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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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2023/0445 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In 2022, the international tensions following Russia's invasion of Ukraine, the overall geopolitical context and the very high energy prices exacerbated the need to accelerate the deployment of renewable energy in the Union with the objective to phase out EU's dependence on Russian fossil fuels.

In particular in the second half of 2022, the situation of the energy crisis had worsened, calling for urgent action. Record spikes of the natural gas price in summer, further disruption of the supplies through the North Stream I pipeline, increased inflation and electricity price fluctuations caused economic and social hardship, placing a heavy burden on citizens and on the economy. Rising energy costs lead to reduced purchasing power for citizens and loss of competitiveness for companies. The shortage in gas and power supply and the relatively inelastic energy demand led to significant increases in prices and volatility of gas and electricity prices in the EU.

Faster deployment of renewables was considered necessary to strengthen the Union's security of supply and lower energy prices as it immediately and structurally reduces demand for fossil fuels in the power, heating and cooling, industry and transport sectors. In addition, as a result of their low operational costs, renewables can positively impact energy prices across the EU.

In this context, on 22 December 2022 the Council adopted Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy. This Regulation aimed to shorten and accelerate the permit-granting procedures for renewable energy projects as well as for grid and infrastructure projects that are needed to integrate renewable energy into the electricity system. If not prolonged, the Regulation will cease to apply on 30 June 2024. This proposal seeks to prolong the application of some of the provisions of Regulation (EU) 2022/2578 in view of the persisting risks for the Union's security of energy supply and high energy prices in the Union as well as the important role of quicker renewables deployment in addressing them.

1.1.1. Reasons for prolonging the Regulation's provisions in the current situation

At the date of adoption of this proposal, significant risks associated with the volatility of gas and electricity prices and the security of supply in the Union persist. They stem from the difficult situation in the energy markets, exacerbated by tense geopolitical environment.

Due to the significant decrease in Russian pipeline gas imports over the past year, availability of gas supplies to the Union is considerably reduced compared to the pre-crisis situation. With the current level of gas imports, the Union is expected to receive approximately 20 bcm of Russian pipeline imports in 2023, approximately 110 bcm less than in 2021.

Global gas markets remain very tight and are expected to remain as such for some time. As noted by the IEA,[1] global LNG supply grew only modestly in 2022 (4%) and in 2023 (3%) because of "limited liquefaction capacity additions, outages at major export facilities and declining feedgas supply at LNG plants fed by ageing fields". Significant new LNG liquefaction capacity globally (especially in the US and Qatar) is set to come online as of 2025 but "market balances remain precarious in the immediate future".[2] This situation is having negative consequences on gas prices which, despite being much lower than the peak experienced in summer 2022 (when prices spiked above 300 €/MWh)) remain more than twice as high as pre-crisis levels (ranging between EUR 40/MWh and EUR 50/MWh in early Autumn 2023) with inevitable repercussions on the EU citizens' purchasing power and the competitiveness of European businesses. Market volatility is also a consequence of the market tightness and represents an additional risk for the EU economy. Summer and autumn 2023 saw a number of episodes of significant volatility which show that gas markets are still fragile and may overreact to any unexpected and sudden shock to supply and demand, as was the case following the strike in Australian LNG facilities, the Middle East crisis and the disruption of the Balticconnector. Under these conditions, the fear of scarcity may trigger large reactions with serious repercussions on prices across the EU.

These severe difficulties are exacerbated by a number of additional risks which, if they materialised, would considerably worsen the situation. These risks include: a rebound in Asian LNG demand that reduces the availability of gas on the global gas market,[3][4] extreme weather conditions potentially affecting hydropower storage or nuclear production which would require higher recourse to gas-fired power generation, and further possible gas supply disruptions, including a complete halt of gas imports from Russia, or a disruption of existing critical gas infrastructure. Moreover, armed conflicts affect several regions relevant for EU energy supply, such as Ukraine, Azerbaijan, or Middle East.

Recent examples illustrate the likelihood and relevance of the risks related to the disruption of energy infrastructure. In September 2022, the NordStream 1 pipeline was damaged by acts of sabotage to such a degree that it currently cannot transport any gas and will not be able to do so in the foreseeable future. In October 2023, the Balticconnector, an important pipeline

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1 IEA: Medium-Term Gas Report 2023

2 IEA: World Energy Outlook 2023

3 IEA noted that "Global gas demand is expected to return to moderate growth in 2024, primarily driven by Asia Pacific and the Middle East" and that the Asian-Pacific demand is expected "to expand by 20% by 2026 compared with 2022", see Medium-Term Gas Report 2023.

4 Domestic shortfalls in hydro and nuclear power, due to climatic conditions and other availability factors, exacerbated the stress on gas market pushing prices further up in summer 2022. The production gap in hydro and nuclear generation in 2022 was approximately 60 TWh and 120 TWh, respectively, compared with 2021.

connecting Finland to Estonia, was disrupted. Following the incident, the Finnish authorities declared an alert level which indicates a significant deterioration of the gas supply situation.[5]

It should be also noted that the significant reduction in demand for natural gas (-18% between August 2022 and August 2023) is contributing to preserve the gas balance in the EU. This reduction is a result of economic factors (e.g. high prices) and administrative measures adopted by Member States pursuant to Regulation (EU) 2022/1369 and its prolongation Regulation (EU) 2023/706 on coordinated gas demand reduction. A possible increase in demand, due to a rebound in the gas use in the residential, commercial and industrial sectors or in case the administrative measures aimed at reducing demand were not prolonged further, represents an additional risk that could undermine EU's security of gas supply.

In three subsequent reports of December 2022, February and July 2023, the International Energy Agency (IEA) has consistently highlighted the risks for the EU security of gas supply and warned against complacency in the light of the improvement of the situation compared to the peak of the crisis in summer 2022. According to the report of February 2023, "global gas supply is set to remain tight in 2023 and the global balance is subject to an unusually wide range of uncertainties and exogenous risk factors. This includes the possibility of complete cessation of Russian piped gas deliveries to the European Union, as well as a recovery of China's LNG imports in line with the country's long-term LNG contracts and a potential lower availability of LNG supply". The IEA warned that "the improved outlook should not be a distraction from the measures necessary (…) to mitigate the European Union's exposure to the exogenous risks".[6] It developed stress scenarios with a halt to Russian gas supplies, LNG supplies remaining tight and weather-related demand increases, which could result in a potential supply-demand gap of 40 bcm in the EU. In its report of July 2023, the IEA highlighted that "risks and uncertainties remain ahead of the 2023/24 Northern Hemisphere winter" and "full storage sites are no guarantee against winter volatility and the risk of renewed market tensions".[7]

In addition, the European Network of Transmission System Operators (ENTSOG) published its yearly Winter Supply Outlook with a summer overview, in line with Article 8 of Regulation (EC) 715/2009. ENTSOG concluded that although the general security of supply situation in the EU has significantly improved, additional measures may be needed if the risk of a full Russian supply disruption is realised. In addition, careful management of the storages throughout the winter of 2023-2024 is needed, as a 46% filling level is likely needed at the beginning of the injection season to achieve the 90% storage target set out by Regulation (EU) 2022/1032,

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5 https://www.huoltovarmuuskeskus.fi/en/a/nesa-raising-its-risk-assessment-concerning-the-security-of-gas-supply

6 According to IEA, European gas demand is forecast to grow by 2% in 2024. See Medium-Term Gas Report 2023.

7 https://iea.blob.core.windows.net/assets/f45a2340-8479-4585-b26e-ec5e9b14feca/GlobalGasSecurityReview2023IncludingtheGasMarketReportQ32023.pdf. In early November 2023, the EU gas inventories reached a record high at above 99% capacity.

The Union's response under REPowerEU and following initiatives, including the measures set out in Regulation (EU) 2022/2577 as regards the accelerated deployment of renewables, contributed to improve the situation as concerns the security of supply and the energy prices. In view of the interconnectivity of the power systems between Member States, the increased share of renewable energy production in one Member State can help easing a shortage in another Member State, thus fostering solidarity in the face of this crisis. An accelerated deployment of renewable energy capacity has played and will continue to play an essential role in the Union strategy to address the energy crisis and has been instrumental in increasing security of supply and in protecting consumers from price volatility by reducing the Union's overall gas demand. The International Energy Agency estimated that average wholesale electricity prices would have been 8% higher in all European markets in 2022 without the additional installed capacity.[8] While most of the effects of the Regulation will be visible in the months to come, initial available data on the production, deployment and permitting of renewable energy and related infrastructure projects for the period after the entry into force of the Regulation suggests acceleration of such projects, at least in some Member States. According to Eurostat, in the first half of 2023, renewable energy production in the EU was record high, which is key to continue replacing additional volumes of gas.[9] The Commission's report also highlights positive developments in terms of increase in renewable energy deployment in the months following the entry into force of Regulation 2022/2577. According to initial industry data, the EU has installed in three quarters of 2023 more solar photovoltaic capacities than in the whole 2022. Wind capacity also significantly increased in several Member States. Available data also signals that several Member States have experienced double-digit increases in the volume of permits issued for renewable energy projects since the entry into force of the Regulation. Additionally, at least in one Member State, grid projects important for increased penetration of renewables and amounting to over 2000 km in total are also benefitting from accelerated permitting.

Should Regulation (EU) 2022/2577 cease to apply, while the significant risks persist, this would undermine the achieved improvement as well as the EU's resilience against potential developments as a complete halt of Russian imports.

According to Article 9 of Regulation (EU) 2022/2577, the Commission shall review that Regulation in view of the development of the security of supply and energy prices and the need to further accelerate the deployment of renewable energy. On the basis of such review, the Commission may propose to prolong the validity of this Regulation. The Commission carried out such a review and, on 28 November 2023, adopted the Report presenting its results[10]. The Report concluded that the application of Regulation (EU) 2022/2577 had a positive impact on the acceleration of the deployment of renewable energy in the Union and consequently helped mitigating the effects of the energy crisis. Taking into account the above-mentioned factors and the fact that some of the provisions of Regulation (EU) 2022/2577 are very similar to those in Directive (EU) 2023/2413 amending the Renewable Energy Directive

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8 How much money are European consumers saving thanks to renewables? – Renewable Energy Market Update - June 2023 – Analysis - IEA.

9 https://ec.europa.eu/eurostat/databrowser/product/view/nrg_cb_pem.

10 COM(2023) 764 final.

(EU) 2018/2001, the Report also concluded that the conditions for a prolongation of the Regulation are met.

Regarding the scope of the prolongation, the Report takes into account the relationship between Regulation (EU) 2022/2577, which is a temporary emergency measure, and Directive (EU) 2023/2413 amending Directive (EU) 2018/2001, which is a permanent ordinary legislative act. In particular, there is an assessment to delimit which measures from Regulation (EU) 2022/2577 were not reflected in the permanent legal framework on renewable energy established in Directive (EU) 2018/2001, so that the prolongation of some of the provisions of the Regulation does not duplicate the provisions of the Directive.

In the light of the conclusions of the Report, considering the persisting severe difficulties and risks for the EU's security of gas supply and for the volatility of energy prices as well as the positive effects that accelerated deployment of renewable energy is expected to have on addressing them, it is necessary and urgent to prolong those parts of Regulation (EU) 2022/2577 which are different than those incorporated in Directive (EU) 2023/2413 and which have been proved effective or have the potential to significantly accelerate the deployment of renewable energy. Hence, this Proposal seeks to partially prolong the application of Articles 1, 2(1), 3(2), 5(1) and 6 and 8 of Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy. In addition, in view of the challenges raised by some Member States regarding the practical application of Article 3, and since these challenges pose a major obstacle to accelerating the deployment of renewables, as mentioned in the Report, this proposal adds a new provision to streamline the assessment on whether a project can be granted environmental derogations.

- **Consistency with existing policy provisions in the policy area**

The proposed instrument sets out temporary, proportionate and extraordinary measures. It complements existing relevant EU initiatives and legislation which ensure that citizens can benefit from accelerated deployment of renewable energy and replacement of the demand for fossil fuels with clean energy. The proposal is complementary to the initiatives already taken by the Commission to respond to the current crisis in energy markets. It is consistent with the "REPowerEU" Plan of 18 May 2022 which puts the massive speed-up and scale-up in renewable energy in power generation, industry, buildings and transport at the core of the strategy to accelerate the phasing out of Russian fossil fuels.

Furthermore, the proposal complements Directive (EU) 2023/2413 amending the Renewable Energy Directive (EU) 2018/2001 that was adopted on 9 October 2023 to provide for amended rules for renewables on a permanent basis. This Directive entered into force on 20 November 2023. It includes extensive provisions to streamline permitting procedures applicable to renewable energy projects in a comprehensive manner through spatial planning, simplification and shortening of procedures. All permitting rules of Directive (EU) 2023/2413, except those related to "renewables acceleration" areas, have to be transposed by 1 July 2024, immediately after the expiry of the validity of the Council Regulation. Directive (EU) 2023/2413 includes provisions covering the same subject matters as Regulation 2022/2577. However, for some of the provisions there is a substantive difference compared to the text of Regulation 2022/2577. This includes in particular Article 3 of the Council Regulation, which regulates the overriding public interest presumption but, unlike Directive (EU) 2023/2413, contains a second subparagraph which requires Member States to give priority to the projects that are recognised as being of overriding public interest whenever a balancing of legal interests is required in the individual case. Also, as regards the permit-

granting process for the repowering of renewable energy plants, Article 5 of the Council Regulation contains a short six-months deadline for all permits applicable to the repowering of renewable energy projects, while Directive (EU) 2023/2413 contains a deadline of one year for the repowering of projects outside renewable acceleration areas and a six month deadline for projects located in renewable acceleration areas. Lastly, Article 6 of the Regulation provides for different conditions to make use of some exemptions from environmental legislation than the ones established in Directive (EU) 2023/2413.

Regulation (EU) 2022/2577 and the current proposal are consistent with the European Green Deal objectives, in particular the development of a power sector based largely on renewable sources, their integration into the energy system, and the faster roll-out of renewable energy projects as a tool to cut down the EU's greenhouse gas emissions in view of the long-term strategy of achieving carbon neutrality by 2050.

- **Consistency with other Union policies**

Regulation (EU) 2022/2577 and this proposal are consistent with a broader set of initiatives to enhance the Union's energy resilience and to mitigate the impact of high energy prices and potential disruptions of the energy supplies. The proposal does not compromise the functioning of the internal market and does not affect the measures for addressing interrupted energy supplies. The proposal is in line with environmental objectives, as accelerated deployment of renewable energy is key to mitigate the impacts of both climate change and pollution, which are driving biodiversity loss and threaten public health and safety. The proposal is also consistent with the objectives of the European Climate Law (Regulation (EU) 2021/1119).

The proposal is line with the recommendations made to Member States in the context of the 2022 European Semester framework to streamline permitting of renewable energy projects. It is also expected to accelerate investments in renewable energy under the Recovery and Resilience Facility, including REPowerEU chapters to be included under national Recovery and Resilience Plans.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this instrument is Article 122(1) of the Treaty on the Functioning of the European Union ('TFEU'). The conditions for the application of this provision require that the measure is "appropriate to the economic situation", which is in particular the case if "severe difficulties in the supply of certain products" exist. The measures must also be taken in a "spirit of solidarity", and, according to the case law of the Court of Justice of the European Union, they must be temporary and proportionate.

The current and on-going shortage of gas supplies constitutes a severe difficulty in the supply of an energy product pursuant to Article 122 TFEU. As explained above in section 1 ("Reasons for and objectives of the proposal"), severe difficulties and risks for the EU security of gas supply and volatility of energy prices persist.

The acceleration in the deployment of renewable capacity played an important role in the EU strategy to fight the energy crisis and has been instrumental in increasing security of supply and keeping energy prices in check. The main reason here was the replacement of natural gas by renewables, especially in the power sector, which then impacted overall gas demand.

Should certain measures set out in Regulation (EU) 2022/2577, which have the greatest potential for renewables acceleration and are different than those incorporated in Directive (EU) 2023/2413, cease to apply, a key tool to accelerate the deployment of renewable capacity would no longer be available to the Member States, in a time where the energy supply situation in the Union is still difficult.

Specific provisions of the Regulation are therefore necessary beyond June 2024, in addition to to address the severe difficulties and the potential risks for prices that could arise because of the current fragile balance in the EU gas system. The accelerated rollout of renewables has proven its ability to reduce risks for the Union's security of supply, especially for gas and electricity, and has contributed to reduce energy prices for EU citizens and businesses. Member States should be able to continue to apply, for a limited period of time beyond June 2024, some of the provisions in Regulation (EU) 2022/2577 in order to facilitate the deployment of renewable energy projects in a spirit of solidarity, on the basis that in an integrated energy market, any increase in renewable energy deployment in a Member State can also benefit other Member States.

The emergency procedure foreseen in Article 122(1) TFEU applies without prejudice to other procedures foreseen under the Treaties. The reference to other procedures provided for in the treaties underscores the exceptional and temporary nature of the measures that may be adopted under Article 122(1) TFEU. The urgent and still unstable situation in the energy market and the urgent need to immediately accelerate the deployment of renewable energy sources as an instrument to mitigate the existing risks to the security of energy supply and volatility of energy prices call for such emergency and temporary measures. Moreover, the upcoming end of the mandate of the European Parliament and the time usually required to adopt legislation under the ordinary legislative procedure resulted in such procedure not being an appropriate option to have the temporary measures in place in time, also bearing mind the need for predictability and legal certainty for Member States and project developers regarding the applicable legal framework. It is therefore justified to base the proposed instrument on Article 122(1) TFEU.

- **Subsidiarity (for non-exclusive competence)**

This proposal is fully in line with the subsidiarity principle.

A fast and large-scale deployment of renewable energy cannot be achieved by Member States alone. Taking into account the different energy policies among Member States, action at EU level, rather than national or local action alone, is more likely to phase out EU's dependence on Russian fossil fuels and reduce energy prices, as well as achieve the EU climate and energy 2030 targets, the EU long-term objectives of climate neutrality and zero pollution.

A coordinated European approach to shortening and simplifying permit-granting procedures and administrative processes is needed to speed up the necessary deployment of renewable energies. Considering the different procedures among Member States, and in view of the urgency to accelerate the deployment of renewable energy across all Member States, action at EU level is more likely to achieve the required objectives than national or local action alone.

Finally, the proposed Regulation introduces targeted amendments to existing pieces of Union legislation. This intervention, which will further streamline certain permit-granting procedures, justifies the need for action at Union level.

- **Proportionality**

This proposal complies with the proportionality principle. The measure is proportional to the dimension and nature of the problems defined and the achievement of the set objectives.

In view of the unprecedented geopolitical situation created by Russia's invasion of Ukraine, the continuous highly volatile energy prices and the need to ensure Europe's energy security of supply for the upcoming winter season and throughout next year, there is a clear need for coordinated and urgent action.

The provisions of this proposal seek to ensuring shorter and faster procedures to authorise renewable energy projects by establishing short deadlines and simplifying the assessment that those projects must undergo under Union legislation, while keeping a proportionate level of environmental safeguards related to species protection.

- **Choice of the instrument**

Taking into account the dimension of the energy crisis and the scale of its social, economic and financial impact, the provisions that the current proposal seeks to prolong are contained in a regulation, which is of general scope and directly and immediately applicable. The prolongation of the period of application of these provisions should, therefore, also be done through the adoption of a regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Due to the urgency to prepare the proposal for prolongation of Regulation (EU) 2022/2576 , a stakeholder consultation could not be carried out.

- **Impact assessment**

Given the temporary and urgent nature of the measures that respond to an emergency situation, an impact assessment could not be carried out.

- **Fundamental rights**

No negative impact has been identified on fundamental rights. The overarching aim of this proposal is to increase the use of renewable energy, which is in line with Article 37 of the Charter of Fundamental Rights of the European Union, under which a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

4. BUDGETARY IMPLICATIONS

This proposal does not require additional resources from the EU budget.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The changes proposed are targeted and limited in scope to prolong by 12 months the period of application of Articles 1, 2(1), first sentence of Article 3(2), 5(1), and 6 and 8 relating to the permit-granting process.

Regarding Article 3(2), its second sentence refers to species protection which is linked to Article 3(1). The proposal does not prolong Article 3(1) since the same presumption is contained in Directive (EU) 2023/2413. For this reason, it is proposed to prolong the first sentence of Article 3(2) only.

There are also amendments to Articles 1, 5 and 8. Regarding Article 5, the amendment seeks to that as of 1 July 2024, the 6-month time limit for the permit-granting process for the repowering of projects will only apply to renewable energy projects located in a dedicated renewable area as referred to in Article 6 of the Regulation. Regarding Articles 1 and 8, the amendment seeks to target the scope of those provisions to Article 5(1).

A new article 3a is introduced to specify that the assessment of alternatives in the context of the relevant environmental assessments should take into account those alternatives that ensure the achievement of the same objectives as the project in question in terms of deployment of renewable energy capacity using the same renewable technology, same or similar timeframe and at no significantly higher cost. Regarding the timing of the proposed changes, the articles of Regulation (EU) 2022/2577 will remain in force in their current form until end of June 2024. Articles 1, 2(1), 3(2) first sentence, 5(1), 6 and 8 will continue to apply for an additional 12 months, until the end of June 2025. In the case of Articles 3(2) of 5(1), it will apply in a revised form during this additional period. The new Article 3a applies from the entry into force of this Regulation until 30 June 2025.

2023/0445 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy

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) Council Regulation (EU) 2022/2577 introduces urgent and targeted measures to accelerate the pace of deployment of renewable energy sources. The deployment of renewable energy in the Union can significantly contribute to mitigate the effects of the energy crisis, by strengthening the Union's security of supply, reducing volatility in the market and lowering energy prices. As lengthy and complex permitting procedures formed a key obstacle hampering the speed and scale of investments in renewables and related infrastructure, Regulation (EU) 2022/2577 aimed to introduce targeted measures to achieve an immediate acceleration of some of the permit-granting procedures applicable to specific renewable energy technologies and types of projects with the highest potential for quick deployment in order to mitigate the effects of the energy crisis. Regulation (EU) 2022/2577 applies until 30 June 2024.

(2) Directive (EU) 2023/2413 of the European Parliament and the Council, which amends Directive (EU) 2018/2001 of the European Parliament and the Council entered into force on 20 November 2023, introducing changes to the legislative framework regulating renewable energy until 2030 and beyond, including provisions to streamline permitting procedures applicable to renewable energy projects. Some of the measures introduced by Regulation (EU) 2022/2577 were included by Directive (EU) 2023/2413 in Directive (EU) 2018/2001. However, the Directive did not mirror some of the more exceptional measures contained in Regulation (EU) 2022/2577, thus delimiting their exceptional and temporary nature. Instead, the Directive introduced a stable and long-term permanent regime to accelerate permit-granting procedures which establishes dedicated steps and procedures which require a longer implementation time. Member States have the obligation to transpose it by 21 May 2025, with the exception of some of the provisions regulating permit-granting procedures, which have an earlier transposition date on 1 July 2024, immediately after the expiry of the validity of Regulation 2022/2577. Following the transposition of this Directive, renewable energy projects will benefit from the provisions introduced by this Directive to streamline permit-granting procedures.

(3) Pursuant to Article 9 of Regulation (EU) 2022/2577, the Commission had to carry out a review of this Regulation by 31 December 2023 at the latest, in view of the development of the security of supply and energy prices and the need to further accelerate the deployment of renewable energy, and submit a report on the main findings of that review to the Council. The same article also provides that, based on that review, the Commission may propose the prolongation of Regulation (EU) 2022/2577.

(4) In its Report [add footnote to report], the Commission found that the conditions for a prolongation were met and proposed to prolong selected measures that have the greatest potential for renewables acceleration and are different from the ones included by Directive (EU) 2023/2413 in Directive (EU) 2018/2001 and appear to bring about an important acceleration to the permitting of renewable energy and related grid projects or have a significant potential to do so. The fact that Directive (EU) 2023/2413 introduces in Directive (EU) 2018/2001 some provisions to streamline permitting procedures applicable to renewable energy projects, including rules on the same or similar topics as those covered by Regulation (EU) 2022(2577 was taken into account. That permitting rules introduced by Directive (EU) 2023/2413, except those related to renewables acceleration areas pursuant to Articles 15c and 16a of that Directive, have to be transposed by 1 July 2024, immediately after the expiry of the validity of Regulation (EU) 2022/2577 was also taken into account.

(5) Since the entry into force of Regulation (EU) 2022/2577, the level of preparedness in the electricity market and the Union's security of supply have improved. However, severe risks persist for the Union's security of energy supply. The global situation on the gas market remains very tight. Gas prices are still considerably higher than pre-crisis with inevitable consequences on Union citizens' purchasing power and the competitiveness of European businesses. This is exacerbated by high market volatility stemming *inter alia* from tense geopolitical environment. Recent episodes of significant price volatility in summer and autumn 2023, when prices increased by more than 50% within a few weeks, caused by events such as the strike in Australian LNG facilities, the Middle East crisis and the disruption of the Balticconnector, show that markets are still fragile and vulnerable to even relatively small shocks on demand and supply. Under these conditions, the fear of scarcity resulting from even an isolated event may trigger negative systemic reactions across the EU with serious repercussions on energy prices. Furthermore, due to the significant decrease in Russian pipeline gas imports over the past year, availability of gas supplies to the Union is considerably reduced compared to pre-crisis. With the current level of pipeline gas imports, the Union is expected to receive approximately 20 bcm of Russian gas - approximately 110 bcm less than in 2021. Therefore, a serious risk remains that gas shortages will occur in the Union.

(6) Global gas markets remain very tight and are expected to remain tight for a certain time. As noted by the IEA,[11] global LNG supply grew only modestly in 2022 (4%) and

[11] IEA: Medium-Term Gas Report 2023.

in 2023 (3%). Although, new LNG capacities are set to come online as of 2025 the IEA expect that market balances will remain precarious in the immediate future.[12]

(7) These severe difficulties are exacerbated by a number of additional risks, including a rebound in Asian LNG demand reducing the availability of gas on the global gas market, a cold winter that could lead to an increase of gas demand of up to 30 bcm, extreme weather events potentially affecting the hydropower storage and nuclear production due to low water levels, and the subsequent increase in demand for gas-fired power generation. Additional risks result from further disruptions of critical infrastructures, such as acts of sabotage against the Nord Stream pipelines in September 2022 and the disruption of the Baltic connector pipeline in October 2023, deterioration of the geopolitical environment, in particular in regions relevant for EU energy security of supply, such as Ukraine, Azerbaijan, and the Middle East.

(8) Given the current tight supply and demand balance, even a moderate disruption to the supply of energy can have wide impacts on the gas and electricity prices and cause serious and lasting harm to the European economy, affecting its competitiveness, and to the citizens of the Union. The current situation is therefore exposing the entire Union to risks of energy shortage and high energy prices.

(9) An accelerated deployment of renewable energy played an essential role in the Union strategy to address the energy crisis and has been instrumental in increasing security of supply and in protecting consumers from price volatility by reducing the Union's overall gas demand. The International Energy Agency estimated that average wholesale electricity prices would have been 8% higher in all European markets in 2022 without the additional installed renewable capacities.[13] In 2022, higher electricity production from renewable energy sources replaced ca. 107 TWh of fossil-based electricity generation - equivalent to ca. 10 bcm of gas, which led to estimated savings of more than EUR 10 billion.

(10) While Regulation (EU) 2022/2577 has been in force for a limited period of application, the Commission's report has shown that it has positively contributed to accelerate the pace of deployment of renewable energy sources in the Union, notably by streamlining the procedures applicable to specific permit-granting processes, and by raising political awareness regarding the importance of accelerating permitting for renewables. While most of the effects of the Regulation will be visible in the months to come, initial available data on the production, deployment and permitting of renewable energy and related infrastructure projects for the period after the entry into force of the Regulation suggests acceleration, at least in some Member States. According to Eurostat, in the first half of 2023, renewable energy production in the Union was record high replacing further gas volumes.[14] The Commission's report also highlights positive developments in terms of increase in renewable energy deployment in the months following the entry into force of Regulation 2022/2577. According to

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12 IEA: World Energy Outlook 2023.

13 How much money are European consumers saving thanks to renewables? – Renewable Energy Market Update - June 2023 – Analysis - IEA.

14 https://ec.europa.eu/eurostat/databrowser/product/view/nrg_cb_pem.

initial industry data, the EU has installed in three quarters of 2023 more solar photovoltaic capacities than in the whole 2022. Wind capacity also significantly increased in several Member States. Available data gathered in the Commission's report also signals that several Member States have experienced double-digit increases in the volume of permits issued for renewable energy projects since the entry into force of the Regulation. Additionally, at least in one Member State, grid projects important for increased penetration for renewables and amounting to over 2000 km in total are also benefitting from accelerated permitting.

(11) Given that risks for energy supplies and prices persist, a quicker pace of deployment of renewable energy projects will still be needed for a certain period after the end of June 2024, to phase out the remaining Russian gas imports. There is no doubt that higher shares of energy from renewable sources would strengthen the Union's resilience even further. Moreover, the quicker the rollout of renewables, the higher the positive impact on the Union's resilience, security of energy supply, energy prices and independence from Russian fossil fuels would be.

(12) Due to the urgent and still unstable energy situation which the Union is facing, it is necessary to prolong specific provisions of Regulation (EU) 2022/2577, namely those which have shown the greatest potential for immediate acceleration of renewable energy sources and which are different from the measures included in Directive (EU) 2018/2001, therefore ensuring that the prolongation of Regulation (EU) 2022/2577 is not duplicating that Directive. Moreover, those measures include appropriate safeguards to ensure environmental protection in the form of specific conditions for their application. These measures shall apply in parallel to this Directive, complementing it with additional emergency measures for a limited period of time. Not prolonging the Regulation would create a risk of slowing down the pace of permitting and deployment of renewables and related infrastructure, in particular in Member States which have made extensive use of this Regulation. For example, according to Germany, the installation of around 41 GW of wind power onshore could be delayed and take approximately two years longer or in some cases halted altogether without a prolongation of the Regulation, in particular its Article 6. Speed of permitting of a number of planned large transmission grid projects totalling thousands of kilometres in length would equally be slowed down, by estimated one up to three years.

(13) One of the temporary measures introduced by Regulation (EU) 2022/2577 which has shown positive effects and which has a significant acceleration potential in the future is the introduction in Article 3(1) of a rebuttable presumption that renewable energy projects are of overriding public interest and serving public health and safety for the purposes of specific derogations foreseen in the relevant Union environmental legislation, except where there is clear evidence that those projects have major adverse effects on the environment which cannot be mitigated or compensated for. Directive (EU) 2018/2001 establishes in its Article 16f a rebuttable presumption that renewable energy projects are of overriding public interest and serving public health and safety, with almost identical wording to Article 3, first paragraph of Regulation (EU) 2022/2577. Therefore, it is not necessary to prolong the application of the first paragraph since such presumption will apply by virtue of Article 16f of Directive (EU) 2018/2001.

(14) However, Article 3 contains a second paragraph which calls to give priority to the projects that are recognised as being of overriding public interest whenever a balancing of legal interests is required in the individual case and introduces additional

compensation requirements for species protection. This paragraph is not included in Directive (EU) 2018/2001. The first sentence of Article 3, second paragraph of Regulation (EU) 2022/2577 has the potential to further accelerate renewable energy projects since it requires Member States to promote them by giving them priority when dealing with different conflicting goods beyond environmental matters. The Commission's report has shown the value of this provision which recognises the relative importance of renewable energy deployment in the current difficult energy context beyond the specific objectives of the derogations foreseen in the environmental Directives referred to in Article 3(1). Therefore, it is appropriate to prolong its application in order to appropriately recognise the crucial role played by renewable energy plants to fight climate change and pollution, reduce energy prices, decrease the Union's dependence on fossil fuels and ensure the Union's security of supply in the context of balancing of legal interests carried out by permitting authorities or national courts.

(15) As shown in the Commission's report, challenges exist in the application of another condition to apply specific derogations foreseen in the Union environmental legislation requiring the absence of other alternative solutions for the purposes of the application of specific derogations. Such challenges limit the practical usefulness of the presumption that renewable energy projects are of overriding public interest, because it is a considerable hurdle to prove that a project could not take place elsewhere, if the territory of a whole country has to be considered, and even more if other renewable energy technologies have to be considered. Therefore, in order to speed up the deployment of renewables, it is appropriate to allow Member States to temporarily limit the scope of the relevant alternative conditions that have to be considered. For the purposes of the relevant Union environmental law, in the necessary case-by-case assessments to ascertain whether there are satisfactory alternative solutions to the specific renewable energy project, Member States should be able to limit the assessment to those alternatives that ensure the achievement of the same objectives as the project in question, namely in terms of deployment of renewable energy capacity using the same renewable energy technology, within the same or similar timeframe and without resulting in significantly higher cost. When comparing the timeframe and cost of satisfactory alternative solutions, Member States should take into account the need to deploy renewable energy in an accelerated and cost-effective manner in accordance with the priorities set out in their integrated national energy and climate plans submitted pursuant to Articles 3 and 14 of Regulation (EU) 2018/1999 and the expected speed to achieve them.

(16) Another provision with potential for significant acceleration of the pace of deployment of renewable energy sources is to be found in Article 5(1) of Regulation (EU) 2022/2577, which imposes a six-month maximum deadline for repowering of existing renewable energy plants. Repowering existing renewable energy plants has a significant potential to rapidly increase renewable power generation, thus allowing to reduce gas consumption. It enables the continued use of sites with significant renewable energy potential, which reduces the need to designate new sites for renewable energy projects. Repowering a wind energy power plant with more efficient turbines usually allows the existing capacity to be maintained or increased but with fewer, bigger and more efficient turbines. Repowering also benefits from the existing grid connection, a likely higher degree of public acceptance and knowledge of environmental impacts.

(17) The Commission found in its review that there is scope for further streamlining the permit-granting process applicable to the repowering of renewable energy projects, in particular in those Member States with greater repowering potential. Directive (EU) 2023/2413 introduces several provisions in this regard into Directive (EU) 2018/2001, including maximum permitting deadlines. Article 16b of Directive (EU) 2018/2001 introduces a maximum deadline of one year for the repowering of projects located outside renewable acceleration areas, while Article 16a of that Directive includes a six-month deadline for projects located within the renewables acceleration areas. Given that the implementation deadline for the designation of renewable acceleration areas is 27 months from the entry into force of the Directive (meaning these areas would have to be designated by 20 February 2026), and even if those areas can be designated earlier, it is appropriate to prolong the application of Article 5(1) of Regulation (EU) 2022/2577. This prolongation includes a targeted amendment regarding the scope of this provision, in order to limit its application to the areas identified pursuant to Article 6 of Regulation (EU) 2022/2577. Prolonging the application of Article 5(1) of that Regulation, together with the application of its Article 6, would ensure that an ambitious permitting deadline applies immediately for the repowering of projects located in the specific areas identified by Member States voluntarily under this Regulation, while the maximum deadlines for the repowering of projects contained in Directive (EU) 2018/2001 would apply to the rest of the territory. Moreover, this is consistent with the differentiation introduced by Directive (EU) 2023/2413 between renewables acceleration areas and areas not having such a status.

(18) Article 6 of Regulation (EU) 2022/2577 allows Member States, under certain conditions to ensure environmental protection, to introduce exemptions from certain environmental assessment obligations set in Union environmental legislation for renewable energy projects and for energy storage projects and electricity grid projects that are necessary for the integration of renewable energy into the electricity system. The application of this provision is optional for Member States and provides them with an effective tool to accelerate the deployment of renewable energy and the related infrastructure projects by ensuring a careful balance between the need to deploy renewables at a much faster speed and the need to ensure protection of environmentally sensitive areas. As explained in the Commission report, this Article has led to tangible positive results both in terms of number of successful renewable and grid projects that are being deployed, and of acceleration potential and shortening of permitting time in the Member States that have made use of it. According to the findings of the Commission's report based on estimates provided by Member States and stakeholders, such acceleration could range from several months to even up to three years for offshore projects.

(19) Based on the evidence gathered in the Commission's report, prolonging Article 6 of Regulation (EU) 2022/2577 appears necessary to ensure an immediate strong acceleration of renewable energy projects. Such Article can and should co-exist, for a limited period, with the provisions included in Directive 2018/2001 regarding the designation of renewable acceleration areas (Article 15c) and areas for grid and storage infrastructure necessary to integrate renewable energy into the electricity system (Article 15e).

(20) Article 15c of Directive (EU) 2018/2001 imposes the obligation on Member States to designate renewable acceleration areas for one or more renewable energy technologies within a deadline of 27 months from the entry into force of Directive (EU) 2023/2413. Even if Member States can designate renewables acceleration areas from the moment

Directive (EU) 2023/2413 entered into force, without waiting to its transposition deadline, this designation requires time, which is expected to be longer than the time needed to designate the dedicated areas referred to in Article 6 of Regulation (EU) 2022/2577. This is because this provision does not require to establish upfront as part of the plan designating renewable accelerations areas appropriate rules for these areas on effective mitigation measures to be adopted for the installation of renewable energy plants and co-located energy storage in those areas and it does not introduce specific procedures to be followed in those areas. Therefore, in order to further facilitate the construction of renewable energy projects during a temporary period, the application of Article 6 should be prolonged, so that it is possible for Member States to designate specific areas in a streamlined manner, without prejudice to the possibility to designate in parallel renewable acceleration areas pursuant to Article 15c of Directive (EU) 2018/2001 in order to ensure that such areas are set up within the deadline prescribed in the Directive.

(21) Article 15e of Directive (EU) 2018/2001 includes a provision granting Member States the possibility to designate areas for grid and storage infrastructure necessary to integrate renewable energy into the electricity system under certain conditions. In view of the optional nature of Article 6 of Regulation (EU) 2022/2577 and Article 15e of Directive (EU) 2018/2001, there is no legal risk of contradiction since Member States can decide which provision to apply or even apply both during the period of application of that Regulation in order to identify different grid areas in parallel, following the different conditions set in those legal acts, respectively.

(22) The provisions of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention') regarding access to information, public participation in decision-making, and access to justice in environmental matters, and in particular, the obligations of Member States relating to public participation and to access to justice, remain applicable.

(23) The principle of energy solidarity is a general principle under Union law and applies to all Member States. In implementing the principle of energy solidarity, the proposed measures allow for cross-border distribution of the effects of faster deployment of renewable energy projects. The measures apply to renewable energy installations in all Member States and capture a wide scope of projects. Given the degree of integration of Union energy markets, any increase in renewable energy deployment in a Member State should be beneficial also for other Member States in terms of security of supply and lower prices. It should help renewable electricity flows across the borders to where it is most needed and ensure that cheaply produced renewable electricity is exported to Member States where the electricity production is more expensive. In addition, the newly installed renewable energy capacities in the Member States will have an impact on the overall gas demand reduction across the Union.

(24) Article 122(1) TFEU enables the Council to decide, without prejudice to any other procedures provided for in the Treaties, on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. In view of those considerations, the urgent and still unstable energy situation and the urgent need to immediately accelerate of renewable energy sources as an instrument to mitigate the risks on the energy supply and volatility of energy prices that still exist, constitutes such a situation. Moreover, it is necessary to take into account the approaching end of the mandate of the European

Parliament, the time required to adopt legislation under the ordinary legislative procedure, as well as the need for Member States and investors to have predictability and legal certainty about the legal framework. A prolongation by one year of some provisions of Regulation (EU) 2022/2577 and the addition of a new provision is necessary to respond to the ongoing situation and it is therefore justified to have Article 122(1) TFEU as the legal basis for this Regulation.

(25) The need to act is urgent as Regulation (EU) 2022/2577 will cease to apply on 30 June 2024 and investors and authorities need to have clarity as soon as possible as regards the legal framework applying thereafter to secure their investment decisions and plan their projects accordingly. Therefore, it is appropriate to adopt the prolongation of that Regulation some months before the end of its application. In addition, due to the inclusion of a new provision, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.

(26) The application of the concerned provisions should be extended temporarily and should, together with the new provision added, remain in force until 30 June 2025.

(27) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved 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, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(28) Regulation (EU) 2022/2577 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2022/2577

Regulation (EU) 2022/2577 is amended as follows:

In Article 1, paragraph 2 is replaced by the following:

‘This Regulation applies to all permit-granting processes that have a starting date within the period of its application and is without prejudice to national provisions establishing shorter deadlines than those laid down in Article 5(1).’;

In Article 3, paragraph 2 is replaced by the following:

‘2. Member States shall ensure, for projects which are recognised as being of overriding public interest, that in the planning and permit-granting process, the construction and operation of plants and installations for the production of energy from renewable sources and the related grid infrastructure development are given priority when balancing legal interests in the individual case. Until 30 June 2024, concerning species protection, the preceding sentence shall only apply if and to the extent that appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken and sufficient financial resources as well as areas are made available for that purpose.’;

The following Article is inserted:

Article 3a
Absence of alternative or satisfactory solutions

‘When assessing whether there are no satisfactory alternative solutions to a project for a plant or installation for the production of energy from renewable sources for the purposes of Articles 6(4) and 16(1) of Council Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1) of Directive 2009/147/EC, this condition may be considered fulfilled if there are no satisfactory alternative solutions capable of achieving the same objective of the project in question, notably in terms of development of the same renewable energy capacity through the same energy technology within the same or similar timeframe and without resulting in significantly higher costs.’;

in Article 5, paragraph 1 is replaced by the following:

‘1. The permit-granting process for the repowering of renewable energy projects located in a dedicated area referred to in Article 6, including the permits related to the upgrade of the assets necessary for their connection to the grid where the repowering results in an increase in capacity, shall not exceed 6 months including environmental impact assessments where required by relevant legislation.’;

In Article 8, the title and the introductory sentence are replaced by the following:

‘Timelines for the permit-granting process for the repowering of renewable energy power plants in dedicated areas pursuant to Article 6

When applying the deadlines referred to in Article 5(1), the following time shall not be counted within those deadlines except when it coincides with other administrative stages of the permit-granting process:’

in Article 10, the following third paragraph is added:

However, Article 1, Article 2(1), Article 3(2), Article 5(1), Article 6 and Article 8 shall apply until 30 June 2025.

Article 2

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*.

This Regulation shall apply from 1 July 2024. However, Article 1(3) shall apply from its entry into force.

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

Done at Brussels,

For the Council
The President