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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 31.3.2023

on the definition of the technical details of the application of the market correction mechanism to derivatives linked to virtual trading points in the Union other than the TTF

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2022/2578, and in particular Article 9(1) thereof,

Whereas:

- (1) 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 'MCM Regulation') sets up a temporary market correction mechanism ('MCM') for orders placed for trading Title Transfer Facility (TTF) derivatives and derivatives linked to other virtual trading points ('VTPs') with maturities between month-ahead and year-ahead. This means that the MCM applies to any commodity derivative, traded on a regulated market, the underlying of which is a transaction in gas in any VTP in the Union.
- (2) Pursuant to Article 1 of the MCM Regulation, the MCM applies to orders placed for trading TTF and derivatives linked to other virtual trading points located in the Union.
- (3) The MCM regulation sets out the technical details of the application of the MCM solely with respect to orders placed for TTF derivatives, and not for orders placed for derivatives linked to other VTPs. This was due to the urgent need to apply the MCM to the TTF derivatives, commonly seen as the standard pricing proxy on European gas markets, and because the application of the MCM to orders for derivatives linked to other VTPs required additional preparation. Therefore, the MCM Regulation empowers the Commission to adopt an implementing act to define the technical details of the application of the MCM to derivatives linked to such other VTPs, namely regarding the occurrence of a market correction event and the application of a dynamic bidding limit with respect to such derivatives. The MCM Regulation also empowers the Commission to exceptionally exclude certain derivatives amongst those linked to other VTPs.
- (4) The definition of the technical details of the application of the MCM to derivatives linked to such other VTPs, as well as the possible exclusion from the scope of application of the MCM of certain derivatives amongst those linked to other VTPs, should be informed by the criteria enshrined in Article 9, paragraph 2 of the MCM Regulation, namely the liquidity and the availability of information on the prices of derivatives linked to other VTPs, and 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 and on the stability of financial markets. Such definition and possible exclusion should also be informed by the effects assessment reports by ACER and

ESMA submitted by 1 March 2023 pursuant to Article 8, paragraph 2, of the MCM Regulation.

- (5) The MCM for TTF derivatives activates when a market correction event occurs, that is, when the front-month TTF derivative settlement price, as published by ICE Endex B.V., exceeds EUR 180/MWh and is EUR 35 higher than the reference price for three working days. The MCM for derivatives linked to other VTPs in the Union should be activated at the same moment, when the same market correction event occurs. This is because of two main reasons. First, if compared to the TTF derivative, many of the derivatives linked to VTPs other than TTF are less liquid. If the MCM activation were to be based on illiquid futures, the mechanism may be vulnerable to manipulation and result in unnecessary activations or delayed activations. Second, if the market correction mechanism was to be activated for some VTPs' derivatives only, trading may shift to derivatives linked to other VTPs which could 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. This assessment is shared by ACER's assessment report, which states that also the MCM for derivatives linked to other VTPs in the Union should be activated based on the front-month TTF derivative settlement price, pursuant to Article 4(1) of the MCM regulation.
- (6) Upon the occurrence of a market correction event, the MCM regulation sets a dynamic bidding limit, according to which market operators should not accept and TTF derivatives market participants should 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/MWh above the reference price published by ACER on the previous day. This dynamic bidding limit is also appropriate for the orders for derivatives linked to other VTPs and does not require modifications. As with the TTF derivatives, a security of supply premium of EUR 35/MWh proxies the average difference between the reference price and the month-ahead futures price for a number of derivatives linked to other VTPs in summer 2022 and this reflects the costs of possible infrastructure congestions in moving gas from LNG terminal to continental Europe in other regions of the Union. Moreover, the application of the same safety ceiling across all VTPs derivatives should limit the risk of trading unduly shifting between VTPs and the risk of distorting the level playing field between different regions within the Union in attracting LNG, which could lead to fragmentation of markets inside the Union. In its assessment report, ACER agrees that the dynamic bidding limit applying to orders for TTF derivatives is also appropriate for the orders for derivatives linked to other VTPs.
- (7) The Commission is of the view that the MCM should apply to all derivatives linked to other VTPs, and that this should be subject to no exception. In their effects assessment reports, ACER and ESMA confirmed the Commission's position, namely that the inclusion of the other VTPs does not lead to significant negative effects on financial or gas markets. Both ACER and ESMA noted that the extension of the MCM to derivatives linked to other VTPs may carry limited additional benefits, that most of those derivatives lack sufficient liquidity, and that some central clearing counterparties ('CCPs') may incur additional costs to change their default management process. However, in view of the implementation of the MCM regulation, both ACER and ESMA concurred with the Commission's conclusion that the application of the MCM to all derivatives linked to other VTPs does not lead to significant negative effects on

financial or gas markets. In its assessment and in line with Article 9(2) of the MCM Regulation the Commission has notably analysed the following criteria.

- (8) First, information on the prices of derivatives linked to other VTPs covered by this implementing act is readily available as these derivatives are traded on regulated markets which regularly provide information on prices.
- (9) Second, the lack of liquidity of some derivatives linked to other VTPs does not lead to significant implementation problems in practice, as the Commission has deliberately chosen the highly liquid TTF month-ahead futures as a trigger for the activation of the MCM for other VTPs.
- (10) Third, the extension to the derivatives linked to other hubs is unlikely to have any significantly negative impact on security of supply. This is because the main instrument to prevent security of supply problems, the ‘premium’ included in the bidding limit (top up vis-à-vis LNG market prices, or ‘safety ceiling’, as referred to in recital 19 of the MCM Regulation) will apply to *all* derivatives and ensure that the MCM does not impair the Union’s ability to attract LNG. The extension is also unlikely to have any significantly negative impact on intra-EU gas flows because of the temporary application of the MCM and the fact that the gas flows within the Union are the outcome of a complex set of positions that result not only from derivative contracts, but also from many other impacts, which are not influenced by the MCM, such as long-term supply commitments, short-term and spot trades, and transactions concluded over-the-counter.
- (11) Finally, no significant impact on the stability of financial markets is expected from the MCM extension, because more than 90% of natural gas derivatives traded on regulated markets in the Union are TTF derivatives. Regarding the potential additional costs that some CCPs may face to change their default management process, ESMA noted that at the time of the publication of its effects assessment report, no CCP has provided information that significant changes may be required because of the MCM regulation.
- (12) In light of the above, the Commission concludes that no derivative linked to other VTPs should be exceptionally excluded from the scope of the MCM application.
- (13) In order to preserve the sound functioning of derivatives markets and to allow market participants to adequately manage their risk exposures, it is of paramount importance that this Regulation does not interfere with contracts concluded before the entry into application of this Regulation. For the same reason, market participants should be able to effectively offset positions in derivatives linked to other VTPs opened before the application of this Regulation. 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 contracts in derivatives linked to other VTPs concluded before the entry into force of this Regulation. Moreover, CCPs play a key role in assuring the orderly functioning of markets for TTF derivatives by mitigating counterparty risk. It is equally important to ensure that the extension of the mechanism to other VTPs does not put CCPs clearing the relevant instruments at risk in case of default of a clearing member. Those CCPs should therefore be able to implement default management processes without being subject to the bidding limit. To that end, the dynamic bidding limit should not apply to trades executed as part of a default management process organised by a CCP.

- (14) There is no conceivable reason not to apply other design features of the MCM to derivatives linked to other VTPs. This includes the rules disciplining the suspension of the MCM. It should be noted that, pursuant to Article 4(8), in case of concrete indications that a market correction event is imminent, the activation of the MCM should be suspended if this would cause unintended market disturbances. Equally, pursuant to Article 6, the MCM should be suspended at any time if the dynamic safety ceiling were to lead to serious market disturbances, affecting the security of supply, the mandatory demand reduction targets, or the stability and orderly functioning of energy derivative markets, the intra-Union flows of gas, the differences between gas market prices within the Union or versus other areas in the world substantially, or the validity of existing gas supply contracts. The assessment of unintended market disturbances should consider the impact on the European market as a whole and also specifically on each VTP to which the MCM applies; in case of such unintended market disturbance, the suspension decision would apply according to Article 6 of the MCM Regulation.
- (15) The volatile and unpredictable situation of the natural gas market makes it important to ensure that the MCM can be applied to derivatives linked to other VTPs as soon as possible, if the conditions justifying its activation are met. Therefore, the technical details of the application of the MCM to derivatives linked to other VTPs should be defined by 31 March 2023. However, in order to provide the companies operating the VTPs in the Union other than the TTF with the time to make the necessary adjustments, this implementing act should apply only from 1 May 2023.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the MCM Committee.

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation defines the technical details of the application of the market correction mechanism to derivatives linked to virtual trading points ('VTPs') in the Union other than the Title Transfer Facility (TTF) Virtual Trading Point in accordance with Article 9(1) of 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.

Article 2

Definitions

For the purpose of this Regulation, the definitions in Article 2 of Regulation (EU) 2022/2578 apply.

The following definitions also apply:

- (1) 'front-month derivative linked to other VTPs' means a derivative linked to other VTPs whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given regulated market;
- (2) 'front-year derivative linked to other VTPs' means a derivative linked to other VTPs whose expiration date is the nearest among the derivatives with twelve months maturity traded on a given regulated market.

Article 3

Application of the MCM to other VTPs

This Regulation applies to orders placed for trading derivatives linked to VTPs located in the Union, other than TTF.

Article 4

Market correction event in relation to other VTPs in the Union

- (1) A market correction event related to derivatives linked to other VTPs shall occur when the conditions defined in Article 4(1) of Regulation (EU) 2022/2578 are met.
- (2) The dynamic bidding limit pursuant Article 4 paragraphs (5) and (7) of the MCM Regulation shall apply to derivatives linked to other VTPs that are due to expire in the period from the expiry date of the front-month derivatives to the expiry date of the front-year derivatives.
- (3) Market operators on the market for derivatives linked to other VTPs and market participants in such derivatives shall monitor the website of ACER on a daily basis.

Article 5

Suspension and deactivation of the MCM in relation to derivatives linked to other VTP

This suspension and deactivation of the MCM with respect to derivatives linked to other VTPs shall take place in accordance with Article 5 and 6 of the MCM Regulation.

Article 6

Grandfathering

This Regulation shall not apply to the following:

- (a) contracts for derivatives linked to other VTPs concluded before the date of entry into force of this Regulation;
- (b) buying and selling of derivatives linked to other VTPs in order to offset or reduce contracts for derivatives linked to other VTPs concluded before the date of entry into force of this Regulation;
- (c) buying and selling of contracts for derivatives linked to other VTP as part of a CCP default management procedure, including OTC trades registered in the regulated market for clearing purposes.

Article 7

Entry into force

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 May 2023.

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

Done at Brussels, 31.3.2023

For the Commission
The President
Ursula VON DER LEYEN