



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

**Brussels, 24 June 2022
(OR. en)**

2022/0090 (COD)

PE-CONS 24/22

**ENER 221
ENV 496
CLIMA 232
IND 192
RECH 294
COMPET 390
ECOFIN 494
CODEC 771**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Regulations (EU) 2017/1938 and (EC) No 715/2009
with regard to gas storage

REGULATION (EU) 2022/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Regulations (EU) 2017/1938 and (EC) No 715/2009
with regard to gas storage

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ Opinion of 18 May 2022 (not yet published in the Official Journal).

² Position of the European Parliament of 23 June 2022 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) While short-term gas supply disruptions have occurred in the past, there are several factors which distinguish the situation in 2022 from previous security of gas supply crises. The escalation of the Russian military aggression against Ukraine since February 2022 has led to unprecedented price increases. Those price increases are likely to fundamentally change the incentives to fill underground gas storage facilities in the Union. In the current geopolitical situation, further disruptions of gas supplies cannot be excluded. Such supply disruptions could severely harm citizens and the economy of the Union because the Union is still, to a significant extent, dependent on external gas supplies, which can be affected by the conflict.

- (2) The nature and consequences of recent events are large-scale and Union-wide and therefore require a comprehensive Union response. That response should prioritise measures that can reinforce the security of gas supply at Union level, in particular gas supplies to protected customers. Energy savings and energy efficiency are key contributors to that objective. It is therefore crucial that the Union acts in a coordinated manner to avoid potential risks resulting from possible gas supply disruptions, without prejudice to Member States' right to choose between different energy sources and the general structure of their energy supply in accordance with Article 194 of the Treaty on the Functioning of the European Union (TFEU).
- (3) Underground gas storage facilities contribute to the security of gas supply and well-filled underground gas storage facilities lead to the security of gas supply by providing additional gas in the event of high demand or supply disruptions. Since supply disruptions of pipeline gas can occur at any time, measures regarding the filling level of Union underground gas storage facilities should be introduced to safeguard the security of gas supply for the winter of 2022 - 2023.

- (4) Regulation (EU) 2017/1938 of the European Parliament and of the Council¹ introduced a solidarity mechanism as an instrument to mitigate the effects of a severe emergency within the Union in which gas supply to solidarity protected customers, as an essential security need and a necessary priority is at stake in a Member State. In the event of a Union emergency, an immediate response ensures that Member States are able to provide enhanced protection to customers.
- (5) The impact of the Russian military aggression against Ukraine has shown that the existing security of supply rules are not adapted to sudden major changes in the geopolitical situation, in which supply shortages and price peaks can result not only from the failure of infrastructure or extreme weather conditions but also from intentional major events and from longer-lasting or sudden supply disruptions. It is therefore necessary to address the sudden greatly increased risks resulting from the current changes in the geopolitical situation, including by diversifying the Union's energy supplies.

¹ 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).

- (6) Based on the Commission's analysis of, *inter alia*, the adequacy of measures to secure gas supply and the Union-wide reinforced risk preparedness analysis carried out in February 2022 by the Commission and the Gas Coordination Group (the "GCG") established by Regulation (EU) 2017/1938, each Member State should, in principle, ensure that the underground gas storage facilities that are located on its territory and directly interconnected to a market area of that Member State are filled to at least 90 % of their capacity at Member State level by 1 November of each year (filling target), with a series of intermediate targets for each Member State in May, July, September and February (filling trajectory) of the year thereafter. Some Member States that have significant underground storage capacity would be disproportionately affected by the obligation to meet the filling target for the underground gas storage facilities on their territory. In order to reflect that situation, the obligation to fill their underground gas storage facilities should be reduced to 35 % of their average annual gas consumption over the preceding five years. This should be without prejudice to the obligation of other Member States to contribute to the filling of the underground gas storage facilities concerned. Member States should be able to decide, subject to conditions, to partially meet the filling target by counting liquefied natural gas (LNG) stocks stored in LNG facilities. The filling targets are necessary to ensure that consumers in the Union are adequately protected against gas supply shortages. For 2022, a lower filling target of 80 % and a reduced number of intermediate targets should apply, taking into account the fact that this Regulation is to enter into force after the start of the storage filling season and that Member States will have limited time to implement it.

- (7) When filling their storage facilities, Member States should aim to diversify their gas suppliers with a view to reducing their dependence where that may endanger the security of energy supply or the essential security interests of the Union or of the Member States.
- (8) Each year from 2023, gas storage should be specifically monitored from February to avoid the sudden withdrawal of gas from underground gas storage facilities in the middle of winter, which could cause security of supply challenges before the end of winter. The filling trajectories should enable continuous monitoring throughout the storage filling season.
- (9) Each year from 2023, each Member State with underground gas storage facilities should submit to the Commission a draft filling trajectory for such facilities on its territory and directly interconnected to its market area in an aggregated form. Taking into account the assessment of the GCG, the Commission should take a decision setting the filling trajectory for each Member State in a manner that does not unduly distort the competitive position of underground gas storage facilities in that Member State in comparison with such facilities located in neighbouring Member States.

- (10) In order to set the filling trajectory for each Member State with underground gas storage facilities from 2023 based on the draft filling trajectory submitted by each such Member State, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (11) The filling trajectory for each Member State with underground gas storage facilities should comprise a series of intermediate targets and should be based on the average filling rate for that Member State during the preceding five years. For Member States for which the filling target is reduced to 35 % of their average annual gas consumption, the intermediate targets of the filling trajectory should be reduced accordingly.
- (12) Where a Member State cannot meet the filling target on time due to technical issues such as problems related to the pipelines feeding the underground gas storage facilities or with injection facilities, the Member State should be allowed to meet the filling target at a later stage. However, each filling target should be met as soon as technically possible, and in any event no later than 1 December of the year concerned, in order to safeguard the security of gas supply for the winter period.

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (13) It is possible that a Member State cannot meet the filling target or an intermediate target due to a regional or Union emergency, such as where the gas supply is insufficient as referred to in Article 11(1), point (c), of Regulation (EU) 2017/1938, which the Commission has declared at the request of one or more Member States, as the case may be, which have declared a national emergency within the meaning of that Regulation. Therefore, the filling targets, including the burden-sharing target, should not apply where, and for as long as, the Commission has declared a regional or Union emergency pursuant to Article 12 of that Regulation.
- (14) To ensure that there is no deviation from the filling trajectories, the competent authorities should continuously monitor the filling levels of the underground gas storage facilities. The filling trajectories should be subject to a margin of five percentage points. Where the filling level of a Member State is more than five percentage points below the level of its filling trajectory, the competent authority should immediately take effective measures to increase it. Member States should inform the Commission and the GCG of such measures.

- (15) Any substantial and sustained deviation by a Member State from its filling trajectory can jeopardise adequate filling levels and the filling target, which are necessary to safeguard the security of gas supply in the Union in a spirit of solidarity. In the event of such a substantial and sustained deviation from the filling trajectory or of a deviation from the filling target, the Commission should be empowered to take effective measures to avoid security of gas supply problems resulting from unfilled storage facilities. When deciding upon such effective measures, the Commission should take into account the specific situation of the Member State concerned, such as the size of the underground gas storage facilities in relation to domestic gas consumption, the importance of the underground gas storage facilities for security of gas supply in the region and any existing LNG storage facilities. As this Regulation is to enter into force after the start of the storage filling season in 2022, any measures taken by the Commission to address deviations from the filling trajectory for 2022 should take into account the limited time available for the implementation of this Regulation at national level. The Commission should ensure that the measures do not go beyond what is necessary to safeguard the security of gas supply, without putting a disproportionate burden on Member States, gas market participants, storage system operators or consumers.

- (16) Member States should take all necessary measures to ensure that the filling targets are met. In so doing, they should aim to use market-based measures as a first recourse, where possible, so as to avoid unnecessary market disruption. Member States should be free to set a higher filling target, so that the Union could strive to reach collectively the filling of 85 % of the capacity of the underground gas storage facilities in the Union for 2022. Given the various regulatory regimes already in place in many Member States to support the filling of storage facilities, no specific instrument to meet the filling trajectories or the filling target should be imposed. Member States should remain free to decide which instrument is most appropriate for their national systems, provided that certain conditions are met. Member States or competent regulatory authorities should therefore have the possibility to determine which market participants are to be required to ensure the filling of the underground gas storage facilities. They should also be able to decide whether regulatory means, such as measures to oblige capacity holders to free up unused capacity, which are possible under existing Union market rules are sufficient to ensure that the filling targets are met, or whether financial incentives or storage tariff rebates are necessary. If a Member State imposes an obligation on suppliers of gas to protected customers on its territory to store gas in underground gas storage facilities, the amount of gas to be stored should be determined on the basis of the amount of natural gas supplied to those protected customers. Member States should coordinate with each other and use instruments such as platforms for the purchase of LNG in order to maximise the utilisation of LNG to fill storage facilities. In addition, Member States should reduce infrastructure and regulatory barriers to the shared use of LNG to fill storage facilities.

- (17) The Commission communication of 8 March 2022 entitled ‘REPowerEU: Joint European Action for more affordable, secure and sustainable energy’ clarified that Union law allows Member States to provide aid to gas suppliers under Article 107(3), point (c) TFEU in order to ensure the filling of storage facilities, for example in the form of guarantees (two-way contract for difference).
- (18) Any measure taken by Member States to ensure the filling of underground gas storage facilities, including the conditions to be imposed on filling based on burden-sharing and the conditions to be imposed on withdrawal of gas from underground gas storage facilities, should be necessary, clearly defined, transparent, proportionate, non-discriminatory and verifiable, and should not unduly distort competition or the proper functioning of the internal market in gas or endanger the security of gas supply of other Member States or of the Union. In particular, such measures should not lead to the strengthening of a dominant position, or to windfall gains for undertakings that control underground gas storage facilities or that have booked but have not used, storage capacity.

- (19) The efficient use of the existing infrastructure, including cross-border transmission capacities, underground gas storage facilities and LNG facilities, is important to safeguard the security of gas supply in a spirit of solidarity. Open energy borders are key for the security of gas supply, including in times of gas supply disruptions at national, regional or Union level. Therefore, measures taken to ensure the filling of underground gas storage facilities should not block or restrict cross-border capacities allocated in accordance with Commission Regulation (EU) 2017/459¹. In addition, Member States should ensure that storage remains available, including to neighbouring Member States and where an emergency as referred to in Article 11(1), point (c), of Regulation (EU) 2017/1938 is declared.

¹ 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, 17.3.2017, p. 1).

- (20) The storage obligation is likely to impose a financial burden on the relevant market participants in those Member States which have relevant underground gas storage facilities on their territory, while the increase in the level of security of gas supply is intended to benefit all Member States, including those that do not have underground gas storage facilities. To share the burden of ensuring that underground gas storage facilities in the Union are sufficiently filled to safeguard the security of gas supply, in a spirit of solidarity, Member States without underground gas storage facilities should use underground gas storage facilities in other Member States. In the event that a Member State has no interconnection with other Member States or if a Member State's limited cross-border transmission capacity or other technical reasons make it impossible to use underground gas storage facilities in other Member States, that obligation should be reduced accordingly.

- (21) Member States without underground gas storage facilities should ensure that market participants within such Member States have in place arrangements in Member States that have such facilities that provide for the use, by 1 November, of storage volumes corresponding to at least 15 % of their average annual gas consumption over the preceding five years. However, Member States without underground gas storage facilities should also be able to develop an alternative burden-sharing mechanism with one or more Member States that have underground gas storage facilities. Also other existing equivalent measures to safeguard the security of gas supply should be taken into account when considering the burden-sharing mechanism, such as an equivalent obligation with regard to fuels other than natural gas, including oil, subject to certain conditions. Member States should notify such alternative burden-sharing mechanisms to the Commission and demonstrate the technical limitations, and the equivalence of the measures taken.
- (22) It is possible that the measures by which Member States without underground gas storage facilities share the burden of the storage obligation with Member States that have underground gas storage facilities have, in turn, a financial impact on the relevant market participants. Member States without underground gas storage facilities should therefore be allowed to provide financial incentives or compensation to market participants for the shortfall in revenues or for the costs of obligations imposed on them which cannot be covered by revenue. If such measures are financed through a levy, that levy should not be applied to cross-border interconnection points.

- (23) Effective monitoring and reporting is essential for the assessment of the nature and extent of the risks related to security of gas supply as well as for the choice of the appropriate measures to counter such risks. Operators of underground gas storage facilities should report filling levels to the competent authorities on a monthly basis during the storage filling season. Owners and operators of underground gas storage facilities are encouraged to enter the capacity and the filling level for each underground gas storage facility regularly on a central reporting platform.
- (24) The competent authorities play a significant role in monitoring the security of gas supply and ensure balance between the security of gas supply and the cost for consumers arising from the measures. The competent authority of each Member State or another entity designated by the Member State should monitor the filling levels of the underground gas storage facilities on their territory and report the results to the Commission. It should also be possible for the Commission, where appropriate, to invite the European Union Agency for the Cooperation of Energy Regulators (ACER) to assist with monitoring.

- (25) It is vital that the risk assessments carried out pursuant to Article 7 of Regulation (EU) 2017/1938 take into account all risks which could severely affect the security of gas supply. For that purpose, the risk-based approach to assessing the security of gas supply and the establishment of preventive and mitigating measures should also take into account scenarios in which there is a total disruption of a single supply source. To ensure maximum preparedness in order to avoid a disruption of gas supply and to mitigate the effects of such a disruption, the common risk assessment and the national risk assessments should be carried out by taking into account such scenarios. This would enable the coordination of measures to mitigate the effects of an emergency and the optimisation of resources to guarantee a continued supply, in the event of a total disruption of supply.
- (26) The role of the GCG should be reinforced, with an explicit mandate to monitor Member States' performance and to develop best practices, with regard to the security of gas supply. The Commission should therefore regularly report to the GCG and the GCG should assist the Commission in monitoring the filling targets and in ensuring that they are met.

- (27) The GCG acts as a key adviser to the Commission to facilitate the coordination of security of supply measures, assisting the Commission at all times and, more specifically, in the event of a crisis. As necessary, in order to ensure maximum preparedness and to facilitate the quick exchange of information, the Commission will convene, without delay, the crisis management formation of the GCG, in anticipation of a possible crisis. The GCG crisis management formation should be available to assist the Commission for as long as necessary. To that end, the GCG should maintain channels of communication with Member States and all relevant market participants in the security of gas supply and collect information relevant to the security of gas supply at national, regional and Union level.

- (28) The storage system sector is of high importance to the Union, the security of its energy supplies and other essential security interests of the Union. Accordingly, underground gas storage facilities are considered to be critical infrastructure within the meaning of Council Directive 2008/114/EC¹. The Member States are encouraged to take into account the measures introduced by this Regulation in their national energy and climate plans and in the progress reports adopted pursuant to Regulation (EU) 2018/1999 of the European Parliament and of the Council².

¹ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

² Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

- (29) Additional safeguards are necessary in the storage system network to avoid threats to public order and public security in the Union or to the welfare of Union citizens. Member States should ensure that each storage system operator, including storage system operators that are controlled by transmission system operators, is certified by the national regulatory authority or by another competent authority designated by the Member State, in order to ensure that the security of energy supply or any other essential security interest in the Union or any Member State is not endangered by the influence over the storage system operator. For the analysis of possible security of energy supply risks, coordination between Member States in carrying out the security of supply assessment is important. That assessment should not discriminate between market participants but should fully comply with the principles of a well-functioning internal market. In order to quickly alleviate the risk resulting from low filling levels, that certification should be prioritised and carried out faster for larger underground storage facilities which have recently been filled at consistently low levels, so as to ensure that potential security of gas supply problems resulting from control over such large storage facilities can be excluded or, if possible, rectified. Considering the average filling level of the preceding six years of all Union underground storage facilities on 31 March being 35 % of their maximum capacity, the threshold for the definition of an unusually low filling level in March 2021 and March 2022 should be set at 30 %.

- (30) National regulatory authorities or another competent authority designated by the Member States concerned (in either case, "certifying authority") should refuse certification where they conclude that a person who directly or indirectly controls or exercises any right over the storage system operator could endanger the security of energy supply or any other essential security interest at national, regional or Union level. In making that assessment, the certifying authority should take into account commercial relationships that could negatively affect the incentives and ability of the storage system operator to fill the underground gas storage facility, as well as the international obligations of the Union and any other specific facts and circumstances of the case. To ensure the consistent application of certification rules across the Union, the observance of the international obligations of the Union and solidarity and energy security within the Union, the certifying authority should take the utmost account of the Commission's opinion when it takes decisions on certification, including by revising its draft decision, where appropriate. Where a certifying authority refuses certification, it should have the power to require any person to dispose of the shareholding or rights they have over the storage system owner or storage system operator and to set a time limit for such disposal, to order any other appropriate measure to ensure that that person is not able to exercise any control or right over that storage system owner or storage system operator, and to decide on appropriate compensatory measures. Any measure taken in the certification decision to address security of gas supply risks or other essential security interests should be necessary, clearly defined, transparent, proportionate and non-discriminatory.

- (31) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’). In particular, it respects the right not to be deprived of one’s possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss as provided for in Article 17 of the Charter and the right to an effective judicial remedy and to a fair trial as provided for in Article 47 of the Charter.
- (32) If undertakings are due to purchase more gas when the price of gas is high, this could further drive up prices. Therefore regulatory authorities should be able to apply a discount of up to 100 % to entry and exit tariffs for transmission and distribution capacity to and from storage, to both underground gas storage facilities and LNG facilities, making storage more attractive for market participants. National regulatory authorities and competition authorities are also encouraged to use their powers to effectively exclude undue increases of storage tariffs.

- (33) In view of the current exceptional circumstances and the uncertainties related to future changes in the geopolitical situation, Member States are encouraged to meet the filling targets as quickly as possible.
- (34) Considering the imminent danger for the security of gas supply brought about by the Russian military aggression against Ukraine, this Regulation should enter into force on the day after its publication. Due to the exceptional nature of the current circumstances, certain provisions introduced by this Regulation should apply only until 31 December 2025.
- (35) This Regulation should, as a matter of urgency, become part of the Energy Community *acquis* in accordance with the Energy Community Treaty, which was signed in Athens on 25 October 2005 and entered into force on 1 July 2006.
- (36) Regulation (EU) 2017/1938 and Regulation (EC) No 715/2009 of the European Parliament and of the Council¹ should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹ 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 14.8.2009, p. 36).

Article 1
Amendments to Regulation (EU) 2017/1938

Regulation (EU) 2017/1938 is amended as follows:

(1) in Article 2, the following points are added:

- “(27) ‘filling trajectory’ means a series of intermediate targets for the underground gas storage facilities of each Member State, as listed in Annex Ia for 2022 and, for the following years, set in accordance with Article 6a;
- (28) ‘filling target’ means a binding target for the filling level of the aggregated capacity of the underground gas storage facilities;
- (29) ‘strategic storage’ means underground storage or part of underground storage of non-liquefied natural gas which is purchased, managed and stored by transmission systems operators, an entity designated by the Member States or an undertaking, and which may be released only after prior notification or public authority authorisation for release, and is generally released in the case of:
- (a) major supply scarcity;
 - (b) a supply disruption; or
 - (c) the declaration of an emergency as referred to in Article 11(1), point (c);

- (30) ‘balancing stock’ means non-liquefied natural gas which is:
- (a) purchased, managed and stored underground by transmission system operators or by an entity designated by the Member State, for the sole purposes of carrying out the functions of transmission system operators and of the security of gas supply; and
 - (b) dispatched only where required to keep the system in operation under secure and reliable conditions in accordance with Article 13 of Directive 2009/73/EC and with Articles 8 and 9 of Regulation (EU) No 312/2014;
- (31) ‘underground gas storage facility’ means a storage facility as defined in Article 2, point (9), of Directive 2009/73/EC that is used for the stocking of natural gas, including balancing stock, and that is connected to a transmission or distribution system, excluding above-ground spherical or linepack storage.”.

(2) the following articles are inserted:

‘Article 6a

Filling targets and filling trajectories

1. Subject to paragraphs 2 to 5, Member States shall meet the following filling targets for the aggregated capacity of all underground gas storage facilities that are located on their territory and directly interconnected to a market area in their territory and for storage facilities listed in Annex Ib by 1 November each year:

(a) for 2022: 80 %;

(b) from 2023: 90 %.

For the purpose of complying with this paragraph, Member States shall take into account the objective of safeguarding the security of gas supply in the Union in accordance with Article 1.

2. Notwithstanding paragraph 1 and without prejudice to the obligations of other Member States to fill the underground gas storage facilities concerned, the filling target for each Member State in which the underground gas storage facilities are located shall be reduced to a volume corresponding to 35 % of the average annual gas consumption over the preceding five years for that Member State.
3. Notwithstanding paragraph 1 and without prejudice to the obligations of other Member States to fill the underground gas storage facilities concerned, the filling target for each Member State in which the underground gas storage facilities are located shall be reduced by the volume which was supplied to third countries during the reference period 2016 to 2021 if the average volume supplied was more than 15 TWh per year during the gas storage withdrawal period (October – April).
4. For the underground gas storage facilities listed in Annex Ib, the filling targets pursuant to paragraph 1 and the filling trajectories pursuant to paragraph 7 shall apply. The details of the obligations of each Member State will be determined in a bilateral agreement in accordance with Annex Ib.

5. A Member State may partially meet the filling target by counting the LNG physically stored and available in its LNG facilities if both of the following conditions are met:
- (a) the gas system includes significant capacity of LNG storage, accounting annually for more than 4 % of the average national consumption over the preceding five years;
 - (b) the Member State has imposed an obligation on gas suppliers to store minimum volumes of gas in underground gas storage facilities and/or LNG facilities in accordance with Article 6b(1), point (a).
6. Member States shall take the necessary measures to meet the intermediate targets or to ensure that they are met as follows:
- (a) for 2022: as set out in Annex Ia; and
 - (b) from 2023: in accordance with paragraph 7.

7. For 2023 and the following years, each Member State with underground gas storage facilities shall submit to the Commission, by 15 September of the previous year, a draft filling trajectory with intermediary targets for February, May, July and September, including technical information, for the underground gas storage facilities on its territory and directly interconnected to its market area in an aggregated form. The filling trajectory and the intermediate targets shall be based on the average filling rate during the preceding five years.

For Member States for which the filling target is reduced to 35 % of their average annual gas consumption pursuant to paragraph 2, the intermediate targets of the filling trajectory shall be reduced accordingly.

Based on the technical information provided by each Member State and taking into account the assessment of the GCG, the Commission shall adopt implementing acts setting the filling trajectory for each Member State. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18a(2). They shall be adopted by 15 November of the preceding year, where necessary and including where a Member State has submitted an updated draft filling trajectory. They shall be based on an assessment of the general security of gas supply situation and the development of gas demand and supply in the Union and individual Member States, and set in a manner that safeguards the security of gas supply, while avoiding unnecessary burdens on Member States, gas market participants, storage system operators or customers and not unduly distorting competition between storage facilities located in neighbouring Member States.

8. Where, in any given year, a Member State is not able to meet its filling target by 1 November due to the specific technical characteristics of one or more underground gas storage facilities within its territory, such as exceptionally low injection rates, it shall be allowed to meet it by 1 December. The Member State shall inform the Commission by 1 November, providing reasons for the delay.
9. The filling target shall not apply where and for as long as the Commission has declared a regional or Union emergency pursuant to Article 12 at the request, as the case may be, of one or more Member States that have declared a national emergency.
10. The competent authority of each Member State shall continuously monitor compliance with the filling trajectory and shall report regularly to the GCG. If the filling level of a given Member State is more than five percentage points below the level of the filling trajectory, the competent authority shall, without delay, take effective measures to increase it. Member States shall inform the Commission and the GCG of the measures taken.

11. In the event of a substantial and sustained deviation by a Member State from the filling trajectory, which compromises the meeting of the filling target or in the event of a deviation from the filling target, the Commission shall, after consulting the GCG and the Member States concerned, issue a recommendation to that Member State or to the other Member States concerned regarding measures to be taken immediately.

Where the deviation is not significantly reduced within one month of receipt of the Commission's recommendation, the Commission shall, after consulting the GCG and the Member State concerned, take a decision as a measure of last resort to require the Member State concerned to take measures that effectively remedy the deviation, including, where appropriate, one or more of the measures provided for in Article 6b(1), or any other measure to ensure that the filling target pursuant to this Article is met.

In deciding which measures to take pursuant to the second subparagraph, the Commission shall take into account the specific situation of the Member States concerned, such as the size of the underground gas storage facilities in relation to the domestic gas consumption, the importance of the underground gas storage facilities for the security of gas supply in the region and any existing LNG storage facilities.

Any measures taken by the Commission to address deviations from the filling trajectory or the filling target for 2022 shall take into account the short timeframe for the implementation of this Article at national level, which may have contributed to the deviation from the filling trajectory or the filling target for 2022.

The Commission shall ensure that the measures taken pursuant to this paragraph do not:

- (a) go beyond what is necessary to safeguard the security of gas supply;
- (b) place a disproportionate burden on Member States, gas market participants, storage system operators or customers.

Article 6b

Implementation of filling targets

1. Member States shall take all necessary measures, including providing for financial incentives or compensation to market participants, to meet the filling targets set pursuant to Article 6a. When ensuring that the filling targets are met, Member States shall prioritise, where possible, market-based measures.

To the extent that any of the measures provided for in this Article are duties and powers of the national regulatory authority pursuant to Article 41 of Directive 2009/73/EC, the national regulatory authorities shall be responsible for taking those measures.

Measures taken pursuant to this paragraph may, in particular, include:

- (a) requiring gas suppliers to store minimum volumes of gas in storage facilities, including in underground gas storage facilities and/or in LNG storage facilities, those volumes to be determined on the basis of the amount of gas supplied by gas suppliers to protected customers;

- (b) requiring storage system operators to tender their capacities to market participants;
- (c) requiring transmission system operators or entities designated by the Member State to purchase and manage balancing stock exclusively for carrying out their functions as transmission system operators and, where necessary, imposing an obligation on other designated entities for the purpose of safeguarding the security of gas supply in the case of an emergency as referred to in Article 11(1), point (c);
- (d) using coordinated instruments, such as platforms for the purchase of LNG, with other Member States to maximise the utilisation of LNG and to reduce infrastructure and regulatory barriers to the shared use of LNG to fill underground gas storage facilities;

- (e) using voluntary mechanisms for the joint procurement of natural gas, regarding the application of which the Commission may, if necessary, issue guidance by 1 August 2022;
- (f) providing financial incentives for market participants, including for storage system operators, such as contracts for difference, or providing compensation to market participants for the shortfall in revenues or for costs incurred by them as a result of obligations on market participants, including storage system operators which cannot be covered by revenue;
- (g) requiring storage capacity holders to use or release unused booked capacities, while still obliging the storage capacity holder not using the storage capacity to pay the agreed price for the whole term of the storage contract;
- (h) adopting effective instruments for the purchase and management of strategic storage by public or private entities, provided that such instruments do not distort competition or the proper functioning of the internal market;

- (i) appointing a dedicated entity tasked with meeting the filling target in the event that the filling target would not otherwise be met;
 - (j) providing discounts on storage tariffs;
 - (k) collecting the revenues needed to recover the capital and operational expenditures related to regulated storage facilities as storage tariffs and as a dedicated charge incorporated into transmission tariffs collected only from exit points to final customers located within the same Member States, provided that revenues collected through tariffs are not larger than the allowed revenues.
2. The measures taken by the Member States pursuant to paragraph 1 shall be limited to what is necessary to meet the filling trajectories and filling targets. They shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable. They shall not unduly distort competition or the proper functioning of the internal market in gas or endanger the security of gas supply of other Member States or of the Union.

3. Member States shall take all necessary measures to ensure the use of the existing infrastructure at national and regional level for the benefit of the security of gas supply in an efficient way. Those measures shall under no circumstances block or restrict the cross-border use of storage facilities or LNG facilities and shall not limit cross-border transmission capacities allocated in accordance with Commission Regulation (EU) 2017/459*.
4. When taking measures pursuant to this Article, Member States shall apply the energy efficiency first principle, while still achieving the objectives of their respective measures, in accordance with Regulation (EU) 2018/1999 of the European Parliament and of the Council**.

Article 6c

Storage arrangements and burden-sharing mechanism

1. A Member State without underground gas storage facilities shall ensure that market participants within that Member State have in place arrangements with underground storage system operators or other market participants in Member States with underground gas storage facilities. Those arrangements shall provide for the use, by 1 November, of storage volumes corresponding to at least 15 % of the average annual gas consumption over the preceding five years of the Member State without underground gas storage facilities. However, where cross-border transmission capacity or other technical limitations prevent a Member State without underground gas storage facilities from fully using 15 % of those storage volumes, that Member State shall store only those volumes that are technically possible.

In the event that technical limitations do not allow a Member State to comply with the obligation laid down in the first subparagraph, and that Member State has in place an obligation to store other fuels to replace gas, the obligation laid down in the first subparagraph may exceptionally be met by an equivalent obligation to store fuels other than gas. The technical limitations and the equivalence of the measure shall be demonstrated by the Member State concerned.

2. By way of derogation from paragraph 1, a Member State without underground gas storage facilities may develop a burden-sharing mechanism with one or more Member States with underground gas storage facilities (burden-sharing mechanism).

The burden-sharing mechanism shall be based on the relevant data from the latest risk assessment pursuant to Article 7 and shall take into account all of the following parameters:

- (a) the cost of financial support for meeting the filling target, exclusive of the costs of meeting any strategic storage obligations;
- (b) the gas volumes needed to meet the demand of protected customers in accordance with Article 6(1);
- (c) any technical limitations, including the available underground storage capacity, technical cross-border transmission capacity and withdrawal rates.

Member States shall notify the burden-sharing mechanism to the Commission by ... [two months after the date of entry into force of this amending Regulation]. In the absence of an agreement on a burden sharing mechanism by that date, Member States without underground gas storage facilities shall demonstrate that they comply with paragraph 1 and shall notify the Commission accordingly.

3. As a transitional measure, Member States without underground gas storage facilities, but which have underground gas storage facilities included in the last list of projects of common interest referred to in Regulation (EU) 2022/869 of the European Parliament and of the Council*** may partially comply with paragraph 1 by counting LNG stocks in existing floating storage units, until their underground gas storage facilities are in operation.
4. Member States without underground gas storage facilities may provide incentives or financial compensation to market participants or transmission system operators, as relevant, for the shortfall in revenues, or for costs incurred by them, as a result of their compliance with their storage obligations pursuant to this Article, where such a shortfall or such costs cannot be covered by revenue, in order to ensure compliance with their obligation to store gas in other Member States pursuant to paragraph 1 or the implementation of the burden-sharing mechanism. If the incentive or financial compensation is financed through a levy, that levy shall not be applied to cross-border interconnection points.

5. Notwithstanding paragraph 1, where a Member State has underground gas storage facilities located on its territory and the aggregated capacity of those facilities is larger than the annual gas consumption of that Member State, the Member States without underground gas storage facilities that have access to those facilities shall either:
- (a) ensure that by 1 November storage volumes correspond at least to the average usage of the storage capacity over the preceding five years, determined, *inter alia*, by taking into account the flows during withdrawal season over the preceding five years from the Member States where the storage facilities are located; or
 - (b) demonstrate that storage capacity equivalent to the volume covered by the obligation under point (a) has been booked.

If the Member State without underground gas storage facilities can demonstrate that storage capacity equivalent to the volume covered by the obligation under point (a) of the first subparagraph has been booked, paragraph 1 shall apply.

The obligation under this paragraph shall be limited to 15 % of the average annual gas consumption over the preceding five years in the Member State concerned.

6. Unless otherwise specified in Annex Ib, in the case of underground gas storage facilities located in one Member State that are not covered by paragraph 5 but that are directly connected to the market area of another Member State, that other Member State shall ensure that by 1 November storage volumes correspond to at least the average of the storage capacity booked at the relevant cross-border point over the preceding five years.

Article 6d

Monitoring and enforcement

1. Storage system operators shall report the filling level to the competent authority in each Member State where the underground gas storage facilities concerned are located and, if applicable, to an entity designated by that Member State (the 'designated entity') as follows:
 - (a) for 2022: on each of the intermediate targets set out in Annex Ia; and
 - (b) from 2023: as set pursuant to Article 6a(4).
2. The competent authority and, if applicable, the designated entity of each Member State shall monitor the filling levels of the underground gas storage facilities on their territory at the end of each month and report the results to the Commission without undue delay.

The Commission may, where appropriate, invite the European Union Agency for the Cooperation of Energy Regulators (ACER) to assist with such monitoring.

3. Based on the information provided by the competent authority and, if applicable, the designated entity of each Member State, the Commission shall report regularly to the GCG.
4. The GCG shall assist the Commission in the monitoring of the filling trajectories and the filling targets, and shall develop guidance for the Commission on adequate measures to ensure compliance in the event that Member States deviate from the filling trajectories or do not meet the filling targets.
5. Member States shall take the necessary measures to meet the filling trajectories and the filling targets and to enforce upon market participants the storage obligations which are required to meet them, including by imposing sufficiently deterrent sanctions and fines on those market participants.

Member States shall inform the Commission without delay of the enforcement measures taken pursuant to this paragraph.

6. Where commercially sensitive information is to be exchanged, the Commission may convene meetings of the GCG that are restricted to itself and Member States.

7. Any information exchanged shall be limited to that which is necessary for the purpose of monitoring compliance with this Regulation.

The Commission, the national regulatory authorities and the Member States shall preserve the confidentiality of commercially sensitive information received for the purposes of carrying out their obligations.

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- * 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, 17.3.2017, p. 1).
- ** Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).
- *** Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ L 152, 3.6.2022, p. 45).”;

(3) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. By 1 September 2022, ENTSOG shall carry out a Union-wide simulation of gas supply and infrastructure disruption scenarios, including scenarios of a prolonged disruption of a single supply source. The simulation shall include the identification and assessment of emergency gas supply corridors and shall also identify which Member States can address identified risks, including in relation to LNG. The gas supply and infrastructure disruption scenarios and the methodology for the simulation shall be defined by ENTSOG in cooperation with the GCG. ENTSOG shall ensure an appropriate level of transparency and access to the modelling assumptions used in its scenarios. The Union-wide simulation of gas supply and infrastructure disruption scenarios shall be repeated every four years unless circumstances warrant more frequent updates.”;

(b) in paragraph 4, the following point is added:

“(g) taking into account scenarios of a prolonged disruption of a single supply source.”;

(4) in Article 16, the following paragraph is added:

“3. Member States shall ensure storage obligations under this Regulation are met by using storage facilities in the Union. However, Member States and the Energy Community Contracting Parties’ cooperation may include voluntary arrangements to use storage capacity provided by Energy Community Contracting Parties to store additional volumes of gas for the Member States.”;

(5) the following article is inserted:

“Article 17a

Commission reporting

1. By 28 February 2023 and annually thereafter, the Commission shall submit reports to the European Parliament and to the Council, containing:
 - (a) an overview of the measures taken by Member States to fulfil the storage obligations;
 - (b) an overview of the time needed for the certification procedure set out in Article 3a of Regulation (EC) No 715/2009;

- (c) an overview of the measures requested by the Commission in order to ensure compliance with the filling trajectories and the filling targets;
- (d) an analysis of the potential effects of this Regulation on gas prices and potential gas savings in relation to Article 6b(4).”;

(6) the following article is inserted:

“Article 18a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).”;

- (7) in Article 20, the following paragraph is added:
- “4. Articles 6a to 6d shall not apply to Ireland, Cyprus or Malta for as long as they are not directly interconnected to the gas interconnected system of any other Member States.”;
- (8) in Article 22, the following paragraph is added:
- “Article 2, points (27) to (31), Articles 6a to 6d, Article 16(3), Article 17a, Article 18a, Article 20(4), and Annexes Ia and Ib shall apply until 31 December 2025.”;
- (9) the text set out in the Annex to this Regulation is inserted as Annexes Ia and Ib.

Article 2
Amendments to Regulation (EC) No 715/2009

Regulation (EC) No 715/2009 is amended as follows:

- (1) the following Article is inserted:

“Article 3a

Certification of storage system operators

1. Member States shall ensure that each storage system operator, including any storage system operator controlled by a transmission system operator, is certified in accordance with the procedure laid down in this Article, either by the national regulatory authority or by another competent authority designated by the Member State concerned pursuant to Article 3(2) of Regulation (EU) 2017/1938 of the European Parliament and of the Council* (in either case, "certifying authority").

This Article also applies to storage system operators controlled by transmission system operators which have already been certified under the unbundling rules laid down in Articles 9, 10 and 11 of Directive 2009/73/EC.

2. The certifying authority shall issue a draft certification decision in respect of storage system operators that operate underground gas storage facilities with a capacity of over 3,5 TWh where, regardless of the number of storage system operators, total storage facilities were filled on 31 March 2021 and on 31 March 2022 at a level which, on average, was less than 30 % of their maximum capacity by ... [150 working days after the date of entry into force of this amending Regulation] or within 150 working days of the date of receipt of a notification pursuant to paragraph 9.

In respect of storage system operators as referred to in the first subparagraph, the certifying authority shall make its best efforts to issue a draft certification decision by 1 November 2022.

In respect of all other storage system operators, the certifying authority shall issue a draft certification decision by ... [18 months after the date of entry into force of this amending Regulation] or within 18 months of the date of receipt of a notification pursuant to paragraph 8 or 9.

3. In considering the risk to the security of energy supply in the Union, the certifying authority shall take into account any security of gas supply risk at national, regional or Union-wide level as well as any mitigation of such risk, resulting, *inter alia*, from:
- (a) ownership, supply or other commercial relationships that could negatively affect the incentives and the ability of the storage system operator to fill the underground gas storage facility;
 - (b) the rights and obligations of the Union with respect to a third country arising under international law, including any agreement concluded with one or more third countries to which the Union is a party and which addresses the issue of the security of energy supply;
 - (c) the rights and obligations of the Member States concerned with respect to a third country arising under agreements concluded by the Member States concerned with one or more third countries, in so far as those agreements comply with Union law; or
 - (d) any other specific facts and circumstances of the case.

4. If the certifying authority concludes that a person who directly or indirectly controls, or exercises any right over, the storage system operator within the meaning of Article 9 of Directive 2009/73/EC could endanger the security of energy supply or the essential security interests of the Union or of any Member State, the certifying authority shall refuse the certification. Alternatively, the certifying authority may issue a certification decision subject to conditions to ensure the sufficient mitigation of the risks which could negatively influence the filling of the underground gas storage facilities, provided that the practicability of the conditions can be fully ensured by effective implementation and monitoring. Such conditions may include, in particular, a requirement that the storage system owner or storage system operator transfer management of the storage system.

5. Where the certifying authority concludes that the gas supply risks cannot be mitigated by conditions pursuant to paragraph 4, including by requiring the storage system owner or storage system operator to transfer management of the storage system, and therefore refuses the certification, it shall:
- (a) require the storage system owner or storage system operator or any person that it considers could endanger the security of energy supply or the essential security interests of the Union or of any Member State to dispose of the shareholding or rights they have over the storage system ownership or storage system operator ownership, and set a time limit for such disposal;
 - (b) order, where appropriate, interim measures, to ensure that such a person is not able to exercise any control or right over that storage system owner or storage system operator until the disposal of the shareholding or rights; and
 - (c) provide for appropriate compensatory measures in accordance with national law.

6. The certifying authority shall notify its draft certification decision to the Commission without delay, together with all relevant information.

The Commission shall deliver an opinion on the draft certification decision to the certifying authority within 25 working days of such notification. The certifying authority shall take the utmost account of the Commission's opinion.

7. The certifying authority shall issue the certification decision within 25 working days of receipt of the Commission's opinion.
8. Before a newly built underground gas storage facility is put into operation, the storage system operator shall be certified in accordance with paragraphs 1 to 7. The storage system operator shall notify the certifying authority of its intention to put the storage facility into operation.
9. Storage system operators shall notify the relevant certifying authority of any planned transaction which would require a reassessment of their compliance with the certification requirements set out in paragraphs 1 to 4.

10. Certifying authorities shall continuously monitor storage system operators as regards compliance with the certification requirements set out in paragraphs 1 to 4. They shall open a certification procedure to reassess compliance in any of the following circumstances:
- (a) upon receipt of a notification by the storage system operator pursuant to paragraph 8 or 9;
 - (b) on their own initiative where they have knowledge that a planned change in rights or in influence over a storage system operator could lead to non-compliance with the requirements of paragraphs 1, 2 and 3;
 - (c) upon a reasoned request from the Commission.

11. Member States shall take all necessary measures to ensure the continuous operation of the underground gas storage facilities on their respective territories. Those underground gas storage facilities may cease operations only where technical and safety requirements are not met or where the certifying authority concludes, after having conducted an assessment and having taken into account the opinion of ENTSO for Gas, that such a cessation would not weaken the security of gas supply at Union or national level.

Appropriate compensatory measures shall be taken, where appropriate, if cessation of operations is not allowed.

12. The Commission may issue guidance on the application of this Article.
13. This Article shall not apply to parts of LNG facilities that are used for storage.

* 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).”.

(2) in Article 13, the following paragraph is added:

“3. The national regulatory authority may apply a discount of up to 100 % to capacity-based transmission and distribution tariffs at entry points from, and exit points to, underground gas storage facilities and LNG facilities, unless and to the extent that such a facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.

This paragraph shall apply until 31 December 2025.”.

Article 3
Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX

“Annex Ia¹

Filling trajectory with intermediate targets and filling target for 2022
for Member States with underground gas storage facilities

Member State	1 August intermediate target	1 September intermediate target	1 October intermediate target	1 November filling target
AT	49 %	60 %	70 %	80 %
BE	49 %	62 %	75 %	80 %
BG	49 %	61 %	75 %	80 %
CZ	60 %	67 %	74 %	80 %
DE	45 %	53 %	80 %	80 %
DK	61 %	68 %	74 %	80 %
ES	71 %	74 %	77 %	80 %
FR	52 %	65 %	72 %	80 %
HR	49 %	60 %	70 %	80 %
HU	51 %	60 %	70 %	80 %

Member State	1 August intermediate target	1 September intermediate target	1 October intermediate target	1 November filling target
IT	58 %	66 %	73 %	80 %
LV	57 %	65 %	72 %	80 %
NL	54 %	62 %	71 %	80 %
PL	80 %	80 %	80 %	80 %
PT	72 %	75 %	77 %	80 %
RO	46 %	57 %	66 %	80 %
SE	40 %	53 %	67 %	80 %
SK	49 %	60 %	70 %	80 %

- ¹ This Annex is subject to the *pro rata* obligations of each Member State under this Regulation, in particular Articles 6a, 6b and 6c.
For Member States falling under Article 6a(2), the *pro rata* intermediate target shall be calculated by multiplying the value indicated in the table by the limit of 35 % and by dividing the result by 80 %.

Annex Ib

Shared responsibility for the filling target and the filling trajectory

With regard to the filling target and the filling trajectory pursuant to Article 6a, the Federal Republic of Germany and the Republic of Austria share the responsibility concerning the storage facilities Haidach and 7Fields. The exact ratio and extent of that responsibility of the Federal Republic of Germany and the Republic of Austria is subject to a bilateral agreement of those Member States.”.
