Non-Paper on the Revision of Regulation (EU) 2017/1938

The reduction of Russian gas imports to the European Union (EU), due to the Russian invasion of Ukraine, has led to an unprecedented gas crisis in the EU and caused major changes in the EU gas flows and gas market. The Russian weaponization of energy resulted in low filling rates of the EU gas storages during the winter of 2021/2022 and unprecedented high prices in the summer of 2022. To combat these consequences, exceptional and temporary measures were adopted on an EU level, which, among others, meant to save gas and to fill the gas storages. Currently the security of gas supply situation in the European Union has improved and most of the emergency measures that were adopted at the EU level in 2022 have either been prolonged, expired or found their way into permanent legislation. That does not mean the EU can go back to normal without revising its gas security of supply policies. The EU has largely shifted away from Russian gas, and now relies on LNG to meet most of its gas demand. LNG is traded on a global market, and this makes the EU gas market more vulnerable to global events, as could be seen with the price spikes after tensions in the Middle East last year.

The co-legislators agreed in the negotiations on the Hydrogen and Gas Package that the European Commission should take stock of the lessons learned on security of gas supply after the energy crisis. Enrico Letta, in his report on 'Much more than a market' (April 2024), also emphasized the need for a systematic review of the gas security of supply framework. The Commission launched an Energy security architecture fitness check in September 2024 and intends to submit a proposal to revise the Gas Security of Supply Regulation at the beginning of 2026. The Commission confirmed this intention in its Action Plan for Affordable Energy.

In that light, the Netherlands, the Federal Republic of Germany and the Republic of Austria would like to support the European Commission in its preparations for the revision of the Gas Security of Supply Regulation and share its experiences and lessons learned. We would like to call attention to the following themes, which in our view should be addressed in the upcoming revision of the Security of Gas Supply Regulation:

- → **Prioritize smart gas savings;**
- → **Ensure preparedness for long term supply shocks;**
- → **Rethink the gas storage targets; and**
- → **Keep the Regulation practical.**

1. Prioritize smart gas savings

It is a fundamental principle of the gas market and the gas system that supply and demand should always be in balance. If a sudden disruption of supply occurs, the transmission system operators (TSOs) have to take immediate actions to restore the balance in the system. However, in case of a longer lasting disruption of supply leading to an emergency situation, the first measure that ought to be taken is to lower (flexible) demand through smart gas savings. This is in line with the energy-efficiency-first principle, which is enshrined in EU-legislation. This was also acknowledged when the Council adopted the first emergency regulation, namely Regulation (EU) 2022/1369, which called on Member States to voluntarily reduce their gas demand. It was due to gas savings measures on EU- and national level, as well as other factors such as high level of prices, that in 2023 gas demand reduction substituted 65 bcm of Russian gas. This, in turn, contributed to higher gas storage filling levels and lower prices.

However, emergency Regulation (EU) 2022/1369 expired and was replaced by Recommendation C/2024/2476. The Hydrogen and Gas Package does introduce the possibility for Member States to limit the non-essential gas use of protected customers, but in our view more needs to be done on gas savings in the Security of Supply Regulation. We therefore recommend the Commission to prioritize smart gas savings measures in the revision of the Security of Supply Regulation. This can be done by providing for a legal basis to introduce demand reduction targets for Member States, ranging from voluntary to obligatory demand-reduction targets depending on the gas supply crisis on an EU level. Member States could then introduce smart gas savings measures, taking into account national circumstances, such as the use of gas for (security of) electricity supply and other protected customers. Member States should be able to take incentivizing measures to reduce gas demand during these different levels of gas supply crises.

2. Ensure preparedness for long term supply shocks

The goal of the Security of Supply Regulation is to safeguard an uninterrupted supply of gas throughout the EU, in particular to protected customers in the event of difficult climatic conditions or severe disruptions of the gas supply. This is done by formulating standards, such as the infrastructure standard and the gas supply standard, by creating measures that oblige Member States to curtail protected customers last and by introducing solidarity provisions. Although these standards and measures protect certain groups of consumers from short-term supply shocks, the Regulation is not sustainable in case of long(er) lasting physical supply shocks. The occurrence of long(er) lasting physical supply shocks is no longer unthinkable, as was seen with the weaponization of Russian gas supplies to Europe or in case of long term disruption of critical infrastructure. Therefore this change should be addressed in the review of the Security of Supply Regulation. We therefore recommend to:

➔ *Revise the definition of protected customers*

We urge the Commission to revise the current system and definition of (non-)protected customers. In the event of long(er) lasting disruptions, it is not durable to curtail supply to industrial consumers that are key to the economy and society. For example, certain industries are crucial to protected customers (as currently defined) or crucial to the economy of a Member State in times of crisis and thereafter. A long lasting curtailment could cause irreparable damage to these industries and consequently the core of the economy and may also lead to unacceptable shortages of essential goods. We propose that Member States are allowed to include in the definition of protected customers a select group of industries, defined in the Regulation, which are key to the society or the economy of a Member State or the European Union as a whole. To prevent the erosion of the definition of protected customer, the gas consumption of these protected industries during a crisis should not go further than a certain percentage of the annual industrial gas consumption of a Member State.

➔ *Review the application of the solidarity mechanism*

The Security of Supply Regulation stipulates that Member States should provide solidarity to Member States with whom they are directly connected in case the latter Member State has insufficient gas to satisfy the demand of its solidarity protected customers. Although, fortunately, up till now no Member State has been in a position that it had to request solidarity, it might nevertheless be necessary to rethink the solidarity provisions. The current solidarity provisions are designed for disruptions for a relatively short period of time (at maximum one to two weeks) and are therefore not robust in the case of longer lasting supply shocks. Furthermore, the solidarity provisions shift a lot of responsibility to Member States, while Member States do not own and do not trade in or transport gas. Therefore, the solidarity mechanism should be revised to bring about a more durable showing of solidarity between Member States. This could be done by focusing on joint mandatory gas savings instead, taking into account the gas systems of the impacted Member States and the Member States able to effectively supply additional volumes of gas. This allows for a strong and practicable showing of solidarity during an energy crisis.

3. Rethink the gas storage targets

During the energy crisis of 2022 the Gas Security of Supply Regulation was amended to provide for mandatory storage targets for Member States until the 31st of December 2025. These mandatory gas storage targets have been amended and extended until 2027. After (temporary) prolongation of the mandatory gas storage targets, it could be considered to permanently enshrine the gas storage obligations in the Gas Security of Supply Regulation during its revision.

We have seen that gas storages play a crucial role in the current gas system after the disruption of Russian gas supply to the EU. It is therefore crucial that the gas storages are sufficiently filled. However, we have also identified several bottlenecks in the gas storage provisions.

1. The gas storage obligations are too rigid as they are solely based on the gas storage capacity in a Member States. Due to the decrease in gas demand there is less need for gas storage in the future; furthermore many Member States have expanded their LNG-import capacity. Certain Member States even rely on LNG storage as the main source of flexibility in all seasons. It is important the gas storage targets reflect these developments to prevent them from inflating the demand during the summer and thus causing a negative spread between the summer and winter prices preventing the filling of the gas storages, a development which already could be observed at the start of the 2025 filling season. Additionally, intermediate filling targets lessen the flexibility of market parties to make use of gas storage and can cause a distortion of market prices.
2. There is a disproportional burden for Member States with relatively large gas storage capacities, both in developing policies to ensure sufficient filling as in terms of potential costs. These Member States cannot properly pass on those costs to other Member States (who also benefit from the stored gas). This despite the fact that the amendment to the Gas Security of Supply Regulation included some provisions which had the aim to alleviate the storage obligations for Member States with ample storage capacity.
3. Member States have limited possibilities to reach the filling targets. The current storage provisions are only targeted at Member States and not at gas market participants, that while gas is mainly traded, transported and stored by these gas market participants and not by Member States. Furthermore, Member States are limited in their options to incentivize filling of the gas storages due to the EU rules on state aid.
4. Market participants have no incentives to fulfill the gas storage obligations: market participants only fill the gas storages if the summer/winter spread is positive and a profit can be made or to fulfill their supply obligations. If the spread is negative there is no incentive for market participants to fill the gas storages and they could even be incentivized to game on the summer/winter products instead, contributing to the negative spread and thereby possibly increasing the costs for Member States.
5. Filling measures of Member States could lead to market distortion: although Member States have limited possibilities to reach the filling targets, the measures that Member States can take could have adverse effects on the seasonal spreads and on the policies of other Member States. As Letta stated, there is a need for a coordinated approach among neighboring Member States.

If the Commission wishes to permanently enshrine the gas storage obligations in the revision of the Gas Security of Supply Regulation, we therefore suggest the following:

➔ The Commission must properly and holistically evaluate and analyze the current gas storage obligations and take the bottlenecks thereof addressed above into account, including the specificities of each Member State; and
➔ come forward with a proposal to address these issues as to ensure gas storages remain filled.

4. Keep the regulation practical

Some of the current measures and standards should be improved to facilitate the preparation and implementation of measures and to prevent a high administrative burden on Member States:

➔ consider simplifying the national risk assessment and preventive action plans and merging the preventive action plans and emergency plans into one document. In order to streamline national plans and ensure the quality and quantity of the required data, the European Commission should draft templates for Member States to submit their information;

- ➔ involve the Joint Research Center while drafting the risk assessment of the regional risk groups, to ensure standardized approaches in each risk assessment, including the infrastructure and gas supply standards;
- ➔ further crystallize and harmonize certain definitions, such as: the different essential social services (services related to healthcare, essential social care, emergency, security, education or public administration), and market-based and non-market-based measures. This limits discrepancies between Member States, which would otherwise result in an unjustifiable differentiated approach;
- ➔ facilitate support measures by Member States aimed at voluntary demand reduction. The current state aid framework prevents the approval of aid measures designed to be applied in an emergency level crisis situation prior to the concrete occurrence of an emergency level crisis. Approval of state aid measures during an emergency level crisis takes too much time. Ideally it should be possible to pre-approve an aid measure under the condition that it will only be applied during an emergency level gas crisis;
- ➔ It remains important that market-based measures take precedence over non-market-based measures. Article 13, paragraph 8b and/or article 13, paragraph 5 of the Regulation should be amended in that respect;
- ➔ and give further guidance on how to operationalize the Security of Supply Regulation.

In conclusion, the Netherlands, the Federal Republic of Germany and the Republic of Austria call upon the Commission to consider the following in the revision of the Security of Supply Regulation: prioritize smart gas savings, ensure preparedness for long term supply shocks, rethink the gas storage targets and keep the Regulation practical.