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EU Winter Gas Package: The Next Phase of the Struggle to Strengthen Energy Resilience

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In February 2016, the European Commission will present the Winter Gas Package, which is a real opportunity to strengthen the security of European gas consumers. The coming months will bring intense negotiations on essential details of documents that will determine the EU's resilience to disruptions of gas supplies and influence the EU's bargaining power in relation to third countries. The EC's proposal contains several points included in Poland's 2014 energy union concept, and hence, the Polish administration should be actively involved in shaping the contents of the package.

Within the framework of the Winter Gas Package, the European Commission (EC) will publish proposals to amend two documents. These are *Regulation No 994/2010* on the security of natural gas supply (the "SoS Regulation"), and the decision on the establishment of an information exchange mechanism with regard to intergovernmental agreements in the field of energy between EU Member States and third countries (known as the "IGA Decision"). The EC will also present a non-binding strategy for liquefied natural gas (LNG) and gas storage. It is the first legislative package this year to aim at implementing the energy union assumptions, and the only one devoted so much to issues regarding natural gas.

More Security. The SoS Regulation was the first step in setting a common security framework and establishing methods of cooperation on the EU gas market. Its aims were to prevent crises caused by supply interruption or seasonal high demand, and to mitigate the potential effects of such events. Now the EC has decided to make a second step by revising the 2010 Regulation.

One of the most promising developments is the implementation of mandatory cooperation at regional level. It is a compromise solution. Currently, the actions provided for in the Regulation, namely the risk assessment, prevention plans and plans for emergency situations, are developed at national level. Such an approach on an increasingly interdependent gas market, though supported by some Member States (particularly in the North-west Europe), is neither sufficient nor effective. This was demonstrated by the EU stress tests carried out in response to the Russia-Ukraine crisis. Poland presented an alternative approach, requiring the adoption of a pan-EU perspective. Undermining the current national basis will undoubtedly meet with opposition from some Member States, and will be one of the difficult areas of negotiation. However, the Commission's regional proposal has a good chance of success.

Another very important element of the Regulation subject to revision and affecting the safety of the Member States (and the EU's neighbours) is the possibility of bi-directional gas flows via interconnectors. Today, the Regulation provides for exceptions to the obligation to establish physical reverse flows. Hence, bi-directional flows are not possible through several interconnectors critical for the entire Union, such as those on the French-German or German-Czech borders, or in the underwater pipeline between the UK and the Netherlands. The EC is aware that the proposal of mandatory reverse flows on all interconnectors, particularly without taking into account the costs of such investments, would provoke too much opposition from Member States. It therefore postulates sealing procedures for granting exemptions and assessment for the security of gas supply in the whole supply corridor. This will entail the infrastructure costs to be shared not only of the countries whose borders are crossed by the pipelines,

but of all those who will benefit from the work. As a consequence, the powers of the ACER and the EC itself will increase (following the example of *Regulation 347/2013* concerning the trans-European energy infrastructure). For the North-west European countries and companies fighting off the introduction of the duty of reverse flows, even this compromise proposal will be difficult to accept and negotiations will be necessary.

More Transparency. Ensuring greater transparency in the natural gas market in the EU could have far-reaching consequences. Today, the control mechanism for intergovernmental agreements arising from the IGA Decision is inefficient, since such agreements are sent to the EC only after their ratification. The Commission therefore intends to propose an ex ante mechanism, according to which a Member State would have to notify it of its intention to enter into an agreement, which would be reviewed by the EC before it is signed. When it comes to commercial contracts, the SoS Regulation imposes on gas companies an obligation to notify the EC of certain details of their agreements with suppliers from third countries. So far, however, such information has been transmitted to the EC in aggregate form, and has therefore been useless. Now the EC wants to tighten control over the most sensitive contracts, such as those concluded with a dominant market gas supplier (defined as one with a share of more than 40%). In practice, this would include agreements between Central and Eastern Europe countries and Russia's Gazprom. During the meeting of the European Council in March 2015, proposals to increase the powers of the EC—with regard to intergovernmental agreements and commercial contracts—aroused strong resistance from not just Western states but also some members of the Visegrad Group. It stems from a reluctance to share sensitive business data and from a fear of compromising privileged relationships between importers and suppliers, so this aspect also presages difficult negotiations.

More Effectiveness. The first EU strategy for the LNG market and gas storage facilities is an eagerly awaited proposal to amend the SoS Regulation. Gas storage and LNG facilities can play a key role in the emergency protection of the gas system in the event of a crisis, while LNG supplies alone can increase diversification and, in the future, as the EC expects, cut prices for the EU consumers. Adequate infrastructure exists already (the capacity of regasification terminals in 2014 amounted to 183.5 bcm), but only about 30% of the potential is used. Increasing the diversity of sources of supply is important above all for today's monopolized markets of Central and Eastern Europe in particular, but the EC will make attempts to ensure that every Member State has access (at least indirectly) to the supply of LNG. It also wants the EU market to generate suitable price incentives to attract suppliers and develop infrastructure, and intends to engage more strongly in dialogue with global LNG suppliers. Shared, voluntary purchases of gas could be an instrument to improve the conditions of LNG contracts, as mentioned directly in the revision of the SoS Regulation.

More Polish Involvement. The EC gas package repeats several Polish strategic propositions included in the 2014 energy union proposal. These include, among others, strengthening EU solidarity mechanisms during gas crises, increasing the transparency of gas agreements with third countries, and support for the diversification of gas supplies by exploiting the potential of the LNG market. Furthermore, although the EC does not introduce common and mandatory gas purchases, voluntary and bottom-up demand aggregation will be allowed.

There remain, however, hurdles to solutions that fulfil Polish expectations. Member States have different perceptions of gas policy priorities. In many West European countries with diversified gas markets (such as Germany, Italy and France), the risk of dependence on Russian gas either does not exist or is underestimated. The United Kingdom agrees in principle with the fact that this relationship may be an economic and political threat to the EU, but has a distinct aversion to interference in the functioning of the gas market. For countries with good business relations with Russia (Hungary, the Czech Republic and Germany) or heavily dependent on it (Bulgaria) provisions that give the EC greater powers for scanning contracts and intergovernmental agreements (although these are not that common in Western Europe) are problematic. Western countries and their corporations, less vulnerable to crises, can argue against common standards or against increasing the role of non-market measures, underlining the ability of the market itself to guarantee gas supplies in the event of a crisis. Neither is it clear how individual states would respond to a proposal for regional cooperation. For example, Germany would lose its key position as a state present in three regions, while Poland, co-opted into a group that includes the Czech Republic, Slovakia and Germany, would definitely gain with such changes.

The Commission's proposal is certainly a compromise between ambitious Polish stipulations and the reluctance of many to any changes. Therefore, in the course of further work, the Polish government should stick to the original proposals and, above all, seek allies in order to maintain advantageous provisions. In the priority issue for the Polish government, namely the transparency of intergovernmental agreements, keeping an ex ante verification will be a great success. If there is to be increased control over commercial contracts it is important not only to fight to keep the EC's proposal, but also to exclude any percentage threshold. Only insight into all contracts will allow the EC to minimize discriminatory practices in different countries, and to have a more decisive impact on any controversial provisions of these agreements.

The European Parliament had a significant impact on the current version of the SoS Regulation, and its role should not be underestimated. Therefore, the Polish government should strengthen cooperation with the EP in order to fully exploit its potential in shaping EU energy security policy.