of minimal flow guarantees should be left to coordinated Member State decisions and could be finalised in intergovernmental agreements.

Besides, the guarantee of minimal gas flows according to existing contracts, which is a minimal solidarity requirement, Member States may agree on further programmes to help each other in case of an emergency. The intergovernmental solidarity programmes in case of an emergency may include cross-border compensations.

This is mitigation (when the market functioning is not able anymore to supply gas at reasonable cost, which means gas should be not more costly than the cost of interruption, e.g. cost of damages) and therefore should be set out in regional emergency plans.

As long as access to VTPs is possible, the market mechanism and the price signal will lead to efficient allocation of gas according to demand. When the market is short, prices will increase and attract new supplies (if possible) and reduce demand (higher prices), leading to a new market equilibrium. This mechanism should be safeguarded as long as possible. Of course, this cross-border supply/demand mechanism assumes there are no cross-border barriers (e.g. sufficient capacity).

Searching for gas in other markets to cope with domestic shortages should be organised according to market demand and supply, even in cases of shortages. Only if markets do not function anymore should the instruments of the mitigation phase intervene.

However, if the gas shortage results in a loss to system integrity or supplies to protected consumers a shut-off plan or a formula, that respects cross border solidarity principles described above, has to be agreed. This is crucial to protect the integrity of gas transmission systems and to a large extent this will be carried out based on national law, however regional considerations should also be taken into account. Thus, the Emergency Plans have to be agreed (coordinated) on VTP, integrated markets/regional and EU level if deemed to be necessary by the stakeholder of the regional emergency plan.

However, as a mitigation measure once the markets do not function anymore, it seems very difficult to implement an obligation on how “to share” gas (e.g. objectivities of the solidarity mechanism) in case of a supply crisis with neighbouring countries unless there are harmonised approaches and definitions. Defining minimal gas flows at cross-border exits, according to existing contracts, which remain guaranteed in case of emergency require agreements between involved adjacent Member States.

The standards present in Articles 6 and 8 render each Member State responsible for ensuring gas flows to Protected Customers. The standards, if diligently applied, mean that in all but the most extremely adverse scenarios the supply of gas to Protected Customers should not be affected.

Gas is shipped according to contractual obligations of shippers and suppliers with their respective customers. Respecting the sanctity of contracts would mean that any agreement to “share gas” within the context of a solidarity mechanism should not jeopardise the formers’ capability to serve their customers.

If the above are not properly addressed during the formulation of any new solidarity principles or obligations we may arrive at a situation where false (security) signals are provided or even worse that the security of individual Member States is negatively impacted (in which case measures would not be realistically implemented).

In our view solidarity mechanisms should (a) provide sufficient guarantees that they do not distort market signals and (b) be truly complementary to national measures without impacting on them negatively:

- a) Unless otherwise agreed bilaterally between Member States solidarity mechanisms may only be activated during emergencies caused by extreme disruption scenarios not foreseen in the standards currently present in Regulation 994/2010.
- b) The activation of any solidarity clause does not harm the continuity of supply situation in any Member State asked to provide assistance.

It is expected that in the event of an extreme disruption scenario, not foreseen in the standards present in Regulation 994/2010, entire regions would be affected. If it is our intention to effectively cope with such a crisis then we think that solidarity mechanisms should be backed by some kind of intra-regional support mechanism.

It is unlikely that Member States provide additional gas volumes to neighbouring countries if they have e.g. different definitions of protected customers (these differences should be discussed among the involved Member States when solidarity is objectivised in the regional emergency plans). If the potentially providing Member State has a rather tight definition of the protected customers including e.g. only households and district heating and the neighbouring Member State has a wider definition, e.g. including industrial customers, then the question arises why the market in one Member State should provide gas volumes for the industry of a neighbouring Member State/market while the gas supply of the domestic industry is potentially interrupted. The definition of protected customers becomes an issue once the markets do not function anymore and a regional emergency has to be declared. Therefore, the emergency plan should be transparent and clearly specify the solidarity mechanisms and the respective trigger including e.g. flows guaranteed from upstream countries. In this context, also technical constraints come into play since a physical distinction between several types of consumers in distribution grids is not always possible.

If the regional emergency plans specify the same definition of protected customers without industrial consumers, possibly there will most likely be enough gas available for all markets in that region to supply those protected customers. Stress test results seem to support this. One prerequisite for this approach would be of course to ensure that gas can flow without restrictions through the internal market, meaning that no national measures to reduce or interrupt export flows are allowed.

However, the results of the RA and PAP scenarios could also provide indications for possible additional gas exports in different Member States and regions. On the basis of this indication it might be possible to set common procedures on how to share gas in case of a supply crisis, so we see this as an operational step to prepare for a crisis situation on regional level.

Provided gas trading is possible in circumstances of decreasing gas liquidity, prices for sourcing gas may drastically rise. This price signal should attract new gas sources. In any case, high prices will likely reduce demand and release supplies for those customers who are willing to pay higher prices or who are protected in another way. Therefore, the market has also a self-regulating mechanism in case of shortages which should be safeguarded as long as possible.

It is also relevant to mention in this context that transparent and clear communication by the authorities in case of an emergency is important and may influence gas demand levels by voluntary curtailment of gas consumption. Gas demand patterns change in case of an emergency.

Question 8: Do you have proposals to simplify the administrative procedure for the Risk Assessments and Preventive Action Plans (and Emergency Plans), e.g. in terms of translation or alignment of the timelines? Should Risk Assessments, Preventive Action Plans (and, possibly, the Emergency Plans) be merged into one document and the procedural rules aligned respectively?

The elaboration and preparation of the national RAs, PAPs and EPs can be very time consuming. The quality of documents depends on how detailed they are and how much time was put into it. Thinking of the additional regional approach it will become an even more intense procedure, first the preparation of the national data and input followed by the preparation of the regional documents. Taking this into account, it could be a good idea to merge those documents into one. A merged SoS document could align and optimise procedural rules and time schedules. This document would have to clearly distinguish between RA/PAP and EP so that the reader is clear about the threshold for moving from prevention to mitigation. However, since the RA is typically a confidential document while the PAP/EPs are public this may not be possible or welcomed by all CAs. As it will be challenging to update the documents every two years, we suggest prolonging the review period from two to four years. These plans should at least be available in English.

The regulation should require that the Ministry and the NRA work together in establishing the plans in order to guarantee maximum coherence between market instruments and state intervention.

3. The "Supply Standard" for protected customers

3.1 Questions about the level of protection set by the current Supply Standard

Question 9: Do you think the current supply standard is defined and set appropriately with a view to ensuring that the objective of securing supplies to protected customers is met, taking into account sufficiently of differences in terms of vulnerability between Member States? Please substantiate your reply. In case you do not think that the supply standard is defined or set appropriately: what alternative design/tools could be envisaged to ensure the gas supply to protected customers? Please substantiate your reply.

Defining a Supply standard for households seem reasonable because households are not really in a position to negotiate the desired SoS level in their supply contract with supply companies. In many Member States due to the configuration of the network it is not possible to separate household consumers from other small/medium sized commercial customers. Therefore, a more pragmatic definition could include households, public service institutions, black-start power plants (cf. coherence SoS electricity) and those loads that cannot be safely isolated. Other categories of consumers should be able to negotiate the level of SoS in their supply contracts with supply companies e.g. industrial customers (of course there is a trade-off between the level of SoS and the price). Such information must be transparent for consumers and suppliers.

In any case, it is of utmost importance that these supply standards and SoS obligations are clear for the market. Different approaches for consumer categories do not distort market functioning. E.g. industrial customers may negotiate their level of SoS freely in their supply contracts with supply companies. Of course, variations in supply standards/SoS obligations will in principle impact the

portfolio management of supply companies and may impact the consumer gas prices. In order to avoid risk-taking of supply companies, penalties may be foreseen (e.g. the cost of damages due to an interruption) if suppliers fail to meet their contractual commitments. The market will reflect these standards/SoS obligations. However, penalties are an ex post measure that does not guarantee that there will be enough gas to meet SoS requirements. It cannot be excluded that market players can fail to anticipate some risks, which could lead to insufficient gas supplies. Monitoring of the market helps to check market behaviour and to control possible shortcomings. The balancing regime is adequate to monitor and react in case of imbalances of individual shippers in the short run.

Pursuant to Article 8 the supply standard must be fulfilled by the natural gas undertakings identified by the competent authority. Undertakings could be suppliers, but pursuant to the current wording of the regulation also TSOs, Supply System Operators (SSOs) or Distribution System Operators (DSOs); this is not clearly defined. In our view the supply standards a)⁸ and b)⁹ should clearly be an obligation for suppliers to protected customers. If another entity than the (importing) supplier is fulfilling (part of) the supply standard, it should be mandatory for this party to do so in a market based manner, considering the risk of inappropriate cost-sharing (see question 18 for more details). In any case, it is not appropriate to place Supply standard c) on shippers in a hub-based market with contracts which contain the delivery point at the hub: traders and suppliers cannot identify if their supplies are affected by a disruption of the largest piece of infrastructure because they do not know the supply source. Importing supply companies, who have booked cross-border capacity, are in fact the suppliers who manage the gas sourcing for that market area. A possible solution to monitor the supply standard c) could therefore be that those companies who import gas from non EU States and domestic producers take care of continuous gas flows according to the supply standard (e.g. diversification, storage capacities or other physical flexibility tools to ensure this).

However, it is important to ensure that the functioning of trading hubs is not physically affected by a supply disruption. If the hub is not affected, traders could trust that their supply contracts would be fulfilled. Traders would usually not sell hub products without ensuring that these products are physically backed, because in times of crisis a trader that cannot deliver would suffer severe financial consequences. However, if the hub is affected additional measures to assure the physical deliverability would be needed, e.g. a Back-up/Back Down service could provide firmness.

It is also important to state clearly that foreseeable events like supply interruptions due to political tensions and questionable reliability of producers are not subject to a Force Majeure clause. Especially importing companies have to be aware of such risks and must set actions to assure the firmness of their supply contracts with downstream parties.

Question 10: Do you think that the scenarios defined for the calculation of the standard in Article 8(1) (a) to (c) are still valid (for all Member States) or should they be modified? Please substantiate your reply.

⁸ Extreme temperatures during a 7 day peak period occurring with a statistical probability of once in 20 years.

⁹ Any period of at least 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years.

Scenarios a) and b) still seem to be appropriate: Suppliers should affirm the gas flows in extreme demand situation on a short term basis; if longer supply disruptions occur, additional measures like increased imports from other sources or demand side measures (interruptible supply contracts incl. contracts to reduce supply levels to contractually agreed levels) could be taken to overcome the situation. In this case it is important that the infrastructure and the capacity are in place to do so. Scenario c) would therefore be in the responsibility of importing traders as they have a key role in the SoS framework. It should be modified according to the reasoning provided for the N-1 improvement.

In this context it is important to emphasise the role of TSOs to guarantee sufficient capacity in order to meet the standards.

Bridging a period of at least 30 days in case of the disruption of the single largest infrastructure under average winter conditions (scenario c) requires also flexibility from the TSO to adapt the management of the system in order to provide maximum room to shippers/suppliers to re-allocate capacities and flows (nominations) in the system.

Question 11: Do you think that increased standards (e.g. manifested in longer and more severe disruption scenarios) would be beneficial or could ultimately jeopardize the security of supply in other Member States by reducing the liquidity in gas markets? Please substantiate your reply.

In well-functioning markets market participants shall choose the efficient tools to achieve the supply standards (and get penalised in case of failure via e.g. balancing incentives). If market evidence shows the need (cf. shortcomings in the market), this basic principle may be complemented by other rules. In these circumstances the Member States prescribes which tools to use without hampering the market functioning and the move to further maturity in the country concerned as well as cross-border impacts. Of course, such strict rules should be limited in time and correspond to the level of market maturity. Increased standards will influence how supply companies manage their supply portfolio and may impact consumer prices (SoS premium). However, looking to the climate and temperature information from the past, it could be analysed if there is a clear reason to increase the standard or not. If increased standards are needed, they will also increase the constraints on suppliers leading to competition issues as they may favour large suppliers. Ex-ante measures, such as storage obligations, may in that sense be considered as a possible way of sharing responsibilities among suppliers, while ensuring a proper level of SoS. Increased standards could also be monitored ex post, to penalise suppliers who did not meet their obligations. But in any case these standards should be properly met by the market and if the market fails (cf. importance of market monitoring), these standards may be complemented with ex ante measures. Contracts should avoid risk-taking/free-riding through penalising suppliers (e.g. cost of damages of disruption) adequately (see also compensation clauses in case of supply failures) if they do not meet these supply standard/SoS obligations. Also monitoring of compliance with supply standards and penalisation are important elements of securing supply to protected customers, and would help traders to assess the value of SoS.

3.2 Questions about implementation and enforcement of the Supply Standard

Question 12: Do you think that the result-oriented approach should be maintained or should the supply standard become more prescriptive in how the implementation and enforcement should be carried out? Please substantiate your reply, taking into account the effects on prices, liquidity, competition and security of supply.

In general, a result-oriented approach should be maintained because such an approach gives more space for undertakings as well as for Member States to choose appropriate measures to fulfil the supply standard – this is necessary given the different situation across Member States (e.g. different stage of market development, dependence on one supplier being a country outside the EU). In that light, one should consider the general importance of non-market-based measures (e.g. strategic stocks/obligatory reserves of natural gas or restriction plans in gas consumption).

However, experience shows that “obligations of result” could be more efficient than “obligations of efforts”. For example, it is basically more efficient to let the market choose the means in order to achieve the required results. It is basically more efficient to make it explicit and clear that households should be sure to get still gas at e.g. -11°C than to impose minimum storage levels for each supplier.

Particularly, in less mature markets and in markets which do not have domestic gas production, an obligation of efforts could make sense to ensure that gas is supplied even in case of disruption and where the market is not providing the desired insurance value of storage. But also here holds that these obligations shall not hamper progress towards a more mature market.

Any standards/SoS obligations must be clear to the market. These standards/SoS obligations should be integrated in supply contracts between suppliers and end customers. There must be clauses which specify penalties if the supplier does not meet the contractual requirements. This market-based approach does not exclude that “supplier of last resort” arrangements are taken on e.g. distribution level. These arrangements will be part of the market functioning and are market rules rather than distortive obligations.

Although standards/obligations may solve market shortcomings and therefore be complementary to the market, a more prescriptive approach risks distorting the market. Badly designed standards/obligations could have unintended impacts on the market in terms of prices and liquidity and may hamper the progress of markets to move to maturity.

Supply standards for gas undertakings are only one pillar in securing supply. Monitoring compliance with supply standards and the penalisation (direct or via cash-out mechanisms in balancing) are also important elements of securing supply to (protected) customers.

Question 13: To what extent can a more active role of the Competent Authorities in the monitoring of the supply standard contribute to resolve the identified issues, notably should the Competent Authorities permanently verify that measures/means to meet the standard put forward by undertakings are appropriate? If so, how can this practically be realised, without unnecessarily limiting cross-border trades and liquidity?

Market participants know best how to secure the supplies for customers and it would be difficult to prescribe exactly which measures have to be taken by the CA. Any supply standards/SoS obligations imposed by authorities must be clearly defined and must be integrated in contractual commitments throughout the gas supply chain. The contracts must also have clauses which determine the penalties if the supply standards/SoS obligations are not met. The penalties must reach a level that suppliers prefer to make efforts to meet the supply standards/SoS obligations instead of “cheating” (in economic terms: the marginal burden for the supply company in case of not meeting the supply standards/SoS obligations must be at least as high as the marginal cost to manage their supply portfolio in order to meet the supply standards/SoS obligations). The CA should more actively monitor supply standards and consider together with the NRA (in case where the CA is not the NRA) any problems or failures in the market organisation to achieve these standards; a review of measures once the RA/ PAP and EP are revised seems to be appropriate. However, this should not be an input-, but rather an output-based check: the CA together with the NRA (in case where the CA is not the NRA) should ensure that the supply standards are actually met.

In regimes where the TSO has a role in fulfilling the supply standards it is necessary that this responsibility is fully in line with the 3rd Package TEP and has no negative consequences on the market functioning within that country or cross-border. The primary responsibility of a TSO is to guarantee sufficient transmission capacity in order to meet the requirement of continuity of gas supply.

Question 14: Should all undertakings be treated equally or should for instance small undertakings be exonerated from the obligation to comply with the supply standard? Please substantiate your reply.

According to the market approach mentioned in previous answers: in principle no exemptions. If a supplier wants to supply gas to customer who is in some sense protected by a legal supply standard/SoS obligation, he has to know it and has to act accordingly. The same holds for other customers which may negotiate the SoS level freely and bilaterally, e.g. gas supply for industrial customers.

However, a threshold for new market entrants could be considered and determined by the CA taking into account national circumstances. Today various gas markets are not mature and we should not add undue barriers to enter those markets. The same obligations for all market participants could put too high a burden on small actors. Liquidity attracts liquidity and this market principle should be kept in mind before intervening into the market.

3.3 Questions about the measures used to meet the Supply Standard

Question 15: Do you think the supply standard should be met by the undertakings responsible as a “going concern” in the context of their regular, day-to-day supply activities? Please substantiate your reply.

Yes, but in order to get appropriate SoS obligations throughout the supply chain it is also necessary to have appropriate balancing incentives (taking into account any supply standards). Any supply standards/SoS-obligations must be integrated in the contracts in the gas supply chain. Penalty clauses must be specified accordingly.

This is common practice when e.g. industrial customers choose a supply company and negotiate a supply contract. The SoS of gas supply will be negotiated bilaterally and the industrial consumer will likely negotiate a compensation clause if the supplier fails to meet the contractually agreed SoS level.

Question 16: To what extent can normal market conditions be relied upon by the undertakings responsible to ensure that they will meet the supply standard even in case of supply disruptions?

In Member States with less developed gas markets, the implementation of supply standards is unlikely to be market-based because the market itself cannot yet be fully relied upon in times of supply crisis.

For developed markets this depends on whether hub trading is assured also where hub liquidity is mainly influenced by one supply source. Contracts should contain SoS guarantees and compensation clauses if those guarantees are not met. This practice is market-based and at the core of market functioning (contracts and the “sanctity of contracts”).

Force majeure clauses must be clearly specified (and may differ across the jurisdictions in the EU). Only force majeure events may “discharge” the supplier of its contractual obligations. Reductions of deliveries by the upstream supplier which are in breach of contract are not considered force majeure.

A force majeure situation only means an unpredictable emergency situation. In that case the EP will be activated.

Question 17: How can the ability of undertakings to supply protected customers be checked in a “hub-based” gas world in practice, in particular:

- a. *To what extent can (long and/or short term) spot market contracts be checked in a “hub-based” gas world in practice?*

Individual checks per supplier portfolio of sources and customers might not be appropriate.

Monitoring of liquidity and trading within a well-functioning market area, taking into account the supply obligation within that area, would help judge to what extent supply meets demand in that area.

The collective capability of a market to meet SoS is a major indicator but this approach does not exclude the need to perform individual checks on injections of individual suppliers/shippers and offtakes of their customers. Obviously, shippers/suppliers which seem regularly in imbalance deserve a further investigation.

b. How can a monitoring system avoid detrimental effects from disproportionate guarantees/certificates for future supplies?

The risk of disproportionate guarantees/certificates is likely neutralised since in the market-based approach the SoS level will have a market price. The higher the SoS guarantee, the higher the consumer gas price.

A monitoring system which accepts different measures to fulfil supply standards, depending on supplier portfolios, avoids detrimental effects. On the other hand non-discrimination must be explicitly integrated in the design of storage obligations since otherwise storage obligations would surely put smaller suppliers at a disadvantage as they would have to procure storage capacities based on their customers or portfolios and ensure that a certain level of gas is in store at a specified time. The rationale for introducing storage obligations is to alleviate a presumed failure of the market to anticipate the need for storage in case of tension between supply and demand.

c. Under what circumstances can a monitoring system based on incentives/sanctions (i.e. without ex ante checks and guarantees) such as described in Box 1 be effective? If so, what role should competent authorities have under this approach?

The system employed in Great Britain is based on a functioning wholesale market with diversity and abundance of supply and a clear market signal. In order to achieve a system like this it is necessary to put all the key components of the 3rd Package in place, by fully implementing the European Network Codes, and delivering the internal energy market. Transparent rules around balancing, clear responsibilities in each stage of an emergency and a high level of information are essential to meet SoS requirements at a lesser cost. The Great Britain approach explained in box 1 (of the European Commission public consultation paper) is in line with this reasoning.

Question 18: In order to protect the level playing field on the market, it may be appropriate to entrust the transmission system operator with the role of supplier of last resort under certain predefined circumstances and in compliance with strict criteria. To what extent would such an approach be commendable in your home market (please indicate which market that is)?

CEER does not see a primary role of the TSO in supplying customers, but the TSO is responsible for the safe operation and stability of the system which includes the role of residual balancer and

also a safety function. The TEP (and previous EP) also contains rules when a TSO is allowed to buy and sell gas (guaranteeing a safe and stable system). The unbundling of network operations and gas business is an essential fundament of a free energy market.

Generally, in order to respect the basic principle of the TEP it is not advocated to give the TSO the responsibility of supplier of last resort (SLR) because of likely market-distortive impacts (cf. free-riding and fair cross-border gas competition). To be a supplier of last resort supposes that the TSO would have to have access to gas which creates the impression that in an emergency the TSO will save the market. The knock-on effect of this is to dampen market signals and thus increase the possibility of moving towards an emergency situation.

There can be reasons why a competent authority chooses not to designate suppliers as the entity responsible for fulfilling the supply standards. However, if not properly arranged, this could likely have market-distortive impacts (e.g. free-riding and unfair cross-border gas competition, risk of inappropriate cost-sharing). CEER considers that in such cases additional measures are needed to safeguard that the supply standard is fulfilled in a market based manner. Market participants who rely on the measures taken by the designated entity shall not be commercially privileged compared to those market participants who set precaution actions themselves.

Question 19: The current supply standard obligation under Article 8 and 2(1) of the Regulation is a national obligation. Is the current approach sufficiently open to cross-border solutions or could a "regional" approach to the supply standard for protected customers be considered in the Regulation?

Yes, there should be enough flexibility in implementing supply standards in order to coordinate them on a regional level. The standard should be sized according to the national circumstances. The Regulation may provide some guidelines to specify the standards and to facilitate the coordination of these standards across the Member State.

Question 20: Please provide your substantiated view relative to the various implementation forms of the supply standard currently in use throughout the EU today. Please indicate your experience with these measures (i.e. storage obligations, strategic stocks, diversification obligations) and consider factors such as overall costs, effectiveness, enforceability, impact on market, competition and prices and compatibility with other SoS measures.

General:

Supply standards/SoS obligations defined as an "obligation of results" (e.g. 1 in 20 rule) are market-friendly (knowing that this will lead to a cost in the consumer gas price) as long as they are unambiguously defined (in practical terms). As long as the market can choose the tools to achieve targets, cost-efficiency will be safeguarded (least cost paths). However, tools beyond the market may also be necessary to address market failure or lack of access to sufficiently liquid markets.

Common purchasing mechanism:

It is not very clear what purpose a common purchasing mechanism would fulfil in connection to SoS. Maybe it would help smaller gas suppliers to get better purchasing conditions but it will not help to get more reliable supplies. In our opinion, common purchasing gas mechanisms are not the appropriate measure to improve security of supply and will raise competition issues and have to be handled with utmost care to not distort any market based approach.

However, options for voluntary collective purchasing of gas during a crisis and where Member States are dependent on a single supplier could be assessed and may be beneficial to attract gas, as long as this is fully compliant with World Trade Organisation (WTO) and EU competition rules, as described by the European Commission in their Energy Union communication.

Storage obligations and strategic storage:

Storage obligations on suppliers/shippers and strategic storage have been widely discussed in the last years. Storage obligations on suppliers/shippers and strategic storage could be essential to guarantee security of supply if the market and supply situation offer insufficient guarantees for continuity of supply. Security of supply is first of all physical. Once a Member State enters in an emergency situation (mitigation phase) and gas is scarce, strategic storages offer a backup in crisis situations when insufficient gas is coming into Europe through the existing pipeline systems or LNG. As market participants may not value correctly the insurance value of storage¹⁰, the choice of introducing storage obligations on suppliers/shippers and strategic storage is one regulatory way to solve a market failure that could be present in countries depending on gas imports or/and in less mature markets.

Strategic storage has a cost component that should be assessed in a CBA (incl. security of supply, market integration, competition and sustainability). Disturbing the flexibility market should be avoided. However, the introduction of strategic storage in some countries has proven compatible with a mature wholesale gas market and with the ability to provide flexibility to traders. Therefore, the use of storage obligations on suppliers/shippers and strategic storage should be considered in a case-by-case approach with a transparent analysis of the pros and cons, and cross-border effects. The organisation of storage markets is different across the EU member states – depending on the geological possibilities to build storage facilities and diversification of supply sources. There is no one size fits all tool to secure supplies. There are several measures that are fully aligned with a market approach and would be likely to improve the use of storage with a view to enhancing SoS. Any regulatory levers or policy interventions are targeted to situations where there is clear evidence of market failure to minimise unintended consequences. The drawback of storage obligations on suppliers/shippers is that they may distort price signals and the economic valuation of storage based, among other things, on seasonal price spreads in wholesale markets. The risk is that price volatility is reduced, thus distorting the price signals and the efficient functioning of the market.

Storage obligations on suppliers/shippers, if not free from discriminatory impacts on suppliers/shippers, could act as a barrier to entry for new market players, perpetuate market

¹⁰ Respondents to the public consultation on the CEER vision paper on storages has shown that not all market participants believe that under the current frameworks in Europe, the insurance value of storage can be realised.

concentration or stifle competition. Such obligations, where necessary, should therefore be used and designed carefully in order to minimise restrictions on when injections/withdrawals from storage facilities can take place, which could prevent market participants from responding efficiently to market signals. In cases of contractual congestion on storage, obligations should not artificially reduce the amount of storage available to the market and therefore the overall level of flexibility.

In the CEER Public Consultation on the draft CEER Vision on Regulatory Arrangements for the Gas Storage Market¹¹ we set our view as follows:

- Where possible, Member States should allow SSOs to offer all storage capacity to the market on a non-discriminatory basis. This capacity should be fully contestable and have no restrictions on usage. Furthermore, SSOs should offer a wide range of products to the market and these should be freely tradable on the secondary market to ensure the most efficient use of the infrastructure.
- SSOs should not be prevented from innovating and developing new products. Where this is not possible due to regulatory (or policy) arrangements, NRAs (or Member States) should seek to develop arrangements that facilitate innovation where appropriate.
- Transportation tariffs should consider the benefits and costs that storage facilities provide to the overall system.
- CEER acknowledges the good progress being made by SSOs to increase information transparency and encourages SSOs to continue to work with market participants to publish appropriate information. CEER will monitor the information provision of SSOs on a regular basis to ensure it delivers sufficient transparency.
- Member States should adopt a clear competition test to enable NRAs to monitor the effectiveness of each Third Party Access (TPA) regime.
- Users should be able to access storage capacity in adjacent markets without restriction on its use.

CEER believes that market participants, in the main, put gas in store for economic reasons. Allowing non-discriminatory rules for storage access to continue in emergency situations enhances the value of storage to the market and allows participants to realise the insurance value of storage. However, it cannot be ensured that market participants, although they realise the insurance value of storage, will behave accordingly.

Security of supply across Europe should be assured through a regional approach. Any restrictions on the cross border use of storage between Member States, including in emergency situations, should be reviewed.

When exploring the idea of EU gas suppliers being legally required to ensure "reserve supplies" for security of supply reasons, it has to be considered that storage cannot be seen isolated, as storage is part of the physical flexibility market. CEER recognises that in certain cases interventions may be required to correct proven market failure. Where interventions are introduced, the impact on the market should be understood and minimised. For example, if a CBA demonstrates that strategic storage is a valid option, clear rules, responsibilities and boundaries are needed to minimise the impact it has on the functioning of the wholesale market. Using storage capacity efficiently depends

¹¹ [CEER Public Consultation on the draft CEER Vision on Regulatory Arrangements](#), 22 October 2014

also on the portfolio a trader has. Typically, a wholesaler with different kinds of purchase contracts on the one hand and different kinds of customers on the other hand can use storage capacity for seasonal and short term flexibility more efficiently than a supplier with only a small number of small end customers – which is typically a new market entrant.

In order to give incentives to storage and use storage in a more efficient way, we should use the market design of the balancing markets. The implementation of the Network Code on Gas Balancing in Transmission Systems will ensure that shippers are responsible for balancing their inputs and off-takes from the system. This will introduce a shift towards more short term flexibility, and potentially an opportunity for fast-cycling storage, because network users need to balance their portfolio on a daily basis.

Infrastructure and Diversification:

In order to diversify, PCI projects could be considered to connect the Caspian and Mediterranean region and Black Sea to the EU markets. However, diversification needs to have a clear goal. Investments needed for the development of the infrastructure to reach this goal should be covered first by commitment of traders but also by public funding.

To ensure that focus is put on the right projects (i.e. critical infrastructure) it is essential that critical strategic infrastructure is identified in the PCI selection process. Therefore, different alternatives and competing projects need to be understood and a selection needs to take place. Non-selection of projects (i.e. a pure aggregation of all applicants for PCI status) causes different issues, e.g.

- a) Scenarios used for the evaluation of benefits of PCIs during CBA should be the one with the highest probability.
- b) Furthermore, it needs to be ensured that Connecting Europe Facility (CEF) funding is not given to „parallel / competing“ initiatives unnecessarily.
- c) Due to the high number of PCIs the possibilities for a case-by-case analysis of potential challenges for implementation and necessary support are restricted.

Coordination between the different Member States which have a different background of gas dependency, a different level of development of gas competition and liquid wholesale markets and different business relations to the dominating supplier in the specific region, is challenging. Article 6 of the Infrastructure Regulation says: “Where a project of common interest encounters significant implementation difficulties, the Commission may designate, in agreement with the Member States concerned, a European coordinator for a period of up to one year renewable twice”. This coordinator may help project promoters to promote the projects and the cross-border dialogue between the project promoters and all concerned stakeholders. This would enable a closer cooperation of TSOs to develop such a transportation route.

Question 21: Which role could LNG play in situations where the market cannot be relied upon to fulfil the supply standard:

- a. *Can it play a role in effectively addressing an emergency situation? If so, in what form?*

LNG could be the (interim) missing link to connect regions not adequately interconnected with major hubs/ other VTPs. According to the International Energy Agency (IEA), actual LNG infrastructure in Europe is sufficient to face the increase of LNG imports by 2025 and 2040 in general, but there are some obstacles in relation to insufficient infrastructure in some Member States which have to be considered (see b.). As a result, an EU vision on the role of LNG would help identifying whether new infrastructure is needed to increase EU SoS, and where they should be located.

Since LNG gives access to global markets, it can provide a global reply (not only regional or EU) to SoS while the existence of LNG plants itself plays in favour of SoS (diversification of origins reinforce the fulfilment of the supply agreements). Guaranteeing TPA under emergency situations is a crucial tool for tackling SoS crisis.

Any supply standards/SoS obligations must be part of contractual supply chain of gas. These requirements will impact the cost of portfolio management of the supply companies. When the market is short, wholesale prices will increase and attract new sources. Especially LNG is a flexible source and comes into the merit order for gas sourcing, especially if shortages of gas may be anticipated in order to redirect cargos. Given the flexibility of LNG sourcing, LNG is very suitable to mitigate emergency situation, not only in VTP with a LNG terminal but for a whole region. Depending on the duration, the larger part of LNG in the sourcing portfolio likely increases not only wholesale prices but also consumer prices. This will again affect demand (demand response) leading to new equilibria on the market. The price impacts may be important and lead to distributional impacts, the willingness to pay for more expensive gas will determine the availability/demand.

b. What are the main barriers for LNG to play such a role (e.g. destination clauses, transparency, price)?

LNG has a great potential in our view and as mentioned above Europe also has the necessary infrastructure to receive significant LNG volumes. But there are still many obstacles which block the expansion in Eastern Europe, South East Europe, Sweden, Finland and the Baltics. The main obstacles:

- Insufficient infrastructure
- Missing infrastructure in the regions that are most vulnerable to supply disruptions
- Less flexibility in the more distant regions
- Price of LNG obtained in the market in a crisis situation
- Increasing dependency on single suppliers (e.g. Qatar¹²)
- Public opposition to new LNG projects

The LNG market is still not very transparent and existing destination clauses restrict the redirection of LNG volumes. Thus, the issue of contractual arrangements which lead to uneconomical reload and usage of LNG have to be tackled.

¹² It is admitted that many LNG suppliers will remain concentrated up to 2020 with Qatar supplies ensuring a large part of LNG contracts. However, as from 2020, newcomers such as Australia, the US, even Eastern African countries will enter the LNG market.

It is not only a question of market barriers but rather a technical issue. Redirection of cargoes takes time but cargoes can be diverted at very short notice in response to price signals. Sailing times obviously have to be factored in, but we would assume that any shock would be anticipated to some degree. Moreover, the increase of spot LNG trades could favour somehow the use of LNG to deal with SoS issues. Where there are shocks which are beyond the timeframe of additional LNG, other sources of flexibility would be expected to respond given market signals. Some LNG terminals offer a flexibility service in their tanks, ensuring that LNG can to an extent be used as a flexibility source for the short term. But it's not likely that the volumes for flexibility purposes are massive, as a LNG terminal is likely to receive as many shipments as possible in order to optimise the throughput.

However, the price signal of market has an impact on the direction of cargos. Wholesale gas prices will increase according to the marginal sourcing cost of LNG. Whether this price impact will impact consumer prices depends largely on the duration of the market shortage. Obviously, in the longer run higher prices will impact demand negatively and lead to a new market equilibrium. Furthermore, the elasticity of LNG demand worldwide is low at the moment. Japan and South Korea, the main importers, have very few alternatives to LNG and low storage capacity. As for now, LNG supply is constrained and LNG demand is inelastic. As a result, the possibility to free up gas from other parts of the world in case of supply crisis in Europe is difficult.

Question 22: The range of available measures to ensure the supply standard is much wider in mature markets than in non-mature markets, where further regulatory interventions may be required:

- a. Do you agree that there could be a need to differentiate between mature and non-mature markets for meeting the supply standard? If so, how should mature and non-mature markets be defined?*

The difference in market maturity will impact the speed of moving from prevention to mitigation; from market-driven SoS to an emergency situation (force majeure). Also the level of supply standard/SoS obligation will influence this speed. E.g. a less mature market with high supply standards/SoS obligations will more rapidly move to an emergency. Also, differentiating between mature and non-mature markets should not be the only criterion. Another important difference in the EU is between Member States which are gas producers and Member States which are dependent on gas imports. Another differentiation is the physical isolation of regions from liquid VTP/Hubs. These differences will influence the measures chosen to ensure the supply standard based on the different RA of each Member States. The choice of measures should be flexible and adapt throughout the journey towards a better functioning market.

As previously discussed, SoS obligations belong to the subsidiarity sphere where the adequate trade-off more SoS or not has to be made.

There will be differences when moving from prevention to mitigation but this is no problem as such. It should be clear that higher market maturity will move this borderline. Therefore, it is essential that interventions never negatively impact the progress of market maturity in order to avoid a negative spiral (more intervention will even speed-up the move to an emergency stage in case of an incident).

The co-existence of VTP or regions in “emergency status” and other in “market status” definitely leads to distributional impacts. Because of the search for additional gas, prices in operational markets will increase. Solidarity is implicit in competitive markets with transparent prices and access to cross-border capacity. Price signals ensure that gas is supplied to the market which values it highest. Demand will consequently be adapted and the willingness to pay for gas will determine the gas allocation on the market, bearing in mind that the willingness to pay is also determined by the income of the consumers. Gas demand changes also before and during an emergency situation.

In the long run we do not see the need for a differentiation because we oppose prescribing concrete measures on how to meet the supply standard as they can vary among Member States according to their status of gas producers or gas importers and their market maturity. Market participants know best how to secure the supplies to customers and it would be difficult for the CA to prescribe exactly which measures have to be taken.

b. Do you think that an obligation of diversification for those Member States that are highly dependent on one single supplier should be considered and what would be an appropriate level of diversification (e.g. a percentage or a minimum number of sources)?

The best insurance for single supplier countries is market integration within the EU, to expand the “local” VTP (EE-zone, BAL-zone) to the neighbouring market area, after carrying out and considering the result of a CBA. Market access is a key and the infrastructure should be in place. In principle, local ways of fulfilling the supply standards/SoS obligations will lead to specific capacity demands of local shippers/suppliers and will next lead to new interconnections. It is exactly here that Regulation (EU) 347/2013¹³ (and CEF) intervenes to accommodate these investments.

CEER believes that, where possible, the value of security of supply should be established in the market without the need for further intervention. Where there is clear evidence of market failure, interventions may be necessary but they must be at a national/regional level and designed to minimise the impact on market functioning, not foreclose the growth of wholesale markets and have an exit strategy when the relevant market is sufficiently developed. Any intervention must be transparent, non-discriminatory and publicly known. Interventions may also be extended beyond the national/regional level, especially for regions that are isolated from liquid VTP/Hubs with measures set in place to link those regions during regional emergencies.

However, generally speaking, all non-market-based measures should be applied only when markets fail to deliver an appropriate level of supply security, when they can help to cope with market players’ bad anticipation of supply risks and the Member State has little or no domestic gas production, and such measures should not be of a permanent nature unless they prove to be an essential tool to ensure an adequate level of SoS in the concerned country.

¹³ [Regulation \(EU\) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations \(EC\) No 713/2009, \(EC\) No 714/2009 and \(EC\) No 715/2009](#)

Question 23: How can regional solutions be fostered where they are more efficient than individual national solutions? Should legal measures (e.g. obligation to evaluate regional solutions) be considered? How should the costs of such regimes be shared?

In the prevention stage no regional solutions should be taken in terms of direct SoS measures. Regional attention should go to improving market maturity by market access (e.g. access capacity) and market integration to expand VTPs (EE-zone, BAL-zone) and market areas. Access to markets is a precondition of SoS. This process remains subject to CBA in which also SoS deserves an adequate recognition. The TEN-E Regulation (Reg. 347/2013) goes in this direction. Achieving the efficient trade-off between the level of SoS and the cost of SoS can be best achieved by incorporating all the costs into the market. This will lead to appropriate decision making. Via the RA, PAP and EP on the several levels, evidence may raise from a collective perspective to cover financial gaps in cases where the market fails to finance projects desirable from a collective point of view. In this case, cost sharing regimes according to CBA logic may be recommended. Again, the Regulation 347/2013 scheme follows to a large extent this reasoning. Finally, the internalisation of SoS in the gas supply chain may make the goals of the Regulation 347/2013 easier and more straight forward knowing that the market makes better trade-offs regarding SoS matters.

Question 24: How could a coordinated gas reserve mechanism be designed:

- a. *How could a mechanism that pools gas storage ("virtual" shared reserve) across Member States be designed? Please describe such mechanism in detail.*

These arrangements of direct interventions are in conflict with the market-driven provision of SoS. In our view it would not be necessary if the common internal market rules are implemented as suppliers from all Member State could use storage capacities from nearby markets.

However, if gas storage pooling becomes an option for Member State it has to be assured that this product is offered in a transparent and non-discriminatory way. It is important to keep in mind that access to storage facilities in an emergency phase could create a free-rider problem if those who use the facilities are not necessarily those who paid for the facilities.

- b. *Is there a need for joint gas or LNG purchasing agreements between different gas companies? Do you see rather benefits or risk of such joint purchases in an emergency situation?*

No, as common purchasing gas mechanisms are not the appropriate measure to improve security of supply. Gas companies may organise themselves freely as long as actions are legal. As mentioned above (see question 20) a common purchasing mechanism would not improve SoS in Europe. Maybe it would help smaller gas suppliers to get better purchasing conditions but it surely will not help to get more reliable supplies. Common purchasing gas mechanisms are not the appropriate measure to improve security of supply and will cause competitive problems which were evident already in the past. Thus, such a solution should only be pursued on a voluntary basis.

- c. *Should such mechanisms be regional or is there a case for an EU-wide mechanism? Who would be the actors in such systems and what would be their role (companies, Member States, EU)?*

For the answer please refer to answer to the question above.

Question 25: Do you agree with the possible conditions for non-market-based measures listed below? Which conditions would you add or delete?

Non market-based measures should be avoided to the extent possible in the prevention stage. This does, however, not mean that supply standard/SoS obligations in terms of an “obligation of result” may not be introduced. Measures in the emergency stage are basically by definition non-market-based measures since the market does not function anymore. However, it is important to subject these measures to a CBA.

- *they can only be used when it is demonstrated that gas traders are not able to provide the necessary supply standard.*

Comment: are not able anymore to provide.

- *they can only be used at a national level if no solutions for shared use of storage resources with other Member States is possible.*

Comment: they can only be used at VTP, regional, EU level if no sourcing at reasonable prices is possible anymore at other VTPs in the EU.

- *it should be ensured that the measure is open to participation of suppliers from other countries.*

Yes, the participation should not be limited to local/domestic suppliers.

- *the capacities should be acquired on a non-discriminatory basis (tender) and should take into account cross-border sources of flexibility.*

Yes, of course.

- *the TSO(s) is most likely to be the best placed person to acquire such means given his control over the system, overview of the flows and independence.*

The role of a TSO is transportation of gas (incl. safeguarding system integrity and the management of operational means in order to fulfil this responsibility) and management of system balancing (incl. balancer of last resort). This basic principle does however not exclude that under specific conditions

and without interfering in the markets, the TSO may be assigned a (partial) role in fulfilling the supply standards.

Question 26: Should the distinction between market-based and non-market-based measures be further clarified? Should the use of non-market-based measures be restricted, for instance by being made subject to the fulfilment of certain criteria and regulatory oversight?

Yes, this is necessary. Non-market-based measures should be avoided for prevention and should basically only be part of mitigation. Any regulation should be market friendly and not yield to distortive market impacts in the prevention stage (while markets work). However, as stated above, we shall take into account that since market conditions and risk assessment may differ across the EU, a “one-size-fits-all” approach is not appropriate. Therefore, for some countries non-market based measures could represent the most efficient and effective solution to contribute not only to their national SoS but also to the SoS of their neighbouring countries.

In the BAL-zone (EE-zone, VTP) gas suppliers have to inject gas into the system according to the offtakes of their clients. This happens according to regulated obligations (within-day-obligations, end-of-day-obligations (EOD), etc.) in order to keep the system in balance and is managed by the TSO. Obviously, as long as the system is in balance, everybody gets their contracted gas. Approaches should be based on the principles of Network Code of Balancing. If the market is “out of balance” the TSO will buy gas on the VTP in case if there is a shortage, and sell gas on the VTP if the market is long. The TSO is in this view the residual balancer. The costs of these transactions are invoiced to the responsible shipper/supplier. Again, this is an adequate scheme for a market-driven SoS provision. If the responsible shippers/suppliers have to pay a fee for imbalance that covers the costs of not delivering (cf. Value of Lost Load) (thus: the prices paid by the TSO to buy the missing gas on the VTP + shadow cost of not delivery) SoS will basically be partly internalised in the market mechanism and the suppliers will choose whether to seek for means to stay in balance or the pay the “penalty”. If the penalty is at least as high as the cost of staying in balance, profit maximising companies will contract tools (these tools range from storage to contract flexibility in supply contracts or demand response etc.). Monitoring balancing positions in the market and of individual suppliers allows a quick intervention in case of imbalances and gives information of the capability of shippers to keep in balance over a longer time horizon and during more severe circumstances (there may be “good balancers” and “bad balancers” and this gives an indication of supply companies’ flexibility of the). However, the balancing regime gives no guarantees that market players do not fail in anticipating properly any supply risks. As it has already been said, obligations of results may be accompanied with obligations of efforts, e.g. NRAs or any other competent authority ensuring that market players have the means to let the market work as long as possible.

Regulation of the TSO’s operational means to safeguard system integrity is an important issue for SoS. If system integrity is no longer safeguarded transmission is not possible anymore and, without intervention, customers will automatically be cut-off the network due to pressure drops since gas is lacking. Without control the cut-off will start with the high pressure customers (e.g. power plants). Customers should have the opportunity to signal their willingness to be curtailed through a market mechanism, e.g. levels of interruption in their supply contracts or through a centralised auction platform. Of course, this uncontrolled process should be complemented by an emergency plan,

including a sequence to cut-off customers (exits) according to an agreed prioritisation (e.g. by law or decree). The safety of the system in an emergency state is of crucial importance. This is the role of the TSO, often upon national legislation, which may require some form of safety monitoring. In brief, this framework already exists but is unfortunately, not (yet) fully used to provide market-based SoS.

PART II

MITIGATION

4. Protected Customers and Solidarity

Question 27: Concerning the definition of protected customers:

- a) *Do you believe that there is a need for a more harmonized definition of protected customers and their consumption? Please substantiate your answer.*

One of the main aims of revising Regulation (EU) No 994/2010 should be a clarification of the solidarity principle between Member States. In case of an emergency, minimal flows at cross-border exits regarding existing contracts must be guaranteed. These minimal flow guarantees should be in coherence with the national cut-off plans and the maximum reduction of exit flows should be known beforehand. The intergovernmental agreement between Member States of minimal flows is influenced by the definition of protected customers in an emergency phase since the minimal flows are basically intended to supply these protected customers. One can notice the problem of different definitions of protected customers applied in different countries. As the supply standard applies only to protected consumers, the solution may be to agree upon one basic (standardised at EU level) definition of protected consumers, to which supply standards would apply. Since Member States may extend such definition as possible to exercise solidarity measures at regional or EU level, minimal solidarity would be applicable only to protected consumers according to definition standardised at EU level.

It is one of the major failings in the current SoS Regulation that the definition of protected customers is not harmonised once entered into the mitigation phase in order to properly specify the meaning of cross-border solidarity. Cooperation between Member States (especially in an emergency case) can only be effective if the definition corresponds to agreed solidarity rules between Member States. Different definitions could lead to a situation where country A (with a strict definition) has to share gas with country B (with a wide definition) because country B has more protected customers and country A could jeopardise the supply of gas to its protected customers because due to solidarity rules it has to share gas.

In addition, it is also of utmost importance that the TSO knows the share of the protected customers in each Member State (not only a question of category but also regarding the corresponding gas volume it represents), as the TSO is the entity who has to interrupt/ shutdown customers in case of an emergency (and needs to know who to interrupt/reduce or not). It is also a benefit if one party has all relevant information that it can present to the CA, instead of the CA contacting many parties (i.e. DSOs).

b) Should the definition of protected customers be stricter in order to avoid that single Member States declare almost all customers as protected?

See point a). The number of protected consumers should be harmonised and limited as possible, both in the prevention and mitigation phase.

A larger definition of protected customers in one Member State than in another may not necessarily impose larger minimal flows guarantees from another country. Minimal flow guarantees at cross-border exits, according to existing contracts, are subject to intergovernmental agreements and should be in coherence with the shut-off plans.

c) What do you think about a regional definition of protected customers (e.g. in closely interdependent areas)?

As discussed in point b. A regional definition is essential in the mitigation phase and will be an outcome of the agreed solidarity levels between the countries. In any case, the meaning of solidarity must be clearly specified (this is not the case in the current regulation).

Question 28: In some 'meshed' distribution grids it is technically difficult to make a physical separation between protected and non-protected customers: What could be a solution to limit the protection to the actually protected customers (e.g. orders to non-protected DSO-connected customers not to consume gas, shielded by sanctions, etc.)?

This is a question to be solved in the EPs on the several levels. One solution could be given if Smart Meters become widespread (depending on CBA). Thus, infringements of curtailment orders can be monitored and sanctioned although it will not provide for a physical separation between households and other non-metered customers. However, curtailments will most likely affect metered customers.

Question 29: Do you see merits in laying down one or more of the following solidarity measures:

- a. an obligation on Member States to agree upfront on bilateral or multilateral crisis measures to deal with imminent disruptions of protected customers (e.g. sharing of costs, roles and responsibilities, etc.), in order to prevent alleged "free-riding";*

The involved Member States could specify the solidarity principles in the EP on several levels (VTP-integrated markets/regional-EU) but should not be allowed to stipulate EP solidarity which prohibits effective functioning of the market in the prevention/normal functioning stage. Clear and transparent solidarity rules become of key importance if more Member States are involved in cutting of customers in order to keep control on the crisis situation.

- b. a prohibition for Member States to close their borders or reduce interconnection capacity in case protected customers on the other side of the border are still at risk (combined with efficient provisions against "free-riding" such as upfront agreements, see a))?*

Solidarity principles should be agreed by the involved Member States in the EP (at different levels) and be applied in order to manage cross-border emergencies (when the markets do not function anymore). In case of an emergency, the management of the flows at the cross-border IPs, according to the existing contracts, should be agreed by the involved Member States and in coherence with the shut-off plans. Inter TSO-agreements already cover emergency procedures to some extent.

c. *What other solidarity measures do you believe can improve levels of security of supply without unnecessarily impacting market functioning?*

Solidarity measures and principles should basically be agreed between the involved Member States.

Inter-governmental solidarity principles should be ready to use in all Member States. While access to functioning markets and operational assistance agreed upon between TSOs are best suited to support Member States in an emergency situation, it is obvious that “last-resort” intergovernmental solidarity principles should only apply in case of emergency situations and between countries in the emergency situations. These solidarity principles should be clear and agreed upfront.

5. Emergency Plans

Question 30: Do you agree that the development of emergency plans at regional level would be an appropriate way to ensure consistency and to enable preparation to react to common and correlated risks? How should the regions for security of gas supply be best defined? Please substantiate your reply.

b) *Should mandatory regional emergency plans complement the national emergency plans or replace them?*

We think that many provisions in the SoS Regulation have a regional component and so we support the idea of regional emergency plans, together with the Risk Assessments and the Preventive Action Plans as part of the SoS plans. The success and coherence of these plans imply the implementation of the Network Codes (e.g. Balancing, Interoperability, Network Code on Capacity Allocation Mechanisms), preferably according to a coordinated timeline. The regional/plans are complementary to the national plans. An obvious precondition in these planning exercises is the collaboration and joint approach of the Member States including the sharing of information and the agreement on solidarity rules.

Since the VTP (EE-zone, BAL-zone) are still within countries (e.g. Germany) or on country level and not yet cross-border (Belgium-Luxembourg is the first project in the EU), the regional approach intervenes in the plan on market area level and certainly on EU level. A market area may consist of several VTPs in which cross-border access is no problem leading to price convergence.

There may be the need to specify a framework for ‘gas islands’ as regional plans do only make sense if there is access to other markets (IP capacity).

c) *Do you think that a template for regional emergency plans would ensure that more detailed and relevant information is provided (e.g. similar to the template used in the recent Energy Stress Tests)?*

Yes, a template would be much appreciated as it will not only ensure a more detailed information exchange but also guarantee harmonised and comparable information, including the information about interdependencies between gas and electricity (gas-fired turbines for power generation, electrical compressors on the gas transmission network).

6. Declaring an Emergency

a. National Emergencies

Question 31: Do you agree with the introduction of a threshold based mechanism or more specific indicators to trigger the declaration of the different crisis levels? Please substantiate your answer.

We support specifying the triggers for the declaration of the different crisis levels on national, regional and EU level as well as a more detailed definition of the different crisis levels to reflect the importance of supply to consumers and to satisfy the need for coherence. The definition of crisis levels is intended to ensure that where potential crisis situations may be prevented by market-based measures, they do not lead to intervention powers being exercised. The definitions should also be fine-tuned to identify critical situations in a timely fashion.

- The early warning level could be triggered when forecast demand reaches the same level as the gross capacity available for supply to consumers while the pressure on the transmission system is regarded as critical and the supply situation is expected to deteriorate further.
- The alert level could be triggered when forecast demand is higher than the gross capacity available for supply to consumers but lower than total gross supply capacity while the pressure situation on the transmission system is regarded as critical and the supply situation is expected to deteriorate further.
- The emergency level could be triggered when forecast demand is higher than the total capacity available for supply to consumers while the pressure situation on the transmission system or the distribution network is regarded as critical and it is likely that non-market-based measures are needed for the security of supply.

An important parameter for the trigger of the different crisis levels is the market balancing position (balance between gas injections and gas offtakes in a system). When the balancing position does not guarantee system integrity anymore, the system is in an emergency. Without further intervention, the pressure would drop further in the system and clients will be interrupted anyway in this worst case scenario, starting with the high pressure customers. This uncontrolled shut-off is of course unsafe and a major reason to develop emergency plans to keep control over the situation.

In order to be able to evaluate the SoS situation it is important to introduce mandatory data transmission rules, defining who needs to transmit which data to whom and allowing the CA and the NRA to collect the necessary data, e.g. the Austrian Natural Gas Intervention Data Ordinance. Such provisions could be added to the SoS Regulation to ensure that the supply situation in the EU can be assessed regularly and in emergency cases.

Question 32: Should the right for Member States to intervene in markets through non market-based measures be extended to alert-level situations or remain limited to emergency situations? Should the list of possible non market-based measures in Annex III of the Regulation be changed or clarified?

The right for Member States to intervene in markets should remain limited to emergency situations (force majeure). In our opinion, as long as the market still works and system balancing is still feasible, no interventions of the Member States are needed. Of course, this changes once the market does not function anymore and state measures have to take over control of remaining gas supply.

Question 33: Should the declaration of national emergencies be subject to an appeal mechanism, e.g. to the Commission? Should the Commission's recommendation on the national measure have a binding character?

We do not think that such an appeal mechanism is necessary if there are clear and harmonised rules to trigger the declaration of emergency level (balance of the market), and we do not support the idea of binding Commission recommendations for national measures as long as there are good reasons for diverging from the Commission's position. We believe that the CA and the respective NRAs will most likely have better knowledge about national markets and systems and so the final decision shall be made by the CA in coordination with the NRA. However, given the impact of declaring an emergency, a third party should be equipped to check whether the emergency is real and meeting the common set criteria defining an emergency. The triggers, particularly for the emergency phase, must be transparent without room for interpretation and preferably based on physical thresholds (cf. link with the balancing position of networks).

b. Regional or EU-Wide Emergencies

Question 34: Is the current allocation of responsibilities and tasks among the Commission, Member States, TSOs and natural gas undertakings in a Union or regional emergency in the Regulation clear enough? Do you see a specific role for ENTSOG or the Gas Coordination Group in a Union or regional emergency? Please substantiate your answer.

It is important to spread information about the introduction of national crisis levels as well as additional information about the supply situation and the findings of ENTSOG's early warning system among the Gas Coordination Group (GCG) members, while in general cooperation is already of utmost importance for developing the SoS plans on the several levels. The GCG shall be able to discuss and coordinate further steps on the basis of collected market data from the CA/NRA, while the NRAs are best placed to collect and analyse market data. This data must be shared with the CA and provided to the GCG, where the NRAs should also be involved as permanent members because of their knowledge and experience of the markets.

The GCG (covering Member States incl. CAs as well as NRAs) and European Commission could play a more important role in the SoS plans (see regional SoS-mediators as fall-back option in general remarks), certainly for the regional (market area) and EU plans (covering whole Europe). Their role becomes even more important in case of an emergency when markets are no longer capable to provide SoS. The GCG and European Commission have a role to play in the dialogue with third countries (producing + transit) involved in the gas supply contracts signed by European gas supply companies. The European supply companies should be sure that sanctity of contracts is also applied outside the EU.

Close cooperation of European TSOs through ENTSOG is needed in order to share all relevant gas flow data and information about unused capacities. Furthermore, ENTSOG has legal responsibilities in order to develop the European TYNDP and CBA methodologies according to Regulation 347/2013, where SoS matters should have the appropriate attention. Also Agency for Cooperation of Energy Regulators' (ACER's) role is important in this respect in order to provide opinions and recommendations regarding ENTSOG's deliverables.

Question 35: Should clearer rules be introduced on the consequences of declaring regional emergency for those Member States where the market is still functioning?

In principle no as long as markets are still working and are not affected by direct state measures from countries in an emergency. Market principles are in this case still valid. Countries with gas shortage should always have access to liquid markets. Connecting markets is by definition already a kind of solidarity mechanism. This will have likely price impacts in liquid markets as well and may lead to export of liquidity as long as customers are willing to pay for the higher priced gas. Depending on new gas sources which enter into the merit order because of higher prices, a new market equilibrium will be found in the involved markets.

Member States where the market is still functioning shall be immediately informed about the declaration of regional emergencies in order to prepare to meet the potential additional supply needs of neighbouring countries and to monitor the impact on the market. This information exchange should already be covered by the existing provisions.

Question 36: The Regulation currently foresees the possibility to declare only an "emergency" at regional or Union level: Do you see a need for an additional regional/EU-wide "early warning" or "alert" level?

We do not see the need for additional possibilities to declare regional or EU-wide crisis levels but the information about announcing national crisis levels, including early warnings and alerts, should be spread among the members of the GCG and also updates about current situations shall be spread by the European Commission on a regular basis.

Question 37: Should the Commission have more sophisticated information tools (e.g. a broader vision of actual gas flows in certain regions) and investigative powers in and before a regional /EU-wide emergency at its disposal in order to have the necessary information available to assess the cross-border effects of the national measures?

The European Commission has certainly a role to play in supervising the sanctity of contracts between European supply companies and third country gas producers or transit countries.

RA, PAP and EP on EU level are also of utmost importance, besides the SoS plans on VTP and integrated market area/regional level - another area where the EC has a key role to play.

The GCG could be more efficient if Member States and NRAs have a role to play (regardless of who is the CA). The harmony between market-driven SoS (NRA) and emergency (Member States) is a necessity to achieve SoS targets. The regulation should provide a legal basis for that.

Furthermore, sophisticated information tools are the basis for assessing SoS situations. Data should not be collected on an ad hoc basis but regularly to analyse the supply situation in Europe. This information should also be accessible for all GCG members and should only serve as database for the evaluation of the supply situation in the Member States. Any decisions about non-market measures, crisis level declaration etc. must stay at the relevant CAs.

Question 38: Should an obligation for the regional coordination of decisions in a regional /EU-wide emergency be created?

Yes, subject to maturity levels of different regions a legal obligation may prove useful to achieve coordinated plans which may contain binding commitments (e.g. regarding agreements on solidarity). Harmonisation is needed in the international character of gas supply companies & integration of markets and the scale of Member States involvement for in particular the management of emergencies.

Fast and efficient coordination requires an already established and well-functioning system of transparent communication and data exchange between the Member States and the European Commission, which is not yet in place. Data exchange and regional coordination is very important, when it comes to decisions it has to be ensured that they can be taken fast and efficient.

Question 39: Are the Commission powers in case of a regional or EU-emergency sufficient or should they be increased in view of the experience with previous crises? Do we need a separate emergency body for the coordination at regional or European level?

The GCG should be redefined in order to give Member States and NRA an adequate position and responsibilities (no matter of whom of both is the CA). The evaluation of the scheme for the new regulation should determine where and how powers should be adapted in order to make the regulation work. In any case, it would be suboptimal to develop a new regulation taking account of the current powers. The powers should adapt and not the other way around.

The European Commission should coordinate the exchange of all relevant data between Member States in order to evaluate potential crisis situations and coordinate Member States in occurring emergency situations. The team of the regional European Commission SoS-mediators (see CEER general remarks) should cooperate with the GCG and could serve as an emergency body for coordination incl. coordinated and transparent communication before, during and after the emergency.

Question 40: Should the emergency procedures of different transmission system operators be aligned in order to ensure more effective and efficient response to cross-border emergencies?

The emergency procedures of TSOs lie/ should lie within the balancing regimes. Supervision of the balancing regimes is a task for NRAs (ACER). The Balancing Network Code is appropriate to play a key role to manage market-driven SoS.

Inter TSO agreements do already exist and more NRA scrutiny may be necessary to accommodate SoS. However, TSOs are not able to influence the “volume of available gas”, which is of course the responsibility of gas supply companies.

There exists already a whole market regulatory framework according to TEP. It should be the ambition to integrate SoS appropriately in the scheme. The balancing system is an adequate backbone to do this. Next the expansion of market areas should be encouraged.

The RA, PAP and EP on the several levels (VTP, integrated markets/regional, EU) should further specify the responsibilities and tasks. A dynamic approach is needed since the process to an IEM is also dynamic.

Annex 1 – CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. CEER's members and observers (from 33 European countries) are the statutory bodies responsible for energy regulation at national level.

One of CEER's key objectives is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest. CEER actively promotes an investment-friendly and harmonised regulatory environment, and consistent application of existing EU legislation. Moreover, CEER champions consumer issues in our belief that a competitive and secure EU single energy market is not a goal in itself, but should deliver benefits for energy consumers.

CEER, based in Brussels, deals with a broad range of energy issues including retail markets and consumers; distribution networks; smart grids; flexibility; sustainability; and international cooperation. European energy regulators are committed to a holistic approach to energy regulation in Europe. Through CEER, NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat. This report was prepared by the Gas Security of Supply Task Force of CEER's Gas Working Group.

More information at www.ceer.eu.