

The EU Energy Crisis: Four Member States Activate First Level of Emergency Gas Plans

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The Ongoing Gas Crisis in the EU. Europe is experiencing one of the most significant energy crises in recent years. The rapid recovery in energy demand following the COVID-19 pandemic and a slower than expected recovery in supply has put a strain on public finances and is threatening economic growth. Increased demand from Asian markets and transport problems have undercut the availability of natural gas in the European Union and caused price surges. The Ukraine crisis and associated [sanctions](#) against Russia—together with the steps Russia has taken in response—have further contributed to the crisis, and are continuing to cause significant disruption across various industries in Europe.

The European natural gas market has been particularly hard hit. Natural gas is crucial for a number of industries, as the preferred hydrocarbon for electric power generation, an essential commodity for the production of chemicals, fertilizers and pharmaceuticals, and the base ingredient for various plastics, fabrics and antifreeze.

Natural gas accounts for about 25% of the EU's energy use, and several Member States import nearly all of their natural gas. Nearly 40% of the EU's imported natural gas comes from Russia, making the EU the largest customer for Russian natural gas.

This supply from Russia is now under threat. President Vladimir Putin announced on 23 March 2022 that “*unfriendly*” countries would be required to pay for natural gas in Roubles—irrespective of the terms of any supply contracts, which typically require payment in either U.S. Dollars or Euros.

In response, on 28 March 2022, the energy ministers of the G7 countries and the EU Commissioner for Energy rejected President Putin's demand, issuing a [joint statement](#) of their position that existing contracts should be respected. Despite this statement, on 31 March 2022, President Putin issued a decree introducing a new payment mechanism. Under this mechanism, gas buyers must open accounts at Gazprom's affiliate bank Gazprombank and make payments in U.S. Dollars or Euros that would then be converted into Roubles by the bank. On 27 April 2022, Gazprom suspended deliveries to Poland and Bulgaria, citing the countries' refusal to follow the new rules. A number of

EU customers are acceding to Putin's demand, but it remains to be seen if their actions are consistent with the EU sanctions regime.

Russia has very recently imposed sanctions of its own, which have further escalated the crises. On 11 May 2022, Russia sanctioned 31 EU energy companies (including some of Gazprom's own former subsidiaries) by introducing a ban on transactions and payments to certain European companies. The long-term impact of these sanctions on the European natural gas supply is unclear, but they have already caused a further rise in gas prices.

At present, it is unclear how the stand-off between the EU and Russia will ultimately be resolved.

The EU's Natural Gas Security Framework. As early as 2004, the EU recognised that any difficulty—including geopolitical disputes—that causes a reduction in gas supply could severely disturb its economic activities. Since then, the EU has had a framework in place aimed at safeguarding its gas supply and ensuring proper functioning of the internal market in the face of disruptions.

[Regulation 2017/1938 of 25 October 2017](#) is the most recent iteration of this framework. It provides that Member States must have emergency plans to mitigate the effects of any gas supply disruption. The emergency plan must accommodate three crisis levels: early warning, alert and emergency.

- The “early warning” level is reached when there is reliable information that an event capable of depleting gas supplies is likely to occur. At this first stage, the Member State merely declares the crisis level without taking any further measures.
- The “alert” level is activated when there is a disruption of gas supplies resulting in a significant depletion of supply. At this second stage, the Member State is still capable of managing the disruption with market-based measures such as increasing flexibility of imports, tapping into commercial gas storage, feeding gas from renewable energy sources into the gas grid infrastructure and increasing the use of renewables.
- The “emergency” level is met when non-market-based measures are needed to address the gas shortfall. These include restricting electricity generation in gas-fired plants, switching off industrial customers and instructing large consumers to reduce gas consumption. At this third stage, Member States are required to prioritise household customers and essential services (e.g., healthcare, social care, security and education) over industrial users.

Member States do not have to declare these levels in succession.

Recent Developments. In response to the current crisis, EU states have turned to their emergency gas plans. Italy first declared an “early warning” alert on 26 February 2022, followed by Latvia on 9 March 2022. Austria and Germany were the latest Member States to declare early warning alerts on 30 March 2022.

What Next? It remains to be seen how far the gas crisis will escalate, if any other EU Member States will activate their emergency gas plans and whether any crisis level above “early warning” will be invoked.

If the gas crisis triggers an “emergency” level in any Member State, industrial users of natural gas may find their access to gas restricted, potentially impacting obligations under gas supply contracts for both customers and suppliers and affecting transportation, storage and other midstream contracts. Industrial users may struggle to fulfil their obligations under their own delivery contracts if they find themselves without the natural gas needed for manufacturing processes.

Parties should assess their existing contracts and plan for the consequences of such potential restrictions. Parties may want to consider whether force majeure, material adverse change or hardship provisions in their contracts would apply in these circumstances. (See our earlier publications on these contractual terms under [French law](#) and [English law](#).) Particular attention should be paid to the notice provisions of such clauses, as some may require early notice to be given to be effective. If there are relevant insurance policies in place, parties should review their terms to see if they would cover restrictions due to the emergency gas plans. In appropriate cases, parties may also wish to make contact with contractual counterparties to attempt to address any potential difficulties and help stop disputes from arising.

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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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