

Bruxelles, le 22 avril 2022
(OR. fr, en)

8202/22

**Dossier interinstitutionnel:
2022/0090(COD)**

LIMITE

**ENER 135
ENV 349
CLIMA 167
IND 120
RECH 188
COMPET 241
ECOFIN 337
CODEC 497**

NOTE

Origine: Secrétariat général du Conseil
Destinataire: délégations

Objet: Proposition de RÈGLEMENT DU PARLEMENT EUROPÉEN ET
DU CONSEIL modifiant le règlement (UE) 2017/1938 du Parlement
européen et du Conseil concernant des mesures visant à garantir la
sécurité de l'approvisionnement en gaz naturel et le règlement (CE)
n° 715/2009 du Parlement européen et du Conseil concernant les
conditions d'accès aux réseaux de transport de gaz naturel

Suite aux discussions tenues lors des dernières réunions du groupe de travail « énergie » et compte tenu des commentaires écrits soumis par les délégations, veuillez trouver ci-joint le compromis proposé par la Présidence (REV1).

Veuillez noter que l'Annexe I est supprimée.

Par rapport à la proposition de la Commission, le nouveau texte est « **souligné en gras** » et les suppressions sont « ~~barrées~~ ».

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and Regulation (EC) n°715/2009 of the European Parliament and of the Council on conditions for access to natural gas transmission networks

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to ~~Article 194(2)~~ of 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 Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) While short-term gas supply **disruptions** ~~interruptions~~ have occurred in the past, there are several factors which distinguish the current situation from previous security of **gas** supply crises. The escalation of the armed conflict in Ukraine since February 2022 has led to unprecedented price increases. These price increases are likely to fundamentally change the incentives to fill storage facilities in the Union. In the current geopolitical context, further supply disruptions of gas can no longer be excluded. This could severely harm citizens and the economy of the Union, as 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 these events are large-scale and Union-wide and therefore require a comprehensive response. The response should prioritise measures that can reinforce the security of **gas** supply at Union level, in particular to protected ~~cons~~**customers**. It is therefore crucial that the Union acts in a coordinated manner to avoid potential risks resulting from a possible ~~gas supply interruption~~ **disruption of the gas supply without prejudice to the Member States right to act on its national energy policy, including security of supply measures, in line with the Article 194 of the TFEU.**
- (3) Gas storage contributes to security of supply by providing additional supply in case of strong demand or supply disruptions, and well filled **underground** gas storage leads to secure- gas supplies. Since supply disruptions of pipeline gas may occur anytime, measures regarding the filling level of Union **underground** storage sites have to be introduced to ensure supply for the winter 2022/2023.
- (4) Regulation (EU) 2017/1938 of the European Parliament and of the Council¹ introduced solidarity mechanisms designed to address extreme situations in which supply of 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 should ensure that Member States are able to provide enhanced protection to customers.

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).

- (5) The ~~impact of the armed conflict at the borders of the Union has shown that the existing~~ security of gas supply rules are, however, not adapted to sudden major geopolitical developments, where supply shortages and price peaks may not only result from the failure of infrastructure or extreme weather conditions, but also for instance from intentional major events and longer lasting or sudden supply **disruptions** ~~interruptions~~. It is therefore necessary to address the sudden greatly increased risks resulting from the current changes in the geopolitical situation.
- (6) Based on the Commission's analysis of adequate measures to secure gas supplies, *inter alia*, the EU wide reinforced risk preparedness analysis carried out in February 2022 by the Commission and the Gas Coordination Group, it is appropriate that Member States should, in principle, ensure that the **underground** storage infrastructures **that are located** in their territory **and directly interconnected to a market area of the respective Member State, unless they primarily serve as a source of gas supply for consumers in one or more other Member States** are full to at least 90% of their capacity at Member State level by 1 November, with intermediary targets for each Member State in May, July, September and February of the following year. **Member States may decide to partially fulfill the 90% target by counting LNG stocks stored in LNG facilities.** This is necessary to ensure that European consumers are adequately protected against supply shortages. For 2022, a lower filling target of 80% and a reduced number of intermediary targets (August, September and October) will apply, taking into account that the Regulation will only become applicable after the start of the gas filling season and Member States have limited time to implement this Regulation.
- (7) A “filling trajectory” system ~~shall~~ **should** enable continuous monitoring throughout the filling season ~~(from 1 April to 30 September)~~. From the year 2023 onwards storage ~~shall~~ **also should** be specifically monitored ~~in~~ **as from** February (the ‘February control point’) to avoid sudden withdrawal of gas from **underground** storage in the middle of the winter, which could cause security of supply challenges before the end of winter.

- (8) The filling target and the Each Member State with storage facilities will make a proposal for filling trajectory ~~can be adjusted by the Commission from 2023 onwards, by means of a delegated act, taking into account the annual ENTSOG simulations and the common analysis to be carried out by the regional risk groups defined~~for the storage facilities on its territory in Regulation (EU) 2017/1938.~~an aggregated form.~~ The decision of the Commission to set the “filling trajectories” ~~will~~should be taken after consultation of the Gas Coordination Group. The “filling trajectory” of a Member State should be set in a manner that does not unduly distort the competitive position of storage facilities in that Member State in comparison with storage facilities in adjacent Member States.
- (8a) In order to determine the individual trajectory of each 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 Council.**
- (9) Member States may not always be able to meet the filling targets on time due to technical issues such as problems related to the pipelines feeding the underground storage site or with the injection facilities. In such cases, it is appropriate that Member States should have the flexibility to meet the target at a later stage. However, the filling target should be met as soon as technically possible and no later than on the 1 December in order to ensure the security of gas supply for the winter period.
- (10) Moreover, Member States may not be able to meet the filling targets or intermediary targets in case of an EU-wide a regional or Union emergency; that ~~is~~the Commission may declare at the request of one or two Member States having declared a national emergency in times of extreme scarcitythe sense of gas.this Regulation. Therefore, the filling targets, including the burden-sharing target, should not apply where and for as long as the Commission has declared a Union or regional emergency pursuant to Article 12 of Regulation (EU) 2017/1938.

- (11) Competent authorities ~~shall~~ **should** continuously monitor the filling of the underground storage facilities in order to ensure that their national filling trajectories are met. The national filling trajectories are defined considering a bandwidth of ~~two~~**five** percentage points. If the filling level of a given Member State is more than ~~2~~**five** percentage points below the targets of the filling trajectory, the competent authorities ~~shall~~ **should** immediately take effective measures to increase the filling level. Member States ~~shall~~ **should** inform the Commission and the Gas Coordination Group of such measures.
- (12) Substantial and sustained deviation from the filling trajectories can jeopardise reaching adequate levels of storage which are necessary to ensure security of **gas** supply in the Union, in a spirit of solidarity. In case of such substantial and sustained deviations, the Commission should therefore be empowered to take effective measures to avoid security of **gas** supply problems resulting from unfilled storages. When deciding upon the adequate measures, the Commission ~~shall~~ **should** take into account the specific situation of the respective Member State, such as the size of the **underground** storage facilities in relation to the domestic gas consumption or the importance of the **underground** storage facilities for security of **gas** supply in the region. As this Regulation will 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 the year 2022 should take into account the limited time for the implementation of this Regulation at national level. The Commission should ensure that the measures do not go beyond what is necessary to maintain security of **gas** supply, without putting disproportionate burden on Member States, gas market participants, storage system operators or citizens.

- (13) Member States should take all necessary measures to ensure that the mandatory filling targets are met. **Member States may choose to set a higher filling target.** With a view to the different regulatory regimes already in place in many Member States to support storage filling, no specific instrument to meet the filling trajectory and reach the filling target is prescribed, and Member States enjoy freedom to choose the instrument which is most appropriate in their national system, provided the conditions in Article 6(b)(2) and (3) are respected. Member States **should** therefore have the freedom to choose which market participant(s) to oblige to ensure the filling of the storages. They ~~can~~**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 EU market rules, may be sufficient to meet the filling targets, or if financial incentives, ~~which might constitute State aid, are necessary.~~ **or storage tariff rebates, which might constitute State aid, are necessary. In the case of a Member State imposing an obligation on gas suppliers who supply gas to protected customers on its respective territory to store gas in underground storage facilities, the amount of which should be determined on the basis on the amount of gas the natural gas undertaking supplies to protected customers.** Member States should use coordinated instruments, such as platforms for the purchase of LNG, with other Member States to maximise the utilisation of LNG to fill storages **facilities**, and **should** reduce infrastructure and regulatory barriers to the shared use of LNG to fill storages.
- (14) The Commission Communication ~~COM(2022) 108 final~~ of 8 March 2022, entitled ‘REPowerEU: Joint European Action for more affordable, secure and sustainable energy’ has clarified in this respect that Union law allows Member States to provide State aid to suppliers under Article 107(3)(c) TFEU in order to ensure filling of storages, for example in the form of guarantees (‘two-way contract for difference’).
- (15) Any measure taken **by Member States** to ensure the filling of **underground** gas storage should be necessary, clearly defined, transparent, proportionate, non-discriminatory and verifiable, and should not unduly distort competition or the effective 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 taken should not lead to strengthening a dominant position or windfall gains for undertakings controlling **underground** storage facilities or having booked but not used storage capacity-

- (16) The efficient use of the existing infrastructure, including cross-border transmission capacities, **underground** storage facilities and LNG facilities are important factors in ensuring security of **gas** supply in a spirit of solidarity. Open energy borders are key for security of **gas** supply, also in times of gas disruptions at national, regional or Union level. Therefore, any measure taken to ensure the filling of gas storage should not block or restrict cross-border capacities allocated in accordance with the provisions of Commission Regulation (EU) 2017/459².
- (17) The storage obligation will impose financial burdens on the relevant actors in those Member States, which have relevant **underground** storage facilities in their territory, while the increase in the level of security of **gas** supply will benefit all Member States including those Member States, which do not have **underground** storage facilities. To share the burden, in a spirit of solidarity, of ensuring that **underground** storage facilities in the Union are sufficiently filled to ensure security of **gas** supply, Member States without **underground** storage facilities should comply with the obligation to use **underground** storage in other Member States. In case there is no interconnection with other Member States, or limited cross-border transmission capacity or other technical reasons make it impossible to use **underground** storage facilities in other Member States, the obligation should be reduced accordingly.
- (18) ~~However,~~ Member States, **however,** should not be subject to such an obligation if they jointly develop an alternative burden sharing mechanism with one or more Member States with **underground** storage facilities. **Also other existing equivalent security of gas supply measures should be taken into account when considering the burden mechanism, like obligation of alternative fuel stocks such as oil and LNG.** Such alternative mechanism ~~can~~**could** take into consideration, among others, already existing equivalent legal obligations to store alternative fuels. Member States should notify such alternative burden sharing mechanisms to the Commission.

² **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).**

- (19) The measures by which Member States without **underground** storage facilities share the burden of the storage obligation with Member States with **underground** storage facilities may in turn have a financial impact on the relevant market actors. Member States without **underground** storage facilities ~~may~~**should** therefore provide financial incentives or compensation to market participants for the shortfall of revenues or for costs incurred by obligations imposed on them which cannot be covered by revenue. If the measure is financed through a levy, that levy ~~shall~~ **should** not be allocated to cross-border interconnection points.
- (20) Effective monitoring and reporting is essential, ~~both~~ 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** storage facilities should report the filling levels to the national competent authorities on a monthly basis during the filling period. Owners and operators of **underground** storage facilities are also encouraged to encode regularly the capacity and the filling level for each storage ~~site~~**facility** at a central reporting platform.
- (21) The ~~regulatory~~**competent** authorities should play an important role in monitoring security of supply, ~~one of the tasks attributed to the regulators by the Internal Energy Market legislation,~~ and ensure a balance between security and the cost of the measures for consumers. ~~The Commission will~~**The competent authorities of Member States should** monitor the filling levels, **of the storage facilities in their territories** jointly with the ~~competent authorities of Member States~~**Commission**.
- (22) The role of the Gas Coordination Group should be reinforced, with an explicit mandate to monitor Member States' performance in the area of ~~gas~~ security of **gas** supply, and to develop best practices on that basis in that area. The Commission ~~shall~~ **should** therefore regularly report to the Gas Coordination Group, which ~~shall support~~**should assist** the Commission in monitoring the filling targets, and in ensuring that the filling targets are met.

- (23) The Union considers that the storage system sector is of high importance to the Union, its security of energy supplies and its other essential security interests. Accordingly, **underground** storage facilities are considered critical infrastructure within the meaning of 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.³ The Member States should **are encouraged to** take into account the measures ~~under~~**introduced by** this Regulation in their national energy and climate plans and **in** the progress reports adopted pursuant **to** Regulation 2018/1999: **of the European Parliament and of the Council**⁴.
- (24) The Union considers that additional safeguards are necessary in the storage system network to avoid any threats to public order and public security in the Union and to the welfare of the citizens of the Union. Member States should ensure that each storage system operator, including such operators controlled by transmission system operators, is certified under this Regulation by the regulatory authority or another competent authority designated by the Member State to ensure that the influence over storage system operators does not put at risk the security of energy supply or any other essential security interest in the Union or any Member State. For the analysis of possible security of **gas** supply risks in other Member States, coordination between Member States in the security of **gas** supply assessment, is important and should not discriminate between market participants and should fully comply with the principles of a well-functioning internal market. In order to quickly alleviate the danger of low storage levels, the certification should be prioritised and carried out faster for larger storages and storages which have recently been filled at consistently low levels, so as to ensure that potential security of **gas** supply problems resulting from the control over such large storages can be excluded.

³ **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).**

⁴ **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).**

- (25) Regulatory authorities should refuse the certification if a person who directly or indirectly controls or exercises any right over the storage system operator may put at risk the security of energy supply or any other essential security interest Member State, regional or Union level. In this assessment the regulatory authorities should take into account commercial relationships that could negatively affect the incentives and ability of the storage operator to fill the 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 those rules across the Union, respect for the international obligations of the Union and solidarity and energy security within the Union, the regulatory authorities should take into utmost account the Commission's opinion when they take decisions on certification: **and properly adjust their decisions where relevant or required.** Where a regulatory authority refuses the certification, it should have the power to require any person to dispose of the shareholding or rights they have over the storage system operator and to set a time limit for such disposal, to order any other appropriate measure to ensure that that person or those persons cannot exercise any control or right over that 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.
- (26) If enterprises are due to purchase more gas when such gas is expensive, this could further drive up prices. Therefore this Regulation is accompanied by ~~the removal of~~ **enabling Member States to remove** entry and exit tariffs for transmission capacity to and from storage, making storage more attractive for market participants. Regulatory and competition authorities should also use their competences to effectively exclude undue increases of storage tariffs.
- (27) In view of the exceptional circumstances of the current situation and the uncertainties related to future geopolitical developments, Member States are encouraged to meet the filling targets as quickly as possible, and in any event no later than within the timeframes set out in this Regulation.

- (28) Considering the imminent danger for the security of gas supply brought about by the current armed conflict, this Regulation should enter into force the day after its publication in the Official Journal. In order to ensure coherence with the Commission Proposal COM/2021/804 final for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast), this Regulation should **be repealed when** ~~only apply until~~ a regulation on the internal markets for renewable and natural gases and for hydrogen, following the above mentioned Commission Proposal COM/2021/804 final, is adopted and enters into force, ~~reflecting the amendments introduced by this Regulation.~~ **or by the end of 2024 at the latest.**

HAVE ADOPTED THIS REGULATION:

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 several intermediary targets for each Member State as ~~listed~~ **defined** in Annex Ia and Ib ~~Article 6a~~;
- (28) ‘filling target’ means a binding target for the filling level of **underground** storage facilities for non-liquefied natural gas;
- (29) ‘strategic storage’ ~~reserves~~ means **underground storage or part of underground** storage of non-liquefied natural gas **purchased, managed and stored by TSOs or an undertaking or entity designated by the Member States** which is subject to **prior notification or** public authority authorisation for release, ~~cannot be and~~ **released or** sold to the market ~~but only released in case of~~ **extraordinary market conditions such as extraordinary price spikes at the spot market or for technical and contractual reasons,** supply scarcity, a supply disruption or emergency.

(30) '~~strategie~~**balancing** stock' means non-liquefied natural gas purchased, managed and stored **underground** by transmission system operators ~~exclusively~~**or an entity designated by the Member State exclusively** for carrying out their functions as transmission system operators and for the purpose of security of supply. ~~Gas stored as part of a strategic stock shall be dispatched~~**gas supply dispatched** only where required to keep the system in operation under secure and reliable conditions in line with Article 13 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 or in case of a declared emergency under Article 11 and ~~can~~**which shall** otherwise not be sold on wholesale gas markets;

(2) The following Articles ~~6a to 6e~~ are inserted:

'Article 6a

Mandatory filling target and filling trajectory

(1) Each Member State shall ensure that the filling target set out in paragraph 2 for the aggregated capacity of all ~~storage facilities in their territory is reached by 1 November each year.~~ **underground storage facilities that are located in their territory and directly interconnected to a market area in their territory is met by 1 November each year. Storage facilities that are located in the territory of a Member State and directly interconnected to a market area of the respective Member State, but primarily serve as a source of gas supply for consumers in one or more other Member States, shall be excluded from this paragraph, being subject to the requirements of Article 6c.**

- (2) For 2022, the filling target shall be set at 80% of the capacity of all storage facilities on the territory **and directly interconnected to a market area** of the respective Member States. ~~Unless the Commission decides otherwise pursuant to paragraph 4,~~ **€The filling target shall be set at 90% for the following years. The obligation on Member States to contribute to the filling of the storage facilities on their own territory and directly interconnected to their gas system shall be limited at 35% of the average annual gas consumption of the last 5 years in the respective Member States.**
- (3) Member States shall take the necessary measures to fulfil **or to ensure the fulfilling** of the intermediary targets as indicated in ~~Annex Ia and Ib~~ **paragraph 4** for each Member State. For 2022, intermediary targets shall only be set for August, September and October. As of 2023 Member States shall ensure that intermediary targets for February, May, July and September are **set and** fulfilled.
- (4a) The filling target may be partially fulfilled by counting the LNG stored in the plants in Member States where at least one of the three following conditions are met:**
- i. **The gas system is highly dependent on LNG, supplying more than [X]% of national demand;**
 - ii. **Aggregated withdrawal capacity in underground facilities is low in relation to overall storage capacity, making impossible to withdraw a volume of gas equivalent to 90% of underground storage capacity during the winter season;**
 - iii. **The availability of the LNG counted is guaranteed by obligations to store in LNG tanks.**

- (4) ~~The Commission is empowered, after consultation of the~~ **[No later than XX], each Member State with storage facilities will transmit to the Commission technical information determining the filling trajectory for the storage facilities on its territory in an aggregated form. Based on the technical information provided by each Member State and taking into account the assessment of the** Gas Coordination Group, ~~to~~ **the Commission shall** adopt a delegated act amending Annex I ~~implementing acts~~ to specify ~~set~~ the filling target and ~~a~~ **individual** filling trajectory ~~from 2023 onwards,~~ **of each Member State. Those implementing acts shall be adopted** in accordance with **the examination procedure referred to in Article 18b paragraph 2** 19. That delegated act shall be adopted no later than 31 December of the year preceding the year for which the new filling target is set. The filling target and filling trajectory set by the Commission shall ~~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 ensures security of gas supply while avoiding unnecessary burden for Member States, gas market participants, storage system operators or citizens and does not unduly distort competition between storage facilities located in adjacent Member States.**
- (5) Where a Member State cannot meet ~~the~~ **its** filling target ~~due to specific technical characteristics of one or more storage facilities within its territory, such as exceptionally low injection rates~~ **by 1 November**, the Member State shall be allowed to reach ~~the~~ **its** filling target ~~only on~~ **no later than** 1 December. The Member State shall inform the Commission before 1 November, providing reasons for the delay. **When, for technical reasons, one or more underground storage facilities cannot be filled before 1 December, rendering reaching a filling target impossible, Member State shall inform Commission about replacement measures to be taken to maintain proper security of gas supply level.**
- (6) The filling target shall not apply where and for as long as the Commission has declared a Union or regional emergency pursuant to Article 12.

- (7) Competent authorities shall continuously monitor the filling trajectory each year and report regularly to the Gas Coordination Group. If the filling level of a given Member State is more than 2[**five**] percentage points below the level of the filling trajectory pursuant to ~~Annex I~~**paragraph 4**, the competent authorities shall, without delay, take effective measures to increase the filling level. Member States shall inform the Commission and the Gas Coordination Group of the measures taken.
- (8) In case of substantial and sustained deviation from the filling trajectories **or the filling target**, the following measures shall be taken:
- (a) after consultation of the Gas Coordination Group and the Member State in question, the Commission shall issue a warning to the Member State and recommend measures to be immediately taken;
 - (b) if the deviation from the trajectory **or the filling target** is not significantly reduced within one month from the date of the warning, the Commission shall, after consultation of the Gas Coordination Group and the Member State in question, take a decision as a measure of last resort to oblige the Member State to take measures that effectively remove the gap to the trajectory **or the filling target**, including where appropriate one or several of the measures listed under Article 6b(1), or any other measure to ensure the mandatory filling target pursuant to this Article is reached;
 - (c) when deciding upon the adequate measures pursuant to point (b), the Commission shall take into account the specific situation of the respective Member State, such as the size of **underground** the storage facilities in relation to the domestic gas consumption or the importance of the **underground** storage facilities for security of **gas** supply in the region. Any measures taken by the Commission to address deviations from the filling trajectory **or the filling target** for the year 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;

- (d) The Commission shall ensure that the measures do not go beyond what is necessary to maintain security of **gas** supply, without putting disproportionate burden on Member States, gas market participants, storage system operators or ~~citizens~~**consumers**.

Article 6b

Implementation of the filling target

- (1) Member States shall take all necessary measures, including financial incentives or compensation to market participants, to ~~ensure that~~**meet** the ~~mandatory~~-filling targets **set** pursuant to Article 6(a) ~~are reached~~. These measures may, in particular, include:
- (a) imposing an obligation on gas suppliers to store minimum volumes of gas in storage facilities, **including underground storage facilities and/or LNG facilities;**
 - (aa) imposing an obligation on gas suppliers who supply gas to protected customers on their territory to store gas in storage facilities, the amount of which may be determined on the basis on the amount of gas the natural gas undertaking supplies to protected customers;**
 - (b) imposing an obligation on storage ~~owners~~**system operator** to tender their capacities to market participants;
 - (c) imposing an obligation on a transmission system operator **or a market area manager** to purchase and manage ~~strategie stocks~~**balancing stock** of gas exclusively for carrying out their functions as transmission system operators and **where necessary impose an obligation on other designated entity** for the purpose of security of **gas** supply in case of emergency;

- (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** storage facilities;
 - (e) providing financial incentives for market participants **including storage system operator** or compensation for the potential shortfall of revenues or for costs incurred by obligations on market participants **including storage system operator** which cannot be covered by revenues;
 - (f) adopting effective instruments to set obligation on storage capacity holders to use or release unused booked capacities **whereas the storage capacity holder not using the storage capacity shall be still obliged to pay the agreed price for the whole term of the storage contract;**
 - (g) **adopting effective instruments for purchasing and managing of strategic reserves by public or private entities such as mandatory reserves;**
 - (h) **appointment of a dedicated party who will be assigned the task to reach the filling target in case this will otherwise not be achieved;**
 - (i) **discounts on the storage tariffs;**
 - (i) **collecting the revenues needed to recover the capital and operational expenditures related to regulated storage facilities as storage tariffs and transmission tariffs [collected only from exit points to final customers located within the same Member States];**
- (2) The measures adopted **by the Member States** pursuant to this Article shall be limited to what is necessary to ~~achieve~~**meet** the filling targets; **and filling trajectories. They shall be** clearly defined, transparent, proportionate, non-discriminatory and verifiable. They shall not unduly distort competition or the effective 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 security of **gas** supply in an efficient way. These measures shall under no circumstances block or restrict the use of storage or LNG facilities across borders, and shall not limit cross-border transmission capacities allocated in accordance with ~~Commission~~ Regulation (EU) 2017/459.

Article 6c

Burden-sharing

- (1) Member States without **underground** storage facilities shall ensure that domestic market participants have arrangements with **underground** storage system operators ~~from~~ **or other market participants in** Member States with storage facilities in place which ensure the use of storage volumes in those Member States by 1 November corresponding to at least 15% of the annual gas consumption of the Member State without **underground** storage facilities. **These storage volumes used by the domestic market participants of a Member State without underground storage facilities shall have no function in terms of the compliance of a Member State with storage facilities with the filling target pursuant to Article 6a.** Where cross-border transmission capacity or other technical limitations do not allow to fully use 15% of non-domestic storage volumes, only the technically possible volumes shall be stored outside the Member State without storage. **In the event, that exceptional and justified technical limitations do not allow the above obligation to be met, the above obligation may be exceptionally met by an equivalent obligation to store alternative fuels. The exceptional and justified technical limitations and the equivalence of the measure shall be demonstrated by the relevant Member state. Member States with storage facilities may use the mechanism described in sentence 1 and 2 as a means to contribute to the filling level in accordance with Art. 6a (2).**

- (2) By way of derogation from paragraph 1, Member States without **underground** storage facilities may instead jointly develop a burden-sharing mechanism with one or more Member States with **underground** storage facilities. The burden-sharing mechanism shall be based on the relevant data of the latest risk assessment pursuant to Article 7 and take into account the following parameters:
- (a) the cost ~~for~~**of** financial support ~~to ensure~~**for meeting the** filling targets, without consideration of **the** costs for filling of strategic ~~storage~~**reserves** obligations;
 - (b) the gas volumes needed to meet the demand of protected customers in accordance with Article 6(1);
 - (c) the technical limitations, such as the available **underground** storage capacity, technical cross-border capacity, withdrawal rates.
- (3) The jointly developed mechanism shall be notified to the Commission at the latest **[one month]** after the entry into force of this ~~Article~~**Regulation. In the absence of an agreement within [one month], Member states without underground storage facilities shall demonstrate that storage capacity equivalent to the volume covered by the obligation has been booked and notify to the Commission accordingly.**
- (4) Member States without **underground** storage facilities may provide incentives or financial compensation to market participants for the shortfall of revenues or for costs incurred by obligations imposed on them which cannot be covered by revenue to ensure the implementation of the obligation to store gas in other Member States pursuant to paragraph 1 or the implementation of the jointly developed mechanism pursuant to paragraph 2. If the measure is financed through a levy, that levy shall not be allocated to cross-border interconnection points.

- (5a) By way of derogation from paragraph 1, in case of storage facilities whose capacity is bigger than the annual gas consumption of the Member State where they are located, Member States without storage having access to those facilities have an obligation to ensure that storage volumes by 1 November correspond at least to their [average usage of the storage capacity in the last 5 years] or to demonstrate that storage capacity equivalent to the volume covered by this obligation has been booked.**
- (5b) In case of storage facilities located in one Member State but primarily serving as a source of gas supply for consumers in other Member States, the latter shall have an obligation to ensure that storage volumes by 1 November correspond at least to their [average usage of the storage capacity in the last 5 years] or to demonstrate that storage capacity equivalent to the volume covered by this obligation has been booked.**

Article 6d

Monitoring and enforcement

- (1) Storage system operators shall report the filling level at each of the control points established in accordance with ~~Annex Ia and Ib~~ **Article 6a(4)** to the competent authorities in the Member States where they are located.
- (2) The competent authorities of the Member States shall monitor the filling levels of the **underground** storage facilities in their territories at the end of each month and report the results to the Commission without undue delay.
- (3) Based on the information provided by the competent authorities of the Member States, the Commission shall regularly report to the Gas Coordination Group.

- (4) The Gas Coordination Group shall ~~support~~**assist** the Commission in the monitoring of the filling targets and trajectories, and **shall** develop guidance to the Commission on adequate measures to ensure compliance in the case where Member States do not meet the targets of the filling trajectory or do not comply with the filling targets.
- (5) Member States shall take the necessary measures to ~~reach~~**meet** the filling trajectory and the filling target and to enforce the storage obligations which are required to ~~reach~~**meet** that trajectory and that target on market participants, including by imposing sufficiently deterrent sanctions and fines on ~~them~~**those market participants**.
- (6) Member States shall inform the Commission without delay of the enforcement measures taken pursuant to this Regulation.
- (7) Where commercially sensitive information is to be exchanged, the Commission may convene meetings of the Gas Coordination Group in a format restricted to Member States.
- (8) The information exchanged shall be limited to what is required to monitor compliance with the requirements of this Regulation. The Commission, the regulatory authorities and the Member States shall preserve the confidentiality of commercially sensitive information received in the context of this Regulation.²

Article 6e

Scope of application

The provisions of Articles 6a to 6d shall not apply to parts of LNG facilities used for storage.

(3) ~~The Annexes are amended in accordance with the text set out in Annex I to this Regulation:~~

(4) In Article 20, the following point is added:

(4a) Articles 6a to 6d shall not apply to Cyprus, Malta and Ireland for as long as they are not directly interconnected to the interconnected system of any Member States.

Article 18b

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 Council⁵.**
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**

⁵ **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).**

Article 2

Amendments to Regulation (EC) No 715/2009

- (1) The following Article 3a is inserted:

‘Article 3a

Certification of storage system operators

- (1) Member States shall ensure that each storage system operator, including storage system operators controlled by transmission system operators, is certified by the ~~regulatory~~**competent** authority under this Article, or another competent authority designated by the Member State concerned, **persuant to Article 3(2)**, in accordance with the procedure laid down in this Article. The obligation to certify storage operators under this Article also applies to storage system operators controlled by transmission system operators which have already been certified under unbundling rules pursuant to Articles 9 to 11 of Directive 2009/73/EC.
- (2) For storage system operators operating **underground** storage facilities with capacities above 3.5 TWh and ~~which~~**where total storage facilities, regardless of number of operators** 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, ~~the regulatory authority or the~~ designated authority pursuant to paragraph 1 shall adopt a draft decision on the certification of storage system operators within 100 working days from the date of entry into force of this Regulation or the receipt of a notification pursuant to paragraph 8. For all other storage system operators, a draft decision shall be adopted within 18 months from the date of entry into force of this Regulation or the receipt of a notification pursuant to paragraphs 7 or 8. In considering the risk to the security of energy supplies, ~~the regulatory authority or the~~ designated authority pursuant to paragraph 1 shall take into account any security of **gas** supply risk at national, regional or Union-wide level resulting, for example, from:

- (a) ownership, supply or other commercial relationships that could negatively affect the incentives and ability of the storage operator to fill the storage facility;
 - (b) the rights and obligations of the Union with respect to a third country or third countries 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 issues of security of energy supply;
 - (c) the rights and obligations of the Member State or Member States concerned with respect to a third country or third countries arising under agreements concluded with them, insofar as they are in compliance with Union law; or
 - (d) any other specific facts and circumstances of the case.
- (3) ~~The regulatory authority or the designated~~ **The designated** authority pursuant to paragraph 1 shall refuse the certification if it is demonstrated that a person which directly or indirectly controls or exercises any right over the storage system operator within the meaning of Article 9 of Directive 2009/73/EC may put at risk the security of energy supply or the essential security interests of any Member State or the Union. ~~The regulatory authority or the designated~~ **The designated** authority pursuant to paragraph 1 may instead choose to grant the certification with conditions, which ensure that all risks which may negatively influence the filling of the storages as provided for under this Regulation are sufficiently mitigated, and provided that their workability can be fully ensured by effective implementation and monitoring.
- (4) Where ~~the regulatory authority, or the designated~~ authority pursuant to paragraph 1 ~~comes to the conclusion~~ **concludes** that the security of gas supply risks cannot be removed by conditions pursuant to paragraph 3 and therefore refuses the certification, it shall:

- (a) require **the storage system owner or storage system operator** or any person or persons that it considers may put at risk the security of energy supply or the essential security interest of any Member State or the Union to **transfer management of the storage system and in case of refusal** dispose of the shareholding or rights they have over the storage system operator and to set a time limit for such disposal;
 - (b) order, where appropriate, interim measures, to ensure that such person or persons cannot exercise any control or right over that storage system operator until ~~the~~**transfer of management or** disposal of the shareholding or rights; and
 - (c) decide on the appropriate compensatory measures.
- (5) ~~The regulatory authority or the designated~~ **The designated** authority pursuant to paragraph 1 shall notify the draft decision to the Commission without delay, together with all the relevant information with respect to that decision. The Commission shall deliver its opinion on the draft decision to the ~~national regulatory authority or the designated authority pursuant to paragraph 1~~ within 50 working days. ~~The regulatory authority or the~~**The** designated authority pursuant to paragraph 1 shall take utmost account of the Commission's opinion.
- (6) ~~The regulatory authority or the designated authority pursuant to paragraph 1~~ shall adopt its decision on the certification of storage system operators no later than ~~25~~**50** working days as of receipt of the Commission opinion.
- (7) Before a newly built **underground** storage facility is put into operation, the storage system operator shall be certified in accordance with paragraphs 1 to 6. The storage system operator shall notify ~~the regulatory authority or the designated authority pursuant to paragraph 1~~ of its intention to put the storage facility into operation.
- (8) Storage system operators shall notify ~~to the regulatory authority or the designated authority pursuant to paragraph 1~~ any planned transaction which would require a reassessment of their compliance with the certification requirements as set out in paragraphs 1, **2** and **23**.

- (9) ~~The regulatory authority or the~~ designated authority pursuant to paragraph 1 shall monitor the continuing compliance of storage system operators with the requirements of paragraphs 1, 2 and 23. It shall open a certification procedure to ensure such compliance:
- (a) upon notification by the storage system operator pursuant to paragraphs 7 or 8;
 - (b) on its own initiative where it has knowledge that a planned change in rights or influence over a storage system operator may lead to non-compliance with the requirements of paragraphs 1 and 2;
 - (c) upon a reasoned request from the Commission.
- (10) Member States shall take all necessary measures to ensure the continued operation of the storage facilities on their territory. Those storage facilities may exit operations only **in case technical and safety requirements are not met or** following an assessment conducted ~~by the regulatory authority or the designated~~ **by designated** authority pursuant to paragraph 1, taking into account an opinion of ENTSOG, which concludes that the exit does not weaken the security of gas supply at national or Union level. Appropriate compensatory measures shall be taken, where appropriate, if exit of operations is not allowed.
- (11) The Commission is empowered to adopt a delegated act setting out the details of the procedure to be followed for the application of this ~~paragraph~~ **Article** in accordance with Article 19.
- (12) The provisions of this Article shall not apply to parts of LNG facilities used for storage.
- (13) The provisions of Article 3a shall not apply to Cyprus, Malta, and Ireland for as long as they are not directly interconnected to the interconnected system of any Member States.**

(2) In Article 13, the following paragraph 3 is added:

‘3. A **Member States may apply a** discount of **up to** 100 % ~~shall be applied~~ to capacity-based transmission **and distribution** tariffs at entry points from and exit points to **underground** storage facilities, unless and to the extent a storage facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point. The Commission shall re-examine this tariff discount 5 years after entry into force of the Regulation. It shall assess whether the level of the reduction set out in this Article is still adequate in view of the storage obligation pursuant to Article 6a of Regulation (EU) 2017/1938.’

Article 3

Entry into force and repeal application

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 ~~apply until~~ **expire on** the date on which the Regulation (EU) of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen, based on the Commission’s proposal of 15 December 2021, enters into force **or by [31 December 2027], whichever is the earliest.**

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President