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NOTE

From:	Permanent Representatives Committee (Part 1)
To:	Council
No. Cion doc.:	16136/23
Subject:	Proposal for a Council Regulation amending Regulation (EU) 2022/2578 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) 2022/2578 as regards the prolongation of its period of application¹.
2. Council Regulation (EU) 2022/2578 (the ‘Market Correction Mechanism Regulation’) establishes a system of temporary measures to prevent spikes of excessively high gas prices in the EU when these do not reflect those on the world market. It was agreed to cap trades on Europe’s gas exchanges at EUR 180/MWh under certain conditions. The mechanism is activated when prices at EU virtual trading points move above certain levels and those prices are significantly above a reference price reflecting global LNG price trends.

¹ 16136/23

3. The Commission proposes to extend the period of application of the Market Correction Mechanism Regulation for one year until 31 January 2025.
4. Considering the persistent shortage of gas supplies, together with the price volatility caused by the fragile balance in global gas markets, such targeted and time-limited extension is deemed necessary to avoid excessively high energy prices throughout the 2023/2024 winter season. It should also be mentioned that the assessments carried out by ESMA and ACER, and later by the Commission, conclude that no negative effects on the security of supply, intra-Union flows of gas or financial stability have been noted since the entry into force of the Market Correction Mechanism Regulation.

STATE OF PLAY

5. The proposal was examined at the meeting 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 2023.
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 ~~strikethrough~~. New changes compared to ST 16186/23 (+ COR 1) are marked in **bold underline** and ~~strikethrough underline~~.

² 16186/23 + COR 1

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.

COUNCIL REGULATION (EU) 2023/...

of ...

amending Regulation (EU) 2022/2578 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) 2022/2578³ ~~sets up~~ **establishes** a temporary market correction mechanism ('MCM') for orders placed for trading derivatives linked to the Union's virtual trading points ('VTPs') with maturities between month-ahead and year-ahead. The MCM therefore applies to any commodity derivative, traded on a regulated market, the underlying of which is a transaction in gas in any VTP in the Union.

³ Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (OJ L 335, 29.12.2022, p. 45, ELI: <http://data.europa.eu/eli/reg/2022/2578/oj>).

- (2) The MCM is to be activated ~~where~~ **when** a market correction event occurs, that is, when the front-month Title Transfer Facility ('TTF') derivative settlement price, as published by ICE Endex B.V. (**the Netherlands**), exceeds EUR 180/MWh and is EUR 35 higher than the reference price for three working days. ~~Upon the occurrence of a market correction event,~~ Regulation (EU) 2022/2578 sets a dynamic bidding limit, according to which, **upon the occurrence of a market correction event**, market operators ~~should~~ **are not to** accept and market participants ~~should~~ **are not to** submit orders for derivatives with prices of EUR 35/MWh above the reference price published by the **European Union** Agency for the Cooperation of Energy Regulators ('ACER')⁴-on the previous day.
- (3) In their effects assessment reports published on 1 March 2023 in accordance with Article 8 of Regulation (EU) 2022/2578, ~~ACER and~~ the European Securities and Markets Authority ('ESMA')⁵ **and ACER** analysed a number of indicators to assess the impact of the MCM since the entry into force of that Regulation. ~~ESMA ACER and ACER ESMA~~ concluded that the MCM had not been activated and no negative effects on **the** security of supply, ~~and~~ intra-Union flows **of gas to financial markets and or financial** stability had arisen until the publication of their respective reports.
- (4) Building on the indicators analysed by ~~ACER ESMA and ACER ESMA~~ in their reports of 1 March 2023, the Commission extended the analysis **in order** to assess ~~the~~ market developments ~~in more recent months~~ **subsequent to the time period analysed by those reports**. No negative effects have been identified since Regulation (EU) 2022/2578 entered into force and the MCM has never been activated.

⁴ ~~https://acer.europa.eu/Publications/ACER_FinalReport_MCM.pdf~~

⁵ ~~https://www.esma.europa.eu/sites/default/files/library/ESMA70-446-794_MCM_Effects_Assessment_Report.pdf~~

- (5) However, severe difficulties 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 **they were pre-prior to the beginning of the crisis in Europe following Russia's weaponisation of energy and Russia's war of aggression against Ukraine**, with inevitable consequences on Union citizens' purchasing power and **on** the competitiveness of Union businesses.
- (6) **Gas m**Market volatility is also a consequence of the market tightness resulting from geopolitical risks, and represents an additional risk for the ~~Union~~ economy **of the Union**. The episodes of pronounced price volatility observed in summer and early autumn **of 2023**, when prices increased by more than 50 % in a few weeks, show that markets are still fragile and remain vulnerable to even relatively small shocks on demand and supply, as evidenced by price movements following recent events such as the strike in Australian liquefied natural gas (LNG) facilities, or the disruption of the Balticconnector. The ongoing crisis in the Middle East constitutes an additional significant geopolitical risk with **a** potential impact on **gas** prices and ~~gas~~-supply.
- (7) Global gas markets are currently very tight and are expected to remain tight for a certain time. Global LNG supply ~~grew~~ **has grown** 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 ~~come online~~ **become operational** only in the course of 2025. Hence, market balances **are expected to** remain precarious in the immediate future.

- (8) Furthermore, 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~~**lower when** compared to the pre-crisis situation. With the current level of gas imports, the Union is expected to receive approximately 20 **billion cubic metres (bcm)** of Russian pipeline gas in 2023, approximately 110 bcm less than in 2021. Therefore, a serious risk remains that gas shortages will occur in the Union in the short term. In view of the current tight market conditions, prices ~~may~~ **can** spike again ~~on the back~~ **as a result** of unpredictable events and sudden shocks such as: a rebound in Asian LNG demand, ~~that~~ **which** could reduce the availability of gas on the global gas market; extreme weather conditions potentially affecting hydropower storage ~~or~~ **and** 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, and further disruptions of critical infrastructures, ~~after~~ **such as** the acts of sabotage against the Nord Stream 1 pipeline in September 2022 ~~and~~ **or** the disruption of the Balticconnector pipeline in October 2023.
- (9) Persistent severe difficulties expose the entire Union to risks of energy shortage and high energy prices. The level of gas prices could **have a negative** impact ~~negatively~~ **on** the ~~Union's~~ economic situation **of the Union, on its** industrial competitiveness and ~~citizens'~~ **on the** purchasing power **of its citizens**.

- (10) Under ~~those~~ conditions, ~~notably~~ **in particular** in a situation of several geopolitical risks with a potential impact on gas prices, the fear of scarcity ~~may can~~ trigger ~~large~~ **significant** reactions which can have serious repercussions on gas prices. Given the current tight supply and demand balance, even moderate disruptions to the supply of gas could have a dramatic impact on ~~the~~ gas prices and could cause serious and lasting harm to the economy and to the citizens of the Union.
- (11) At the peak of the crisis, the Union adopted a strong and coordinated response to protect its citizens and its economy against ~~excessively~~ **high** prices and to make sure that gas flows to all consumers in need across borders, ~~also~~ **including** in situations of gas scarcity. The Union's response ~~under~~ **pursuant to** the 'REPowerEU Plan'⁶, **as announced by the Commission in its communication of 18 May 2022**, and subsequent initiatives, including the measures set out in Regulation (EU) 2022/2578, **has** contributed to **an improvement in** the situation. Should those measures cease to apply, ~~this would risk altering~~ the stabilised, ~~but~~ **albeit** fragile, situation **that** the Union has achieved **would be at risk** and ~~would deteriorate~~ the resilience to possible future events and sudden shocks **would deteriorate**, ~~such as those mentioned above~~.

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.~~

(12) Since the Union is a single market and the TTF **in the Netherlands** is commonly seen as the ‘standard’ pricing proxy on ~~Union~~ **European** gas markets, high gas prices for the derivatives linked to **the** TTF would have severe consequences in all Member States, although possibly to **different** degrees depending on the Member State. Derivatives linked to all other VTPs in the Union should also remain included in the prolongation of **the period of application of** Regulation (EU) 2022/2578 so as to avoid possible shifts of trade to derivatives linked to other VTPs which may lead to distortions ~~on~~ **in** the ~~Union~~ energy or financial markets **of the Union**. The MCM strengthens the Union’s solidarity by avoiding excessively high gas prices, which are unsustainable even for short periods of time for many Member States. The MCM can help ensure that, **in a spirit of solidarity between Member States**, gas supply undertakings ~~from~~ **in** all Member States are able to purchase gas at reasonable prices ~~in a spirit of solidarity~~.

~~(13) The prolongation of the period of application of Regulation (EU) 2022/2578 constitutes an emergency measure in response to persistent severe difficulties in the supply of energy which entail a risk of imminent crisis and require that the measure set out in that Regulation, which contributes to keep prices in check, continues to apply~~

(134) Taking into account the fact that Regulation (EU) 2022/2578 will cease to apply on 31 January 2024, the prolongation of its period of application constitutes an emergency measure, in a spirit of solidarity between Member States, ~~which aims to~~ **in** response to persistent severe difficulties in the supply of energy. ~~Such difficulties also~~ **which** entail a risk of imminent crisis and excessively high prices ~~especially if events such as the ones described above were to materialise~~.

- (145) **Furthermore**, ~~Aa~~ prolongation of the period of application of Regulation (EU) 2022/2578 is ~~also~~ consistent with the REPowerEU Plan, which aims to protect Union citizens and **the Union** economy against excessive prices and energy supply shortages.
- (156) This Regulation should enter into force on 1 February 2024 in order to ensure a continuous protection against excessively high prices throughout the 2023/2024 winter season.
- (167) The ~~extended provisions~~ **prolongation** should be temporary and should remain in force until ~~the end of~~ 31 January 2025. ~~The prolongation by one year~~ **It** is necessary and proportionate due to the persistent nature of the severe difficulties **and risks for the Union's security of gas supply and gas prices** ~~and the additional risks described above~~, and **due to** the uncertainty of the current situation.
- (178) 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.
- (189) Regulation (EU) 2022/2578 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) 2022/2578

In Article 12(1) of Regulation (EU) 2022/2578, the second sentence is replaced by the following:

‘It shall apply until 31 January 2025.’.

Article 2

Entry into force and application

This Regulation shall enter into force on 1 February 2024.

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

Done at Brussels..., ...

For the Council

The President
