

The EU Energy Crisis: EC Issues Its “Save Gas for Winter Plan”

26 August 2022

In August this year, the European Council adopted a [regulation](#) on coordinated demand-reduction measures for gas. This closely followed the Member States’ 26 July 2022 agreement to “make every effort” to reduce their natural gas consumption by 15% this winter, and to revise their existing emergency gas supply legislation to meet this target. The Member States also agreed to empower the European Council to impose binding demand reductions on all Member States if “there is a substantial risk of a severe gas shortage or an exceptionally high gas demand.”

These measures—tabled in the form of the European Commission’s “Save gas for a safe winter” plan (the “[Plan](#)”) and the Proposal for a Council Regulation on coordinated demand reduction measures for gas (the “[Proposed Regulation](#)”)—are the latest in a series of measures aimed at addressing the risk of further supply cuts from Russia and preventing a significant energy crisis this winter. As the measures target industry players—individual households are exempt from the measures—such players may find their access to gas restricted, with attendant consequences for their contractual obligations.

The Ongoing Gas Crisis in the EU. As we reported [here](#), in response to the looming energy crisis caused primarily by Russia’s decision to reduce its natural gas supplies to Europe, several Member States have invoked emergency gas plans developed under the EU’s existing Security of Supply Regulation of 25 October 2017 (“[Regulation 2017/1938](#)”).

Regulation 2017/1938 provides that Member States must have emergency plans to mitigate the effects of any gas supply disruption and that the plans must accommodate three crisis levels: early warning, alert and emergency. As of 26 August 2022, Austria, Croatia, Denmark, Estonia, Finland, Hungary, Italy, Latvia, the Netherlands, Slovenia and Sweden have activated their emergency gas plans by declaring an “early warning” alert. Germany activated the “alert” level of its emergency gas plan in June this year.

Recognising that the existing framework—geared toward short-term and geographically limited gas supply disruption—is insufficient to tackle the current crisis,

the EU has now taken additional steps to reduce its reliance on Russian gas and to secure, on an urgent basis, a safe and reliable natural gas supply at affordable prices. However, the transition will take time, raising the likelihood of energy disruption in the interim period.

“Save Gas for a Safe Winter” Plan. On 31 May and 23 June 2022, the European Council requested that the European Commission submit proposals for improving the EU’s preparedness for major gas supply disruptions. On 20 July 2022, the Commission issued its Plan, supplemented by a [Communication](#), [Annex](#) and the Proposed Regulation, setting out recommendations for Member States to take coordinated action to control energy demand.

The Plan specifically targets industry users of natural gas. Individual households and essential social services, such as hospitals and schools, are “protected” and exempt from gas rationing measures, so will not be directly affected. For non-protected users, however, the Plan includes the following measures:

- a voluntary gas demand reduction target of 15% from 1 August 2022 to 31 March 2023;
- a requirement that Member States update, by September 2022, their existing national emergency plans with adequate reduction measures to meet this target;
- a series of policy measures available to incentivise fuel switching (*i.e.*, replacing gas with alternative sources of energy) and a decrease in gas consumption;¹
- a set of criteria for Member States to identify non-protected consumers should it become necessary to curtail energy consumption, prioritising non-protected customers in “societally critical sectors and activities”, such as health and pharmaceutical industries, food, safety and environment, security, defence and refineries. When defining the criteria, Member States are urged to consider the potential impact on cross-border supply chains, potential damage to installations due to halted or postponed activity, and the substitution of natural gas with other fuels (ideally cleaner alternatives and renewable energy sources). Member States are asked to take into account broader economic considerations, such as where disruption to non-critical upstream sectors (*e.g.*, textile industry) may impact critical sectors in downstream sectors (*e.g.*, a healthcare industry that depends in part on textile industries); and

¹ In this context, the European Commission has also adopted an amendment to its [Temporary Crisis Framework for State Aid](#) aimed at incentivising switches to alternative clean energy sources.

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- a mechanism to declare a state of EU alert (“Union Alert”) triggering compulsory gas consumption reductions by a Member State if the voluntary reduction targets are not met.

The European Council [adopted](#) the Commission’s Plan and Proposed Regulation in early August. The most significant departure from Regulation 2017/1938 is the Council’s increased role in triggering a Union Alert. The Union Alert may be invoked following a recommendation by the Commission. The Commission shall present its proposal when there is a substantial risk of severe gas supply shortage, or where an exceptionally high demand for gas occurs, for which voluntary demand reduction measures are insufficient (even if the internal market is able to manage the disruption using market-based measures). The Commission shall also present its proposal where five or more competent authorities have declared an alert at the national level. Before submitting a proposal, the Commission is required to consult various risk groups.

The Plan is also intended to complement the [European Green Deal](#), [Fit for 55 package](#) and the EU’s [REPowerEU Plan](#) and [EU Energy Platform](#), designed to coordinate the EU’s energy supply and progressively eliminate the EU’s dependence on fossil fuels.

The measures in the Plan will apply for one year, once written into law. At the end of the year, the Commission will carry out a review and consider the need for further extensions to the Plan.

What Impact Will This Have? In accordance with the Plan, in the event of natural gas shortages, non-protected users may find themselves subject to rationing or mandatory limits on gas usage. These curtailments come into play when voluntary measures fail to achieve the desired levels of gas reduction.

The Plan therefore refers to a number of non-mandatory measures that State’s may encourage before resorting to mandatory curtailments. For instance, the Commission paper briefly refers to swap contracts between non-protected industry consumers (described as “contractual swaps of [non-protected customers’] production from a region exposed to disruptions to a region less exposed in case of large shortage”). The Annex states that such swaps should not (in principle) infringe EU competition law but the Commission has yet to provide guidance on how such swaps ought to be structured or would work in practice. Once further guidance is available, industry players will need to investigate the commercial viability (e.g., prevention of unfair competitive advantages and exploitation of unequal bargaining powers) and workability of such swaps, and consider the impact that such proposals could have on any *force majeure*, material adverse change or hardship provisions in their existing contracts.

The Communication also provides that Member States should encourage large customers to enter into interruptible contracts for gas consumption. Under interruptible contracts, the interruption is invoked with “*a pre-determined financial compensation corresponding to a pre-determined level of volume reduction or period of disconnection*”. While the European Commission recognises that such measures are not tailored for prolonged and complete disruption of Russian gas supply, such contracts would nonetheless represent an important source of flexibility in case of curtailment.

If these and other measures contemplated by the Plan (for *e.g.*, switching gas with other energy sources) are unable to address shortages in supply, the EU will consider targeted curtailments to non-protected consumers, including large customers.

As noted in our previous [Update](#), industrial users of natural gas may find their access to gas restricted, with an impact on various contractual obligations under gas supply contracts for both customers and suppliers, and with effects on transportation, storage and other midstream contracts.

Parties should therefore consider:

- monitoring impending legislative changes and considering what impact, if any, such changes will have on their contractual obligations;
- assessing their existing contracts and plan for the consequences of such potential restrictions, and considering whether *force majeure*, material adverse change or hardship provisions in their contracts would apply in those circumstances;
- paying particular attention to the notice provisions of such clauses, as some may require early notice to be given to be effective; and
- reviewing insurance policies to see if they cover restrictions of supply due to the emergency gas plans.

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We are closely monitoring the situation and expect to continue providing updates of any relevant developments. Please do not hesitate to contact us with any questions.

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