



**Assessment of legislative and regulatory risks related to
storing gas in Ukraine by non-Ukrainian operators and
measures aimed at their reduction and mitigation**

by the Energy Community Secretariat

PURPOSE STATEMENT

Assessment of legislative and regulatory risks related to storing gas in Ukraine by non-Ukrainian operators and measures aimed at their reduction and mitigation.

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Ukraine Energy Market Observatory

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Usage of Ukraine gas storage facilities by European operators

Introduction

The present assessment describes the evolution of de-risking the mutual business opportunity for European traders (shippers) and the Ukrainian operators by introducing relevant measures from the Ukrainian side.

Background

The coming 2023/24 winter season poses a risk of exhaustive gas price volatility on the EU spot markets which in turn will reduce gas (and electricity) affordability for customers. In this context, the usage of additional available gas storage facilities is of paramount importance for the European Union to ensure uninterrupted energy availability and mitigate price spikes on the spot markets. In the EU closest neighborhood, Ukraine stands with the vast storage capacities (cca 31bcm), the majority at its western borders, operated by the certified¹ storage system operator, Ukrtransgaz (UTG). In order to have a meaningful effect on the security of supply of the EU and effective balancing possibilities on the price of the European gas hubs, storing a sizable amount of gas (in the environment of cca 5 bcm) in Ukraine would be of mutual benefit for both European market participants and Ukrainian operators. However, the filling of European storages has advanced considerably, it is high time that the corresponding injection to Ukraine's facilities started as soon as possible to make a difference.

In this context, the Secretariat led the exhaustive debate with the interested parties, aiming at defining the actions to lead to a satisfying outcome. Particular attention was paid to identifying obstacles to that, most notably perceived risks by the EU parties to store gas in a country at war. Such perceived risks would either dissuade the traders to consider storing altogether or could increase the costs of the operation to the point it made it unsustainable. The Secretariat has also discussed potential mitigation measures which would reduce the risk and their quick implementation is of the essence, for the reasons described above. The Secretariat stands ready to showcase the progress to be achieved in this regard by Ukrainian authorities.

Impact on the market

The presumption of the storage business case is that the storages in the EU are full at the level of 85% end of July 2023². It is expected that the EU storage would achieve its 90% November targets much in advance, still during the summer, running into its nearly 100% filled-up scenarios. This would leave the EU suppliers with a lack of the EU space to store gas they would intend to buy before the start of the heating season. Such quantities could be stored in Ukraine. The current seasonal spreads for 2024 at the TTF gas hub are favourable for the storing business. The market expects

¹ NEURC Resolution No.630 of 07.04.2023 "On the final decision on the certification of the gas storage operator"

² <https://agsi.gie.eu/>

higher winter prices due to increased exposure of the EU to global LNG supplies – this means that the EU, as a primary market for the limited spot LNG supplies that it has become, would compete with the Asia-Pacific in terms of pricing. If add to this a potentially colder winter, the summer–winter spread is indeed attractive for storing gas.

The costs of storing gas will increase in case of the gas being transported towards Ukraine, however, the special short-haul service for the non-resident companies to allow additional discounts for transmission tariffs makes such an operation even more commercially attractive. Additionally, if the storage tariffs in Ukraine remain at the present levels, they are more favourable in comparison with other competing storage in the EU. The calculated full storage tariff (injection, withdrawal, and working volume) in Ukraine is not exceeding 1,85 EUR/MWh which is from 1,6 to 5 times lower in comparison with some EU storage operators, at present.

As an illustration, the volumes of non-Ukrainian residents are shown in the table for the previous two years on a yearly basis, and for the current year up to 2 August 2023.

The volumes of gas from the non-Ukrainian residents stored in Ukraine’s storages	
2021	2.043bcm
2022	0.294 bcm
2 August 2023	0.949 bcm

Data source: UTG

The storage case is attractive for Ukraine’s network operators which would earn additional income (Gas TSO of Ukraine (GTSOU) and UTG in particular). For example, the expected income from storing 5 bcm could amount to anywhere between USD 40-70 mln for GTSOU (depending on the service), and around USD 80 mln for UTG.

The storing of gas in Ukraine would additionally shave off the peaks of gas price hikes in the EU hubs, if they occur, during the withdrawal season as the marginal quantities of gas could be supplied from Ukraine to stabilize the market. In addition, the pure fact that additional gas is stored in the EU’s closest neighbourhood is beneficial for the overall security of supply of the EU.

Risk Assessment

More than 80% of the storage facilities are located in the western part of Ukraine close to the border with the EU Member States. However, due to the war and associated political and regulatory risks in Ukraine, interested companies are assessing the risk to use the Ukrainian storage facilities as too high, in spite of favourable storage case described above, once such risks are monetized. The perceived risks by the EU operators are predominantly identified and categorised as:

- Damage (military) risks: the ongoing war creates risks to the integrity of the gas storage facilities and the pipeline infrastructure;
- Political and regulatory risks: uncertainties exist in the legislative and regulatory environment due to war and martial law. Specific concerns regarding unforeseen changes in the legislative and regulatory framework by the Ukrainian government have been raised by traders, including the concern of nationalization, export/import ban, or other measures, affecting companies storing gas in Ukraine

It is worth noting that the perception of political/regulatory risks is higher than that of military risks. Whereas the military risks cannot be excluded, it is worth noting that the gas transmission and storage infrastructure in Ukraine has not been attacked by military activities which resulted in GTSOU's unconditional fulfillment of - inter alia - its transit obligations of the Russian gas to the EU Member States. Whilst acknowledging and welcoming all the ongoing efforts of the EU and the Energy Community Contracting Parties to diversify its routes and sources from Russian gas, the transiting role of GTSOU and indirectly of the storage system is vindicated and asserted by all interested parties.

The technical risks and their mitigation were presented in detail by Ukrainian stakeholders at a high-profile event organized by the Energy Community Secretariat on 14 June 2023 in Vienna for the traders' community. The role of Ukraine's robust and dependable gas infrastructure and its adaptability to crisis situations was highlighted.

Nevertheless, the perception of the unpredictability of the Ukrainian regulatory frameworks and the risks associated therein was constantly underscored by the EU operators. All stakeholders made clear that such risks can only be mitigated through the support of the international community.

Ukraine has suffered significant damage due to the ongoing war. The UN World Economic Situation and Prospects 2023³ has estimated some of the economic consequences of the war. Ukraine's economy suffered heavy losses, contracting by over 30 percent in 2022 according to preliminary national data, and after the end of the conflict, will need large-scale and expensive reconstruction efforts. The war has had a profound impact on the Ukrainian population. It has caused widespread destruction, uprooted millions of Ukrainians, disrupted agriculture, limited access to the Black Sea ports that are vital for grain and metals exports, and driven up defence spending. Despite a decrease in consumption due to the war's impact, ensuring a reliable energy supply remains a major challenge. In the first weeks after the Russian full-scale invasion of Ukraine, the Ministry of Energy introduced a prohibition⁴ of any gas exports from Ukraine, except for gas transiting Ukraine. This order⁵ was later amended by the Cabinet of Ministers to limit the gas export ban only to gas of Ukrainian origin. While the current resolution essentially bans only domestically produced gas from being exported, which violates the basic principles of the Energy Community Treaty, its application to the gas stored by foreign operators in the Ukrainian storage facilities is cancelled. In other words, gas stored in storage facilities under the special customs warehouse regime has not been cleared under Ukrainian customs and is thus considered foreign gas, ensuring that the export ban does not apply to gas stored by external entities.

Another example of such political intervention which affected the storage business occurred in May 2023. The Cabinet of Ministers of Ukraine's Resolution No. 459 of May 9, 2023 "On Amendments to the List of Goods Prohibited for Importation into the Customs Territory of Ukraine Originating from the Russian Federation", introduced the obligation for natural gas suppliers to provide documentary evidence of the country of natural gas origin for its supply to the customs territory of Ukraine.

Such an obligation proved to be a burden on foreign operators to store gas in Ukraine as they were requested to submit a certificate of origin of gas (i.e. that the origin of gas was not from Russia)

³ https://desapublications.un.org/publications/world-economic-situation-and-prospects-2023?_gl=1*1dgi4za*_ga*NjAwMzQ5NDE5LjE2OTA4NzUzOTU.*_ga_TK9BQL5X7Z*MTY5MDg3NTM5NC4wLjAuMTY5MDg3NTM5NC4wLjAuMA

⁴ <https://zakon.rada.gov.ua/rada/show/v0099922-22#Text>

⁵ <https://zakon.rada.gov.ua/rada/show/666-2022-%D0%BF#n2>

issued by the authorized body of the exporting country. While the intention was to diversify from the Russian supplies, such a measure all but stopped the storing business by the EU traders as it was currently impossible to obtain the country of origin document for a particular natural gas batch and provide the corresponding certificate. Again, such a measure in regard to gas was revoked.

All said above illustrates that the storage business in Ukraine was not damaged by military attacks, but by the government's interventions, only partially justified by war-related circumstances. That has created the perception of legal unpredictability for foreign operators. To de-risk such potential re-occurrence of undue interventions by the Ukrainian authorities, the EU trading community needs to regain the trust in Ukraine for this particular business case at least. Thus, Ukraine's authorities are invited to commit to a set of measures aiming at de-risking the regulatory environment. With such commitments, the EU trading community is expected to reassess the risk of a storage business in Ukraine. Such measures are listed in the next chapter and the Secretariat stands ready to provide close monitoring at the implementation stage.

Recommendations

This set of measures is based on the assumption that it would be challenging to secure before winter 2023/2024 massive financial insurance from the market to enable European traders to engage in storing significant amounts of gas in Ukraine.

1. The Ministry of Energy of Ukraine to amend the National Action Plan⁶, preferably in agreement in advance with the Secretariat, to:
 - a. Explicitly rule out any emergency measures impacting the free flow of gas stored in the storage system of Ukraine, and envisage advance consultations of declaring emergency measures with the Secretariat;
 - b. give withdrawals from gas storages and its transmission priority in case of emergency curtailment; those measures are to be imposed on the storage and transmission system operators solely and are without prejudice to Ukraine's obligations to supply its protected customers in crisis;
 - c. Stipulate that in case of technical limitations to the withdrawal capacity from storages, the storage system operator shall share the residual capacity equally between the non-Ukrainian and Ukrainian system users (50%-50%).
2. The Government is to transpose and implement Regulation 1938/2017 as adopted in the Energy Community, and draft updated preventive and emergency plans to be shared with neighbouring countries and with the Secretariat for its opinion. The competent authority shall comply with the Secretariat's opinion before the adoption of the final plans.
3. The national regulatory authority, NEURC, without prejudice to its independence, to ensure that the storage tariffs for the winter season 2023/2024 remain at the current level without changes.
4. NEURC, without prejudice to its independence, to ensure that any future amendments to the storage tariff methodology or the tariff are subject to all stakeholders, including the non-Ukrainian operators, consultations, and that their feedback is taken into account.
5. NEURC, without prejudice to its independence, to continuously monitor the storage system operator Ukrtransgaz as regards compliance with the certification requirements and the Storage Regulation; NEURC will immediately notify the Secretariat in case of any changes

⁶ Order of Ministry of Energy and Coal No.687 of 02.11.2015

- to the Ukrtransgaz corporate structure which may affect its ability to inject, store, or withdraw gas;
6. The Government and, without prejudice to its independence, NEURC, to declare publicly that any amendments to gas-related laws, bylaws methodologies and tariffs will only be made upon consultation and with the positive opinion of the Secretariat; in particular, such a commitment would encompass abstention from changes to additional requirements on gas injections/withdrawals.
 7. Without prejudice to the independence of NEURC, the Storage standard agreement or any related relevant act shall incorporate additional risk-averse measures, under the responsibility of the storage system operator (SSO) and a third party – NAK Naftogaz. In its role as both the owner of the SSO and trader in the European gas markets, NAK Naftogaz will pledge to offset missing quantities of gas if they could not be withdrawn from Ukraine's storage facilities during crisis mode, in the way that such gas will be delivered physically at a relevant hub. Such a pledge should be proportionate to the revenues from the storage operations and/or should be subject to an additional charge to the customs warehouse regime package. The Ukrainian parties shall engage with the Secretariat to deliver the optimal solution.
 8. Without prejudice to the independence of NEURC, in the Storage standard agreement, the *force majeure* definition (excluding acts of war) shall be amended and a *change of law clause* shall be introduced that protects users from any negative changes in the legal and regulatory framework.
 9. Ukrtransgaz and GTSOU to continuously publish all data relevant for storage and transmission operations, share such data with the relevant EU transparency platforms and immediately update on any events which may affect the system users.
 10. Ukrtransgaz and GTSOU to update, test and simulate scenarios to ensure the utmost technical flexibility of the storage and transmission systems in case of a crisis and engage an independent international auditor to verify such scenarios and plans. The auditor shall be selected in agreement with the Secretariat.

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