

January 2023



The EU regulatory framework governing solidarity during a gas crisis

The EU has witnessed a severe gas (and energy) crisis since late 2021 and, in certain circumstances, the crisis could become more acute next winter. In this case, sharing of limited gas supplies across the EU could become a necessity. The Security of Supply Regulation (SOS Regulation, 2017), the Gas Demand Reduction Regulation (GDR Regulation, 2022), and the (draft) Enhancing Solidarity Regulation (ES Regulation, 2022) all contain solidarity provisions, aimed at alleviating any such crisis. However, 2023 could test the effectiveness of these provisions, particularly in respect of Germany, Czechia, Slovakia, Austria, and Hungary.

SOS Regulation

The SOS Regulation, adopted in 2017, introduced a solidarity obligation, under which a Member State which is directly connected to a requesting Member State, is obliged to reduce gas supplies to its own non-solidarity protected customers to support solidarity-protected customers in the requesting Member State. Solidarity-protected customers include all household customers connected to a gas distribution network and may include district heating installations in so far as they deliver heating to households (thus excluding small or medium-sized enterprises) or essential social services (including services such as healthcare, essential social care, emergency and security services but excluding educational and public administration services), and essential social services, as long as they are protected customers. A Member State can only request the application of the solidarity mechanism when the market cannot deliver the supplies for its solidarity-protected customers and after it has declared an emergency – the highest crisis level (preceded by an early warning and an alert). Member States were required to conclude their bilateral solidarity agreements, stipulating technical, legal, and financial arrangements, by 1 December 2018 but by January 2023, only six such agreements have been concluded (between Germany and Denmark, Germany and Austria, Italy and Slovenia, Latvia and Estonia, Latvia and Lithuania, and Estonia and Finland).

Enhancing Solidarity Regulation

In December 2022, the EU adopted the ES Regulation, which alongside the joint purchasing platform and the price correction mechanism, included provisions on solidarity, complementing the SOS Regulation. In particular, the ES Regulation extended solidarity protection to critical gas volumes for security of supply of electricity. This obliges a Member State to reduce gas supplies to its own customers, except (essential) volumes to solidarity-protected customers, critical volumes for security of supply of electricity, volumes for the electricity needed for the production and transportation of gas, and volumes necessary for the operations of various critical installations and infrastructure for a requesting Member State that is unable to cover (the essential volumes of) its solidarity-protected customers and supply the critical gas volumes for electricity security of supply. It has also extended the solidarity



obligation – currently applicable only to Member States directly connected to a requesting Member State – to Member States with LNG facilities, provided that the necessary infrastructure is available. Importantly, the Regulation has introduced the default rules governing the implementation of the solidarity mechanism for those Member States which failed to conclude their bilateral solidarity agreements by the time of a solidarity measure being requested.

GDR Regulation

Following an estimation by the EC that a 15 per cent reduction of gas demand would be sufficient for the EU to see through the winter of 2022/23 – even if all Russian gas supplies were to be cut off – in August 2022 the EU adopted the GDR Regulation, which stipulates a voluntary 15 per cent gas demand reduction by each Member State between 1 August 2022 – 31 March 2023 (compared to their average consumption between 1 August and 31 March in the preceding five year period). It becomes mandatory when the Council, acting on a proposal from the EC and supported by a qualified majority, declares a Union alert, obliging each Member State – although exemptions are possible – to reduce its gas consumption by 15 per cent, taking the already achieved reductions into account. EU gas demand had already declined by almost 15 per cent in 2022 compared to 2021, mostly due to very high prices (forcing industrial closures) and mild temperatures (leading to lower demand for residential heating). Should EU gas demand remain on this trajectory, an EU alert might not be triggered. The EC must propose triggering an EU alert if at least five Member States have declared a national alert, or if there is a substantial risk of a severe gas shortage or exceptionally high gas demand resulting in a supply shock but where the market is still able to manage the disruption. As the criteria is not clearly defined, the EC has significant discretion over whether to make such a proposal, and the factors capable of prompting it to do so include a complete halt in Russian gas flows to Europe, a significant deviation from the 15 per cent demand reduction trajectory, lower LNG imports, and colder weather causing an accelerated storage depletion. Once the EU alert is declared, Member States would determine whose supplies get cut off, prioritising supplies to protected customers. Industrial consumers would likely be the first to experience reductions, but difficult trade-offs would have to be made with each Member State determining which industries are considered more critical than others. There would also be measures aimed at reducing gas consumption by the electricity sector. Overall, the process of implementing the mandatory gas demand reduction provision has a significant scope for disagreements – within Member States, between Member States, and between Member States and the EC – over who is going to be cut off and who is going to be exempted, thus potentially undermining its effectiveness during an actual crisis.

Conclusions: Possible Impact of Solidarity Measures During a Gas Crisis

The solidarity measures stipulated in SOS, ES, and GDR Regulations would likely have a limited – albeit not negligible – impact on the gas supply situation for the central and east European sub-region, should Russian flows be cut off. Even if these measures are agreed and implemented – and there are significant difficulties associated with this process, some of which could be resolved by next winter – infrastructure and capacity constraints would limit the volume of ‘solidarity gas’ which would be ‘freed up’ and which could flow to these countries from the adjacent Member States. In the short term – possibly until 2025, by which time more LNG supply and more LNG terminals and interconnections are expected to be available – even with maximum assistance from the other Member States, the central and east European sub-region could have problems coping with the consequences of any further significant reduction in Russian flows. Therefore, although gas rationing appears increasingly unlikely during the current winter, there is a significant risk that rationing will be needed in the winter of 2023/24, unless a recession triggers an even more significant gas demand reduction than is currently being observed in Europe.

Katja Yafimava (<mailto:katja.yafimava@oxfordenergy.org>)