

## Position paper

# Defining the energy security penalties exception under the EU Methane Regulation (EUMR)

### Main conclusions

- The energy supply challenges the EU is currently facing are driven by geopolitical developments in the Strait of Hormuz. Knowing the EUMR is neither a key driver nor a solution to both the supply and price of imported fossil fuel, **securing the predictability of the legal regime surrounding EUMR penalties is the best way the EU can ensure stability and certainty.**
- Energy crises are by definition sudden and recurrent. Article 33 already contains the core elements necessary to address both effective enforcement and legitimate energy security concerns. The existence of this safeguard does not mean that **penalties imposed under the EUMR should automatically be presumed to pose a risk to energy security** or that every period of crisis justifies triggering this mechanism.
- **Established EU law principles and existing energy security legislation call for prescribing a restrictive interpretation of the energy security exception** already contained in the EUMR, to be triggered on condition of evidenced causality between EUMR and EU supply concerns.
- **Ensuring a strict, narrow, harmonized interpretation for invoking the energy security exemption is the best guarantee to secure a predictable implementation environment that avoids creating further confusion and risk in Europe's energy reality.**

### Why does this matter?

A clear, evidence-based and harmonized interpretation of the energy-security-related exception is essential as penalties are central to the effectiveness of the EUMR. Credible enforcement creates incentives for compliance, supports investment in monitoring and methane reduction, and ensures that the Regulation's objectives translate into real-world outcomes.

For more information, please contact Dr. Léa Pilsner, Director Energy Policy Europe, [lpilsner@edf.org](mailto:lpilsner@edf.org)

# Guiding legal criteria for evidence-based decision-making

1. **The decision to apply the security-of-supply exception inevitably involves political judgement, particularly in extraordinary circumstances. For that reason, adherence to established legal principles and existing EU energy security frameworks is essential to ensure that the application of the security of energy supply exception is based on a demonstrable causality between EUMR enforcement and a security-of-supply risk.**

That is especially the case since the non-application of environmental law penalties is not the norm in the EU, based on legal precedent, especially because penalties imposed in practice are often significantly lower than the statutory maximums provided for in national legislation. Evidence from comparable environmental legislation suggests that penalties commonly fall within the range of €50,000–€250,000 per violation and Member State, with substantially higher amounts being relatively uncommon in practice. Consequently, the impact of financial measures is often overstated.

2. **A legal approach provides an objective basis for decision-making, helps distinguish genuine security-of-supply concerns from broader political or market pressures, and reduces the risk that short-term considerations lead to disproportionate derogations that undermine the effectiveness, credibility and uniform application of the EUMR also in the long-term.**

Establishing clear principles for the application of Article 33(2) is essential not only to comply with EU law, but also to ensure a harmonized, proportionate, and effective implementation of the EUMR. A well-defined exception helps protect genuine energy security interests while avoiding legal uncertainty, regulatory fragmentation, and unintended risks to the integrity of the EU regulatory framework.

More specifically:

**Existing EU energy security legislation demonstrates that security-of-supply determinations are not left to unlimited discretion.** The application of exceptional measures is accompanied by justification requirements, notification obligations, Commission oversight, and safeguards to protect the functioning of the internal market. Even where Member States retain discretion in assessing supply risks, that discretion remains subject to procedural requirements and review mechanisms at EU level.

**The application of Article 33(2) is not determined solely by energy security legislation. It is also governed by four foundational legal principles:**

- a) Applying a strict interpretation of derogations based on **case law**
- b) Maintaining the **effectiveness (*effet utile*)** of legislation
- c) Respecting the principle of **proportionality**, and
- d) **Preserving the internal market** and uniform application of EU law.

Based on the above legal considerations, the following criteria help ensure that any application of the security-of-supply exception is justified by evidence, limited in scope and duration, and based on a demonstrated causal link between the EUMR and the identified risk:

- a) The security of energy supply exception is **based on a strict and narrow interpretation.**
- b) **Clear and harmonized criteria are established based on existing EU energy security frameworks**, ensuring consistent implementation across member states.
- c) The security of supply **exception remains confined to circumstances where limiting enforcement is necessary to address a demonstrable supply risk.**
- d) The exception is **applied selectively rather than through broad suspensions of the penalties regime** as administrative penalties and measures vary significantly in severity and potential market impact.
- e) **Transparency, conservatively defined duration limits and periodic review are included** to help ensure that the security-of-supply exception remains targeted and proportionate over time.

# Recommendations based on legal considerations

Based on the above legal considerations, Environmental Defense Fund Europe recommends:

1. **As policymakers seek to reconcile legitimate energy security concerns with the effective implementation of the EUMR, the security of energy supply exception should be interpreted strictly and be subject to clear harmonized criteria, to ensure consistent implementation across Member States and avoid divergent regulatory treatment, distortions of competition or obstacles to the functioning of the internal market.**

a) **Balancing energy security considerations with effective implementation of the EUMR requires a predictable and evidence-based basis for the application of the security-of-supply exception grounded on proof of causality between supply concerns and the Regulation.**

- **Decisions to limit enforcement are stronger when based on objective and identifiable criteria.** The absence of such criteria risks contradicting the principle that exceptions from EU law must be interpreted strictly and narrowly and goes against the principles of effectiveness and proportionality as neither can be preserved (or even assessed), if derogation is divorced from a demonstration of causation through objective criteria.
- The security of energy supply exception should only apply where the “Emergency” crisis level under Article 11(1) of the GSoS Regulation has been declared and the Commission has reviewed such declaration and determined that it is justified and linked to the EUMR, or where the Commission declares a regional or Union Emergency.
- In the context of the OSD, the Commission should indicate that the exemption should only apply when there is a “major supply disruption” as defined in that Directive that requires Member States to initiate emergency procedures **and be able to prove the link to the EUMR requirements based on verifiable and transparent data sources, such as ACER.**
- **Such guidance would ensure a strict and narrow interpretation applied in accordance with a set of existing harmonized criteria and only upon demonstration that the EUMR is causing or contributing to such “major” disruption.** Furthermore, the exception should only be applied to the minimum extent necessary. For example, in keeping with principles of effectiveness and proportionality.
- In addition, the **existence of uncertainty regarding the level of or the application of penalties does not constitute a risk to security of energy supply.** Oil and gas operators routinely manage legal and regulatory uncertainty, including significantly larger risks related to pricing, geopolitics, and contract performance. Treating uncertainty as a sufficient justification risks transforming Article 33(2) into a general flexibility clause.
- **Implementation flexibility would benefit from remaining clearly linked to provable security-of-supply concerns indicating causality with the EUMR.** Any proposal to suspend the application of EUMR penalties for an extended period should clearly identify the basis on which such a derogation is justified. Where reliance is placed on the Gas Security of Supply Regulation or the Oil Stocks Directive, the assessment should explain how those instruments inform the interpretation of the security of energy supply exception in the specific circumstances concerned, including the particular security of supply conditions being relied upon.
- **A level playing field requires a common understanding of when energy security concerns justify limiting enforcement.** Any guidance accompanying a suspension of penalties should promote a harmonized application of the EUMR across the Union and provide sufficient clarity to avoid divergent national approaches to the interpretation of the security of energy supply exception.

- b) **Transparency is essential to ensure that decisions to invoke the security-of-supply exception remain accountable and evidence-based.** To ensure a strict and harmonized interpretation of the security of energy supply exemption, transparency of any national decision to apply the exemption should be required. All national economic operators and civil society should have easy access to information as to why and when the exemption is being applied.
2. **The security of energy supply exception should be used only for the most severe administrative penalties and measures, be limited to a duration that is strictly necessary, and prioritize delays in the application of the measures rather than non-application as the principles of effectiveness and proportionality need to be respected.**
- a) **Temporary energy security concerns can lead to long-term limitations on the ability of the EUMR to achieve its objectives. Limiting the suspension to one year, with an indication that the Commission may extend, would ensure that the exemption is applied to the extent that it is strictly necessary and would send the required signal that the provisions of the EUMR are intended to continue to be legally effective.**
- **If even after a thorough assessment a multi-year period exception is proven justified, a yearly review and the possibility for its withdrawal if the conditions justifying it no longer apply can work as a safeguard to avoid rendering the EUMR importers framework ineffective.** A three-year suspension of the penalties regime adopted without any assessment of the nature, duration, or gravity of the supply risk does not in any way comply with the principle of proportionality and risks deferring compliance for the next three years and potentially beyond.
- b) **A differentiated approach to the security-of-supply exception better reflects the varying severity and potential market impact of the penalties and administrative measures listed in Article 33(2).** The penalties and measures listed vary and do not affect security of supply equally, which does not warrant equal treatment. Requirements on importers should not be rendered ineffective in a disproportionate manner by suggesting that an exception may be used to render Article 33 inapplicable in its entirety, without distinguishing severity levels and possible impacts on importers.
- **Thus, when justifiably triggered and if causality is proven, it would be proportionate to apply the exception only to the most severe penalties and measures.** For example, the application of the exception could be limited to the measures provided in Article 33(2)(b) (order confiscation of profits), or Article 33(2)(e) with respect to administrative fines that may be up to 20% of the annual turnover of legal entities or annual income in the case of natural persons.
  - **Finally, delaying penalties, rather than suspending them altogether, better preserves the effectiveness of the EUMR** as it maintains the legal expectation of enforcement while allowing temporary flexibility where security-of-supply concerns justify it. Any delay in the application of administrative penalties or other administrative measures would therefore need to remain limited to a well-defined period that is strictly necessary to ensure the security of energy supply.

# ANNEX: Analysis of relevant EU legislation and Case Law

## 1) What does the EUMR require on penalties?

Article 33 establishes the framework governing penalties for infringements of the EUMR, including the importer obligations set out in Chapter 5. It requires Member States to establish penalties that are effective, proportionate and dissuasive and to provide for a range of administrative penalties and measures, including corrective orders, confiscation of profits, periodic penalty payments and administrative fines. At the same time, it qualifies the application of those penalties and measures by providing that they are to be imposed only insofar as they do not endanger the security of energy supply. Article 33, therefore, already contains the core elements necessary to address both effective enforcement and legitimate energy security concerns.

Nevertheless, while the Regulation expressly recognizes energy security considerations, it does not define what is meant by “security of energy supply”. The absence of a definition raises an important question as to how the scope of this exception should be understood and applied in practice. In such circumstances, the interpretation of the concept cannot be divorced from the wider legal context in which it operates. Rather, it requires consideration of the relevant EU framework governing security of gas and oil supply, as well as the established principles of EU law that guide the interpretation of exceptions and derogations.

## 2) What does the EUMR say?

The EUMR is intended to monitor and reduce methane emissions in the EU. To achieve this objective, it imposes monitoring, reporting and verification (MRV) requirements on operators in the oil, gas and coal sectors, as well as operative restrictions on activities such as flaring and venting. The Regulation also imposes MRV obligations on importers of oil, gas, and coal established in the EU that place such commodities on the EU market. Ultimately, these requirements are intended to incentivize producers in third countries to adopt MRV measures equivalent to those imposed on EU-established producers.

**Chapter 5** of the EUMR sets out the obligations applicable to importers. Importers are required to report annually to the competent authorities of the Member State in which they are established the information specified in Annex IX, including the country of origin, the type of supply contract concluded, and whether the producer or exporter has monitoring and verification mechanisms in place. In addition, Article 28 requires that, as of 1 January 2027, importers demonstrate and report that any supply contract concluded or renewed on or after 4 August 2024 covers only crude oil, natural gas or coal that is subject to producer-level MRV measures equivalent to those imposed under the EUMR. Article 29 further requires importers, from 5 August 2028 and annually thereafter, to report the methane intensity of the production of the oil, gas and coal placed on the EU internal market.

**Article 33** includes the following:

- **Under Article 33(1)**, Member States must lay down penalties that are effective, proportionate and dissuasive, proportionate to the environmental damage and to the impact on human safety and public health caused by the infringement, set at a level that at least deprives the responsible entity of the economic benefits derived from the infringement, and capable of

being gradually increased for repeated infringements.

- **Article 33(2)** further requires Member States to establish administrative penalties and measures including obligations to bring infringements to an end, confiscation of profits gained or losses avoided, public notices identifying the responsible entity and the nature of the infringement, periodic penalty payments, and administrative fines of up to 20% of annual turnover.
- A literal reading of Article 33(2) suggests that where a Member State has determined that an importer has failed to comply with the MRV obligations set out in Chapter 5, it should impose one or more of the administrative penalties and measures listed in Article 33(2).
- Article 33(2) qualifies the application of these penalties and measures by providing that they should only be imposed “provided that they do not endanger the security of energy supply”.

The interpretation of the security-of-supply exception requires consideration of the wider EU framework governing security of gas and oil supply, examined below.

### 3) What does EU energy security legislation prescribe?

EU energy security legislation already provides a framework for identifying and responding to risks to the security of supply of gas and oil. In particular, the Gas Security of Supply Regulation (EU) 2017/1938 (“GSoS Regulation”) and the Oil Stocks Directive 2009/119/EC (“OSD”) establish legal mechanisms through which Member States and the European Commission may respond to supply disruptions. These instruments are relevant when considering the interpretation of the security of energy supply exception contained in Article 33(2) of the EUMR.

#### 1. EU energy security legislation establishes graduated emergency frameworks

**Not every concern relating to energy markets or supply conditions constitutes a security of supply emergency. EU energy security legislation distinguishes between periods of uncertainty, deteriorating market conditions and situations that justify exceptional intervention.**

- a) The GSoS Regulation establishes a graduated crisis framework consisting of three levels: Early Warning, Alert and Emergency.
  - **An Early Warning** may be declared where there is “concrete, serious and reliable information” that an event may occur which could subsequently lead to the triggering of the more serious Alert or Emergency levels. Importantly, no event affecting the actual supply of gas must yet have taken place.
  - **An Alert** may be declared where a disruption of gas supply or exceptionally high gas demand leads to a significant deterioration of the gas supply situation. However, at this stage market operators remain capable of managing the disruption and direct state intervention is not required.
  - **An Emergency** represents the most serious crisis level under the Regulation. It requires exceptionally high gas demand, a significant disruption of gas supply, or a significant deterioration in the gas supply situation, combined with the exhaustion of market-based measures and the need for direct intervention to safeguard supply.
- b) The OSD similarly provides for exceptional measures in response to a “major supply disruption”, defined as a “substantial and sudden drop in the supply of crude oil or petroleum products” to the Union or a Member State.

#### 2. The declaration of crisis situations is subject to legal conditions and oversight

**Neither the GSoS Regulation nor the OSD allows exceptional measures to be triggered without legal justification. Decision-making discretion lies with Member States, but that**

**discretion isn't unlimited and comes with legal obligations at the EU level, including formal notification, justification and restrictions.**

- Under the GSoS Regulation, Member States retain discretion when determining whether the conditions for a crisis level have been met. The Regulation does not prescribe the precise level of information required before a competent authority may trigger a crisis level. Rather, Member States assess the information available to them, including the information reported by gas undertakings under Article 14(4), and determine whether circumstances justify an Early Warning, Alert or Emergency declaration.

However, that discretion is not unlimited. The declaration of a crisis level triggers specific legal consequences. Member States must immediately notify the Commission and directly connected Member States, provide supporting information and explain the measures they intend to take. In addition, Member States triggering a crisis level remain subject to restrictions intended to protect the functioning of the internal market, including obligations not to unduly restrict gas flows or seriously endanger the supply situation of another Member State.

The most serious crisis situations are also subject to additional oversight. Following the declaration of an Emergency, the Commission reviews the justification provided by the Member State and may request that the Emergency be terminated if it concludes that the relevant conditions have not been met. The Regulation also allows for the declaration of regional and Union-wide emergencies under specified conditions.

- Similarly, under the OSD, where no International Energy Agency decision to release stocks exists, the determination of whether a major supply disruption has occurred falls to the Commission in consultation with Member States.

### **3. Existing EU legislation provides structured and harmonized reference points in combination with EU law principles**

GSoS Regulation and the OSD provide an important reference point when considering the interpretation of the security of energy supply exception under Article 33(2) of the EUMR. However, they do not fully resolve the question of when that exception should apply. While they identify circumstances that may justify exceptional intervention, they do not establish precise thresholds capable of determining the scope of Article 33(2) or how the exception should be applied in practice.

**As a result, the interpretation of Article 33(2) must be informed not only by existing EU energy security legislation, but also by broader principles of EU law.** More specifically:

- **Case law considerations:** Under established CJEU case law, derogations and exceptions from obligations established under EU law must be interpreted strictly and narrowly<sup>1</sup>. This is particularly relevant given that Article 33(2) operates as an exception to the obligation on Member States to establish effective, proportionate and dissuasive penalties for infringements of the EUMR.
- **Principle of effectiveness:** The interpretation of Article 33(2) must comply with the principle of effectiveness ("effet utile"), which requires that provisions of EU law be interpreted in a manner that preserves their practical effect<sup>2</sup>. Accordingly, the security of energy supply exception cannot be interpreted in a way that renders the penalties regime established under

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<sup>1</sup> The Court of Justice of the EU ("CJEU") has repeatedly made clear that provisions providing derogations from a requirement set out in EU legislation must be interpreted strictly and narrowly. See for instance Case C-476/01 Kapper; Case C-36/05 Commission v Spain; and Case C-5/08 Infopaq International A/S v. Danske Dagblades Forening).

<sup>2</sup> According to the Court, the principle of "effet utile" ("useful effect") requires that provisions of EU law be interpreted so as to ensure their practical effectiveness (see for example, Case 26/62 Van Gend en Loos and in the later Case 41/74 van Duyn). In the context of penalties, the CJEU has made clear that, to ensure the effective application of EU legislation, Member States must impose penalties that are "effective, proportionate and dissuasive" (see Case 68/88 Greek Maize; Case 50/76 Amsterdam Bulb).

Article 33 ineffective in practice.

- **Principle of proportionality:** Any application of the exception must comply with the principle of proportionality. Measures adopted to safeguard security of supply must be suitable for achieving that objective, limited to what is necessary, and must not produce disproportionate effects<sup>3</sup>. This principle is particularly relevant when assessing whether security of supply concerns justify the postponement, reduction or non-application of penalties.
- **Functioning of the internal market:** The interpretation of Article 33(2) must take account of the need to preserve the functioning of the internal market. As recognized in the case law of the CJEU<sup>4</sup>, Member States may not exercise their powers in a manner that creates unjustified distortions of competition, alters conditions of market access, or undermines the uniform application of EU law across the Union. Any interpretation of the security of energy supply exception should therefore avoid creating divergent enforcement approaches that could result in unequal treatment of importers depending on the Member State in which they are established.

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<sup>3</sup> Article 5(4) of the Treaty on European Union establishes the EU principle of proportionality, which requires that any measure must be suitable to achieve the objective pursued, must not be more restrictive than what is necessary to achieve such objective, and must not have disproportionate effects (see Case 11/70 Internationale Handelsgesellschaft; Case C-331/88 Fedesa; Case C-58/08 Vodafone). This requires that the security of energy supply exception be applied only when it is necessary and in a way that does not have disproportionate effects.

<sup>4</sup> Case law from the CJEU also prevents Member States from exercising their powers in a manner that undermines the harmonization of the internal market by creating obstacles to intra-EU trade (see C-8/74 Dassonville; C-120/78 Cassis de Dijon; and C-110/05 Commission v Italy) or in a manner that alters competitive conditions to the advantage of certain operators or leads to the partitioning of the internal market (see C-265/95 Commission v France, and C-78/70 Deutsche Grammophon).