

Gas Storage and SoS Briefing Note

Date:	8 May 2022
Region:	European Union, Germany, Austria, Poland, Czechia, Slovakia, Iberia
Focus item:	Overview of upcoming supply support measures and storage obligations across EU

EU level

- The EU Energy Council met on 2 May 2022 in Brussels to address the situation of energy supplies and the energy developments in the Union, further to halting by Gazprom of gas deliveries to some Member States, notably Poland and Bulgaria. On their 2nd May meeting, EU Ministers reaffirmed that all suppliers must execute their obligations as settled in the contracts.
- In reference to the Russian decree relevant for gas importers, EU Ministers reiterated the obligation of full compliance and consistency with the existing restrictive measures adopted in respect of Russia and their commitment to work closely with operators to follow a common approach on gas payments.
- The European Commission considers it imperative to prepare for possible reduction in gas supply, continue to coordinate, proceed with legislation. Cessation of gas supply will not have purely national effect as entire X-border regions within the EU may be affected.
- The REPower the EU Plan to be presented by the Commission in May should set out concrete actions, including by:
 1. diversifying gas supplies,
 - a. accelerating renewables' deployment,
 - b. promoting further energy efficiency and energy savings;
 - c. strengthening accordingly our infrastructures;
 - d. address the problem of excessive electricity prices while preserving the integrity of the Single Market, maintaining incentives for the green transition, preserving the security of supply and avoiding disproportionate budgetary costs.
- As part of its package, the Commission is expected to present the following on 18 May 2022:
 - (1) a detailed plan on the implementing the plan outlined in the REPowerEU Communication.
 - (2) A targeted proposal aimed amending the Renewable Energy Directive to improve permitting with an aim to accelerate renewable energy projects.
 - (3) A Communication on a European strategy on external energy engagement.

EU Regulation (EU) No 2017/1938 on Minimum Gas Storage (Legislative Proposal):

- The European Commission's proposal establishes requirements on a mandatory minimum level of gas in storage facilities of 80% for 1 November 2022 and increasing to 90% in subsequent years. It also establishes intermediary targets for August, September and October 2022, and in 2023, from February, May, July and September.
- Following its publication on 23 March 2022, the proposal was sent to the European Parliament and the Council for examination.

- The European Parliament adopted the Commission proposal as its mandate for inter-institutional negotiations ('trilogues') with the Council.
- The Commission's public consultation on the proposal is running until 26 May 2022.
- COREPER (Member States Ambassadors meeting at Council level) is scheduled to discuss the proposal on 27 April 2022 with a view to provide guidance for further work.
- The proposal follows the ordinary legislative procedure under the Lisbon Treaty.

Contract settlement in rubles, cessation of Russian gas supplies and “early warning” notifications:

- According to the changes in the legislation of the Russian Federation,¹ starting from April 1, 2022, settlements for natural gas supplies made after April 1, 2022 in accordance with the foreign trade agreements of PJSC “Gazprom” for the supply of natural gas abroad (to a number of countries) shall be made only in Russian rubles.
- **Lithuania** stopped importing on 2 April. Decision was made in conjunction with other Baltic states, now reliant on imports from Klaipeda. Transit from Belarus to Kaliningrad continues under existing contract.
- **Bulgaria and Poland** have confirmed the suspension of Russian gas from 27 April 2022. The suspension is in response to refusal to pay in roubles.
- **Poland:** The Yamal contract with Gazprom amounted to 10bcm/year and was expected to expire at the end of December 2022 without renewal. Bulgaria has been off-taking around 2bcm of Russian gas under a long-term contract which is due to expire at end of December 2022, which Bulgaria will was not seeking to renew.
- OMV have agreed to the new payment procedure by Gazprom, i.e. the gas buyer operates parallel Euro and a Rubble accounts with Gazprombank.
- Germany and Austria issued two “early warnings” on 30 March triggering the first level of three levels in term of SoS-procedure.
- **Croatia** declared an “early warning” on 25 April in the context of the EU Gas Security of Supply Regulation. The supply of gas to Croatia, including imports through Ukraine, is currently uninterrupted and has been flowing for weeks. Domestic supply to end customers is fully covered by imports and domestic production over recent days, but the level of storage is not increasing.
- **Finland** declared “early warning” on 6 May 2022 in the context of the Gas Security of Supply Regulation, in view of Russia’ announcement on accepting payment for gas imports only in rubles and threatening to stop gas deliveries without ruble payments. NESA and Gasgrid Finladn Oy (TSO) will enhance the monitoring of the gas market and particularly the SoS situation.

Russian counter-sanctions:

- President Putin decreed on 3 May 2022² that Russia would no longer export products and raw materials to entities in states that had imposed sanctions on Russia, and forbade transactions with people and entities that Moscow had sanctioned. The document introduces a ban on government authorities at all levels, as well as organisations and individuals under the jurisdiction of the Russian Federation, implementing agreements (including foreign trade contracts) with legal entities, individuals and organisations under their control that are subject

¹ Russian Presidential Decree "On a special procedure for the fulfilment by foreign buyers of obligations to Russian suppliers of natural gas" from 31 March 2022:
<http://kremlin.ru/events/president/news/68094>

² <http://publication.pravo.gov.ru/File/GetFile/0001202205030001?type=pdf>

to the special economic measures, and on executing obligations under existing agreements (including foreign trade contracts) to individuals under the sanctions where such obligations are not satisfied or are partially satisfied.

- The Government has been instructed to approve the list of individuals under sanctions within ten days and define additional criteria for transactions whose implementation and obligations shall be banned under the Executive Order.

ACER Report on Gas Storage Regulation and Indicators:³

- ACER gas storage report published on 7 April 2022. It's a collection of analysis and facts on the basis of ACSI+, GIE and GSE data, not a policy document.
- Of the 18 MS with underground storage facilities, 11 Member States (MS) have opted for regulated third-party access (TPA) rules and regulated tariffs, while in the other 7 non-regulated TPA (access to storage is negotiated between users and operators). 4 occurrences of low fill are all Gazprom with capacity or control.
- On 1 October average fill was 72%, representing nearly 20% of the EU-27 annual gas consumption; the booked storage capacity in Austria, Germany, the Netherlands and Slovakia was significantly above actual used capacity due to low filling levels of storages used or controlled by Gazprom. Austria and Latvia in particular have regional effect (particularly since their storage capacity exceeds their national demand). 11 MS have storage obligations, 7 do not.
- Booked vs filled storage capacity for this heating season was notably large in Austria, Germany, The Netherlands, Poland, Slovakia.
- 11 NRAs reported the existence of gas in storage obligations. 7 NRAs (Austria, Denmark, Germany, Latvia, The Netherlands, Slovakia and Sweden) inform of not storage obligations.
- EC recognised that negative spreads do not encourage storage filling. Negative storage costs as an example of possible policy to address this (but was not making a recommendation).

Germany

Trusteeship over Gazprom Germania GmbH

- On March 31, Gazprom Group terminated its participation in the German company, Gazprom Germania GmbH, and all its assets, which include all shares in Gazprom Marketing & Trading Ltd.⁴
- On 4 April 2022, the German Federal Ministry for Economic Affairs and Climate Action (BMWK) announced that Gazprom Germania GmbH (including its UK subsidiaries such as GMT, and Wingas), had been placed under a special trusteeship under Bundesnetzagentur (BNetzA) until 30 September 2022 on the basis of the Foreign Trade and Payments Act. This trusteeship would cover trading and assets. The Ministry had not accepted the announced change in ownership, against the background of the unclear legal situation, violations of the reporting obligation and the subsequent announcement of the liquidation of Gazprom Germania.

³https://extranet.acer.europa.eu//Official_documents/Acts_of_the_Agency/Publication/ACER%20Report%20on%20Gas%20Storage%20Regulation%20and%20Indicators.pdf . See Annex 1 for further information.

⁴ <https://www.bmwk.de/Redaktion/EN/Pressemitteilungen/2022/03/20220404-bmwk-appoints-bundesnetzagentur-as-fiduciary-for-gazprom-germania.html>

- Given the ongoing discussions regarding the creditworthiness of Gazprom Germania (GPG) and its subsidiaries, including Gazprom Marketing & Trading Ltd., the German regulatory authority, BNetzA, has issued a comfort letter⁵ (dated 8 April 2022) addressing its role as GPG's current fiduciary and associated issues particularly directed at business partners and banks. According to the letter, BNetzA will ensure that all payments of Gazprom Germania GmbH may only be made to maintain business operations and will thus prevent an uncontrolled outflow of funds.
- On 2 May 2022, the US Department of the Treasury issued a General License no 30, authorising transactions involving Gazprom Germania GmbH prohibited by Directive 3 under Executive Order 14024, *Prohibitions Related to New Debt and Equity of Certain Russia-related Entities*, up until period of September 30, 2022. The General License also refers to any entity, in which Gazprom Germania GmbH owns, directly or indirectly, a 50% or greater interest.

Law to amend the Energy Industry Act to introduce filling level specifications for gas storage facilities

- On March 25, 2022, the German Bundestag approved the law amending the Energy Industry Act to introduce filling level specifications for gas storage facilities. The law should come into force at the beginning of May.
- Based on the current draft law and given that the first Strategic Storage-Based Options (SSBO) tenders are already planned for May 2022, THE has developed the product design for the SSBO level 1 together with the authorities.⁶

German Energy Security Act Reform (EnSiG)

The EnSiG is a draft law providing for a detailed provisions of trusteeship of critical infrastructure and includes a future explicit legal basis of permanent trusteeship and – as ultima ratio- the expropriation of energy infrastructure owners in Germany. As the German law does not allow for a law with specific scope (e.g. “LEX GAZPROM”), the draft act remains general in nature and covers any energy related contract including contracts in electricity and gas. Current EnSiG dates from 1975 and addresses the role of strategic reserves in oil products in the context of the oil crisis.

The EnSiG-draft has been prepared with record speed: a first Government EnSiG-draft was published in the week of 11th April, the public hearing of stakeholders was organised by the Government yesterday (on 20 April 22), involving the Federal Ministries and the Federal Network Agency. There has been just a week between the publishing of the draft EnSiG and the public hearing, which is considerably shorter than normal consultation period. The expediency can be explained [in the context of the early warning level of the gas emergency plan](#), which the Federal Ministry for Economic Affairs and Climate Action (BMWK) declared on 30 March 2022.

The draft Energy Security Bill is currently consulted with industry circles. The public expert hearing in the German Parliament has been scheduled for 9th May and its endorsement is expected to be on 29th May. Considerable risks remain for the gas market participants in the present EnSiG draft. In particular, there are lots of questions raised around **the implementation of the price modification clause** which would force trading participants to re-negotiate the commercial terms for gas supply along the string of trades triggered by a sudden loss of gas supply.

⁵https://www.bundesnetzagentur.de/DE/Fachthemen/ElektrizitaetundGas/Versorgungssicherheit/aktuelle_ga_sversorgung/Treuhand/artikel.html

⁶ https://www.tradinghub.eu/Portals/0/SSBO/22-04-04%20Umsetzung%20Speichergesetz_Ausgestaltung%20SSBO%20Stufe%201_Webseite.pdf?ver=vPLWLvo7zhT9R5wntUCIQ%3d%3d

The draft Section 24 EnSiG allows importers to increase the price, should a certain percentage of gas supply disappear (exact details remain open at this stage). Passing on higher price due to a change at import level is creating insolvency risks along the line, as price modifications may not be implemented in time along complex trading arrangements. Companies may not agree on the new price and the negotiation may hit a wall and create substantial litigation risks, which may in turn lead to non-enforceability of these arrangements, notably if the governing law is English law, and not German law. The draft EnSiG does not specify **an adequate compensation for traders** affected by a gas shortage. **New insolvency risks** are created, de facto the EnSiG moves these risks from the importer to the entire trading community.

The EnSiG aims to **establish the legal basis for permanent state trusteeship for critical infrastructures** (e.g. storage or pipeline infrastructure). Section 17 of the current draft EnSiG allocate a wide discretionary power to state authorities to proceed with expropriation/trusteeship, but in our view does not respect the principle of proportionality in law-making for limiting the high degree of protection of private property enshrined in the German constitution.

The draft EnSiG mentions **auctioning mechanisms on a digital platform** but lacks granularity of information on how this platform is meant to function. Early warning level (phase one) under the EU Security of Supply (SoS) Regulation 2017/1938 provides *inter alia* for establishment of a crisis committee and mandates a general watch of potential market disruptions whilst enabling the Government to take precautionary measures to mitigate the impact of the crisis. SoS Phase One has recently triggered emergency planning of THE and EEX for example.

Current EnSiG reform should be seen as part of the current effort to prepare for a further escalation of the gas supply crisis. Sadly, we believe that current text will increase the risk associated with the crisis rather than mitigating it. The planned measure would substantially increase collateral requirements, increase insolvency risk and have destabilising effect on the market.

Legislative timeline:

- **Bundestag 1. Reading, 29.04.2022**
- **Bundestag Committee Energy 11.05.2022 (Discussion)**
- **Bundestag 2nd Reading : 12./13.05.2022**
- **Upper House Vote: 20.05.2022**

Austria

The Austrian National Council took decision to purchase gas reserves. In this context, an amendment to the Gas Industry Act (Gaswirtschaftsgesetz 2011 - GWG) was submitted, which stipulates that a strategic gas reserve should be available in Austria for the first time on November 1, 2022. Approval by the Federal Council and publication in the Federal Law Gazette are still pending.

The operational handling of the procurement and maintenance of the strategic gas reserve is transferred to the distribution area manager. In order to enable rapid operational handling, according to the submitted amendment, the distribution area manager is to establish a subsidiary. The procurement of the gas reserve is to be carried out by the distribution area manager within the framework of a tender procedure. The respective costs will be borne by the federal government.

The exact amount of the gas reserve is calculated on the basis of the gas volumes sold in January and is published by the regulatory authority (E-Control) by March 1. For 2022, the total consumption in January is 12.6 TWh. The amount of the reserve can be adjusted by decree of the federal government, which, however, shall require the approval of the main committee with a two-thirds majority. This is intended to secure supplies in the event of an interruption in Russian gas deliveries.

Poland

With effect as of 16 April 2022, Poland has introduced sanctions legislation in the form of the **Act on special measures to combat support for aggression against Ukraine and to protect national security** (hereinafter "Sanctions Act", text available in Polish [here](#)). This new law is an **addition** to a package of sanctions that have been adopted at the EU level. Summarising, the Sanctions Act:

- creates a national list of persons and entities subject to sanctions (sanctions list);
- introduces a new restrictive measure in the form of disqualification of targeted entities from public procurement proceedings;
- imposes a national embargo on coal from the territory of Russia and Belarus;
- provides for administrative and criminal liability for violations of the Sanctions Act and EU regulations imposing sanctions on Russia and Belarus.

With effect as of today, 27 April 2022, the Polish Ministry for Internal Affairs and Administration (Ministerstwo Spraw Wewnętrznych i Administracji) has published on its website **the national sanctions list**. It is supplemental to the EU sanctions, therefore, **it only features entities which have not already been listed by the EU**. With regard to most entities, the following restrictive measures have been imposed:

- freeze of all funds and economic resources;
- ban on provision of funds or economic resources, directly or indirectly, to the entity;
- ban on participation, knowingly and intentionally, in activities intended to circumvent the above restrictions;
- disqualification from public procurement proceedings;
- for natural persons: entry into the register of foreigners deemed persona non grata on the territory of Poland.

The full sanctions list is available [here](#) (for now, provided only in Polish). The list currently comprises 15 individuals and 35 entities, including:

- **Novatek Green Energy Sp. z o.o. (registered in Cracow, Poland)**, within the following scope: (a) freeze of all funds and economic resources; (b) ban on provision of funds or economic resources, directly or indirectly, to the entity; (c) ban on participation, knowingly and intentionally, in activities intended to circumvent the above restrictions; (d) disqualification from public procurement proceedings;
- **OAQ Novatek (registered in Moscow, Russia)**, within the following scope: (a) freeze of all funds and economic resources; (b) ban on provision of funds or economic resources, directly or indirectly, to the entity; (c) ban on participation, knowingly and intentionally, in activities intended to circumvent the above restrictions;
- **PAQ Gazprom (registered in Moscow, Russia)**, within the following scope: (a) freezing the exercise of rights from shares and other securities, freezing the dividend; (b) ban on participation, knowingly and intentionally, in activities intended to circumvent the above restrictions. PAQ Gazprom has a minority stake in EuRoPol Gaz, an entity that owns the Polish section of the Yamal pipeline.

The list also includes the coal and petrochemical trading companies (e.g. SUEK Polska, KTK Polska, BELOIL Polska, Barter Coal). There will be parallel administrative and criminal liability regimes for non-compliance with the Sanctions Act and the EU sanctions regulations: administrative fines of up to 20 million PLN and, in the sphere of criminal liability, no fewer than 3 years of imprisonment.

Czechia

In light of the conflict in Ukraine, the Czech Ministry of Industry and Trade has issued a crisis management measure, which shall increase the minimum gas storage capacity up to 80% in order to

prevent fluctuations in gas prices in the coming months and the following winter season. This measure has not yet been detailed, aside from providing state subsidies for the purchase of additional gas.

Originally, there was supposed to be a Government decree tackling this matter, which aimed at increasing the minimum storage capacity from 30% to 45%. However, the Czech Parliament approved a state of emergency, thus enabling an easier procedure of adopting crisis management measures.

Slovakia

According to NRA and the Ministry of Economy, the gas storage in Slovakia was filled to approx. 24% as of 30 March, and the biggest Slovak gas supplier SPP started to fill the storage facilities for next winter.

The Slovak NRA will consider further regulations in the context of the European Commission to establish requirements on a mandatory minimum level of gas in storage facilities of 80% for 1 November 2022.

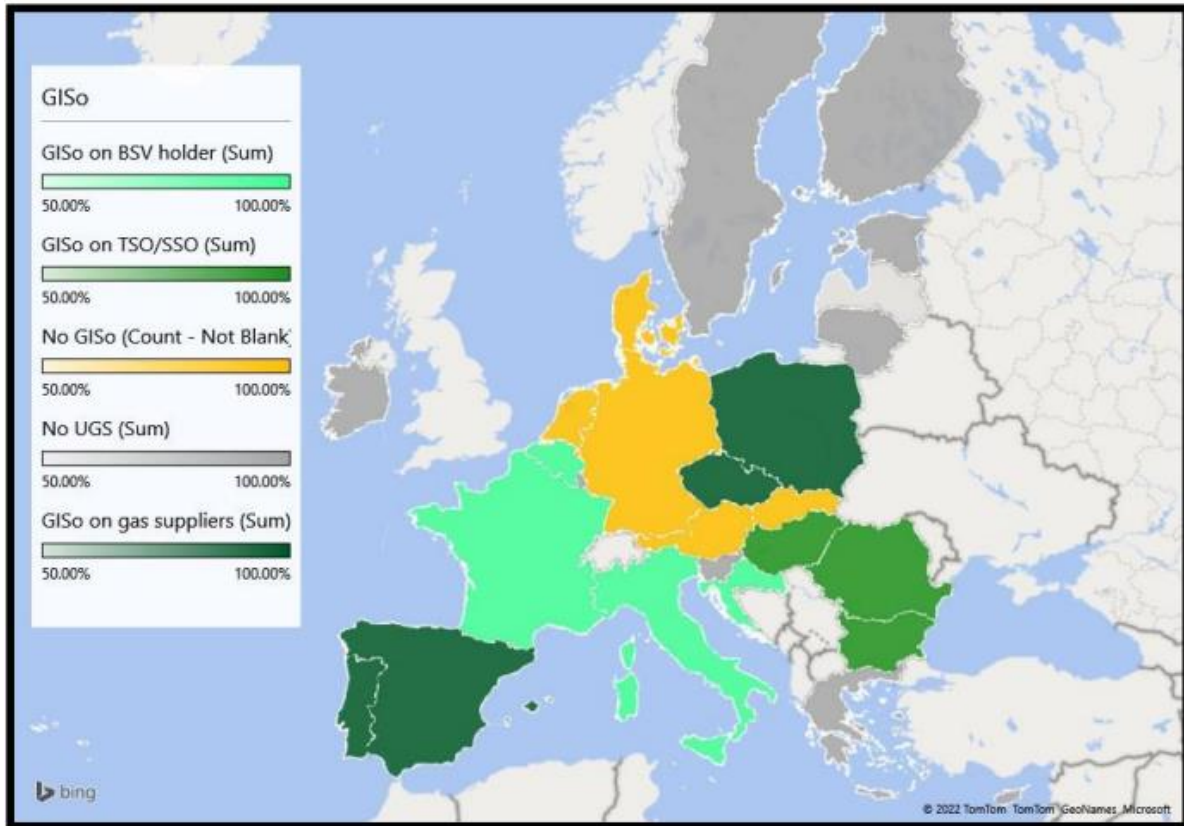
According to the Slovak Ministry of Economy, Slovakia is prepared to pay for gas in roubles, if required, - which was then denied by Slovak PM who confirmed that Slovakia will coordinate the process with other EU countries.

Iberia

The proposal of Spain and Portugal to the European Commission to cap gas price used for electricity generation until 31/12/2022.

- On 26 April 2022, the Spanish and Portuguese governments announced the conclusion of an agreement with the European Commission on a proposal to control wholesale electricity prices in the Iberian peninsula. The details of the agreement are yet to be published.
- According to what is known of the proposal, Iberian electricity market operators would duplicate the daily pan-European auction with an additional Iberian-only auction. In this auction, Iberian electricity generators using gas-fired plants would be forced to adjust their bids using a fictive “shadow price” for natural gas of 40€ to 50€/MWh.
- A compensation instrument would be developed for electricity buyers (i.e. consumers) to compensate the difference between the regulated “shadow price” generators have to use and the actual price at which they procured gas on the wholesale market.
- Estimated cost for the total subsidy is of 10.000 mln EUR per year. The intention is mainly to control the regulated PVPC that is indexed to the pool price. The downside is that it creates a serious cost burden in the sector. The question remains outstanding, namely how these extra costs will be paid: only by traders/end-users or will it be funded, at least in part, from the general state budget.

Annex: Gas in Storage (GIS) Obligations⁷



Source: ACER; * BSV - Booked Storage Volume

Belgium. GIS must be at least 90% of BSV on 1 November (as an anti-hoarding measure) and at least 30% of BSV on 15 February. These rules are applicable to all storage users in Belgium.

Bulgaria. GIS should ensure gas security of supply requirements.

Czechia. Gas suppliers to protected customers in Czechia are required by legislation related to security of supply requirements to keep a 30% of gas supplies for protected customers in storage in Czechia or EU from January to March and October to December. There are no obligations on holders of booked storage capacity.

France. Suppliers that have booked storage capacity shall actually store gas at a minimum level of 85% of their booked capacity by November 1st each year.

Hungary. Security of supply requirements: mandatory storage of natural gas for the universal service customer (USC) 29, with pro-competition requirements (anti-hoarding capacity measures).

Italy. GIS obligations on holders of booked storage volumes mainly as pro-competitive and beneficial measure for SoS. Certain limitations to the daily gas withdrawals to avoid storage being emptied too soon, as storage withdrawal capacity is directly linked to the level of gas stored. Maximum volumes that can be withdrawn from storage are to be compliant with a Ministerial decree and published on storage operator's website.

⁷ [ACER Report on Gas Storage Regulation and Indicators, 7 April 2022.](#)

Poland. Obligation to maintain mandatory stocks are based on security of supply requirements up to the level of the mandatory gas volumes described in the administrative decisions.

Portugal. Obligations for strategic reserves is defined by law, related to security of supply requirements. Until October 2021, security reserves were mandatory and equal to 30 days of (average daily) consumption for protected consumers and also for power stations with non-interruptible gas consumption. In January 2022, the reserves' obligations legal framework was increased to 45 days of average daily consumption of protected consumers and 16 days of rated power consumption of electric power stations with non-interruptible gas consumption. It also includes mandatory "additional reserves", on top of security reserves between October and March.

Romania. Suppliers' obligation connected to the security of supply requirements for the end users.

Spain. Storage users (gas suppliers) have the obligation to store 20 days of annual firm sales to all kind of final consumers (strategic reserves), as well as the possibility to store 60 days of household consumption and 10 days of other firm sales (operative reserves).

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