

**ACER** 

European Union Agency for the Cooperation  
of Energy Regulators

**CEER**

Council of European  
Energy Regulators



Fostering energy markets, empowering consumers.

**ACER and CEER views  
on the proposal for a regulation  
amending Regulations (EU) 2017/1938  
and (EC) n°715/2009 relating to the  
access to gas storage facilities**

**29 April 2022**

## 1 Introduction

On 23 March 2022, the European Commission published a proposal for a regulation amending Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and Regulation (EC) n°715/2009 on conditions for access to natural gas transmission networks. Acknowledging the importance of gas storage in its contribution to security of supply, the legislative proposal aims at ensuring that storage capacities in the Union are properly used and shared, in a “spirit of solidarity”, in the context of the “dramatically changed geopolitical situation”.

In the current geopolitical context, the risk of supply disruption is historically high, underlining the vulnerability of the European market supplied by a dominant state-owned market participant from a country at war with an Energy Community Contracting Party. Faced with this unprecedented emergency, Europe’s energy regulators welcome the European Commission’s initiative to bolster the Union’s security of gas supply, and have identified some practical reflections to reach the objective of filling EU gas storage facilities more effectively, whilst protecting the consumer interest. Under normal operating circumstances, gas suppliers would generally fill storage facilities to a very high level. ACER and CEER therefore underline that the proposed measures must be considered exceptional, temporary and specifically targeted to the current circumstances, where high wholesale prices, negative seasonal spreads and risks on the availability of import gas volumes prevent market players from storing gas.

More than ever, solidarity among Member States (MS) is paramount. The European Commission has issued a set of proposals, including filling targets and arrangements to achieve them. ACER and CEER note that the chosen approach is overly oriented towards national storage capacity, which may create a disproportionate burden on some MS, whilst introducing the need for complex cross-border financial compensation schemes. Regulators recommend an approach where national demand levels would be the main parameter in terms of setting the storage obligations.

The present proposals from ACER and CEER aim at responding to the emergency with simple rules and allocation keys and, looking at the longer term, elaborating on methods to better address rights and duties of MS and gas suppliers. Government intervention should be proportionate to the goals and should avoid distorting the market where it is able to fulfil the adequate levels of gas storage. For that purpose, regulators recommend conducting an analysis of the role of storage in order to identify the most appropriate measures for the different situations that may be encountered in the EU. Once the measures are in place, an EU-wide monitoring of storage filling levels and of the prices paid for that fill needs to be put in place. This will allow for learning from the current experience, identification of best practices, and the achievement of good results at a much lower cost for consumers for next year’s filling season.

### **Overview of regulators’ key reflections on the proposed measures**

#### **In terms of method**

- Measures must be exceptional, temporary and specifically targeted to the current circumstances
- Intervention should be proportionate to the goals and should avoid distorting the market where it is able to fulfil the adequate level of gas storage

- The EU institutions should find an appropriate balance between top-down and bottom-up approaches

### **General principles**

- Filling targets should apply a demand-based rather than capacity-based rationale, combining a collective level and national levels
- For 2022, apply simple but realistic measures, taking into account national specific characteristics and constraints
- For the future (2023 and beyond): better estimate storage needs on the basis of several parameters (LNG tanks, diversity of supply, demand seasonality, interconnection capacities, dependence on Russian supplies)
- Risk mitigation measures should minimise the use of public funding
- Implement an EU-wide monitoring of storage filling levels and of prices paid for that fill

## **2 Main provisions of the European Commission’s proposal**

Setting a filling target for EU gas storage facilities is the cornerstone of the proposal for a regulation. It is fixed at a minimum of 80% for 1 November 2022 (deadline postponed to 1 December in case of low injection rates) and a minimum of 90% for the following years. The European Commission would be empowered to adopt a delegated act to specify the filling target and trajectory from 2023 onwards.

To ensure that the filling trajectory is followed strictly, the competent authorities must take effective measures to increase the filling level when the actual monthly level is 2 percentage points below the expected one. In case of sustained deviation, the MS could be recommended or even obliged to take measures. The European Commission must, however, ensure the measures are proportionate and do not place an excessive burden on MS, gas market participants, storage system operators or citizens.

To implement the filling target, MS are invited to take measures including:

- An obligation on gas suppliers to store minimum volumes of gas;
- An obligation on storage owners to tender capacities;
- An obligation on Transmission System Operators (TSOs) to purchase and manage strategic stocks;
- Provide financial incentives for market participants, including compensation for the costs induced by these obligations;
- An obligation on storage capacity holders to use or release unused booked capacities (“use-it-or-lose-it” on storage capacity holders).

“Burden sharing” measures mainly require that those MS without storage facilities ensure that national market players have arrangements with Storage System Operators (SSOs) from MS with storage facilities corresponding to a volume that is equal to at least 15% of the annual gas consumption in their country, or the maximum volume technically feasible. Alternatively, they can establish a joint burden-sharing mechanism with another MS with storage capacities based on the latest risk assessment. Market participants can be compensated for costs incurred by the obligations, in case of a shortfall of revenues.

The proposal also introduces a provision for SSOs to be certified by the regulator or a competent authority. SSOs operating capacities above 3.5 TWh which were filled below 30% of their maximum capacity on 31 March 2021 and 31 March 2022 should be certified within 100 working days from the date of entry into force of the Regulation; others should be certified within 18 months. Certification shall be refused to any person directly or indirectly controlling the SSO who may put at risk the security of energy supply or essential security interest of any MS or of the Union. A certification with conditions could also be granted.

Application of a 100% discount to capacity-based transmission tariffs at entry points to and exit points from storage facilities is also proposed.

### **3 Context: diversity of situations in the EU**

Over the last few years, underground gas storage seemed to play its role properly throughout the EU. The differences between national regulatory regimes reflected the different situations in terms of market value and security of supply requirements, but with an overall satisfactory level of filling. However, the low level of filling of EU storage facilities in October 2021 raised particular concerns about the market's ability to bring enough gas into storage when prices are high. Since sufficient gas in storage (GIS) by the start of the heating season is of key importance for the EU to secure gas supplies during the winter period, Europe's energy regulators agree with the principle of setting storage objectives for winter seasons, and particularly for next winter (2022-2023) as a preventive measure in order to secure supply.

The EU-27 gas storage capacity amounts to 1,147 TWh across 18 MS or an equivalent of approximately 27% of the EU-27's yearly consumption. Gas in storage on 1 November 2021 represented nearly 74% of the EU-27 gas storage capacity and 20% of EU-27 annual consumption. The situation differs strongly across the MS in regard to underground gas storage (UGS) as shown in table 1. Considering the huge differences among MS in terms of the role of storage and the level of capacity compared to national needs, setting a collective target is not sufficient. For instance, Austria and Latvia have storage capacities larger than their national gas consumption, and their facilities also serve regional markets (e.g. Southern Germany and Slovenia in the Austrian case, and the Baltics in the Latvian). Furthermore, storage targets should be based on the relevant driver, which in this case is gas consumption rather than storage capacity. Given that some LNG terminals can equally be used to store gas, Europe's energy regulators believe that LNG stocks should also be counted towards the fulfilment of storage obligations, acknowledging, however, that the management of LNG stocks is technically different because of its link with LNG cargo unloading processes. More generally, ACER and CEER recommend that the EU institutions find an appropriate balance between top-down (fixing a target for the EU) and bottom-up approaches (translating the EU objectives in national targets based on local needs and market characteristics).

Europe's energy regulators share EU leaders' concerns about the market's ability to fill storage facilities to the required level due to the problem posed by very high gas prices and in particular, the current negative winter-summer price spreads in forward markets. These negative winter-summer price spreads do not offer the market signal for market players to refill storage facilities, as they would be doing it at a financial loss. Public intervention could alleviate risks associated with the current market situation but should be targeted and temporary. Dedicated

EU funding may be needed in MS where the cost of the implementation of the regulation would not be affordable.

**Table 1. Storage filling per MS on 1 November 2021**

NRA from MS	Annual Gas Consumption CON [TWh]	Working gas volume WGV [TWh]	Gas in storage GIS [TWh]	Level of filling GIS/WGV [%]	Capacity to consumption WGV/CON [%]	Gas in storage to consumption GIS/CON [%]
Austria	93	*96	54	56%	102%	57%
Belgium	194	9	8	92%	5%	4%
Bulgaria	33	6	4	75%	19%	13%
Croatia	34	5	4	82%	16%	13%
Czechia	94	**36	31	86%	38%	33%
Denmark	31	11	7	69%	29%	24%
Estonia	4		0			
Finland	26		0			
France	451	133	121	91%	29%	27%
Germany	962	260	178	68%	29%	18%
Greece	70	0	0			
Hungary	113	70	52	74%	60%	46%
Ireland	59		0			
Italy	751	195	163	84%	26%	22%
Latvia	12	24	17	71%	186%	146%
Lithuania	26		0			
Malta	4		0			
Luxemburg	8		0			
Netherlands	408	145	89	61%	35%	22%
Poland	220	36	35	97%	16%	16%
Portugal	67	4	2	68%	5%	4%
Romania	127	33	25	74%	26%	19%
Slovakia	53	43	27	63%	74%	52%
Slovenia	10		0			
Spain	361	34	28	83%	10%	8 %
Sweden	15	0	0	10%	0%	0%
<b>EU-27 TOTAL</b>	<b>4218</b>	<b>1147</b>	<b>846</b>	<b>74%</b>	<b>27%</b>	<b>20%</b>

Sources: NRAs and GIE

Note: CON: consumption; WGV: working gas volume; GIS: gas in storage

\* Including UGS Haidach which is connected exclusively to the German gas transmission system

\*\*excluding UGS Dolní Bojanovice, which is located in Czechia, but is currently connected exclusively to the Slovak gas transmission system and therefore used by Slovakia

In summary, a fair application of the Regulation would require a review of the national filling targets in order to have a balanced burden sharing across the MS. Several MS are working on the scope and level of storage obligations and the creation of strategic storage. These

initiatives and the measures already in place should serve as a starting point in the EU gas storage strategy. Where the national security of supply is ensured via existing measures in the likely risk context, additional filling requirements aimed at fulfilling the collective target could be subject to dedicated processes and support schemes.

## **4 ACER and CEER comments on the European Commission's proposal**

### **a) EU storage filling requirements**

Europe's energy regulators take note of the reduction of the filling target from 90% to 80% for 1 November 2022 as a pragmatic measure. In MS where existing storage obligations for storage users stand below 90%, current storage capacity bookings could have been endangered by a risk to cancel contracts due to imposing higher filling requirements under the 90% requirement. ACER and CEER see the provision allowing the European Commission to redefine the filling target as an opportunity to elaborate a methodology for determining the appropriate amount of gas to be stored, while also learning from the experience.

For that purpose, an assessment of national and regional vulnerabilities would help in determining relevant storage volumes. ACER and CEER support consumption as a relevant basis for determining filling targets instead of storage capacity. Additional relevant parameters in terms of risk analysis should also be included such as the dependence on Russian gas (and general reliability of supply sources), the seasonality of demand (i.e. winter demand's share of annual consumption), cross-border interconnection capacity, storage capacities of a MS in relation to its national consumption, the access to LNG and direct connection with upstream pipelines with gas producing countries with whom the EU has concluded bilateral trading agreements. The diversification of supply sources of countries and regions should be taken into account (typically those that have LNG terminals) as they are less vulnerable to supply interruptions from a single source.

### **Analysis and proposals**

- For 2022, the 80% filling target is a pragmatic option that helps safeguard existing storage booking contracts.
- For 2023 and after, ACER and CEER recommend determining the EU filling target and filling trajectories according to the level of expected demand; regional vulnerability assessments should be carried out to calculate the appropriate volumes of gas to be stored on 1 November. In any case, filling targets must be known before storage capacity is allocated. 90% of the working gas volume corresponded to 25% of the 2020 EU gas consumption. This ratio could serve as a basis for setting the EU filling target starting from 2023.
- A proper monitoring system, covering both volumes (filling levels) and prices, must be in place as of day 1 in order to control the level of cost for EU taxpayers.

### **b) National storage obligations and their fulfilment**

The large diversity of situations among MS in terms of storage capacity compared to national consumption would result in important imbalances regarding the efforts needed to achieve the required level of filling if the target is exclusively based on storage capacity. The EU average

ratio between the filling level target (80% in 2022) and annual consumption (22% in 2020) could be used as a first reference to calculate national targets or MS contributions to the collective effort. Obligations may next be adapted to national particularities while keeping the collective EU gas in storage objective in place. For instance, the Summer/Winter demand ratio is much lower in Southern Europe than in Northern Europe, which reduces the need for seasonal storage. Storage is sometimes used at regional scale, physically or by swapping (e.g. between GIS and flows) in certain MS, only a certain share of the available storage capacity may be needed for domestic consumption while the rest of GIS may serve the overall security of supply of neighbouring MS or the Union. Where the EU requirements go beyond what MS need, pooling or allocating capacity to a third MS should be considered as part of the possible measures. LNG terminals with the possibility to store gas should also be part of the assessment of a MS' contribution to the storage effort. Countries with LNG infrastructure can build upon shippers' long-term LNG contracts, the diversification of sources and the flexibility provided by LNG. Operational flexibility of LNG tanks should thus also count among the means to fulfil storage obligations.

Setting storage levels entails responsibilities and rights, associated financial risks must be carefully assessed. In order to make sure any requirements are fit for purpose, there needs to be a link between the actual gas consumption (i.e. excluding interruptible and dual-fuel consumers and considering a share of protected customers and essential services) in a MS and the storage capacities subject to such filling requirement. Additional technical aspects could be considered. Seasonal flexibility is essentially provided by depleted fields and aquifers while salt caverns provide a higher withdrawal flexibility and a stock rotation time which can be much shorter; thus, non-seasonal storage needs a specific treatment to ensure it remains valuable for market participants.

### **Analysis and proposals**

- For 2022, national filling requirements should correspond to 22% of the average annual consumption corrected according to parameters such as demand seasonality, share of LNG, dependence on Russian supplies and physical constraints in terms of access to storage capacities.
- At national level, storage targets could be translated into filling obligations per booked capacity and/or booking obligations according to the suppliers' customer portfolio. Obligations must take into account the market situation, namely, the constraints and risks associated with purchasing gas for storage purposes and should be non-discriminatory. Obligations should be accompanied by support schemes where financial risks would prevent gas suppliers from storing gas.
- Where individual storage actions by gas suppliers are not sufficient, storage filling by third entities (TSOs, SSOs or mandated entities) should be carried out. The usage of the associated volumes should not interfere with the market but be withdrawn to alleviated scarcity situations.

### **c) National filling trajectories**

The national filling trajectories should be set pragmatically in liaison with MS and SSOs. They should be adapted to the characteristics of facilities and be consistent with the flexibility users need to best manage their gas sourcing strategies. In this respect, the tight 2% limit in terms of bandwidth introduces the risk of reducing market incentives to store gas spontaneously. The

more constraints, the less commercial opportunities exist to optimise injections and withdrawals based on market signals, and the less market value for storage facilities. We should be careful that very ambitious and rigid filling trajectories do not disincentivise market players to book storage capacities, thus putting security of supply at risk and increasing the need for public intervention and financial support. In addition, Europe's energy regulators acknowledge that the February target is introduced to avoid that storage facilities will be emptied too early in the winter but it needs to be adjusted according to the technical characteristics of storage sites at MS level.

The national trajectories also raise the question of how to use the gas volumes in storage. Faced with a collective objective per MS, one must be cautious about translating this into harmonised individual constraints in terms of injection and withdrawal for capacity subscribers.

### **Analysis and proposals**

- For 2022, filling trajectories should only be indicative and determined in liaison with national competent authorities for security of supply.
- National filling trajectories may not necessarily be applied to individual suppliers but assessed in an aggregated way. Overly rigid storage products could reduce their value and endanger market players' ability to effectively fulfil their obligations.

#### **d) Burden sharing provisions and cross-border arrangements**

Regarding solidarity between MS, the proposed provisions address the principle of storage in another MS; however, few arrangements are actually foreseen in terms of sharing the financial and physical burden of filling. In the proposed set-up, the introduction of the 15% filling target for MS without gas storage sites is a first step but does not allow the discrepancy between national situations and burdens for MS where a significant part of storage capacity serves the needs of other MS to be addressed. Linking targets to consumption would reduce, if not solve, the issue of burden sharing.

If one were to stay within the current set-up, i.e. with targets based on national storage capacities, it seems necessary to provide for a method of defining the relevant storage targets for each MS according to their characteristics that could structure cross-border obligations for the market players present on their territory and potentially serve to define a concept of regional strategic storage (assuming it would follow a beneficiary pays principle with no burden for the countries where strategic storage already exists). As a counterpart to financing, unless irremediable technical obstacles prevent it, MS with no UGS facility would need some guarantee that the amount of stored gas would be accessible and available, when necessary, regardless of the situation (for example when the MS with the UGS has declared a gas crisis). Alternatively, the option of using part of a Floating Storage Regasification Unit (FSRU) or an LNG Terminal for storage purposes for these MS could be considered.

Storage volumes that exceed the relevant capacities at national level could be included in the scope of strategic storage as defined in the proposal, at regional or Community levels. Regulators do not agree that only TSOs may be given the default role of procuring and managing strategic storages, as proposed in the December package. Other existing entities already are and others could be tasked by the competent authorities to fulfil this role, given the national circumstances and legislation, for example storage system operators, market area



managers, entities set up for stockpiling of gas, entities responsible for the balancing of the market or entities designated as supplier of last resort.

As a matter of priority, the measures taken should not be in contradiction with good market practices. It is necessary to build on the incentives to store, with properly targeted obligations. Applying cross-border financing mechanisms is complex and very difficult (see for example, the many long-outstanding solidarity arrangements). Europe's energy regulators recommend being pragmatic and introducing aids (including potential EU financial support) which might be needed at national level. Storage filling requirements should be transparent and proportional with regards to who benefits from the gas in storage. Part of storage capacities may be booked by enterprises according to an obligation in a neighbouring MS; thus, the cross-border operation would be backed by contracts and it is the responsibility of the non-hosting MS to arrange the supporting financial measures. The merit in this would be to avoid complicated negotiations and excessively bureaucratic processes when an urgent action is needed.

### **Analysis and proposals**

- The current business model for gas storage already follows a logic of a fair allocation of costs based on a benefit-received principle. MS without gas storage can impose gas storage obligations on suppliers to book storage capacities in other EU MS. Those obligations would relate to the gas demand of the protected customers and essential services in the respective MS.
- Cross-border obligations for market players should take into account the actual access to storage capacities (technical and economic aspects).
- In the longer term, a bottom-up approach based on the (regional) risk analyses carried out in the framework of the application of the Security of Supply Regulation could be used to address cross-border storage use and targets.
- If the aggregated corrected national targets were below 80% of EU storage capacity, dedicated collective procedures should be implemented to fill the gap

#### **e) Financing issues and price volatility**

High gas prices and uncertainties about future developments, which are now reflected in negative spreads, result in extremely high levels of risk for market players. Some suppliers may not have sufficient financial capacity to store gas and cover deficits from the negative spreads. This situation may jeopardise their ability to fill up storage facilities, and it might therefore be necessary to design support measures to manage these risks.

Among the measures that could be implemented to palliate market players' difficulty to satisfy the filling requirements, Europe's energy regulators see different options:

- Launching descending clock auctions with zero reserve price to reflect the market's appreciation of the risk of negative spreads, including through negative prices. Ascending storage auctions with reserve prices based on seasonal spreads could also be launched. In such a set-up, the reserve price could be negative, helping storage allocation price to converge with storage's market value in case of negative seasonal spread. The associated cost for SSOs would be compensated.
- Putting in place insurance measures to reduce the collateral required by the clearing houses. This may involve providing a public guarantee against the failure of players such as covering the risks of losses linked to negative seasonal spreads. In terms of

design, that can take the form of double-sided contract for difference (losses are compensated while gains are paid back to the supporting public entity).

- Compensating insufficient bookings through storage filling by SSOs (or other entities) without necessarily creating strategic storages but minimising market distortions.

In all cases, due attention should be given to potential drawbacks in terms of i) market players' sourcing strategies and incentives and ii) level of exposure for MS. The mechanisms should be selected regarding their effectiveness in terms of minimisation of public spending and maximisation of market incentives to store gas. They should not lead to "windfall profits".

Financial compensation should be collected in a non-discriminatory way and not from cross-border transmission tariffs. The cost of national storage obligations should indeed be covered by consumers or citizens from the same MS. European financial support should be foreseen where storage capacity on a MS territory overtakes the national needs for accomplishing storage obligations and where agreements with other MS are insufficient.

### **Analysis and proposals**

- Financial support to storage obligations should be addressed as an insurance policy, thus protecting market players and consumers from risks relating to high gas prices and negative seasonal spreads.
- Auctioning of storage tariffs allowing negative tariffs as a way to reflect market's appreciation of the risk involved.
- Contracts for difference (neutralising the risk of selling at loss) or negative storage auction prices should be the privileged means of incentivising filling.
- In case of insufficient bookings, storage by non-market entities should be carried-out in order to minimise interference with the market.
- Costs of support mechanisms for national obligations may be covered from levies or taxes collected from domestic consumers/taxpayers.

#### **f) Transmission tariff discount of 100% for storage**

Article 9 of the Tariffs network code (TAR NC) already provides for a discount of at least 50% at transmission-storage interconnection points. Although a 100% discount would currently only marginally reduce costs for storing gas, it could be envisaged to set a tariff to zero for security of supply reasons. Storage could be defined as insurance for which all those who may benefit pay a premium. This measure, applied for security of supply, should be limited in time. It may raise contractual issues when tariffs are already set up and be ineffective when tariffs do not represent an obstacle to storing gas.

### **Analysis and proposal**

- The existing legislation already allows for tariff discounts.
- Tariff discounts could be compensated by premiums paid by those who benefit from storage.

### **g) Deadline for the certification of gas storage facilities**

The period for the certification of gas storage facilities should be uniformly set to 18 months. The proposed period of 100 working days is overly ambitious, given the relatively high number of SSOs that will need to be certified. Furthermore, national laws must be adapted in order to establish the procedures and rules for certification. The provisions of Article 3a on the general rules, deadlines and other requirements necessary for implementation of the procedure for certification require national legislative transposition. Irrespective of the high number of storage system operators and the time needed to modify national legislation, a standardised period of 18 months would in principle leave open the possibility to carry out an audit significantly faster than 18 months, if necessary and possible.

#### **Analysis and proposal**

- Certification procedures are lengthy; delays should better take into account the necessary time to carry out the necessary investigations.