



Brussels, 18.11.2021
C(2021) 7797 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 18.11.2021

amending Regulation (EU) 2017/1938 of the European Parliament and of the Council as regards the composition of the risk groups

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2017/1938 of the European Parliament and the Council, of 25 October 2017, concerning measures to safeguard the security of gas supply (“Regulation”)¹ sets up a security of gas supply mechanism in the Union that is based on the notion of identifying and anticipating risks (“risk-based approach”). Once the risks have been identified and assessed at regional and national level, the next step for Member States is to take appropriate preventive measures to reduce the likeliness that risks happen, as well as to foresee emergency measures that, in case of a gas supply disruption, will allow to minimize or remove its effects. These measures are to be described in national Preventive Action Plans and Emergency Plans (“National Plans”).

Regional cooperation, in a spirit of solidarity, is a guiding principle of the Regulation. Assessing correlated risks jointly, at regional level, makes the risk assessment more comprehensive and more precise, and ensures that Member States are better prepared for any crises. Moreover, in an emergency, a coordinated and pre-agreed approach to the security of supply ensures a consistent response, optimises resources, makes measures more effective and reduces the risk of negative spill-over effects that purely national measures could have in neighbouring Member States.

To structure the preparation of joint risk assessments and facilitate regional cooperation, Annex I of the Regulation established thirteen regional risk groups, separated into four regional categories: Eastern, North Sea, North African and South-East. These risk groups are the basis for enhanced regional cooperation and enable agreement on appropriate and effective cross-border measures of all Member States concerned within the risk groups or outside the risk groups along the emergency supply corridors.

The risk groups reflect the major transnational risks to the security of gas supply in the Union; their composition is based on the main gas supply sources and routes. Each risk group includes those Member States along a corridor that may play a strategic role in case of gas supply crisis. Under Article 3(8) of the Regulation, the Commission is empowered to update the composition of the risk groups to reflect the evolution of the main transnational risks.

Article 7(2) of the Regulation requires Member States within each risk group to assess jointly all relevant risk factors such as natural disasters, technological, commercial, social, political and other risks that could lead to the materialisation of the major transnational risk to the security of supply for which the risk group was created (“common risk assessment”).

In order to make the regional cooperation feasible, Article 7(2) requires Member States to agree on a cooperation mechanism within each risk group. This mechanism has to be developed sufficiently in time to allow for conducting the common risk assessment and discussing and agreeing on appropriate and effective cross-border measures, which will require the agreement of each Member State concerned and that have to be included in the regional chapters of the national plans.

As foreseen in Article 7 (1) of the Regulation, the European Network of Transmission System Operators for Gas (ENTSOG) carried out in 2017, for the first time, a Union-wide simulation of gas supply and infrastructure disruption scenarios. The simulation identified and assessed the emergency gas supply corridors and identified which Member States can address

¹ OJ L 280, 28.10.2017, p. 1.

identified risks. The gas supply and infrastructure disruption scenarios and the methodology for the simulation were defined by ENTSOG in cooperation with the Gas Coordination Group (“GCG”).

ENTSOG’s first Union-wide simulation considered the gas infrastructures that were in operation along the different gas corridors on 1 October 2017. This first Union-wide simulation of gas supply and infrastructure disruption scenarios was the starting point for the preparation of the first “common risk assessments” within each risk group and of the national risk assessments, which were finalised by most Member States in 2019 and 2020. Those risk assessments, on their turn, represented the basis for the preventive and emergency measures described in the national plans (also finalised by most Member States in 2019 and 2020).

In October 2020, upon request of the GCG, ENTSOG produced an *addendum* to the Union-wide simulation, in order to consider the security of supply impact of several major infrastructures that had been commissioned in the meantime across the Union. The *addendum* simulated again three disruption scenarios to take account of investments that had been commissioned in 2019: the “Baltic Connector”, connecting Finland and Estonia, and new gas import capacity from Russia via Turkey (TurkStream2) to Bulgaria.

Under the Regulation, the cycle Union-wide “simulation / common risk assessments / national risk assessments / national plans” has to be reviewed every four years.

The methodology and assumptions for ENTSOG’s Union-wide simulation, due to be finalised by November 2021, remain largely the same as applied in the first simulation. However, learning from the experience, the revised Union-wide simulation considers those projects that are expected to be in operation in January 2023. In this way, the simulation will reflect as much as possible the actual configuration of the emergency gas corridors at the time of application of the next national plans (expected to be in place in preparation for the winter 2023/24). The choice of the relevant projects is based on the technical data submitted to ENTSOG by promoters in the context of the preparation of ENTSOG’s upcoming Ten Years Network Develop Plan (TYNDP)².

The analysis of the new major gas infrastructures that have entered into operation since 2017, as well as the expected impact of those that will be commissioned in the coming months and by the end of December 2022, shows that new emergency supply corridors are available and will potentially have an impact on the emergency gas flows. At the same time, new interconnectors broaden the list of Member States that can contribute to address potential failures of the main gas supply routes.

As a matter of consequence, the composition of some risk groups, as defined in Annex I of the Regulation, needs to be modified to reflect the role that some additional Member States may have along certain supply corridors and to allow these countries to contribute to the common risk assessments of these risk groups and to the joint definition of regional preventive and emergency measures.

The United Kingdom ceased to be a Member State of the European Union as from 1 February 2020. As a matter of legal certainty, it should be removed from the lists of Member States in Annex I.

² Under Article 8(3)(b) of Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.08.2009, p. 36), ENTSOG develops TYNDP every two years.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The GCG³ was established by Article 4 of the Regulation to facilitate the coordination of measures concerning the security of gas supply. It is composed of representatives of the Member States, the Agency for the Cooperation of Energy Regulators (ACER), ENTSOG and representative bodies of the gas industry and of relevant customers.⁴

Under Article 4(4) of the Regulation, the Commission may convene the GCG in a setting that is restricted to the representatives of the Member States.

The impact of new infrastructures on the existing emergency supply corridors considered in Annex I was discussed at three ordinary meetings of the GCG in 2020, in the context of the discussions about ENTSOG's 2020 addendum to the first Union-wide simulation of supply and infrastructure disruption scenarios.

The methodology and assumptions for ENTSOG's 2021 Union-wide simulation were presented and discussed at an ordinary GCG meeting on 6 May 2021. Among other methodology aspects, the discussions addressed the inclusion in the simulation of infrastructures expected to be commissioned in 2023, and the logical impact of this choice on the composition of the risk groups. The Commission's services presented the procedure and estimated timeline for updating the risk groups. After the meeting, a two-week-period was open for GCG to comment in writing.⁵

The GCG received the draft update of the risk groups by e-mail on 13 July 2021⁶, as well as on 19 August 2021, together with the invitation to a restricted GCG meeting, via the AGM application.

A four-week-period was open for public feedback on 20 July 2021 until 17 August 2021. Comments were generally supportive of the intended changes.⁷

A meeting of the GCG, restricted to Member States' representatives and ENTSOG (as observer), was held on 2 September 2021 by webconference.

The Commission took note of comments from Germany, Hungary and the Netherlands, recorded in the minutes of the meeting, and concluded that there was general support to the draft Delegated Regulation.

Concerning, in particular, Hungary's membership in the Trans-Balkan Group, the Commission took note of the information according to which the additional reverse-flow capacity at the interconnection point between Hungary and Romania would not be expected to be completed by January 2023.

The European Parliament and the Council were informed of the meetings of the GCG where this draft delegated act was discussed and both institutions, therefore, received all relevant documents at the same time as Member States' experts in line with the 2016 Interinstitutional Agreement on Better Law Making and the Common understanding on Delegated Acts annexed to it.

³ Expert group register number X01096.

⁴ The expert group was first created in 2006; the current composition results from Commission Decision of 11 August 2011 establishing the composition and the operational provisions of the Gas Coordination Group and repealing Commission Decision 2006/791/EC, OJ C 236, 12.8.2011, p. 10.

⁵ Seven Member States sent comments in writing.

⁶ Attached to an e-mail informing the Energy Attachés of the Permanent Representations at the European Union about the upcoming restricted GCG meeting and inviting them to appoint delegates. Member States' usual GCG delegates were in cc to the e-mail.

⁷ Five contributions, from one citizen and four industry associations.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 3(8) of the Regulation empowers the Commission to adopt delegated acts in accordance with Article 19 (“Exercise of the delegation”) in order to update the composition of the risk groups set out in Annex I, by amending this annex in order to reflect the evolution of the major transnational risks to the security of gas supply in the Union and its impact on Member States, taking into account the result of the Union-wide simulation of gas supply and infrastructure disruption scenarios carried out by ENTSOG in accordance with Article 7(1). Before proceeding to the update, the Commission shall consult the GCG in the setting provided for in Article 4(4) of the Regulation on the draft update.

The purpose of this Delegated Regulation is to amend Annex I of the Regulation by adding some Member States to several risk groups to take into account the impact that new and upcoming gas infrastructures are expected to have on the gas flows within the relevant emergency gas corridors, as defined in Annex I, as well as the potential contribution of those Member States in case of supply disruption along those corridors, as explained in the following paragraphs. Furthermore, the risk groups should be modified to reflect the United Kingdom’s withdrawal from the European Union.

The “Baltic Connector”, connecting the gas transmission systems of Finland and Estonia, entered into operation in December 2019 and its impact in case of supply disruption affecting the “North-East group” was already analysed in the 2020 *addendum* to ENTSOG’s first Union-wide simulation. This new infrastructure justifies that Finland is added to the “1(b) Belarus risk group”.

One main upcoming infrastructure with an impact on the composition of some risk groups is the “Baltic Pipe Project”, which will transport gas from Norway to Denmark (and Sweden) and –across the Baltic Sea– to Poland. Gas transmission through the bidirectional gas pipeline between Denmark and Poland is expected to start in 2022.

Another main upcoming infrastructure that justifies some changes is the “Gas Interconnection Poland-Lithuania” pipeline (GIPL); this bidirectional gas infrastructure is a Project of Common Interest (PCI) that will connect the gas transmission systems of Poland and Lithuania and is expected to enter into operation by the end of 2022.

The impact of these two upcoming main infrastructures justifies the following changes.

Concerning the Eastern gas supply risk groups (point 1. of Annex I):

Denmark and Sweden need to be added to the “(a) Ukraine risk group” and the “(b) Belarus risk group”

Czechia, Denmark, Germany, Poland, Slovakia and Sweden need to be added to the “(d) North-Eastern risk group”.

Concerning the North Sea gas supply risk groups (point 2. of Annex I), Poland is to be added to the “(a) Norway risk group” and the “(c) Denmark risk group”.

In addition, considering the bidirectional capacity between Romania and Hungary existing at the Csanádpalota interconnection point (a PCI related to the “ROHUAT/BRUA” transmission corridor)⁸, in operation since November 2020, it would be pertinent for Hungary to be a member of the Trans-Balkan gas supply risk group.

⁸ The first phase of this project enabled 1,75 bcm/a capacity; capacity is expected to expand to 4.4 bcm/a in the second phase.

Finally, following the United Kingdom's withdrawal from the European Union as from 1st February 2020, this third country has ceased to be a member of the "(a) Norway risk group" and the "(d) United Kingdom risk group". Annex I is to be modified to reflect this.

These changes in the composition of risk groups are expected to have significant and positive implications on the security of gas supply in the Union. These changes will allow more Member States to contribute to the work of the risk groups to which they have been added. These Member States will be able to have a say in the revised regional cooperation mechanisms and their contribution will help to improve the quality and accuracy of the common risk assessments. While this might imply additional administrative burden for some Member States, this is clearly outweighed by the fact that their participation in additional groups will bring along greater and safer emergency preparedness: in practice, the revised common risk assessments (due by October 2022) will be more realistic and accurate, by incorporating the perspective of all Member States that in 2023 will be connected to the relevant emergency supply corridor. This, in turn, will benefit the national risk assessments and will provide a sound basis for the preparation of the national plans, which are due to be communicated to the Commission in March 2023.

The act is within the scope of the delegated powers provided to the Commission by Article 3(8) and Article 19 of the Regulation and does not go beyond what is necessary to achieve the purpose of those provisions.

This delegated act is amending and replacing provisions of the Regulation and it is appropriate, therefore, to proceed with a Delegated Regulation.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010⁹, and in particular Article 3(8) thereof,

Whereas:

- (1) Regional cooperation, in a spirit of solidarity, is a core principle on which the security of gas supply mechanism established by Regulation (EU) 2017/1938 is based. To make regional cooperation operational in practice, Annex I to that Regulation identifies thirteen risk groups corresponding to four main emergency gas supply corridors. For each risk group, Annex I lists the Member States that may be affected or play a role in case of supply disruption along the corridor, or both. Under Article 3(8) of Regulation (EU) 2017/1938, the Commission is empowered to adopt delegated acts in order to update the composition of those risk groups.
- (2) New major gas infrastructures have entered into operation since the adoption of Regulation (EU) 2017/1938 and several infrastructures are expected to be commissioned in the following months. Those infrastructures create new emergency supply corridors. They also have an impact on the Member States that can be affected by or contribute to addressing potential failures of the main gas supply routes.
- (3) Under Article 7(1) of Regulation (EU) 2017/1938, the European Network of Transmission System Operators for Gas (ENTSOG) is to carry out a revised Union-wide simulation of gas supply and infrastructure disruption scenarios by November 2021. This simulation will take into account the evolution of the Union gas infrastructures since 2017 and its impact on the different emergency gas supply corridors. The simulation will also cover all gas infrastructures that are expected to be in operation in January 2023.
- (4) The impact of the new and upcoming gas infrastructures on the emergency gas corridors, as reflected in ENTSOG's Union-wide simulations, justifies that the composition of the risk groups be adapted accordingly.
- (5) The impact of new gas infrastructures on the composition of some risk groups was discussed at several ordinary meetings of the Gas Coordination Group (GCG) in 2020 and 2021. The content of this act was discussed at a GCG meeting restricted to Member States representatives and ENTSOG, as an observer.

⁹ OJ L 280, 28.10.2017, p. 1.

(6) The United Kingdom ceased to be a Member State of the Union as from 1 February 2020. In the interest of legal certainty, it should be removed from the lists of Member States in Annex I to Regulation (EU) 2017/1938.

(7) Regulation (EU) 2017/1938 should therefore be amended accordingly

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) 2017/1938 is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18.11.2021

For the Commission

The President

Ursula VON DER LEYEN