



Gas emergency situation – What can you do?

At the end of June, the German Federal Ministry of Economics and Climate Protection (“*Bundesministerium für Wirtschaft und Klimaschutz*”, BMWK) declared the alert level (“*Alarmstufe*”) of the German Gas Emergency Plan - there is great concern about a gas supply stop and corresponding reductions. If the BMWK declares the emergency level (“*Notfallstufe*”, *Stufe 3*), companies would basically be affected first. The strains will run through the entire supply chain.

We have summarized what you can do to best prepare yourself. Our experts are always available for an in-depth discussion on these and other points.

Application for protection (“*unternehmensspezifischer Schutzantrag*”) /notification to network operators

If the federal government declares the emergency level, the Federal Network Agency (“*BNetzA*”), in its role as the federal load distributor (“*Bundeslastverteiler*”), will decide whether to reduce gas consumption. Currently, it has little information regarding this decision; in April and May 2022, data was collected from end consumers with technical connection capacity of at least 10 MWh. We recommend that relevant company data be proactively communicated to the Federal Network Agency via a company-specific application for protection, e.g., on the costs and threatened damages of a reduction. While this does not guarantee that your company will not be affected or will be affected only to a small extent by any gas consumption reduction, the application should protect management, which is obligated to prevent damage to the company. It may also be helpful in establishing a legal basis for any claims for damages/compensation.

Based on the application for protection, it may be advisable, depending on the individual case, to draft an

application for an injunction as a precautionary measure, which can be filed quickly if the worst comes to the worst, possibly even as a preventive measure. If successful, you can use such an application to temporarily prevent the Federal Network Agency from interfering with your company's gas supply.

A notification similar to the application for protection should be sent to the network operator. In the event of a threat to or disruption of the safety or reliability of the gas supply system, the operator is entitled and obliged to adjust all gas supply in its network. Again, while the network operator does not have to take this information into account, it needs to have the information available at all in order to have the opportunity to do so in the first place.

Disputes with suppliers and customers

If gas becomes scarce or fails to arrive altogether, this will lead to production stops for suppliers and manufacturers, or at least to a considerable increase in production costs. Disputes with business partners will be unavoidable.

Contract check

All contracts should be checked. Do they contain provisions for cases in which production becomes more expensive? Are there provisions covering the consequences of production stoppages, e.g. force majeure clauses? Are there any other regulations on exemption from performance, liability or precautionary obligations?

Contact with contractual partners

To avoid disputes, it is generally recommended to contact contractual partners at an early stage. If necessary, point out possible production losses to your contractual partners. Suggest the agreement of a joint German Gas Emergency Plan.

Agree - if not already part of the contract - on arrangements for production stops and increases in production costs as well as other liability and contract resolution issues.

Precautions

In any case, you should take reasonable precautionary measures. These may include, for example, the deferral of a certain number of particularly important parts in the event of a production stop, or the provision of an alternative source of energy in the event that a certain source is no longer available. General duties of consideration generally affect every contractual partner and can give rise to claims for damages in the event of non-compliance; your own claims for damages may be reduced if you fail to comply.

Labor law implications

The shortage of gas has various effects. Production stops on the one hand and (forced) savings of energy, for example for heating company buildings, on the other hand are to be considered in the foreground. Companies are forced to make concessions to their employees.

Ordering short-time work (only in operating facilities)

If there is a gas supply shortage that affects production, short-time work may be considered. The decisive factor is whether the reason for the work stop is outside the company's sphere of influence and is directly attributable to it. In the event of a possible forced disconnection of the company from the gas supply or other restrictions in the energy supply, an "unavoidable event" may also be considered as the reason for the work stop.

Working in unheated / lowly heated rooms

Lowering the office temperature is currently only possible to a limited extent. In the first draft of the so-called "winter strategy", the EU has currently proposed to the member states to limit the room temperature in public buildings, offices and commercially used buildings to 19 degrees Celsius. If minimum temperatures are not reached, workplace-related technical, organizational and/or personal measures (e.g. provision of suitable clothing) are required.

Home office obligation

The introduction of a home office obligation is currently under discussion. This is intended to avoid energy burdens caused by employee-related commuting and to implement cost-saving measures in companies. The implementation of instructions to work from home must be assessed on a case-by-case basis. The main problem is whether the employer may have to provide additional compensation for expenses.

Any co-determination rights must be observed for all measures.

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