

Agreement

concerning

Solidarity Measures to Safeguard the Security of Gas Supply

between

the Government of the Federal Republic of Germany,

the Government of the Swiss Confederation

and

the Government of the Italian Republic

The Government of the Federal Republic of Germany, the Government of the Swiss Confederation and the Government of the Italian Republic (hereinafter “the Contracting Parties”),

Noting the most important rules

- for allocating transport capacity (Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013, so-called CAM Network Code),
- the procedures for managing contractual congestion at interconnection points (Regulation (EC) No 715/2009 of the European Parliament and the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, Annex I, so-called CMP),
- the rules for balancing gas networks, including the rules for scheduling gas flows (nomination procedures),
- the harmonisation of interconnection agreements, gas quality management and data exchange solutions (Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules, so-called INT NC), including daily imbalance charges (Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks, so-called BAL NC),
- tariff structures according to cost allocation methodologies and criteria between the different entry and exit points (Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas, so-called TAR NC),
- the implementation of the transparency and non-discrimination obligations envisaged by the Third Energy Package (i.e. Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and Regulation (EC) No 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) for the gas sector,

Noting that there is no dedicated agreement between the EU and Switzerland on gas market and gas security of supply rules,

Noting Article 13 Paragraph 2 of Regulation (EU) 2017/1938 (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 994/2010, OJ L 280, 28.10.2017, p. 1, as last amended by Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 30.6.2022, p. 17, hereinafter “the Regulation”), whereby Member States shall involve, as appropriate, the third country through which they are connected,

Noting Article 6 Paragraph 7 of the Agreement between the Government of the Federal Republic of Germany and the Government of the Italian Republic concerning Solidarity measures to safeguard the security of gas supply done at Berlin on 19 March 2024, whereby Germany and Italy agree on the need to involve a relevant third Country,

Have agreed as follows:

Article 1

The Contracting Parties refer to the Agreement between the Government of the Federal Republic of Germany and the Government of the Italian Republic concerning Solidarity measures to safeguard the security of gas supply done at Berlin on 19. March 2024 (hereinafter “the Solidarity Agreement”). The Contracting Parties declare this Agreement to be an integral part of the Solidarity Agreement. This Agreement is without prejudice to the obligations of Germany and Italy under the Regulation.

Article 2

Article 3 Paragraph 2 of the Solidarity Agreement is complemented as follows: The solidarity request of any Contracting Party shall be transmitted to the Swiss Federal Office for National Economic Supply (FONES; hereinafter “the Swiss Competent Authority”). The Swiss solidarity request pursuant to the following Article 9 of this Agreement shall be transmitted to both German and Italian Competent Authorities.

Article 3

The Swiss Competent Authority and the Swiss Transmission System Operators (TSOs) are informed about all bookings and nominations at the delivery point according to Article 4 Paragraph 5 of the Solidarity Agreement and the Swiss Competent Authority informs, also by means of the Swiss TSOs, both the German and Italian Competent Authorities about any bookings and nominations related to solidarity measures. The timing of such information is to be agreed among TSOs according to Article 10 of this Agreement.

Article 4

The Competent Authorities of Germany, Switzerland and Italy notify each other about:

- the declaration of the emergency level or equivalent condition for Switzerland;
- any change or update of contact details of the Competent Authority as provided for in Article 11 Paragraph 2 of the Solidarity Agreement.

Article 5

Any Solidarity offer between Germany and Italy shall not interfere with the supply of solidarity protected customers in Switzerland. Especially transport capacities necessary for their supply shall be preserved.

Article 6

In executing Solidarity requests, the German, the Swiss and the Italian Competent Authorities shall ensure that no action will be undertaken to unduly limit the use of existing transmission capacity on their relevant gas networks, respecting the correct and transparent functioning of the infrastructures.

Article 7

Execution of solidarity measures according to Articles 4 and 5 of the Solidarity Agreement shall take into account supplies to solidarity protected customers in Switzerland. Solidarity protected customers in Switzerland shall be treated equally to the German and Italian solidarity protected customers as long as their definition remains compatible with Article 2 Paragraph 6 and Article 13 of the Regulation.

Article 8

If a solidarity offer between Germany and Italy, or vice versa, jeopardizes the security of supply of solidarity protected customers in Switzerland, the Competent Authorities of the three Contracting Parties shall meet at the request of the Swiss Competent Authority within the shortest possible timeframe in order to implement measures to ensure the supply of solidarity protected customers in Switzerland.

Article 9

Should the supply to solidarity protected customers in Switzerland no longer be ensured, Switzerland shall have the right to present a solidarity request to both Germany and Italy. Conversely, if the supply of solidarity protected customers in Germany or Italy is no longer ensured, both Germany and Italy also have the right to present a solidarity request to Switzerland. Such solidarity requests shall be treated by the Contracting Parties according to the procedures of the Solidarity Agreement; also, Switzerland shall underpin its solidarity request with documentation as laid out in the Solidarity Agreement and comply with all the procedures as laid out in the Solidarity Agreement.

Article 10

All the Contracting Parties commit to undertake all the necessary actions in order to encourage the conclusion of an agreement functional to an operational procedure among TSOs regarding the transport at the delivery points within six (6) months, in case no relevant operational procedure with this regard is already in force.

Article 11

(1) Disputes between Switzerland on the one side, and either one or both of the other Contracting Parties on the other side, concerning the interpretation or application of this Agreement shall as far as possible be settled by the Competent Authorities of the three Contracting Parties.

(2) If a dispute cannot thus be settled, either Contracting Party may request that the dispute be submitted to an arbitral tribunal for its decision.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one member, and these three members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Contracting Party has informed the other Contracting Parties that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 of this Article have not been observed, any Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of a Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the Member of the Court next in seniority who is not a national of a Contracting Party shall make the necessary appointments.

(5) The arbitral tribunal shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties and other rules and principles of international law applicable between the Contracting Parties and reach its decisions by a majority of votes. If the vote is a draw between any of the Contracting Parties, the chairman's vote carries. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representatives in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties involved. The arbitral tribunal may make a different decision concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Contracting Party. For greater certainty, in determining the consistency of a measure with this Agreement, the arbitral tribunal may consider, as appropriate, the domestic law of a Contracting Party as a matter of fact. In case of Germany and Italy, "domestic law" includes the law of the European Union.

In doing so, the arbitral tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Contracting Party and any meaning given to domestic law by the arbitral tribunal shall not be binding upon the courts or the authorities of that Contracting Party.

Article 12

The compensation is governed by the procedures defined under Articles 8 and 9 of the Solidarity Agreement. If Switzerland is the providing Contracting Party, the gas price shall be the average of the last available spot market prices on the German, Italian and French exchanges. The determination of the amount of compensation for damages to involved sectors of the economy of Switzerland as a providing Contracting Party shall be made on the basis of the relevant laws of Switzerland, as per Annex 1 of this Agreement. Switzerland can also claim costs for transporting the gas to the Swiss border for the price to be paid by Germany or Italy, as these costs are not included in the exchange price.

Article 13

According to Article 8 Paragraph 2 of the Customs Treaty between the Swiss Confederation and the Principality of Liechtenstein, done at Bern on 29 March 1923, concerning the union of the latter with the Swiss Customs Territory (Customs Union Treaty), Switzerland informs the Contracting Parties that Liechtenstein has authorized Switzerland, as notified on 21 February 2024, to conclude the present Agreement with effect to Liechtenstein as well. Therefore, the provisions of this Agreement also will apply to Liechtenstein in the same way as in Switzerland.

Article 14

(1) The Government of the Federal Republic of Germany is the depositary of this Agreement.

(2) This Agreement shall enter into force on the date on which the Governments of all the Contracting Parties have informed each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last communication is received by the Government of the Federal Republic of Germany. If the Solidarity Agreement has not entered into force at the date indicated in the previous sentence, this Agreement shall enter into force on the same date as the Solidarity Agreement.

(3) Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter, shall be initiated by the Government of the Federal Republic of Germany immediately following its entry into force. The Government of the Swiss Confederation and the Government of the Italian Republic shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat.

(4) This Agreement shall remain in force as long as the Solidarity Agreement is in force, unless denounced following the procedure provided for by Article 14 Paragraph 2 of the Solidarity Agreement.

Done at Berlin on 19 March 2024 in one original in the English language, which will be deposited in the archives of the Government of the Federal Republic of Germany; the Government of the Federal Republic of Germany will transmit a certified copy to the other Contracting Parties.

For the Government of the Federal Republic of Germany

For the Government of the Swiss Confederation

For the Government of the Italian Republic

Annex 1

Referring to Article 12 of the

Agreement

concerning

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between

the Government of the Federal Republic of Germany

and

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Excerpt from the Swiss Federal Act on National Economic Supply (National Economic Supply Act, NESAs) of 17 June 2016 (Status as of 01 July 2023):

[...] Chapter 4 Support, Compensation and Insurance

Article 38 Compensation

- (1) The Confederation may pay compensation to private and public sector undertakings for measures under Articles 5 paragraph 4 and 31-33 insofar as:
 - A. the measures need to be taken quickly; and
 - B. the undertakings do suffer substantial unreasonable loss.
- (2) The Federal Council shall decide on the conditions for compensation.

- (3) The Swiss Federal Office for National Economic Supply shall specify the compensation amount in each individual case and the requirements therefor. In particular it shall take into account the undertakings' own particular interests in the measures and the benefits that they may draw from them.