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Subject:	Proposal for a COUNCIL REGULATION Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks

Delegations will find in the Annex the text of the proposal for a Council Regulation enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks following the agreement on the context at the Extraordinary Energy Council on 24 November 2022. The text in the Annex is subject to lawyer-linguist revision.

2022/0339 (NLE)

COUNCIL REGULATION (EU) 2022/...

of...

enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks

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,

Whereas:

- (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 the gas supply and the Russian Federation's manipulation of the markets through intentional disruptions of gas flows have led to skyrocketing energy prices in the Union, endangering not only the economy of the Union, but also seriously undermining security of supply.

- (2) This requires a strong and coordinated response from the Union, to protect its citizens and its economy against excessive and manipulated market prices and to make sure that gas flows to all consumers in need across borders, also in situations of gas scarcity. To lower the dependency on supplies of natural gas from the Russian Federation and to bring excessive prices down, a better coordination of gas purchases from external suppliers is crucial.
- (3) Article 122(1) of the Treaty on the Functioning of the European Union enables the Council to decide, on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate in the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. The high risk of a complete halt of Russian gas supplies and the extreme energy price increase undermining the Union's economy constitute such severe difficulties.
- (4) The Commission announced in its Communication of 18 May 2022 entitled 'REPowerEU plan the setting up of an EU Energy Platform¹ together with the Member States for the common purchase of gas, Liquefied Natural Gas (LNG) and hydrogen. This announcement was endorsed by the European Council of 30 and 31 May 2022. As part of the REPowerEU Plan, the Commission also presented the strategy for an EU external energy engagement², which explains how the Union supports a global, clean and just energy transition to ensure sustainable, secure and affordable energy, including by diversifying the Union's energy supply, in particular by negotiating political commitments with existing or new gas suppliers to increase gas deliveries and thus to replace Russian gas deliveries to Europe.

¹ COM(2022) 108 final.

² JOIN(2022) 23 final.

- (5) The EU Energy Platform can play a pivotal role in seeking mutually beneficial partnerships that contribute to security of supply and lead to lower import prices of gas purchased from third countries, making full use of the Union's collective weight. Enhanced international outreach to gas suppliers (both pipeline and LNG) as well as the green hydrogen suppliers of the future is essential for this purpose. In particular a much stronger coordination with and among Member States via-à-vis third countries via the EU Energy Platform would ensure the Union's collective weight is more effective.
- (6) In so far as a situation of severe difficulties in ensuring security of supply persists, joint purchasing should help to ensure more equal access for undertakings across Member States to new or additional gas sources and help to ensure lower prices than might otherwise have applied to those purchasing the gas through the service provider individually to the benefit of final consumers.
- (7) Joint purchasing could result in granting a more beneficial treatment or support to the supply of renewable gases such as biomethane and hydrogen, insofar as they can safely be injected into the gas system, and to the supply of gas which would otherwise be vented or flared. In the absence of a formal legal requirement in any relevant jurisdiction, undertakings concluding contracts pursuant to this Regulation will be able to use the UN Oil and Gas Methane Partnership 2.0 Standard to measure, report and verify methane emissions along the supply chain to the European Union.

- (8) The new mechanism developed under this Regulation should consist of two steps. As a first step, natural gas undertakings or undertakings consuming gas established within the Union would aggregate their gas demand through a service provider, contracted by the Commission. This would allow gas suppliers to make offers on the basis of large aggregated volumes, instead of many smaller offers of purchasers approaching them individually. In a second step, natural gas undertakings or undertakings consuming gas established within the Union may conclude gas purchase contracts, individually or in a coordinated manner with others, with natural gas suppliers or producers that have matched the aggregated demand.
- (9) As a situation of severe difficulties in ensuring security of supply persists, demand aggregation and joint purchasing should help to ensure more equal access for undertakings across Member States to new or additional gas sources and help to ensure lower prices than might otherwise have pertained for those purchasing the gas through the service provider to the benefit of final consumers. A first reference to the possibility of a very limited form of joint purchasing of gas for balancing purposes is already included in the Commission's proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen³. However, the proposal dates from a time before the Russian Federation's military aggression against Ukraine; furthermore, no detailed concept was included in the proposal, which only concerned the very specific needs of transmission system operators for balancing energy. As an immediate and much more comprehensive solution to the problem of missing structures for coordinated gas purchasing is needed, it is appropriate to propose a temporary fast-track solution.

³ See Article 64 of the proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

- (10) Joint purchasing could, therefore, strengthen Union solidarity in purchasing and distributing gas. In a spirit of solidarity, joint purchasing should support particularly those undertakings that were previously purchasing gas only or mainly from Russian suppliers by helping them to obtain supplies from alternative natural gas suppliers or providers in advantageous conditions, as a result of the demand aggregation and joint purchasing.
- (11) The demand aggregation and joint purchasing should help to fill up gas storage facilities in the current emergency situation, should most of the European gas storage facilities be depleted after the upcoming winter. Moreover, it should help to purchase gas in a more coordinated manner in the spirit of solidarity.
- (12) It is therefore necessary to urgently establish joint purchasing swiftly and on a temporary basis. This would allow the rapid establishment of a service provider, which would enable the aggregation of demand. The service provider contracted by the Commission would have only some basic functionalities and the process it organises only has mandatory elements regarding participation in aggregating demand but would not yet include a mandatory coordination of the contractual conditions or an obligation to submit binding offers to purchase gas through it.

- (13) No requirement should be imposed on natural gas undertakings or undertakings consuming gas to buy gas through the service provider, by concluding gas supply contracts or memoranda of understanding with the gas suppliers or producers which have matched the aggregated demand. However, natural gas undertakings or undertakings consuming gas are strongly encouraged to explore forms of cooperation which are compatible with competition law, and to make use of the service provider to fully reap the full benefits of the joint purchasing. A mechanism could, therefore, be developed between the service provider and participating undertakings, setting out the main conditions under which participating undertakings enter into a commitment to buy the gas matching aggregated demand.
- (14) It is important for the Commission and the Member States to have a clear picture of intended and concluded gas supply contracts across the Union, in order to assess whether the objectives of security of supply and energy solidarity are met. Therefore, undertakings or authorities of Member States should inform the Commission and the Member States in which those undertakings are established of large planned gas purchases above 5 TWh/year. This should in particular apply to basic information regarding new or renewed contracts. The Commission should be allowed to issue recommendations to the natural gas undertakings or authorities of the relevant Member States, notably where further coordination could improve the functioning of joint purchasing or where the launch of a tender for the purchase of gas or planned gas purchases may have a negative impact on security of supply, the internal market or energy solidarity. The issuing of the recommendation should not prevent in the meantime natural gas undertakings or authorities of the relevant Member States from proceeding with the negotiations.

- (15) Member States should assist the Commission in assessing whether the relevant gas purchases enhance security of supply in the Union and are compatible with the principle of energy solidarity. Therefore, an ad hoc Steering Board composed of representatives of the Member States and the Commission should be established to help coordinate this assessment.
- (16) The process of aggregating demand for the purpose of joint purchasing should be carried out by a suitable service provider. Therefore, the Commission should contract a service provider through a procurement process in accordance with the Regulation 2018/1046⁴, which can develop an appropriate IT tool and organise the process of aggregation of demand. Fees could be collected from participants of the joint purchasing to cover operating costs.
- (16a) When allocating access rights to the supply among undertakings aggregating demand, the service provider should apply methods that would not discriminate between smaller and larger participants of the demand aggregation and should be fair regardless of gas volumes requested by individual undertakings. For instance, the service provider should allocate access rights in proportion to the gas volumes that individual undertakings declared to buy for the given delivery time and destination. This might be relevant in cases when supply does not sufficiently cover demand in the Union market.

⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1–222.

- (17) The aggregation of demand and the purchasing of natural gas are complex processes, which need to take into account various elements, which are not limited to prices, but also to volumes, delivery points and other parameters. Therefore, the selected service provider should have the necessary level of experience in managing and aggregating purchases of natural gas or associated services at the Union level. Also, the aggregation of demand and the purchasing of natural gas is a crucial element in ensuring the security of the gas supply and safeguarding the principle of energy solidarity in the Union.
- (17a) The protection of commercially sensitive information is of utmost importance when information is made available to the Commission, the Steering Board Members or the service provider setting or managing the IT tool for demand aggregation. The Commission should therefore apply effective tools to protect this information against any unauthorised access and cybersecurity risks. Any personal data that might be processed as part of demand aggregation and joint purchasing should be processed in accordance with the Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 of the European Parliament and of the Council*.
- (18) Joint purchasing could take different forms. It could take place through tenders or auctions organised by the service provider that aggregates the demand of natural gas undertakings and undertakings consuming gas, in order to potentially match it with offers from natural gas suppliers or producers, through the use of an IT Tool.

- (19) One of the objectives of aggregation of demand and joint purchasing is to reduce the risk of unnecessary price increases driven by companies bidding for the same tranche of gas. Ensuring that the full benefits of joint purchasing reach final consumers ultimately depends on the decisions of the undertakings themselves. Large companies should be restrained even if they can sell the gas at higher prices. Undertakings benefiting from lower prices for the purchase of gas from joint purchasing should pass those benefits to the consumers. The pass-through of lower prices would be an important indicator for the success of joint purchasing, as it is crucial for consumers.
- (19a) Demand aggregation and joint purchasing should be open to natural gas undertakings and undertakings consuming gas established within the Union. From joint purchasing may benefit in particular also industrial consumers, which use gas intensively in their production processes, such as producers of fertilizers, steel, ceramic and glass by enabling them to pool their demand, to contract gas and LNG cargoes, and to structure supply according to their particular needs. The process of organizing the joint purchasing should have transparent rules on how to join it and ensure its openness.
- (19b) Opening of demand aggregation and joint purchasing also for Western Balkans and the three associated Eastern Partners is a declared political aim of the Union. Therefore, undertakings established in the Energy Community Contracting Parties should be allowed to participate in the demand aggregation and joint purchasing established by this Regulation provided that necessary arrangements are in place.

- (20) It is necessary to lower the dependency of the Union on gas supplied from the Russian Federation. Undertakings controlled by the Russian Federation or any Russian natural or legal person, or undertakings targeted by Union restrictive measures established on the basis of Article 215 TFEU, or owned or controlled by any other natural or legal person, entity or body subject to such restrictive measures should therefore be excluded from participating in joint purchasing as well as from organizing the process of joint purchasing.
- (21) In order to prevent the objective of diversification from the gas supplied from the Russian Federation is put at risk or jeopardized by participation in demand aggregation and joint purchasing of undertakings or other bodies controlled by Russian natural or legal persons or undertakings established in the Russian Federation, participation of those entities should also be excluded.

- (21a) Moreover, natural gas originating in the Russian Federation should not be subject to joint purchasing. For this purpose, natural gas entering the Member States or Energy Community Contracting Parties through specific entry points should not be subject to joint purchasing since natural gas originating in the Russian Federation is likely to enter the Member States or Energy Community Contracting Parties through those entry points.
- (22) Participants of the joint purchasing of gas may need financial guarantees, if any of the undertakings would not be able to pay for the final amount contracted. Member States or other stakeholders might provide financial support, including guarantees, to participants in joint purchasing. Providing financial aid should take place in accordance with Union State aid rules, including the Temporary Crisis Framework, where applicable.
- (23) Filling gas storage facilities is vital to ensure security of supply in the Union. Due to the drop in supplies of natural gas from the Russian Federation, Member States may face challenges in filling the storage facilities to ensure the security of the gas supply for winter 2023/2024 as prescribed by Regulation (EU) 2022/1032⁵. Using the demand aggregation possibility of the service provider could help the Member States to diminish those challenges. It could, within the limits of competition law, notably support coordinated filling and storage management in view of the next filling season, avoiding the excessive price peaks caused, inter alia, by uncoordinated storage filling.

⁵ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 30.6.2022, p. 17.

- (24) In order to ensure that joint purchasing contributes to filling gas storage facilities in line with the intermediary targets set out in Regulation (EU) 2022/1032, Member States should take appropriate measures to ensure that natural gas undertakings under their jurisdiction use the process organised by the service provider as one possible means to meet the filling targets.
- (25) Regulation (EU) 2022/1032 requires that Member States fill their storage facilities up to 90% by November 2023. This target is higher than the target for November 2022 (80%). Joint purchasing could help the Member States meet this new target. In doing so the Member States should require domestic undertakings to use the service provider to aggregate demand with sufficiently high volumes of gas in order to decrease the risk that storage facilities cannot be filled. Member States should require that volumes equivalent to at least 15% equivalent to around 13.5 bcm for the EU as a whole, of their storage filling target volume for next year be included by their companies in the demand aggregation process. Member States without underground storage in their territory should participate in the demand aggregation process with volumes equivalent to 15 % of their burden sharing obligation under Article 6 c of Regulation (EU) 2017/1938.
- (25a) Demand aggregation and joint purchasing does not prescribe the management of gas storages, including strategic gas storages, and is without prejudice to the Regulation (EU) 2022/1032 and Regulation (EU) 2017/1938.

- (26) In order to effectively use the joint purchasing and to conclude gas agreements with suppliers offering gas to the service provider, undertakings should be able to coordinate conditions of the purchase, such as volumes, gas price, delivery points and time, within the limits of Union law. Natural gas undertakings participating in a gas purchasing consortium should, however, ensure that the information directly or indirectly exchanged is limited to what is strictly necessary to achieve the objective pursued, in line with Article 101 TFEU. In addition, the transparency and governance provisions in this Regulation should ensure that contracts of the buying consortium do not endanger security of supply or jeopardise energy solidarity, in particular where Member States are directly or indirectly involved in the purchase process.
- (27) Whilst more than one gas purchasing consortium may be formed, the most effective option would be to form a single gas purchasing consortium encompassing as many companies as possible to aggregate demand through the service provider and designed in a way that is compatible with Union competition law. Additionally, joining forces into a single gas purchasing consortium should bring strengthened Union negotiation power into the market and enable advantageous conditions that would hardly be achieved by smaller Union undertakings or in the case of fragmented action.

- (28) The set-up and implementation of gas purchasing consortia under this Regulation should be done in compliance with the Union’s competition rules, as applicable in light of the current exceptional market circumstances. The Commission has indicated that it is ready to accompany companies in the design of such a gas purchasing consortium and to issue a decision, pursuant to Article 10 of Regulation 1/2003, on the inapplicability of Articles 101 and 102 TFEU if relevant safeguards are incorporated and respected. The Commission has also stated its readiness to provide informal guidance to the extent that the participating undertakings in any other consortia face uncertainty with regard to the assessment of one or more elements of their joint purchasing arrangement under the Union competition rules.
- (30) In accordance with the principle of proportionality, the measures with respect to demand aggregation and joint purchasing do not go beyond what is necessary to achieve their objective, as they will be implemented on a voluntary basis, with only a limited exception as regards mandatory participation in demand aggregation for the purpose of filling gas storage facilities, and private undertakings will remain parties to the contracts for gas supply established under the joint purchasing.

(31) In order to optimise the LNG absorption capacity of the Union's LNG terminals and the usage of storage facilities, enhanced transparency arrangements and an organised market facilitating secondary trade in gas storage capacities and capacities of LNG facilities are necessary, similar to those existing for transport of gas via pipelines. This is particularly important in times of emergency and changes in gas flows from pipeline gas from the Russian Federation to LNG. The Commission proposal to revise the Gas Regulation of the Hydrogen and Gas Market Decarbonisation Package⁶ contains provisions to this effect. Frontloading those provisions as part of the crisis response is crucial to use the LNG terminals and gas storage facilities with the necessary transparency and more efficiently. Regarding a pan-European transparency platform, it should be possible for Member States to use the existing Union's transparency platforms for LNG terminals and gas storage facilities to ensure a swift implementation of this Regulation. As regards a secondary booking platform, the LNG terminals and storage operators should be able to make use of their existing platforms by enriching them with the necessary features.

⁶ Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen COM/2021/803 final; proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

- (32) In relation to long-term bookings of gas transportation capacities, the existing congestion management rules provide for “use-it-or-lose-it” procedures. Those procedures, however, are slow as they take at least six months before they show effect, and require the heavy administrative procedures of National Regulatory Authorities. Therefore those rules should be strengthened and simplified in order to provide the gas system operators with tools to react rapidly to changes in gas flows and to address possible congestions. In particular, the new rules could accelerate marketing of unused long-term capacities which would otherwise remain unutilised, rendering the use of pipelines more efficient.
- (33) The transmission system operators should analyse the available information on the usage of the transmission network by the network users and should determine whether there is underutilisation of the contracted firm capacity. Such underutilisation should be defined as the situation where a network user has used or offered on the market on average less than 80% of the booked firm capacity in the last 30 days. In case of underutilisation, the transmission system operator should publish the available capacity for the next monthly auction and subsequently auction it. Alternatively, the national regulatory authorities should be able to decide to use a firm day ahead use-it-or-lose-it mechanism instead. In this latter case, the mechanism should apply to all interconnection points, whether congested or not.

- (33a) Companies purchasing gas or offering to deliver gas to predefined destinations via joint purchasing should secure transport capacities from the points of delivery of gas to its destination. The applicable internal market rules, including the gas Network Codes, apply to help in securing the transport capacities. The national regulatory authorities, transmission system operators, LNG and gas storage operators as well as booking platforms should explore possibilities how to improve the infrastructure usage in affordable manner by exploring the possibility for development of new transport capacity products linking intra-EU interconnection points, LNG facilities and gas storage facilities while respecting applicable internal market rules, in particular the Commission Regulation (EU) 2017/459.
- (33b) While the extraordinary crisis circumstances lead to changes of flow patterns in the European gas networks, resulting in extraordinarily high congestion rents at certain interconnection points in the Union, some flexibilities could be found in dialogue with the relevant regulatory authorities of the impacted Member States under the existing rules, if appropriate with the facilitation of the Commission.
- (34) The invasion of Ukraine by the Russian Federation has led to major uncertainties and disruptions in the European natural gas markets. As a result, those markets have for the past months reflected the uncertainty on the supply, and has translated the resulting market expectation to extremely high and volatile natural gas prices. This has in turn put additional pressure on market participants and undermined the smooth functioning of the Union energy markets.

- (35) Directive 2014/65/EU of the European Parliament and of the Council⁷ sets out rules to ensure the proper functioning of trading venues, on which energy-related commodities derivatives are also traded. That Directive provides that Member States are to require a regulated market to have mechanisms in place to guarantee fair and orderly functioning financial markets. However, such mechanisms are not intended to set a limit on the intra-day evolution of prices and have failed to prevent the episodes of exceptional volatility observed in the gas and electricity derivatives markets.
- (36) Given the difficulties faced by market participants in the trading venues on which energy-related commodity derivatives are traded, and the urgency to ensure that energy derivatives markets keep fulfilling their role in providing for the hedging needs of the real economy, it is appropriate to require trading venues on which energy-related commodity derivatives are traded to set up temporary intra-day volatility management mechanisms to apprehend excessive price movements more efficiently. In order to ensure that the mechanism applies to the most relevant contracts, the intra-day volatility management mechanism should apply to energy-related derivatives the maturity of which does not exceed 12 months.

⁷ 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).

- (37) Trading venues offering energy-related commodity derivatives often admit for participation various energy firms from all Member States. Such energy firms rely heavily on derivatives traded on such trading venues to ensure crucial supplies of gas and electricity across the Union. Excessive price movements occurring on energy-related commodity derivatives trading venues therefore affect the operation of energy firms across the whole Union, ultimately also adversely affecting end-consumers. Therefore, in a spirit of solidarity between Member States, coordination of the implementation and application of the intra-day volatility management mechanism should be undertaken, to ensure that operators essential for the security of the energy supply in all Member States benefit from safeguards against large price movements that are detrimental to the continued operation of their business, which would also be detrimental to the end-consumers.
- (38) The intra-day volatility management mechanism should ensure that excessive movements in prices within a trading day are prevented. The mechanism should be based on the observed market price at regular intervals. Given the wide diversity of instruments in energy derivatives markets and the peculiarities of the trading venues associated with such instruments, the intra-day volatility management mechanisms should be adapted to the specificities of those instruments and markets. Therefore, price limits should be set up by trading venues taking into account the specificities of each relevant energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.
- (38a) When determining the opening price for the purpose of setting the first reference price in a trading day, the trading venue should rely on the methodology it normally applies to determine the price at which a specific energy-related commodity derivative first trades upon the start of the trading day. In determining the opening price after any interruption of trading that might occur during the trading day, the trading venue should apply the methodology it deems most appropriate to ensure that orderly trading resumes.

- (39) Trading venues should be able to implement the intra-day volatility management mechanism either by integrating it into their existing circuit breakers already established in accordance with Directive 2014/65/EU, or as an additional mechanism thereto.
- (40) In order to ensure transparency in the functioning of the intra-day volatility management mechanism that they implement, the trading venues should without undue delay make public a description of its general features for whenever they apply a modification. However, to safeguard fair and orderly trading, the trading venues should not be required to publish all the technical parameters of the mechanism they put in place.
- (41) Where the information collected by the European Securities and Markets Agency ('ESMA') about the implementation of the volatility management mechanism by energy-related commodity derivatives trading venues in the Union show that further consistency of implementation of the mechanism is needed to ensure more efficient management of excessive price volatility across the Union, the Commission should be able to specify uniform conditions of implementation of the intra-day volatility management mechanism, such as the frequency at which the price boundaries are renewed, or the measures to be taken if trading moves outside those price boundaries. The Commission should be able to take into account the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.

- (42) In order to give enough time to trading venues to robustly implement the intra-day volatility management mechanism as specified in this Regulation, trading venues should be granted until 31 January 2023 to set up the intra-day volatility management mechanism. In order to ensure that trading venues are capable of dealing with excessive price movements quickly even before that mechanism is set up, they should have in place a preliminary mechanism that can broadly achieve the same objective as the intra-day volatility management mechanism.
- (43) The obligations and restrictions imposed on trading venues and traders by this measure do not go beyond what is necessary in order to allow energy companies to continue participating in gas and electricity markets and meet their hedging needs, thereby contributing to the security of the energy supply for final consumers.
- (44) In order to ensure an efficient application of the intra-day volatility management mechanism, competent authorities should supervise its implementation by trading venues, and report regularly to ESMA on such implementation. In order to ensure a consistent implementation of the intra-day volatility management mechanism, competent authorities should also ensure that divergences in the implementation of the mechanism by trading venues are duly justified.
- (45) To address potential divergences in the application of the intra-day volatility management mechanism between the Member States, and on the basis of the reports submitted by competent authorities, ESMA should coordinate the action of the competent authorities of the Member States, and document any divergences observed in the way the intra-day volatility management mechanism is implemented by trading venues across jurisdictions in the Union.

- (46) Given the unprecedented reduction of the natural gas supply from the Russian Federation and the persisting risk of further sudden supply disruptions, the Union faces the urgent need to diversify its gas supplies. However, the LNG market for Europe is still emerging and it is difficult to assess the accuracy of prices that prevail in this marketplace. In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries to the Union, the European Agency for the Cooperation of Energy Regulators (ACER) should collect all the LNG market data that are necessary to establish a daily LNG price assessment.
- (47) This price assessment should be undertaken based on all transactions pertaining to LNG deliveries to the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023, bids and offer prices for LNG deliveries to the Union. The daily publication of this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices. In view of the urgency of the measure, the first publication of the LNG price assessment should take place no later than two weeks after the entry into force of this Regulation.

- (48) The current empowerments vested on ACER by Regulation (EU) No 1227/2011 of the European Parliament and of the Council⁸ and Commission Implementing Regulation (EU) No 1348/2014 implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011⁹ (hereinafter together referred to as ‘REMIT’) do not suffice to create a complete and comprehensive dataset of all LNG deliveries into the Union. However, such a comprehensive and complete dataset for daily price assessment is necessary for the Union to manage, in a spirit of solidarity, its procurement policies for international LNG imports, in particular during the on-going crisis situation. Relevant data and information on LNG contracts are also necessary to ensure monitoring of price developments as well as perform data quality control and quality assurance. This ad hoc instrument should allow ACER to collect all market data that is required to establish a comprehensive and representative assessment of the price of LNG deliveries to the Union.
- (49) Although the establishment of a daily LNG price assessment and LNG benchmark on a permanent basis should at a later stage be included in a more comprehensive revision of the REMIT legal framework, the on-going crisis situation requires urgent action already now to address the immediate situation of severe difficulties in the supply and accurate pricing of LNG deliveries to the Union on a temporary basis until such revision of the REMIT legal framework can be adopted in accordance with the ordinary legislative procedure.
- (50) In order to immediately increase price transparency and planning security in the LNG import market, it should be specified that the relevant dataset should comprise both information on the price and quantity of completed LNG transactions, prices and quantities of bids and offers pertaining to LNG deliveries into the Union, as well as the price formula in the long-term contract from which the price is derived, if relevant.

⁸ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency Text with EEA relevance (OJ L 326, 8.12.2011, p. 1)

⁹ Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ L 363, 18.12.2014, p. 121)

- (51) All market participants subject to a reporting obligation should be defined as those engaged in either the purchase or sale of LNG cargoes destined for delivery into the Union. Those LNG market participants should be subject to the obligations and prohibitions applying to market participants according to REMIT.
- (52) ACER, in cooperation with the Commission, should have a broad mandate to specify the quality and the substance of the market data it collects to establish a daily price assessment for LNG deliveries into the Union. It should also enjoy broad discretion in the choice of its preferred transmission protocol. In order to achieve the highest possible quality in the market data to be reported, ACER should be empowered to specify all the parameters of the market data that should be reported to it. Such parameters should include, without being limited to, the reference units in which price data is reported, the reference units in which quantity data is reported, the forward tenors of transaction or pre-transaction bid and offer data, as well as the transmission protocols to be used to convey the required data to ACER.
- (53) ACER should also set out the methodology it employs to provide a daily LNG price assessment and LNG benchmark, as well as the process for a regular review of this methodology.
- (54) The price assessment published under this Regulation should provide more transparency to Member States and other market participants on the prevailing price of LNG imports to Europe. More price transparency should in turn allow Member States and private entities domiciled in the Union to act in a more informed and coordinated manner when purchasing LNG on global markets and in particular, when using the service provider. More coordination in purchasing LNG should enable Member States to prevent outbidding each other or bidding prices that are not in line with the prevailing market price. Therefore, price assessments and benchmark spreads published under this Regulation are crucial in bringing about more solidarity between Member States in procuring limited LNG supplies.

- (55) The obligation on market operators to provide ACER with information on LNG transactions is necessary and proportionate to achieve the objective of enabling ACER to establish an LNG benchmark, in particular as it is aligned with market operators' existing obligations under REMIT and ACER will keep sensitive business information confidential.
- (55a) In addition to the circuit breaker and the LNG benchmark other interventions are available including a temporary dynamic price corridor, as requested by the European Council in its conclusions from October 2022, taking into account the following safeguards: 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.
- (59) Regulation (EU) 2017/1938 already provides the possibility for Member States, during an emergency, to prioritise the gas supply to certain critical gas-fired power plants, given their importance to ensuring the electricity security of supply and avoiding grid imbalances. The critical gas-fired power plants and associated gas volumes may have an important impact on the gas volumes available for solidarity in an emergency. In that context, Member States should, by way of derogation from Article 13(1), (3) and (8) of Regulation (EU) 2017/1938, be, temporarily, able to request emergency solidarity measures also when they are not able to secure those critical gas volumes necessary to ensure the continuation of electricity production in critical gas-fired power plants. For the same reason, Member States providing solidarity should also be entitled to ensure that supplies to their solidarity protected customers or other essential services, such as district heating, and the operation of their critical gas-fired power plants are not endangered when providing solidarity to another Member State.

(60) A maximum limit of the critical gas volumes needed in each Member State to preserve the security of the electricity supply should be established so as to avoid unnecessary or abusive solidarity requests or undue limitations to solidarity provided to a Member State in need. The methodology used in the European Network of Transmission System Operators for Electricity ('ENTSO-E') Winter Outlook provides a basis identifying critical gas volume for electricity security of supply and for setting such limits. The critical gas volumes calculated by ENTSO-E reflect the volumes of gas absolutely needed for ensuring pan-European electricity adequacy using all market resources, always considering gas to be the last in the order of merit. The ENTSOE methodology is based on a large sample of worst case climate and forced outages scenarios. The fact that the ENTSOE methodology does not take into account all combined heat and power does not prevent Member States from considering district heating installations of protected customers as protected pursuant to the definition of Regulation (EU) 2017/1938. Member States for which the electricity generation relies exclusively on LNG deliveries with no significant storage capacities, critical gas volumes should be adapted accordingly. The critical gas volume can be lower than the historic level of gas consumed for electricity generation since electricity adequacy can be provided by other means, including by providing supplies between Member States.

- (60a) This however does not exclude that actual minimum gas volumes required by a Member State requesting solidarity or a Member State providing solidarity could be higher than the values modelled by ENTSO-E to avoid an electricity crisis. In such cases, the Member State requesting solidarity or providing solidarity should be able to exceed the maximum values set out in this Regulation if it can justify this is necessary to avoid an electricity crisis, such as cases that require to call upon Frequency Restoration Reserves and alternative fuels, or in exceptional scenarios which were not taken into account in the ENTSOE Winter Outlook, notably considering the hydrological levels or unexpected developments. Critical gas volume for electricity security of supply by definition includes all the gas needed to ensure a stable electricity supply, and therefore includes the electricity required to produce and transport gas as well as crucial sectors of critical infrastructure and installations crucial for the functioning of military, national security and humanitarian aid services.
- (61) The restrictions imposed on market operators by the extension of solidarity protection to critical gas volumes are necessary to ensure security of the gas supply during a situation of reduced gas supply and increased demand during the winter season. They build on existing measures laid down in Regulations (EU) 2022/1369 and (EU) 2017/1938 respectively, aiming at making those measures more effective under the current circumstances.
- (61a) This regulation is without prejudice to the freedom of the Member States to take into account the potential long-lasting damage to industrial installations when prioritising the demand that should be reduced or curtailed to be able to provide solidarity to another Member State.

- (62) Certain customers, including households and customers providing essential social services, are particularly sensitive to the negative effects of gas supply disruptions. For this reason, Regulation (EU) 2017/1938 introduced a solidarity mechanism between Member States to mitigate the effects of a severe emergency within the Union and ensure that gas can flow to solidarity-protected customers. However, in certain cases, the use of gas also by protected customers could be considered as non-essential; the reduction of this type of use which clearly goes beyond what is needed would not undermine the objectives set out in Regulation (EU) 2017/1938, in particular as the missing gas consumed for non-essential purposes could lead to severe harm in other private or commercial sectors. Member States should therefore have the possibility to achieve gas savings also by reducing the non-essential consumption of protected customers under specific circumstances, where such reduction is physically feasible without affecting essential uses. However, any reduction measures taken by the Member States should strictly be limited to non-essential consumption and by no means reduce the basic use of protected customers nor limit their ability to heat their homes adequately.
- (63) Member States and their competent authorities should be free to determine the applicable reduction measures and the activities corresponding to non-essential consumption, such as outdoor heating, the heating of residential swimming pools and other complementary residential facilities. By having the possibility to limit non-essential consumption, Member States should be able to strengthen the safeguards and ensure that gas is being supplied to other essential sectors, services and industries, enabling them to continue their operation during a crisis.

- (64) Any measure to reduce non-essential consumption of protected customers should be necessary and proportional, applying particularly in situations of a declared crisis pursuant to Article 11(1) and Article 12 of Regulation (EU) 2017/1938 or of a Union alert pursuant to Regulation (EU) 2022/1369. Despite the application of non-essential consumption reduction measures, protected customers should continue to benefit from protection against disconnection. Member States should also ensure that such measures do not limit the protection required for the vulnerable customers whose current consumption should be considered as essential without prejudice to interruption of supplies due to technical reasons.
- (64a) Member States are free to decide on whether and how to distinguish between essential consumption and non-essential consumption of protected customers. A Member State requesting solidarity measures which decides not to make this distinction, should not be required to demonstrate that the non-essential consumption could be reduced before the request for solidarity. A Member State providing solidarity should not be required to make a distinction between essential and non-essential customers to determine the amount of gas available for solidarity measures.

(65) In case of emergency, Member States, as well as the Union, should ensure that gas flows within the internal market. This means that measures taken at national level should not give rise to security of supply issues in another Member State while access to cross-border infrastructure should remain safe and technically possible at any time. The current legislative framework does not provide for a process which can effectively solve conflicts between two Member States on measures negatively affecting cross-border flows. As the Union's gas and electricity grids are interconnected, this could not only lead to serious security of supply problems, but also weaken the Union's unity vis-à-vis third countries. By derogation from Article 12(6) of Regulation 2017/1938, the Commission should therefore be given the power to evaluate the national measures taken and to arbitrate, where necessary, within a reasonable time frame. To this end, the Commission should be able to request their modification in case it observes threats to the security of the gas supply of other Member States or the Union. Given the exceptional nature of the current energy crisis, complying with the Commission's decision should take place without delays that can potentially hinder the Union's gas supply. Therefore, for the period of application of this Regulation, reconciliation procedures should be suspended for the sake of securing the functioning of the internal market.

(66) The principle of energy solidarity is a general principle under Union law¹⁰ and applies to all Member States, and not only to neighbouring Member States. Furthermore, the efficient use of the existing infrastructure, including cross-border transmission capacities and LNG facilities, is important to safeguard the security of the gas supply in a spirit of solidarity. In times of gas supply disruptions at national, regional or Union level, and a significant switch from pipeline gas to LNG, Member States in a severe crisis situation should not only be able to benefit from supply possibilities from neighbouring pipelines, but also from supplies from countries which dispose of an LNG facility. Some Member States should be in a position to provide solidarity to other Member States, even if they are not directly connected via a gas pipeline or through a third country or other Member States, provided that the requesting Member State has exhausted all market-based measures in its emergency plan, including LNG purchases in the global market. It is therefore appropriate to expand the obligation to provide solidarity to non-connected Member States with LNG facilities, taking into account the differences between pipeline gas and LNG markets and infrastructure, including LNG vessels and carriers, in imposing obligations on operators, and lack of enforcement powers with respect to LNG assets such as LNG carriers and including possibilities to swap between natural gas and LNG if there is no gas liquefaction facility on the territory of a Member State providing solidarity.

¹⁰ Judgment of the Court of Justice of 15 July 2021, Germany v Poland, C-848/19 P, ECLI:EU:C:2021:598.

- (66a) A Member State with LNG facilities, when providing solidarity to another Member State, should not be held responsible for bottlenecks or other potential issues that may occur outside its own territory, or that result from lack of enforcement powers over LNG carriers and vessels owned by a third-country operator, impact the actual flow of gas and ultimately prevent the volume of gas needed reaching the solidarity requesting Member State. Where the Member State providing solidarity does not have enforcement powers, it should not be held responsible for the lack of swapping of an LNG cargo for natural gas.
- (67) In implementing the principle of energy solidarity, Regulation (EU) 2017/1938 introduced a solidarity mechanism intended to enhance cooperation and trust between the Member States in the event of a severe crisis. To facilitate the implementation of the solidarity mechanism, Member States are required to agree on a number of technical, legal and financial issues in their bilateral arrangements, pursuant to Article 13(10) of the same Regulation.

(68) Despite a legal obligation to conclude bilateral solidarity arrangements by 1 December 2018, only a few such arrangements have been finalised, putting at risk the implementation of the legal obligation to provide solidarity support in an emergency. The Commission's proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen from December 2020 included a first model for a template solidarity agreement.¹¹ However, as this template was developed before the invasion of Ukraine by the Russian Federation, with a view to the current situation of extreme gas scarcity and exploding prices and the urgent need to have temporary default rules in place already for the coming winter, it is appropriate to create a temporary framework of default rules for the provision of the required solidarity measures by derogation from Article 13(1) and (2) of Regulation (EU) 2017/1938 which are effective and swiftly implementable, do not depend on long bilateral negotiations and are adapted to the current situation of excessive prices and highly volatile gas prices. Clearer default rules should notably be introduced for the compensation of the costs of the gas provided and, in a spirit of solidarity between the Member States, for the limitation of potential additional costs the providing Member State may charge. The rules on solidarity measures pursuant to Article 13 of Regulation (EU) 2017/1938 should remain applicable unless expressly provided otherwise.

¹¹ See Article 64 of the proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

- (69) Solidarity should, in principle, be provided based on fair compensation directly paid by the requesting Member State or its delegated entities. The compensation should cover the gas price, any actual or potential storage costs, the cross-border transportation and associated costs. The compensation should be fair, both for the requesting as well as for the providing Member States.
- (70) The current crisis is leading to price levels and regular price peaks which are far beyond the situation of a possible supply crisis at the time of the adoption of the Security of Supply Regulation. The intra-day price volatility currently characterising the gas market as a result of the existing gas crisis should therefore be considered when determining the amount of compensation for Member States providing solidarity. On the basis of solidarity, and in order to avoid pricing on extreme market circumstances, it would be problematic to take the fluctuating intra-day market price as the basis for the default price of the solidarity measure. The gas price should reflect the average of day-ahead market price of the day preceding solidarity request in the Member State providing solidarity. Taking this into account, the compensation is still based on the ‘market price’, as stipulated in Commission Recommendation (EU) 2018/177 of 2 February 2018. The average day-ahead market price is more independent from the volatility and very high spot prices during crisis situations, and as such, limits any perverse incentives.

(71) As highlighted in Commission Recommendation (EU) 2018/177 of 2 February 2018, the cost of damages to curtailed industry may only be covered by compensation if it is not reflected in the gas price that the Member State requesting solidarity has to pay; the Member State that requested solidarity should not have to pay compensation for the same costs twice. Taking into account the exceptional circumstances where gas prices have reached unprecedented levels, a Member State receiving solidarity should not be automatically obliged to fully cover other costs, such as damages or costs of legal proceedings, occurring in the providing Member State, unless another solution is agreed upon in a solidarity agreement. Experience has shown that the obligation for receiving Member State to bear the full financial risk for all direct or indirect compensation costs which may possibly result from the provision of solidarity measures are a key obstacle to the conclusion of solidarity agreements. The unlimited liability should therefore be alleviated in the default rules for solidarity agreements, to enable the conclusion of the outstanding agreements as soon as possible, as these agreements are a cornerstone of Regulation (EU) 2017/1938, reflecting the Union principle of energy solidarity. As far as the compensation for indirect costs does not exceed 100% of the price for gas, is justified and is not covered by the price of gas, these costs should be covered by the receiving Member State. However, in case the requested cost goes beyond 100% of the price for gas the Commission should after consulting relevant competent authorities establish a fair cost compensation and therefore have the possibility to verify whether the limitation of the cost compensation is appropriate. The Commission should therefore be able to allow for a different compensation than in Regulation (EU) 2017/1938 in individual cases, taking into account the specific circumstances of the case including measures to save gas and reduce gas demand, and the principle of energy solidarity. In the assessment, the Commission should give due consideration to avoid excessive indirect costs as a consequence of curtailment or disconnection of customers of gas.

- (71a) The rules of this Regulation related to the payment of compensation for solidarity measures between Member States are without prejudice to the principles of compensation for damages under national constitutional law.
- (72) The conclusion of solidarity agreements with neighbouring Member States, as required pursuant to Article 13(10) of Regulation (EU) 2017/1938, is the most appropriate instrument to implement the obligation to provide solidarity measures pursuant to Article 13(1) and (2) of that Regulation. Member States should therefore be allowed to depart from the default compensation rules set out in this Regulation if they agree on other rules in a solidarity agreement. Member States should notably retain the possibility to agree bilaterally upon additional compensation, covering other costs, such as the full costs incurred from an obligation to pay compensation in the providing Member State, including damages to curtailed industry. In bilateral solidarity agreements, such costs can be included in the compensation if the national legal framework provides for the obligation to pay damages to curtailed industry, including compensation for economic damage, in addition to the gas price.
- (73) As a last-resort measure, default solidarity should only be triggered by a requesting Member State where the market fails to offer the necessary gas volumes, including LNG and those offered voluntarily by non-protected customers, to meet the demand from solidarity protected customers. Pursuant to Regulation (EU) 2017/1938 Member States are required to have exhausted all measures in their emergency plans including forced curtailment down to the level of solidarity-protected customers.

- (74) The urgent nature and the consequences of a potential activation of the solidarity mechanism should entail the close cooperation between the involved Member States, the Commission and the competent crisis managers as designated by Member States in accordance with Article 10(1)(g) of Regulation (EU) 2017/1938. The request should, therefore, be communicated to all parties in due time and contain a minimum set of elements that allow the providing Member States to respond without delay. The providing Member States' response should include information on the amount of gas that could be delivered to the requesting Member State, also including those volumes that could be freed when non-market-based measures are applied. Member States may agree on additional technical and coordination arrangements to facilitate the timely response to a solidarity request. When providing solidarity, Member States and their competent authorities should ensure the network's operational safety and reliability.
- (75) The requesting Member State should be able to receive solidarity from multiple Member States. The default solidarity mechanism should be in place only in case the providing Member State has not concluded any bilateral arrangement with the requesting Member State. In case of a bilateral agreement between the requesting and providing Member State, this arrangement should prevail and apply between them.

- (76) The Commission should be able to monitor the application of the default solidarity mechanism and, if deemed necessary, should be able to facilitate the matching of solidarity demand requests. To this end, the Commission should provide for an interactive platform, which should serve as a template and allow the continuous, real-time submission of solidarity requests and their coupling with the respective, available volumes.
- (76a) Member States and the Energy Community Contracting Parties' may also conclude voluntary arrangements for the application of solidarity measures.
- (77) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers 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.
- (78) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and requires cooperation at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, and as set out in the aforementioned Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAS ADOPTED THIS REGULATION:

CHAPTER I - SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes temporary rules and measures, namely on:

- the expedited setting up of a service allowing for joint demand aggregation and gas purchasing by undertakings established within the Union,
- secondary capacity booking and transparency platforms for LNG and for gas storages,
- congestion management in gas transmission networks, and
- for the case of a gas emergency to distribute gas fairly across borders, to safeguard gas for the most critical customers and to ensure the provision of cross-border solidarity measures.

It also introduces temporary mechanisms to protect citizens and the economy against excessively high prices, by way of an ad hoc LNG benchmark, to be developed by ACER, a temporary intra-day volatility management mechanism for extreme price movements and the framework for the development of a market correction mechanism for gas exchanges.

Article 2

Definitions

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

- (1) ‘natural gas undertaking’ means a natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical or maintenance tasks related to those functions, but shall not include final customers;
- (1) ‘LNG facility’ means a terminal which is used for the liquefaction of natural gas or the importation, offloading and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system, but does not include any part of the LNG terminals used for storage;
- (2) ‘gas storage facility’ means a facility used for the stocking of natural gas and owned or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;
- (3) ‘service provider’ means an undertaking established in the Union and contracted by the Commission through a procurement procedure under Regulation (EU) 2018/1046 to organise the joint purchasing and fulfil the tasks listed in Article 7;

- (4) ‘IT tool’ means an IT tool through which the undertaking contracted by the Commission acts as the service provider by aggregating the demand of natural gas undertakings and undertakings consuming gas and seeking offers from natural gas suppliers or producers to match said aggregated demand;
- (5) ‘ACER’ means the European Agency for the Cooperation of Energy Regulators, as established by Regulation (EU) 2019/942;
- (6) ‘LNG trading’ means bids, offers or transactions for the purchase or sale of LNG:
 - (a) that specify delivery in the Union, or
 - (b) that result in delivery in the Union, or
 - (c) in which one counterparty re-gasifies the LNG at a terminal in the Union;
- (7) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information as specified in Article 21(1).
- (8) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading;
- (9) ‘LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by ACER;
- (10) ‘LNG benchmark’ for the purpose of this Regulation means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis;

- (11) ‘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;
- (12) ‘energy-related commodity 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 Council¹², traded on a trading venue and the underlying of which is electricity or gas, and whose maturity does not exceed 12 months;
- (13) ‘competent authority’ means a competent authority as defined in Article 4(1), point (26), of Directive (EU) 2014/65/EU;
- (14) ‘critical gas volume for electricity security of supply’ means the maximum gas consumption needed in the power sector to ensure adequacy in a worst-case scenario simulated in the winter adequacy assessment pursuant to Article 9 of Regulation (EU) 2019/941 on risk-preparedness in the electricity sector.
- (15) ‘protected customer’ means a protected customer as defined in Article 2, point 5, of Regulation (EU) 2017/1938;
- (16) ‘solidarity protected customer’ means a solidarity protected customer as defined in Article 2, point 6, of Regulation (EU) 2017/1938.

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).

CHAPTER II – BETTER COORDINATION OF GAS PURCHASES

Section 1

Coordination of gas purchases in the Union

Article 3

Transparency and information exchange

- (1) For the sole purpose of better coordination, natural gas undertakings or undertakings consuming gas established in the Union or authorities of Member States, which intend to launch a tender to purchase gas or open the negotiations with natural gas producers or suppliers from third countries on the purchase of gas, of a volume above 5 TWh/year, shall inform the Commission and where applicable the Member State in which those undertakings are established of the conclusion of a gas supply contract or a memorandum of understanding or the launch of a tender to purchase gas, at least six weeks before the intended conclusion or launch, or within a shorter period provided that the negotiations are opened closer to the date of signing of the contract, but no later than two weeks before the intended conclusion or launch. Such notification shall be limited to the following basic information:

- the identity of the contract partner or partners or the purpose of the tender to purchase gas;
- the relevant volumes;
- the relevant dates; and, where applicable,
- the service provider organising such purchases or tenders on behalf of a Member State.

- (2) If the Commission considers that further coordination with regards to the launch of a tender for the purchase of gas or planned gas purchases of natural gas undertakings or undertakings consuming gas established in the Union or of authorities of Member States could improve the functioning of joint purchasing or that the launch of a tender for the purchase of gas or planned gas purchases may have a negative impact on the internal market, on security of supply or on energy solidarity, the Commission may issue a recommendation to the natural gas undertakings or undertakings consuming gas established in the Union or authorities of Member States to consider appropriate measures. In such a case the Commission where applicable shall inform the Member State in which the undertaking is established.
- (3) The Commission shall inform the ad hoc Steering Board referred to in Article 4 before issuing any of the recommendations set forth in paragraph 2.

- (4) When providing information to the Commission in accordance with paragraph 1, the entities providing the information may indicate whether any part of the information, be it commercial or other information the disclosure of which could harm the activities of the parties involved, is to be regarded as confidential and whether the information provided can be shared with other Member States.
- (5) Requests for confidentiality under this Article shall not restrict the access of the Commission itself to confidential information. The Commission shall ensure that access to confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available. Commission representatives shall handle sensitive information with due confidentiality.
- (6) Without prejudice to Article 346 TFEU, information that is confidential shall be exchanged with the Commission and other relevant authorities only where such exchange is necessary for the application of this Regulation. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of such exchange. Such exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of the entities falling within the scope of this Regulation and apply effective tools to protect the data physically. All servers and information shall be physically located and stored in the territory of the Union.

Article 4

Ad hoc Steering Board

- (1) An ad hoc Steering Board shall be established to facilitate the coordination of demand aggregation and joint purchasing.
- (2) The ad hoc Steering Board shall be established by the Commission within 6 weeks after entry into force of this Regulation; it shall be composed of one representative of each Member State and one of the Commission. The representatives of the Energy Community Contracting Parties may participate in the Steering Board upon invitation of the Commission on all matters of mutual concern. The Commission shall chair the ad hoc Steering Board.
- (3) The ad hoc Steering Board shall adopt its own Rules of Procedure by qualified majority within one month from its establishment.
- (4) The Commission shall consult the ad hoc Steering Board on the draft recommendation provided by the Commission pursuant to Article 3(4), notably as to whether the relevant gas purchases or a tender for the purchase of gas enhance security of supply in the Union and are compatible with the principle of energy solidarity.
- (5) The Commission shall also inform the ad hoc Steering Board about the impact of the participation of the undertakings in the joint purchasing organised by the service provider on security of supply in the Union and energy solidarity, where applicable.
- (6) Where confidential information is forwarded to them in accordance with paragraph 7 of Article 3, members of the ad hoc Steering Board shall handle sensitive information with due confidentiality. The information exchanged shall be limited to that what is relevant and proportionate to the purpose of such exchange.

Section 2

Demand aggregation and joint purchasing

Article 5

Temporary service contract with a service provider

- (1) By derogation from Article 176 of Regulation (EU, Euratom) 2018/1046¹³, the Commission shall contract the necessary services of an entity established in the Union through a procurement procedure under Regulation (EU, Euratom) 2018/1046, acting as a service provider to fulfil the tasks set forth in Article 7.
- (2) The service contract with the selected service provider shall determine the ownership of the information obtained by the service provider, and shall provide for the possible transfer of this information to the Commission at the termination or expiry of the service contract.
- (3) The Commission shall define in the service contract the practicalities of the operation of the service provider including the use of the IT tool, the security measures, the currency or currencies, the payment regime, and liabilities.
- (4) The service contract with the service provider shall reserve to the Commission the right to monitor and audit it. For that purpose, the Commission shall have full access to the information held by the service provider.
- (5) The Commission may request the service provider to provide all information necessary for the fulfilment of the tasks listed in Article 7 and to enable the Commission to verify the fulfilment by the natural gas undertakings and undertakings consuming gas of the obligations arising from Article 10.

¹³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1–222.

Article 6

Criteria for selecting the service provider

- (1) The service provider shall be selected by the Commission on the basis of the following eligibility criteria:
 - (a) The service provider shall be established and have its operational seat in the territory of a Member State.
 - (aa) The service provider shall have experience in cross-border transactions.
 - (b) The service provider shall not be:
 - (i) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (ii) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (iii) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.

- (2) Without prejudice to other due diligence obligations, contractual obligations between the Commission and the service provider shall be put in place to ensure that the service provider when carrying out its tasks in accordance with Article 7 does not make any funds or economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies:
- (a) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (c) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.
- (3) The service provider shall not be part of a vertically integrated undertaking active in the production or supply of natural gas as referred to Article 2(20) of the Gas Directive 2009/73/EC, except for an entity unbundled in accordance with Chapter IV therein.

- (4) The Commission shall establish its selection and award criteria taking into account, inter alia, the following criteria to be specified in the call of tenders:
- (a) level of experience in setting up and running tendering or auctioning processes for natural gas or associated services, such as transportation services, through the use of dedicated IT tools;
 - (b) level of experience in tailoring tendering or auctioning processes to different needs such as geographical focus or timing;
 - (c) level of experience in developing IT tools to aggregate demand from multiple participants and match it with supply;
 - (d) quality of information system security, in particular in terms of data protection and internet security; and
 - (e) capacity of identification and accreditation of participants, both in terms of legal entity and financial capacity.

Article 7

Tasks of the service provider

- (1) The service provider shall organise the demand aggregation and joint purchasing and, in particular:
 - (a) aggregate the demand of natural gas undertakings and undertakings consuming gas with the support of the IT tool;
 - (b) seek offers from natural gas suppliers or producers, to match the aggregated demand with the support of the IT tool;
 - (bb) allocate access rights to supply, taking into account a proportionate distribution between smaller and larger participants of offered gas volumes among the natural gas undertakings and undertakings consuming gas participating in aggregating demand. Where the aggregated demand exceeds the received supply offers, the allocation of access rights shall be proportionate to the demand declared by the participating undertakings during the demand aggregation stage for a given delivery time and location;
 - (c) verify, accredit and register the users of the IT tool; and
 - (d) provide any ancillary services to the users of the IT tool, including services to facilitate the conclusion of contracts, or to the Commission necessary for the correct performance of the operations as provided in the contract referred to in Article 5.
- (2) The conditions relating to the tasks of the service provider, namely regarding registration of users, publication and reporting shall be determined in the contract between the Commission and the service provider.

Article 8

Participation in the demand aggregation and joint purchasing

- (1) Participation in the demand aggregation and joint purchasing shall be open and transparent to all natural gas undertakings and undertakings consuming gas established within the Union regardless of the volume requested. Natural gas undertakings and undertakings consuming gas shall be precluded from participating as suppliers, producers and purchasers in aggregation of demand and joint purchasing, if they are:
- (a) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (c) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.

- (2) Contractual obligations shall be put in place to ensure that no funds or economic resources resulting from participation in the process of joint purchasing organised by the service provider are made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, which are:
- (a) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (c) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.
- (3) Member States, or other stakeholders may provide liquidity support, including guarantees, to participants in the process of joint purchasing organised by the service provider, in accordance with State aid rules, where applicable. This may include guarantees to cover collateral needs or to cover the risk of additional costs following the insolvency of other buyers under the same joint purchasing contract.
- (5) Natural gas undertakings and undertakings consuming gas established in the Energy Community Contracting Parties may participate in the demand aggregation and joint purchasing provided that the necessary measures or arrangements are in place to allow their participation in the demand aggregation and joint purchasing pursuant to this section under the conditions thereof.

Article 9

Natural gas supplies excluded from joint purchasing

- (1) Natural gas supplies originating in the Russian Federation shall not be subject to joint purchasing including natural gas supplies entering the Member States or Energy Community Contracting Parties through the following entry points:
 - (a) Greifswald
 - (b) Lubmin II
 - (c) Imatra
 - (d) Narva
 - (e) Värskä

- (f) Luhamaa
- (g) Sakiai
- (h) Kotlovka
- (i) Kondratki
- (j) Wysokoje
- (k) Tietierowka
- (l) Mozyr
- (m) Kobryn
- (n) Sudzha (RU)/Ukraine
- (o) Belgorod RU/Ukraine
- (p) Valuyki RU/Ukraine
- (q) Serebryanka RU/Ukraine
- (r) Pisarevka RU/Ukraine
- (s) Sokhranovka RU/Ukraine
- (t) Prokhorovka RU/Ukraine
- (u) Platovo RU/Ukraine
- (v) Strandzha 2 (BG) /Malkoclar (TR)

Mandatory use of the service provider

- (1) Member States shall take appropriate measures to ensure that natural gas undertakings and undertaking consuming gas under their jurisdiction participate in the process of demand aggregation organised by the service provider as one of the possible means to meet the filling targets referred to in Article 6a and 20 of Regulation (EU) 2017/1938.
- (2) Member States with underground storage shall require natural gas undertakings and undertaking consuming gas under their jurisdiction to participate in the process of demand aggregation organised by the service provider with volumes at least equal to 15% of the total volume necessary to meet the filling targets referred to in Articles 6a and 20 of Regulation (EU) 2017/1938.
- (3) Member States without underground storage facilities shall require natural gas undertakings and undertaking consuming gas under their jurisdiction to participate in the process of demand aggregation organised by the service provider with volumes at least equal to 15% of the volumes corresponding to the cross-border filling targets referred to in Article 6c and 20 of Regulation (EU) 2017/1938.
- (4) The natural gas undertakings and undertaking consuming gas participating in demand aggregation under a mandatory obligation may decide not to purchase the gas after the aggregation process. The gas purchased may be used for other purposes than storage filling.

Article 11

Gas Purchasing Consortium

- (1) Natural gas undertakings and undertakings consuming gas participating in demand aggregation organised by the service provider may, on a transparent basis, coordinate elements of the conditions of the purchase contract or use joint purchase contracts in order to achieve better conditions with their suppliers, provided they comply with Union law, including Union competition law, in particular Articles 101 and 102 TFEU, as may be specified by the Commission in a decision pursuant to Article 10 of Council Regulation (EC) No 1/2003, as well as with the transparency requirement pursuant to Article 3.

Section 3

Measures to enhance the use of LNG terminals, storage facilities and pipelines

Article 12

Secondary capacity booking platform for LNG and storage facility users

LNG facility and storage facility users, who wish to re-sell their contracted capacity on the secondary market, as defined in Regulation (EC) No 715/2009, shall be entitled to do so. LNG facility and storage facility operators, individually or regionally, shall set up or make use of an existing transparent and non-discriminatory booking platform for LNG facility and storage facility users to re-sell their contracted capacity on the secondary market no later than two months after [entry into force of this Regulation].

Article 13

Transparency platforms for LNG and storage facilities

- (1) LNG facility and storage facility operators shall ensure that they publish within two months from [date of entry into force of the Regulation] all the information required by Article 19 of Regulation (EC) No 715/2009 on a European LNG Transparency Platform and a European Storage Transparency platform, respectively in a transparent and user-friendly manner. Regulatory authorities may request those operators to make public any additional relevant information for system users.
- (2) LNG facilities that have been granted an exemption from third party access rules pursuant to Article 22 of Directive 2003/55/EC and Article 36 of Directive 2009/73/EC, and natural gas storage operators under the negotiated third party access regime referred to in Article 33(3) of Directive 2009/73/EC, shall make public final tariffs for infrastructure within one month from [date of entry into force of the Regulation].

More effective use of transmission capacities

- (1) Transmission system operators shall offer underutilised contracted firm capacity at interconnection points and virtual interconnection points pursuant to paragraph 2 as a monthly capacity product and as daily and within-day capacity products for the month in case of an underutilisation pursuant to paragraph 2.
- (2) Contracted firm capacity shall be considered underutilised if a network user used or offered less than on average 80% of the booked firm capacity at an interconnection point or virtual interconnection point in the preceding calendar month. The transmission system operator shall monitor the unused capacity and shall inform the network user on the amount of capacity to be withdrawn at the relevant interconnection point or virtual interconnection point at the latest before notifying the amount of capacity to be offered for the upcoming rolling monthly capacity auction in accordance with Commission Regulation (EU) 2017/459.
- (3) The amount of capacity to be offered shall equal the difference between the average utilisation for the preceding calendar month and 80% of the firm capacity which was contracted for a duration longer than a month.
- (4) Available capacity offered in an auction in accordance with Commission Regulation (EU) 2017/459 shall have priority over underutilised capacity included in an auction from mechanism pursuant to paragraph 2 when allocating capacity.

- (5) If the underutilised capacity offered by the transmission system operator is sold, it shall be withdrawn from the original holder of the contracted capacity. The original holder may use the withdrawn firm capacity on an interruptible basis.
- (5a) The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent that the capacity is not reallocated by the transmission system operator.
- (6) Before offering underutilized firm capacity in accordance with this Article, the transmission system operators shall analyse the potential effects at every interconnection point it operates and shall inform the competent national regulatory authority. In derogation of paragraphs (1) to (5a) of this Article, and regardless of whether these interconnection points are congested or not national regulatory authorities may decide to introduce one of the following mechanisms on all interconnection points:
- (a) a firm day ahead use-it-or loose-it mechanism in line with the Commission Regulation (EU) 2017/459 and taking into consideration chapter 2.2.3 of Annex I of the Regulation (EC) No 715/2009; or
- (b) implement an oversubscription and buy-back scheme in line with chapter 2.2.2 of Annex I of Regulation (EC) No 715/2009 offering at least 5% additional capacity in relation to the technical capacity at the relevant interconnection point, or

- (c) offer at least, initially not nominated capacity on a day-ahead and within-day basis, to be allocated as interruptible capacity.

Paragraphs (1) to (5a) shall automatically apply if one of the alternative mechanisms pursuant to this paragraph is not applied within [OJ: 3 months after the date of the entry into force of this Regulation],

- (7) Before taking the decision referred to in paragraph 6, the national regulatory authority shall consult with the national regulatory authority of the adjacent Member State and take account of the national regulatory authority's opinions. In the case the entry-exit system is covering more than one Member State where more than one transmission system operator is active, national regulatory authorities of Member States concerns shall decide jointly, on the application of paragraph 6.

**CHAPTER III – MEASURES TO PREVENT EXCESSIVE GAS PRICES AND EXCESSIVE INTRA DAY
VOLATILITY IN ENERGY DERIVATIVES MARKETS**

Section 1

Temporary intra day tool to manage excess volatility in energy derivatives markets

Article 15

intra-day volatility management mechanism

- (1) As soon as possible, but by no later than 31 January 2023, each trading venue on which energy-related commodity derivatives are traded shall set up, for each energy-related commodity derivative traded on it, an intra-day volatility management mechanism based on an upper and lower price boundary ('price boundaries') that defines the prices above and below which orders may not be executed ('intra-day volatility management mechanism'). Trading venues shall ensure that the intra-day price volatility management mechanism prevents excessive movements of prices within a trading day for energy-related commodity derivatives. When setting up the intra-day volatility management mechanism, trading venues shall also ensure that the implementation of these measures does not prevent the formation of reliable end-of-day closing prices.

- (2) For each energy-related commodity derivative traded on them, trading venues shall establish the applicable calculation method to determine the price boundaries relative to a reference price. The first reference price of the day shall be equal to the price determined upon the opening of the relevant trading session. The subsequent reference prices shall be the last market price observed at regular intervals. In case of an interruption in trading during the trading day, the first reference price after the interruption shall be the opening price of the resumed trading.
- (3) The price boundaries shall be expressed either in absolute value, or in relative terms in the form of a percentage variation relative to the reference price. Trading venues shall adjust that calculation method to the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile. The trading venue shall inform the competent authority of the method without undue delay.
- (4) Trading venues shall renew the price boundaries at regular intervals during trading hours, based on the reference price.
- (5) Trading venues shall without undue delay make public the features of the intra-day volatility management mechanism they have put in place or whenever they have applied a modification.

- (6) Trading venues shall implement the intra day volatility management mechanism either by integrating it into their existing circuit breakers already established in accordance with Directive 2014/65/EU or as an additional mechanism thereto.
- (7) Where a trading venue intends to modify the calculation method for the price boundaries applicable to a given energy-related commodity derivative, it shall inform the competent authority of the intended modifications without undue delay.
- (8) Where the information collected by the European Securities and Market Authority ('ESMA') in accordance with Article 16(3) show that further consistency of implementation of the mechanism is needed to ensure more efficient management of excessive price volatility across the Union, the Commission may adopt implementing acts specifying the uniform principles for the implementation of the intra-day volatility management mechanism, taking into account the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile. In particular, in order to ensure the smooth operation of trading venues that offer trading in energy-related commodity derivatives, the Commission may specify the intervals at which the price boundaries will be renewed or the measures to be taken if trading moves outside those price boundaries including provisions to ensure the formation of reliable closing prices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33.

Article 16

Role of competent authorities

- (1) Competent authorities shall supervise the implementation of the intra-day volatility management mechanism. Competent authorities shall ensure that divergences in the implementation of the intra day volatility management mechanisms by trading venues established in their Member States are duly justified by the specificities of the trading venues or energy-related commodity derivative concerned.
- (2) Competent authorities shall ensure that trading venues implement appropriate preliminary mechanisms ensuring that excessive volatility in energy-related commodity derivatives markets is mitigated until the set-up of the intra day volatility management mechanism as referred to in Article 15(1).
- (3) Competent authorities shall report to ESMA on the implementation of the intra-day volatility management mechanism by trading venues they supervise within three weeks from the date referred to in Article 15 (1) and at least on a quarterly basis.

Article 17

Coordination role of ESMA

- (1) ESMA shall coordinate and monitor the implementation of the intra-day volatility management mechanisms on the basis of reports submitted to it by the competent authorities in accordance with Article 16(3).
- (2) ESMA shall document any divergences in the implementation of the intra-day volatility management mechanisms across jurisdictions in the Union based on the reports from competent authorities. By [OJ: please insert the date = 6 months after the entry into force of this Regulation], ESMA shall submit a report to the Commission evaluating the efficiency of the intra day volatility management mechanisms. On the basis of that report, the Commission shall consider whether to submit a proposal for the amendment of this Regulation to the Council.

Section 2

Tasking ACER to collect and publish objective price data

Article 18

Tasks and powers of ACER to carry out price assessments and benchmarks

- (1) As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than two weeks after the entry into force of this Regulation. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.
- (2) No later than 31 March 2023 ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.
- (3) By way of derogation from Article 3(4)(b) of Regulation 1227/2011, the market participant obligations and prohibitions of Regulation (EU) No 1227/2011 shall apply to LNG market participants. The powers conferred on ACER under Regulation (EU) No 1227/2011 and under Commission Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.

Article 19

Publication of LNG price assessments and benchmark

- (1) The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19.00 CET or as soon as technically possible.
- (2) For the purposes of this Article, ACER may make use of the services of a third party.

Article 20

Provision of LNG market data to ACER

- (1) LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in Article 21, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily price assessment (18.00 CET).
- (2) The Commission may adopt implementing acts specifying the point in time by which market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33.

- (3) Where appropriate, ACER shall, after consulting the Commission, issue guidance on:
- (a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Commission Implementing Regulation (EU) No 1348/2014, including bids and offers, and
 - (b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required market data.
- (4) LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, where possible using already existing and available procedures.

Article 21

Market data quality

- (1) LNG market data shall include:
- (a) the parties to the contract, including buy/sell indicator;
 - (b) the reporting party;
 - (c) the transaction price;
 - (d) the contract quantities;
 - (e) the value of the contract;
 - (f) the arrival window for the LNG cargo;

- (g) the terms of delivery;
 - (h) the delivery points;
 - (i) the timestamp information on all of the following:
 - (i) the time of placing the bid or offer;
 - (ii) the transaction time;
 - (iii) the time of reporting of the bid, offer or transaction;
 - (iv) the receipt of LNG market data by ACER.
- (2) LNG market participants shall provide ACER with LNG market data in the following units and currencies:
- (a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in €/MWh and include applied conversion and exchange rates if applicable;
 - (b) contract quantities shall be reported in the units specified in the contracts and in MWh;
 - (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;
 - (d) delivery point shall indicate a valid identifier listed by ACER such as referred to in the list of LNG facilities subject to reporting and Regulation (EU) No 1227/2011 and Commission Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format;
 - (e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.

- (3) ACER shall issue guidance regarding under which criteria a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its daily LNG price assessment and LNG benchmarks.

Article 22

Business continuity

ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of market data contributors.

CHAPTER IV - MEASURES FOR THE CASE OF A GAS EMERGENCY

Section 2

Gas solidarity for electricity supply, essential industries and protected customers

Article 27

Extension of solidarity protection to critical gas volumes for electricity security of supply

- (1) By way of derogation from Article 13(3) of Regulation (EU) 2017/1938, a solidarity measure pursuant to Article 13 (1) and (2) of Regulation (EU) 2017/1938 shall apply only if the requesting Member State has not been able to cover:
 - (a) the deficit in gas supply to its solidarity protected customers or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 28, the essential volumes of consumption of gas to its solidarity protected customers;
 - (b) the critical gas volume for electricity security of supply, despite the application of the measure referred to in Article 11(3) of Regulation (EU) 2017/1938. The conditions set out in Article 13(3) (b) to (d) of Regulation (EU) 2017/1938 shall apply.

- (2) The Member States which are obliged to provide solidarity pursuant to paragraph (1) shall be entitled to deduct from the solidarity offer:
- (a) supplies to its solidarity protected customers to the extent essential volumes are affected or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 28, the supplies of the essential volumes of consumption of gas of its solidarity protected customers;
 - (b) supplies of critical gas volumes for electricity security of supply;
 - (c) supplies of gas volumes for the electricity needed for the production and transportation of gas; and
 - (d) gas volumes necessary for the operations of security of supply critical infrastructure as referred to in Annex II as well as other installations crucial for the functioning of military, national security and humanitarian aid services.
- (3) The critical gas volumes for electricity security of supply as referred to in paragraphs 1(b) 2(b) and 2(d) shall not exceed the volumes indicated in Annex 1. In case a Member State can demonstrate that a higher volume of gas is required to avoid an electricity crisis of a Member State, the Commission may, upon a duly reasoned request, decide to allow the deduction of higher volumes.

- (4) In case Member States whose electricity system is synchronised only with the electricity system of a third country are requested to provide solidarity measures, they may exceptionally deduct higher volumes of gas in the event the electricity system is desynchronised from that third country's system for as long as isolated power system services or other services to the power transmission system operator are required to ensure the safe and reliable operation of the power system.

Article 28

Demand reduction measures concerning protected customers

- (1) Member States may, exceptionally, take temporary measures to reduce the non-essential consumption of protected customers, as defined in Article 2(5) of Regulation (EU) 2017/1938, in particular when one of the crisis levels pursuant to Article 11(1) and Article 12 of Regulation (EU) 2017/1938, or the EU alert pursuant to Regulation (EU) 2022/1369 have been declared. Such measures shall be limited to non-essential uses of gas and shall take into account the elements set out in Article 6(2) of Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas. Such exceptional measures may be taken only after an assessment is carried out by the competent authorities of the Member States, as defined in Article 2(7) of Regulation (EU) 2017/1938, with regard to the conditions to determine such non-essential volumes of gas.
- (2) As a result of measures referred to in paragraph 1, the consumption of vulnerable customers, as defined by Member States according to Article 3(3) of Directive 2009/73/EC, shall under no circumstance be reduced, and Member States shall not disconnect protected customers as a result of the application of paragraph 1.

Safeguards for cross-border flows

In case of a Commission request pursuant to Article 12(6), first subparagraph of Regulation (EU) 2017/1938 to terminate undue restrictions of cross-border gas flows or of access to gas infrastructure, or measures endangering the gas supply in another Member State, the competent authority, as defined in Article 2(7) of Regulation (EU) 2017/1938, or Member State shall instead of following the procedure provided for in Article 12(6), second subparagraph, of Regulation (EU) 2017/1938, modify its action or take action in order to ensure compliance with Article 12(5) of Regulation (EU) 2017/1938.

Section 3

Rules for the provision of solidarity measures

Article 30

Temporary extension of solidarity obligations to Member States with LNG facilities

- (1) The obligation to provide solidarity measures pursuant to Article 13(1) of Regulation (EU) 2017/1938 shall not only apply to Member States directly connected to the requesting Member State, but also to Member States with LNG facilities, provided the necessary capacity in the relevant infrastructure, including the LNG vessels and carriers, is available.
- (1a) Article 13, paragraphs (2) to (9) of Regulation (EU) 2017/1938 shall apply to Member States with LNG facilities unless otherwise provided in this Regulation.
- (2) Member States with LNG facilities that are not directly connected to a requesting Member State may agree bilaterally with any other Member States on the necessary technical, legal and financial solidarity arrangements that apply to the provision of solidarity.
- (3) The default rules for the provision of solidarity measures pursuant to Article 31 shall also apply to the non-connected Member States in so far as a bilateral arrangement is not concluded at the time of the receipt of a solidarity request.

Default rules for solidarity measures

- (1) Where two Member States have not agreed on the necessary technical, legal and financial arrangements pursuant to Article 13(10) of Regulation (EU) 2017/1938 ('solidarity agreement'), the delivery of gas pursuant to the obligation in Article 13(1) in case of an emergency shall be subject to the conditions in this Article.
- (2) The compensation for the solidarity measure shall not exceed reasonable costs and, by derogation from Article 13(8) of Regulation 2017/1938, it shall in any event include:
 - (a) the price for gas in the Member State providing solidarity;
 - (b) the storage and transport costs, including possible fees resulting from the deviation of LNG cargoes to the interconnection point requested;
 - (bb) litigation costs for related judicial or arbitration proceedings involving the Member State providing solidarity;
 - (c) other indirect costs that are not covered by the price for gas, such as the reimbursement of financial or other damages resulting from enforced firm load shedding of customers related to the provision of solidarity, provided that those indirect costs do not exceed 100 % of the price for gas.
- (2b) In case a Member State requests compensation for indirect costs pursuant to paragraph (2)(c) exceeding 100% of the gas price, the Commission shall, after consulting the relevant competent authorities, decide whether a higher compensation is appropriate, taking into account the specific contractual and national circumstances of the case and the principle of energy solidarity.

- (3) Unless the requesting Member State and the Member State providing solidarity agree on another price, the price for the gas supplied to the requesting Member State shall correspond to the day-ahead market price in the providing Member State the day preceding the request for solidarity or the corresponding day-ahead market price at the closest accessible exchange virtual trading point, or at an agreed hub over the day preceding the request for solidarity.
- (6) Compensation for the gas volumes delivered in the context of a solidarity request pursuant to Article 32 shall be paid directly by the solidarity requesting Member State to the solidarity providing Member State or the entity both Member States indicate in their response to the solidarity request and the confirmation of receipt and of the volume taken.
- (7) The Member State to which the request for a solidarity measure is addressed shall provide the solidarity measures as soon as possible and no later than 3 days after the request. A Member State may refuse to provide solidarity to a Member State requesting solidarity only if it demonstrates that:
 - (a) it does not have enough gas for the volumes referred to in Article 27(2)(a) to (d), or
 - (b) it does not have sufficient interconnection capacity available, as set out in Article 13(7) of Regulation 2017/1938 and it does not have the possibility to provide sufficient volumes of LNG.
- (8) In addition to the default rules provided for in this article, Member States may agree on technical arrangements and coordination of the provision of solidarity.
- (9) The provisions in this article shall be without prejudice to existing arrangements for the safe and reliable operation of the gas system.

Article 32

Procedure for solidarity measures in the absence of a solidarity agreement

- (1) The Member State requesting the application of the solidarity measures shall issue a solidarity request to another Member State, indicating at least the following information:
 - (a) contact details of the competent authority of the Member State;
 - (b) contact details of the relevant transmission system operators of the Member State (if relevant);
 - (c) contact details of the third party acting on behalf of the Member State (if relevant);
 - (d) delivery period including timing of the first possible delivery and the anticipated duration of deliveries;
 - (e) delivery and interconnection points;
 - (f) gas volume in kWh for each interconnection point;
 - (g) gas quality.
- (2) The solidarity request shall be sent simultaneously to Member States potentially being able to provide solidarity measures, to the Commission and to the national crisis managers designated pursuant to Article 10(1)(g) of Regulation (EU) 2017/1938.

- (3) The Member States receiving a solidarity request shall send a response that indicates the contact points as referred to in paragraph 1, points (a) to (c), and the volume that can be supplied to the interconnection points and at the time requested as referred to in paragraph 1, points (e) to (g). The response shall indicate the volume resulting from possible curtailment, or where it is strictly indispensable, release of strategic stocks in case the volume that can be supplied by voluntary measures is insufficient.
- (4) Solidarity requests shall be submitted at least 72 hours before the indicated delivery time. The response to solidarity requests shall be done within 24 hours. The confirmation of receipt and of the volume taken by the requesting Member State shall be done within 24 hours of the delivery time needed.
- (5) The request may be submitted for a period of one day or several days, and the response shall match the requested duration.
- (6) Where there are several Member States providing solidarity and bilateral solidarity arrangements are in place with one or several of them, those arrangements shall prevail between the Member States having agreed bilaterally. The default rules provided for in this article shall only be applicable in relation to the other Member States providing solidarity.
- (7) The Commission may facilitate the implementation of solidarity agreements, notably by a template in the form of a secured online platform to enable real-time transmission of requests and offers.

CHAPTER V - FINAL PROVISIONS

Article 33

Committee procedure

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

Article 34

(Article moved from below, no changes to the text)

Review

By 1 October 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 to prolong the validity of this Regulation.

Article 35

Entry into force and application

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.

Article 14 shall apply from [OJ: three months after entry into force of the 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 President

ANNEX 1

a) Maximum critical gas volumes for electricity security of supply pursuant to Article 27 for the period between December 2022 to March 2023¹⁴

Values in mcm	December 2022	January 2023	February 2023	March 2023
AT	74.24	196.83	152.20	139.35
BE	399.05	458.77	382.76	398.99
BG	61.49	71.26	61.55	63.29
CY	-	-	-	-
CZ	17.26	49.64	34.80	28.28
DE	2,090.53	2,419.56	2,090.59	1,863.77
DK	249.48	295.56	254.87	268.09
EE	5.89	5.78	5.00	1.05
EL	209.95	326.68	317.18	232.80
ES	1,378.23	1,985.66	1,597.27	1,189.29
IE	372.76	375.29	364.26	375.74
FI	28.42	39.55	44.66	12.97
FR	876.37	875.58	802.53	771.15
HR	10.95	66.01	59.99	48.85
HU	82.13	133.97	126.44	93.72

¹⁴ The figures in Annex I a) and b) are based on data from the winter adequacy assessment pursuant to Article 9 of Regulation (EU) 2019/941 by the European Network of Transmission System Operators for Electricity (ENTSO-E), except for Malta for which the electricity generation relies exclusively on LNG deliveries with no significant storage capacities. Given the specificity of the low-calorific gas, the values for the Netherlands in this table should be multiplied with a conversion factor of 37.89 divided by 35.17. Annex I a) represents the individual monthly volumes calculated by ENTSO-E for the months December 2022 to March 2023; the figures in Table 1 b) for the months April 2023 to December 2023 represent the average of the values in the period between December 2022 and March 2023.

IT	2,166.46	3,304.99	3,110.79	2,774.67
LV	89.26	83.56	84.96	66.19
LT	16.13	20.22	18.81	4.21
LU	-	-	-	-
MT	32.88	34.84	31.43	33.02
NL	684.26	762.31	556.26	480.31
PL	158.14	158.64	136.97	148.64
PT	409.97	415.22	368.54	401.32
RO	130.35	179.35	162.41	159.71
SI	12.98	15.15	13.35	12.80
SK	33.99	47.26	34.80	34.76
SE	18.05	18.61	17.71	15.76

b) Maximum critical gas volumes for electricity security of supply pursuant to Article 27 for the period between April 2023 to December 2023

Values in mcm	Monthly value
AT	140.66
BE	409.89
BG	64.40
CY	-
CZ	32.50
DE	2,116.11
DK	267.00
EE	4.43
EL	271.65
ES	1,537.61
IE	372.01
FI	31.40
FR	831.41
HR	46.45
HU	109.06
IT	2,839.23
LV	80.99
LT	14.84
LU	-
MT	33.03
NL	620.79
PL	150.60

PT	398.76
RO	157.96
SI	13.57
SK	37.70
SE	17.53

Annex II

Security of supply critical infrastructure pursuant to Article 27(2)(d)

Sector	Subsector	
I Energy	1. Electricity	Infrastructures and facilities for generation and transmission of electricity in respect of supply electricity
	2. Oil	Oil production, refining, treatment, storage and transmission by pipelines
	3. Gas	Gas production, refining, treatment, storage and transmission by pipelines LNG terminals
II Transport	4. Road transport	
	5. Rail transport	
	6. Air transport	