Council of the European Union

Brussels, 13 September 2022
(OR. en)

12060/22
ADD 1

**Interinstitutional File:**
**2022/0235 (NLE)**

**ENER 420**
**RELEX 1133**
**COWEB 81**
**COEST 629**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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| Subject: | Draft DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY adapting and implementing Regulation (EU) 2022/1032 of the European Parliament and of the Council amending Regulation (EU) 2017/1938 as adapted and adopted in the Energy Community by Ministerial Council Decision 2021/15/MC-EnC, and Regulation (EC) No 715/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC, with regard to gas storage |

DRAFT

**DECISION 2022/…/MC-EnC**
**OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY**

**of …**

**adapting and implementing Regulation (EU) 2022/1032 of the European Parliament and of the Council amending Regulation (EU) 2017/1938 as adapted and adopted in the Energy Community by Ministerial Council Decision 2021/15/MC-EnC, and Regulation (EC) No 715/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC, with regard to gas storage**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the the Energy Community Treaty, and in particular Articles 79, 24 and 25 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Contracting Parties' commitments under Article 11 of the Energy Community Treaty ('the Treaty') should be brought in line with the evolution of European Union law, while taking into account the Energy Community's own institutional framework and the specific situation of each of its Contracting Parties.

(2) Given the importance of gas storage in ensuring the security of gas supply, and against the background of Russia's war of aggression against Ukraine, in March 2022 the Commission proposed an urgent Regulation on gas storage to ensure the European Union is prepared for the risk of an interruption to gas supplies next winter.

(3) Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage was adopted at Union level under an urgent procedure and entered into force on 1 July 2022.

(4) In line with Recital 35 of Regulation (EU) 2022/1032, that Regulation should, as a matter of urgency, become part of the Energy Community *acquis* in accordance with the Treaty.

(5) Annex I to the Treaty should therefore be amended to reflect the changes made to the *acquis communautaire* on energy. It is also necessary to adapt Regulation (EU) 2022/1032 to the Treaty and to take the measures necessary for its implementation by the Contracting Parties.

(6) The Permanent High-Level Group welcomed the proposal to incorporate Regulation (EU) 2022/1032 into the Energy Community *acquis* at its meeting on 7 July 2022,

HAS ADOPTED THIS DECISION:

*Article 1*

*Amendments to the Treaty*

In Annex I ‘List of acts included in the “Acquis communautaire on energy”’ to the Treaty, point (6) is replaced by the following:

‘(6) 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, as adapted and adopted by Ministerial Council Decision 2021/15/MC-EnC of 30 November 2021 and as adapted by Ministerial Council Decision 2022/.../MC-EnC of ..., and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 and as adapted by Permanent High-Level Group Decision No 2018/01/PHLG-EnC of 12 January 2018 and Ministerial Council Decision 2022/.../MC-EnC of ...’.

*Article 2*

*Transposition and implementation deadlines*

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulations (EU) 2017/1938 and (EC) 715/2009, as adapted by this Decision, by 1 October 2022.

2. Upon transposition, the Contracting Parties shall immediately inform the Energy Community Secretariat thereof and communicate to the Energy Community Secretariat the text of the provisions of national law which they adopt in the field covered by this Decision.

*Article 3*

*Specific adaptations to Regulation (EU) 2017/1938 as adopted in the Energy Community*

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, as adapted and adopted by Ministerial Council Decision 2021/15/MC-EnC of 30 November 2021, shall be adapted as follows:

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

‘(28) “filling trajectory” means a series of intermediate targets for the underground gas storage facilities of each Contracting Party, as listed in Annex Ia for 2022 and, for the following years, set in accordance with Article 6a;

(29) “filling target” means a binding target for the filling level of the aggregated capacity of the underground gas storage facilities;

(30) “strategic storage” means underground storage or part of underground storage of non-liquefied natural gas which is purchased, managed and stored by transmission systems operators, an entity designated by the Contracting Parties or an undertaking, and which may be released only after prior notification or public authority authorisation for release, and is generally released in case of:

(a) major supply scarcity;

(b) a supply disruption; or

(c) the declaration of an emergency as referred to in Article 11(1), point (c);

(31) “balancing stock” means non-liquefied natural gas which is:

(a) purchased, managed and stored underground by transmission system operators or by an entity designated by the Contracting Party, for the sole purposes of carrying out the functions of transmission system operators and of the security gas supply; and

(b) dispatched only where required to keep the system in operation under secure and reliable conditions in accordance with Article 13 of Directive 2009/73/EC of the European Parliament and of the Council as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC and with Articles 8 and 9 of Commission Regulation (EU) No 312/2014 as adapted and adopted by Permanent High-Level Group Decision 2019/01/PHLG-EnC;

(32) "underground gas storage facility" means a storage facility as defined in Article 2, point (9), of Directive 2009/73/EC as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC, that is used for the stocking of natural gas, including balancing stock, and that is connected to a transmission or distribution system, excluding above-ground spherical or linepack storage.';

(2) the following Articles are inserted:

'*Article 6a*
*Filling targets and filling trajectories*

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

(a) for 2022: 80 %;

(b) from 2023: 90 %.

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

2. Notwithstanding paragraph 1 and without prejudice to the obligations of other Contracting Parties to fill the underground gas storage facilities concerned, the filling target for each Contracting Party in which the underground gas storage facilities are located shall be reduced to a volume corresponding to 35 % of the average annual gas consumption over the preceding five years for that Contracting Party.

3. Notwithstanding paragraph 1 and without prejudice to the obligations of other Contracting Parties to fill the underground gas storage facilities concerned, the filling target for each Contracting Party in which the underground gas storage facilities are located shall be reduced by the volume which was supplied to the EU Member States and third countries during the reference period 2016 to 2021 if the average volume supplied was more than 15 TWh per year during the gas storage withdrawal period (October – April).

4. <….>

5. A Contracting Party may partially meet the filling target by counting the LNG physically stored and available in its LNG facilities if both of the following conditions are met:

   (a) the gas system includes significant capacity of LNG storage, accounting annually for more than 4 % of the average national consumption over the preceding five years;

   (b) the Contracting Party has imposed an obligation on gas suppliers to store minimum volumes of gas in underground gas storage facilities and/or LNG facilities in accordance with Article 6b(1), point (a).

6. The Contracting Parties shall take the necessary measures to meet the intermediate targets or to ensure that they are met as follows:

   (a) for 2022 as set out in Annex Ia; and

   (b) from 2023: in accordance with paragraph 7.

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

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

Based on the technical information provided by each Contracting Party and taking into account the assessment of the Security of Supply Coordination Group, the Energy Community Secretariat shall adopt a decision setting the filling trajectory for each Contracting Party. That decision shall be adopted by 15 November of the preceding year, where necessary and including where a Contracting Party has submitted an updated draft filling trajectory. It shall be based on an assessment of the general security of gas supply situation and the development of gas demand and supply in the Energy Community and individual Contracting Parties, and set in a manner that safeguards the security of gas supply, while avoiding unnecessary burdens on Contracting Parties, gas market participants, storage system operators or customers and not unduly distorting competition between storage facilities located in neighbouring Contracting Parties and/or Member States.

8. Where, in any given year, a Contracting Party is not able to meet its filling target by 1 November due to the specific technical characteristics of one or more underground gas storage facilities within its territory, such as exceptionally low injection rates, it shall be allowed to meet it by 1 December. The Contracting Party shall inform the Energy Community Secretariat by 1 November, providing reasons for the delay.

9. The filling target shall not apply where and for as long as one or more Contracting Parties with underground gas storage facilities have declared a national emergency pursuant to Article 11.

10. The competent authority of each Contracting Party shall continuously monitor compliance with the filling trajectory and shall report regularly to the Security of Supply Coordination Group. If the filling level of a given Contracting Party is more than five percentage points below the level of the filling trajectory, the competent authority shall, without delay, take effective measures to increase it. The Contracting Parties shall inform the Energy Community Secretariat and the Security of Supply Coordination Group of the measures taken.

11. In the event of a substantial and sustained deviation by a Contracting Party from the filling trajectory, which compromises the meeting of the filling target, or in the event of a deviation from the filling target, the Energy Community Secretariat shall, after consulting the Security of Supply Coordination Group and the Contracting Party concerned, issue a recommendation to that Contracting Party or to the other Contracting Parties concerned regarding measures to be taken immediately.

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

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

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

The Energy Community Secretariat shall ensure that the measures taken pursuant to this paragraph do not:

(a) go beyond what is necessary to safeguard the security of gas supply;

(b) place a disproportionate burden on Contracting Parties, gas market participants, storage system operators or customers.

*Article 6b*

*Implementation of filling targets*

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

To the extent that any of the measures provided for in this Article are duties and powers of the national regulatory authority pursuant to Article 41 of Directive 2009/73/EC as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC, the national regulatory authorities shall be responsible for taking those measures.

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

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

(b) requiring storage system operators to tender their capacities to market participants;

(c) requiring transmission system operators or entities designated by the Contracting Party to purchase and manage balancing stock exclusively for carrying out their functions as transmission system operators and, where necessary, imposing an obligation on other designated entities for the purpose of safeguarding the security of gas supply in the case of an emergency as referred to in Article 11(1), point (c);

(d) using coordinated instruments, such as platforms for the purchase of LNG, with other Contracting Parties to maximise the utilisation of LNG and to reduce infrastructure and regulatory barriers to the shared use of LNG to fill underground gas storage facilities;

(e) using voluntary mechanisms for the joint procurement of natural gas;

(f) providing financial incentives for market participants, including for storage system operators, such as contracts for difference, or providing compensation to market participants for the shortfall in revenues or for costs incurred by them as a result of obligations on market participants, including storage system operators which cannot be covered by revenue;

(g) requiring storage capacity holders to use or release unused booked capacities, while still obliging the storage capacity holder not using the storage capacity to pay the agreed price for the whole term of the storage contract;

(h) adopting effective instruments for the purchase and management of strategic storage by public or private entities, provided that such instruments do not distort competition or the proper functioning of the internal market;

(i) appointing a dedicated entity tasked with meeting the filling target in the event that the filling target would not otherwise be met;

(j) providing discounts on storage tariffs;

(k) collecting the revenues needed to recover the capital and operational expenditures related to regulated storage facilities as storage tariffs and as a dedicated charge incorporated into transmission tariffs collected only from exit points to final customers located within the same Contracting Parties, provided that revenues collected through tariffs are not larger than the allowed revenues.

2. The measures taken by the Contracting Parties pursuant to paragraph 1 shall be limited to what is necessary to meet the filling trajectories and filling targets. They shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable. They shall not unduly distort competition or the proper functioning of the internal market in gas or endanger the security of gas supply of other Contracting Parties or of the Energy Community.

3. The Contracting Parties shall take all necessary measures to ensure the use of the existing infrastructure at national and regional level for the benefit of the security of gas supply in an efficient way. Those measures shall under no circumstances block or restrict the cross-border use of storage facilities or LNG facilities and shall not limit cross-border transmission capacities allocated in accordance with Commission Regulation (EU) 2017/459, as adapted and adopted by Permanent High Level Group Decision 2018/06/PHLG-EnC.

4. When taking measures pursuant to this Article, the Contracting Parties shall apply the energy efficiency first principle, while still achieving the objectives of their respective measures, in accordance with Regulation (EU) 2018/1999 of the European Parliament and of the Council, as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC.

*Article 6c*

*Storage arrangements and burden-sharing mechanism*

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

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

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

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

(a) the cost of financial support for meeting the filling target, exclusive of the costs of meeting any strategic storage obligations;

(b) the gas volumes needed to meet the demand of protected customers in accordance with Article 6(1);

(c) any technical limitations, including the available underground storage capacity, technical cross-border transmission capacity and withdrawal rates.

Contracting Parties shall notify the burden-sharing mechanism to the Energy Community Secretariat and the Security of Supply Coordination Group by ….. [two months after the date of entry into force of this Decision]. In the absence of an agreement on a burden-sharing mechanism by that date, Contracting Parties without underground gas storage facilities shall demonstrate that they comply with paragraph 1 and shall notify the Energy Community Secretariat and the Security of Supply Coordination Group accordingly.

3. <…>

4. Contracting Parties without underground gas storage facilities may provide incentives or financial compensation to market participants or transmission system operators, as relevant, for the shortfall in revenues, or for costs incurred by them, as a result of their compliance with their storage obligations pursuant to this Article, where such a shortfall or such costs cannot be covered by revenue, in order to ensure compliance with their obligation to store gas in other Contracting Parties and/or Member States pursuant to paragraph 1 or the implementation of the burden-sharing mechanism. If the incentive or financial compensation is financed through a levy, that levy shall not be applied to cross-border interconnection points.

5. Notwithstanding paragraph 1, where a Contracting Party has underground gas storage facilities located on its territory and the aggregated capacity of those facilities is larger than the annual gas consumption of that Contracting Party, the Contracting Parties without underground gas storage facilities that have access to those facilities shall either:

   (a) ensure that by 1 November storage volumes correspond at least to the average usage of the storage capacity over the preceding five years, determined, *inter alia*, by taking into account the flows during withdrawal season over the preceding five years from the Contracting Parties where the storage facilities are located; or

(b) demonstrate that storage capacity equivalent to the volume covered by the obligation under point (a) has been booked.

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

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

6. <…>

*Article 6d*

*Monitoring and enforcement*

1. Storage system operators shall report the filling level to the competent authority in each Contracting Party where the underground gas storage facilities concerned are located and, if applicable, to an entity designated by that Contracting Party (the "designated entity") as follows:

(a) for 2022: on each of the intermediate targets set out in Annex Ia; and

(b) from 2023: as set pursuant to Article 6a(4).

2. The competent authority and, if applicable, the designated entity of each Contracting Party shall monitor the filling levels of the underground gas storage facilities on their territory at the end of each month and report the results to the Energy Community Secretariat without undue delay.

   The Energy Community Secretariat may, where appropriate, invite the Energy Community Regulatory Board to assist with such monitoring.

3. Based on the information provided by the competent authority and, if applicable, the designated entity of each Contracting Party, the Energy Community Secretariat shall report regularly to the Security of Supply Coordination Group.

4. The Security of Supply Coordination Group shall assist the Energy Community Secretariat in the monitoring of the filling trajectories and the filling targets, and shall develop guidance for the Energy Community Secretariat on adequate measures to ensure compliance in the event that Contracting Parties deviate from the filling trajectories or do not meet the filling targets.

5. The Contracting Parties shall take the necessary measures to meet the filling trajectories and the filling targets and to enforce upon market participants the storage obligations which are required to meet them, including by imposing sufficiently deterrent sanctions and fines on those market participants.

The Contracting Parties shall inform the Energy Community Secretariat without delay of the enforcement measures taken pursuant to this paragraph.

6. Where commercially sensitive information is to be exchanged, the Energy Community Secretariat may convene meetings of the Security of Supply Coordination Group that are restricted to the Contracting Parties and the Energy Community Secretariat.

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

The Energy Community Secretariat, the national regulatory authorities and the Contracting Parties shall preserve the confidentiality of commercially sensitive information received for the purposes of carrying out their obligations.";

(3) Article 7 is adapted as follows:

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

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

(b) in paragraph 5, at the end of the second sentence ‘The national risk assessments shall be prepared in accordance with the relevant template set out in Annex V.
If necessary, Contracting Parties may include additional information’, the following text shall be added:

‘such as the ENTSOG Union-wide simulation of gas supply and infrastructure disruption scenarios as carried out in accordance with paragraph 1.’;

(4) the following Article is inserted:

‘*Article 17a*
*Reporting*

1. By 1 June 2023 and annually thereafter, the Energy Community Secretariat shall submit reports to the Ministerial Council, containing:

(a) an overview of the measures taken by the Contracting Parties to fulfil the storage obligations,

(b) an overview of the time needed for the certification procedure set out in Article 3a of Regulation (EC) No 715/2009 as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC;

(c) an overview of the measures requested by the Energy Community Secretariat in order to ensure compliance with the filling trajectories and the filling targets;

(d) an analysis of the potential effects of this Regulation on gas prices and potential gas savings in relation to Article 6b(4).';

(5) in Article 20, the following paragraph is added:

'4. Articles 6a to 6d shall not apply to Montenegro, Kosovo* or Georgia for as long as they are not directly interconnected to the gas interconnected system of any other Contracting Parties.';

(6) in Article 22, the following paragraph is added:

'Article 2, points (27) to (31), Articles 6a to 6d, Article 17a, Article 20(4) and Annex Ia shall apply until 31 December 2025.';

(7) the following Annex is inserted:

'ANNEX Ia*:

Filling trajectory with intermediate targets and filling target for 2022 for Contracting Parties with underground gas storage facilities

| Contracting Party | September 1st Intermediate target | October 1st Intermediate target | November 1st filling target |
|---|---|---|---|
| RS | 60 % | 70 % | 80 % |
| UA | 60 % | 70 % | 80 % |

* This Annex is subject to the *pro rata* obligations of each Contracting Party under this Regulation, in particular Articles 6a, 6b and 6c.

For Contracting Parties falling under Article 6a(2), the *pro rata* intermediate target shall be calculated by multiplying the value indicated in the table by the limit of 35 % and by dividing the result by 80 %.'.

*Article 4*

*Specific adaptations to Regulation (EC) No 715/2009*

*as adapted and adopted in the Energy Community*

Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 and as adapted by Permanent High-Level Group Decision No 2018/01/PHLG-EnC of 12 January 2018, shall be adapted as follows:

(1) the following Article is inserted:

‘*Article 3a*

*Certification of storage system operators*

1. Contracting Parties shall ensure that each storage system operator, including any storage system operator controlled by a transmission system operator, is certified in accordance with the procedure laid down in this Article, either by the national regulatory authority or by another competent authority designated by the Contracting Party concerned pursuant to Article 3(2) of Regulation (EU) 2017/1938 of the European Parliament and of the Council, as adapted and adopted by Ministerial Council Decision 2021/15/MC-EnC (in either case, “certifying authority”).

This Article also applies to storage system operators controlled by transmission system operators which have already been certified under the unbundling rules laid down in Articles 9, 10 and 11 of Directive 2009/73/EC, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC.

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

In respect of storage system operators as referred to in the first subparagraph, the certifying authority shall make its best efforts to issue a draft certification decision by 1 January 2023.

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

3. In considering the risk to the security of energy supply, the certifying authority shall take into account any security of gas supply risk at national or Energy Community level as well as any mitigation of such risk, resulting, inter alia, from:

(a) ownership, supply or other commercial relationships that could negatively affect the incentives and the ability of the storage system operator to fill the underground gas storage facility;

(b) the rights and obligations of the Energy Community with respect to a third country arising under international law;

(c) the rights and obligations of the Contracting Parties concerned with respect to a third country arising under agreements concluded by the Contracting Parties concerned with one or more third countries, in so far as those agreements comply with Energy Community law; or

(d) any other specific facts and circumstances of the case.

4. If the certifying authority concludes that a person who directly or indirectly controls, or exercises any right over, the storage system operator within the meaning of Article 9 of Directive 2009/73/EC as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC could endanger the security of energy supply or the essential security interests of the Energy Community or of any Contracting Party, the certifying authority shall refuse the certification. Alternatively, the certifying authority may issue a certification decision subject to conditions to ensure the sufficient mitigation of the risks which could negatively influence the filling of the underground gas storage facilities, provided that the practicability of the conditions can be fully ensured by effective implementation and monitoring. Such conditions may include, in particular, a requirement that the storage system owner or storage system operator transfer management of the storage system.

5. Where the certifying authority concludes that the gas supply risks cannot be mitigated by conditions pursuant to paragraph 4, including by requiring the storage system owner or storage system operator to transfer management of the storage system, and therefore refuses the certification, it shall:

   (a) require the storage system owner or storage system operator or any person that it considers could endanger the security of energy supply or the essential security interests of the Energy Community or of any Contracting Party to dispose of the shareholding or rights they have over the storage system ownership or storage system operator ownership, and set a time limit for such disposal;

(b) order, where appropriate, interim measures, to ensure that such a person is not able to exercise any control or right over that storage system owner or storage system operator until the disposal of the shareholding or rights; and

(c) provide for appropriate compensatory measures in accordance with national law.

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

The Energy Community Secretariat shall deliver a binding opinion on the draft certification decision to the certifying authority within 25 working days of such notification. The certifying authority shall comply with the Energy Community Secretariat's opinion.

7. The certifying authority shall issue the certification decision within 25 working days of receipt of the Energy Community Secretariat's opinion.

8. Before a newly built underground gas storage facility is put into operation, the storage system operator shall be certified in accordance with paragraphs 1 to 7. The storage system operator shall notify the certifying authority of its intention to put the storage facility into operation.

9. Storage system operators shall notify the relevant certifying authority of any planned transaction which would require a reassessment of their compliance with the certification requirements set out in paragraphs 1 to 4.

10. Certifying authorities shall continuously monitor storage system operators as regards compliance with the certification requirements set out in paragraphs 1 to 4. They shall open a certification procedure to reassess compliance in any of the following circumstances:

    (a) upon receipt of a notification by the storage system operator pursuant to paragraph 8 or 9;

    (b) on their own initiative where they have knowledge that a planned change in rights or in influence over a storage system operator could lead to non-compliance with the requirements of paragraphs 1, 2 and 3;

    (c) upon a reasoned request from the Energy Community Secretariat.

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

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

12. The Energy Community Secretariat may issue guidance on the application of this Article.

13. This Article shall not apply to parts of LNG facilities that are used for storage.';

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

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

    This paragraph shall apply until 31 December 2025.'.

*Article 5*

*Entry into force and addressees*

This Decision shall enter into force on the date of its adoption.

This Decision is addressed to the Contracting Parties and the institutions of the Energy Community.

Done at ..., ... 2022

*For the Ministerial Council*

*The President*