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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 - Examination

Delegations will find in the annex the presidency compromise (REV 2) on the Market Correction Mechanism.

From doc. 15352/22 (REV 1) the added text remains in **bold underlined**, deleted text is in ~~strikethrough.~~

In the current revision (REV 2) new added text is bold **underlined** grey shaded, deleted text is in ~~strikethrough~~ grey shaded.

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ANNEX

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 Bank,

Whereas:

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(1) The Russian Federation's unprovoked and unjustified military aggression against Ukraine and the unprecedented reduction of natural gas supplies from the Russian Federation to Member States threaten the security of supply of the Union and its Member States. At the same time, the weaponisation of gas supply and the Russian Federation's manipulation of markets 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 the situation of 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 security of supply.

(2) In 2022, natural gas prices have been 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 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 TTF Gas Futures (3-month/quarterly products) traded on the exchange ICE Endex[1] traded at levels slightly below EUR 350/MWh, the TTF day-ahead gas traded on EEX hit EUR 316/MWh. Never in previous times gas prices had reached levels such as those observed in August 2022.

[1] 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.

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(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 , ~~, weather storms~~ 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) 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.

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(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.

(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.

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(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, **Regulation (EU) No 648/2012**~~financial market regulation~~ includes already some safeguards to limit episodes of extreme volatility, for instance by requiring that trading venues 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 for effective mechanism to ensure that the potential of demand reduction is used to the fullest extent, and~~ that the activation of the mechanism does not lead to increased use of gas.

(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.

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(11) It is therefore necessary to establish a temporary market correction mechanism for natural gas transactions in the **main** ~~month-ahead~~ TTF derivatives market**s with maturities between month-ahead and three-month 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 ~~gave a mandate to the~~ **invited the** Commission to ~~propose legislation~~**urgently present a Proposal** for a ~~market correction mechanism which should build upon Articles~~**temporary dynamic price corridor on natural gas transactions taking into account the safeguards set out in Article** 23 ~~and 24~~**(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 ~~('October Proposal')~~.

(13) The ~~basic criteria and~~**following** safeguards ~~set out in the conclusions of the European Council of 21 October 2022 and in Articles 23 and 24 of the October Proposal~~ should, on the one hand, be considered when designing the market correction mechanism~~. They should,~~ **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 ~~Title Transfer Facility (~~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.**

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(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 three-month ahead**. Other benchmarks do not face the same problems resulting notably from capacity bottlenecks in central Europe. The TTF ~~month-ahead~~**derivatives** reference**, between month-ahead to three month ahead, are** ~~is~~ not only used by many traders in their derivatives, but also frequently by gas supply undertakings in their supply contracts. It is therefore appropriate to limit the intervention to the TTF month-ahead **to three-month ahead** settlement price**, not only to target the most used and liquid markets but also to avoid arbitrage and minimise the circumvention of the mechanism**.

(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.

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(17) The mechanism should introduce a **dynamic** safety ceiling for the price **from**~~of~~ month-ahead **to three**~~thr~~**hee-month ahead** TTF-derivatives. The **dynamic** ceiling should be activated if the TTF-**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 European trading hubs and, due to the particular importance of Asia as a competitor in the global LNG market, also on an appropriate benchmark for the Asian region. LNG is an appropriate proxy for gas price developments at global level. In contrast to pipeline gas, LNG is traded on a world-wide market. LNG prices, such as those at Mediterranean or North West exchanges, are directly influenced by the development of the global LNG market and are usually closer to the world market price level than pipeline-dominated benchmarks. LNG prices at Mediterranean or North West exchanges provide an appropriate indication whether extreme price hikes are based on underlying changes of demand or supply or on a malfunctioning of the price formation mechanism in the Union. The basket of LNG price assessments taken into account should be sufficiently broad to be informative even in case a specific LNG price assessement should not be available on a given day.

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(17b) While the benchmarks taken into account for the reference price are a good proxy for global LNG price trends, they cannot simply substitute TTF-derivate prices. This is mainly because the reference price reflects prices at different locations than TTF. For instance, they do not take account the transportation costs to move 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 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.

(17c) In line with the conclusions of the European Council of 21.10.22, 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.

(18) To avoid any risks that a bidding limit for the price of the month-ahead **to three-month ahead** TTF derivatives ~~risks~~ results~~s~~ 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.

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(20) The market correction mechanism should only be activated when front-month TTF 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 August 2022, the **front-month prices reached levels above 220 EUR~~€~~/MWh ~~in August 2022~~**~~price difference between spot TTF month-ahead and LNG prices was above EUR 57/MWh. Front-month prices reached levels above EUR 300~~. The aim of the market correction mechanism should be to avoid abnormal prices at a level reached last August.

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(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 markt 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 ~~prices on global markets were to increase after the activation of the mechanism, and~~ the difference to TTF prices were to reduce or disappear, the mechanism should be ~~automatically~~ deactivated, to avoid any risk for security of supply.

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(22) ~~LNG is an appropriate proxy for gas price developments at global level. In contrast to pipeline gas, LNG is traded on a world-wide market. LNG prices, such as those at Mediterranean or North West exchanges, are directly influenced by the development of the global LNG market and are usually closer to the world market price level than pipeline-dominated benchmarks. LNG prices at Mediterranean or North West exchanges provide an appropriate indication whether extreme price hikes are based on underlying changes of demand or supply or on a malfunctioning of the price formation mechanism in the Union. These LNG prices also reflect better the supply and demand conditions in Europe than similar prices overseas, such as in Asia or the U.S (see ,e.g. the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both published be S&P Global Inc., New York). That is, they. **They** reflect more appropriately the TTF overprice compared to LNG delivered into the European system. Considering European LNG prices avoids an inaccurate influence of specific local supply and demand considerations in prices in other world regions (like the**, such as in the** United States and Asia).. However, the developments at other organised relevant organised market places outside the Union should be taken into account in the monitoring before and after a possible activation of the mechanism. The actual triggers for the comparison between TTF and LNG prices should be chosen based on an analysis of the historical prices, and take into account the spread during the prices spike in August 2022.~~

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~~(23) The triggers of the market correction mechanism should make sure 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.~~

(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, 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 its damages the necessary efforts to reduce natural gas demand in ~~line~~**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.

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(25) ~~In order to allow the Commission to intervene if gas and electricity consumption should increase in reaction to the market correction event, Member States should, in addition to the existing reporting obligations on the implementation of demand reduction, report to the Commission specifically which measures they have taken to reduce gas and electricity consumption in reaction to the market correction event, with a view to the 15% gas demand reduction as provided for in Articles 3 and 5 of Council Regulation (EU) 2022/1369 and the demand reduction targets in Articles 3 and 4 of Council Regulation (EU) 2022/1854. In order to ensure that a market correction event does not reduce the incentive to pursue demand reduction, the Commission should consider proposing an adaptation of~~ **amendment to** ~~Council Regulation (EU) 2022/1369 to~~ **adapt to** ~~the new situation.~~

(26) Depending on the level of the intervention, the market correction mechanism may entail financial, contractual and of 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. A lower threshold would risk triggering the cap activation in situations where the price increases are of limited duration and therefore do not raise concerns to the same extent as the price rise observed in August 2022. At the end of December 2021 and at the beginning of March 2022, the TTF month-ahead prices spiked very high for only a couple of days and fell back almost immediately to the starting level, without tangible negative consequences for markets and consumers.

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(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 bidding limit should immediately and automatically be activated, without the need for a further decision by by the European Agency for the Cooperation of Energy Regulators ('ACER') or the Commission. To ensure that possible problems resulting from the activation are identified early on, the Commission should mandate the ECB and the European Securities and Markets Authority ('ESMA') to issue a report on possible negative effects from the mechanism on financial markets.

(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 of the TTF European Gas Spot Index, and compare the latter 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 mechanism is activated, ACER should report on a daily basis to the Commission ~~for if~~**on whether** the trigger for the activation is still met.

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(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, 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 the ECB, 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 **once activated**.

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

(32) The 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.

(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. ~~If ACER, when monitoring the development of the triggers for the mechanism, establishes that the TTF European Gas Spot Index is no longer higher than the reference price for a sufficiently stable period, the mechanism should automatically be deactivated~~. **The market correction mechanism should therefore be automatically deactivated, after one month if ~~when~~ the dynamic bidding limit is at ~~below~~ [220]EUR for a certain period. As for the activation, t**~~T~~he deactivation of the mechanism should not require any assessment by ACER or the Commission, but should happen automatically when the conditions are fulfilled.

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(34) It is of key importance that the market correction mechanism includes an effective instrument to suspend 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**~~safety ceiling~~, the **market correction mechanism** ~~safety ceiling~~ 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 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.

(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 a situation where the Commission has declared a regional or Union emergency pursuant to Article 12 of Regulation (EU) 2017/1938, and where non-market-based measures have to be additionally introduced in particular with the aim of safeguarding gas supplies to protected customers, the **activation of the** market correction mechanism should not unduly restrict the flow of gas within the internal market endangering the Union's security of gas supply, and should therefore be **immediately** suspended **by the Commission**.

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

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(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 EU, such losses may not only affect the specialised derivatives markets, but may have significant knock-on effects on other financial markets. Therefore, the Commission should immediately suspend the market correction mechanism if it jeopardises the orderly functioning of the derivatives market. In that regard, it is important that the Commission takes into account available expertise from relevant EU 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 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 and the opinion of the ECB 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 in which the Commission observes that the activation of the market correction mechanism negatively impacts existing supply contracts, the Commission should suspend it.

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(40) The design and the 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, the European Central Bank, 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.

(42) Following a market event or a suspension decision, or in the light of market and security of supply developments, it may be appropriate to review the conditions for the activation of the market correction mechanism ~~set out in Article 3(2)(a) and (b).~~ . The Council may therefore, upon a proposal from the Commission, adopt appropriate amendments to this Regulation in this situation.

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(43) The market correction mechanism is necessary and proportionate for achieving the objective of correcting excessively high gas prices at TTF. 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 plays 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 TTF 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 the day following that of its publication in the Official Journal of the European Union;

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HAS ADOPTED THIS REGULATION:

CHAPTER I – SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes a temporary market correction mechanism against excessively high gas prices **in the European Union, which do not reflect world market prices.** ~~which are unrelated to prices at other~~ **gas** ~~exchanges in the Union~~.

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 trading venue, the underlying of which is a transaction in the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V.;**

(1) 'front-month TTF derivative' means a **TTF derivative** ~~commodity derivative as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014, traded on a trading venue, the underlying of which is a transaction in the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V, and~~ whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given trading venue;

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1a) ‘quarter-year TTF derivative’ means a TTF derivative whose expiration date is the nearest among the derivatives with a three-month maturity traded on a given trading venue;

(2) ‘reference price’ means**, insofar as available,** the daily average price of the price of the LNG **price** assessments “Daily Spot Mediterranean Marker (MED)”, the “Daily Spot Northwest Europe Marker (NWE)”, **and the "Japan Korea Marker (JKM)"** ~~published~~ **administered** by ~~[~~**Platts Benchmark B.V., the Netherlands** ~~S&P Global Inc., New York]~~ and of the price of the daily price assessment carried out by ACER pursuant to Article 18 ~~to 22~~ of Council Regulation (EU) [XXXX/2022~~]~~.**]. LNG price assessments in US Dollars (USD) per Million British Thermal Units (MMBtu) are converted 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.**

(3) ‘trading venue’ means any of the following:

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

(b) ‘multilateral trading’ facility as defined in Article 4(1), point (22), of Directive 2014/65/EU;

(c) ‘organised trading facility’ as defined in Article 4(1), point (23), of Directive 2014/65/EU;

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CHAPTER II – MARKET CORRECTION MECHANISM

Article 3

Market correction mechanism

(1) To limit episodes of excessive natural gas prices which are unrelated to prices at other gas exchanges, a market correction mechanism for ~~the front month~~ TTF derivative settlement price ~~can be~~**shall** ~~be activated as~~**apply as** of 1 January 2023~~.~~

~~(2) The market correction mechanism shall be activated~~ where**ever** the following conditions are met ('market correction event')

(a) the front-month TTF derivative settlement price**, as published by ICE Endex B.V. ICE Endex), the Netherlands,** exceeds EUR **[220**~~26~~**64**~~75~~**]** for **[five** ~~ten~~**] trading days** ~~two week(s)~~ and

(b) the TTF European Gas Spot Index as published by the European Energy Exchange (EEX)**, Germany,** is EUR **[**~~58~~**35]** higher than the reference price during ~~[~~the last ~~[five~~**ten]**~~10 trading days before the end of~~ the period referred to in subparagraph (a).

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(3) **In order for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be** ~~**once such mechanism is activated.**~~ ~~**I**~~**in** case there are, based on the results of ACER monitoring pursuant to Article 4(1), concrete indications that a market correction event pursuant to Article 3(~~2~~**1**)(b) is imminent, the Commission shall **without delay** ~~request an opinion from~~ **invite** the European Central Bank ('ECB'), **the** European Securities and Markets Authority ('ESMA') and, where appropriate, from 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**.** ~~For the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be. The opinion shall also~~**The** ~~**opinion**~~ **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.~~

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(4) ACER shall, where it observes that a market correction event has occurred, based on the information it receives pursuant to Regulation (EU) No 1227/2011, Commission Implementing Regulation (EU) No 1348/2014, Articles 18 to 22 of ~~Council~~ Regulation (EU) [XXXX/2022] or based on other publicly available market information, without delay publish a notice in the Official Journal of the European Union that a market correction event has occurred ('market correction notice') and inform the Commission, ESMA and the ECB **and the Member States** of the market correction event.

(5) **As from the day after the publication of a market correction notice, o**~~O~~rders for ~~front-mont~~ 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 quarter-year TTF derivative** with prices **of [35 EUR/MWh]** ~~-~~above **the reference published by ACER on the previous day or [220 EUR], whichever is higher, [**~~2~~**64**~~75~~**]** ~~**that are due to expire in the period from the expiry date of the front-month TTF derivative to the expiry date of the quarter-year TTF derivative shall**~~may~~ not be accepted~~- as from the day after the publication of a market correction notice~~ ('**dynamic** bidding limit').

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~~(6) Member States shall notify to the Commission which measures they have taken to prevent an expansion of gas and electricity consumption in reaction to the market correction event and to reduce gas and electricity demand, with a view to **reaching** the 15% gas demand reduction as provided for in Articles 3 and 5 of Council Regulation (EU) 2022/1369 and the demand reduction targets in Articles 3 and 4 of Council Regulation (EU) 2022/1854. The notification shall be made no later than two weeks after the market correction event, unless the Commission has adopted a suspension decision pursuant to Article 5(2) in the meantime.~~

(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 ~~to adapt~~ **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 a report on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets**.**

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Article 4

Monitoring and deactivation of the market correction mechanism

(0) **Platts Benchmark B.V. shall notify to ACER every day no later than 22h00 (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)". Based on the information received, ACER shall calculate and publish on its website the daily reference price every day no later than 23h59 CET. ICE Endex shall notify to ACER every day no later than 22h00 the front-month TTF derivative settlement price. EEX shall notify to ACER every day, no later than 22h00 (CET) the TTF European Gas Spot Index.**

(1) ACER shall constantly monitor whether the condition**s** referred to in Article 3(~~2~~**1**)~~(b) is~~ **are** fulfilled, based on **the information provided by Platts Benchmark B.V. , ICE Endex and EEX,** the information it receives pursuant to Regulation (EU) No 1227/2011, ~~Commission~~ Implementing Regulation (EU) No 1348/2014 and Articles 18 ~~to 22~~ of ~~Council~~ Regulation (EU) [XXXX/2022] and on market information. ~~ACER shall communicate the results of its monitoring to the Commission at the end of every business day by no later than 18h00 CET.~~

(2) In case the **dynamic bidding limit referred to in Article 3(5) is at [220] EUR for** ~~condition referred to in Article 3(21)(b) is no longer met during~~ 10 **five** consecutive trading days before the end of the month after the market correction event, or afterwards ('deactivation event'), ACER shall without delay publish a notice in the Official Journal of the European Union and notify to the Commission and ESMA that **a deactivation event has occurred** ~~condition referred to in Article 3(21)(b) is no longer met~~ ('deactivation notice'). From the day following publication of a deactivation notice, the **dynamic** bidding limit referred to in Article 3(~~4~~**5**) shall cease to apply.

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Article 5

Suspension of the market correction mechanism

(1) **In addition to the tasks ~~-~~pursuant to ~~-Once a market correction notice has been published in accordance with~~ Article 3(4),** ESMA, the ECB, ACER, the Gas Coordination Group and ENTSOG shall constantly monitor the effects of the bidding limit on markets and security of supply **in the case of the activation of the market correction mechanism.**~~-~~

(2) On basis of ~~this~~**the** monitoring **referred to in paragraph 1**, the Commission shall, by **means of an implementing** decision, suspend the market correction mechanism at any time, ~~if~~**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 ~~continued activation of the~~ **activated** market correction mechanism

(a) jeopardises the Union's security of gas supply~~, which is notably deemed to be the case if the Commission has declared a regional or Union emergency pursuant to Article 12 of Regulation (EU) 2017/1938~~**;**

(aa) ~~or~~ may lead to any rationing of gas;

(b) occurs during a period where the mandatory demand reduction targets pursuant to Article 5 of ~~Council~~ Regulation (EU) 2022/1369 are not met at ~~EU~~**Union** level, negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of ~~Council~~ Regulation (EU) 2022/1369, or leads to an overall increase in gas consumption, 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;

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(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 an opinion of the ECB requested by the Commission for that purpose, the stability and orderly functioning of energy derivative markets;

(e) **substantially differs from** ~~takes into account~~ 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**~~published~~ by **Platts Benchmarks B.V., the Netherlands**~~S&P Global Inc., New York~~;

(f) affects the validity of existing gas supply contracts, including long-term gas supply contracts.

(2a) **The Commission shall, by means of an implementing decision, suspend the market correction mechanism at any time when a regional or a Union emergency is declared in accordance with Article 12(1) of Regulation (EU) 2017/1938, at the request, as the case may be, of one or more Memebr States that have declared national emergency.**

(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 bidding limit referred to in Article 3(~~4)~~ **5)** shall cease to apply.

(4) ACER, the ECB, ESMA, the Gas Coordination Group and ENTSOG shall assist the Commission in the tasks pursuant to Articles 3, 4 and 5. The report of ESMA and the opinion of the ECB pursuant to paragraph (2)(d) shall be issued no later than 48 hours or within the same day in urgent cases upon a request ~~from~~**by** the Commission.

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~~(5) The market correction mechanism shall apply only for as long as this Regulation is in force.~~

(6) Following a market correction event or a suspension decision, or in the light of market and security of supply developments, the ~~Council, upon a proposal from the~~ Commission~~,~~ may ~~decide~~**, where appropriate, propose an amendment** to ~~review~~**this Regulation with a view to reviewing** the conditions for the activation of the market correction mechanism set out in Article 3(~~2~~**1**)(a) and (b). ~~Before submitting such a proposal, the Commission should consult ECB, ESMA, ACER, the Gas Coordination Group, ENTSOG and other relevant stakeholders.~~

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CHAPTER III - FINAL PROVISIONS

Article 6

Entry into force and review

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union. It shall apply for a period of one year from its entry into force. By 1.11.2023 at the latest, the Commission shall carry out a review of this Regulation in view of the general situation of the gas supply to the Union, and present a report on the main findings of that review to the Council. The Commission may, based on that report, propose **where appropriate an amendment to this Regulation** to prolong the ~~validity~~ **period of application** of this Regulation.

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

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