



Brussels, 16 December 2023
(OR. en)

16890/23

LIMITE

ENER 701
ECOFIN 1391

**Interinstitutional File:
2023/0444(NLE)**

NOTE

From:	Permanent Representatives Committee (Part 1)
To:	Council
No. Cion doc.:	16139/23
Subject:	Proposal for a Council Regulation amending Regulation (EU) 2022/2576 as regards the prolongation of its period of application - Political agreement

INTRODUCTION

1. On 28 November 2023, the Commission presented a proposal for a Council Regulation amending Regulation (EU) 2022/2576 as regards the prolongation of its period of application¹.
2. Council Regulation (EU) 2022/2576 (the ‘Solidarity Regulation’) includes temporary emergency measures designed to bring down high energy prices and improve gas supply security, through (i) tighter solidarity in the event of a real emergency and gas supply shortage, (ii) better coordination between Member States, (iii) limiting gas and electricity price volatility, and (iv) setting reliable gas price benchmarks.
3. The Commission proposes to extend the period of application of the Solidarity Regulation for one year until 31 December 2024.

¹ 16139/23

4. Considering the persistent difficulties affecting the EU's security of gas supply and the fact that global gas markets and prices' levels are still not comparable with the pre-crisis situation, such targeted and time-limited extension is deemed necessary to enhance solidarity and decrease the tightness of gas markets.

STATE OF PLAY

5. The proposal was examined at the meetings of the Working Party on Energy on 5, 7 and 12 December 2023.
6. Having taken into account the Member States' comments, the Presidency tabled a first revision of the text² for an exchange of views at the Coreper meeting on 15 December 2023.
7. As the revised text could be accepted by a very broad majority of Member States, the Presidency now presents the text in the Annex to this note with a view to reaching a political agreement at the forthcoming TTE (Energy) Council on 19 December.
8. A few additional legal-linguistic and stylistic changes have been made throughout the text to improve it, including the alignment of identical recitals in the three emergency regulations.
9. Changes compared to the Commission proposal are marked in **bold** and ~~striketrough~~. New changes compared to ST 16182/23 are marked in **bold underline** and ~~striketrough underline~~.

CONCLUSION

10. In light of the above, the Council is invited to examine the Presidency compromise text as set out in the Annex to this note, discuss any outstanding issues raised by the delegations and reach a political agreement on this Council Regulation.

² 16182/23

COUNCIL REGULATION (EU) 2023/...

of ...

amending Regulation (EU) 2022/2576 as regards the prolongation of its period of application

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) 2022/2576³ was adopted in view of the gas supply crisis caused by Russia's unprovoked and unjustified **war of aggression against** ~~full-scale invasion of~~ Ukraine ~~in February 2022~~ and the need for the Union to react with temporary measures in a spirit of solidarity between Member States. It aims at mitigating the impact on the price for gas by addressing its demand and supply, ensuring security of supply across the entire Union, and enhancing solidarity.
- (2) Regulation (EU) 2022/2576 provides a temporary legal framework in respect of better coordination of gas purchases, measures to prevent excessive gas prices and excessive intra-day volatility in energy derivatives markets, and measures **in the event** ~~for the case~~ of a gas emergency.

³ Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders (OJ L 335, 29.12.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2576/oj>).

- (3) The period of the application of Regulation (EU) 2022/2576 was originally limited to 30 December 2023.
- (4) In accordance with Article 30 of Regulation (EU) 2022/2576, the Commission carried out a review of that Regulation **and on 28 September 2023 issued a report summarising the main findings**, ~~the results of which are summarised in the Report on the main findings of the review of the Regulation of 28 September 2023 ('the Report')~~⁴. The Report concluded that Regulation (EU) 2022/2576 ~~has~~ played an important role in stabilising the situation of the gas market and **in** ensuring adequate gas supply to the Union, and that it is an important element of the Union gas security of supply tool kit.
- (5) Regulation (EU) 2022/2576 **provides for the expedited setting up of a service allowing for demand aggregation and joint gas purchasing** ~~sets up a demand aggregation platform~~ and requires Member States to take appropriate measures to ensure that natural gas undertakings and undertakings consuming gas under their jurisdiction participate in the process of demand aggregation organised by the service provider as one of the possible means **of to-meeting** the filling targets referred to in Regulation (EU) 2017/1938 of the European Parliament and of the Council⁵, ~~as amended by Regulation (EU) 2022/1032~~. Member States and natural gas undertakings as well as undertakings consuming gas have effectively participated in the demand aggregation and joint purchasing mechanism set up under Regulation (EU) 2022/2576 ("AggregateEU") and contributed to achieve, by October 2023, a total aggregation of 44,-04 **billion cubic metres** ~~hem~~ of demand for gas, which is equivalent to more than three times the mandatory amounts for demand aggregation. This shows that "AggregateEU" attracted significant interest by market participants.

⁴ ~~COM(2023) 547 final.~~

⁵ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1, ELI: <http://data.europa.eu/eli/reg/2017/1938/oj>).

- (6) The Report concluded that the “AggregateEU” mechanism provided additional opportunities for European buyers to procure gas from reliable suppliers **in** at competitive conditions, as well as market transparency on demand and supply, thereby contributing to **the** decreasing volatility of markets.
- (7) As regards market oversight rules, Regulation (EU) 2022/2576 requires trading venues on which energy-related commodity derivatives are traded ~~are~~ to 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’). The Report found that gas markets still feature episodes of significant volatility and that the intra-day volatility management mechanism may play a role in preventing excessive price spikes and in stabilising the market.
- (8) Pursuant to Regulation (EU) 2022/2576, the European Union Agency for the Cooperation of Energy Regulators (ACER) is required to **produce and** publish daily liquefied natural gas (LNG) price assessments and **a** daily LNG benchmark on the basis of LNG market data on transactions that ACER ~~should~~ **is to** systematically collect and process. The LNG price assessments and benchmark have provided the market with greater transparency thereby enhancing market players’ ability to secure LNG supplies at competitive prices. The Report found that the LNG price assessments and benchmark have proven useful in stabilising the market.

- (9) Regulation (EU) 2022/2576 provides for a number of security of supply and solidarity provisions ~~for the case in the event~~ of a gas emergency to better coordinate the organisation of energy solidarity measures in an emergency situation. ~~Its Chapter IV of Regulation (EU) 2022/2576 temporarily complemented Regulation (EU) 2017/1938, notably in particular~~ by making the solidarity mechanism applicable by default in absence of bilateral agreements, as well as by extending the solidarity mechanism to LNG and critical gas volumes for electricity. In addition, **Regulation (EU) 2022/2576 provides for temporary measures to reduce the non-essential consumption of protected customers and safeguards for cross-border flows** ~~a provision was added to facilitate demand reduction by protected customers, as well as a measure to safeguard cross-border flows~~. The Report concluded that the temporary security of supply and solidarity provisions have proven ~~to be~~ useful ~~into~~ preventing and mitigating a gas crisis, and ~~in~~ **facilitating** gas demand reduction efforts.
- (10) The conclusion of the Report, **namely** that severe difficulties persist for the Union's security of energy supply still holds true. 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 Union businesses. **Gas** market volatility is another aspect of the current situation. Recent episodes of significant volatility **in the** summer and autumn **of** 2023, caused by events such as the strike in Australian LNG facilities, or the disruption of the Balticconnector, show that markets are still fragile and vulnerable to even relatively small shocks on demand and supply. The ongoing crisis in the Middle East constitutes an additional significant geopolitical risk with potential impact on prices and gas supply. Under these conditions, the fear of scarcity may trigger large reactions with serious repercussions on prices.

- (11) Due to the significant decrease in Russian pipeline gas imports over the past year, **the** availability of gas supplies to the Union is considerably reduced ~~in comparisoned with~~ **pre-crisis levels**. With the current pipeline gas import levels, the Union is expected to receive approximately 20 **billion cubic metres**~~per~~ of Russian pipeline imports, if these unreliable imports are not disrupted altogether. This would ~~amount to~~ be approximately 110 **billion cubic metres**~~per~~ less than in 2021. This reduction constitutes a risk that gas shortages will occur in the Union.
- (12) Global gas markets currently are very tight and are expected to remain ~~tight so~~ for a certain time. Global LNG supply **has grown** ~~grew~~ only modestly in the past two years because of limited liquefaction capacity additions, outages at major export facilities and declining feed gas supply at LNG plants. Significant new LNG liquefaction capacity is set to **become operational** ~~online~~ only in the course of 2025. Hence, market balances **are expected to** remain precarious in the immediate future. This situation has negative consequences on gas prices which, despite being lower than the peak experienced in summer 2022, remain more than twice as high ~~as than~~ pre-crisis levels.
- (13) In view of the current tight market conditions, prices may spike again ~~as a result on the~~ **back** of unpredictable events and sudden shocks such as a rebound in Asian LNG demand, **which could** ~~reducing~~ the availability of gas on the global gas market, a cold winter which could lead to an increase ~~in the of gas demand for gas~~ of up to 30 **billion cubic metres**~~per~~, extreme weather **conditions** potentially affecting ~~the~~ hydropower storage and nuclear production due to low water levels, ~~and~~ **which would lead to** the subsequent increase in demand for gas fired power generation, further disruptions of critical infrastructures, ~~after~~ **such as** the acts of sabotage against the Nord Stream pipelines in September 2022 and the disruption of the Balticconnector pipeline in October 2023, and a deterioration of the geopolitical environment and threat landscape in supplying regions, for example ~~due to with~~ the crisis in the Middle East.

- (14) Given the current tight supply and demand balance, even moderate disruption to the supply of gas or even the mere threat of such disruptions could have a dramatic impact on the gas market and could cause serious and lasting harm to the economy and to the citizens of the Union.
- (15) The current crisis is exposing the entire Union to risks of energy shortage and high energy prices. The persistent severe difficulties still affecting the Union's security of gas supply, as well as any new additional ones, and the level of gas prices can **negatively** impact ~~negatively~~ the economic situation, industrial competitiveness and citizens' purchasing power.
- (16) Since the Union is a single market, gas shortage in one Member State would have severe consequences in all other Member States through physical supply shortage of gas, volatility of prices or disruption of industrial chains resulting from possible curtailments of specific industries in a Member State. Moreover, in a spirit of solidarity, all Member States can contribute to continue reducing the risks of energy shortage and thus help contain gas price volatility.
- (17) The prolongation of the period of application of Regulation (EU) 2022/2576 constitutes an exceptional and time-limited measure, in response to persistent and new severe difficulties in the supply of energy, which entail a risk of imminent crisis. The prolongation will clearly decrease **the** volatility of markets and enhance solidarity.

- (18) The need to act is urgent. Not prolonging the period of application of Regulation 2022/2576, which will cease to apply on 30 December 2023, would risk altering the stabilised but fragile situation **that** the Union has achieved so far and would deteriorate the resilience to likely future developments such as a complete halt of Russian gas imports. A prolongation of the period of application of Regulation (EU) 2022/2576 is also consistent with the “RepowerEU Plan”⁶, **as announced by the Commission in its communication of 18 May 2022**, which was meant to protect Union citizens and **the** economy against excessive prices and energy supply shortages.
- (19) The persisting energy supply tensions justify a prolongation of **the period of application of** the demand aggregation and joint purchasing provisions in Regulation (EU) 2022/2576, as they help ensure more equal access for undertakings across Member States to new or additional gas sources. ~~They~~ **Those provisions** also help ensure better conditions than might otherwise have applied to undertakings purchasing ~~the~~ gas through the use of the service provider, thereby contributing to security of supply.
- (20) Prolonging **the period of application of** the provisions on demand aggregation and joint purchasing would strengthen Union solidarity in purchasing and distributing gas. In a spirit of solidarity, the prolonged availability of demand aggregation and joint purchasing will 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.

⁶ ~~Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU Plan, COM(2022) 230 final, 18.5.2022.~~

- (21) In order to support market participants throughout this winter and **the** next gas storage filling season, continuity in the operation of ~~the demand aggregation and joint purchasing mechanism~~ (“AggregateEU²”) should be ensured. This includes the possibility of extending the current contract with the service provider in line with Regulation (EU, Euratom) 2018/1046 **of the European Parliament and of the Council**⁷.
- (22) With a view to the advantages for consumers, price stability and energy supply security, a prolongation **of the period of application** is also warranted with respect to the provisions **of Regulation (EU) 2022/2576** establishing an intraday volatility management mechanism and ~~a~~ LNG price assessments and **a** LNG benchmark.
- (23) In view of the persisting risks for stable gas supplies set out above, it is also appropriate to prolong **the period of application of the provisions in the event** ~~for the case~~ of a gas emergency (~~Chapter IV~~) for another year, in line with the findings on the positive effect of ~~the~~ **those** provisions in the Report. The values for critical gas volumes in Annex I remain valid for the period of a prolonged application of ~~the~~ Regulation **(EU) 2022/2576** until the end of 2024.

⁷ 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, ELI: <http://data.europa.eu/eli/reg/2018/1046/oj>).

- (24) The ~~extended~~ **prolonged** application of Regulation (EU) 2022/2576 should be temporary **and**, should enter into force on ~~the~~ 31 December 2023 in order to ensure a continued application of the relevant provisions, and should last one year, ~~namely~~ until 31 December 2024. The prolongation by one year is necessary and proportionate due to the persistent nature of the severe difficulties for energy supplies and the resulting risks for prices and security of supply which are expected to continue at least during the whole of 2024. **Taking into account that the volumes of gas aggregated through the demand aggregation platform by October 2023 had already amounted to three times the volumes required, the ~~extension~~ prolongation of the period of application of Regulation (EU) 2022/2576 should not introduce any additional obligations beyond the temporary prolongation, in particular as regards measures taken by Member States to ensure **include the mandatory** participation in demand aggregation.**
- (25) Regulation (EU) 2022/2576 should therefore apply until 31 December 2024.
- (26) 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.
- (27) Regulation (EU) 2022/2576 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2022/2576

Regulation (EU) 2022/2576 is amended as follows:

(1) **In Article 5, the fifth paragraph 5 is replaced by the following:**

‘The Commission may request the service provider to provide all information necessary for the fulfilment of the tasks set out in Article 7.’;

(2) **Article 10 is deleted;**

(13) **In Article 31, the second paragraph is replaced by the following:**

‘It shall apply until 31 December 2024.’;

(24) **~~In~~ Annex I is amended as follows:**

(a) in part (a), footnote (1) is replaced by the following:

‘The figures in Annex I, parts (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, part (a), represents the individual monthly volumes calculated by ENTSO-E for the months December 2022 to March 2023; the figures in Annex I, part (b), for the months April 2023 to December 2024 represent the average of the values in the period between December 2022 and March 2023.’;

(3b) in part (b) ~~In Annex I (b)~~, the heading first sentence is replaced by the following:

‘Maximum critical gas volumes for electricity security of supply pursuant to Article 23 for the period between April 2023 to December 2024 (values in million cubic metres):’.

Article 2

Entry into force and application

This Regulation shall enter into force on 31 December 2023.

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

Done at Brussels..., ...

For the Council

The President
