

Council Directive 2004/67/EC
of 26 April 2004
concerning measures to safeguard security of natural gas supply
(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Economic and Social Committee(2),

After consulting the Committee of the Regions,

Having regard to the opinion of the European Parliament(3),

Whereas:

(1) Natural gas (gas) is becoming an increasingly important component in Community energy supply, and, as indicated in the Green Paper "Towards a European strategy for the security of energy supply", the European Union is expected in the longer term to become increasingly dependent on gas imported from non-EU sources of supply.

(2) Following Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas(4) and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC(5), the Community gas market is being liberalised. Consequently, regarding security of supply, any difficulty having the effect of reducing gas supply could cause serious disturbances in the economic activity of the Community; for this reason, there is a growing need to ensure security of gas supply.

(3) The completion of the internal gas market necessitates a minimum common approach to security of supply, in particular through transparent and non-discriminatory security of supply policies compatible with the requirements of such a market, in order to avoid market distortions. Definition of clear roles and responsibilities of all market players is therefore crucial in safeguarding security of gas supply and the well-functioning of the internal market.

(4) Security of supply obligations imposed on companies should not impede the well functioning of the internal market and should not impose unreasonable and disproportionate burden on gas market players, including new market entrants and small market players.

(5) In view of the growing gas market in the Community, it is important that the security of gas supply is maintained, in particular as regards household customers.

(6) A large choice of instruments are available for the industry and, if appropriate, for Member States, to comply with the security of supply obligations. Bilateral agreements between Member States could be one of the means to contribute to the achievement of the minimum security of supply standards, having due regard to the Treaty and secondary legislation, in particular Article 3(2) of Directive 2003/55/EC.

(7) Indicative minimum targets for gas storage could be set either at national level or by the industry. It is understood that this should not create any additional investment obligations.

(8) Considering the importance of securing gas supply, i.e. on the basis of long-term contracts, the Commission should monitor the developments on the gas market on the basis of reports from Member States.

(9) In order to meet growing demand for gas and diversify gas supplies as a condition for a competitive internal gas market, the Community will need to mobilise significant

additional volumes of gas over the coming decades much of which will have to come from distant sources and transported over long distances.

(10) The Community has a strong common interest with gas supplying and transit countries in ensuring continued investments in gas supply infrastructure.

(11) Long-term contracts have played a very important role in securing gas supplies for Europe and will continue to do so. The current level of long term contracts is adequate on the Community level, and it is believed that such contracts will continue to make a significant contribution to overall gas supplies as companies continue to include such contracts in their overall supply portfolio.

(12) Considerable progress has been made in developing liquid trading platforms and through gas release programmes at national level. This trend is expected to continue.

(13) The establishment of genuine solidarity between Member States in major emergency supply situations is essential, even more so as Member States become increasingly interdependent regarding security of supply.

(14) The sovereign rights of Member States over their own natural resources are not affected by this Directive.

(15) A Gas Coordination Group should be established, which should facilitate coordination of security of supply measures at Community level in the event of a major supply disruption, and may also assist member States in coordinating measures taken at a national level. In addition, it should exchange information on security of gas supply on a regular basis, and should consider aspects relevant in the context of a major supply disruption.

(16) Member States should adopt and publish national emergency provisions.

(17) This Directive should provide rules applicable in the event of a major supply disruption; the foreseeable length of such a supply disruption should cover a significant period of time of at least eight weeks.

(18) Regarding the handling of a major supply disruption, this Directive should provide for a mechanism based on a three step approach. The first step would involve the reactions of the industry to the supply disruption; if this were not sufficient, Member States should take measures to solve the supply disruption. Only if the measures taken at stage one and two have failed should appropriate measures be taken at Community level.

(19) Since the objective of this Directive, namely ensuring an adequate level for the security of gas supply, in particular in the event of a major supply disruption, whilst contributing to the proper functioning of the internal gas market, cannot, in all circumstances, be sufficiently achieved by the Member States, particularly in light of the increasing interdependency of the Member States regarding security of gas supply, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Objective

This Directive establishes measures to safeguard an adequate level for the security of gas supply. These measures also contribute to the proper functioning of the internal gas market. It establishes a common framework within which Member States shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive internal gas market; clarify the general roles and responsibilities of the different market players and implement specific non-discriminatory procedures to safeguard security of gas supply.

Article 2

Definitions

For the purpose of this Directive:

1. "long-term gas supply contract" means a gas supply contract with a duration of more than 10 years;
2. "major supply disruption" shall mean a situation where the Community would risk to lose more than 20 % of its gas supply from third countries and the situation at Community level is not likely to be adequately managed with national measures.

Article 3

Policies for securing gas supply

1. In establishing their general policies with respect to ensuring adequate levels of security of gas supply, Member States shall define the roles and responsibilities of the different gas market players in achieving these policies, and specify adequate minimum security of supply standards that must be complied with by the players on the gas market of the Member State in question. The standards shall be implemented in a non-discriminatory and transparent way and shall be published.
2. Member States shall take the appropriate steps to ensure that the measures referred to in this Directive do not place an unreasonable and disproportionate burden on gas market players and are compatible with the requirements of a competitive internal gas market.
3. A non-exhaustive list of instruments for the security of gas supply is given in the Annex.

Article 4

Security of supply for specific customers

1. Member States shall ensure that supplies for household customers inside their territory are protected to an appropriate extent at least in the event of:
 - (a) a partial disruption of national gas supplies during a period to be determined by Member States taking into account national circumstances;
 - (b) extremely cold temperatures during a nationally determined peak period;
 - (c) periods of exceptionally high gas demand during the coldest weather periods statistically occurring every 20 years,These criteria are referred to in this Directive as "security of supply standards".
2. Member States may extend the scope of paragraph 1 in particular to small and medium-sized enterprises and other customers that cannot switch their gas consumption to other energy sources, including measures for the security of their national electricity system if it depends on gas supplies.
3. A non-exhaustive list in the Annex sets out examples of instruments which may be used in order to achieve the security of supply standards.
4. Member States, having due regard to the geological conditions of their territory and the economic and technical feasibility, may also take the necessary measures to ensure that gas storage facilities located within their territory contribute to an appropriate degree to achieving the security of supply standards.
5. If an adequate level of interconnection is available, Member States may take the appropriate measures in cooperation with another Member State, including bilateral agreements, to achieve the security of supply standards using gas storage facilities located within that other Member State. These measures, in particular bilateral agreements, shall not impede the proper functioning of the internal gas market.
6. Member States may set or require the industry to set indicative minimum targets for a possible future contribution of storage, either located within or outside the Member State, to security of supply. These targets shall be published.

Article 5

Reporting

1. In the report published by Member States pursuant to Article 5 of Directive 2003/55/EC, Member States shall also cover the following:

- (a) the competitive impact of the measures taken pursuant to Articles 3 and 4 on all gas market players;
- (b) the levels of storage capacity;
- (c) the extent of long-term gas supply contracts concluded by companies established and registered on their territory, and in particular their remaining duration, based on information provided by the companies concerned, but excluding commercially sensitive information, and the degree of liquidity of the gas market;
- (d) the regulatory frameworks to provide adequate incentives for new investment in exploration and production, storage, LNG and transport of gas, taking into account Article 22 of Directive 2003/55/EC as far as implemented by the Member State.

2. This information shall be considered by the Commission in the reports that it issues pursuant to Article 31 of Directive 2003/55/EC in the light of the consequences of that Directive for the Community as a whole and the overall efficient and secure operation of the internal gas market.

Article 6

Monitoring

1. The Commission shall monitor, on the basis of the reports referred to in Article 5(1):

- (a) the degree of new long-term gas supply import contracts from third countries;
- (b) the existence of adequate liquidity of gas supplies;
- (c) the level of working gas and of the withdrawal capacity of gas storage;
- (d) the level of interconnection of the national gas systems of Member States;
- (e) the foreseeable gas supply situation in function of demand, supply autonomy and available supply sources at Community level concerning specific geographic areas in the Community.

2. Where the Commission concludes that gas supplies in the Community will be insufficient to meet foreseeable gas demand in the long term, it may submit proposals in accordance with the Treaty.

3. By 19 May 2008 the Commission shall submit a review report to the European Parliament and the Council on the experience gained from the application of this Article.

Article 7

Gas Coordination Group

1. A Gas Coordination Group is hereby established in order to facilitate the coordination of security of supply measure (the Group).

2. The Group shall be composed of the representatives of Member States and representative bodies of the industry concerned and of relevant consumers, under the chairmanship of the Commission.

3. The Group shall adopt its Rules of Procedure.

Article 8

National emergency measures

1. Member States shall prepare in advance and, if appropriate, update national emergency measures and shall communicate these to the Commission. Member States shall publish their national emergency measures.

2. Member States' emergency measures shall ensure, where appropriate, that market players are given sufficient opportunity to provide an initial response to the emergency situation.

3. Subject to Article 4(1), Member States may indicate to the Chair of the Group events which they consider, because of their magnitude and exceptional character, cannot be adequately managed with national measures.

Article 9

Community mechanism

1. If an event occurs that is likely to develop into a major supply disruption for a significant period of time, or in the case of an event indicated by a Member State according to Article 8(3), the Commission shall convene the Group as soon as possible, at the request of a Member State or on its own initiative.
2. The Group shall examine, and, where appropriate, assist the Member States in coordinating the measures taken at national level to deal with the major supply disruption.
3. In carrying out its work, the Group shall take full account of:
 - (a) the measures taken by the gas industry as a first response to the major supply disruption;
 - (b) the measures taken by Member States, such as those taken pursuant to Article 4, including relevant bilateral agreements.
4. Where the measures taken at national level referred to in paragraph 3 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may, in consultation with the Group, provide guidance to Member States regarding further measures to assist those Member States particularly affected by the major supply disruption.
5. Where the measures taken at national level pursuant to paragraph 4 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may submit a proposal to the Council regarding further necessary measures.
6. Any measures at Community level referred to in this Article shall contain provisions aimed at ensuring fair and equitable compensation of the undertakings concerned by the measures to be taken.

Article 10

Monitoring of implementation

1. By 19 May 2008, the Commission shall, in the light of the manner in which Member States have implemented this Directive, report on the effectiveness of the instruments used with regard to Article 3 and 4 and their effect on the internal gas market and on the evolution of competition on the internal gas market.
2. In the light of the results of this monitoring, where appropriate, the Commission may issue recommendations or present proposals regarding further measures to enhance security of supply.

Article 11

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 May 2006. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 12

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

Article 13

This Directive is addressed to the Member States.

Done at Luxembourg, 26 April 2004.

For the Council

The President

J. Walsh

(1) OJ C 331 E, 31.12.2002, p. 262.

(2) OJ C 133, 6.6.2003, p. 16.

(3) Opinion not yet published in the Official Journal.

(4) OJ L 204, 21.7.1998, p. 1.

(5) OJ L 176, 15.7.2003, p. 57.

ANNEX

Non-exhaustive list of instruments to enhance the security of gas supply referred to in Article 3(3) and Article 4(3)

- working gas in storage capacity,
- withdrawal capacity in gas storage,
- provision of pipeline capacity enabling diversion of gas supplies to affected areas,
- liquid tradable gas markets,
- system flexibility,
- development of interruptible demand,
- use of alternative back-up fuels in industrial and power generation plants,
- cross-border capacities,
- cooperation between transmission system operators of neighbouring Member States for coordinated dispatching,
- coordinated dispatching activities between distribution and transmission system operators,
- domestic production of gas,
- production flexibility,
- import flexibility,
- diversification of sources of gas supply,
- long term contracts,
- investments in infrastructure for gas import via regasification terminals and pipelines.