COUNCIL REGULATION (EU) 2022/2578

of 22 December 2022

establishing a market correction mechanism to protect Union 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 Bank ([1]),

Whereas:

(1) The Russian Federation's ('Russia') unprovoked and unjustified war of aggression against Ukraine and the unprecedented reduction of natural gas supplies from Russia to Member States threaten the security of supply in the Union and 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 1 000 % 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 Endex ([2]) exchange have been traded at levels slightly below EUR 350/MWh and the TTF day-ahead gas that is traded on European Energy Exchange hit EUR 316/MWh. Gas prices have never before reached levels such as those observed in August 2022.

(3) Following the damage to the Nord Stream 1 pipeline which was likely caused by an act of sabotage in September 2022, there is no likelihood that gas supplies from Russia to the Union will resume at pre-war levels in the near future. European consumers and businesses remain exposed to a manifest risk of further potential episodes of economically damaging gas price spikes. Unpredictable events, such as accidents or the sabotage of pipelines, that disrupt gas supplies to Europe or that dramatically increase demand may threaten the security of supply. Market tensions triggered by the fear of sudden scarcity, 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 continue for one or more years.

(4) While derivatives relating to other virtual trading point ('VTPs') exist, the 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

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

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

price in pricing formulas of gas supply contracts, as well as a price basis in hedging or derivatives operations across the Union, including in hubs not directly linked to the TTF. According to market data, the TTF hub accounted for approximately 80 % of natural gas traded in the first eight months of 2022 in the Union and the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') combined.

(5) However, the disruptive changes in Union energy markets since February 2022 have influenced the functioning and effectiveness of the traditional price formation mechanisms in the wholesale gas 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 liquefied natural gas ('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 European market, other regional markets outside North-Western Europe may experience more favourable market conditions and are therefore unduly impacted through contract indexation to the TTF. Whilst the TTF still accomplishes its objective of balancing supply and demand in North-Western Europe, action is required to limit the effect of any abnormal episodes of excessively high TTF prices for other regional markets in the Union. Deficiencies in the price formation, to a lesser extent, may also exist in other hubs.

(6) Different measures are available to address problems with the current price formation mechanisms. A possibility for European companies affected by the recent market disruptions and by deficiencies in the price formation system is to enter into a renegotiation of the existing TTF-based contracts. As price references linked to TTF Gas Futures have a different relevance than in the past and are not necessarily representative of the gas market situation outside North-Western Europe, certain purchasers may seek to address the current issues with price formation and the TTF benchmark by way of a renegotiation with their contract partners, either under the explicit terms of the existing contract or according to the 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 contracts or to 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 Council Regulation (EU) 2022/2576 ([3]) may provide opportunities to lower the price of energy imports, in turn lowering the necessity of market intervention.

(8) Furthermore, Directive 2014/65/EU of the European Parliament and of the Council ([4]) already includes some safeguards to limit episodes of extreme volatility, for instance by requiring that regulated markets as defined in Article 4(1), point (21), of that Directive have so-called short-term 'circuit breakers' which limit extreme price increases for certain hours. The temporary intra-day tool to manage excess volatility in energy derivatives markets, introduced by Regulation (EU) 2022/2576, contributes to limiting extreme volatility of prices in energy derivatives markets within a day. However, such mechanisms only work in the short term, and are not intended to prevent market prices from reaching excessive levels.

([3]) Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders (see page 1 of this Official Journal).

([4]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(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. Therefore, this Regulation should, in line with the Conclusions of the European Council of 20-21 October 2022, ensure that the activation of the mechanism established by this Regulation does not lead to an overall increase in gas consumption.

(10) 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, between Member States using state-financed entities to purchase gas for filling underground gas storage facilities is therefore important to avoid extreme price peaks in future. The use of the joint purchasing mechanism established by Regulation (EU) 2022/2576 can play an important role in limiting episodes of excessively high gas prices in that regard.

(11) Whilst existing measures are available to tackle some of the elements leading to the issues with price formation in gas markets, those existing measures do not guarantee an immediate and sufficiently certain remedy for the current problems.

(12) It is therefore necessary to establish a temporary market correction mechanism (the 'MCM') 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 excessively high gas prices with immediate effect.

(13) In its conclusions of 20-21 October 2022, the European Council called on the Commission to urgently present a proposal for a temporary dynamic price corridor on natural gas transactions to immediately limit episodes of excessively high gas prices, taking into account the safeguards set out in Article 23(2) of the Commission's proposal for Regulation (EU) 2022/2576.

(14) The following safeguards should, on the one hand, be considered when designing the MCM and, on the other hand, be used to guarantee that possible activation of the MCM will be terminated if the conditions for its activation are no longer in place or if unintended market disturbances occur: the MCM should apply to natural gas transactions in the TTF, a 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 ('OTC') gas trades; it should not jeopardise the Union's security of gas supply; it should not depend on progress made in implementing the gas savings target; it should not lead to an overall increase in gas consumption; it should be designed in such a manner that it would not prevent market-based intra-Union flows of gas; it should not affect the stability and orderly functioning of energy derivative markets; and it should take into account the gas market prices in different organised marketplaces across the Union.

(15) The MCM should be designed to meet two basic criteria, in particular 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 risks for the security of supply.

(16) The intervention through the MCM should be limited to addressing the most important deficiencies in the price formation system. The TTF month-ahead settlement price for derivatives is by far the most widely used benchmark in gas supply contracts across the Union, followed by maturities of two-months ahead and year-ahead. However, shifts of trade to derivatives linked to other VTPs may lead to distortions on Union 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 MCM. However, the application of the MCM to derivatives linked to VTPs other than TTF is complex and

requires additional technical preparation. With a view to the urgent need to introduce the MCM for the most important derivative, TTF derivative, the Commission should be given the power to define the technical details of the application of the MCM 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.

(17) The establishment of the MCM should send a clear signal to the market that the Union will not accept excessively high gas prices which result from imperfect price formation. It should also provide certainty to market players as regards reliable limits for gas trading, and could result in important economic savings for both companies and households that will not be left exposed to excessively high energy price episodes.

(18) The MCM should introduce a dynamic safety ceiling for the price from month-ahead to year-ahead derivatives. The dynamic safety 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.

(19) 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 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 a benchmark to assess whether price levels in continental hubs abnormally diverge from international prices.

(20) The sample of LNG prices taken into account should be sufficiently broad to be informative even in the event that a specific LNG price is not 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 Union regulation, price assessments should be selected by reporting agencies which are listed in the register of administrators and benchmarks established by Regulation (EU) 2016/1011 of the European Parliament and of the Council ([5]). As timely information is key for the dynamic MCM, only price information from entities providing information relating to the day of publication should be taken into account. In order to allow European Union Agency for the Cooperation of Energy Regulators ('ACER') established by Regulation (EU) 2019/942 of the European Parliament and of the Council ([6]) 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 that publish price assessments to provide assessments to ACER 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 that information and use that information solely for regulatory purposes. ACER should be able to issue guidance on the format in which the relevant data is to be provided.

(21) Due to their high liquidity, it is appropriate to also include front-month derivatives related to the National Balancing Point ('NBP') of the United Kingdom. The daily price assessment carried out by ACER pursuant to Regulation (EU) 2022/2576 should be part of the basket of LNG price assessments.

([5]) Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

([6]) Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).

(22) While the benchmarks taken into account for the reference price are a good proxy for global LNG price trends, they cannot simply substitute derivative prices. This is mainly because the reference price reflects prices at different locations than the 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 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 attract LNG imports from other regions in the world. 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 should serve as a certain safety margin to ensure that the 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.

(23) The safety ceiling should not be static. The safety ceiling should be adjusted in a dynamic manner and on a daily basis. The publication of a daily settlement price allows the dynamic safety 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 dynamic safety ceiling should not correct market prices below a certain limit.

(24) To avoid any risk that a dynamic bidding limit for the price of the month-ahead to year-ahead derivatives result 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 period when the MCM is activated.

(25) The MCM 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 MCM to operate.

(26) The MCM should only be activated when front-month TTF derivative settlement prices reach a pre-defined exceptionally high level, so as to ensure that the MCM corrects market deficiencies and does not significantly interfere with demand and supply and normal price setting. Unless set at a sufficiently high level, the safety 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 MCM 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 should be prevented by the design of the MCM. Past experiences, such as the exceptional price hike evidenced in August 2022, should therefore guide the definition of the price levels at which the MCM should be triggered. Available data show that in August 2022, the front-month prices for TTF-derivatives reached levels above EUR 180/MWh. The aim of the MCM should be to avoid abnormal prices at a level reached in August 2022.

(27) Moreover, the MCM 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 MCM could impede the purchase of supplies on the global markets, which may result in risks for security of supply. Therefore, the MCM should only be triggered in situations where TTF prices are significantly higher than prices on global markets over a longer duration. Likewise, if the difference to TTF prices were to reduce or disappear, the MCM should be deactivated, in order to avoid any risk for security of supply.

(28) To be fully compatible with Council Regulation (EU) 2022/1369 ([7]) and the demand reduction targets set out in that Regulation, the Commission should be able to suspend the activation of the MCM if it negatively affects the progress made in implementing the voluntary demand reduction targets pursuant to 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 address regional or Union-wide variations caused by seasonality, weather changes and other factors such as the COVID-19 crisis, gas consumption should be measured against consumption in the five years preceding the date of entry into force of this Regulation, in line with the approach in Regulation (EU) 2022/1369 and on the basis of data on gas consumption and demand reduction received from Member States pursuant to that Regulation. The dampening effect on natural gas prices that the MCM may entail should not end up in artificially incentivising natural gas consumption in the Union to the point that it damages the efforts necessary to reduce natural gas demand in accordance with the voluntary and mandatory demand reduction targets pursuant to Regulation (EU) 2022/1369 and demand reduction targets pursuant to Council Regulation (EU) 2022/1854 ([8]). The Commission should ensure that the activation of the MCM does not slow down the progress of Member States in meeting their energy saving targets.

(29) Depending on the level of the intervention, the MCM may entail financial risks, contractual risks and risks for the security of supply. The level of risk depends on the frequency with which the MCM is activated and may therefore interfere with the normal functioning of the market. The lower the threshold for intervention, the more frequently the MCM will be triggered, and therefore the more likely it is that the relevant risk will materialise. As such, the conditions for the activation of the MCM 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 excessively high gas prices that do not reflect international market developments.

(30) It is important that the MCM is designed in such a manner so as 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 MCM or its activation can be minimised.

(31) In order to ensure that the MCM has an immediate effect, the dynamic bidding limit should be activated immediately and automatically, without the need for a further decision by ACER or the Commission.

(32) To ensure that possible problems resulting from the activation of the MCM are identified early on, the Commission should mandate the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([9]) ('ESMA') and ACER to issue a report on possible negative effects from the MCM on financial and energy markets and on security of supply.

(33) ACER should continuously monitor whether the conditions for the operation of the MCM 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 Union law. ACER should therefore monitor the evolution of the front-month TTF settlement price and compare it to 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 deactivation of the MCM are met. Once the conditions for activation of the MCM are met, ACER should publish a notice immediately on its website stating that the triggering conditions for the activation of the MCM have been met. The

([7]) Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).
([8]) Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261 I, 7.10.2022, p. 1).
([9]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

following day, market operators should not accept any orders above the dynamic bidding limit and TTF derivatives market participants should not submit such orders. 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 of the MCM to such derivatives.

(34) The activation of the MCM may engender undesirable and unforeseeable effects on the economy, including risks for security of supply and for financial stability. To ensure a swift reaction in case unintended market disturbances occur, efficient safeguards should be established, based on objective criteria, which ensure that the MCM can be suspended at any time. In the event of unintended market disturbances , based on the results of ACER monitoring and concrete indications that a market correction event is imminent, the Commission should be able to request an opinion from ESMA, ACER, and, where appropriate, European Network of Transmission System Operators for Gas (‘ENTSOG’) and the Gas Coordination Group established under Regulation (EU) 2017/1938 of the European Parliament and of the Council ([10]) (the ‘GCG’) on the impact of a possible market correction event on security of supply, intra-Union flows of gas and financial stability for the Commission to be able to suspend, by means of an implementing decision, the activation of the MCM by ACER swiftly if need be.

(35) Beyond a daily review on whether the requirements for the dynamic bidding limit are still in place, additional safeguards should be established in order to avoid unintended market disturbances.

(36) The dynamic bidding limit should not affect OTC transactions, as applying that limit to OTC transactions would raise serious monitoring issues and may lead to problems with the security of supply. However, a review mechanism should apply to assess whether the exclusion of OTC transactions may lead to significant shifts of TTF derivatives trading to OTC markets, thereby endangering the stability of financial or energy markets.

(37) The MCM should be automatically deactivated if its operation is no longer justified by the situation in the natural gas market. Unless market disturbances occur, the MCM should only be deactivated after a certain period of time, to avoid frequent activation and deactivation. The MCM should therefore be automatically deactivated after 20 days if the dynamic bidding limit is at EUR 180/MWh for a certain period. The deactivation of the MCM should not require any assessment by ACER or the Commission, but should happen automatically once the conditions are fulfilled.

(38) Should there be a significant reduction in the supply of gas and in the event that the gas supply is insufficient to meet the remaining gas demand, pursuant to Regulation (EU) 2017/1938, the Commission may declare a regional or Union emergency at the request of a Member State which has declared an emergency, and is to declare a regional or Union emergency if two or more Member States have declared an emergency. In order to prevent a situation from occurring where the continued activation of the MCM leads to security of supply problems, the MCM should be automatically deactivated where the Commission has declared a regional or Union emergency.

(39) It is of key importance that the MCM includes an effective instrument to suspend, based on objective criteria, the dynamic safety ceiling immediately and at any time if the dynamic safety ceiling were to lead to serious market disturbances, affecting the security of supply and intra-Union flows of gas.

(40) As it is important to thoroughly assess all safeguards to be taken into account when assessing a possible suspension of the MCM, the MCM should be suspended by means of an implementing decision of the Commission. When taking such a decision, which should be without undue delay, the Commission should assess whether the application of the dynamic bidding limit jeopardises the Union’s security of supply, is accompanied by a sufficient demand reduction

([10]) Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

effort, prevents market-based intra-Union flows of gas, negatively affects energy derivatives markets, accounts for gas market prices in various organised marketplaces across the Union or where it may negatively affect existing gas supply contracts. In such cases, the Commission should suspend the MCM by means of an implementing decision. Considering the need to react swiftly, the Commission should not be required to act in accordance with a committee procedure.

(41) The MCM should not jeopardise the Union's security of gas supply by constraining price signals that are essential in attracting necessary gas supplies and intra-Union flows of gas. Gas providers may in fact potentially withhold supplies when the MCM is activated to maximise profits by selling shortly after the deactivation of the safety ceiling. In case the MCM 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 MCM. 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 compared to the historical trend, and a significant drop of quarterly LNG imports into the Union compared to the same quarter of the previous year.

(42) As unrestricted intra-Union flows of gas are a key element of security of supply in the Union, the activation of the MCM should also be suspended if it unduly restricts intra-Union flows of gas, endangering the Union's security of supply.

(43) The MCM should not end up diminishing the role that price signals fulfil in the Union's internal market in natural gas and prevent market-based intra-Union flows of gas, as it is essential that natural gas continues to flow where it is needed most.

(44) The MCM should not unduly jeopardise the continued proper functioning of the energy derivatives markets. Those 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 MCM 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 the 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 MCM 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 Union. In that regard, it is important that the Commission takes into account available expertise from relevant Union bodies. ESMA is an independent authority that contributes to safeguarding the stability of the Union'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 such 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 4 on the statute of the European system of central banks and of the European Central Bank annexed to TFEU (the 'Protocol'). 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 MCM quickly. Therefore, the report of ESMA should be issued no later than 48 hours or within the same day in urgent cases after the Commission's request.

(45) The MCM should be designed to address only exceptional increases in gas prices caused by deficiencies in the price formation mechanism and as such should not have an impact on the validity of existing gas supply contracts. However, in situations where ACER or the Commission observes that the activation of the MCM has a negative impact on existing gas supply contracts, the Commission should suspend the MCM.

(46) The design and suspension possibilities of the MCM should take into account that natural gas traders may move the natural gas trade to regions outside the Union, thereby reducing the effectiveness of the MCM. This would be the case, for instance, if traders started engaging in OTC gas trade, which is less transparent, less subject to regulatory scrutiny, and carries 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 MCM, 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.

(47) ACER, ESMA, ENTSOG and the GCG should assist the Commission in monitoring the MCM.

(48) In carrying out its tasks under this Regulation, the Commission should also have the possibility of consulting the ECB, and to seek its advice, in accordance with the ECB's role pursuant to Article 127(5) TFEU in order to contribute to the smooth conduct of policies relating to the prudential supervision of credit institutions and to the stability of the financial system and pursuant to Article 25.1 of the Protocol 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. Such a consultation process should be organised in a manner that allows a swift suspension of the MCM, if need be.

(49) Given the urgent need to address the problems notably in TTF-derivatives price setting in the Union, a swift implementation of the MCM is crucial. ESMA and ACER should carry out an assessment on the impact of the MCM ('effects assessment'), to analyse whether the fast implementation of the MCM could lead to unintended negative consequences for financial or energy markets or for security of supply. The effects assessment should be submitted to the Commission by 1 March 2023. It should notably analyse the elements necessary for the implementing act on the details of the modalities for the extension of the MCM to derivatives linked to other VTPs and verify whether the key elements of the MCM are still appropriate in light of developments as regards the financial and energy market or security of supply. ESMA and ACER should publish a preliminary data report concerning the introduction of the MCM by 23 January 2023. 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 MCM.

(50) The Commission may also propose other amendments to this Regulation, based on the effects assessment, or following a market correction event or a suspension decision, or in light of market and security of supply developments.

(51) In order to preserve the sound functioning of derivatives markets, in particular the risk management processes of the central clearing counterparties ('CCPs'), and to 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 the entry into force of this Regulation.

(52) 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, in particular in managing defaulting positions, are not hindered by the MCM. To that end, the dynamic bidding limit should not apply to trades executed as part of a default management process organised by a CCP.

(53) The MCM is necessary and proportionate in 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 regards the deficiencies in the price formation system, such deficiencies play a different role in various 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, common action is needed in a spirit of solidarity. This is also crucial in order to ensure

the security of supply in the Union. Moreover, common safeguards, which may be more necessary in Member States without supply alternatives than in Member States with supply alternatives, should ensure a coordinated approach as an expression of energy solidarity. Indeed, while the financial risks and benefits are very different for various Member States, the MCM should constitute a solidary compromise, in which all Member States agree to contribute to the market correction and accept the same limits for 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 some Member States. The MCM would therefore strengthen Union solidarity in avoiding excessively high gas prices, which are unsustainable even for short periods of time for many Member States. The MCM will help to ensure that gas supply undertakings from all Member States are able to purchase gas at reasonable prices in the spirit of solidarity.

(54) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers to define the technical details of the application of the MCM to derivatives linked to other VTPs should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([11]).

(55) The volatile and unpredictable situation of the natural gas market entering the winter seasons makes it important to ensure that the MCM can be applied as soon as possible, if the conditions justifying its activation are met. This Regulation should therefore enter into force on 1 February 2023. The dynamic bidding limit should apply from 15 February 2023. The obligation to provide a preliminary data report by ESMA and ACER should apply retroactively as of 1 January 2023 in order to obtain the required information as soon as possible,

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 (‘MCM’) for orders placed for trading TTF derivatives and derivatives linked to other virtual trading points (‘VTPs’) in accordance with Article 9, to limit episodes of excessively high gas prices in the Union which do not reflect world market prices.

Article 2

Definitions

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

(1) ‘TTF derivative’ means a commodity derivative as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([12]), traded on a regulated market, the underlying of which is a transaction in the Title Transfer Facility (TTF), a virtual trading point operated by Gasunie Transport Services B.V.;

([11]) Regulation (EU) No 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 powers (OJ L 55, 28.2.2011, p. 13).

([12]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(2) ‘derivative linked to other VTP’ 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 gas in a virtual trading point in the Union;

(3) ‘virtual trading point’ or ‘VTP’ means a non-physical commercial point within an entry-exit system where gas is exchanged between a seller and a buyer without the need to book transmission or distribution capacity;

(4) ‘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;

(5) ‘-front-year TTF derivative’ means a TTF derivative whose expiration date is the nearest among the derivatives with twelve months maturity traded on a given regulated market;

(6) ‘reference price’ means, insofar as available, the daily average price of:

— the LNG Northwest Europe Marker price assessment 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 USD per Metric Million British Thermal Units (MMBtu) into EUR per MWh, on the basis of the European Central Bank’s (‘ECB’) Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kWh;

— 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 USD per MMBtu into EUR per MWh, on the basis of the ECB’s Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kWh;

— 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 USD per MMBtu into EUR per MWh, on the basis of the ECB’s Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kWh;

— 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 ECB’s Euro foreign exchange rate and a conversion rate of 1 therm to 29.3071 kWh;

— the price of the daily price assessment carried out by ACER pursuant to Article 18 of Regulation (EU) 2022/2576;

(7) ‘regulated market’ means a regulated market defined in Article 4(1), point (21), of Directive 2014/65/EU;

(8) ‘market operator’ means a market operator defined in Article 4(1), point (18), of Directive 2014/65/EU.

CHAPTER II

MARKET CORRECTION MECHANISM

Article 3

Price monitoring

1. ACER shall constantly monitor the development of the reference price and the front-month TTF derivative settlement price, and the front-month derivative settlement price of derivatives linked to other VTPs.

2. For the purpose of paragraph 1, Platts Benchmark B.V. (the Netherlands) shall notify ACER every day no later than 21:00 (CET) of 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)'.

3. For the purpose of paragraph 1, Argus Benchmark Administration B.V. (the Netherlands) shall notify ACER every day no later than 21:00 (CET) of 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'.

4. ACER shall calculate the daily reference price every day based on the information received pursuant to paragraph 1. ACER shall publish the daily reference price daily on its website no later than 23:59 CET.

Article 4

Market correction event

1. The MCM for the front-year TTF derivative settlement price shall be activated when a market correction event occurs. A market correction event shall be considered to 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 point (a).

2. Upon adoption of the implementing act referred to in Article 9(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 set out in Article 9(2).

3. If ACER observes that a market correction event has occurred, it shall publish a notice stating that a market correction event has occurred ('market correction notice') in a clear and visible manner on its website no later than 23:59 CET and shall inform the Council, the Commission, ECB and ESMA of the market correction event.

4. Market operators on the TTF derivatives market and TTF derivatives market participants shall monitor the website of ACER on a daily basis.

5. As from the day after the publication of a market correction notice, market 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 EUR 35 above the reference price published by ACER on the previous day ('dynamic bidding limit'). If the reference price is below EUR 145/MWh, the dynamic bidding limit shall remain at the sum of EUR 145 and EUR 35 .

6. Upon adoption of the implementing act referred to in Article 9(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 set out in Article 9(2).

7. Once activated by ACER, the dynamic bidding limit shall apply for a minimum of 20 working days, unless suspended by the Commission in accordance with Article 6 or deactivated in accordance with Article 5(1).

8. In order for the Commission to be able to suspend, by means of an implementing decision, the activation of the MCM by ACER swiftly if need be, in case there are, based on the results of ACER monitoring pursuant to Article 3(1), concrete indications that a market correction event pursuant to Article 4(1), point b, is imminent, the Commission shall without delay invite ECB, ESMA and, where appropriate, the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group (the 'GCG') to provide an assessment of the impact of a possible market

correction event on the security of supply, intra-Union flows of gas and financial stability. That assessment shall take into account price developments in other relevant organised marketplaces, notably in Asia or the United States, as reflected in the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both administered by Platts Benchmark B.V. (the Netherlands) and published by S&P Global Inc. (New York).

9. After having assessed the effect of the dynamic bidding limit on gas and electricity consumption and progress with the demand reduction targets provided for in Articles 3 and 5 of Regulation (EU) 2022/1369 and in Articles 3 and 4 of Regulation (EU) 2022/1854, the Commission may also propose an amendment to Regulation (EU) 2022/1369 in order to adapt it to the new situation.

10. 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 5

Deactivation of the MCM

1. The dynamic bidding limit shall be deactivated, 20 working days from the occurrence of the market correction event in accordance with Article 4(5) or afterwards, if the reference price is below EUR 145/MWh for three consecutive working days.

2. Where a regional or a Union emergency has been 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 shall be deactivated.

3. ACER shall publish a notice on its website without delay and notify the Council, the Commission, ECB and ESMA that a deactivation event as referred to in paragraph 1 has occurred ('deactivation notice').

Article 6

Suspension of the MCM

1. ESMA, ACER, ENTSOG and the GCG shall constantly monitor the effects of the dynamic bidding limit on financial and energy markets and on security of supply in the case of the activation of the MCM.

2. On basis of the monitoring referred to in paragraph 1, the Commission shall suspend the MCM at any time by means of an implementing decision, where unintended market disturbances or manifest risks of such disturbances occur that negatively affect security of supply, intra-Union flows of gas or financial stability ('suspension decision'). In the assessment, the Commission shall take into account whether the activation of MCM:

(a) jeopardises the Union's security of gas supply; the elements to be taken into account in the assessment of the risks for the security of supply shall be a potential significant deviation of one the components of the reference price compared to the historical trend and a significant drop of quarterly LNG imports into 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 by 10 % in two consecutive months compared to the respective average consumption for the same months during the five consecutive years preceding 1 February 2023, on the basis of data on gas consumption and demand reduction received from Member States pursuant to Article 8 of Regulation (EU) 2022/1369;

(c) prevents market-based intra-Union flows of gas according to ACER monitoring data;

(d) affects, on the basis of ESMA's report on the impact of the activation of the MCM 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 or a 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 to trading venues outside the Union;

(e) leads to substantial differences between gas market prices in the different organised marketplaces across the Union, and at other relevant organised marketplaces, such as in Asia or the United States, as reflected in the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both administered by Platts Benchmark 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 shall cease to apply.

4. ACER, ESMA, ENTSOG and the GCG shall assist the Commission in the tasks pursuant to Articles 4, 5 and 6. The report of ESMA pursuant to paragraph (2), point (d), of this Article shall be issued no later than 48 hours or within the same day in urgent cases upon a request by the Commission.

5. In carrying out its tasks pursuant to Articles 4, 5 and 6, 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 7

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 this Article.

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 8

Effects assessment

1. ESMA and ACER shall assess the effects of the MCM on financial and energy markets and on security of supply, notably to verify whether the key elements of the MCM are still appropriate in light of the developments as regards the financial and energy market and security of supply.

2. ESMA and ACER shall in the effects assessment in particular carry out an analysis concerning the criteria set out in Article 9(2). That 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.

3. ESMA and ACER shall also assess whether:

(a) the exclusion of over-the-counter ('OTC') trading from the scope of this Regulation led to significant shifts of TTF derivatives trading to OTC markets, endangering the stability of financial or energy markets;

(b) the MCM led 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 Union;

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

(a) the elements taken into account for the reference price;

(b) the conditions set out in Article 4(1);

(c) the dynamic bidding limit.

5. The reports from ESMA and ACER pursuant to paragraph 1 shall be submitted to the Commission by 1 March 2023. ESMA and ACER shall publish a preliminary data report concerning introduction of the MCM by 23 January 2023.

Article 9

Extension of the MCM to derivatives linked to other VTPs

1. On the basis of the assessment referred to in Article 8(1), , the Commission, shall by means of an implementing act, define the technical details of the application of the MCM to derivatives linked to other VTPs by 31 March 2023 in accordance with paragraph 2 of this Article. That implementing act shall be adopted in accordance with Article 11(2).

In the event that the application of the MCM 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 of this Article, the Commission shall, exceptionally, exclude certain derivatives from the scope of application of the MCM.

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 scope of application of the MCM, in particular 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 extension of the MCM to derivatives linked to other VTPs would have on intra-Union flows of gas and security of supply;

(d) the impact of the extension of the MCM to derivatives linked to other VTPs would have on the stability of financial markets, taking into account the impact on possible additional margins as collateral.

Article 10

Review

The Commission may, where appropriate, propose an amendment to this Regulation to include derivatives traded OTC in the scope of this Regulation, or to review the elements taken into account for the reference price, notably considering giving different weight to those elements, the conditions for the activation of the MCM set out in Article 4(1), points (a) and (b), and the dynamic bidding limit. Before submitting such a proposal, the Commission shall consult the ECB, ESMA, ACER, ENTSOG and the GCG and, where appropriate, other relevant stakeholders.

Article 11

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER III

FINAL PROVISIONS

Article 12

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.

2. Article 4 shall apply from 15 February 2023.

3. Article 8(2) shall apply from 1 January 2023.

4. This Regulation shall not apply to the following:

(a) TTF derivative contracts concluded before 1 February 2023;

(b) buying and selling of TTF derivatives in order to offset or reduce TTF derivatives contracts concluded before 1 February 2023;

(c) buying and selling of TTF derivatives as part of a CCP default management procedure, including OTC trades registered in the regulated market for clearing purposes.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 December 2022.

For the Council
The President
M. BEK