Agreement

between

the Government of the Kingdom of Denmark

and

the Government of the Kingdom of Sweden

on

solidarity measures to safeguard the security of gas supply
The Government of the Kingdom of Denmark
and
the Government of the Kingdom of Sweden –

hereinafter designated the contracting parties,


taking note of Commission Recommendation (EU) 2018/177 of 2 February 2018 on the elements to be included in the technical, legal and financial arrangements between Member States for the application of the solidarity mechanism under Article 13 of Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply,

desiring to alleviate the effects of a severe emergency and to safeguard the supply of gas to the solidarity protected customers,

considering that solidarity is needed to safeguard the security of gas supply in the Union,

on the basis of a common understanding whereby a request for solidarity will generally only be necessary when the market of the requesting party is no longer capable of functioning and the neighbouring markets are no longer liquid to the extent that the requesting party cannot use the customary means of the market to acquire gas volumes on the neighbouring markets and solidarity is therefore provided to the extent possible and as long as possible by market-based measures which are intended to help the requesting party
itself to cover the volume required to supply its solidarity protected customers with gas via the market, –

have agreed as follows:
Article 1
Subject-matter and scope of the agreement

(1) This agreement sets out the technical, legal and financial arrangements for the application of the solidarity mechanism in accordance with Article 13(10) sentence 2 of Regulation (EU) 2017/1938 in conjunction with the respective domestic legislation in force. The contracting parties shall request the solidarity measures as a last resort in an emergency in which the gas supply of solidarity protected customers cannot be achieved without assistance.

(2) In the case of solidarity, the providing party shall take solidarity measures in its territory to supply the solidarity protected customers in the territory of the requesting party with gas.

(3) Sweden is exempt from providing solidarity to Denmark in accordance with Article 20(3) of Regulation (EU) 2017/1938.

(4) Nothing in this agreement affects the obligations for Denmark under Regulation (EU) 2017/1938, including corollary effects for Sweden due to technical design, safe and reliable operation of the two connected gas systems.

Article 2
Definitions

(1) For the purposes of this Agreement, the definitions used in the following statutory provisions shall apply:

1. Article 2 of Regulation (EU) 2017/1938,


5. Article 2 of Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (OJ L 113 of 1 May 2015, pp. 13-26), and


(2) Further to this, the following definitions shall apply to this agreement:

1. “Solidarity measures” shall mean necessary measures in the territory of the providing party in accordance with Article 13 of Regulation (EU) 2017/1938, on the basis of which the gas supply to customers other than solidarity protected customers is curtailed or suspended to the extent necessary and for as long as the gas supply to solidarity protected customers in the requesting party is not safeguarded.

2. “Market-based measures” shall mean the calls to market participants in the providing party’s own territory to take voluntary measures on a contractual basis on the supply and demand side to gas volumes in return for payment of a contractually agreed price, which are to enable the requesting party itself to cover the volume needed to supply its own solidarity protected customers with gas via the market.
3. "Non-market-based measures" shall mean sovereign measures on the supply and demand side taken by the providing party in its own territory with a view to contributing to the gas supply of the solidarity protected customers of the requesting party.

4. "Requesting party" shall mean the contracting party requesting solidarity measures, Sweden.

5. "Providing party" shall mean the contracting party undertaking solidarity measures, Denmark.

6. "Solidarity request" shall mean the call by the requesting party to the providing party to provide solidarity.

7. "Solidarity offer" shall mean the composition of the non-market-based measures by the providing party which can be provided in return for payment of compensation.

8. "Offers of the market participants" shall mean offers of contracts by market participants to voluntarily provide gas volumes.

9. "Gas suppliers" shall mean market participants which offer gas volumes voluntarily.

10. "Delivery point" shall mean Dragør interconnection point.

11. "Transport risk" shall mean the risk that the gas volumes made available by solidarity measures cannot be transported to the delivery point because, following the making of the solidarity offer, there have been technical grid restrictions or contractual restrictions, e.g. a renomination of previously contracted capacities at the respective interconnection points and congestion thus arises.

12. "Emergency" or "emergency level" shall mean a crisis situation in line with Article 11(1)(c) of Regulation (EU) 2017/1938.

13. "Gas Coordination Group" shall mean the body set up by Article 4 of Regulation (EU) 2017/1938.
14. “Gas day” shall mean the gas day within the meaning of Article 3 figure 7 of Regulation (EU) No 984/2013 on which the solidarity measures are to be used.

Article 3
Solidarity request

(1) The solidarity request shall be dependent on the declaration of an emergency level pursuant to Article 11(1)(c) of Regulation (EU) 2017/1938 and the assurance by the competent authority of the requesting party that the preconditions of Article 13(3) of Regulation (EU) 2017/1938 are met at the time of the introduction of the requested solidarity measures.

(2) The competent authority of the requesting party shall transmit, using the means of communication cited in Article 11, the solidarity request to the contact data of the competent authority of the providing party as listed in the list of members of the Gas Coordination Group. Following the transmission of the solidarity request in accordance with sentence 1 the competent authority of the requesting party shall inform the Commission without delay about the transmission and the content of the solidarity request. The requesting party shall notify the providing party without delay that it has complied with its duty to inform the Commission in accordance with sentence 2.

(3) The competent authority of the requesting party shall transmit the solidarity request to the competent authorities of all Member States of the European Union directly connected with the requesting party pursuant to Article 13(1) of Regulation (EU) 2017/1938 and to the competent authorities of other Member States of the European Union which are connected with the requesting party pursuant to Article 13(2) of Regulation (EU) 2017/1938 via a third country which is not a Member State of the European Union.

(4) The solidarity request must include at least the following information:
1. contact details of the competent authority of the requesting party,

2. contact details of the relevant transmission system operator of the requesting party,

3. contact details of the market area managers of the requesting party (where available),

4. period of supply,

5. gas volume in kWh,

6. gas quality,

7. delivery point,

8. assurance pursuant to paragraph 1,

9. declaration as to whether the contracts offered by market participants following the implementation of market-based measures by the providing party are to be concluded directly by the requesting party or by a specified third party acting on behalf of the requesting party,

10. assurance that claims by market participants deriving from the conclusion of contracts with third parties acting for the requesting party shall be backed by state guarantees by the requesting party, and

11. recognition of the obligation of the requesting party to pay compensation for the solidarity in accordance with the provisions of this agreement and Article 13(8) of Regulation (EU) 2017/1938).

(5) To the extent that the supply security situation permits, the solidarity request must be made at least 20 hours before the beginning of the gas day. The providing party shall endeavour to respond also to solidarity requests made at shorter notice if the crisis situation
and the necessary preparatory periods for the gas industry to be able to provide a solidarity offer permit this.

(6) The solidarity request must be restricted at most to the following gas day. Further solidarity requests for subsequent gas days can be made, giving consideration to the deadlines in paragraph 5.

(7) Following receipt of the solidarity request, the providing party shall without delay scrutinise the solidarity request for errors or omissions which might render impossible an orderly response to the solidarity request. If this scrutiny reveals errors or omissions in the solidarity request within the meaning of sentence 1, the competent authority of the providing party shall contact the competent authority of the requesting party without delay using the contact data cited in the solidarity request and shall request rectification of the solidarity request.

(8) The competent authority of the providing party shall confirm receipt of the solidarity request to the competent authority of the requesting party within half an hour following receipt of the solidarity request using the contact data cited in the solidarity request. If the requesting party has not received confirmation of the receipt of the solidarity request in accordance with sentence 2 within half an hour of the sending of the solidarity request, it shall endeavour to make contact with the providing party using all available means of communication.

Article 4
Implementation of market-based measures

(1) Following receipt of the solidarity request, the providing party shall implement market-based measures without delay in order to enable the requesting party or a specified third party acting on behalf of the requesting party to conclude contracts with market
participants in the territory of the providing party to procure the gas volumes needed to supply its solidarity protected customers.

(2) If, following implementation of market-based measures by the providing party, the requesting party has offers from market participants in the territory of the providing party, the requesting party or a specified third party acting on behalf of the requesting party shall be responsible for procuring the gas volumes required by concluding contracts with market participants selected by it at the latest up to 14 hours before the beginning of the day on which delivery is to take place and taking account of the lead times needed by the gas industry. The providing party shall not be a contracting partner to these contracts and shall not be liable for their fulfilment.

(3) The claims of the market participants arising from the contracts concluded in accordance with paragraph 2 sentence 1 shall be secured by state guarantees from the requesting party. This shall not apply when the requesting party is itself a direct debtor of these claims.

(4) The requesting party or a specified third party acting on behalf of the requesting party shall ensure that the transport capacities necessary at the delivery point for take-off of the gas volumes provided on the basis of offers by market participants are booked. If the requesting party or a specified third party acting on behalf of the requesting party is not able to book transport capacities pursuant to sentence 1, it shall inform the providing party of this without delay, citing the reasons.

Article 5
Implementation of non-market-based measures

(1) To the extent that the requesting party cannot fully cover its need even after the implementation of market-based measures by the providing party for the period of supply cited in the solidarity request by accepting all the available offers by market participants in
the territory of the providing party and in the territories of the other Member States of the European Union which are directly connected with the requesting party pursuant to Article 13(1) of Regulation 2017/1938 and other Member States of the European Union which are connected with the requesting party pursuant to Article 13(2) of Regulation 2017/1938 via a third country which is not a member of the European Union, it can make a second solidarity request up to 13 hours before the beginning of the gas day for the gas volume which is still required; Article 3 of this agreement shall apply mutatis mutandis where applicable. In this case, the providing party shall transmit a solidarity offer up to 9 hours before the beginning of the gas day. Where the deadlines pursuant to Article 3(5) sentence 1 or pursuant to Article 5(2) sentence 1 of this agreement were not complied with, the transmission of the solidarity offer shall take place in the context of the necessary preparatory times for the gas industry. If the providing party is not able to submit a solidarity offer by the end of the deadline pursuant to sentence 2 or in the case of sentence 3 taking account of the necessary preparatory times for the gas industry, it shall inform the requesting party of this without delay, citing the reasons.

(2) The solidarity offer by the providing party must include at least the following information:

1. contact details of the competent authority of the providing party,

2. contact details of the relevant transmission system operator of the providing party,

3. contact details of the relevant market area managers of the providing party (where available),

4. gas volume in kWh,

5. gas quality,

6. delivery point,

7. period of supply,
8. likely costs of the solidarity measures, and

9. details of the recipients of payments.

(3) The gas volumes contained in the solidarity offer can be lower than the gas volume requested by the competent authority of the requesting party.

(4) A solidarity offer shall contain the potentially available gas volumes including necessary transport services at the time of the provision of the solidarity offer.

(5) All solidarity offers shall apply subject to the technically secure and reliable operation of the gas system of the providing party and the export capacity of the interconnectors between the contracting parties and subject to the reservation that when a solidarity offer is accepted and implemented, the necessary gas volume for the supply of the providing party’s own solidarity protected customers is fully available and is not jeopardised.

(6) Following receipt of the solidarity offer, the competent authority of the requesting party shall confirm receipt of the offer without delay to the competent authority of the providing party using the contact details cited in the solidarity offer.

(7) The acceptance of the solidarity offer shall be undertaken by the competent authority of the requesting party using the contact details cited in the solidarity offer.

(8) The acceptance of solidarity offers can only take place up to 7 hours prior to the beginning of the delivery day. Solidarity offers pursuant to paragraph 1 sentence 3 can only be accepted within 2 hours of their receipt by the requesting party. Solidarity offers not accepted within this period shall expire.

(9) In order to accept a solidarity offer, the competent authority of the requesting party shall declare its acceptance of the offer to the competent authority of the providing party observing the deadlines cited in paragraph 8. When the declaration of acceptance is
received by the competent authority of the providing party, a contract shall come into being between the providing and the requesting party or a specified third party acting on behalf of the requesting party on the basis of which the providing party is obliged to undertake sovereign measures to ensure that the offered gas volumes are made available and transported to the delivery point.

(10) By accepting the solidarity offer, the requesting party shall commit to fulfilling the compensation obligations pursuant to Article 13(8) and (10) of Regulation (EU) 2017/1938 and Article 8 of this agreement.

Article 6
Transmission and take-off of the gas volumes in the implementation of non-market-based measures

(1) The gas volume taken off shall be the allocated gas volume in line with the arrangements in force at the delivery point.

(2) The designated delivery point is Dragør interconnection point.

(3) The providing party shall bear the transport risk for the transport to the delivery point.

(4) The requesting party or a specified third party acting on behalf of the requesting party shall ensure that the gas volumes provided at the agreed delivery points are taken off.

(5) Irrespective of the actual take-off of the gas volumes provided in line with the contract to the requesting party or a specified third party acting on behalf of the requesting party, the payment obligations deriving from the acceptance of the solidarity offer must be met in full by the requesting party to the providing party (“take or pay”).

Article 7
End of the solidarity measures

(1) The obligation of the providing party to implement the solidarity measure shall end when

a. the Commission finds following a verification procedure in accordance with Article 11(8) subparagraph 1 of Regulation (EU) 2017/1938 that the declaration of the emergency is not or is no longer justified,

b. the end of the emergency is declared by the requesting party, or no renewed solidarity request is made in accordance with Article 3 of this agreement for the gas day following the day on which the gas was supplied, or

c. the supply of the providing party’s own solidarity protected customers is specifically jeopardised.

(2) In the cases of paragraph 1 subparagraph a and b, the solidarity measure shall end at the end of the respective gas day for which a solidarity request was made in accordance with Article 3. In the case of paragraph 1 subparagraph c, the providing party shall have the right to end the solidarity measure without delay once it has informed the competent authority of the requesting party.

Article 8
Compensation for non-market-based measures

(1) Compensation for the gas volume delivered in the context of the non-market-based measures pursuant to Article 13(8) sentence 1 of Regulation (EU) 2017/1938 shall be paid directly by the requesting party or a specified third party acting on behalf of the requesting party to the providing party and shall generally include
a. the gas price deriving from the last available spot market price on the exchange of the providing party, in the case of the existence of several exchanges in the territory of the providing party, from the arithmetic mean of the last available spot market prices on all the exchanges, for gas of the gas quality supplied by the providing party prior to the implementation of the respective non-market-based measure,

b. compensation to be paid by the providing party to affected third parties on the basis of the relevant statutory rules in the context of the implementation of the respective non-market-based measure, including if appropriate any related non-judicial and judicial procedural costs, and

c. the transport costs.

The requesting party or a specified third party acting on behalf of the requesting party only has to pay compensation pursuant to sentence 1 subparagraph c to the extent that the disadvantages remedied by this compensation are not already an explicit component of the gas price pursuant to sentence 1 subparagraph a.

(2) The determination of the amount of compensation in accordance with paragraph 1 letter b shall be made on the basis of the relevant statutory rules of the providing party. The relevant statutory rules of the providing party which are in force at the time of the conclusion of this agreement are attached as Annex. The providing party shall be obliged to inform the requesting party of any changes to this without delay.

(3) The likely costs cited in the solidarity offer for the non-market-based measures pursuant to Article 5(2) of this agreement shall not be exhaustive. The reimbursable costs pursuant to Article 13(8)(c) of Regulation (EU) 2017/1938 and Article 8(1)(b) of this agreement can be submitted with corresponding documentation following the termination of the solidarity measures without being subject to deadlines.
(4) The duty to pay compensation shall continue to exist even if, following the taking of the solidarity measures, it should transpire that the request for solidarity measures was unnecessary.

(5) If the compensation paid by the requesting party or a specified third party acting on behalf of the requesting party for non-market-based measures exceeds the actual costs of the non-market-based measures of the providing party, the providing party shall repay the surplus compensation payment to the requesting party or a specified third party acting on behalf of the requesting party within an appropriate deadline following the conclusion of all administrative and judicial or similar compensation procedures and all arbitration procedures in relation to the respective non-market-based measures. This shall not exclude the right of the providing party to make further claims pursuant to paragraph 3.

(6) This shall be without prejudice to Article 6(5) of this agreement.

Article 9
Methods of payment, invoicing and deadlines
for the compensation of non-market-based measures

(1) Payments shall be fully due within 20 calendar days following receipt of the invoice or interim invoice pursuant to paragraph 2.

(2) The providing party shall have the right to submit an interim invoice for the gas volumes provided.

(3) Payments must be made in the currency of the providing party.

(4) Following the end of the non-market-based measures, the contracting parties shall agree on the need for and the time of transmission of the final invoice.
(5) Delayed payments shall be subject to interest payments from (and including) the due date until and excluding the day of payment at the default interest rate. Here, “default interest rate” shall be the interest rate five percentage points above the base rate of the European Central Bank.

Article 10
Compliance

The contracting parties shall take all necessary measures at domestic level and shall undertake the necessary action in order to ensure compliance with their solidarity obligation with respect of the technical design of the gas systems and to ensure the implementation of this agreement.

Article 11
Means of communication

(1) Communications between the contracting parties shall primarily take place by email. If this is not available, communications shall take place by telephone. Further means of communication can be used in line with the respective situation.

(2) The contracting parties shall ensure that, if the contact details of the competent authority change, the contact details contained in the list of members of the Gas Coordination Group are updated and that the other contracting party is informed of this without delay.
Article 12
Jurisdiction clause

(1) Disputes concerning the interpretation or application of the present agreement shall, as far as possible, be settled by the competent authorities of the two contracting parties.

(2) If the dispute cannot thus be settled, each contracting party can appeal to the European Court of Justice. The decisions by the European Court of Justice shall be binding on the contracting parties.

(3) If the European Court of Justice finds that a contracting party has failed to meet its obligations deriving from this agreement or has violated the agreement, the respective contracting party shall take the necessary measures deriving from the decision of the European Court of Justice within a deadline to be determined by the European Court of Justice.

(4) Paragraphs 2 and 3 shall represent an arbitration agreement between the contracting parties within the meaning of Article 273 TFEU.

Article 13
Termination

This agreement shall be valid indefinitely. It can be terminated at any time by each contracting party in writing; it shall expire six months following receipt of the notice of termination by the other contracting party.
Article 14
Entry into force

This agreement shall enter into force on the date of signature thereof.

Done in duplicate in Danish and Swedish languages, both texts being equally authentic.

8. maj 2023

The Danish Energy Agency
For the Government of
The Kingdom of Denmark

8. maj 2023

The Swedish Energy Agency on
Behalf of the Government of
the Kingdom of Sweden