

AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

AND

THE GOVERNMENT OF THE REPUBLIC OF LATVIA

ON

SOLIDARITY MEASURES TO SAFEGUARD THE SECURITY OF GAS SUPPLY

The Government of the Republic of Lithuania and the Government of the Republic of Latvia,

having regard to Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard security of gas supply (hereinafter “the Regulation”), and particularly to Article 13 of the Regulation,

taking note of Recommendation (EU) 2018/177 of the European Commission, 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 the Regulation,

aiming 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 Requesting party has exhausted market-based and non-market-based measures set out in Requesting party’s existing emergency action plan for gas, while remaining unable to ensure supply of gas to solidarity protected customers, and solidarity is therefore provided by Providing party to the extent possible and as long as possible by

market-based measures which are intended to help the Requesting party to cover the gas amount required to supply its solidarity protected customers, 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 pursuant to Article 13 of the Regulation. The Contracting parties shall activate this Agreement as the last resort measure in an emergency in which the gas supply to solidarity protected customers cannot be achieved without assistance.
2. In case of activation of this Agreement, the Providing party shall take necessary solidarity measures in its gas system to supply the solidarity protected customers in the gas system of the Requesting party with gas.
3. The measures mentioned in paragraph 2 of this Article include, among other measures, gas supply to the gas system from an LNG terminal and gas supply from the Member State's gas security reserves of the Providing party but shall not include supply from the Member State's gas security reserves intended for:
 - a) the use of "solidarity protected customers" as defined in the Regulation.
 - b) the gas supply in accordance with Article 13 (1) subparagraph 2 of the Regulation.
4. The measures mentioned in paragraph 2 of this Article shall not apply to the use of gas from the end user's own emergency stock, which the end-user is obliged to maintain in accordance with the national Preventive Action Plan or the National Emergency Plan referred to in Article 8 of the Regulation.

Article 2

Definitions

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

a) Article 2 of the Regulation, (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard security of gas supply (OJ L 280 of 28 October 2017, pp.1-56),

b) Article 2 of 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 (OJ L 211 of 14 August 2009, pp. 36-54),

c) Article 3 of 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 (OJ L 72 of 17 March 2017, pp. 1-28),

d) Article 3 of Commission Regulation (EU) 312/2014 of 26 March 2014 establishing a network code on Gas Balancing of Transmission Networks (OJ L 91 of 27 March 2014, pp. 15-35),

e) 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

f) Article 2 of 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 (OJ L 211 of 14 August 2009, pp. 94–136).

2. Further to this, the following definitions shall apply:

a) “Requesting party” shall mean the Member State of the European Union requesting solidarity measures under this Agreement.

b) “Providing party” shall mean the Member State of the European Union or one of the parties involved in the sale-purchase process related to the Solidarity offer:

- in case of market-based measures, gas undertakings willing to curtail their gas demand to sell it to a Requesting party as well as other gas undertakings, setting the price of such gas using the tender mechanism;

- in case of non-market-based measures, the Contracting party of this Agreement implementing non-market-based measures.

c) “Solidarity request” shall mean the call by the Requesting party to the Providing party to provide solidarity.

d) “Solidarity measure” shall mean necessary measure in the gas system of the Providing party, in accordance with Article 13 of the Regulation, by 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.

e) “Solidarity offer” shall mean the composition of the market-based measures and non-market-based measures by the Providing party which can be provided to Requesting party in return for payment of compensation.

f) “Contracting party” shall mean the Member State of the European Union involved in this Agreement.

g) “Market-based measures” shall mean the calls by the Providing party to gas undertakings and in the Providing party’s own territory to take voluntary measures on the supply and demand side to secure gas amounts in return for payment of a contractually agreed price, which are to enable the Requesting party itself to cover the amount needed to supply its own solidarity protected customers with gas.

h) “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.

i) “Tender Mechanism Measure” shall mean a call from the Providing party to gas undertakings and final customers in a national market to take voluntary measures on the supply and demand side to submit to the Requesting Party, under the tendering mechanism, their price and gas amount proposals in response to the Solidarity request.

j) “The initial purchase price” shall mean a price gas amount purchased by the gas undertaking or for its own needs before the energy crisis and implementation of Solidarity mechanism measures.

k) “The most significant exchange operator” shall mean a gas exchange operator that has a market share of at least 70% of the whole exchange market in the market areas located in the region affected by an energy crisis giving grounds for a Solidarity request.

l) “Delivery point” shall mean the exit point of the national gas transmission system of the Providing party where gas amount related to a Solidarity offer has to be delivered.

m) “Emergency” or “emergency level” shall mean a crisis in line with Article 11, paragraph 1 (c) of the Regulation.

n) “Gas Coordination Group” shall mean the technical level body set up by Article 4 of the Regulation.

o) “Delivery day” shall mean the gas day within the meaning of Article 3, paragraph (16) of 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 on which the Solidarity measures are to be used.

p) “Gas” shall mean natural gas and other combustible gases transported by the gas transmission system, such as biomethane and hydrogen, if applicable.

Article 3

Solidarity request

1. The Solidarity request shall be dependent on the declaration of an emergency level pursuant to Article 11, paragraph 1 (c) of the Regulation and the assurance by the Requesting party that the preconditions of Article 13, paragraph (3) of the Regulation are met at the time of the introduction of the requested Solidarity measures.

2. The Requesting party shall transmit the Solidarity request, by means of communication media provided in Article 15 of this Agreement, to the Providing party of the directly interconnected Member State, as in the list of the Gas Coordination Group’s members. Following the transmission of the Solidarity request, in accordance with paragraph 1 of this Article, the Requesting party shall inform the European Commission about the transmission and the content of the Solidarity request immediately.

3. The Solidarity request shall include at least the following information:

- a) contact details of the Competent Authority of the Requesting party,
- b) contact details of the relevant transmission system operator of the Requesting party,
- c) period in gas days of gas supply,
- d) daily amount of gas in kWh to be supplied,
- e) delivery point,
- f) assurance pursuant to paragraph 1 of this Article,
- g) declaration as to whether the contracts offered by gas undertakings 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,

h) assurance that claims by gas undertakings deriving from the conclusion of contracts with third parties acting for the Requesting party shall be guaranteed by the Requesting party, and

- i) 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 paragraph (8) of the Regulation.

4. To the extent that the supply security situation allows, the Solidarity request for market-based measures shall be transmitted at least 20 hours before the beginning of the delivery gas day. It will only be possible to respond to Solidarity requests made at shorter notice if the emergency and the necessary preparatory periods for the gas undertakings to be able to provide a Solidarity offer allow. In this case, the Providing party shall undertake best efforts to arrange the Solidarity offer.

5. The Providing Party shall not compensate for any costs incurred by the Requesting party on delivery gas day if the Solidarity offer is submitted less than 20 hours before the beginning of delivery gas day.

6. Unless relevant Solidarity request specifies otherwise, the Solidarity request shall relate to the gas day following the gas day in which the Solidarity request was submitted. Further Solidarity requests for subsequent gas days may be submitted, considering the deadlines in paragraph 4 of this Article.

7. Following receipt of the Solidarity request, the Providing party shall without delay scrutinize 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 the first sentence of this paragraph, 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 Providing party shall confirm receipt of the Solidarity request to 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 within half an hour of the sending of the Solidarity request, it shall endeavor 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 obtain and collect Solidarity offers from gas undertakings and shall transmit them to the Requesting party.
2. If, following implementation of market-based measures by the Providing party, the Providing party has Solidarity offers from gas undertakings in the territory of the Providing party, the Requesting party shall be responsible for procuring the gas amount required by concluding contracts with Providing parties selected by it.
3. The claims of the Providing party arising from the contracts concluded in accordance with paragraph 2 of this Article shall be secured by the Requesting party. This shall not apply when the Requesting party itself is a direct debtor of these claims.

4. The Requesting party and the Providing party shall ensure that the transmission capacity necessary at the delivery point for off-take of the gas amount provided based on Solidarity offers by Providing parties is available. If the Requesting party is not able to ensure the transmission capacity, it shall inform the Providing party of this without delay, citing the reasons.

Article 5

Implementation of tender mechanism measure

1. In case the gas amount needed to supply the solidarity protected customers of the Requesting party is not achieved through the market-based measures pursuant to Article 4 of this Agreement, the Requesting party shall activate the tender mechanism measure. In the tender mechanism, the Requesting party shall make a request to the Providing party, specifying the details of the request as stated in Article 3 (3) of this Agreement to invite tenders from the gas undertakings of the Providing party to submit their proposals for the price and the gas amount they are voluntarily willing to provide to the Requesting party. The proposals for the price of the gas shall include all the costs to the gas undertaking making the proposal deriving from giving up the gas, including transmission costs, value added tax, excise duty, etc.
2. The Providing party shall without undue delay ask for the tenders and provide the acquired proposals to the Requesting party.
3. The most economically advantageous tender or tenders are chosen by Requesting party from submitted proposals.
4. The Requesting party shall inform without delay the Providing party on accepting or declining the proposals received.
5. The terms set in Article 4 (4) of this Agreement shall be applied to capacity booking, if necessary, and transmission capacities.

Article 6

Implementation of non-market-based measures

1. To the extent that the Requesting party cannot fully supply its solidarity protected customers with gas even after the implementation of market-based measures and tender-mechanism measure by the Providing party for the period of supply in gas days cited in the Solidarity request or it will not accept all the available Solidarity offers by gas undertakings 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, paragraph (1) of the Regulation and other Member States of the European Union which are connected with the Requesting party pursuant to Article 13, paragraph (2) of the Regulation via a third country which is not a member of the European Union, it can make a following Solidarity request up to 13 hours before the beginning of the delivery gas day for the gas amount which is still required; Article 3 of this Agreement shall apply *Mutatis mutandis* where applicable.

2. Where the deadline pursuant to Article 3 (4) of this Agreement was not complied with, the transmission of the Solidarity offer shall take place in the context of the necessary preparatory times for the gas undertaking. If the Providing party is not able to submit a Solidarity offer by the end of the deadline pursuant to Article 7 (1), it shall inform the Requesting party of this without delay, citing the reasons.

Article 7

Transmission of Solidarity offers

1. Following receipt of the Solidarity request, the Providing party shall transmit a Solidarity offer based on market-based measures to the Requesting party up to 15 hours before the beginning of the delivery gas day specified in the Solidarity request. Where the deadline pursuant to Article 3 (4) of this Agreement are not met, the transmission of the Solidarity offer shall take place considering all necessary preparatory times for the gas undertakings. If the Providing party is not able to submit a Solidarity offer based on market-based measures by the deadline set out in this paragraph, it shall inform the Requesting party immediately, mentioning proper justification.
2. In the case referred to in Article 6 (1) of this Agreement, the Providing party shall transmit a Solidarity offer up to 9 hours before the beginning of the delivery gas day.
3. The Solidarity offer shall include at least the following information:
 - a) contact details of the Competent Authority of the Providing party,
 - b) contact details of the relevant transmission system operator of the Providing party,
 - c) contact details of the Providing party,
 - d) daily amount of gas in kWh to be supplied,
 - e) delivery point,
 - f) period of supply,
 - g) basis of the Solidarity offer: market-based, tender mechanism measure or non-market measures,
 - h) costs of the Solidarity measures as mentioned in the Regulation, excluding cost of possible judicial proceedings,
 - i) details of the recipients of payments.
4. The amount of gas contained in the Solidarity offer shall be equal or lower than the amount of gas set out by the Requesting party in Solidarity request.
5. The amount of gas indicated in a Solidarity offer shall not exceed the technical capacity of the delivery point.

6. Following the receipt of the Solidarity offer, the Requesting party shall confirm the receipt of the Solidarity offer immediately to the competent authority of the Providing party using the contact details in the Solidarity offer.

Article 8

Acceptance of the Solidarity offer

1. The Requesting party, using the competent authority details of the Providing party in the Solidarity offer, may send the acceptance of the Solidarity offer.
2. The acceptance of the Solidarity offer based on market-based measures shall only take place up to 13 hours before the beginning of the delivery gas day. The acceptance of Solidarity offer based on non-market-based measures shall only take place up to 7 hours before the beginning of the delivery gas day. The Requesting party shall only accept Solidarity offers, pursuant to Article 7 of this Agreement within 2 hours from the receipt. Solidarity offers not accepted within this period shall expire.
3. In order to accept the Solidarity offer based on market-based measures, the Requesting party shall select one or more Solidarity offers submitted by the Providing parties through the market-based measures or the Tender mechanism measure and deliver the accepted Solidarity offer to the Providing party within the deadline. The Requesting party shall transmit the declaration of acceptance of the Requesting party immediately to Providing parties that won the tender under the Tender measure mechanism as a Providing party. When the acceptance of the Solidarity offer is received by the Providing party, an arrangement related to the negotiated amounts shall be concluded between the Requesting party and the Providing party.
4. When the declaration of acceptance of Solidarity offer based on non-market-based measures is received by the Providing party, a contract shall be concluded between the Providing and Requesting party and on the basis of which the Providing party is obliged to undertake administrative measures to ensure that the offered amount of gas is available and transported to the selected delivery point.

5. Accepting the Solidarity offer, the Requesting party shall commit to fulfilling the compensation obligations pursuant to Article 13, paragraph (8) and (10) of the Regulation as laid down in accordance with Articles 12 and 13 of this Agreement.

Article 9

Transmission and withdrawal of the gas volume in accordance with the Solidarity offer

1. In case of an accepted Solidarity offer, all necessary transmission capacity at the chosen delivery point is assumed as firm.
2. The precise designation of the delivery point shall derive from the current transmission capacity map of the European Network of Transmission System Operators for Gas, in which the entry-exit points of the transmission system are determined.
3. The Requesting party shall ensure that the transmission capacity necessary for withdrawal at the delivery point is available and the amount of gas provided at the agreed delivery points by Providing party or Providing party is physically transported.

Article 10

Conclusion of the Solidarity measures

1. The obligation of the Providing party to apply Solidarity measure shall end when:
 - a) the European Commission finds, after a verification procedure in accordance with Article 11, paragraph (8), subparagraph 1 of the Regulation, 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
 - c) the Member State acting as Providing party in a Solidarity offer can no longer supply all of its own solidarity protected customers and certain critical gas-fired power plants, in accordance with Article 13 (1) subparagraph 2 of the Regulation.

2. In the cases of subparagraphs (1) (a) and (b) of this Article, the Solidarity measure shall conclude at the end of the relevant gas day for which a Solidarity request was submitted in accordance with Article 3 of this Agreement. In the case of subparagraph (1) (c) of this Article, the Providing party shall have the right to end the solidarity measure immediately once it has informed the Requesting party.

Article 11

Accepting the proposal of the tender

In case the amount of the proposals received from the Providing party or other Member State under the tender mechanism is limited so that the requested gas amount will not be acquired in full or the compensation for the gas amount in proposals submitted by the gas undertakings in the market-based measures and the tender mechanism measures is seen as manifestly unreasonable, the Requesting party has the right to refuse Solidarity offers of market-based measures and Solidarity offers under the tender mechanism, and call for the non-market-based measures. If the Requesting party declines the tender mechanism outcome and calls for the non-market-based measures, the proposals received through the tender mechanism shall become void.

Article 12

Compensation for non-market-based measures

1. Compensation for the gas amount delivered in the context of the non-market-based measures pursuant to Article 13, paragraph (8) of the Regulation shall be paid directly by the Requesting party to the Providing party and shall cover a full compensation (including taxes) to the Providing party, including at least:

a) Gas price deriving from arithmetic average of day-ahead price (settlement price)

of the most significant exchange operator in previous 10 days, or the initial purchase price of the gas if it is higher than the beforementioned average exchange price.

b) Transmission costs.

c) Storage costs, if applicable.

d) Liquefied natural gas terminal costs and regasification costs, if applicable.

e) Full compensation for additional costs and losses of justified future revenue for the interruption of gas supply 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, if such compensation is not already included in subparagraphs a and g of this paragraph.

f) Compensation and reimbursement for justified damages to the providing Member State's infrastructure affected by reductions in supply, including technical damages to infrastructure such as gas storage facilities and liquefied natural gas terminals caused by an extraordinary utilization.

g) Reimbursement of the direct losses of justified future revenue of the Providing party in case the gas was derived from a storage facility or a liquefied natural gas facility if such losses are not already included in subparagraph a of this paragraph.

2. The possible costs cited in the Solidarity offer for the non-market-based measures pursuant to paragraph 1 of this Article shall not be exhaustive. The reimbursable costs pursuant to Article 13, paragraph (8) (c) of the Regulation can be submitted with corresponding documentation following the termination of the solidarity measures without being subject to deadlines.

3. 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 or this agreement has been terminated in accordance with Article 19.

Article 13

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

1. For non-market-based measures, payments shall be fully undertaken within 30 calendar days following receipt of the invoice.

2. In the case of non-market-based measures, the Providing party shall have the right to submit an interim invoice for the amounts of gas provided.

3. Following the end of the Solidarity measures, the Contracting parties shall agree on the need for and the time of transmission of the final invoice.

4. Delayed payments for non-market-based measures shall be subject to interest payments from (and including) the payment date, pursuant to paragraph 2 of this Article, 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 14

Cooperation and compliance

The Contracting parties shall take all necessary measures at national level and shall undertake the necessary actions to ensure compliance with their solidarity obligation and to ensure the implementation of this Agreement.

Article 15

Means of communication

1. Communications between the Contracting parties shall primarily take place by email. If this option is not available, communications shall take place by telephone. Further means of communication may be used in line with the respective situation.
2. The Contracting parties shall ensure that, if the relevant contact details of this Agreement 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 immediately.

Article 16

Roles and contact details of authorities

The Contracting parties shall settle the roles and contact details of authorities responsible for the communication and implementation of the solidarity measure and competent authorities for disputes bilaterally between the ministries responsible for energy issues. The roles shall be renewed according to need and distributed between the Contracting parties.

Article 17

Jurisdiction clause

1. Disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the responsible authorities of Contracting parties set according to Article 16 of this Agreement.
2. If the dispute cannot thus be settled in accordance with paragraph 1 of this Article, each Contracting party can appeal to the Court of Justice of the European Union. The decisions by the Court of Justice of the European Union shall be binding on the Contracting parties.
3. If the Court of Justice of the European Union 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 Court of Justice of the European Union.
4. Paragraphs 2 and 3 of this Article shall represent an arbitration agreement between the Contracting parties within the meaning of Article 273 of Treaty on the Functioning of the European Union.

Article 18

Entry into force

The Contracting parties shall notify each other through diplomatic channels of the completion of the national procedures necessary for the entry into force of this Agreement. Without prejudice to the obligations imposed by Article 13 (14) of the Regulation, this Agreement shall enter into force on the thirtieth day following the receipt of the later notification.

Article 19

Termination

This Agreement shall be valid indefinitely. Each Contracting party can terminate it at any time by giving a written notification to the other through diplomatic channels. This Agreement shall terminate six months after the date of the receipt of such notification.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Vilnius and Riga, 2022 in duplicate, in the Lithuanian, Latvian and English languages, all texts being equally authentic. In case of divergence of interpretation, of this Agreement the English text shall prevail.

For the Government of
the Republic of Lithuania



Signature

Date 2022.03.10

For the Government of
the Republic of Latvia



Signature

Date 2022.03.10