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CONTRIBUTION

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| From: | General Secretariat of the Council |
| To: | Working Party on Energy |
| Subject: | Gas storage Regulation: BE comments |

Delegations will find in the annex the BE comments on the Gas storage Regulation.

PUBLIC

Belgium would like to share its comments on the REV1 of the gas storage regulation.

For your convenience we would like to summarize the main elements and give you at the end our detailed comments on the text.

Summary

BE would like to remind that we were also perfectly fine to support the original COM proposal without any modifications.

But we hear and understand the requests by other MS and want to be constructive...

However we are concerned and considers if we go in the line some MS asked, we should at least pay attention to the following elements:

1. We should ensure that the introduced flexibilities do not raise any doubt that competent authorities have the legal powers to ensure that market participants do the necessary filling in time considering the technical/physical reality of each storage.

This means:

- In Belgium (and we understand in many MS) the gas in the storages is owned by private actors that reserve a certain capacity in a storage
 - All storages have a maximal injection rate per time unit (just to the technicalities and the physics)
(and this technicalities may differ from one storage to another and often also differs in function of the filling rate of the storage)
- Therefore we consider it important that the competent authority can have the necessary powers to act against private actors ...
..and some of our experts that the way the text stands know a discussion could emerge around the lines:
- o *“sorry competent authority, yes it is September and yes I didn't fill anything so far but the regulation says 'indicative targets' so please let me alone”*
 - o *“Even if technically speaking it is clear that if the filling is not at a certain level by September that by then it is technically impossible to achieve the 90% by the deadline timing”*

As we are sure that it is not the intention to create potential legal uncertainties we think we could [while keeping the spirit of the REV1] potentially resolve this by:

- a) **Add a definition** in the core of text explaining that *“indicative intermediate target means a target that is an intermediate that ensures that the market participant can achieve the required filling ration taking into consideration the technical characteristics of the network and storage facility.”*

Reasoning: This to give the national competent authorities a clear and non-disputable hook towards market participants that reserved a capacity in a storage [and thus block it for others] but not use it at a tempo that allows him pure technically speaking to achieve the target by the required date

- b) In order to ensure that private actors fill at a pace that allows them technically speaking to achieve the 90% by the deadline, we feel that it is important that competent authorities also have a clear and explicit mandate to follow up the status of filling rates.

Therefore we would propose

- instead of deleting the words “*intermediate filling targets*” all over the text as was done in the REV1
- to **replace** it everywhere by “*indicative intermediate filling targets*”

In our understanding that would allow

- the authorities to be better able to track the progress (keeping in mind the technical limitations of how quick each different storage can technical be filled)
- while allowing for flexibility different MS asked for.

2. Even if we prefer the 1st of November deadline for all, we could in the spirit of agree with the principle of a less clear-cut deadline for achieving the 90% filling, **but we think two additional finetunings are necessary to avoid unwanted consequences**

We fear that

- 1st of December is too late as in BE we *usually* start to extract gas from our storages from 15th of november
- my colleagues fear that shifting the 1st of November date to any date between 1 October and 1 December *could lead to a certain double counting* as it can not be excluded that an actor could have an incentive to shift a same volume of gas from one storage to another during this time periode giving a false feeling of security

As we are sure that it is not the intention to create potential legal uncertainties we think we could [while keeping the spirit of the REV1] potentially resolve this by:

- a) Suggestion to say the 90% storage should be achieved *between 1 October and the average starting date of extracting from the concerned storage as observed over the last 5 years*

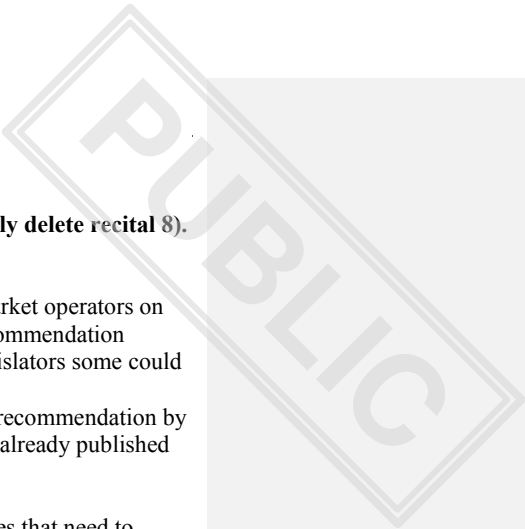
Reasoning

- This way this could still allow for the flexibility asked for by some,
- Still give a less clear cut cut-off date markets could use to bet against (as this extraction date can also be different from storage to storage)
- While also considering the reality that in the past some storages the extraction started on average already earlier then December?

- b) Add in the text that: *It is only allowed to extract gas from a storage that achieved the 90% filling ration before the average starting date of extracting from the concerned storage as observed over the last 5 years after agreement by the national competent authorities*

Reasoning:

- In order to keep the flexibility of the 90% deadline
- While limit the risk of private actors shifting their gas from one storage [that achieved its filling target] to another storage [that did not yet achieve its filling target]
- give a role to the competent authority to agree for extractions from a “fully filled storage” before the “usual” extracting date of the storage concerned?



3. Please delete the reference to the recommendation in recital 8 (or fully delete recital 8).

Because

- we fear that this could only induce questions/discussions with market operators on the status of the recommendation, while this is a commission recommendation addressed to MS but referring to it into a text approved by co-legislators some could argue that this implies that MS did *indirectly* underwrite it etc.
- in our reading it doesn't has to be there (MS that want to use the recommendation by the COM are aware of it and the commission recommendation is already published in the Official Journal)

So in order to avoid as much as possible legal discussions for the colleagues that need to ensure the correct application of the provisions please delete this reference.

4. Suggestions on legal clarity/certainty

Our experts have also some worry that some langue might some further clarification in order to avoid that there could be different interpretations (and thus disputes before the courts..) among competent authorities, operators, market actors.

Please see annex for details, thanks in advance for looking into this and add where possible any additional clarifications.

2025/0051 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Amending Regulation (EU)2017/1938 as regards the role of gas storage for securing gas supplies ahead of the winter season

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) 2022/1032 of the Parliament and of the Council¹ was adopted in reaction to the gas-supply crisis and unprecedented price increases caused by the escalation of the Russian military aggression against Ukraine since February 2022, impelling the Union to act in a coordinated and comprehensive manner to avoid potential risks resulting from further gas-supply disruptions.
- (2) Regulation (EU) 2022/1032 amended Regulation (EU) 2017/1938 by introducing a temporary legal framework for measures regarding the filling level of underground storage facilities to strengthen the security of gas supply in the Union, in particular gas supplies to protected customers.

¹ 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 (OJ L 173, 30.6.2022, p. 17, ELI: <http://data.europa.eu/eli/reg/2022/1032/oj>).

- (3) Gas-storage facilities provide for 30% of the Union’s gas consumption during the winter months, and well-filled underground gas-storage facilities contribute substantially to the security of gas supply by providing additional gas in the event of high demand or supply disruptions.
- (4) The laying down of a mandatory target to ensure that gas-storage facilities are 90% full by 1 November (filling target), with a series of intermediate targets for each Member State in February, May, July and September of the year thereafter (filling trajectory), proved to be fundamental amidst the energy crisis sparked by the weaponisation of Russian gas supplies and invasion of Ukraine in both: (i) weathering the gas-supply shortages; and (ii) reducing market uncertainties and price volatility.
- (5) Despite the substantial improvement of the gas market situation compared to 2022-2023 period, the European gas market remains tight. More intense competition for global LNG supplies can increase Member States exposure to price volatility. The gas price development during the 2024/2025 winter may confirm the trend. In such situation, the role of gas storages remains paramount. Predictable filling trajectories increase transparency and prevent market distortion.
- (6) Pursuant to Regulation (EU) 2017/1938 the obligation of the Member States to follow an annual filling trajectory and to ensure that the filling target is achieved by 1 November of each year expires on 31 December 2025.
- (7) At the same time, the overall framework to meet this 1 November target must be flexible enough during the filling season to allow a swift reaction to constantly changing market conditions and in particular to take advantage of the best purchasing conditions.
- (8) The purpose of intermediary filling targets, agreed upon each year by the Member States, is to ensure that the mandatory 1 November target is met. However, these targets are indicative and should allow for storage filling in such a way that there is sufficient flexibility available for market participants throughout the year in accordance with Recommendation XXX.

Commented [A1]: It seems to me generally that the ‘intermediate targets’ should be based on the TECHNICAL minima in order for 90% to be achieved by 1 NOV (technically, depending on the characteristics of the network and storage facility). For the rest, the market should be in a position to achieve the 90% through the cheapest way and through contractual obligations.

Commented [A2]: The SoS monitoring loses its scope when intermediary targets are just “indicative”. Measures of certain MS such as BE are clearly linked to binding intermediary targets (eg commercial sanctions if intermediary targets are not met). However from a European perspective and to maximise market efficiency, if making the intermediate filling targets indicative it should be as long as the 90% GIS remains binding on 1 NOV (and 30% on 1 Feb). The usefulness of intermediate filling targets seems to be mainly to specify the technical minima (including injection capacity) for it to be technically feasible to meet the 90% GIS target on 1 NOV.

Commented [A3]: What is sufficient flexibility ? Using such a broad concept might distort competition or impact the proper functioning of the internal market in gas if the interpretation varies from one Member State to another Member State. When providing storage users sufficient freedom to maximise their target function of 90% filling by 1 NOV at least cost and providing enough room for commercial arbitrage, 90% at 1 Nov must be binding.

Commented [A4]: At the one hand there is a “non binding” Recommendation, at the other hand the Recommendation is “incorporated” in the recital of a “binding” regulation. What kind of legal value or rights might market participants eventually claim under such a legal structure.

(9) Commission's assessment of the current energy-security framework has confirmed the positive impact of the storage-filling requirements on the security of gas supply and those positive effects should be preserved beyond 2025.

(10) It is therefore necessary to extend by two years the relevant gas storage filling provisions that provide predictability and transparency as to the utilisation of gas-storage facilities across the Union.

(11) Regulation (EU) 2017/1938 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

In Article 2, the point (27) is replaced by the following:

'(27) "filling trajectory" means a series of indicative intermediate targets for the underground gas storage facilities of each Member State, as listed in Annex Ia for 2022 and, for the following years, set in accordance with Article 6a;

Article 6a, is amended as follows :

(a) the first subparagraph of paragraph 1 is replaced by the following:

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

Commented [A5]: It is not only an extension but also an amendment of "existing" rules jeopardizing legal certainty. Art. 2 - This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Commented [A6]: Predictability is lacking by changing the rules of an existing regulation on the basis of which decisions have already been made in the past for the future: "Commission Implementing Regulation (EU) 2024/2995 of 29 November 2024 setting the filling trajectory with intermediary targets for 2025 for each Member State with underground gas storage facilities on its territory and directly interconnected to its market area."

Commented [A7]: Article 6a should be reviewed to allow each Member State to define its filling trajectory in a way that ensures that the filling target can be reached (based on the physics of the storage facilities of the Member State). Interim GIS targets should be determined by the technical requirements for 90% to be achieved by 1 NOV.

Commented [A8]: As far as BE is concerned, this may be too late, past experience shows that by mid-November at the latest gas is already being used from storage for next winter; so perhaps best to keep the current target (reference period) till 1 November. Is the idea that the 90% should be achieved at least one day in the timeframe or on all days of the timeframe? The phrasing is not 100% clear for me. As for the 90% GIS target, I would remain strict: the photo on 1 NOV should demonstrate this. The space of 2 months leaves room for 'gaming' and especially if the date of the photo can vary across member states. Photo on 1 NOV across the EU should show 90% GIS.

Commented [A9]: A "fixed date" at EU level is predictable and guarantees market efficiency. With a "timeframe", there is a risk that storage moves from one EU member state to another EU member state within the time frame and thus eventually being counted twice in the context of the final filling target of (both) Member States, hence jeopardizing SoS.

(b) paragraph 6 is replaced by the following:

6. In order to achieve the filling target, Member States shall strive to follow the filling trajectory as set out in Annex Ia, 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.

Commented [A10]: >< market participants (Recital 8). If kept we see it is a conceptual problem by placing responsibility with the MS and not the market. Market rules must be designed (e.g. contract terms) so that the desired degrees of filling are achieved.

Commented [A11]: Define measures that incentivize/encourage market participants to follow the filling trajectory.

(c) paragraph 8 is replaced by the following:

8. Where, in any given year, a Member State is not able to meet its filling target, its competent authority shall take effective measures to minimize the impact on security of supply of the EU and the Member States. The Member States shall inform the Commission and the GCG without delay, but at the latest by 1 December, providing reasons for the failure to meet the filling target and on the measures taken. by 1 November due to the specific technical characteristics of one or more underground gas storage facilities within its territory, such as exceptionally low injection rates, it shall be allowed to meet it by 1 December. The Member State shall inform the Commission by 1 November, providing reasons for the delay.

Commented [A12]: Which kind of effective measures can you take when a posteriori a competent authority realizes the target is not met? At that time it might be too late to minimize the impact on SoS of the EU and the MS. This shows that you need to apply market instruments so that targets are providing an emergency solution "from the market".

(d) paragraph 10 is replaced by the following:

10. The competent authority of each Member State shall continuously monitor compliance alignment with the filling trajectory and shall report regularly to the GCG. If the filling level of a given Member State is more than five percentage points below the level of the filling trajectory, the competent authority shall, without delay, take effective measures to increase it. Member States shall inform the Commission and the GCG of the measures taken.

Commented [A13]: Monitoring "alignment" is not guaranteeing SoS. The regulation should create the legal framework for MS to address the grid users and possibly intervene (pointing out contractual obligations).

PUBLIC

Commented [A14]: >> market participants (Recital 8)

(e) paragraph 11 is replaced by the following:

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

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

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

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

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

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

In Article 6b, paragraph 2 is amended as follows:

2. The measures taken by the Member States pursuant to paragraph 1 shall be limited to what is necessary to meet the filling trajectories and filling targets. ~~They~~ All measures taken pursuant to article 6a8 and 6a10 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable. They shall not unduly distort competition or the proper functioning of the internal market in gas or endanger the security of gas supply of other Member States or of the Union. Member States shall inform the Commission and the GCG of those measures.

Commented [A15]: Using such a broad concept might distort competition or impact the proper functioning of the internal market in gas if the interpretation varies from one Member State to another Member State in what is necessary.

Commented [A16]: Suggestion amendment: To follow the trend depicted by the filling trajectory and to meet the filling target.

Article 6d is amended as follows:

(a) Paragraph 2 is deleted

~~2. The competent authority and, if applicable, the designated entity of each Member State shall monitor the filling levels of the underground gas storage facilities on their territory at the end of each month and report the results to the Commission without undue delay.~~

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

(b) Paragraph 4 is amended as follows:

4. The GCG shall assist the Commission in the monitoring of the filling trajectories and the filling targets, and shall develop guidance for the Commission on adequate measures to ensure compliance better alignment in the event that Member States deviate from the filling trajectories compromising the achievement of the filling target, or to minimize the impact on security of supply if they do not meet the filling targets.

(c) Paragraph 5 is amended as follows:

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

Commented [A17]: At that moment the damage might already be there on the SoS of the MS and/or the EU. Sanctions and fines at that time will not solve the SoS of the MS and/or the EU if storages are not filled properly during reference period. Hence it does seem to us that the market organisation and rules should be adapted so that market players know what their obligations and possible penalties are when signing a storage contract. If contractual obligations are not met, there are sanctions and a market-based emergency solution should be considered or worked out.

PUBLIC

In Article 22 ~~of Regulation (EU) of Regulation (EU) 2017/1938~~, the fourth paragraph is replaced by the following:

“Article 2, points (27) to (31), Articles 6a to 6d, Article 16(3), Article 17a, Article 18a, Article 20(4), and Annexes Ia and Ib shall apply until 31 December 2027.”

Article 2

Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President
