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#### NOTE

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Origine:	Secrétariat général du Conseil
Destinataire:	Comité des représentants permanents
N° doc. Cion:	7406/22 +ADD 1
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 - Analyse du texte de compromis final en vue d'un accord

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#### I. INTRODUCTION

1. Le 23 mars 2022, la Commission a présenté la proposition de règlement relatif au stockage de gaz au sein de l'Union européenne modifiant le règlement 2017/1938 sur la sécurité d'approvisionnement en gaz et le règlement 715/2009 sur les conditions d'accès aux réseaux de transport de gaz. Cette proposition est fondée sur l'article 194(2) du Traité sur le fonctionnement de l'Union européenne (TFUE) et comporte en particulier trois modifications de la législation existantes (obligation de remplissage des stocks, certification des opérateurs de stocks, rabais tarifaires).

2. Les 24 et 25 mars 2022, le Conseil européen a chargé le Conseil d'examiner les travaux sur les propositions de la Commission relatives à une politique de l'UE en matière de stockage de gaz, en prenant dûment en compte et en respectant les intérêts des États membres disposant d'une capacité de stockage significative afin d'assurer un juste équilibre. Le Conseil européen a considéré que la reconstitution des stocks de gaz dans l'ensemble de l'Union devrait commencer dès que possible, en tenant pleinement compte des mesures de préparation nationales.

## **II. EXAMEN PAR LES AUTRES INSTITUTIONS**

3. Le Parlement européen a désigné la commission de l'industrie, de la recherche et de l'énergie (ITRE) comme commission responsable de cette proposition et a désigné une équipe de négociation coordonnée par M. Jerzy Buzek (PL, EPP). Le Parlement a aussi décidé d'adopter une procédure d'urgence (article 163 du Règlement intérieur du Parlement).
4. Le Comité économique et social européen a donné son avis le 18 Mai et le Comité européen des régions a décidé de ne pas fournir un avis.

## **III. ETAT D'AVANCEMENT DES TRAVAUX**

5. La proposition a été présentée en groupe de travail au Conseil le 28 mars ainsi qu'au Comité des Représentants Permanents le 1<sup>er</sup> avril. Trois groupes de travail se sont tenus les 4, 12 et 26 avril et les États membres ont partagé des commentaires écrits. La Présidence a proposé deux révisions successives du texte<sup>1</sup>. Le Comité des Représentants Permanents a débattu de cette proposition à trois reprises.
6. Au cours de ces réunions, la Présidence a pu constater que les États membres soutenaient la nécessité d'assurer la sécurité d'approvisionnement et de garantir le stockage du gaz pour la prochaine saison de chauffage, en ligne avec les Conclusions du Conseil européen susmentionnées.

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<sup>1</sup> ST 8202/22 et ST 8694/22 REV1

7. Le Comité des Représentants Permanents du 11 mai a mandaté la Présidence pour conduire les négociations avec le Parlement européen sur la base de la deuxième révision du règlement proposée par la Présidence. La Présidence a ensuite tenu deux trilogues avec le Parlement européen, les 16 et 19 mai ainsi que trois réunions techniques.
8. La Présidence a rendu compte des résultats du trilogue du 16 mai lors de la réunion du Comité des Représentants Permanents du 18 mai et a soumis deux options de compromis à l'avis du Comité. Sur cette base, les co-législateurs sont parvenus à un accord politique provisoire lors du trilogue du 19 mai. Le texte de compromis global a été finalisé en réunions techniques et figure en annexe de ce document.
9. Les principaux éléments de ce texte de compromis sont exposés à la section IV ci-dessous.

#### **IV. COMPROMIS GLOBAL**

10. En ce qui concerne les accords politiques provisoires dégagés lors des deux trilogues, il convient de noter les éléments suivants:
11. S'agissant de l'objectif de remplissage des stocks (Article 6a), le compromis final reprend l'architecture élaborée par le Conseil prenant en compte les spécificités nationales. L'obligation de remplissage resterait fixée à 80% au 1<sup>er</sup> novembre 2022 (90% pour les années suivantes) mais avec la clarification qu'elle concernerait, pour chaque État membre, les unités de stockage présentes sur leur territoire et connectées directement à leur zone de marché respective. Cette obligation serait plafonnée et ne pourrait pas dépasser 35% de leur consommation annuelle respective, calculée en moyenne sur les cinq dernières années. Lorsque les conditions sont remplies et lorsque dûment justifié, des possibilités de comptage de stocks GNL pourraient être comptabilisées au titre de l'obligation de remplissage. Par ailleurs, pour les États membres disposant de capacités de stockage directement connectées à un pays tiers, les volumes de gaz stockés et fournis pour le compte de ces pays tiers seraient exclus de l'obligation de remplissage des États membres concernés lorsque ces volumes (calculés sur la période de référence 2016-2021) sont supérieurs à 15 TWh pendant la période de soutirage d'Octobre à Avril. Enfin, le compromis final comprend un considérant précisant que les États membres peuvent, sur une base volontaire, fixer des objectifs de remplissage supérieurs afin que l'Union puisse, collectivement, tendre vers 85% de remplissage des stocks de gaz en moyenne.

12. S'agissant du mécanisme de partage de la charge (Article 6c), le compromis final reprend l'architecture élaborée par le Conseil. Les États membres ne disposant pas d'installation de stockage devraient imposer aux acteurs de leur marché national de constituer des stocks correspondant à 15% de leur consommation annuelle respective, calculée en moyenne sur les cinq dernières années. Conformément au principe du partage de la charge, ces stocks contribueraient à l'objectif de remplissage des stocks assignés aux États membres disposant de capacités de stockage. Lorsque des limitations techniques exceptionnelles le justifient et que l'équivalence est démontrée par les États membres concernés, cette obligation de stockage pourrait être remplie par le stockage de carburants alternatifs.
13. De manière transitoire, le cas particulier des États membres n'ayant pas de capacité de stockage mais ayant des projets de développement de capacités de stockage référencées dans la liste PCI est pris en compte . Ces États membres pourraient remplir partiellement l'obligation de stockage de 15% de leur consommation annuelle en prenant en compte des stocks de GNL stockés dans des unités de stockages flottantes (*FSU*) déjà existantes.
14. Le cas particulier des États membres disposant d'une capacité de stockage supérieure à 100% de leur consommation nationale serait pris en compte en imposant une obligation aux États membres connectés à ces capacités de stockage (mais sans capacité de stockage nationale) d'assurer le remplissage de ces capacités selon la moyenne de leur remplissage sur les cinq dernières années. Cette obligation serait plafonnée et ne pourrait pas dépasser 15% de leur consommation annuelle de gaz, calculée selon la moyenne des cinq dernières années (Article 6c(5a)). Le cas particulier de capacités de stockage non connectées à leur réseau gazier national ou utilisées principalement pour d'autres États membres serait pris en compte par des obligations additionnelles pour les États membres les utilisant sur la base de leur contribution à leur remplissage, calculée en moyenne sur les cinq dernières années. De manière optionnelle, le cas particulier de ces capacités de stockage et le partage de la responsabilité entre les États membres concernés serait clarifié à l'Annexe Ic (Article 6c(5b)).

15. S'agissant des trajectoires de remplissage (Article 6a (3)-(8)), le processus du Conseil est conservé dans le compromis final à partir de l'année 2023 et compte tenu de l'importance d'assurer un remplissage des stocks pour la saison de chauffage de l'hiver prochain, une Annexe Ia est réintroduite pour fixer les trajectoires de remplissage de l'année 2022. Cette Annexe Ia précise que les trajectoires de remplissage sont calculées aux prorata conformément aux obligations des États membres énoncées dans les articles et précise en particulier la formule de calcul pour les États pour lesquels l'obligation est plafonnée à 35% de leur consommation annuelle respective. À partir de 2023, les États membres devraient partager à la Commission un projet de trajectoire nationale au plus tard le 15 septembre de l'année précédente. La Commission publierait ensuite les actes d'exécution correspondant au plus tard le 15 novembre de l'année précédente.
16. S'agissant de la mise en œuvre des objectifs de remplissage (Article 6b), le compromis final reprend la liste de mesures complétée par le Conseil et ajoute une référence à la possibilité pour les États membres d'avoir recours à un mécanisme volontaire d'achat conjoint de gaz naturel. La Commission pourrait publier d'ici le 1<sup>er</sup> août 2022, si jugé nécessaire, des lignes directrices sur l'application d'un tel mécanisme. Le compromis final comprend aussi une référence au « principe de primauté de l'efficacité énergétique » en conformité avec le Règlement gouvernance UE 2018/1999.
17. S'agissant du champ d'application (Article 6e), le compromis final reprend l'exemption de Chypre, Malte et l'Irlande aux obligations de ce règlement, tant que ces États membres ne sont pas directement interconnectés au réseau de gazier d'un autre État membre.
18. S'agissant de la certification (Article 3a), le compromis final conserve un délai de 150 jours ouvrés pour la publication par les États membres des décisions préliminaires de certification, suivi d'un délai de 25 jours ouvrés pour l'analyse de la Commission puis de 25 jours ouvrés pour la publication de la décision finale par les États membres. Le compromis final contient en outre une obligation de moyen pour les États membres qui devraient fournir leurs meilleurs efforts afin de publier leurs décisions préliminaires de certification avant le 1<sup>er</sup> novembre 2022.

19. S'agissant de la référence à la réduction des dépendances énergétiques (Article 6a(1)), le compromis final reprend l'option discutée lors du Comité des Représentants Permanents du 18 mai, indiquant à l'Article 6a(1) que les États membres devraient prendre en compte les objectifs de maintien de la sécurité d'approvisionnement dans l'Union en accord avec l'Article 1 précisant l'objet du Règlement EU 2017/1938.
20. S'agissant de la gouvernance des crises au sein du Groupe de coordination gaz (GCG) (considérant 22a), le compromis final rappelle en considérant le fonctionnement actuel de la coordination entre le GCG et la Commission en cas de crise afin d'assurer le niveau maximum de préparation aux crises et de faciliter un échange rapide d'information.
21. S'agissant des scénarios de sécurité d'approvisionnement (Article 2a), le compromis final inclut une obligation pour l'ENTSOG de réaliser, d'ici le 1<sup>er</sup> septembre 2022, une simulation à l'échelle de l'Union des perturbations d'approvisionnement en gaz et des infrastructures en incluant un scénario d'interruption prolongé d'une seule source d'approvisionnement (scénario S-1).
22. S'agissant des pays de la Communauté de l'énergie, le compromis final précise que la coopération entre les États membres et les parties contractantes de la Communauté de l'énergie pourrait inclure des accords volontaires d'utilisation de la capacité de stockage des pays de la Communauté de l'énergie afin de stocker du gaz au-delà de l'objectif de stockage dans les sites localisés dans l'Union européenne, et sans remettre en cause cet objectif.
23. S'agissant du rôle de l'ACER (Article 6d(2)), le compromis final précise que la Commission pourrait, si approprié, inviter l'ACER à participer à son suivi du niveau de remplissage des stocks dans l'Union.
24. S'agissant des tarifs (Article 13), le compromis final indique que les autorités de régulation pourraient appliquer une réduction jusqu'à 100% des tarifs de transmission et de distribution aux points d'entrée et de sortie des sites de stockages de gaz souterrains et des sites de stockage de GNL.

25. S'agissant de l'entrée en vigueur et de la date d'extinction du règlement, le compromis final fixe la date d'extinction au 31 décembre 2025 pour l'ensemble des articles sauf les dispositions relatives à la certification des opérateurs de stockages et celles relatives à la réalisation par l'ENTSOG des simulations des perturbations de la sécurité d'approvisionnement de l'Union prenant en compte un scénario d'interruption prolongé d'une seule source d'approvisionnement, qui continueront de s'appliquer.

#### **IV. CONCLUSION**

26. Sur cette base, le Comité des représentants permanents est invité à :

- approuver le texte de compromis figurant en Annexe et concernant la 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.
- charger la Présidence d'adresser une lettre au Président de la Commission ITRE du Parlement européen confirmant que, si le Parlement européen adoptait sa position en première lecture, conformément à l'article 294, paragraphe 3, du traité, dans la forme figurant dans le texte de compromis figurant en annexe (sous réserve de mise au point par les juristes-linguistes par les deux institutions), le Conseil approuverait, conformément à l'article 294, paragraphe 4, du traité, la position du Parlement européen et l'acte sera adopté dans la formulation qui correspond à la position du Parlement européen.

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 **with regard to gas storage** ~~of the European Parliament and of the Council on conditions for access to natural gas transmission network~~

(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 ~~interruptions~~ **disruptions** 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~~ **Russian military aggression against** Ukraine since February 2022 has led to unprecedented price increases. ~~These~~ **Those** price increases are likely to fundamentally change the incentives to fill **underground gas** storage facilities in the Union. In the current geopolitical ~~context~~ **situation, it cannot be excluded that** further ~~supply~~ **supplies will take place** ~~can no longer be excluded~~. ~~This~~ **Such disruptions** could severely harm citizens and the economy of the Union, ~~as~~ **because** the Union is still, to a significant extent, dependent on external gas supplies which which can be affected by the conflict.

(2) The nature and consequences of ~~these~~ **recent** 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 **gas supplies** to protected ~~customers~~. **Energy savings and energy efficiency are key contributors to this objective.** 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's right to choose between different energy sources and the general structure of their energy supply, in accordance with the Article 194 of the Treaty on the Functioning of the European Union (TFEU).**

(3) **Underground g**Gas storage contributes to security of supply by providing additional **gas** supply in ~~ease of the event of~~ strong demand or ~~of~~ 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 facilities should have to** be introduced to ensure ~~supply~~ **gas supplies** for the winter of 2022/2023.

(4) Regulation (EU) 2017/1938 of the European Parliament and of the Council<sup>2</sup> introduced solidarity mechanisms designed to address extreme situations in which **gas supply of to** 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.

(5) The impact of the ~~armed conflict at the borders of the Union~~ **Russian military aggression against Ukraine** 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 **disruptions** ~~interruptions~~. It is therefore necessary to address the sudden greatly increased risks resulting from the current changes in the geopolitical situation, **including by diversifying our energy supplies**.

(6) Based on the Commission's analysis of, **inter alia, the adequacy of** 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 established by Regulation (EU) 2017/1938 (the "GCG")**, ~~it is appropriate that~~ Member States should, in principle, ensure that the **underground storage infrastructures facilities that are located in their territory and directly interconnected to a market area of that Member State** 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 **thereafter. There are some Member States with significant storage capacity that would be disproportionately impacted by the obligation to reach the filling target for the storage facilities on their territory. In order to reflect this situation, the legal obligation to fill their storages pursuant to Article 6a should be reduced to a volume of 35% of their annual gas consumption in the past five years. This is without prejudice to the obligation of other Member States to contribute to the filling of their respective storages . Member States should be able to decide, under conditions, to partially fulfil the 90% target by counting liquefied natural gas (LNG) stocks stored in LNG facilities. This is Those targets are** 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

<sup>2</sup> 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).

intermediary targets (August, September and October) ~~will~~ **should** apply, taking into account that ~~the~~ **this** Regulation will ~~only become applicable~~ **enter into force** after the start of the gas filling season and ~~that~~ Member States have limited time to implement ~~this Regulation~~ **it**.

**(6a) When filling storage, Member States should aim at diversifying their gas suppliers with a view to reducing their dependence where that may put at risk the security of energy supply or the essential security interests of the European Union or the Member States.**

(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~~ **gas** storage ~~shall also~~ **should** be specifically monitored ~~in~~ **as from** February ~~(the ‘February control point’)~~ to avoid ~~the~~ 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 should transmit a draft** 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 in Regulation (EU) 2017/1938.~~ **for the storage facilities on its territory in an aggregated form.** The decision of the Commission to set the “filling trajectories” ~~will~~ **should** be taken after ~~consultation~~ **having taken into account the assessment** of the ~~Gas Coordination Group GCG~~. **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 Stat in comparison with storage facilities in adjacent Member States.**

**(8a) In order to determine the individual trajectory from 2023 onwards of each Member State based on the filling trajectory transmitted by the Member States, 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<sup>3</sup>.**

**(9) The filling trajectory and the respective intermediate targets should be based on the average filling rate during the five preceding years. For Member States for which the filling target is reduced to 35% of their consumption, the intermediate targets of the filling trajectory should be reduced accordingly.** 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-facilities** or **problems** with the injection facilities. In such cases, ~~it is appropriate that~~ Member States should have the flexibility to meet the **relevant** 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 of the year concerned** in order to ensure the security of **gas** supply for the winter period.

**(10) ~~Moreover~~ In addition,** Member States may not be able to meet the filling targets **or intermediary targets** in the case of ~~an EU-wide~~ **a regional or Union emergency, including where gas supply is insufficient pursuant to Article 11(1)(c) of Regulation (UE) 2017/1938** ~~;~~ **that is the Commission has declared at the request of one or more Member States having declared a national emergency, as the case may be, in the sense of that Regulation** ~~in times of extreme scarcity of gas.~~ Therefore, the filling targets, **including the burden-sharing target**, should not apply ~~where~~ **if**, and for as long as, the Commission has declared a **regional or Union or regional** emergency pursuant to Article 12 of Regulation (EU) 2017/1938.

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<sup>3</sup> 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).

(11) Competent authorities ~~shall~~ **should** continuously monitor the filling **levels** of the underground storage facilities in order to ensure that their national filling trajectories are met. The national filling trajectories ~~are defined considering~~ **should be set within** a bandwidth of ~~two~~**five** percentage points. If the filling level of a given Member State is more than ~~two~~**five** percentage points below the ~~targets level~~ **level** 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~~ **GCG** of such measures.

(12) ~~The S~~**Substantial and sustained deviation by a Member State** from the filling trajectories can jeopardise ~~reaching adequate~~ **filling levels and the filling target**, ~~of storage~~ which are necessary to ensure security of **gas** supply in the Union, in a spirit of solidarity. In ~~the case~~ **event** of such a substantial and sustained deviation ~~from the filling trajectory or of deviation from the filling target~~ **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 such effective measures, the Commission shall should take into account the specific situation of the respective Member State concerned, 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 consumers**

(13) Member States should take all necessary measures to ensure that the ~~mandatory~~ filling targets are met **while aiming to use market-based solutions as a first recourse, where possible, so as to avoid unnecessary market disruptions. Member States should be able to choose to set a higher filling target, so that the Union could strive to reach collectively the filling of 85% of the capacity of the underground gas storage facilities in the Union for 2022.** With a view to the ~~different various~~ regulatory regimes already in place in many Member States to support ~~storage~~ **the filling of storage facilities**, no specific instrument to meet the filling trajectory and reach the filling target ~~is~~ **should be** prescribed, ~~and Member States should enjoy freedom to choose~~ **be able to decide which** ~~the instrument which~~ is most appropriate in their national systems, provided the conditions are ~~respected~~ **complied with**. Member States **or, where competent, regulatory authorities should** therefore have the **possibility to decide on the** ~~freedom to choose which market participant(s) to oblige~~ **be required** to ensure the filling of the storage **facilities**. 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~~ **Union** market rules, ~~may be~~ **are** sufficient to meet the filling targets, or ~~if whether~~ financial incentives, ~~which might constitute State aid, are necessary~~ **or storage tariff rebates are necessary. In the case of a Member State imposing an obligation on gas suppliers which supply gas to protected customers on its territory to store gas in underground storage facilities, the amount of gas stored should be determined based on the amount of natural gas supplied to those protected customers.** Member States should use coordinated instruments, such as platforms for the purchase of **liquefied natural gas (LNG)**, with other Member States **in order** 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 storage **facilities**.

(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~~ **of the Treaty on the Functioning of the European Union** in order to ensure **the filling of storages facilities**, 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 facilities, including the conditions to be imposed on filling based on burden sharing and the conditions to be imposed on withdrawal of gas from underground storage facilities**, 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 **the strengthening of** a dominant position, or **to** windfall gains for undertakings **that controlling underground storage facilities or having** ~~have~~ 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~~ **is** important ~~to factors in~~ ensuring security of **gas** supply in a spirit of solidarity. Open energy borders are key for security of **gas** supply, ~~also including~~ in times of gas **supply** disruptions at national, regional or Union level. Therefore, ~~any~~ measures taken to ensure the filling of **gas-storage facilities** should not block or restrict cross-border capacities allocated ~~in accordance with~~ **pursuant to the provisions of** Commission Regulation (EU) 2017/459<sup>4</sup>. **In addition, Member States should ensure that storage remains available, including to neighbouring Member states and including in an emergency pursuant to Article 11(1)(c) of Regulation 2017/1938.**

(17) The storage obligation ~~will~~ **is likely to** 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~~ **is intended to** benefit all Member States including those ~~that Member States, which~~ do not have **underground storage facilities**. To share ~~the burden~~, in a spirit of solidarity, **the burden** 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 ~~ease~~ **the event that a Member State has** ~~there is~~ no interconnection with other Member States, or **if a Member State's** limited cross-border transmission capacity or other technical reasons make it impossible to use **underground storage facilities** in other Member States, ~~the~~ **that** obligation should be reduced accordingly.

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<sup>4</sup> 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).

(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 without underground storage arrangements should provide for the use of storage volumes corresponding to at least 15% of their annual gas consumption in the last five years. However, those Member States should also be able to 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 sharing mechanism, like equivalent obligation of other fuels than natural gas including oil, when certain conditions are met.** ~~Such alternative mechanism can 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 and **demonstrate the technical limitations and the equivalence of the measures.**

(19) The measures by which Member States without **underground** storage facilities share the burden of the storage obligation with Member States ~~with~~ **having underground** storage facilities may in turn have a financial impact on the relevant market actors. Member States without **underground** storage facilities ~~may~~ **should** therefore **be allowed to** provide financial incentives or compensation to market participants for the shortfall of revenues or for **the** costs ~~incurred by of~~ obligations imposed on them which cannot be covered by revenue. If ~~the such~~ measures ~~is~~ **are** financed through a levy, that levy ~~shall~~ **should** not be ~~allocated~~ **applied** 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 gas 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 or an entity designated by the Member State should** monitor the filling levels, **of the storage facilities in their territories** jointly with the ~~competent authorities of Member States~~ **Commission**. **The Commission may also, where appropriate, invite ACER to assist with monitoring.**

(21a) **It is vital that the risk assessment pursuant to Article 7 of Regulation (EU) 2017/1938 takes into account all risks which can severely impact security of supply. For that purpose, the risk-based approach to assessing security of supply and establishing preventive and mitigating measures should also take into account scenarios of a full disruption of a single supply source. To ensure maximum preparedness, so as to avoid a disruption of gas supply and mitigate its effects, the common and national assessments should be carried out by taking into account such scenarios. This will enable coordination of measures to mitigate the impact of an emergency and optimization of resources to guarantee a continued supply, under full disruption conditions.**

(22) The role of the ~~Gas Coordination Group~~ **GCG** 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~~ **GCG**, which ~~shall support~~ **should assist** the Commission in monitoring the filling targets, and in ensuring that the filling targets are met.

(22a) **The GCG acts as a key adviser to the Commission to facilitate the coordination of security of supply measures, assisting the Commission at any time and, more specifically, in the event of a crisis. As needed to ensure maximum preparedness and to facilitate quick exchange of information, the Commission will convene, without delay, the crisis management formation of the GCG, in anticipation of a possible crisis. The GCG crisis management formation should be available to assist the Commission for as long as necessary; to do so, it should maintain channels of communication with Member States and all relevant actors of the security of supply in natural gas as well as collect any information relevant to the security of gas supply at national, regional and Union level.**

(23) ~~The Union considers that~~ **T**he 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 **to be** 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.<sup>5</sup> 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**<sup>6</sup>.

(24) ~~The Union considers that~~ **A**dditional 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 **themselves** controlled by transmission system operators, is certified ~~under this Regulation~~ by the regulatory authority or another competent authority designated by the Member State, **in order** 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 supply risks in other Member States, coordination between Member States in the security of 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~~**risk** of low ~~storage~~**filling** levels, ~~the~~**that** certification should be prioritised and carried out faster for larger storages **facilities** 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 **facilities** can be excluded **or if possible rectified. Considering the average storage filling level of the last 6 years of all EU underground storages on 31 March being 35%, the threshold to define an unusually low level of storage in March 2021 and March 2022 should be set at 30%.**

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<sup>5</sup> 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).

<sup>6</sup> 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 **at** Member State, regional or Union level. In **making that** 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, **the observance of 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, **including by amending their decision where appropriate**. 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.

**(25a) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, it respects the right not to be deprived of one's possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss as provided for in Article 17 of the Charter and the right to an effective judicial remedy and to a fair trial as provided for in Article 47 of the Charter.**

(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~~ **regulatory authorities should be able to apply a discount of up to 100% to** entry and exit tariffs for transmission **and distribution** capacity to and from storage, **to both underground storage and LNG facilities**, making storage more attractive for market participants. Regulatory and competition authorities ~~should~~ **are** also **encouraged to** use their ~~competences~~ **powers** to effectively exclude undue increases of storage tariffs.

(27) In view of the **current** exceptional circumstances ~~of the current situation~~ and the uncertainties related to future **changes in the geopolitical developments situation**, 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~~, **Russian military aggression against Ukraine**, this Regulation should enter into force **on** 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, following the above mentioned Commission Proposal COM/2021/804 final, is adopted and enters into force, reflecting the amendments introduced by this Regulation.~~ **However, certain provisions introduced by this Regulation should cease to apply on 31 December 2025.**

(29) This Regulation should be included in the Union acquis for the purposes of the Energy Community Treaty as a matter of urgency.

(30) Regulations (EU) 2017/1938 and (EC) no 715/2009 should therefore be amended accordingly.

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 **for 2022 and, for the following years, as defined pursuant to the procedure in Annex Ia and** ~~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’ means **underground storage or part of underground** storage of non-liquefied natural gas **purchased, managed and stored by transmission systems operators 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 generally released** ~~or sold to the market but only released~~ in case of **major** supply scarcity, a supply disruption or emergency **declared pursuant to Article 11(1), point (c).**

(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<sup>7</sup> of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and with Articles 8 and 9 of Commission Regulation EU 312/2014<sup>8</sup> ~~or in case of a declared emergency under Article 11 and can otherwise not be sold on wholesale gas markets;~~

(31) **‘underground gas storage’** means a storage facility, as defined in point 9 of Article 2 of Directive 2009/73/EC, used for the stocking of natural gas and connected to a transmission or distribution system, excluding above ground spherical or pipe storages, but including balancing stock.

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<sup>7</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

<sup>8</sup> Commission Regulation (EU) 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (OJ L 91, 27.3.2014, p. 15).

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

*'Article 6a*

*Mandatory filling targets and filling trajectories*

(1) ~~Each~~ Member States 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.**

**In meeting their obligations under this paragraph Member States shall take into account the objective of safeguarding the security of gas supply in the Union in accordance with Article 1.**

(2) **Unless specific rules pursuant to letters (2a) to (2d) apply, For 2022,** the filling target for **2022** shall be set at 80% of the capacity of all storage facilities on the territory **and directly interconnected to a market area in their territory and for storage facilities listed in Annex 1a** 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.**

**(2a) Notwithstanding paragraph 2 and without prejudice to the obligations of other Member States to fill the respective storage facilities, the filling target of the Member States in which the storage facilities are located shall be limited to a volume corresponding to 35% of the average annual gas consumption of the last 5 years in the respective Member State**

**(2b) Notwithstanding paragraph 2 and without prejudice to the obligations of other Member States to fill the respective storage facilities, the filling target of Member States in which the storage facilities are located shall be reduced by the volume during the reference period 2016-2021 which was supplied to third countries if the average volume supplied was more than 15 TWh per year during the gas storage withdrawal period (October – April).**

**(2c) For the storage facilities listed in Annex Ic, the obligations relating to the filling target pursuant to paragraph 2 and the filling trajectory pursuant to paragraph 4 apply. The details of the respective obligation for each Member State will be determined in a bilateral agreement pursuant to Annex Ic.**

**(2d) The filling target may be partially fulfilled by counting the LNG physically stored and available in the-LNG facilities in Member States where all of the following conditions are met:**

- i. The gas system includes a significant capacity of LNG storage, accounting annually for more than 4% of the average national consumption of the last five years;**
- ii. The relevant Member State has imposed an obligation on gas suppliers to store minimum volumes of gas in underground storage facilities and/or LNG facilities according to Article 6b(1)(a).**

**(3) Member States shall take the necessary measures to fulfil or to ensure that the intermediary targets are fulfilled as set out indicated in Annex Ia for 2022 and, for the following years, as set out in and in 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.**



(4) ~~The Commission is empowered, after consultation of the Gas Coordination Group, to~~ **For 2023 and the following years, each Member State with storage facilities shall transmit, by 15 September of the previous year, to the Commission a draft filling trajectory, including technical information, for the storage facilities on its territory in an aggregated form. The filling trajectory and the respective intermediate targets shall be based on the filling rate during the five preceding years. For countries for which the filling target is reduced to 35% of their consumption pursuant to paragraph 2(a), the intermediate targets of the filling trajectory shall be reduced accordingly. Based on the technical information provided by each Member State and taking into account the assessment of the GCG, the Commission shall adopt 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. Those implementing acts shall be adopted by 15 November of the preceding year, where necessary and including when a Member State has submitted an updated filling trajectory.** ~~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 whilst avoiding unnecessary burdens for Member States, gas market participants, storage system operators or citizens and not unduly distorting competition between storage facilities located in adjacent Member States.**

(5) Where a Member State cannot meet ~~theits~~ 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, that the** Member State shall be allowed to reach ~~theits~~ filling target ~~only on~~ **by 1 December.** The Member State shall inform the Commission before 1 November, providing reasons for the delay.

(6) The filling target shall not apply where, and for as long as, the Commission has declared a **regional or** Union or regional emergency pursuant to Article 12 **at the request, as the case may be, of one or more Member States that have declared a national emergency.**

(7) Competent authorities shall continuously monitor the filling trajectory each year and report regularly to the ~~Gas Coordination Group~~ **GCG**. 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 Ib~~, 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~~ **GCG** of the measures taken.

(8) In ~~case the event~~ of substantial and sustained deviation ~~from the filling trajectories~~ **by a Member State from the filling trajectory compromising the achievement of the filling target, or of deviation from the filling target** the following measures shall be taken:

(a) ~~after consulting~~~~on of~~ the ~~Gas Coordination Group~~ **GCG** and the Member States ~~in question concerned~~, the Commission shall issue a ~~warning recommendation~~ **warning recommendation** to the Member State ~~or Member States concerned~~ **or Member States concerned** and ~~recommend~~ **recommend** regarding measures to be ~~immediately~~ taken **immediately**;

(b) ~~if where~~ the deviation from the trajectory ~~or the filling target~~ **or the filling target** is not significantly reduced within one month from the date of the ~~warning recommendation~~ **warning recommendation**, the Commission shall, after consultation of the ~~Gas Coordination Group~~ **GCG** and the Member States ~~in question concerned~~ **concerned**, take a decision as a measure of last resort to ~~oblige~~ **require** the Member State ~~concerned~~ **concerned** to take measures that effectively remove the gap to the trajectory ~~or the filling target~~ **or the filling target**, including where appropriate one or ~~several more~~ **several more** of the measures ~~listed under provided for in~~ **provided for in** Article 6b(1), or any other measure to ensure the mandatory filling target pursuant to this Article is reached;

- (c) ~~when in~~ deciding ~~upon the adequate~~ **which** measures **to take** pursuant to point (b), the Commission shall take into account the specific situation of the ~~respective~~ Member State **or Member States concerned**, 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 **and any existing LNG storage facilities**. 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~~ **while not placing** disproportionate burden on Member States, gas market participants, storage system operators or ~~citizens~~ **consumers**.

*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. When fulfilling their obligations under this Regulation, Member States shall prioritise, when possible, market-based measures. To the extent that the measures listed in this article fall under the duties and powers of the regulatory authority, in accordance with to Article 41 of Directive 2009/73/EC concerning common rules for the internal market in natural gas, the regulatory authorities shall be responsible for taking those measures. These** Those measures may, in particular, include:

- (a) ~~imposing an obligation on~~ **requiring** gas suppliers to store minimum volumes of gas in storage facilities, **including underground storage facilities and/or LNG storage facilities, the volume of the respective obligation may be determined on the basis of the amount of the gas supplied by gas suppliers to protected customers;**
- (b) ~~imposing an obligation on~~ **requiring** storage owners **system operator** to tender their capacities to market participants;
- (c) ~~imposing an obligation on a~~ **requiring** transmission system operators **or entities designed by the Member State** to purchase and manage ~~strategic 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 **the case of an** 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;

- (da) using voluntary mechanism for joint procurement of natural gas for which the Commission may issue, if necessary, guidance on the application of such mechanism by 1st August 2022.**
- (e) providing financial incentives including, but not limited to contracts for difference, for market participants including storage system operator or providing compensation to market participants for the ~~potential~~ shortfall of revenues, or for costs incurred by them as a result of ~~by~~ obligations on market participants including storage system operator which cannot be covered by revenues;**
- (f) ~~adopting effective instruments to set obligation on~~ requiring 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 storage not distorting the internal market by public or private entities;**
- (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;**
- (j) collecting the revenues needed to recover the capital and operational expenditures related to regulated storage facilities as storage tariffs and a dedicated charge incorporated into transmission tariffs, collected only from exit points to final customers located within the same Member States. Revenues collected through tariffs cannot be larger than the allowed revenues;**

(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. ~~Thoes~~ measures shall under no circumstances block or restrict the use **across borders** of storage **facilities** or LNG facilities ~~across borders~~, and shall not limit cross-border transmission capacities allocated in accordance with ~~Commission~~ Regulation (EU) 2017/459.

**(3a) In addition and as a general principle, when taking measures pursuant to this Article, Member States shall apply the energy efficiency first principle whilst still achieving the objectives of their respective measures, in compliance with Regulation EU 2018/1999 [Governance of the Energy Union and Climate Action].**

Article 6c

**Burden-sharing**

(1) Member States without **underground** storage facilities shall ensure that domestic market participants have **in place** arrangements with **underground** storage system operators ~~from~~ **other market participants in** Member States with storage facilities. **Those arrangements shall provide for the use, by 1 November** ~~in place which ensure the use of storage volumes in those Member States by 1 November~~ corresponding to at least 15% of the **average** annual gas consumption **in the last five years** of the Member State without **underground** 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. **In the event, that technical limitations do not allow the above obligation to be met and the Member State has in place an obligation to store other fuels to replace gas, the above obligation may be exceptionally met by an equivalent obligation to store other fuels than gas. The technical limitations and the equivalence of the measure shall be demonstrated by the relevant Member State.**

(2) By way of derogation from paragraph 1 **of this Article**, a 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 **shall** take into account **all** of the following parameters:

- (a) the cost ~~for~~**of** financial support ~~to ensure~~**for meeting the** filling targets, ~~without consideration~~ **disregarding** ~~of the costs for filling of~~**of meeting any** 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, **and** withdrawal rates.

(3) The jointly developed mechanism shall be notified to the Commission at the latest ~~one~~ **two** months after the entry into force of this Article. **In the absence of an agreement within that time limit, Member States without underground storage facilities shall demonstrate that they comply with the storage obligation laid down in paragraph 1 and notify to the Commission accordingly.**

**(3a) As a transitory measure, in the case of Member States without underground storage but which have underground storage facilities included in the last PCI list, their obligation laid down in paragraph 1 can partially be fulfilled taking into consideration LNG stocks in existing FSUs, until the underground storage facilities are in operation.**

(4) Member States without **underground** storage facilities may provide incentives or financial compensation to market participants **and transmission system operators as relevant** for the shortfall of revenues or for costs incurred by **them, as a result of** obligations ~~imposed on them~~ **under this Regulation** which cannot be covered by revenue, **in order** 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~~ **referred to in** paragraph 2. If the measure is financed through a levy, that levy shall not be allocated to cross-border interconnection points.



**(5a) Notwithstanding 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 shall ensure that storage volumes by 1 November correspond at least to the average usage of the storage capacity of the last 5 years determined, inter alia taking into account the flows during withdrawal season in the last 5 years from Member States where the storage is located or to demonstrate that storage capacity equivalent to the volume covered by this obligation has been booked.**

**If the Member State can demonstrate that storage capacity equivalent to the volume covered by this obligation has been booked, the obligations pursuant paragraph 1 apply.**

**The obligation shall be limited at 15% of the average annual gas consumption of the last 5 years in the respective Member State.**

**(5b) Unless otherwise specified in Annex Ic, in case of storage facilities located in one Member State, not covered by paragraph 5a and directly connected to the market area of another-Member States, the latter shall have an obligation to ensure that storage volumes by 1 November correspond at least to their average of the storage capacity booked-at the respective cross-border point-in the last 5 years.**

Article 6d

***Monitoring and enforcement***

(1) Storage system operators shall report the filling level at each of the control points ~~established in accordance with set out in Annex Ia for 2022 or for the following years in and in Article 6a(4)~~ to the competent authorities in the Member States **and, if applicable, an entity designated by the Member State** where they are located.

(2) The competent authorities of the Member States **and, if applicable, the designated entity** 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. **The Commission may also, where appropriate, invite ACER to assist with monitoring.**

(3) Based on the information provided by the competent authorities **and, if applicable, the designated entity** of the Member States, the Commission shall ~~regularly~~ **regularly** to the ~~Gas Coordination Group GCG~~

(4) The ~~Gas Coordination Group GCG~~ 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~~ **in the event that** 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~~ **GCG in a format that are** restricted to Member States **and the Commission**.

(8) The information exchanged shall be limited to **that necessary** ~~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 **carrying out their obligation under** this Regulation.

### *Article 2a*

#### *Amendments to Regulation EU 2017/2018*

**In paragraph (1) of Article 7, the first sentence is replaced by the following:**

**By 1 September 2022, ENTSOG shall carry out a Union-wide simulation of gas supply and infrastructure disruption scenarios, including scenarios of a prolonged disruption of a single supply source.**

**In Article 7(4), a new sub-paragraph (g) is introduced:**

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

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 following paragraph 3 is added in *Article 16*:**

**(3) Whilst Member States shall have to comply with their obligations to fill storage facilities by using storage facilities in the Union, Member States and the Energy Community Contracting Parties' cooperation may include voluntary arrangements to use storage capacity provided by Energy Community Contracting Parties to store additional volumes of gas for the Member States.**

*Article 17a*

*Commission reporting*

**1. By 28 February 2023, and once per year thereafter, the Commission shall submit a report to the European Parliament and to the Council, containing:**

- (a) an overview of the measures taken by Member States to fulfil the storage obligations,**
- (b) an overview of the time needed for the certification procedure, and of measures requested by the Commission in order to ensure compliance with the filling targets and filling trajectories.**

**The report shall also include an analysis of the potential effects of this Regulation on gas prices and potential gas savings in relation to Article 6b paragraph 3a.**

## 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 Council<sup>9</sup>.**

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

**(4) In Article 20, the following paragraph 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 gas interconnected system of any other Member States.**

*(moved from 6e)* (3) The Annexes are amended in accordance with the text set out in Annex I to this Regulation.

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<sup>9</sup> 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*

**Regulation (EC) No 715/2009 of the European Parliament and of the Council<sup>10</sup> is amended as follows:**

- (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 **any** storage system operators controlled by **a** transmission system operators, is certified by the regulatory authority under this Article, or another competent authority designated by the Member State concerned, **pursuant to Article 3(2) of Regulation (EU) 2017/1938 of the European Parliament and of the Council<sup>11</sup>**, in accordance with the procedure laid down in this Article. The obligation to certify storage **system** 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.

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<sup>10</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211 14.8.2009, p. 36).

<sup>11</sup> Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

(2) ~~For~~**In respect of** 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 ~~400~~ **150** working days from the date of entry into force of this Regulation or the receipt of a notification pursuant to paragraph 8. **For those storage facilities, the regulatory authority or the designated authority pursuant to paragraph 1 shall make their best efforts to publish a draft decision before 1 November 2022.** 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 supply risk at national, regional or Union-wide level **as well as any mitigation of such risk**, resulting, ~~for example~~**inter alia**, from:

(a) ownership, supply or other commercial relationships that could negatively affect the incentives and ability of the storage **system** 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 authority pursuant to paragraph 1 shall refuse the certification if it is demonstrated that a person ~~which~~ directly or indirectly ~~control~~**ings** or ~~exercising~~**es** 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~~ **or of any Member State**. The regulatory authority or the designated authority pursuant to paragraph 1 may instead choose to ~~issue a grant~~ **the certification subject to** ~~with~~ conditions, which ensure **the sufficient mitigation of the** ~~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. **Such conditions may include in particular requiring the storage system owner or storage system operator to transfer management of the storage system.**

(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, **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 or persons that it considers may put 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 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 disposal of the shareholding or rights; and
- (c) decide on the appropriate compensatory measures **in accordance with national law**.

(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~~ **an** opinion on the draft decision to the national regulatory authority or the designated authority pursuant to paragraph 1 within ~~50~~ **25** working days. The regulatory authority or the designated authority pursuant to paragraph 1 shall take **the** 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 working days **after its** ~~as~~ ~~of~~ receipt of the Commission's 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 **in any of the following circumstances**:

(a) upon **receipt of a** 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 **respective territories**. 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 the designated** authority pursuant to paragraph 1, taking into account an opinion of **ENTSO for Gas** ~~ENTSOG~~, which concludes that the exit does not weaken the security of gas supply at **Union or** 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 in accordance with Article 19.~~

**(11a) The Commission may issue guidance on the application of this Article.**

~~(12) The provisions of This Article shall not apply to parts of LNG facilities used for storage.~~

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

~~‘3. The regulatory authority may apply a 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 and LNG facilities, unless and to the extent that 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.’ This paragraph shall cease to apply on 31 December 2025.~~

*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 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~~

**Application of (xx) [All articles except Article 3a 'certification' and Article 2a 'S-1 scenario' ]  
Articles 2 point 27 to 31, Articles 6a to 6d, Article 17a, Article 18b, Article 20(4a), Annex Ia  
and Annex Ic shall apply until 31 December 2025.**

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

Done at Brussels,

For the European Parliament

For the Council

*The President*

The President

## Annex I

The annexes to Regulation (EU) 2017/1938 are amended as follows:

(1) The following Annex Ia is inserted:

### *Annex Ia\*:*

#### *Intermediate targets for 2022 for Member States with underground storage facilities*

Country	August 1st intermediate target	September 1st intermediate target	October intermediate target	November 1st filling target
AT	49%	60%	70%	80%
BE	49%	62%	75%	80%
BG	49%	61%	75%	80%
CZ	60%	67%	74%	80%
DE	45%	53%	80%	80%
DK	61%	68%	74%	80%
ES	71%	74%	77%	80%
FR	52%	65%	72%	80%
HR	49%	60%	70%	80%
HU	51%	60%	70%	80%
IT	58%	66%	73%	80%
LV	57%	65%	72%	80%
NL	54%	62%	71%	80%
PL	80%	80%	80%	80%
PT	72%	75%	77%	80%
RO	46%	57%	66%	80%
SE	40%	53%	67%	80%
SK	49%	60%	70%	80%

\* Annex Ia is subject to the pro rata obligations of each Member State under this Regulation and in particular Articles 6a, 6b and 6c.

In particular, for Member States falling under Article 6a(2b), the *pro rata* intermediate target shall be calculated by multiplying the value indicated in the table by the limit of 35% and by dividing the result by 80%.

*Annex Ib*

*Deleted*

**The annexes to Regulation (EU) 2017/1938 are amended as follows:**

**The following Annex Ic is inserted:**

*Annex Ic*

*Shared responsibility for mandatory filling target and trajectory*

**With regard to the mandatory filling target and trajectory pursuant to Article 6a (1), the Republic of Austria and the Federal Republic of Germany share the responsibility concerning the storage facilities Haidach and 7Fields. The exact ratio and extent of this responsibility of both the Republic of Austria and the Federal Republic of Germany is subject to a bilateral agreement of these Member States.**

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