

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2023/706

of 30 March 2023

amending Regulation (EU) 2022/1369 as regards prolonging the demand-reduction period for demand-reduction measures for gas and reinforcing the reporting and monitoring of their implementation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Regulation (EU) 2022/1369 ⁽¹⁾ aims at voluntarily and, if necessary, mandatorily reducing the Union's gas demand, facilitating the filling of gas storage facilities and ensuring better preparation against any further supply disruptions. Regulation (EU) 2022/1369 was adopted on the basis of Article 122(1) of the Treaty on the Functioning of the European Union ("TFEU") in view of the imminent gas supply crisis caused by Russia's unprovoked and unjustified invasion of Ukraine in February 2022 and the need for the Union to react with temporary measures in a spirit of solidarity between Member States.
- (2) Pursuant to Regulation (EU) 2022/1369, Member States were to use their best efforts to reduce their gas consumption by 15 % in the period from 1 August 2022 to 31 March 2023. In case the voluntary demand-reduction measures proved to be insufficient in addressing the risk of a serious supply shortage, the Council, acting on a proposal from the Commission, was empowered to declare a Union alert, which would trigger a mandatory demand-reduction obligation. In recent months, Member States have worked diligently and have adopted measures that aim at reducing their respective gas demand by 15 %, in a spirit of solidarity. That has already resulted in effective gas demand reductions across the Union of more than 15 %, from August 2022 to January 2023.
- (3) However, severe difficulties persist for the security of energy supply. The global situation on the gas market has not improved since February 2022 and the Union continues to rely on certain volumes of Russian gas to meet its overall gas demand, in spite of the demand reduction achieved under Regulation (EU) 2022/1369. Energy demand curtailment to citizens of the Union has been avoided over the past year thanks to effective measures regarding storage refilling and demand reduction. However, 11 Member States are still declaring an early warning and one Member State an alert level in accordance with Regulation (EU) 2017/1938 of the European Parliament and of the Council ⁽²⁾. Therefore, since gas prices remain exceptionally high and since the global supply situation has not improved since August 2022 when Regulation (EU) 2022/1369 was adopted, there is an urgent need to prolong the measures that helped to contain the crisis, especially by continuing demand reduction. Halting the demand-reduction measures would result in changes to the stable but fragile situation which the Union has achieved so far

⁽¹⁾ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

⁽²⁾ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

and would undermine its resilience in responding to likely future developments, such as the complete halt of Russian imports. It is therefore of the utmost importance to continue to prevent the exposure of the Union to gas shortage and high price volatility.

- (4) Due to the significant decrease in Russian pipeline gas imports over the past year, the capacity of the Union to refill storage is currently considerably reduced, including in comparison with the situation in the summer of 2022. Despite the fact that the energy crisis commenced in 2022, the Union was able to import approximately 60 bcm of gas from Russia to fill storage facilities during that year, including via the NordStream 1 pipeline. However, during the summer of 2022, Russia interrupted and eventually completely halted gas supplies via that pipeline, which was damaged by acts of sabotage in September 2022 to such a degree that it is currently unable to transport any gas and will remain unable to do so for the foreseeable future. Taking into account the current pipeline gas import levels, the Union will only receive a maximum of 20 bcm of Russian pipeline imports, if those unreliable imports are not disrupted altogether. Therefore, there is a serious risk that gas shortages will occur in the Union during the winter of 2023-2024.
- (5) These severe difficulties are exacerbated by a number of additional risks and new factors, including a rebound in Asian liquefied natural gas (LNG) demand that reduces the availability of gas on the global gas market, weather conditions which have recently further deteriorated, thus affecting the hydropower storage and nuclear production due to low water levels, new technical developments which increase the level of uncertainty as to the availability of existing nuclear production, and which require higher recourse to gas-fired power generation, and further possible gas supply disruptions, including a complete halt of gas imports from Russia.
- (6) These persistent and new severe difficulties affect the ability of the Union to meet gas demand, in particular the filling of underground storage facilities in a timely and efficient manner for the winter of 2023-2024, as well as the adequacy between supply and demand during the winter of 2023-2024.
- (7) In accordance with Regulation (EU) 2022/1369, the Commission carried out a review of that Regulation and its results were summarised in a report presented by the Commission to the Council. The report analyses different scenarios, with and without an extension of demand-reduction efforts under Regulation (EU) 2022/1369, including a seven month extension from April to October 2023, an eight month extension from August 2023 to March 2024, and a one year extension from April 2023 to March 2024. The report concludes that without continued demand reduction, storage levels would only reach 69 bcm by the end of October 2023, which is significantly below the 90 % (89,4 bcm) target for 1 November set out in Regulation (EU) 2017/1938 and that storage levels would be fully depleted by February 2024.
- (8) Regarding the different scenarios assessed in the report, in the event of a seven month extension from April to October 2023, storage facilities would be sufficiently filled by the end of the summer 2023 (95 bcm by the end of October 2023, thereby reaching the 90 % target). However, as gas demand, even in normal winters, is twice as high as in summer, storage facilities would be almost fully depleted by the end of the winter of 2023-2024 (9 bcm by the end of March 2024). This implies extremely serious security of supply concerns and makes it very difficult to fill storage facilities sufficiently for the following winter. In case of an eight month extension from August 2023 to March 2024, storage facilities would be filled too slowly, thereby reaching only 80 bcm by the end of October 2023, which is significantly below the target, and storage levels would drop to below 30 % by the end of the winter of 2023-2024 (below 28 bcm), causing serious security of supply concerns and making it difficult to fill storage facilities sufficiently for the following winter. Only in the event of a one year extension with a continued 15 % demand reduction from April 2023 to March 2024, would storage levels meet the 1 November 2023 90 % storage target and reach 89,4 bcm by 1 November 2023, with Member States being on track for a secured supply of gas for the winter of 2023-2024 with 43 bcm stored at Union level by the end of March 2024.

- (9) In view of those scenarios, the report concludes that a continued demand reduction of 15 % over a 12 month period until the end of March 2024 is necessary in order to ensure that Member States are able to comply with the storage target of 90 % set out in Regulation (EU) 2017/1938, which is imperative for the security of gas supply, and to prevent any supply gap during the winter of 2023-2024.
- (10) While Member States are able to decide which measures are more appropriate to ensure that storage targets are met, this cannot be achieved without demand-reduction measures. The report concludes that there are insufficient gas volumes in the market to meet that obligation in all Member States. This means that not all Member States are physically able to fill storage facilities to adequate levels, thus resulting in severe difficulties for the security of gas supply by the end of the winter of 2023-2024.
- (11) The report also indicates that a reduction in gas consumption proportionate to the one provided for in Regulation (EU) 2022/1369 is required during the period from 1 April 2023 to 31 March 2024. The prolonged reduction needed would correspond to a reduction of 15 % for the period from 1 April 2023 to 31 March 2024 compared to a reference period from 1 April 2017 to 31 March 2022. The prolongation of the demand-reduction measures and the extension of the reduction period would also provide flexibility in the market in order to contain gas price volatility and to prevent price spikes such as those observed in 2022.
- (12) Given the current tight supply and demand balance, even moderate disruption to the supply of gas can have a dramatic impact on the gas market and can cause serious and lasting harm to the economy and to the citizens of the Union. The gas storage filling obligation applies unless a regional or Union emergency is declared in accordance with Regulation (EU) 2017/1938. Therefore, a sudden disruption of 10 % of the gas pipeline imports to the Union would either impose drastic isolated measures on Member States to comply with their filling storage obligation or would lead to the declaration of a regional or Union emergency, unless the voluntary coordinated reduction of demand continues. Such prolonged coordinated demand reduction by all Member States in a spirit of solidarity is essential to the refilling of storage capacities in an efficient way and with minimum market disturbances, which remains imperative for the security of gas supply ahead of the winter of 2023-2024.
- (13) The extension of Regulation (EU) 2022/1369 constitutes an emergency measure in response to persistent and new severe difficulties in the supply of energy which entail a risk of imminent crisis and require that the gas demand-reduction period be adapted both in order to prolong the voluntary gas demand reduction, and in order to ensure the possibility of declaring a Union alert and triggering the corresponding mandatory gas demand reduction after March 2023.
- (14) The current crisis is exposing the entire Union to risks of energy shortage and high energy prices. Since the Union is a single market, gas shortage in one Member State would have severe consequences in all other Member States through physical supply shortage of gas, volatility of prices or disruption of industrial chains resulting from possible curtailments of specific industries in a Member State. Moreover, in a spirit of solidarity, all Member States can contribute to continue reducing the risks of energy shortage and can contain gas price volatility by reducing their demand. The positive impact of this spirit of solidarity has considerably increased over the past year with the development of new interconnection capacities towards the East and with additional LNG import capacities which better connect Member States to LNG regasification facilities, either physically or virtually. Therefore, continued coordinated action through measures taken at Union level to reduce demand would benefit all Member States by decreasing the risk of a more substantial impact on their economies.
- (15) The need to act is urgent as the season to fill gas storage facilities commences in April. Given the persistent and new severe difficulties described above, not prolonging the coordinated reduction of demand on time before the filling of storage facilities would have immediate effects on the trajectories to fill storage facilities, on the market conditions impacting security of supply and on the volatility of prices.

- (16) Article 122(1) TFEU enables the Council to decide, on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. In view of the above considerations, the current crisis in the supply of gas, an energy product, constitutes such a situation. Therefore, a temporary extension of, as well as targeted amendments to Regulation (EU) 2022/1369 are necessary in order to respond to the on-going situation in a spirit of solidarity between Member States. It is therefore justified to have Article 122(1) TFEU as the legal basis for this Regulation.
- (17) The provisions of Regulation (EU) 2022/1369 that acknowledge specific national circumstances in the event of a mandatory demand reduction triggered by a Union alert continue to apply. Member States remain able to temporarily limit the mandatory demand reduction where a Member State faces an electricity crisis, as referred to in Regulation (EU) 2019/941 of the European Parliament and of the Council ⁽³⁾. Such a scenario may include a limitation proportional to a significantly increased use of gas for power generation, required to export significantly more electricity to a neighbouring Member State, due to exceptional circumstances, such as low hydropower or nuclear availability in the Member State concerned, or in the neighbouring Member State to which significantly more electricity is exported. That limitation should not exceed the volume of gas corresponding to the aforementioned additional exports. Member States should take into account that limitation when reporting their breakdown of gas consumption per sector.
- (18) Member States introducing significant decarbonisation measures by switching from coal to gas in district heating should be able to deduct those gas volumes from their demand-reduction obligation provided that those gas volumes are directly attributable to the switch from coal to gas.
- (19) Member States should report to the Commission at least every two months on their gas consumption, no later than by the 15th day of the following month, via Eurostat. In order to provide up to date figures, Member States are encouraged to report their gas consumption in order to assess the demand reduction achieved every month. If a Union alert is declared, the reporting should be on a monthly basis. In order to better target the measures to reduce demand and improve the monitoring of gas consumption, Member States are encouraged to include in their reporting a breakdown of gas consumption per sector, including gas input for electricity and heat generation, gas consumption in industry and gas consumption in households and services, according to the definitions and statistical conventions established in Regulation (EC) No 1099/2008 of the European Parliament and of the Council ⁽⁴⁾.
- (20) In accordance with Regulation (EU) 2022/1369, the Commission is to carry out a review on the basis of the findings of which the Commission is entitled to propose a prolongation of the period of application of that Regulation. To account for the further prolongation of the period of application of Regulation (EU) 2022/1369, a new review date should be set for 1 March 2024.
- (21) The extended and modified demand-reduction measures should be temporary and should remain in force until the end of the winter of 2023-2024. On the basis of the new review to be carried out by 1 March 2024, the Commission should, if appropriate, be able to propose the prolongation of their period of application.
- (22) This Regulation should enter into force on 1 April 2023 in order to ensure a continued demand reduction of 15 % over a 12 month period from 1 April 2023 until 31 March 2024 and in order to enable economic operators, the Member States and the Commission to take the measures necessary in achieving that objective.

⁽³⁾ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1).

⁽⁴⁾ Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1).

- (23) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (24) Regulation (EU) 2022/1369 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2022/1369

Regulation (EU) 2022/1369 is amended as follows:

- (1) in Article 2, points (5) and (6) are replaced by the following:

‘(5) “reference gas consumption” means the volume of a Member State’s average gas consumption during the reference period; for Member States where gas consumption increased at least by 8 % in the period from 1 April 2021 to 31 March 2022 compared to the average gas consumption during the reference period, “reference gas consumption” means only the volume of gas consumption in the period from 1 April 2021 to 31 March 2022;

(6) “reference period” means the period from 1 April 2017 to 31 March 2022;’;

- (2) Article 3 is replaced by the following:

‘Article 3

Voluntary demand reduction

Member States shall use their best efforts to reduce their gas consumption in the period from 1 April 2023 to 31 March 2024 at least by 15 % compared to their average gas consumption in the period from 1 April 2017 to 31 March 2022 (“voluntary demand reduction”). Articles 6, 7 and 8 shall apply to those voluntary demand-reduction measures.’;

- (3) in Article 5, paragraph 2 is replaced by the following:

‘2. For the purpose of mandatory demand reduction, for as long as the Union alert is declared, gas consumption in each Member State over the period from 1 April 2023 to 31 March 2024 (the “reduction period”) shall be 15 % lower compared to its reference gas consumption. Any demand reductions achieved by Member States during the period before the Union alert was declared shall be taken into account for the purpose of the mandatory demand reduction.’;

- (4) in Article 5, the following paragraph is added:

‘6a. A Member State may adjust the reference gas consumption used to calculate the mandatory demand-reduction target pursuant to paragraph 2 by the volume of increased gas consumption resulting from the switch from coal to gas used for district heating, if that increase is of at least 8 % in the period from 1 August 2023 to 31 March 2024 compared to the average gas consumption during the reference period and to the extent that this increase is directly attributable to the switch.’;

- (5) in Article 8, paragraph 1 is replaced by the following:

‘1. The competent authority of each Member State shall monitor the implementation of the demand-reduction measures on its territory. Member States shall report on their gas consumption (in terajoules, TJ) to the Commission at least every two months and not later than by the 15th day of the following month. If a Union alert is declared in accordance with Article 4(1), the reporting shall be submitted on a monthly basis.

Member States may include in their reporting a breakdown of gas consumption per sector, including gas consumption for the following sectors:

- (a) gas input for electricity and heat generation;
- (b) gas consumption in industry;
- (c) gas consumption in households and services.

For the purpose of this paragraph, the definitions and statistical conventions established in Regulation (EC) 1099/2008 of the European Parliament and of the Council (*) shall apply.

The GCG shall assist the Commission in the monitoring of the voluntary and mandatory demand reduction.

(*) Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1).;

- (6) in Article 9, the date '1 May 2023' is replaced by '1 March 2024';
- (7) in Article 10, the second paragraph is replaced by the following:
'It shall apply until 31 March 2024.'

Article 2

Entry into force

This Regulation shall enter into force on 1 April 2023.

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

Done at Brussels, 30 March 2023.

For the Council
The President
J. ROSWALL
