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**EFET RESPONSE TO CONSULTATION PAPER ON THE REVISION OF
REGULATION (EU) NO 994/2010 CONCERNING MEASURES TO SAFEGUARD
SECURITY OF GAS SUPPLY AND REPEALING COUNCIL DIRECTIVE 2004/67/EC**

Overview

In the wake of risks to gas supplies over the years, it is surely right that the European Commission (“the Commission”) periodically tests its security of supply arrangements to see if improvements can be made. However, the trade-off between security, sustainability and affordability in European energy policy remains at its heart. Security of supply is not an absolute principle that should be mandated *at any price*. Levels of security of supply can be defined in ways that are easily reached by some Member States, but are simply unaffordable in others. The condition of the market in some Member States may mean that market-based solutions are feasible; in others, not. The challenge of legislation is therefore to define a framework that can cover a wide range of market circumstances, yet still seek to garner the advantages of working regionally and cooperatively. In this overview, we draw attention to the key points that the European Federation of Energy Traders’ (EFET¹) believes should be taken into consideration: these include points made in response to questions in the consultation, but also include remarks that were not specifically requested and do not appear elsewhere. Answers to specific questions follow.

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information, visit our website at www.efet.org.

- Circumstances are very different across the European Union (and Energy Community countries). A one-size-fits-all model risks mandating retrograde solutions in mature markets or unachievable solutions (in the short term) in less mature markets, or defining such a wide range of circumstances that the regulation becomes meaningless or unenforceable. **Under these circumstances, the role of Competent Authorities in Member States remains fundamental to any new legislation.**
- The existing Regulation 994/2010 contains very little reference or guidance to the costs and benefits of Security of Supply measures. The costs of meeting a particular requirement may vary significantly depending on the location of the Member State, its geographical size, its geological suitability for storage, whether it has a coastline or deep harbour facilities to site an LNG terminal. The benefits may depend on the price-responsiveness of its demand base, the availability of alternative fuels, its dependence on gas. **Some recognition of costs and benefits and how Member States should weigh these would be helpful, rather than measures *at any cost*.**
- Where surplus infrastructure is called for to meet a low probability / high impact event, it may not be underwritten by the market. Such standards may need access to public funds that are committed elsewhere or are unavailable during times of austerity. An energy tax (e.g. a transportation surcharge or levy) may unduly burden a declining gas consumption base with higher asset and security costs. **Where standards will not be met by commodity markets alone, there should be a requirement to identify how costs will be met.**
- In Member States where security measures can be provided by the market, this should be strongly encouraged. In Member States where this is not possible, then non-market measures should be transparent, temporary, transitional and regressive. However, in certain circumstances such as ongoing dependence on a single source, Member States may need longer term measures. **The Commission should have appropriate powers to investigate security measures in each Member State, to test if they are unnecessarily market-distortive, and to make changes where this is so.**
- A Member State can only influence investments within its own borders, yet many will be dependent on transit countries upstream. In such circumstances, there is a clear differentiation between those who bear the costs of the transit infrastructure and those who benefit from the increased supply security it brings. An inter-TSO compensation mechanism or common scheme to fund such arrangements may be helpful, but must be targeted and not become a general cross-subsidisation pot for socialisation across EU. **A security mechanism could be created under the auspices of the Commission to facilitate specific cross-border compensation.**

- The increasing complexity of Security of Supply arrangements and the need for differentiated requirements across the EU means that transparency and consultation are ever more important. **In the same way that TSOs are required to publish information clearly, in English, and in a comparative framework, then Competent Authorities should also have requirements to publish obligations in an easily accessible format.** This would also help the Commission to monitor such obligations more effectively.

As a general point, EFET believes that a revised Regulation should focus more on process, standards, objectives and accountability, and should focus less on mandating specific solutions. It should also take account of powers and duties already defined under existing legislation, including Gas Directive 2009/73 on areas such as regional cooperation, and avoid introducing new and potentially conflicting legislation in preference to effective enforcement of existing legislation.

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Questions

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 current N-1 rule is a reasonable guideline for Member States to consider when planning their security standards. However, there are weaknesses in relying on any single indicator.

First, it does not take account of the availability of gas to flow through the pipeline, and risks building pipelines that are empty almost all of the time; second, it does not take into account commercial considerations particularly the relative costs and benefits of providing alternative routes or infrastructure facilities.

For example, given current levels of price volatility, private storage developments are being cancelled and some Member States are attempting to institute reforms to prevent facilities from closing. Under these circumstances, private investment is unlikely to underwrite storage as a means of meeting an N-1 obligation. LNG importation facilities and connecting pipelines may meet a similar fate. The provision of state support for such projects may not be the best use of public funds.

Accordingly, we recommend that N-1 be retained as a criterion for consideration, but should not form a mandatory requirement for TSOs. Member States should be particularly careful where necessary investments cannot be hedged in advance through long-term contracts from a tendering process.

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

A regional dimension to security of supply considerations in general is a good idea, but EFET would warn against strict definitions of regions. As interconnections / reverse flow capability is built, regions may change; historical alliances – both technical and political – may have more effective working arrangements than a regulatory instruction. If regions are to be mandated, we suggest that the same geographical areas facilitated by Annex IV of Regulation 994/2010 be adopted.

However, we take the opportunity here to raise an issue that is not consulted elsewhere in the paper. The combination of overcapacity in some pipeline routes (especially relative to reduced demand) and to the introduction of auctions as a means of pricing transportation capacity has led to the potential stranding of significant pipeline routes. Commercial pressure on privately owned TSOs may encourage reductions in capacity through operating cost savings (e.g. switching off compressors). Where these pipelines are on transit routes, the effect will be a reduction of supply security in the downstream Member State (i.e. corresponding to the occurrence of a N-1 scenario), not the Member State where the pipeline is located.

It is important that such analysis is carried out at a regional level, but it also suggests that some form of inter-TSO compensation or a security mechanism administered by the Commission should be considered as a means to address such stranding. However, it is important that such a mechanism is targeted between those who bear the costs of specific infrastructure and those who benefit. It should not become a general pot for cross-subsidisation of projects across EU.

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?*

We believe that at certain key points on the system, both contractual reverse flow (backhaul) and physical reverse flow are being constrained or are not possible. In some cases this appears to be for contractual reasons related to historical agreements. The construction of physical pipeline loops as an engineering solution to a regulatory or contractual problem is an inefficient response.

We would additionally note that it may be insufficient to look only at Member States facing immediate supply crises, if further reinforcement upstream may be necessary to facilitate more flexible gas flows.

4. *As concerns exemptions from the reverse flow obligation²:*
- a. Should these provisions be clarified and/or strengthened?*
 - b. Should the relevant authority analyse the benefits of reverse flows along the whole transportation corridor?*
 - c. Should affected Member States even beyond the immediate borders be involved in the assessment?*

Current rules around exemptions are broadly adequate. Where an authority determines that bi-directional capacity must be built where there is insufficient demand to support such a project commercially, then the authority should provide a full cost-benefit analysis underlying its decision, including guidance on how costs should be recovered.

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?*

An obligation to review every two years could be adequate. However, if short-term signals, such as the country risk factor are considered, it may make sense to have more frequent updates of the Risk Assessment, e.g. annually. We note that the ability of parties to request such flow on a commercial basis will depend on final rules agreed for incremental capacity under the European Network Code for Capacity Allocation Mechanisms (CAM).

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*

² See notably Article 7(4) (a) of the Regulation.

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.)?

EFET supports the further refinement and harmonisation of Risk Assessments and Preventative Action Plans across Member States – especially on a regional basis. EFET also considers that further thought could be put into how these Assessments and Plans are communicated across the gas community. Not all members feel well-informed in this area, and the reports are not all easily accessible or comparable.

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)?

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?

EFET believes that the existing obligations as provided for in Articles 6 and 7 of Directive 2009/73 for regional solidarity and regional cooperation are adequate if properly enforced, but we notice that it has not worked in practice. Additional clarification may be welcome to ensure the inclusion of Energy Community countries where appropriate.

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 process is not currently well understood. EFET would support simplification and transparency of the relevant procedures. This is important because supply security arrangements (including but not limited to the construction of surplus capacity) may considerably impact commercial markets outside times of crisis (e.g. through uncertainty of transportation tariffs). Greater transparency – including publication in English language - would allow such issues to be addressed more openly.

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.*

Article 2(1) of Regulation 994/2010 allows Member States to define “protected customers” differently in different Member States. Regional solutions which include countries who adopt different definitions could therefore be suboptimal and give rise to disputes where vulnerable consumers in one Member State may be interrupted in order to protect SMEs in another. Different scenarios using common definitions would help to remove such inconsistencies.

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.*

EFET considers that the scenarios are still valid. Where a natural gas undertaking meets its supply obligations using LNG, storage or commercial arrangements in a different Member State (or neighbouring country outside the EU), this should be recognised by the Competent Authority. When it is physically possible, coordinated / agreed between neighbouring authorities (in particular to avoid double counting), a natural gas undertaking should be allowed to fulfil its obligations using arrangements across Member States.

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.*

Current standards appear to have worked reasonably as a planning tool. If a higher standard is to be adopted, we trust that this would not be mandated *at any cost*. An indication of costs (and their recovery) and benefits should accompany any proposal for change, including impacts on liquidity. As a general point, we note that the current wording in Regulation 994/2010 appears to support investment and security of supply *at any cost*. There are very few occasions which make any reference to an economic test to ensure that the costs are justified by measurable economic benefits.

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.

EFET recognises that Member States across Europe have different gas uses and dependencies, different supply risks, different capacity to develop LNG and storage, different cost bases, and different Values of Lost Load. It seems very difficult under such circumstances to create a unifying standard. EFET therefore supports retaining the existing arrangements provided standards are harmonized at regional level. However, a more active role for the Commission would be welcome in ensuring that standards are not unnecessarily onerous or conducted in a way that prevents development of competition. It is therefore important that the Commission has suitable powers for investigation and enforcement.

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?

Given the changing nature of the energy mix and relative prices of fuels, permanent verification is not possible. A regular review should be undertaken, possibly in conjunction with the TYNDP infrastructure reviews, where Competent Authorities can define how far the supply standard can be met under a set of reasonable entry/exit flow assumptions. This can form the basis for more regionalised analysis going forward. This does not, however, replace the need for a strong Commission's role, should Member States pursue a nationalistic approach at the expense of others in the region.

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.

In practical terms, arrangements such as "Supplier of Last Resort" may mean some differences in obligations facing certain companies. However, these should be minimised in order to avoid tilting the playing field.

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.

The meaning of the question is not clear, but we take the opportunity to point out that market parties almost universally condemned the proposed use of the Value of Lost Load (VoLL) to cap prices in Great Britain. Early proposals completely misunderstood how commercial entities would respond to such an incentive (i.e. a high cashout price based on VoLL), that it would not lead to the construction of storage facilities as the regulator had initially assumed and that it would merely have the effect of advertising a target price for the wholesale market when a supply crisis was impending. EFET cautions against the use of this example for widespread implementation.

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?

Clearly this depends on a number of factors including the size of the market, the flexibility of demand response, the reliance on few sources of gas, levels of interconnectedness, and the willingness to pay. These can be expected to vary enormously between Member States, and would be expected to be important factors for Competent Authorities to take into account.

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

In aggregate, long-term supply contracts may give some indication of trends in supply availability, but clearly they no longer show the complete picture. The risk of a high cashout price is a strong commercial incentive if market parties are confident that authorities will not intervene to cap prices at a lower level where they consider to be politically preferable.

Badly designed obligations for supply/storage may simply crowd out commercial holdings and have no overall increase in supply availability, yet be distortive to the market.

EFET cautions against a “silver bullet” theory that can suddenly be applied equally across all Member States at all levels of market maturity and infrastructure availability. In mature markets with high levels of interconnectivity there may be sufficient confidence to rely on market signals to manage supply risks in innovative ways and to facilitate investment in infrastructure where appropriate. Less mature markets may depend for some time on physical facilities and historical arrangements such as supply obligations on the historical player or pre-existing regional cooperations. Reliance on market principles may need to be introduced gradually.

Reviews to Regulation 994/2010 should not be at the expense of delivering the internal energy market.

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)?

This approach should be treated with caution. It is unclear how this is proposed to be delivered. If TSOs are to hold contracts for supply or for storage or LNG, then this could be expensive and distortive. If TSOs are to take over the execution of contracts in the name of shippers and producers, then the circumstances for such action would need to be clearly spelt out (presumably a declaration of emergency circumstances would be necessary to enable contracts to be overridden).

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?

EFET considers that Articles 6 and 7 of Directive 2009/73 and Annex IV of Regulation 994/1010 already allow for regional approaches to national security standards.

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.

Recent investment in storage and LNG facilities has created unprecedented levels of availability, and of competitiveness between facilities. National obligations to hold gas in particular storage facilities attempt to circumvent such competitiveness and to protect certain national assets that deliver services at lower levels of market efficiency. Alternatively they could be regarded as a lack of trust between Member States such that, if a problem were to arise, a country would be prepared to protect its own consumers and to export the problem.

Such rules should be strongly discouraged.

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

LNG can play an important role in preventing emergency situations from arising in situations where the market *can* be relied upon. Where the forward price rises to world levels, then LNG can be attracted. It is more difficult to see its role *in situations where the market cannot be relied upon*. We are familiar with LNG carriers being moored at import terminals over winter, which is a very expensive way of providing peak load. Arguably, a requirement to hold options for cargoes/LNG in tank with delivery during particular periods could be introduced in a similar way to requirements to hold gas in store. This could be an efficient and appropriate means if designed via market-based mechanisms such as a call for tenders. The use of LNG in market situations is therefore more effective than in non-market situations. However, LNG should not be regarded as a panacea, but part of a range of possible measures.

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?*
- 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)?*

Market maturity is only one criterion among many others. EFET is concerned that by drawing hard lines based on (e.g.) liquidity measures as suggested in the ACER Gas Target Model, then it will be more difficult to fine-tune obligations where other circumstances differ. Again, this is best left to Member States, with due cooperation between them, in consultation with the Commission.

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?*

As stated above, the legislative instrument for regional cooperation already exists in the Gas Directive 2009/73 (Articles 6-7) and Regulation 994/1010 (Annex IV). Different regions may need to pursue different approaches based on market maturity, dependence on single source, interconnectedness, fuel substitutability. We have also referenced the possible establishment of a cost-sharing mechanism either through inter-TSO compensation payments, or a targeted fund managed by the Commission / an independent body where beneficiaries in downstream systems can contribute to the maintenance of transit systems upstream of their national border.

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.*
- 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?*

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)?

EFET is sceptical that a pooling mechanism will be enforceable in the extreme circumstances that would prevail when it must be relied upon. There will always be concerns that the Member State where the storage is located will prioritise its own vulnerable consumers over meeting a pooling obligation to protect others. Implementation of effective markets in order to avoid an emergency situation arising is a key preventative measure. Transparency over public service obligations may draw attention to excessive conditions in one Member State that may be used to protect its own non-vulnerable consumers over vulnerable consumers in another Member State. In very low-probability / high-impact events, *ad hoc* arrangements between Member States, perhaps facilitated by the Commission, will always be a last resort option. The value of introducing additional legislation is unclear and should be subject to a rigorous Regulatory Impact Assessment.

It is difficult to see how joint purchasing arrangements can be introduced without compromising or breaching the terms or intent of European energy markets legislation or of European and national competition law. EFET believes that such arrangements could cause untold damage to the development of efficient markets and, if restricted to crisis occasions only (as opposed to being permanently in force), are unlikely to be operable or effective.

Such mechanisms should be neither regional nor EU-wide. If an emergency situation is reached because of market forces (e.g. a Fukushima-type incident draws all available gas from Europe or all unconventional production is halted in US), it is difficult to see how a joint purchasing arrangement would help; similarly if a natural disaster or terrorist activity were to disable a large number of major supply routes, a joint purchasing arrangement is unlikely to help; finally, if EU were to be held ransom by a major gas supplier country in order to fulfil a geopolitical objective, then political intervention would be necessary, rather than a legislated joint purchasing arrangement.

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

- *they can only be used when it is demonstrated that gas traders are not able to provide the necessary supply standard.*
- *they can only be used at a national level if no solutions for shared use of storage resources with other Member States is possible*

- *it should be ensured that the measure is open to participation of suppliers from other countries.*
- *the capacities should be acquired on a non-discriminatory basis (tender) and should take into account cross-border sources of flexibility.*
- *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.*

EFET supports market-based solutions wherever possible and recommends that any non-market solutions should be transparent and designed to be least-distortive. The acceptability of each of the above points depends on the context and means of implementation, and we would be wary of suggesting that we support them in all circumstances. A condition should be added in any case that such measures should be transitional only, should be reduced over time, and should be phased out when markets are sufficiently effective.

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?

EFET assumes that all non market-based measures would be subject to regulatory oversight, and would be amended if it was found that they were unduly distortive or were being abused. It may be helpful to make clear that such measures would not exempt firms from the application of competition law.

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.*
- b) Should the definition of protected customers be stricter in order to avoid that single Member States declare almost all customers as protected?*
- b) What do you think about a regional definition of protected customers (e.g. in closely interdependent areas)?*

As already mentioned, a more harmonised definition of protected customers would be helpful. A regional analysis that protects SMEs in some Member States but not others would not be equitable and may produce distortive results. Scenarios based on measures such as (a) vulnerable domestic consumers only (b) all domestics (c) all domestics and “essential social services” could be harmonised across Member States for planning purposes, taking

into account the operational feasibility of load shedding by TSOs and DSOs according to these definitions.

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.)?

It is difficult to control this on an *ex ante* basis. TSOs and DSOs should have obligations to monitor consumption and the rights to disconnect non-vulnerable consumers who ignore instructions to reduce demand. A high cashout price would also be a suitable incentive.

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

Generally, development of regional assessment of security of supply is a good step forward. Though, depending on the targeted solidarity measures, it may either contribute to foster or to prevent free-riding and moral hazard. But if one Member State is relying on another, it seems reasonable that some contribution be made to reflect the supply security being "enjoyed" (i.e. the public good that is consumed) by the dependent Member State.

Fear of closed borders is a legitimate concern for Member States. It may in some cases be necessary to close borders in order to contain an incident and to reduce loss of life or limb. Prohibitions would need to be carefully thought through to ensure that they are operationally viable, but EFET agrees that there needs to be strong pressure on Member States to avoid the interruption of commercial agreements. Article 11(5) of Regulation 994/2010 is already clear on this issue.

Consideration of general energy security is important and not just gas in isolation. The use of fuel substitution and cross-border trade in other fuels need to be considered as part of a

broader approach to protecting vulnerable consumers. (This is already suggested by Annex III to Regulation 994/2010.) The trade-off between security and other objectives (sustainability, affordability) cannot be ignored.

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.

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

b) 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)?

See above responses to questions 23-24.

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.

As has been already pointed out, differences in Member State circumstances mean that it is difficult to see how a single unified threshold could be appropriate for all Member States without dragging all systems down to a least common denominator. In most Member States, obligations for the safe running of the transport system is placed on the TSO. Ultimately the TSO must make a decision on how to run its system, and a delay to that decision may either be dangerous or may prompt precipitative action that turns out to be unnecessary. Of course, actions from TSOs must be transparent, non-discriminatory, and triggered in a way that could be forecast by the market.

Additional powers to the Commission to investigate on an *ex post* basis whether an alert or emergency was correctly called seems entirely reasonable. Some access to *ex ante* information by the Commission may be helpful to the TSO and Competent Authority in terms of shared responsibility for the declaration of an emergency. However, if a TSO and NRA call for emergency measures and this is rejected or overruled by the Commission, then the question is raised over what responsibility is taken by the Commission if lives are subsequently lost. The interaction between European and national legislation in this area will probably require extensive separate consideration.

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?

Intervention should be limited to emergency situations only, as at present. Annex III is *indicative and non-exhaustive*; EFET has no suggestions to change or clarify, other than the need to reinforce transparency.

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?

As already referenced in the answer to question 31, the Commission could have *ex post* investigative powers. Given that the number of incidents should be expected to be low, it seems reasonable that the Commission would investigate incidents in any case. Right of non-suspensive appeal could therefore be allowed. For the Commission's recommendation to have a binding character, some consideration should be given to liabilities where commercial entities relied on a national decision that is subsequently overturned.

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.

The current allocation of tasks is as clear as can reasonably be expected in an emergency situation which may have multiple causes and be fast changing. A degree of flexibility may be necessary in such circumstances and strict definitions may introduce other problems.

We do not see a specific role for ENTSOG. This is not foreseen in Regulation 715/2009 which defines the establishment and duties of ENTSOG and the corresponding costs it can therefore recover. A significant extension of their duties beyond the provision of their opinions and advice into operational matters could be expected to require substantial changes to expertise, operating structures, costs and cost recovery.

Duties of the Gas Coordination Group are adequately described in Article 12 of Regulation 994/2010.

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

Better understanding of the consequences (and confidence that mitigating measures or compensation schemes would actually be applied) would help commercial entities to value opportunities and take commercial decisions on contracts and investments, that would in turn protect market functioning.

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?

EFET sees no *need* for this additional provision. It can be inferred from the declaration of an *early warning* or *alert* by multiple authorities for neighbouring Member States.

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?

As a minimum, near real-time flow information should be available at all major points. If the Commission has further ideas, information on what tools are requested and how they would be used is necessary before we are able to comment. The Commission is invited to spell out what it has in mind and the expected costs and benefits, in order to allow interested parties to comment on more specific proposals.

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

This obligation already exists in Articles 6-7 of Gas Directive 2009/73.

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?

As previously stated, the Commission's powers to investigate the declaration of emergencies and the suspension of markets would be helpful to give confidence that this is not being used to help frustrate markets or unduly intervene in ways that dampen economic signals. We would also welcome greater investigation of why gas flows across borders (in both forward and reverse flow) are inhibited by mismatched network access terms or interpretations of obligations under historical (legacy) supply agreements.

EFET does not believe a separate emergency body is necessary, and the terms of Article 12 of Regulation 994/2010 allow for a more regionally-focussed Gas Coordination Group if they have the agreement of Member States to do so.

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?

As already stated, the range of market conditions across Europe means that a one-size-fits-all model is likely to be either ineffective or retrograde for some Member states. Indeed TSOs may actually need to have slight variations in emergency procedures at each interconnection point depending on whether it is an import or export route, and whether it is connected to a mature or immature market. There is certainly a need for TSOs (and NRAs) to cooperate with neighbouring systems and this is already provided for in the legislation. Greater focus could be placed on procedural aspects of cooperation rather than determining specific outcomes.