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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 of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (Text with EEA relevance) and Regulation (EU) 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to natural gas transmission networks and repealing Regulation (EC) No 1775/2005

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

a) Security of supply

The potential threats to the security of gas supply of the EU, mainly linked to its dependence for primary energy from third countries have already triggered preparations to deal with additional challenges. With the introduction of the European Green Deal in particular, upgrading and extending LNG infrastructure and the diversification of sources and routes of pipeline gas, it has already taken important steps to shield households and enterprises against supply shocks.

The international tensions have underlined the need of advancing plans and actions with the objective to become more independent from third countries. Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. However, the current geopolitical situation requires additional short term measures to deal with the market imbalances for energy and for securing supplies in the years ahead. As supply disruptions of pipeline gas may occur anytime, measures introducing an insurance policy regarding the filling level of EU storage facilities are introduced. Well-filled gas storage contributes to more secure gas supplies for the winter 2022/2023.

b) Role of storage and current problems

Gas storage contributes to security of supply by providing additional supply in case of strong demand or supply disruptions; storage supplies 25-30% of gas consumed in winter. During the heating season, storage reduces the need to import additional gas. Storage contributes to absorbing supply shocks.

Over the last six months, an unbalanced gas market has led to a sharp increase in gas prices. The EU level of filling of storage during the winter was largely below the level of the preceding years – 10% less in percentage points in January. This has amplified uncertainties as regards security of supply and the volatility of prices. This proposal seeks to address the three more specific problems below:

- The difference of gas prices between summer and winter is important to attract gas in storage. Given the ongoing geopolitical developments and high energy prices, an estimate of the foreseeable summer/winter spread is very unreliable. The situation is expected to be particularly problematic ahead of next winter, as prices may be higher in summer than in winter. This is expected to lead to a situation in which storage is not very attractive to market participants and filling may need to be ensured by public interventions, including financial support to incentivise the use of storage.
- The Commission and the Gas Coordination Group carried out an EU wide reinforced risk preparedness analysis in February 2022. This analysis indicated that while the winter 2021/2022 was eventually safe, there could be risk of insufficient gas in storage ahead of the next winter 2022/2023. Optimising the storage capacities over the filling season would require immediate injection as from the start of the filling season (April 2022). Such early actions would reduce the risks of bottlenecks when filling storage during possible disruptions from the East that would require to transport gas to storage sites from other routes.
- Gas storage levels in 2021/2022 have proven to be particularly low at sites owned by specific third country entities. This has contributed to nearly half of the unusually low

storage level this year. Storage facilities are strategic assets and critical for the security of supply of the Union and its Member States. The control and use of storage facilities by third countries entities may create security of supply risks, impacting on other essential security interests, and undermine further the strategic autonomy of the EU.

c) Objectives of the proposal

This proposal aims at addressing the very significant risks for security of supply and the Union's economy resulting from the dramatically changed geopolitical situation. The proposal aims notably at ensuring that storage capacities in the Union, which are crucial to ensure security of supply, do not remain unused, to ensure that storages can be shared across the Union, in a spirit of solidarity.

For that purpose, a mandatory minimum level of gas in storage facilities will reinforce the security of supply ahead of the winter 2022/2023 and for the following winter periods. A mandatory certification of storage system operators will ensure that potential security of supply risks resulting from influence over the critical storage infrastructure can be excluded. Finally, the use of storage will be incentivised by allowing to exempt storage users from transmission tariffs at storage entry or exit points.

- **Consistency with existing policy provisions in the policy area**

This proposal amends two existing regulations, Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and Regulation (EU) 715/2009 on conditions for access to natural gas transmission networks. It builds on the existing framework to for gas security of supply and internal gas market rules, adding further measures needed to ensure security of supply of natural gas in the Union in the context of the severe energy crisis caused by recent changes of the geopolitical situation.

The proposed rules on mandatory storage filling targets are related to a proposal on the use of storage which was included in Article 67 of the Commission's proposal for a Proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen of 15. December 2021¹. This Article proposed to insert a new Article 7(b) into Regulation (EU) 2017/1938 in order to incentivise Member States to use some storage-related measures to enhance security of supply, without introducing a mandatory storage obligation. However, since the geopolitical situation has significantly changed since December 2021, enhanced measures to ensure security of supply have become crucial. The Commission, in coordination with the Gas Coordination Group, carried out a dedicated risk analysis which showed that more stringent rules to ensure a better use of storage facilities in the Union are urgently needed.

A swift negotiation of the comprehensive Proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen of 15. December 2021 is key for the Green Deal and to lower Europe's dependency on fossil gas. To avoid a disruption of the negotiation process on the proposal of 15 December 2021, the proposal for rules to enhance storage filling levels is made in a form of a separate Regulation, which is limited to three well-targeted amendments (storage filling obligation, storage certification, tariff rebate). The short and well-targeted proposal should allow Council and Parliament to adopt it within a short timeframe, since new rules to ensure storage filling in times of souring energy prices are urgently needed.

To avoid a legal conflict between Article 67 of the Proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen of 15. December 2021 and the current

¹ COM/2021/804 final.

proposal, the validity of the proposed regulation shall be limited until the entry into force of the recast 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 15.12.2021.

The provisions related to the filling of storage in this proposal are meant to be adopted as soon as possible to ensure their effectiveness before the start of the heating season in October 2022. They could be easily integrated into the Regulation on the internal markets for renewable and natural gases and for hydrogen at a later stage.

- **Consistency with other Union policies**

The proposal is consistent with a broader set of initiatives to enhance the Unions energy resilience and prepare against possible emergency situations, notably the Commission's 'Fit for 55' proposals, in particular the revision of the Third Energy Package for gas (Directive 2009/73/EU and Regulation 715/2009/EU) which are designed to regulate competitive decarbonised gas markets and to create a sustainable energy sector for the long term, in the benefit of European consumers.

In October 2021, the European Commission presented a Communication to enact and support appropriate measures to mitigate the impact of the rising energy prices. The Communication also provides measures to secure affordable energy and sufficient level of storage, making the EU more resilient to future shocks.

Following the recent geopolitical developments, in March 2022, the Commission issued the 'REPowerEU' Communication for a Joint European Action for more affordable, secure and sustainable energy. According to the REPowerEU Communication, the Commission will make a legislative proposal so as to ensure an annual adequate level of storage by next winter. If The Communication stressed not only the urgent need to full storage facilities in the Union, but clarified also that it is possible to use state aid for financial support to the filling of storages².

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal amends Regulation (EU) 2017/1938, whose legal base was Article 194(2) of the Treaty on the Functioning of the European Union. It also amends Regulation (EU) 715/2009, which was, since the Treaty on the Functioning of the European Union was not in force at that time, based on Article 95 of the Treaty establishing the European Community, now Article 114 of the Treaty on the Functioning of the European Union. This proposal is based on Article 194(2) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

The planned measures of the present initiative are fully in line with the subsidiarity principle. Because of the risk and the significant effect of possible gas supply interruption on the entire Union, there is a need for an EU level action.

² COM(2022) 108 final, section 1.2: *'To incentivise the refilling, Member States can provide aid to suppliers under Article 107(3)(c) TFEU for example in the form of guarantees ('two-way contract for difference')*.

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Given the unprecedented nature of the gas supply crisis and its transboundary effects, and the fact that EU countries are connected through a joint gas network, action at Union level is warranted, as Member States alone cannot sufficiently effectively address the risk of serious economic difficulties resulting from significant supply disruptions in a coordinated manner. Only EU action motivated by a spirit of solidarity between Member States can ensure an effective preparedness against a supply disruption, which would lead to lasting harm for citizens and the economy.

- **Proportionality**

The initiative complies with the proportionality principle. In view of the unprecedented geopolitical situation and the significant threat for consumers and the EU economy in the event of gas supply disruptions, there is a clear need for coordinated action. Hence, the proposal does not go beyond what is necessary to achieve the objectives laid down in the current instrument. The proposed measures are considered proportionate and build to the extent possible on existing approaches. The support of solidarity measures and requirement of storage filling effectively ensure that security of supply risks are minimised at regional level. The choice of the required filling level has been carefully considered. It was discussed with stakeholder in the framework of the Gas Coordination Group and followed intensive consultations with sector experts and Member States. Based on these consultations, the proposed 90% filling rate is a necessary and appropriate level in order to ensure security of supply over the winter in case of serious supply disruptions, without putting an excessive burden on Member States, energy companies or citizens.

- **Choice of the instrument**

This is a proposal to amend two regulations, Regulation (EU) 2017/1938 and Regulation (EU) 715/2009, therefore the instrument chosen is an amending Regulation. Given that this is not a full revision of either Regulation, a recast is not considered appropriate.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Due to the urgency of the proposal, which is made in reaction to an unexpected geopolitical crisis and needs to be urgently adopted to ensure filled storages ahead of the heating season, stakeholder consultations had to be kept less formal. Nevertheless, targeted stakeholder consultations were carried out, including through the Gas Coordination Group, as well as manifold bilateral consultations with key stakeholders, sector experts and Member States.

The Commission published its Communication COM(2022) 108 final “REPowerEU: Joint European Action for more affordable, secure and sustainable energy” on 8 March 2022, which set out the main content of the current proposal on storage filling measures, and already allowed for a consultation of relevant stakeholder with regard to the proposed measures. Based on this document, all parties interested - for example authorities, stakeholders and citizens - had the opportunity to comment on the Commission’s legislative approach, as outlined in the Communication.

- **Collection and use of expertise**

Due to the politically sensitive and urgent nature of the proposal, no external expertise was commissioned apart from the extensive stakeholder consultations.

- **Impact assessment**

Due to the politically sensitive and urgent nature of the proposal, no impact assessment was carried out but a security preparedness analysis and targeted consultations were carried out.

However, the storage filling measures and possible alternatives were assessed and intensively discussed with stakeholders ahead of the proposal:

The reinforced preparedness analysis under Regulation (EU) 2017/1938, carried out in February 2022, highlighted that there is a risk of decreasing levels of storage in the Union, which could be even lower than in 2021/2022. Optimising the storage capacities over the filling season would, according to the analysis, require immediate injection as from the start of the filling season (April 2022).

During the meeting of the Gas Coordination Group of 23 February 2022, participants exchanged views on storage and possible measures to refill storage. The Commission and the European Network of Transmission System Operators for Gas ('ENTSO-G') pointed out that authorities need to ensure that early withdrawals are avoided and stocks maintained until the end of March 2022. The storage would be at a low level at the end of March 2022, a situation to be addressed already at the beginning of the next filling season. It was underlined that measures should be taken as soon as possible. Interventions focused on ways to promote filling, using where possible market mechanisms, the filling level to achieve, the way to finance storage, including possible state aid, and the way to coordinate between Member States.

At the meeting of the Gas Coordination Group of 11 March 2022, the Commission presented the storage measures envisaged in this proposal, and outlined in the Communication of 8 March 2022. The Group welcomed the analysis already done for the winter and expressed the need to move quickly with the additional analysis.

- **Fundamental rights**

The measure will allow support to some of the most vulnerable customers, and in particular those already experiencing energy poverty.

4. **BUDGETARY IMPLICATIONS**

[Ensure a legislative financial statement. All the monitoring and enforcement measures related to storage filling as well as the certification procedure of existing storage capacity will have significant resource implications]

5. **OTHER ELEMENTS**

- **Detailed explanation of the specific provisions of the proposal**

Article 1 amends Regulation (EU) 2017/1938.

Article 1(1) added definitions to Article 2 of Regulation (EU) 2017/1938, to define 'filling trajectory', 'filling target' and 'storage capacity'.

Article 1(2) inserts new Articles 6a to 6d;

- Article 6(a). This new provision will require the Member States to ensure that the storage infrastructures in its territory are filled up to at least 90% of their capacity at Member State level by 1 November each year, with intermediary targets for each Member State in February, May, July, and September and the possibility for the

Commission to ensure that the filling targets are met in case intermediate targets are missed.

- Article 6b sets out the measures Member States shall take to ensure that the mandatory filling targets pursuant to Article 6a are reached.
- Article 6c. A burden sharing mechanism is introduced, as although not all Member States have storage facilities in their territories, all will benefit from having a guaranteed high filling level, in terms of the insurance value against security of supply risks and price dampening effects in winter.
- Article 6d. This new provision provides for effective instruments to monitor the new filling obligations and reinforces the role of the Gas Coordination Group, giving it an explicit mandate to monitor Member States' performance in the area of gas security of supply, and to develop best practices on that basis. The updated of National energy and climate plans and the integrated national energy and climate progress reports adopted pursuant Article 17 of the Regulation 2018/1999 shall reflect the progress on the filling trajectories and the filling targets, and the planned policies and measures to achieve it

Article 1(3) modifies Article 9(11) to increase the frequency of the preventative action plans.

Article 1(4) modifies Article 10(2) to increase the frequency of the preventative action plans.

Article 2 amends Regulation (EU) 715/2009.

Article 2(1) inserts a new Article 3a on the certification of storage system operators, under which Member States shall certify all undertakings which own a storage system operator, including transmission system operators, to ensure that the owner of the storage system operator does not put at risk the security of energy supply in the Union or any Member State.

Article 2(2) adds a new final paragraph to Article 13, applying a discount of 100 % to capacity-based transmission tariffs at entry points from and exit points to storage facilities.

Article 3 concerns entry into force.

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amending Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and Regulation (EU) 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,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) While short-term gas supply interruptions have occurred in the past, there are several factors which distinguish the current situation from previous security of 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 supply at Union level, in particular to protected consumers. It is therefore crucial that the Union acts in a coordinated manner to avoid potential risks resulting from a possible gas supply interruption.
- (3) Gas storage contributes to security of supply by providing additional supply in case of strong demand or supply disruptions, and well filled gas storage leads to secure gas supplies. Since supply disruptions of pipeline gas may occur anytime, measures regarding the filling level of Union 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 Council³ introduced solidarity mechanisms designed to address extreme situations in which supply of protected customers, as an essential security need and a necessary priority,

³ 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).

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.

- (5) The impact of the armed conflict at the borders of the Union has shown that the existing security of 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 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 ensure that the storage infrastructures in their territory are filled up to at least 90% of their capacity at Member State level by 1 November 2022, with intermediary targets for each Member State in April, June and August and February. This is necessary to ensure that European customers are adequately protected against supply shortages during the 2022/23 and storage levels should be fixed for each subsequent winter periods.
- (7) A “filling trajectory” system shall enable continuous monitoring throughout the filling season (from 1 April to 30 September). From the year 2023 storage shall also be specifically monitored in February (the ‘February control point’), to avoid sudden withdrawal of gas from storage in the middle of the winter, which could bring along security of supply challenges before the end of winter.
- (8) The storage trajectories will be defined by the Commission for 2023 onwards, by means of a delegated act, on the basis of annual ENTSOG simulations and the common analysis to be carried out by the regional risk groups defined in Regulation (EU) 2017/1938. The decision of the Commission to set the “storage trajectories” will be taken after consultation of the Gas Coordination Group.
- (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 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 supply for the winter period.
- (10) Moreover, Member States may not be able to meet the filling targets in case of an EU-wide emergency, that is in times of extreme scarcity of gas. Therefore, the filling targets should not apply where and as long the Commission has declared a Union or regional emergency pursuant to Article 12 of Regulation (EU) 2017/1938.
- (11) Competent authorities shall 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 by a bandwidth of two percentage points. If the filling level of a given Member State is more than 2 percentage points below the targets of the filling trajectory, the competent authorities shall immediately take effective measures to increase the filling level. Member States shall 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 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 supply problems resulting from unfilled storages. When deciding upon the adequate measures, the Commission shall take into account the specific situation of the respective Member State, such as the size of the storage facilities in relation to the domestic gas consumption or the importance of the storage facilities for security of supply in the region. The Commission shall ensure that the measures do not go beyond what is necessary to maintain security of 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. 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 paragraph 6(b)(2) and (3) are respected. Member States therefore have the freedom to choose which market participant(s) to oblige to ensure the filling of the storages. They can also decide whether use 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.
- (14) 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 to ensure the filling of 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 storage facilities or having booked but not used storage capacity.
- (16) The efficient use of the existing infrastructure, including cross-border transmission capacities, storage facilities and LNG facilities are important factors in ensuring security of supply. 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) 2017/459.
- (17) The storage obligation will impose financial burdens on the relevant actors in those Member States, which have relevant storage facilities in their territory, while the increase in the level of security of supply will benefit all Member States including those Member States, which do not have storage facilities. To share the burden, in a spirit of solidarity, of ensuring that storages in the Union are sufficiently filled to ensure security of supply, Member States without storage facilities should comply with the obligation to use storage in other Member States.

- (18) However, Member States should not be subject to such an obligation if they jointly develop an alternative burden sharing mechanism with one or more Member States with storage facilities. Member States should notify such alternative burden sharing mechanisms to the Commission, which should consult ACER before issuing an opinion. Thus, ACER should be given a reinforced role in the monitoring of security of supply measures, and in ensuring transparency on storages.
- (19) The measures by which Member States without storage facilities share the burden of the storage obligation with Member States with storage facilities may in turn have a financial impact on the relevant market actors. Member States without storage facilities may 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 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 supply, as well as for the choice of the appropriate measures to counter such risks. Operators of storage sites should report the filling levels to the national competent authorities on a monthly basis during the filling period. Owners and operators of storage facilities are also encouraged to encode regularly the capacity and the filling level for each storage site at a central reporting platform.
- (21) The regulatory 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 – as regulatory authorities ensure a balance between security and the cost of the measures for consumers. The Commission will monitor the filling levels, jointly with the competent authorities of Member States, at the first day of each month from April until October.
- (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 supply, and to develop best practices on that basis in that area. The Gas Coordination Group, shall support 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, 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. The Member States should take into account the measures under this Regulation in their national energy and climate plans and the progress reports adopted pursuant Regulation 2018/1999.
- (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 transmission system operators, is certified by the regulatory authority, or another competent authority designated by the Member State to ensure that the owner of the storage system operator does not put at risk the security of energy supply or any other essential security interest in the Union or any Member State.

- (25) Regulatory authorities should refuse the certification if a person which 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 of any Member State or the Union. In this assessment the regulatory authorities should take into account 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 the former take decisions on certification. Where a regulatory authority refuses the certification, it should have the power to require any person to dispose of the shareholding or rights it has 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.
- (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 entry and exit tariffs for transmission capacity to and from storage, making storage more attractive for market participants.
- (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 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 only apply until a regulation on the internal markets for renewable and natural gases and for hydrogen is adopted, following the above mentioned Commission Proposal COM/2021/804 final, enters into force, reflecting the amendments introduced by this Regulation,

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 in Annex Ia;
- (28) ‘filling target’ means a binding target for the filling level of natural gas storage facilities;

- (29) ‘strategic storage’ means storage of gas which is subject to public authority authorisation for release, cannot be sold to the market but and only released in case of supply scarcity, a supply disruption or emergency;
- (30) ‘strategic stock’ means gas purchased, managed and stored by transmission system operators 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 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 of Regulation (EU) 2017/1938 of the European Parliament and of the Council and can otherwise not be sold on wholesale gas markets;’

- (2) The following Articles 6a to 6d are inserted:

‘Article 6a

Mandatory filling target and filling trajectory

1. Each Member State shall ensure that the storage facilities on their territory reach the filling target set out in paragraph 2 by 1 November each year (‘filling target’).

Member States shall take the necessary measures to fulfil the intermediary targets as indicated in Annex Ia for each Member State and set for the months of April, June, August and September of the same year, and February of the following year (‘filling trajectory’).

2. For 2022, the filling target shall be set at 90% of the capacity of all storage facilities on the territory of the respective Member States.

The Commission is empowered, after consultation of the Gas Coordination Group, to adopt a delegated act amending Annex Ia to specify the filling target and a filling trajectory for the following years, in accordance with Article 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 be based on an assessment of the general security of 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 supply while avoiding unnecessary burden for Member States, gas market participants, storage system operators or citizens.

3. Where a Member State cannot meet the filling target due to specific technical characteristics of a respective storage facility within its territory, such as exceptionally low injection rates, the Member State shall be allowed to reach the filling target only

on 1 December. The Member State shall inform the Commission before 1 November, providing reasons for the delay.

4. 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.
5. 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 percentage points below the level of the filling trajectory pursuant to Annex Ia, 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.
6. In case of substantial and sustained deviation from the filling trajectories, 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 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, including where appropriate one or several of the measures listed in 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 the storage facilities in relation to the domestic gas consumption or the importance of the storage facilities for security of supply in the region. The Commission shall ensure that the measures do not go beyond what is necessary to maintain security of supply, without putting disproportionate burden on Member States, gas market participants, storage system operators or citizens.

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 the mandatory filling targets pursuant to Article 6a are reached. These measures may, in particular, include:
 - (a) imposing an obligation on gas suppliers to store minimum volumes of gas in storage facilities;
 - (b) imposing an obligation on storage owners to tender their capacities to market participants;
 - (c) imposing an obligation on a transmission system operator to purchase and manage strategic stocks of gas exclusively for carrying out their functions as transmission system operators and for the purpose of security of supply in case of emergency;

- (d) providing financial incentives for market participants or compensation for the potential shortfall of revenues or for costs incurred by obligations on market participants which cannot be covered by revenues;
 - (e) adopting effective instruments to set an obligation on storage capacity holders to use or release unused booked capacities.
2. The measures adopted pursuant to this Article shall be limited to what is necessary to achieve the filling target, 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 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 storage facilities shall ensure that domestic market participants have arrangements with storage operators from 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 States without storage facilities. 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.
2. By way of derogation from paragraph 1, Member States without storage facilities may instead jointly develop a burden-sharing mechanism with one or more Member States with 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 financial support to ensure filling targets, without consideration of costs for filling of strategic storage obligations;
 - b. the gas volumes needed to meet demand of protected customers in accordance with Article 6(1);
 - c. the technical limitations, such as the available 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.
4. Member States without 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 under paragraph 2. If the measure is financed through a levy, that levy shall not be allocated to cross-border interconnection points.

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 to the competent authorities in the respective Member States.
 2. The competent authorities of the Member States shall monitor the filling levels of the 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 the Commission in the monitoring of the filling targets and trajectories and 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 the filling trajectory and the filling target and to enforce the storage obligations which are required to reach that trajectory and that target on market participants, including by imposing sufficiently deterrent sanctions and fines on them.
 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 shall convene meetings of the Gas Coordination Group in a format restricted to Member States and shall limit the information exchanged 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.'
- (3) The Annexes are amended in accordance with the text set out in Annex I to this Regulation.

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 authority under this Article, or another competent authority designated by the Member State concerned, in accordance with the procedure laid down in this Article. The obligation to certify storage operators under this Article applies also to storage system operators controlled by transmission operators which have already been certified under unbundling rules pursuant to Articles 9 to 11 of Directive 2009/73/EC.
2. 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 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:
 - a) 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;
 - b) 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; and
 - c) any other specific facts and circumstances of the case concerned.
3. The regulatory authority or 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. In exceptional circumstances, the regulatory authority or the designated authority pursuant to paragraph 1, may chose not to refuse the certification, by imposing 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, refuses the certification, it shall:
 - a) require any person or persons that it considers as putting at risk the security of energy

- supply or the essential security interests of any Member State or the Union to dispose of the shareholding or rights it or they have over the storage system operator and to set a time limit for such disposal;
- b) order any other appropriate measure, including interim measures, to ensure that such person or persons cannot exercise any control or right over that storage system operator;
 - c) decide on the appropriate compensatory measures.
5. The regulatory authority or 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 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 within 175 working days from the date of entry into force of this Regulation or from the date of the notification pursuant to paragraphs 7 or 8.
 7. Before a newly built 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 and 2.
 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 and 2. 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 identified in Annex Ia. Those storage facilities may exit operations only

following an assessment conducted by the regulatory authority or the 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.;"

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

‘3. A discount of 100 % shall be applied to capacity-based transmission tariffs at entry points from and exit points to 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 this 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.’;

(3) The Annexes are amended in accordance with the text set out in Annex II to this Regulation.

Article 3

Entry into force and 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 xx/xx/xxx [the date on which 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.]

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