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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a COUNCIL REGULATION Establishing a market correction mechanism to protect citizens and the economy against excessively high prices

Delegations will find in the Annex the text of the proposal for a Council Regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices following the political agreement at the TTE (Energy) Council on 19 December 2022.

The text in the Annex is subject to lawyer-linguist revision.

The Council decided to authorise the use of written procedure for adoption of this Regulation.

2022/0393 (NLE)

Proposal for a

COUNCIL REGULATION

**Establishing a market correction mechanism to protect citizens and the economy against
excessively high prices**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank¹,

Whereas:

¹ Opinion of 2 December 2022 (not yet published in the Official Journal).

- (1) The Russian Federation's ('Russia') unprovoked and unjustified military aggression against Ukraine and the unprecedented reduction of natural gas supplies from the Russia to Member States threaten the security of supply in the Union and its Member States. At the same time, Russia's weaponisation of gas supply and market manipulation through intentional disruptions of gas flows have led to skyrocketing energy prices in the Union. Changing supply routes, resulting in congestion in the European gas infrastructure, the need to find alternative gas supply sources and price formation systems which are not adapted to the situation of a supply shock have contributed to price volatility and price hikes. Higher natural gas prices endanger the economy of the Union through sustained high inflation caused by higher electricity prices, undermining consumer purchasing power, as well as through raising the cost of manufacturing, particularly in energy-intensive industry, and seriously threaten the security of supply.
- (2) In 2022, natural gas prices were exceptionally volatile, with some benchmarks reaching all-time highs in August 2022. The abnormal level of the natural gas prices registered in August 2022 was the result of multiple factors, including a tight supply-demand balance linked to storage refilling and the reduction of pipeline flows, fears of further supply disruptions and market manipulations by Russia, and a price formation mechanism which was not tailored to such extreme demand and supply shifts and which aggravated the excessive price hike. While prices over the previous decade were within a band between EUR 5/MWh and EUR 35/MWh, European natural gas prices reached levels which were 1000% higher than the average prices seen before in the Union. Dutch Title Transfer Facility (TTF) Gas Futures (3-month/quarterly products) that are traded on the ICE Endex² exchange have been traded at levels slightly below EUR 350/MWh, the TTF day-ahead gas traded on European Energy Exchange (EEX) hit EUR 316/MWh. Gas prices have never before reached levels such as those observed in August 2022.

² ICE ENDEX is one of the main energy exchanges in Europe. For gas, it provides regulated futures and options trading for the Dutch Title Transfer Facility (TTF) trading hub.

- (3) Following the damage to the Nord Stream 1 pipeline likely caused by an act of sabotage in September 2022, there is no perspective of gas supplies from Russia to the Union to resume to pre-war levels in the near future. European consumers and business remain exposed to a manifest risk of further potential episodes of economically damaging gas price spikes. Unpredictable events, like accidents or, the sabotage of pipelines, that disrupt gas supplies to Europe or increase demand dramatically may threaten security of supply. Market tensions and nervousness, triggered by the fear of sudden scarcity situations are likely to persist beyond this winter and into next year, as the adaptation to supply shocks and the establishment of new supply relationships and infrastructure is expected to take one or more years.
- (4) While derivatives relating to other virtual trading point (VTPs) exist, the Title Transfer Facility ('TTF') in the Netherlands is commonly seen as the 'standard' pricing proxy on European gas markets. This is because of its typically high liquidity, which is due to several factors, including its geographical location, which allowed the TTF in a pre-war environment to receive natural gas from several sources, including significant volumes from Russia. As such, it is widely used as a reference price in pricing formulas of gas supply contracts, as well as a price basis in hedging / derivatives operations across the Union, including in hubs not directly linked to the TTF. According to market data, the TTF hub accounted for around 80% of natural gas traded in the European Union and the United Kingdom combined in the first eight months of 2022.

- (5) However, the disruptive changes in EU energy markets since February 2022 had an influence on the functioning and effectiveness of the traditional price formation mechanisms in gas wholesale market, notably on the TTF benchmark. Whilst the TTF was a good proxy for gas prices in other regions of Europe in the past, as of April 2022 it has become detached from prices at other hubs and trading places in Europe, as well as from the price assessments made for LNG imports by price reporting agencies. This is largely because the gas system of North-Western Europe presents particular infrastructural limitations both in terms of pipeline transmission (West-East) and in terms of LNG regasification capacity. Such limitations were partly responsible for the general increase of gas prices since the beginning of the crisis in Europe following Russia's weaponisation of energy. The abnormal spread between the TTF and other regional hubs in August 2022 indicates that, under the current specific market circumstances, the TTF may not be a good proxy of the market situation outside North-Western Europe, where markets are facing infrastructure constraints. During scarcity episodes in the North-Western Europe market, other regional markets outside North-Western Europe may experience more favourable market conditions and are therefore unduly impacted through contract indexation to TTF. Hence, whilst the TTF still accomplishes its objective of balancing supply and demand in North-Western Europe, action is required to limit the effect any abnormal episodes of excessive prices of the TTF have for other regional markets in the EU. Deficits in the price formation, to a lesser extent, may also exist with other hubs.

- (6) Different measures are available to address the problems with the current price formation mechanisms. One possibility for European companies affected by the recent market disruptions and the deficits of the price formation system is to enter into a renegotiation of the existing TTF-based contracts. As price references linked to TTF-futures have a different relevance than in the past and are not necessarily representative for the gas market situation outside North-Western Europe, certain purchasers may seek to solve the current problems with price formation and the TTF benchmark by way of a renegotiation with their contract partners, either under the explicit terms of the contract or according to general principles of contract law.
- (7) In the same vein, importing companies or Member States acting on their behalf may engage with international partners in order to renegotiate existing or agree on new supply contracts with more appropriate pricing formulas, adapted to the current situation of volatility. Coordinated purchasing via the IT tool created under Regulation (EU) [XXXX/2022] may provide opportunities to lower the price of energy imports, in turn lowering the necessity of market intervention.
- (8) Furthermore, Directive 2014/65/EU includes already some safeguards to limit episodes of extreme volatility, for instance by requiring that regulated markets set up so-called short-term ‘circuit breakers’, which limit extreme price increases for certain hours to that end. The intra-day volatility management mechanism, introduced in Articles 15 to 17 of Council Regulation (EU) [XXXX/2022], contributes to limiting extreme volatility of prices in energy derivatives markets within one day. However, those mechanisms work only short-term, and are not intended to prevent market prices from reaching certain excessive levels.

- (9) Demand reduction constitutes a further important element to tackle the problem of extreme price peaks. Reducing demand for gas and electricity can have a dampening effect on market prices and can therefore contribute to mitigating the problems with abnormally high gas prices. This Regulation should, in line with the Conclusions of the European Council of 21 October 2022, therefore provide that the activation of the mechanism does not lead to increased use of gas.
- (9a) In summer 2022, efforts of state-subsidised entities to buy gas for storage without consideration of the impact of uncoordinated purchasing on prices contributed to driving up price benchmarks, and in particular TTF prices. Better coordination, where appropriate, of Member States using state-financed entities to purchase gas for filling underground storages is therefore important to avoid extreme price peaks in future. The use of the joint purchasing mechanism established by Regulation XXXX/2022 can play an important role to limit episodes of excessive gas prices in this regard-
- (10) Whilst existing measures are therefore available to tackle some of the elements leading to the problems with price formation in gas markets, these measures do not guarantee an immediate and sufficiently certain remedy to the current problems.
- (11) It is therefore necessary to establish a temporary market correction mechanism for natural gas transactions in the main markets for TTF derivatives and derivatives linked to other VTPs with maturities between month-ahead and year-ahead, as an instrument against episodes of excessive high gas prices with immediate effect.

- (12) The conclusions of the European Council of 21 October 2022 invited the Commission to urgently present a Proposal for a temporary dynamic price corridor on natural gas transactions taking into account the safeguards set out in Article 23(2) of the Commission proposal for the Council Regulation enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks of 18 October 2022.
- (13) The following safeguards should, on the one hand, be considered when designing the market correction mechanism and on the other hand, be used to guarantee that a possible activation of the market correction mechanism will be terminated if the conditions for its activation are no longer in place or if unintended market disturbances occur: it should apply to natural gas transactions in the -TTF-Virtual Trading Point, operated by Gasunie Transport Services B.V.; other Union gas trading hubs may be linked to the corrected TTF spot price via a dynamic price corridor; it should be without prejudice to over-the-counter gas trades, not jeopardise the Union's security of gas supply, depend on progress made in implementing the gas savings target, not lead to an overall increase in gas consumption, be designed in such a manner that it will not prevent market-based intra-EU flows of gas, not affect the stability and orderly functioning of energy derivative markets, and take into account the gas market prices in the different organised market places across the Union.
- (14) The market correction mechanism should be designed in a manner to meet two basic criteria, namely to act as an effective instrument against episodes of extraordinarily high gas prices, and to be activated only if prices reach exceptional levels compared to global markets, in order to avoid significant market disturbances and disruptions of supply contracts, potentially resulting in severe security of supply risks.

- (15) The intervention through the market correction mechanism should be limited to addressing the most important deficits in price formation. The TTF month-ahead settlement price for derivatives is by far the most widely used benchmark in gas supply contracts across the EU, followed by maturities of two-month ahead and year ahead. However, shifts of trade to derivatives linked to other VTPs may lead to distortions on EU energy or financial markets, for instance through arbitrage by market participants between corrected and non-corrected derivatives, to the detriment of consumers. Derivatives linked to all VTPs in the Union should therefore, in principle, be included in the market correction mechanism. However, the application of the mechanism to derivatives linked to other VTPs than TTF is complex and requires additional technical preparation. With a view to the urgent need to introduce a market correction mechanism for the most important derivative (TTF), the Commission should be given the power to define the technical details of the application of the market correction mechanism to derivatives linked to other VTPs and the selection of derivatives linked to other VTPs which may be excluded on the basis of pre-defined criteria by means of an implementing act.
- (16) The enactment of the market correction mechanism should send a clear signal to the market that the EU will not accept excessive prices which result from imperfect price formation. It should also provide certainty to market players as concerns reliable limits for gas trading, and can bring important economic savings for both companies and households that will not be left as exposed to episodes on excessive energy prices.

- (17) The mechanism should introduce a dynamic safety ceiling for the price from-month-ahead to year-ahead derivatives. The dynamic ceiling should be activated if the derivatives price reaches a pre-defined level, and if the price hike does not correspond to a similar hike at regional or world market level.
- (17a) A dynamic safety ceiling should therefore ensure that trading orders which would be significantly above LNG prices in other regions of the world are not accepted. Appropriate benchmarks should be used to determine a reference price reflecting global LNG price trends. The reference price should be based on LNG price assessments ~~linked to~~ representative of the European market conditions and, due to the particular importance of the United Kingdom and Asia as competitors in the global LNG market, also on an appropriate benchmark for the United Kingdom and Asian regions. -In contrast to pipeline gas, LNG is traded world-wide. Therefore, LNG prices better reflect the gas price developments at global level and can serve as benchmark to assess whether price levels in continental hubs diverge abnormally from international prices.

(17aa) The sample of LNG prices taken into account should be sufficiently broad to be informative even in case a specific LNG price should not be available on a given day. In view of building a representative basket of European and international prices and in order to ensure that the entities providing the price information are subject to relevant EU regulation, price assessments should be selected by reporting agencies which are listed in the Benchmark Registry established by the Regulation (EU) 2016/1011. As timely information is key for the dynamic market correction mechanism, only price information from entities providing information relating to the day of publication should be taken into account. In order to allow ACER to exercise its market supervision duties under this Regulation, and to calculate the reference price on time, it is necessary to oblige the reporting agencies publishing price assessments to provide assessments to ACER already by 21:00 CET, provided that they are available, in order to allow ACER to publish a reference price before the end of the day; while such reporting obligations concern only existing data and do not place significant additional burden on the reporting agencies and are frequent in energy and financial market regulation, ACER should ensure confidential treatment of the information received, protect any intellectual property rights related to the information and use it solely for regulatory purposes. ACER should be able to issue guidance on the format the relevant data have to be provided.

(17 ab) Due to its high liquidity, it is appropriate to include also front-month derivatives related to the UK National Balancing Point ('NBP'). The daily price assessment carried out by ACER pursuant to Article 18 of Regulation (EU) XXXX/2022 should be part of the basket of LNG price assessments.

- (17b) While the benchmarks taken into account for the reference price are a good proxy for global LNG price trends, they cannot simply substitute derivate prices. This is mainly because the reference price reflects prices at different locations than TTF and other VTPs in the Union. For instance, they do not take into account the costs related to possible infrastructure congestions faced when moving the gas from the LNG terminal to where the TTF hub is located. TTF prices are therefore usually higher than the prices taken into account for the reference price. The difference amounted to around EUR 35 €/MWh on average between June and August 2022. Furthermore, it is of key importance for the security of supply that the corrected TTF-derivative price is set at a sufficiently high level to still attract LNG imports from other regions in the world. As security of supply premium should therefore be put on the reference price for the calculation of the corrected TTF-derivative price. The formula for the safety ceiling should be fully dynamic, based on a dynamically developing basket of prices reflecting world market prices, and a certain safety margin, to ensure security of supply is not at risk. The dynamic safety ceiling can vary every day on the basis of the evolution of global prices contained in the basket.
- (17c) The safety ceiling should not be static but be adjusted in a dynamic manner and on a daily basis. The publication of a daily settlement price allows the ceiling to remain in line with LNG market developments, and to preserve the price formation process on exchanges and mitigate possible impacts on the orderly functioning of derivatives markets. A dynamic design of the safety ceiling will also reduce risks for Central Counterparties and limit the impact on participants in futures markets, such as clearing members and their clients. The safety ceiling should not correct market prices below a certain limit.
- (18) To avoid any risks that a dynamic bidding limit for the price of the month-ahead to year ahead derivatives results in illegal collusive behaviour amongst natural gas suppliers or traders, financial regulators, ACER and competition authorities should observe the gas and energy derivatives markets particularly carefully during the activation of the market correction mechanism.

- (19) The market correction mechanism should be temporary in nature and should only be activated to limit episodes of exceptionally high natural gas prices, which are also unrelated to prices at other gas exchanges. To this end, two cumulative conditions should be met for the market correction mechanism to operate.
- (20) The market correction mechanism should only be activated when front-month derivative settlement prices reach a predefined exceptionally high level, so as to ensure that the mechanism corrects market deficits and does not significantly interfere with demand and supply and normal price setting. Unless set at a high enough level, the ceiling could prevent market participants from effectively hedging their risks, as the formation of reliable prices for products with a delivery date in the future and the functioning of derivatives markets could be harmed. If the mechanism were to be triggered to bring prices artificially down instead of correcting market malfunctioning, it would have a serious negative impact on market participants, including energy firms, who could face difficulties in meeting margin calls and liquidity constraints, potentially resulting in defaults. Some market actors—, in particular smaller ones—, may be prevented from hedging their positions, further exacerbating volatility in spot markets, and resulting in possibly higher price spikes. Given the significant trading volumes, such development would constitute a manifest risk for the economy which the design of the measure should prevent. Based on past experiences, such as the exceptional price hike evidenced in the month of August 2022, should therefore guide the definition of the price levels at which a market correction mechanism should be triggered. Available data show that in summer 2022, the front-month prices for TTF-derivatives reached levels above 180 EUR€/MWh. The aim of the market correction mechanism should be to avoid abnormal prices at a level reached last summer.

- (21) Moreover, the market correction mechanism should only be activated when TTF prices reach levels which are significantly and abnormally high compared to LNG prices which reflect world market trends. If prices on global markets increase at the same pace and level as TTF prices, the activation of the market correction mechanism could impede the purchase of supplies on the global markets, which may result in security of supply risks. Therefore, the market correction mechanism should only be triggered in situations where TTF prices are significantly and over a longer duration higher than prices on global markets. Likewise, if the difference to TTF prices were to reduce or disappear, the mechanism should be deactivated, to avoid any risk for security of supply.

(24) To be fully compatible with Council Regulation (EU) 2022/1369 and the demand reduction targets set out in that Regulation, the Commission should be able to suspend the activation of the mechanism if it negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of Council Regulation (EU) 2022/1369, or if it leads to an overall increase in gas consumption by 15% in one month or 10% in two consecutive months compared to the respective average consumption during comparable months in previous years. To correct for regional or Union-wide variations caused by seasonality, weather changes and other factors such as the COVID-crisis-, the gas consumption should be measured against the consumption in the five years preceding the date of entry into force of this regulation, in line with the approach in Council Regulation (EU) 2022/1369 and, on the basis of data on gas consumption and demand reduction received from Member States pursuant to Article 8 Council Regulation (EU) 2022/1369. The dampening effect on natural gas prices that the market correction mechanism may entail should not end up in artificially incentivising natural gas consumption in the EU to the point that it damages the necessary efforts to reduce natural gas demand in accordance with the demand reduction targets pursuant to Article 3 and 5 of Council Regulation (EU) 2022/1369 and of Article 3 and 4 of Regulation 2022/1854. The Commission should ensure that the activation of the mechanism does not slow down the progress which Member States make in meeting their energy savings targets.

- (26) Depending on the level of the intervention, the market correction mechanism may entail financial, contractual and security of supply risks. The level of risk depends on the frequency with which the mechanism is activated and may therefore interfere with the normal market functioning. The lower the threshold for intervention, the more frequently the mechanism will be triggered, and therefore the more likely it is that the risk will materialise. As such, the conditions for the activation of the mechanism should therefore be set at a level linked to abnormal and extraordinarily high levels of the TTF month-ahead price, while at the same time ensuring that it is an effective instrument against episodes of excessive prices not reflecting international market developments.
- (27) It is important that the mechanism is designed in a manner not to alter the fundamental contractual equilibrium of gas supply contracts, but rather to address episodes of abnormal market behaviour. If the triggers for the intervention are set at a level where they correct existing problems with price formation and do not intend to interfere with the demand and supply equilibrium, the risk that the contractual equilibrium of existing contracts will be altered through the mechanism or its activation can be minimised.
- (28) In order to ensure that the market correction mechanism has an immediate effect, the dynamic bidding limit should immediately and automatically be activated, without the need for a further decision by the European Agency for the Cooperation of Energy Regulators ('ACER') or the Commission.
- (28a) To ensure that possible problems resulting from the activation are identified early on, the Commission should mandate the European Securities and Markets Authority ('ESMA') and ACER to issue a report on possible negative effects from the mechanism on financial and energy markets and security of supply.

(29) ACER should continuously monitor whether the conditions for the operation of the market correction mechanism are fulfilled. ACER is the best placed authority to carry out such monitoring, because it has a Union-wide view of gas markets and the necessary expertise in the operation of gas markets, and is already mandated to monitor trading activities in wholesale energy products under EU law. ACER should therefore monitor the evolution of the front-month TTF settlement price and compare it with the reference price, determined by the average price of LNG price assessments linked to European trading hubs, in order to verify whether the conditions that justify the activation or de-activation of the market correction mechanism are met. Once the conditions for activation are met, ACER should publish a notice immediately on its website informing of the fact that the triggering conditions for the activation of the mechanism have been met. The following day, regulated market operators should not accept any orders above the dynamic bidding limit and TTF derivatives market participants should not submit any such orders. Regulated market operators and TTF derivatives market participants should monitor the website of ACER where the daily reference price should be published. A similar dynamic bidding limit should apply to derivatives linked to other VTPs under the conditions defined in the implementing act concerning the application to those derivatives.

- (30) The activation of the market correction mechanism may engender undesirable and unforeseeable effects on the economy, including risks to security of supply and to financial stability. To ensure a swift reaction in case unintended market disturbances occur, efficient safeguards should be incorporated, based on objective criteria, ensuring that the mechanism can be suspended at any time. In case there are, based on the results of ACER monitoring, concrete indications that a market correction event is imminent, the Commission should be able to request an opinion from ESMA, ACER, and, where appropriate, ENTSOG and the Gas Coordination Group on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be.
- (31) Beyond a daily review on whether the requirements for the dynamic bidding limit are still in place, additional safeguards should be included to avoid unintended market disturbances.
- (32) The dynamic bidding limit should not affect over-the-counter ('OTC') transactions, as including them would raise serious monitoring issues and may lead to problems with security of supply. However, a review mechanism should apply to assess whether the exclusion of OTC-transactions may lead to significant shifts of derivatives trading to OTC markets, endangering the stability of financial or energy markets.
- (33) The market correction mechanism should be automatically deactivated if its operation is no longer justified by the situation on the natural gas market. Unless market disturbances occur, the mechanism should only be deactivated after a certain period of time, to avoid frequent activation and de-activation. The market correction mechanism should therefore be automatically deactivated, after twenty days if the dynamic bidding limit is at 180 EUR for a certain period. As for the activation, the deactivation of the mechanism should not require any assessment by ACER or the Commission, but should happen automatically when the conditions are fulfilled.

- (33a) Should there be a significant reductions of gas supplies and a situation where the gas supply is insufficient to meet the remaining gas demand, pursuant to Article 12(1) of Regulation (EU) 2017/1938 the Commission may declare a regional or Union emergency at the request of one Member State which has declared a emergency, and is to declare a regional or Union emergency if two or more Member States have declared emergency. In order to prevent that the continued activation of the market correction mechanism leads to security of supply problems, the mechanism should be automatically deactivated in a situation where the Commission has declared a regional or Union emergency.
- (34) It is of key importance that the market correction mechanism includes an effective instrument to suspend, based on objective criteria, the dynamic safety ceiling immediately and at any time if it were to lead to serious market disturbances, affecting security of supply and intra-EU flows.
- (35) As it is important to thoroughly assess all safeguards to be taken into account when assessing a possible suspension of the market correction mechanism, the market correction mechanism should be suspended by way of a decision of the Commission. When taking the decision, which should be taken without undue delay, the Commission should notably assess whether the continued application of the dynamic bidding limit jeopardises the Union's security of supply, is accompanied by a sufficient demand reduction efforts, prevents market-based intra-Union flows of gas, negatively affects energy derivatives markets, accounts for gas market prices in the different organised market places across the Union, or may negatively affect existing gas supply contracts. In such cases, the Commission should take a decision to suspend the market correction mechanism by means of an implementing decision. Considering the need to react swiftly, it should not be required to act in accordance with a comitology procedure.

- (36) The market correction mechanism should not jeopardise the Union's security of gas supply by constraining price signals that are essential to attract necessary gas supplies and for intra-EU gas flows. Gas providers may in fact potentially withhold supplies when the market correction mechanism is activated to maximise profits by selling just after the de-activation of the ceilings. In case the mechanism would lead to such risks for the Union's security of gas supply, but where no regional or Union emergency is declared, the Commission should immediately suspend the mechanism. The elements to be taken into account in the assessment of security of supply risks should include a potential significant deviation of one of the components of the reference price pursuant to Article 2(2) compared to the historical trend, and a significant drop of quarterly LNG imports to the Union compared to the same quarter of the previous year.
- (36a) As unrestricted cross-border flows of gas between Member States are a key element of security of supply in the Union, the activation of the market correction mechanism should also be suspended if it unduly restricts cross-border flows of gas within the internal market, endangering the Union's security of gas supply.
- (37) The market correction mechanism should not end up diminishing the role that price signals fulfil in the Union's internal gas market and prevent market-based intra-Union flows of gas, as it is essential that natural gas continues to flow where it is most needed.

(38) The market correction mechanisms should not unduly jeopardise the continued proper functioning of the energy derivatives markets. These markets play a key role in enabling market participants in hedging their positions in order to manage risks, in particular with regard to price volatility. Moreover, price interventions through the market correction mechanism can result in considerable financial losses for market participants in the derivatives markets. Given the size of the market for gas in the Union, such losses may not only affect the specialised derivatives markets, but may have significant knock-on effects on other financial markets. Price interventions could also lead to a detrimental increase in margin call due to uncertainty. A substantial increase in margin calls, could result in considerable financial and liquidity losses for market participants, leading to a default of a clearing member or a final client. Relevant market participants should act in good faith and not unduly change risk management procedures resulting in an increase of margin calls, in particular if not in line with normal market procedures. Therefore, the Commission should immediately suspend the market correction mechanism if it jeopardises the orderly functioning of the derivatives market, for instance where it leads to a significant decrease in TTF derivatives transactions within the Union or to a significant shift of TTF-derivative transactions to trading venues outside the EU. In that regard, it is important that the Commission takes into account available expertise from relevant Union bodies. The European Securities and Markets Authority is an independent authority that contributes to safeguarding the stability of the EU's financial system, notably by promoting stable and orderly financial markets, such as the derivative markets. The Commission should therefore take into account reports from ESMA on these aspects. In addition, the Commission should take into account any advice of the European Central Bank ('ECB') relating to the stability of the financial system in line with Article 127(4) Treaty on the Functioning of the European Union ('TFEU') and Article 25.1 of Protocol IV to the TFEU. Given the volatility of financial markets and the potentially large impact of market interventions therein, it is important to ensure that the Commission can suspend the market correction mechanism quickly. Therefore, the report of ESMA should be issued no later than 48 hours or within the day same in urgent cases after the Commission's request.

- (39) The market correction mechanism should be designed to address only exceptional increases in gas prices caused by deficits in the price formation mechanism and as such not have an impact on the validity of existing gas supply contracts. However, in situations where ACER or the Commission observe that the activation of the market correction mechanism negatively impacts existing supply contracts, the Commission should suspend it.
- (40) The design and suspension possibilities of the mechanism should take into account that natural gas traders may move trade of natural gas to regions outside the Union, reducing the effectiveness of the market correction mechanism. This would be the case, for instance, if traders started engaging in over-the-counter gas trades, which is less transparent, less subject to regulatory scrutiny, and carrying greater risks of defaulting on obligations for the parties involved. This would also be the case if traders, whose hedging may be limited by the market correction mechanism, sought hedges in other jurisdictions, resulting in the clearing counterpart needing to rebalance the cash underpinning derivatives positions to reflect the capped settlement price, triggering margin calls.
- (41) ACER, ESMA, the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group established under Regulation (EU) 2017/1938 should assist the Commission in monitoring the market correction mechanism.

- (41a) In carrying out its tasks under this Regulation, the Commission should also have the possibility to consult the ECB, and seek its advice, in accordance with the ECB's role pursuant to Article 127(5) TFEU to contribute to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system and pursuant to Article 25.1 of the Statute of the European System of Central Banks and of the European Central Bank to offer advice to and be consulted by, inter alia, the Commission, on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system. The consultation process of the ECB should be organised in a manner that it allows a swift suspension of the market correction mechanism if need be.
- (41b) Given the urgent need to address the problems notably in TTF-derivatives price setting in the Union, a swift implementation of the market correction mechanism is crucial. ESMA and ACER should carry out an assessment on the impact of the market correction mechanism ('effects assessment'), to analyse whether the fast implementation may lead to unintended negative consequences for financial or energy markets or for security of supply. The effects assessment should be submitted to the Commission already by 1 March 2023. It should notably analyse the elements necessary for the implementing act on the modalities for the extension of the market correction mechanism to derivatives linked to other VTPs and verify whether the key elements of the market correction mechanism are still appropriate in the light of financial and energy market or security of supply developments. No later than by 23 January 2023, ESMA and ACER shall publish a preliminary data report concerning the introduction of the market correction mechanism. Taking into account the results of the effects assessment, the Commission should, where appropriate, propose an amendment to this Regulation without undue delay with a view to adapting the choice of the products covered by the market correction mechanism.

- (42) The Commission may also propose other amendments to this Regulation, based on the effects assessment, or following a market event or a suspension decision, or in the light of market and security of supply developments.
- (42a) In order to preserve the sound functioning of derivatives markets, in particular the risk management processes of the central clearing counterparties (CCPs) and minimise the need to call for additional margin as collateral, parties should be allowed to offset or reduce positions in TTF derivatives market in an orderly manner if they wish to do so. Therefore, the dynamic bidding limit should not apply to contracts entered into before the entry into force of this regulation, nor to trades that allow market participants to offset or reduce positions resulting from TTF derivatives contracts entered into before entry into force of this regulation.
- (42b) Central clearing counterparties (CCPs) play a key role in assuring the orderly functioning of markets for TTF derivatives by mitigating counterparty risk. It is therefore necessary that the activities of CCPs, notably in managing defaulting positions, are not hindered by the market correction mechanism. To that end, the dynamic bidding limit should not apply to trades executed as part of a default management process organised by a CCP.

- (43) The market correction mechanism is necessary and proportionate for achieving the objective of correcting excessively high gas prices at the TTF and derivatives linked to other VTPs. All Member States are concerned by the indirect effects of the price hikes, such as increasing energy prices and inflation. As concerns the deficits in the price formation system, these deficits play a different role in different Member States, with price increases being more representative in some Member States (e.g. Central European Member States) than in other Member States (e.g. Member States at the periphery or with other supply possibilities). In order to avoid a fragmented action, which could divide the integrated Union gas market, a common action is needed in a spirit of solidarity. This is also crucial to ensure security of supply in the Union. Moreover, common safeguards, which may be more needed in Member States without supply alternatives than in Member States with more alternatives, ensure a coordinated approach as an expression of energy solidarity. Indeed, while the financial risks and benefits are very different for different Member States, the market correction mechanism constitutes a solidary compromise, in which all Member States agree to contribute to the market correction and accept the same limits to the price formation, even though the level of malfunction of the price formation mechanism and the financial impacts of derivatives prices on the economy are different in different Member States. The market correction mechanism would therefore strengthen Union solidarity in avoiding excessive prices, which are unsustainable even for short periods of time for many Member States. The proposed measure will help ensure that gas supply undertakings from all Member States are able to purchase gas at reasonable prices in a spirit of solidarity.
- (44) The volatile and unpredictable situation on the natural gas market entering the winter seasons makes it important to ensure that the market correction mechanism may be applied as soon as possible, if the conditions justifying its activation are met. This Regulation should therefore enter into force on 1 February. The dynamic bidding limit should apply from 15 February. The obligation to provide a preliminary data report by ESMA and ACER should apply retroactively as of 1 January in order to obtain the required information timely.

HAS ADOPTED THIS REGULATION:

CHAPTER I – SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes a temporary market correction mechanism for orders placed for trading TTF derivatives, and derivatives linked to other Virtual Trading Points in accordance with Article 5c, to limit episodes of excessively gas prices in the European Union, which do not reflect world market prices. .

Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

- (0a) 'TTF derivative' means a commodity derivative as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014, traded on a regulated market, the underlying of which is a transaction in the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V.;
- (0b) 'Derivatives linked to other VTPs' means commodity derivatives as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014, traded on a regulated market, the underlying of which is a transaction in a gas Virtual Trading Point in the Union.
- (0c) 'Virtual Trading Point' (VTP) means a non-physical commercial point within an entry-exit system where gases are exchanged between a seller and a buyer without the need to book transmission or distribution capacity.

- (1) 'front-month TTF derivative' means a TTF derivative -whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given regulated market;
- 1a) 'front year TTF derivative' means a TTF derivative whose expiration date is the nearest among the derivatives with a twelve months maturity traded on a given regulated market;
- (2) 'reference price' means, insofar as available, the daily average price of the price of:
- the LNG Northwest Europe Marker price assessments defined as the daily average of "Daily Spot Northwest Europe Marker (NWE)" administered by Platts Benchmark B.V., the Netherlands, and the "Northwest Europe des – half-month 2" administered by Argus Benchmark Administration B.V., the Netherlands, with a conversion of LNG price assessments in US Dollars (USD) per Million British Thermal Units (MMBtu)-into EUR per MWh, on the basis of the European Central Bank's Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kilowatt hours;
 - the LNG Mediterranean Marker price assessment defined as the daily average of "Daily Spot Mediterranean Marker (MED)" administered by Platts Benchmark B.V., the Netherlands, and of the daily average of "Iberian peninsula des - half-month 2", "Italy des - half-month 2" and "Greece des - half-month 2" administered by Argus Benchmark Administration B.V., the Netherlands, with a conversion of LNG price assessments in US Dollars (USD) per Million British Thermal Units (MMBtu) into EUR per MWh, on the basis of the European Central Bank's Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kilowatt hours;

- the LNG Northeast Asia Marker price assessment defined as the daily average of " LNG Japan/Korea DES 2 Half-Month" administered by Platts Benchmark B.V., the Netherlands, and "Northeast Asia des (ANEA) - half-month 2" administered by Argus Benchmark Administration B.V., the Netherlands, with a conversion of LNG price assessments in US Dollars (USD) per Million British Thermal Units (MMBtu) into EUR per MWh, on the basis of the European Central Bank's Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kilowatt hours;

- the front-month NBP derivative settlement price, as published by ICE Futures Europe, the United Kingdom; with a conversion of Sterling pence per therm into EUR per MWh, on the basis of the European Central Bank's Euro foreign exchange rate and a conversion rate of 1 therm to 29.3071 kilowatt hours;

- the price of the daily price assessment carried out by ACER pursuant to Article 18 of Council Regulation (EU) [XXXX/2022];-

(3) 'regulated market' means 'regulated market' as defined in Article 4(1), point (21), of Directive 2014/65/EU;

(4) 'regulated market operator' means a-market operator as defined in Article 4(1), point (18), of Directive 2014/65.

CHAPTER II – MARKET CORRECTION MECHANISM

Article 3

Price Monitoring

- (0) ACER shall constantly monitor the development of the reference price, the front-month TTF derivative settlement price and the front-month derivative settlement price of derivatives linked to other VTPs. For that purpose,
- Platts Benchmark B.V. shall notify to ACER every day no later than [21:00] (CET) the daily LNG price assessments of the following markers: the “Daily Spot Mediterranean Marker (MED)”, the “Daily Spot Northwest Europe Marker (NEW)” and the “Japan Korea Marker (JKM)” and
 - Argus Benchmark Administration B.V shall notify to ACER every day no later than [21:00] (CET) the daily LNG price assessments of the following markers: the “Northwest Europe des – half-month 2”, the “Iberian peninsula des - half-month 2”, the “Italy des - half-month 2”, the “Greece des - half-month 2” and the “Northeast Asia des (ANEA) - half-month 2”;
- (1) Based on the information received pursuant to paragraph 1, ACER shall calculate the daily reference price every day and publish it on its website no later than 23h59 CET.

Article 3a

Market correction event

- (1) A market correction mechanism for the front-year TTF derivative settlement price shall apply as of 15 February 2023. The market correction mechanism is activated through a market correction event, which shall occur when the front-month TTF derivative settlement price, as published by ICE Endex B.V., the Netherlands :
- (a) exceeds EUR 180/MWh for three working days and
 - (b) is EUR 35 higher than the reference price during the period referred to in subparagraph (a).
- (1a) Upon adoption of the implementing act pursuant to Article 5c(1), a market correction event related to derivatives linked to other VTPs shall also occur under the conditions defined in that implementing act pursuant to the criteria of Article 5c(2).
- (1b) ACER shall, where it observes that a market correction event has occurred, publish in a clear and visible manner on its website no later than 23h59 CET, a notice that a market correction event has occurred ('market correction notice') and inform the Commission, ESMA, the European Central Bank ('ECB') and the Council of the market correction event.
- (1c) Regulated markets operators on the TTF derivatives market and TTF derivatives market participants shall monitor the website of ACER on a daily basis.

- (1ca) As from the day after the publication of a market correction notice, regulated markets operators shall not accept and TTF derivatives market participants shall not submit orders for TTF-derivatives that are due to expire in the period from the expiry date of the front-month TTF derivative to the expiry date of the front year TTF derivative with prices of 35 EUR/MWh above the reference price published by ACER on the previous day ('dynamic bidding limit'). If the reference price is below 145 EUR the dynamic bidding limit shall remain at the sum of 145 EUR and 35 EUR.
- (1d) Upon adoption of the implementing act pursuant to Article 5c)1), a dynamic bidding limit shall apply to derivatives linked to other VTPs under the conditions defined in that implementing act pursuant to the criteria of Article 5c)2).
- (1e) Once activated by ACER, the dynamic bidding limit shall apply at least for 20 working days, unless suspended by the Commission in accordance with Article 5 or deactivated in accordance with Article 4(0).

- (3) In order for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be, in case there are, based on the results of ACER monitoring pursuant to Article 3(0), concrete indications that a market correction event pursuant to Article 3a)(1)(b) is imminent, the Commission shall without delay invite the European Central Bank ('ECB'), the European Securities and Markets Authority ('ESMA') and, where appropriate, the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group established pursuant to Regulation (EU) 2017/1938 to provide an assessment of on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability. The assessment shall take into account price developments in other relevant organised market places, notably in Asia or the U.S., as reflected in the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both administered by Platts Benchmark B.V. published by S&P Global Inc., New York.
- (7) The Commission, having assessed the effect of the bidding limit on gas and electricity consumption and progress with the demand reduction targets provided for in Articles 3 and 5 of Council Regulation (EU) 2022/1369 and in Articles 3 and 4 of Council Regulation (EU) 2022/1854, may also propose an amendment to Council Regulation (EU) 2022/1369 to adapt to the new situation.
- (8) In the case of a market correction event, the Commission shall, without undue delay, ask the ECB for advice on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets.

Article 4

Deactivation of the market correction mechanism

- (0) The dynamic bidding limit referred to in Article 3a 1(ca) and 3a(1d) shall be deactivated, after 20 working days since the market correction event in accordance with Article 3a(1e) or afterwards, if the reference price is below 145 EUR/MWh for three consecutive working days.
- (1) When a regional or a Union emergency is declared by the Commission, notably in case of a significant deterioration of the gas supply situation leading to a situation where the gas supply is insufficient to meet the remaining gas demand ('rationing'), in accordance with Article 12(1) of Regulation (EU) 2017/1938, the dynamic bidding limit referred to Article 3a(1ca) and 3a(1d) shall be deactivated.
- (2) ACER shall without delay publish a notice on its website and notify to the Commission, ESMA, the ECB and the Council that a deactivation event as referred to in paragraph 0 has occurred ('deactivation notice').

Article 5

Suspension of the market correction mechanism

- (0)** ESMA, ACER, the Gas Coordination Group and ENTSOG shall constantly monitor the effects of the dynamic bidding limit on financial and energy markets and security of supply in the case of the activation of the market correction mechanism.
- (2) On basis of the monitoring referred to in paragraph 0, the Commission shall, by means of an implementing decision, suspend the market correction mechanism at any time, where unintended market disturbances or manifest risks of such disturbances occur, negatively affecting security of supply, intra-EU flows or financial stability ('suspension decision'). In the assessment, the Commission shall notably take into account if the activated market correction mechanism
- (a) jeopardises the Union's security of gas supply; **the elements to be taken into account in the assessment of security of supply risks shall be a potential significant deviation of one of the components of the reference price pursuant to Article 2(2) compared to the historical trend and a significant drop of quarterly LNG imports to the Union compared to the same quarter of the previous year.**

- (b) occurs during a period where the mandatory demand reduction targets pursuant to Article 5 of Regulation (EU) 2022/1369 are not met at Union level, negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of Regulation (EU) 2022/1369, taking into account the need to ensure that price signals incentivise demand reduction, or leads to an overall increase in gas consumption by 15% in one month or 10% in two consecutive months compared to the respective average consumption for the same months during the five consecutive years preceding the date of entry into force of this Regulation, on the basis of data on gas consumption and demand reduction received from Member States pursuant to Article 8 of Council Regulation (EU) 2022/1369;
- (c) prevents market-based intra-EU flows of gas according to ACER monitoring data;
- (d) affects, on the basis of a report on the impact of the activation of the market correction measure by ESMA and any advice of the ECB requested by the Commission for that purpose, the stability and orderly functioning of energy derivative markets, in particular where it leads to a significant increase of margin calls margin calls or significant decrease in TTF derivatives transactions within the Union in one month, compared to the same month of the previous year or to a significant shift of TTF-derivative transactions outside the EU.
- (e) substantially differs from the gas market prices in the different organised market places across the Union, and at other relevant organised market places, such as in Asia or the U.S., as reflected in the ‘Joint Japan Korea Marker’ or the ‘Henry Hub Gas Price Assessment’, both administered by Platts Benchmarks B.V., the Netherlands;
- (f) affects the validity of existing gas supply contracts, including long-term gas supply contracts.

- (3) A suspension decision shall be taken without undue delay and be published in the Official Journal of the European Union. From the day following publication of a suspension decision, and for as long as specified in the suspension decision, the dynamic bidding limit referred to in Article 3a (1ca) and 3a1d) shall cease to apply.
- (4) ACER,-ESMA, the Gas Coordination Group and ENTSOG shall assist the Commission in the tasks pursuant to Articles 3a, 4 and 5. The report of ESMA pursuant to paragraph (2)(d) shall be issued no later than 48 hours or within the same day in urgent cases upon a request by the Commission.
- (4a) In carrying out its tasks pursuant to Articles 3a, 4 and 5, the Commission may consult the ECB for advice on any matter relating to its task pursuant to Article 127(5) TFEU to contribute to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 5a

Professional secrecy

- (1) Any confidential information received, exchanged, or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2.
- (2) The obligation of professional secrecy applies to all persons who work or who have worked for ACER or for any authority or market undertaking or natural or legal person to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority.
- (3) Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.
- (4) All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions, and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

Article 5b
Effects Assessment

(0) ESMA and ACER shall assess the effects of the market correction mechanism on financial and energy markets and on security of supply, notably to verify whether the key elements of the market correction mechanism are still appropriate in the light of financial and energy market and security of supply developments.

(0a) ESMA and ACER shall in the effects assessment in particular carry out an analysis concerning the criteria pursuant to Article 5c(2). The assessment shall notably verify whether the limitation to TTF-derivatives led to arbitrage by market participants between corrected and non-corrected derivatives with negative impact on financial or energy markets, and to the detriment of consumers.

(0aa) ESMA and ACER shall also assess whether:

- the exclusion of over-the counter ('OTC') trading from the scope of application of this Regulation led to significant shifts of TTF-derivatives trading to OTC markets, endangering the stability of financial or energy markets;
- and the market correction mechanism led to a significant decrease in TTF derivatives transactions within the Union, to a significant shift of TTF-derivative transactions to trading venues outside the EU.

ESMA and ACER shall additionally assess whether the following needs to be reviewed:

- the elements taken into account for the reference price pursuant to Article 2(2);
- the conditions referred to in Article 3a(1);
- the dynamic bidding limit referred to in Article 3a(1ca).

(0a) The reports from ESMA and ACER pursuant to paragraph one shall be submitted to the Commission by 1 March 2023. No later than by 23 January 2023 ESMA and ACER shall publish a preliminary data report concerning introduction of the market correction mechanism.

Extension to derivatives linked to other VTPs

- (1) On the basis of the assessment referred to in Article 5b (0), the Commission, shall by means of an implementing act in accordance with Article 5e (2), define the technical details of the application of the market correction mechanism to derivatives linked to other VTPs no later than 31 March 2023.

In case the application of the market correction mechanism to derivatives linked to other VTPs leads to significant negative effects on financial or gas markets pursuant to the criteria set out in paragraph 2, the Commission shall, exceptionally, exclude certain derivatives from the application of the market correction mechanism.

- (2) The Commission shall select the technical details of the implementation, as well as those derivatives linked to other VTPs, which may have to be excluded from the market correction mechanism notably on the basis of the following criteria:
- a) Availability of information on the prices of derivatives linked to other VTPs;
 - b) The liquidity of the derivatives linked to other VTPs;
 - c) The impact of the inclusion of derivatives linked to other VTPs would have on intra-EU flows of gas and security of supply;
 - d) The impact of the inclusion of derivatives linked to other VTPs on stability of financial markets, taking into account the impact of on possible additional margins as collateral.

Article 5d

Review

The Commission may, where appropriate, propose an amendment to this Regulation to include derivatives traded over-the counter ('OTC') in the scope of this Regulation, or to review the elements taken into account for the reference price pursuant to Article 2(2), notably considering giving different weight to those elements the conditions for the activation of the market correction mechanism set out in Article 3a(1) (a) and (b) and the dynamic bidding limit referred to in Article 3a(1c). Before submitting such a proposal, the Commission shall consult the ECB, ESMA, ACER, the Gas Coordination Group, ENTSOG and, where appropriate, other relevant stakeholders.

Article 5e

Committee procedure

- (1) The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing power.
- (2) Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.

CHAPTER III - FINAL PROVISIONS

Article 6

Entry into force

- (1) This Regulation shall enter into force on 1 February 2023. It shall apply from the same day for a period of one year.

Article 3a shall apply from 15 February 2023. Article 5b(0a) shall apply retroactively from 1 January 2023.

- (3) This regulation shall not apply to the following:
- (a) TTF derivative contracts concluded before the entry into force of this Regulation;
 - (b) Buying and selling of TTF derivatives in order to offset or reduce TTF derivatives contracts concluded before the entry into force of this Regulation;
 - (c) Buying and selling of TTF derivatives as part of a central clearing counterparty default management procedure including over-the-counter trades registered by the regulated market for clearing purposes.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

For the Council

The Presiden
