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Proposal for a

**COUNCIL REGULATION**

**Establishing a market correction mechanism to protect citizens and the economy against  
excessively high prices**

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**COUNCIL REGULATION****Establishing a market correction mechanism to protect citizens and the economy against excessively high prices****1. CONTEXT OF THE PROPOSAL**

The proposal creates a temporary and well-targeted regulatory instrument to address the phenomenon of extreme price peaks caused by shortcomings in the price formation mechanisms of gas wholesale markets, thereby preventing significant damage to the Union economy.

**a) Ukraine crisis leading to unprecedented price hikes and severe economic harm.**

Russia's unjustified military aggression against Ukraine and its weaponisation of energy have provoked an unprecedented energy crisis, particularly affecting the Union. This has led to a sharp rise in energy prices, driving inflation and compromising our security of energy supply. Russia has engaged in intentional disruptions and supply manipulations, affecting European natural gas prices and the equilibrium of price formation in energy markets. Russia's decision to cut-off supply through the Nord Stream 1 pipeline and disrupt supplies to several EU Member States, the sabotage of the Nord Stream 1 and 2 pipelines, and the necessity to find new supply sources and routes on short notice has brought this crisis to a new stage. The EU is committed to phasing-out completely its dependence on Russian fossil fuels, as set out in the Commission's Communication of 18 May 2022 entitled 'REPowerEU Plan' by reducing demand, accelerating the roll-out of renewables and replacing Russian gas by alternative supplies from trusted partners via the Energy Platform. The Russian share of pipeline gas imports out of the total EU gas imports already decreased from 41% in September 2021 to 9% in September 2022.

While markets had already reacted with a significant increase of gas prices since the start of the Russian aggression towards Ukraine, natural gas prices have seen unprecedented price peaks, reaching all-time highs in the whole second half of August 2022. While prices over the previous decade were within a band between EUR 5MWh and EUR 35MWh, European natural gas prices reached levels which were 1000% higher than the average prices seen before in the Union. Dutch TTF Gas Futures (3-month/quarterly products) traded on the exchange ICE Endex<sup>1</sup> hit EUR 350/MWh, the TTF day-ahead gas traded on EEX hit EUR 316/MWh, without significant changes in traded volumes. Month-ahead prices spiked well above 200 €/MWh and reached its peak at almost 314 €/MWh on 26 August 2022. For two consecutive weeks the month ahead price remained above EUR 225/MWh, from 18 August to 31 August 2022. The highest price levels were reached for one week - 5 consecutive trading days - from 22 to 26 August 2022, when the prices had been very close or above EUR 265/MWh. During the period from 22 to 31 August 2022 the difference between spot TTF

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<sup>1</sup> Price difference or 'spread' measured on the basis of 'TTF spot EGSI' from EEX minus the average of North-western EU and South-western EU LNG spot price assessment from Platts/S&P Global.

and LNG prices<sup>2</sup> was above EUR 57/MWh. In the last three days of the week 22 to 26 August 2022, the spread between spot TTF prices and the LNG reference prices was above EUR 58/MWh. This was an unprecedented decoupling of TTF prices from LNG prices, which reflect world market prices. After reaching the extreme levels in August 2022, prices went below EUR 220/MWh in the following weeks and have not yet peaked above that level again.

This extreme price spike over almost two weeks was highly damaging for the European economy. Gas is widely used by many sectors in the EU economy from SMEs to large industry, in particular gas intensive industries such as ceramics, glass, fertilisers, pulp and paper and chemicals. Very high natural gas prices at the levels seen in August of around EUR 350 MWh have a major negative impact on the Union economy even over just a short period of time; they have contagion effects on electricity prices and increase the overall inflation. Price spikes involve tangible damages and risks for energy customers, suppliers and for security of supply on gas and electricity markets. Customers were fully exposed to the extreme price peaks caused by regional capacity bottlenecks. At maximum capacity, no additional gas supplies could be attracted by further price increases. Russia's aggression against Ukraine continues to negatively affect the entire Union economy, setting it on a path of lower growth and higher inflation compared to the Commission Spring Forecast<sup>3</sup>. Annual average inflation is projected to peak at historical highs in 2022, at 7.6% in the euro area and 8.3% in the EU, before easing in 2023 to 4.0% and 4.6%, respectively. The Union forecast 'Summer 2022 (interim) Economic Forecast' projects that the Union economy will grow only by 2.7% in 2022 and 1.5% in 2023. Growth in the euro area is expected at 2.6% in 2022, moderating to 1.4% in 2023; in some countries, a recession is expected.

With the current low levels of Russian natural gas flows to Europe, already reduced to 9% of the EU total gas pipeline imports, and the perspective that they will not rise to pre-war levels, the situation on gas and financial markets remains challenging in the EU. The unprecedented change of gas supply and transport routes, combined with market and price formation instruments that were not tailored to a situation of a supply shock, exposes European consumers and business to a manifest risk of further potential episodes of economically damaging gas price spikes. Unpredictable events, like accidents or the sabotage of pipelines that disrupt gas supplies to Europe or increase demand dramatically may threaten security of supply. Market tensions and nervousness, triggered by the fear of sudden scarcity situations are likely to persist beyond this winter and into next year, as the adaptation to supply shock and the establishment of new supply relationships and infrastructure is expected to take one or more years.

## **b) Changed TTF & market context - change of relevance of price benchmarks**

### *System of price formation*

The Title Transfer Facility, (TTF), is a 'hub<sup>4</sup>' or a 'virtual trading point' of a so-called entry/exit system, where network users can transfer gas between each other. A hub is usually operated by a transmission system operator or another entity designated by the Member State, handling nominations for the transfer of title of the gas between network users.

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<sup>2</sup> Price difference or 'spread' measured on the basis of 'TTF spot EGSI' from EEX minus the average of North-western EU and South-western EU LNG spot price assessment from Platts/S&P Global.

<sup>3</sup> [Summer 2022 Economic Forecast: Russia's war worsens the outlook, \(https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4511\).](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4511)

<sup>4</sup> A hub is a virtual trading point of an entry/exit system, where network users can transfer gas between each other, most frequently operated by the transmission system operator (or another designated entity).

A range of products can be traded for delivery on hubs including virtual or physical (where the gas is required to be delivered at a certain physical point)<sup>5</sup>. Hubs have an important function in the stability of the natural gas system as they enable the transfer of gas between market players and therefore are at the core of the gas market. There are different gas hubs in Europe, the main ones being: the Dutch TTF (NL), the German Trading Hub Europe (THE), the French Gas exchange point - North (PEG), the Belgian Zeebrugge (Beach) and ZTP, the Austrian Virtual Trading Point (VTP), the Italian Punto di Scambio Virtuale (PSV), the Czech Virtual Trading Point (VTP), the Spanish Virtual Balancing Point (PVB), and the British National Balancing Point (NBP).

### ***Specific relevance of the TTF future price for the EU system of price formation***

Trading on hubs can occur either over-the-counter (OTC) or via exchanges, the hub being the place of delivery to exchange the gas between portfolios. The most liquid product referring to TTF is the Dutch “TTF Gas Futures” for delivery within the month, traded on the exchange ‘ICE Endex’, while on the so-called ‘spot market’, i.e. the market for products with a duration of a day or less, the European Energy Exchange (‘EEX’) is the most liquid market place.

The TTF is a virtual trading point to which both spot and futures contracts relate. TTF-related products (i.e. contracts with TTF as a delivery point) are available on exchanges and typically range from short-term products (e.g. within-day, day-ahead, week-ahead) to products with a delivery horizon several years ahead. Different markets can be distinguished in this context:

Spot markets (within-day and day-ahead) are the place where TSOs physically keep balance in the grid, critical to ensure Security of Supply. It is also the place for physically delivered transactions where market participants will balance their gas portfolios in response to changes in demand and supply, for instance due to weather conditions, or congestion. Given the risks for Security of Supply and the balancing of daily markets, this is not the object of the current proposal.

Derivatives markets, notably with contracts concerning the future delivery of gas (e.g. month-ahead or longer) are essential for gas companies to hedge their financial risks when purchasing gas in volatile markets. The more stable long-term prices of derivatives also provide price signals for a reliable environment for infrastructure investment. Interventions in derivatives and future markets might also have impacts on financial stability.

Price Reporting Agencies (PRAs) track the activity of day-ahead markets and publish indices, including TTF-related ones, that are usually referenced in contracts. TTF month-ahead reference prices are the ones frequently referenced in contracts. In turn, TTF-related indices, relating the price of TTF spot or futures contracts, can be used in the price formulas contained in longer-term contracts. This is mainly linked to the fact that, over the past years, the TTF has been perceived as the most reliable proxy for gas prices at EU level, even beyond the boundaries of the region served by the TTF hub.

Exchanges usually have so called ‘clearing houses’ which manage counter-party risks, as trades are conducted without knowing the counterparty.

The TTF is the most liquid gas hub in the EU and is a widely used reference for European gas prices, serving as the premier trading and risk management instrument for gas trading in Europe. TTF indexes have been used in the past years in Europe as a proxy for natural gas prices in Europe. This was due to the specific geographical location of the hub, receiving natural gas from several sources, including domestically produced gas from the ‘Groningen’

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<sup>5</sup> ACER(2011) Framework Guidelines on Gas Balancing in Transmission Systems.

field, Norwegian gas, LNG, as well as significant volumes from Russia. The latter now have to be replaced from other Third Country Suppliers. Market players historically used TTF as a reference proxy price for the natural gas for the whole of Europe, and it was regarded as being representative of the whole market. According to market data, the TTF hub accounted for around 80% of natural gas traded in the European Union and the United Kingdom combined in the first 8 months of 2022 (same share as in 2021 during this period). According to market estimates, the share of exchange-based trading on TTF rose to 70% in the first 8 months of 2022. ICE ENDEX and ECC B.V. are the gas exchange operators for the Dutch gas market.

### ***Evidence of malfunctioning of price formation contributing to excessive price hikes***

Russia's unprovoked aggression against Ukraine and the weaponisation of energy by Russia are having a profound structural impact on the natural gas markets in Europe, fundamentally changing the origin of supplies in Europe and the way gas flows inside the EU.

Supply disruptions from Russia have brought the proportion of Russian pipeline gas out of total pipeline imports in the EU from 40% to 9% during the course of this year. The infrastructure needed to accommodate the necessary flows from other sources is not yet available. Several infrastructure bottlenecks both on pipeline gas and LNG are being addressed now to adapt to the new market reality in line with the REPowerEU plan.

In the situation where there is a supply shock and new supply routes are being established, the fact that the gas system of North-Western Europe is characterised by important infrastructural limitations both in terms of pipeline transmission (West-East) and in terms of LNG regasification capacity became problematic for the price formation mechanism for the rest of Europe. Such limitations were partly responsible for the general increase of gas prices since the beginning of the crisis. Infrastructure bottlenecks in the region were one of the reasons that explain the increase in the divergence between the TTF-future price and LNG prices on the world market during the summer. Whilst the TTF future price was always a good and reliable proxy for gas prices in many regions of Europe in the past, it has become less relevant and reliable as a price benchmark in certain regions - in particular in those countries which have easier access to LNG and other gas sources than countries without major LNG access and in which capacity bottlenecks prevent additional supplies.

A clear indicator for the malfunctioning of the price formation mechanism impacting the whole of the European market is that, as of April 2022, the TTF future price became detached from other regional hubs in Europe, and from the price assessments made for LNG imports by professional index providers ('price reporting agencies'). In normal circumstances, as was the case in the past decade where the TTF became the most used proxy for the price of natural gas in Europe, the spread between TTF and LNG has been narrower and even negative. The abnormal spread between the TTF and other regional hubs seen in August 2022 is a strong indication that the TTF may not be a good proxy of the market situation outside North-Western Europe, leading to high prices which do not correspond to the market fundamentals for the whole of the EU. A new, more reliable LNG benchmark at Union level has therefore been created, to be developed by ACER by 1.3.2023, in Regulation [XXXX/2022]. In scarcity episodes in the North-Western Europe market, other regional markets outside North-Western Europe are unduly impacted through contract indexation to TTF.

Infrastructure bottlenecks have led to significant and unprecedented price differentials between TTF, national gas hubs and LNG prices. Until infrastructure bottlenecks are resolved in North-Western Europe, they will impact price formation, and continue having a massive and disproportionate effect in natural gas markets and the economy in Europe. Once pipeline flows and LNG terminals are at maximum capacity, ensuring security of supply, any further increases in prices above a certain spread with global gas prices, which are needed to attract

LNG cargoes to the continent, do not attract new gas, but are a result of infrastructure bottlenecks. This situation can be used by traders and energy companies to drive up prices, with a harmful effect in the whole Union.

This has led to situations such as in the last two weeks of August 2022, where natural gas prices reached record levels above EUR 300/MWh and the price in continental hubs, such as the TTF, went up to EUR 70/MWh above the LNG price (i.e. the TTF price was up to 25% higher than the LNG price (as indicated by the average North-West and South West Europe LNG Spot Index). In these situations, it can be argued the TTF index does no longer provide an adequate proxy for prices in Europe.

Given the role of the TTF as a proxy in contracts all over Europe, this has led to European customers not located in central and Eastern Europe having to pay a higher price although natural gas in global markets was significantly cheaper. In this situation, the extreme hike of TTF, mainly caused by internal capacity bottlenecks within central Europe, was no longer representative for many European customers and perceived as excessive and not mirroring the market equilibrium.

The spread between TTF and other regional hubs, back in August, outlines why TTF might no longer be a good proxy of the market situation outside North-Western Europe (NWE) when markets are facing infrastructure constraints. In scarcity episodes in NWE market, other regional markets outside NWE (experiencing more favourable market conditions) would be unduly impacted through contract indexation to TTF.

This situation is expected to continue throughout 2023. On the longer-term, substantial investments in gas inter-connections and LNG terminals will resolve gas prices regional hubs divergences. Investments in renewable and low carbon electricity production will decouple permanently the impact of gas prices on electricity prices and lower the pressure on gas prices in situations of scarcity. In particular, new LNG infrastructure coming online later this year or in the first months of 2023 are expected to mitigate the current problems. This expectation of a decrease in the spread between the TTF and other EU hubs is linked to the envisaged deployment of LNG infrastructure such as Floating Storage Regasification Units (FSRUs), which should reduce the bottlenecks in North-Western EU. For this reason, only a temporary intervention is warranted.

However, at least for the next year, there is an urgent need to correct the temporary impact of congestion bottlenecks in specific parts of the EU, due to the massive structural change affecting the historical balance in replacing the origin of 40% of the natural gas coming to Europe, in circumstances when TTF prices may not represent the global gas supply and demand conditions. Market tools serving the European markets were not tailored and developed to tackle the current market situation, characterised by a massive supply shock and driven by the ‘weaponisation’ of energy by Russia, that results in the EU paying a premium for its gas. Likewise, the European electricity market design was not prepared for such a crisis situation but the extraordinary high gas prices have led to high electricity prices and unprecedented revenues to inframarginal production technologies. Following the Council Regulation on an emergency intervention to address high energy prices, adopted on 6 October 2022, the Commission is now working on a proposal aiming at structurally decoupling electricity prices to be tabled in the first quarter 2023.

## **II. AIMS OF THIS PROPOSAL**

The instances of abnormally high TTF prices, and their reverberation on the general level of natural gas prices in Europe, has prompted numerous calls at political level for an for urgent and temporary intervention.

On 5 October 2022, in its resolution on ‘The EU’s response to the increase in energy prices in Europe’, the European Parliament called for ‘measures to be taken vis-à-vis the functioning of the TTF’, and considered ‘that these measures might include applying a trading halt mechanism in the TTF in the event of excessive price fluctuations and price collars’.

The informal meeting of Energy ministers of 12 October asked the Commission to propose measures to coordinate solidarity efforts, secure the energy supply, stabilise price levels and support households and companies facing high energy prices.

In its October proposal, the Commission aimed at tackling situations of excessive natural gas prices, by proposing a Council measure to establish a maximum dynamic price at which natural gas transactions can take place in the TTF spot markets under specific conditions. In order to ensure no negative effects, the measure should allow for over-the-counter gas trades, not affect EU’s security of gas supply and intra-EU flows, not lead to an increase in gas consumption and not affect the stability and orderly functioning of energy derivative markets.

The conclusions of the European Council held on 20 and 21 October 2022 called for the urgent submission of concrete decisions on certain additional measures, including a ‘a temporary dynamic price corridor on natural gas transactions to immediately limit episodes of excessive gas prices’, after assessing the impact of such mechanism on existing contracts and taking into account the different energy mixes and national circumstances.

The main objective of the market correction mechanism proposed in this Regulation is to prevent episodes of extremely high gas prices which may partly be caused by inefficiencies in the price formation mechanisms. The main objective is not an intervention into prices fairly reflecting demand and supply. This is because price signals are important for attracting natural gas supplies from third countries that the EU needs in order to preserve its Security of Supply and economic prosperity.

### III. MAIN ELEMENTS OF THIS PROPOSAL

The proposed market correction mechanism builds upon Articles 23 and 24 of the Commission proposal for the Council Regulation *Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks* of 18 October 2022 (‘October Proposal’).

Based on the Conclusions of the European Council of 21 October 2022<sup>6</sup> and the safeguards in Article 23(2) of the October Proposal<sup>7</sup>, the Market Correction Mechanism is designed in a manner to meet two basic criteria:

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<sup>6</sup> See recital 18 of the Conclusions of 20/21.10.22:

“The European Council calls on the Council and the Commission to urgently submit concrete decisions on the following additional measures, as well as on the Commission proposals, having assessed their impact notably on existing contracts, including the non-affectation of long-term contracts, and taking into account the different energy mixes and national circumstances: (...)

c) a temporary dynamic price corridor on natural gas transactions to immediately limit episodes of excessive gas prices, taking into account the safeguards set out in Article 23(2) of the draft Council Regulation proposed on 18 October 2022;”

<sup>7</sup> Article 23(2) of the October Proposal provides that a future market correction mechanism shall comply with the following safeguards: be without prejudice to over-the-counter gas trades; not jeopardise the Union’s security of gas supply; depend on progress made in implementing the gas savings target; not lead to an overall increase in gas consumption; be designed in such a manner that it will not prevent market-based intra-EU flows of gas; not affect the stability and orderly functioning of energy derivative markets; and take into account the gas market prices in the different organised market places across the Union.

- (i) act as an effective instrument against episodes of extraordinarily high gas prices; and
- (ii) be activated only if prices reach exceptional levels (compared to LNG prices), in order to avoid significant market disturbances and disruptions of supply contracts, potentially resulting in severe security of supply risks.

Past events, such as the exceptional price hike evidenced in the month of August 2022, may provide guidance to define price levels at which a market correction mechanism could be triggered.

The proposed mechanism consists essentially of a safety ceiling for the price of month-ahead TTF-derivatives ('TTF-price'), which plays a key role as a reference price in the European wholesale gas market. The ceiling is activated if the TTF-Price basis reaches a pre-defined level and if the price hike does not correspond to a similar hike at world market level, reflected by means of daily average price of the price of the LNG assessments "Daily Spot Mediterranean Marker (MED)" and "Daily Spot Northwest Europe Marker (NWE)", published by S&P Global Inc., New York.

In order to ensure an immediate effect, it is proposed that the values to trigger the activation of the mechanism should be fixed upfront, so as to avoid lengthy decision-making procedures which could significantly delay its activation and the intended price-dampening effect. Once the conditions for its activation are fulfilled, the market corrections mechanism should apply automatically.

The safety ceiling on TTF futures is carefully designed not to affect price formation at the other regional gas markets. This is a consequence of the price signals of these other markets being less affected by the current regasification and transmission bottlenecks that characterize the Dutch gas hub and, in consequence, the TTF.

The objective of the instrument is to smoothen events of very excessive prices but not change structurally the level of prices. The events in August 2022 can serve as a benchmark to determine the level of the intervention.

Available data show that during the period of 22 August to 31 August, the price difference between spot TTF month-ahead and LNG prices was above EUR 57/MWh. Front-month prices reached levels above EUR 300. The aim of the market correction mechanism should be to avoid abnormal prices at a level reached last August.

The cap is designed to be activated only in exceptional circumstances to address potentially short-lived episodes of genuine excessive prices, so as to not increase natural gas consumption. Indeed, when prices are 'excessive', demand elasticity is expected to be very low and the short-lived additional increases of prices avoided by the cap would not be expected to result in a significant reduction of consumption. Finally, the mechanism is not meant to structurally lower the prices which is what, if passed on to final consumers, may lead to more gas consumption.

The safety ceiling will only apply to one futures product (TTF month-ahead products). Even when the safety ceiling is activated, market operators will still be able to procure gas spot, though longer maturity derivatives and over-the-counter which are not directly affected by the mechanism. The activation of the mechanism can therefore not be expected to lead to "rationing" of gas or security of supply problems.

Effective safeguards are built into the market correction mechanism, such as high intervention ceilings, close monitoring allowing for interruption of the mechanism in case it negatively impacts security of supply



With a view to possible changes in the market situation, and to be able to react to possible unintended negative consequences of the price limit, efficient safeguards are built into the proposal to guarantee that the mechanism can be suspended at any time if it were to lead to serious market disturbances, or a manifest risk thereof, affecting security of supply and intra-EU flows. The safety ceiling would be automatically deactivated if a daily review shows that the conditions for its activation are no longer present. Compliance with EU demand reduction targets should also be taken into account when assessing the effects of the mechanism.

#### **IV. CONSISTENCY WITH EXISTING POLICY PROVISIONS IN THE POLICY AREA**

On 23 March 2022, the European Commission presented a Communication entitled ‘Security of supply and affordable energy prices: Options for immediate measures and preparing for next winter’ (COM(2022) 138 final), where it outlined the objective of ensuring the supply of gas at reasonable cost for next winter and beyond. The Communication referred to capping or modulating the gas price through regulatory means as an option that may be considered to mitigate a sharp rise in energy prices. In October 2022, on the backdrop of an escalating crisis, the European Commission issued a Communication reaffirming the need to address high energy prices with targeted and coordinated measures. In its Communication, the Commission proposed to put in place a mechanism to limit prices via the main European gas exchange, the TTF, to be triggered when necessary. The current proposal for a market correction mechanism, to mitigate the impact of exceptionally high gas prices, is complementary to the measures set out by the Commission in its Communications.

The objectives and principles of 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 are not endangered by this proposal. The proposal ensures that, in the event of a regional or Union emergency, the market correction mechanism does not unduly restrict the flow of gas within the internal market endangering the Union’s security of gas supply.

This proposal forms part of a group of measures to address the current energy crisis which the Council has adopted over the past months.

In particular, this proposal is closely linked to Council Regulation (EU) 2022/1369 and consistent with its objectives. It ensures notably that the Commission can suspend the market correction mechanism if it negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of Council Regulation (EU) 2022/1369, or if it leads to an overall increase in gas consumption, on the basis of data on gas consumption and demand reduction received from Member States pursuant to Article 8 of Council Regulation (EU) 2022/1369).

In addition, regular and effective monitoring and reporting are essential for the assessment of progress made by the Member States in the implementation of the voluntary and mandatory demand-reduction measures. In order to do so, and in addition to the monitoring and reporting measures foreseen in Council Regulation (EU) 2022/1369, at the latest two weeks after the market correction event, Member States need to notify to the Commission which measures they have taken to reduce gas and electricity consumption in reaction to the market correction event, unless the Commission has adopted a suspension decision. The demand reduction across the Union is an expression of the principle of solidarity enshrined in the Treaty.

In order to make sure that the market correction event does not take away the incentive to pursue demand reduction, the activation of the market correction event should be followed by

a Commission proposal to extend the demand reduction targets foreseen in Council Regulation (EU) 2022/1369 beyond 31 March 2023.

Member States should be free to choose the appropriate measures to achieve demand reduction. When identifying appropriate demand-reduction measures, Member States should consider making use of the measures identified by the Commission in its communication of 20 July 2022 entitled “Save Gas for a safe Winter”.

Furthermore, this proposal is complementary to the objectives of introducing intra-day volatility management mechanism to address short term market volatility as set out in Article 15 of the October Proposal, and tasking ACER to produce and publish a daily LNG benchmark to improve representativeness of indexes as set out Article 18 of the October Proposal. While the October Proposal provides for an instrument to limit extreme changes within a short time period (circuit breaker) and is not sufficient to address problems as evidenced in August 2022, the present proposal complements the October Proposal in this regard.

Moreover, the current proposal is consistent with the European Green Deal objectives, in particular with ensuring a secure and affordable EU energy supply by providing a mechanism that will mitigate the effects of extremely high gas prices on EU consumers and its Member States, while – at the same time – being designed in such a way as to not structurally lower the prices which, if passed on to final consumers, may lead to more gas consumption.

## **V. CONSISTENCY WITH OTHER UNION POLICIES**

The proposal is compatible with other Union policies, notably the rules on the internal market policy, including with regard to competition rules and rules concerning financial markets. In particular, it is complementary to the European Market Infrastructure Regulation (EMIR), which aims to reduce systemic risk, increase transparency in the OTC market and preserve financial stability, as well as to the Financial Regulation (e.g. MiFID II), which requires a set of mechanisms to be set up by regulated markets to contain significant volatility in financial markets and to prevent erroneous trading patterns. The proposal does not unduly interfere with the principles of competition law. In particular, the market correction mechanism is designed in a way to limit the intervention to situations of excessive prices, in which the TTF index no longer provides an adequate proxy for prices which accurately reflect market dynamics in Europe.

## **IV. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **1. Legal basis**

The legal basis for this temporary instrument is Article 122(1) of the Treaty on the Functioning of the European Union (‘TFEU’). Measures pursuant to Article 122(1) TFEU need to reply to an emergency or an exceptional situation leading to grave difficulties in the economic situation of Member States, in particular if severe difficulties arise in the supply of energy, which cannot be addressed by ordinary measures. Furthermore, the measures must be taken in a spirit of solidarity and must be strictly temporary.

This proposal, as previous temporary crisis measures adopted by the Council in the past months, addresses a severe economic crisis, resulting, inter alia, from difficulties in the supply of energy. The market correction mechanism is of temporary nature.

## **2. Solidarity**

Following the Russian aggression against Ukraine, gas prices have reached unforeseen levels with extreme hikes in particular in August 2022. The volatility of gas markets, the unseen increases in gas prices, and the exceptional hikes have impacted different Member States in unequal ways. However, all Member States are concerned by the indirect effects of the price hikes, such as increasing energy prices and inflation.

As concerns the deficits in the price formation system, these deficits play a different role in different Member States, with price increases being more representative in some Member States (e.g. Central European Member States) than in other Member States (e.g. Member States at the periphery or with other supply possibilities). In order to avoid a fragmented action, which could divide the integrated EU gas market, a common action is needed in the spirit of solidarity. This is also crucial ensure security of supply in the Union.

Moreover, common safeguards, which may be more needed in Member States without supply alternatives than in Member States with more alternatives, ensure a coordinated approach as an expression of energy solidarity, which has recently been endorsed as a fundamental principle of EU law<sup>8</sup>.

Indeed, while the financial risks and benefits are very different for different Member States, the market correction mechanism constitutes a compromise in the spirit of solidarity, in which all Member States agree to contribute to the market correction and accept the same limits to the price formation, even though the level of malfunction of the price formation mechanism and the financial impacts of TTF prices on the economy are different in different Member States.

The market correction mechanism would therefore strengthen Union solidarity in avoiding excessive prices, which are unsustainable even for short periods of time for many Member States. The proposed measure will help ensure that gas supply undertakings from all Member States are able to purchase gas at reasonable prices in a spirit of solidarity.

## **3. Subsidiarity (for non-exclusive competence)**

The planned measures of the present initiative are in line with the subsidiarity principle. Because of the integrated nature of gas and financial markets, action at Union level is the most effective way to address the problem of Union-wide price peaks.

Market players in the EU use TTF as a reference because it is the most liquid trading hub in Europe, and it was regarded as being representative of the whole market. However, external factors have hampered market functioning and notably the function of the TTF benchmark as an objective parameter for gas customers across Europe. Therefore, a coordinated approach at EU level is necessary in order to be able to address exceptional situations in which the TTF cannot properly function as a suitable benchmark for market participants across the EU.

Given the unprecedented nature of the gas supply crisis and its transboundary effects, action at Union level is warranted as Member States alone cannot sufficiently effectively address the risk of serious economic difficulties resulting from sharp rise in energy prices and significant supply disruptions. Only an EU action motivated by a spirit of solidarity between Member

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<sup>8</sup> Judgment of the Court of Justice of 15 July 2021, Germany v Poland, C-848/19 P, ECLI:EU:C:2021:598.

States can ensure that a sharp rise in energy prices does not lead to lasting harm for citizens and the economy.

By reason of its scale and effects, the aim of the measure can be better achieved at Union level, hence the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

#### **4. Proportionality**

In view of the unprecedented geopolitical situation and the significant threat for citizens and the EU economy, there is a clear need for coordinated action.

The prohibition to execute front-month TTF derivatives above the ceiling in this proposal is a suitable means to avoid such excessively high prices across Europe, including in other markets across the EU.

Bidding limits are a common feature in traded markets to address problem with the price formation mechanisms potentially leading to harmful effects for consumers. Such mechanism exist, for example, in EU electricity markets (see. e.g. Art 10 of Regulation (EU) 2019/943), and can also be found in markets outside the Union, such in the US. For instance, the Chicago Mercantile Exchange (CME), where the Henry Hub futures contract is traded, has price limits and price banding. Price limits are the maximum price range permitted for a futures contract in each trading session.

Moreover, the mechanism is not meant to intervene into the normal interplay of demand and supply and to “cap” ordinary price setting. It may only be triggered in very exceptional situations where the prices increase at the TTF are unrelated to prices at other exchanges, momentarily putting their suitability as a reference price into doubt.

The market correction mechanism will only be triggered under exceptional circumstances for a strictly limited time. Liquidity on other hubs is not likely to be severely impacted. TTF contracts are also traded on these markets for hedging purposes, however, price limits can give indication to market participants on hedging strategies, so they can hedge against high prices in the future. Continental markets not having access to LNG remained closely aligned with TTF, so any price cap on TTF will have a limited impact on their liquidity.

Furthermore, the bidding limit will be immediately deactivated when these exceptional circumstances cease to persist. In addition, the market correction mechanism is accompanied by a comprehensive set of safeguards, which allow for the suspension of the mechanism, if unintended market disturbances occur, negatively affecting security of supply and intra-EU flows. Finally, the measure does not unduly affect the rights of market participants to continue to do business, because the trading limit will not affect the rights of market participants to conclude bilateral or over-the-counter transactions.

Therefore, the intervention does not go beyond what is necessary for attaining the policy objective pursued and is therefore proportional. The market correction mechanism is a suitable instrument necessary and proportionate for achieving the objective of mitigating the impact of abnormally high gas prices.

#### **5. Choice of the instrument**

Taking into account the dimension of the energy crisis and the scale of its social, economic and financial impact, the Commission deems it suitable to act by way of a regulation which is

of general scope and directly and immediately applicable. This would result in a swift, uniform and Union-wide cooperation mechanism.

## **V. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

### **1. Stakeholder consultations**

Due to the urgency to prepare the proposal so that it can be adopted on time by the Council, a stakeholder consultation could not be carried out.

However, a dedicated Seminar with Member States and stakeholders took place on the 7th of September regarding possible emergency interventions in gas markets.

A seminar to discuss the market correction mechanism with key market participants and Member States took place on 7 November 2022, with a view to establish the most adequate way forward. Exchanges also took place with Member States during the Council working group meetings following the 18 October 2022 Commission proposal for new measures on joint gas purchasing, price limiting mechanisms and transparent infrastructure use, as well as on solidarity between Member States and demand management.

This allowed the identification of the relevant safeguards to minimise any potential risks stemming from the mechanism.

### **2. Fundamental rights**

The market correction mechanism is temporary and it is activated only when certain conditions are met. These conditions in turn reflect a situation that is harmful for the Union's economy and its energy security and that therefore should be addressed. Moreover, the market correction mechanism features solid safeguards that would prevent any issue related to fundamental rights from arising. It enshrines a deactivation mechanism that will end it if its operation is no longer justified by the situation on the natural gas market. And even if the conditions justifying the activation of the market correction mechanism subsist, the regulation provides for the possibility to suspend the mechanism upon the occurrence of unintended market disturbances. The Commission is obliged to adopt such suspension decisions in case unintended market disturbances occur.

Therefore, the market correction mechanism is proportional and duly justified, in that it is not more impactful than necessary on fundamental rights such as the freedom to conduct business in light of the effect that inaction would have on the Union economy and its energy security.

## **VI. BUDGETARY IMPLICATIONS**

The budgetary impact on the EU budget associated to this proposal concerns the human resources of the European Commission's Directorate-General (DG) for Energy.

This unprecedented mechanism entails tasks – including on the functioning of commodity markets and security of supply – that are not currently part of the Commission's role. Due to the level of responsibility linked to such task it is paramount to ensure an adequate accompaniment by the Commission services, allocating a reinforced role to DG Energy, namely on financial and market monitoring and assessment (6FTE). Support from ACER in monitoring, activating and suspending the market correction mechanism will be crucial for its efficient implementation. The budgetary impact on the EU budget associated to this proposal

therefore also concerns the human resources and other administrative expenditures of ACER (6 FTE).

## **VII. OTHER ELEMENTS**

Not relevant.

Proposal for a

## **COUNCIL REGULATION**

### **Establishing a market correction mechanism to protect citizens and the economy against excessively high prices**

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,

Having regard to the opinion of the European Central Bank,

Whereas:

- (1) The Russian Federation's unprovoked and unjustified military aggression against Ukraine and the unprecedented reduction of natural gas supplies from the Russian Federation to Member States threaten the security of supply of the Union and its Member States. At the same time, the weaponisation of gas supply and the Russian Federation's manipulation of markets through intentional disruptions of gas flows have led to skyrocketing energy prices in the Union. Changing supply routes, resulting in congestion in the European gas infrastructure, the need to find alternative gas supply sources and price formation systems which are not adapted to the situation of a supply shock have contributed to the situation of price volatility and price hikes. Higher natural gas prices endanger the economy of the Union through sustained high inflation caused by higher electricity prices, undermining consumer purchasing power, as well as through raising the cost of manufacturing, particularly in energy-intensive industry, and seriously threaten security of supply.
- (2) In 2022, natural gas prices have been exceptionally volatile, with some benchmarks reaching all-time highs in August 2022. The abnormal level of the natural gas prices registered in August 2022 was the result of multiple factors, including a tight supply-demand balance linked to storage refilling and reduction of pipeline flows, fears of further supply disruptions and market manipulations by Russia, and a price formation mechanism which was not tailored to such extreme demand and supply shifts and which aggravated the excessive price hike. While prices over the previous decade were within a band between EUR 5/MWh and EUR 35/MWh, European natural gas prices reached levels which were 1000% higher than the average prices seen before in the Union. Dutch TTF Gas Futures (3-month/quarterly products) traded on the exchange ICE Endex<sup>9</sup> traded at levels slightly below EUR 350/MWh, the TTF day-ahead gas

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<sup>9</sup> ICE ENDEX is one of the main energy exchanges in Europe. For gas, it provides regulated futures and options trading for the Dutch Title Transfer Facility (TTF) trading hub.

traded on EEX hit EUR 316/MWh. Never in previous times gas prices had reached levels such as those observed in August 2022.

- (3) Following the damage to the Nord Stream 1 pipeline likely caused by an act of sabotage in September 2022, there is no perspective of gas supplies from Russia to the Union to resume to pre-war levels in the near future. European consumers and business remain exposed to a manifest risk of further potential episodes of economically damaging gas price spikes. Unpredictable events, like accidents, the sabotage of pipelines, weather storms that disrupt gas supplies to Europe or increase demand dramatically may threaten security of supply. Market tensions and nervousness, triggered by the fear of sudden scarcity situations are likely to persist beyond this winter and into next year, as the adaptation to supply shocks and the establishment of new supply relationships and infrastructure is expected to take one or more years.
- (4) The Title Transfer Facility ('TTF') in the Netherlands is commonly seen as the 'standard' pricing proxy on European gas markets. This is because of its typically high liquidity, which is due to several factors, including its geographical location, which allowed the TTF in a pre-war environment to receive natural gas from several sources, including significant volumes from Russia. As such, it is widely used as a reference price in pricing formulas of gas supply contracts, as well as a price basis in hedging / derivatives operations across the Union, including in hubs not directly linked to the TTF. According to market data, the TTF hub accounted for around 80% of natural gas traded in the European Union and the United Kingdom combined in the first eight months of 2022.
- (5) However, the disruptive changes in EU energy markets since February 2022 had an influence on the functioning and effectiveness of the traditional price formation mechanisms in gas wholesale market, notably on the TTF benchmark. Whilst the TTF was a good proxy for gas prices in other regions of Europe in the past, as of April 2022 it has become detached from prices at other hubs and trading places in Europe, as well as from the price assessments made for LNG imports by price reporting agencies. This is largely because the gas system of North-Western Europe presents particular infrastructural limitations both in terms of pipeline transmission (West-East) and in terms of LNG regasification capacity. Such limitations were partly responsible for the general increase of gas prices since the beginning of the crisis in Europe following Russia's weaponisation of energy. The abnormal spread between the TTF and other regional hubs in August 2022 indicates that, under the current specific market circumstances, the TTF may not be a good proxy of the market situation outside North-Western Europe, where markets are facing infrastructure constraints. During scarcity episodes in the North-Western Europe market, other regional markets outside North-Western Europe may experience more favourable market conditions and are therefore unduly impacted through contract indexation to TTF. Hence, whilst the TTF still accomplishes its objective of balancing supply and demand in North-Western Europe, action is required to limit the effect any abnormal episodes of excessive prices of the TTF have for other regional markets in the EU.
- (6) Different measures are available to address the problems with the current price formation mechanisms. One possibility for European companies affected by the recent market disruptions and the deficits of the price formation system is to enter into a renegotiation of the existing TTF-based contracts. As price references linked to TTF-futures have a different relevance than in the past and are not necessarily representative for the gas market situation outside North-Western Europe, certain



purchasers may seek to solve the current problems with price formation and the TTF benchmark by way of a renegotiation with their contract partners, either under the explicit terms of the contract or according to general principles of contract law.

- (7) In the same vein, importing companies or Member States acting on their behalf may engage with international partners in order to renegotiate existing or agree on new supply contracts with more appropriate pricing formulas, adapted to the current situation of volatility. Coordinated purchasing via the IT tool created under Regulation (EU) [XXXX/2022] may provide opportunities to lower the price of energy imports, in turn lowering the necessity of market intervention.
- (8) Furthermore, financial market regulation includes already some safeguards to limit episodes of extreme volatility, for instance by requiring that trading venues set up so-called short-term ‘circuit breakers’, which limit extreme price increases for certain hours to that end. The intra-day volatility management mechanism, introduced in Articles 15 to 17 of Council Regulation (EU) [XXXX/2022], contributes to limiting extreme volatility of prices in energy derivatives markets within one day. However, those mechanisms work only short-term, and are not intended to prevent market prices from reaching certain excessive levels.
- (9) Demand reduction constitutes a further important element to tackle the problem of extreme price peaks. Reducing demand for gas and electricity can have a dampening effect on market prices and can therefore contribute to mitigating the problems with abnormally high gas prices. This Regulation should, in line with the Conclusions of the European Council of 21 October 2022, therefore provide for effective mechanism to ensure that the potential of demand reduction is used to the fullest extent, and that the activation of the mechanism does not lead to increased use of gas.
- (10) Whilst existing measures are therefore available to tackle some of the elements leading to the problems with price formation in gas markets, these measures do not guarantee an immediate and sufficiently certain remedy to the current problems.
- (11) It is therefore necessary to establish a temporary market correction mechanism for natural gas transactions in the month-ahead TTF derivatives market, as an instrument against episodes of excessive high gas prices with immediate effect.
- (12) The conclusions of the European Council of 21 October 2022 gave a mandate to the Commission to propose legislation for a market correction mechanism which should build upon Articles 23 and 24 of the Commission proposal for the Council Regulation enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks of 18 October 2022 (‘October Proposal’).
- (13) The basic criteria and safeguards set out in the conclusions of the European Council of 21 October 2022 and in Articles 23 and 24 of the October Proposal should, on the one hand, be considered when designing the market correction mechanism. They should, on the other hand, be used to guarantee that a possible activation of the market correction mechanism will be terminated if the conditions for its activation are no longer in place or if unintended market disturbances occur.
- (14) The market correction mechanism should be designed in a manner to meet two basic criteria, namely to act as an effective instrument against episodes of extraordinarily high gas prices, and to be activated only if prices reach exceptional levels compared to global markets, in order to avoid significant market disturbances and disruptions of supply contracts, potentially resulting in severe security of supply risks.

- (15) The intervention through the market correction mechanism should be limited to addressing the most important deficits in price formation. The TTF month-ahead settlement price for derivatives is by far the most widely used benchmark in gas supply contracts across the EU. Other benchmarks do not face the same problems resulting notably from capacity bottlenecks in central Europe. The TTF month-ahead reference is not only used by many traders in their derivatives, but also frequently by gas supply undertakings in their supply contracts. It is therefore appropriate to limit the intervention to the TTF month-ahead settlement price.
- (16) The enactment of the market correction mechanism should send a clear signal to the market that the EU will not accept excessive prices which result from imperfect price formation. It should also provide certainty to market players as concerns reliable limits for gas trading, and can bring important economic savings for both companies and households that will not be left as exposed to episodes on excessive energy prices.
- (17) The mechanism should introduce a safety ceiling for the price of month-ahead TTF-derivatives. The ceiling should be activated if the TTF-price reaches a pre-defined level, and if the price hike does not correspond to a similar hike at regional or world market level. A safety ceiling should ensure that trading orders with prices above EUR 275 are not accepted once the mechanism is activated, the ceiling should remain stable for a certain time, in order to ensure a minimum of predictability of the intervention. This is to avoid the disadvantages of a ceiling with daily changes, which would be less transparent and more difficult to anticipate for market actors, limiting their ability to adjust their expectations for the future. A pre-defined safety ceiling allows market players to adjust their expectations for the future evolution of prices accordingly. The market correction mechanism should, however, have dynamic elements. Dynamic market developments should be taken into account through regular reviews and the possibility to be deactivate the bidding limit at any time. The activation should also take into account the spread between the TTF European Gas Spot Index and a reference price, determined by the average price of LNG price assessments linked to European trading hubs, which may vary over time.
- (18) To avoid any risks that a bidding limit for the price of the month-ahead TTF derivatives results in illegal collusive behaviour amongst natural gas suppliers or traders, financial regulators, ACER and competition authorities should observe the gas and energy derivatives markets particularly carefully during the activation of the market correction mechanism.
- (19) The market correction mechanism should be temporary in nature and should only be activated to limit episodes of exceptionally high natural gas prices, which are also unrelated to prices at other gas exchanges. To this end, two cumulative conditions should be met for the market correction mechanism to operate.
- (20) The market correction mechanism should only be activated when front-month TTF derivative settlement prices reach a predefined exceptionally high level. Based on past experiences, such as the exceptional price hike evidenced in the month of August 2022, should therefore guide the definition of the price levels at which a market correction mechanism should be triggered. Available data show that in August 2022, the price difference between spot TTF month-ahead and LNG prices was above EUR 57/MWh. Front-month prices reached levels above EUR 300. The aim of the market correction mechanism should be to avoid abnormal prices at a level reached last August.

- (21) Moreover, the market correction mechanism should only be activated when TTF prices reach levels which are significantly and abnormally high compared to LNG prices. If prices on global markets increase at the same pace and level as TTF prices, the activation of the market correction mechanism could impede the purchase of supplies on the global markets, which may result in security of supply risks. Therefore, the market correction mechanism should only be triggered in situations where TTF prices are significantly and over a longer duration higher than prices on global markets. Likewise, if prices on global markets were to increase after the activation of the mechanism, and the difference to TTF prices were to reduce or disappear, the mechanism should be automatically deactivated, to avoid any risk for security of supply.
- (22) LNG is an appropriate proxy for gas price developments at global level. In contrast to pipeline gas, LNG is traded on a world-wide market. LNG prices, such as those at Mediterranean or North West exchanges, are directly influenced by the development of the global LNG market and are usually closer to the world market price level than pipeline-dominated benchmarks. LNG prices at Mediterranean or North West exchanges provide an appropriate indication whether extreme price hikes are based on underlying changes of demand or supply or on a malfunctioning of the price formation mechanism in the Union. These LNG prices also reflect better the supply and demand conditions in Europe than similar prices overseas, such as in Asia or the U.S (see e.g. the ‘Joint Japan Korea Marker’ or the ‘Henry Hub Gas Price Assessment’, both published by S&P Global Inc., New York). That is, they reflect more appropriately the TTF overprice compared to LNG delivered into the European system. Considering European LNG prices avoids an inaccurate influence of specific local supply and demand considerations in prices in other world regions (like the United States and Asia). However, the developments at other organised relevant organised market places outside the Union should be taken into account in the monitoring before and after a possible activation of the mechanism. The actual triggers for the comparison between TTF and LNG prices should be chosen based on an analysis of the historical prices, and take into account the spread during the prices spike in August 2022.
- (23) The triggers of the market correction mechanism should make sure that the mechanism corrects market deficits and does not significantly interfere with demand and supply and normal price setting. Unless set at a high enough level, the ceiling could prevent market participants from effectively hedging their risks, as the formation of reliable prices for products with a delivery date in the future and the functioning of derivatives markets could be harmed. If the mechanism were to be triggered to bring prices artificially down instead of correcting market malfunctioning, it would have a serious negative impact on market participants, including energy firms, who could face difficulties in meeting margin calls and liquidity constraints, potentially resulting in defaults. Some market actors (in particular smaller ones) may be prevented from hedging their positions, further exacerbating volatility in spot markets, and resulting in possibly higher price spikes. Given the significant trading volumes, such development would constitute a manifest risk for the economy which the design of the measure should prevent.
- (24) To be fully compatible with Council Regulation (EU) 2022/1369 and the demand reduction targets set out in that Regulation, the Commission should be able to suspend the activation of the mechanism if it negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of Council Regulation (EU) 2022/1369, or if it leads to an overall increase in gas consumption, on the basis of data

on gas consumption and demand reduction received from Member States pursuant to Article 8 Council Regulation (EU) 2022/1369. The dampening effect on natural gas prices that the market correction mechanism may entail should not end up in artificially incentivising natural gas consumption in the EU to the point that it damages the necessary efforts to reduce natural gas demand in line with the demand reduction targets pursuant to Article 3 and 5 of Council Regulation (EU) 2022/1369 and of Article 3 and 4 of Regulation 2022/1854. The Commission should ensure that the activation of the mechanism does not slow down the progress which Member States make in meeting their energy savings targets.

- (25) In order to allow the Commission to intervene if gas and electricity consumption should increase in reaction to the market correction event, Member States should, in addition to the existing reporting obligations on the implementation of demand reduction, report to the Commission specifically which measures they have taken to reduce gas and electricity consumption in reaction to the market correction event, with a view to the 15% gas demand reduction as provided for in Articles 3 and 5 of Council Regulation (EU) 2022/1369 and the demand reduction targets in Articles 3 and 4 of Council Regulation (EU) 2022/1854. In order to ensure that a market correction event does not reduce the incentive to pursue demand reduction, the Commission should consider proposing an adaptation of Council Regulation (EU) 2022/1369 to the new situation.
- (26) Depending on the level of the intervention, the market correction mechanism may entail financial, contractual and of security of supply risks. The level of risk depends on the frequency with which the mechanism is activated and may therefore interfere with the normal market functioning. The lower the threshold for intervention, the more frequently the mechanism will be triggered, and therefore the more likely it is that the risk will materialise. As such, the conditions for the activation of the mechanism should therefore be set at a level linked to abnormal and extraordinarily high levels of the TTF month-ahead price, while at the same time ensuring that it is an effective instrument against episodes of excessive prices not reflecting international market developments. A lower threshold would risk triggering the cap activation in situations where the price increases are of limited duration and therefore do not raise concerns to the same extent as the price rise observed in August 2022. At the end of December 2021 and at the beginning of March 2022, the TTF month-ahead prices spiked very high for only a couple of days and fell back almost immediately to the starting level, without tangible negative consequences for markets and consumers.
- (27) It is important that the mechanism is designed in a manner not to alter the fundamental contractual equilibrium of gas supply contracts, but rather to address episodes of abnormal market behaviour. If the triggers for the intervention are set at a level where they correct existing problems with price formation and do not intend to interfere with the demand and supply equilibrium, the risk that the contractual equilibrium of existing contracts will be altered through the mechanism or its activation can be minimised.
- (28) In order to ensure that the market correction mechanism has an immediate effect, the bidding limit should immediately and automatically be activated, without the need for a further decision by the European Agency for the Cooperation of Energy Regulators ('ACER') or the Commission. To ensure that possible problems resulting from the activation are identified early on, the Commission should mandate the ECB and the European Securities and Markets Authority ('ESMA') to issue a report on possible negative effects from the mechanism on financial markets.

- (29) ACER should continuously monitor whether the conditions for the operation of the market correction mechanism are fulfilled. ACER is the best placed authority to carry out such monitoring, because it has a Union-wide view of gas markets and the necessary expertise in the operation of gas markets, and is already mandated to monitor trading activities in wholesale energy products under EU law. ACER should therefore monitor the evolution of the front-month TTF settlement price and of the TTF European Gas Spot Index, and compare the latter with the reference price, determined by the average price of LNG price assessments linked to European trading hubs, in order to verify whether the conditions that justify the activation or de-activation of the market correction mechanism are met. Once the mechanism is activated, ACER should report on a daily basis to the Commission for if the trigger for the activation is still met.
- (30) The activation of the market correction mechanism may engender undesirable and unforeseeable effects on the economy, including risks to security of supply and to financial stability. To ensure a swift reaction in case unintended market disturbances occur, efficient safeguards should be incorporated, ensuring that the mechanism can be suspended at any time. In case there are, based on the results of ACER monitoring, concrete indications that a market correction event is imminent, the Commission should be able to request an opinion from the ECB, ESMA, ACER, and, where appropriate, ENTSOG and the Gas Coordination Group on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be.
- (31) Beyond a daily review on whether the requirements for the bidding limit are still in place, additional safeguards should be included to avoid unintended market disturbances.
- (32) The bidding limit should not affect over-the-counter ('OTC') transactions, as including them would raise serious monitoring issues and may lead to problems with security of supply.
- (33) The market correction mechanism should be automatically deactivated if its operation is no longer justified by the situation on the natural gas market. Unless market disturbances occur, the mechanism should only be deactivated after a certain period of time, to avoid frequent activation and de-activation. If ACER, when monitoring the development of the triggers for the mechanism, establishes that the TTF European Gas Spot Index is no longer higher than the reference price for a sufficiently stable period, the mechanism should automatically be deactivated. The deactivation of the mechanism should not require any assessment by ACER or the Commission, but should happen automatically when the conditions are fulfilled.
- (34) It is of key importance that the market correction mechanism includes an effective instrument to suspend the safety ceiling immediately and at any time if it were to lead to serious market disturbances, affecting security of supply and intra-EU flows.
- (35) As it is important to thoroughly assess all safeguards to be taken into account when assessing a possible suspension of the safety ceiling, the safety ceiling should be suspended by way of a decision of the Commission. When taking the decision, which should be taken without undue delay, the Commission should notably assess whether the continued application of the bidding limit jeopardises the Union's security of supply, is accompanied by a sufficient demand reduction efforts, prevents market-based intra-Union flows of gas, negatively affects energy derivatives markets,

accounts for gas market prices in the different organised market places across the Union, or may negatively affect existing gas supply contracts.

- (36) The market correction mechanism should not jeopardise the Union's security of gas supply by constraining price signals that are essential to attract necessary gas supplies and for intra-EU gas flows. Gas providers may in fact potentially withhold supplies when the market correction mechanism is activated to maximise profits by selling just after the de-activation of the ceilings. In a situation where the Commission has declared a regional or Union emergency pursuant to Article 12 of Regulation (EU) 2017/1938, and where non-market-based measures have to be additionally introduced in particular with the aim of safeguarding gas supplies to protected customers, the market correction mechanism should not unduly restrict the flow of gas within the internal market endangering the Union's security of gas supply, and should therefore be suspended.
- (37) The market correction mechanism should not end up diminishing the role that price signals fulfil in the EU internal gas market and prevent market-based intra-EU flows of gas, as it is essential that natural gas continues to flow where it is most needed.
- (38) The market correction mechanisms should not unduly jeopardise the continued proper functioning of the energy derivatives markets. These markets play a key role in enabling market participants in hedging their positions in order to manage risks, in particular with regard to price volatility. Moreover, price interventions through the market correction mechanism can result in considerable financial losses for market participants in the derivatives markets. Given the size of the market for gas in the EU, such losses may not only affect the specialised derivatives markets, but may have significant knock-on effects on other financial markets. Therefore, the Commission should immediately suspend the market correction mechanism if it jeopardises the orderly functioning of the derivatives market. In that regard, it is important that the Commission takes into account available expertise from relevant EU bodies. The European Securities and Markets Authority is an independent authority that contributes to safeguarding the stability of the EU's financial system, notably by promoting stable and orderly financial markets, such as the derivative markets. The Commission should therefore take into account reports from ESMA on these aspects. In addition, the Commission should take into account any advice of the European Central Bank ('ECB') relating to the stability of the financial system in line with Article 127(4) Treaty on the Functioning of the European Union ('TFEU') and Article 25 of Protocol IV to the TFEU. Given the volatility of financial markets and the potentially large impact of market interventions therein, it is important to ensure that the Commission can suspend the market correction mechanism quickly. Therefore, the report of ESMA and the opinion of the ECB should be issued no later than 48 hours or within the day same in urgent cases after the Commission's request.
- (39) The market correction mechanism should be designed to address only exceptional increases in gas prices caused by deficits in the price formation mechanism and as such not have an impact on the validity of existing gas supply contracts. However, in situations in which the Commission observes that the activation of the market correction mechanism negatively impacts existing supply contracts, the Commission should suspend it.
- (40) The design and the suspension possibilities of the mechanism should take into account that natural gas traders may move trade of natural gas to regions outside the Union, reducing the effectiveness of the market correction mechanism. This would be the

case, for instance, if traders started engaging in over-the-counter gas trades, which is less transparent, less subject to regulatory scrutiny, and carrying greater risks of defaulting on obligations for the parties involved. This would also be the case if traders, whose hedging may be limited by the market correction mechanism, sought hedges in other jurisdictions, resulting in the clearing counterpart needing to rebalance the cash underpinning derivatives positions to reflect the capped settlement price, triggering margin calls.

- (41) ACER, the European Central Bank, ESMA, the European Network of Transmission System Operators for Gas ('ENTSO-G') and the Gas Coordination Group established under Regulation (EU) 2017/1938 should assist the Commission in monitoring the market correction mechanism.
- (42) Following a market event or a suspension decision, or in the light of market and security of supply developments, it may be appropriate to review the conditions for the activation of the market correction mechanism set out in Article 3(2)(a) and (b). The Council may therefore, upon a proposal from the Commission, adopt appropriate amendments to this Regulation in this situation.
- (43) The market correction mechanism is necessary and proportionate for achieving the objective of correcting excessively high gas prices at TTF. All Member States are concerned by the indirect effects of the price hikes, such as increasing energy prices and inflation. As concerns the deficits in the price formation system, these deficits play a different role in different Member States, with price increases being more representative in some Member States (e.g. Central European Member States) than in other Member States (e.g. Member States at the periphery or with other supply possibilities). In order to avoid a fragmented action, which could divide the integrated Union gas market, a common action is needed in a spirit of solidarity. This is also crucial to ensure security of supply in the Union. Moreover, common safeguards, which may be more needed in Member States without supply alternatives than in Member States with more alternatives, ensure a coordinated approach as an expression of energy solidarity. Indeed, while the financial risks and benefits are very different for different Member States, the market correction mechanism constitutes a solidary compromise, in which all Member States agree to contribute to the market correction and accept the same limits to the price formation, even though the level of malfunction of the price formation mechanism and the financial impacts of TTF prices on the economy are different in different Member States. The market correction mechanism would therefore strengthen Union solidarity in avoiding excessive prices, which are unsustainable even for short periods of time for many Member States. The proposed measure will help ensure that gas supply undertakings from all Member States are able to purchase gas at reasonable prices in a spirit of solidarity.
- (44) The volatile and unpredictable situation on the natural gas market entering the winter seasons makes it important to ensure that the market correction mechanism may be applied as soon as possible, if the conditions justifying its activation are met. This Regulation should therefore enter into force on the day following that of its publication in the Official Journal of the European Union;

HAS ADOPTED THIS REGULATION:

## CHAPTER I – SUBJECT MATTER AND DEFINITIONS

### *Article 1*

#### **Subject matter and scope**

This Regulation establishes a temporary market correction mechanism against excessively high gas prices which are unrelated to prices at other exchanges in the Union.

### *Article 2*

#### **Definitions**

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

- (1) ‘front-month TTF derivative’ means a commodity derivative as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014, traded on a trading venue, the underlying of which is a transaction in the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V, and whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given trading venue;
- (2) ‘reference price’ means the daily average price of the price of the LNG assessments “Daily Spot Mediterranean Marker (MED)”, the “Daily Spot Northwest Europe Marker (NWE)”, published by S&P Global Inc., New York and of the price of the daily price assessment carried out by ACER pursuant to Article 18 to 22 of Council Regulation (EU) [XXXX/2022].
- (3) ‘trading venue’ means any of the following:
  - (a) ‘regulated market’ as defined in Article 4(1), point (21), of Directive 2014/65/EU;
  - (b) ‘multilateral trading’ facility as defined in Article 4(1), point (22), of Directive 2014/65/EU;
  - (c) ‘organised trading facility’ as defined in Article 4(1), point (23), of Directive 2014/65/EU;

## CHAPTER II – MARKET CORRECTION MECHANISM

### *Article 3*

#### **Market correction mechanism**

- (1) To limit episodes of excessive natural gas prices which are unrelated to prices at other gas exchanges, a market correction mechanism for the front-month TTF derivative settlement price can be activated as of 1 January 2023.
- (2) The market correction mechanism shall be activated where the following conditions are met (‘market correction event’)



- (a) the front-month TTF derivative settlement price exceeds EUR 275 for two week(s) and
  - (b) the TTF European Gas Spot Index as published by the European Energy Exchange (EEX) is EUR 58 higher than the reference price during the last 10 trading days before the end of the period referred to in subparagraph (a).
- (3) In case there are, based on the results of ACER monitoring pursuant to Article 4(1), concrete indications that a market correction event pursuant to Article 3(2)(b) is imminent, the Commission shall request an opinion from the European Central Bank ('ECB'), European Securities and Markets Authority ('ESMA') and, where appropriate, from the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group established pursuant to Regulation (EU) 2017/1938 on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be. The opinion shall also take into account price developments in other relevant organised market places, notably in Asia or the U.S., as reflected in the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both published by S&P Global Inc., New York.
- (4) ACER shall, where it observes that a market correction event has occurred, based on the information it receives pursuant to Regulation (EU) No 1227/2011, Commission Implementing Regulation (EU) No 1348/2014, Articles 18 to 22 of Council Regulation (EU) [XXXX/2022] or based on other publicly available market information, without delay publish a notice in the Official Journal of the European Union that a market correction event has occurred ('market correction notice') and inform the Commission, ESMA and the ECB of the market correction event.
- (5) Orders for front-month TTF derivatives with prices above EUR 275 may not be accepted as from the day after the publication of a market correction notice ('bidding limit').
- (6) Member States shall notify to the Commission which measures they have taken to prevent an expansion of gas and electricity consumption in reaction to the market correction event and to reduce gas and electricity demand, with a view to the 15% gas demand reduction as provided for in Articles 3 and 5 of Council Regulation (EU) 2022/1369 and the demand reduction targets in Articles 3 and 4 of Council Regulation (EU) 2022/1854. The notification shall be made no later than two weeks after the market correction event, unless the Commission has adopted a suspension decision pursuant to Article 5(2) in the meantime.
- (7) The Commission, having assessed the effect of the bidding limit on gas and electricity consumption and progress with the demand reduction targets provided for in Articles 3 and 5 of Council Regulation (EU) 2022/1369 and in Articles 3 and 4 of Council Regulation (EU) 2022/1854, may also propose to adapt Council Regulation (EU) 2022/1369 to the new situation.
- (8) In case of a market correction event, the Commission shall, without undue delay, ask the ECB for a report on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets

#### *Article 4*

##### **Monitoring and deactivation of the market correction mechanism**

- (1) ACER shall constantly monitor whether the condition referred to in Article 3(2)(b) is fulfilled, based on the information it receives pursuant to Regulation (EU) No 1227/2011, Commission Implementing Regulation (EU) No 1348/2014 and Articles 18 to 22 of Council Regulation (EU) [XXXX/2022] and on market information. ACER shall communicate the results of its monitoring to the Commission at the end of every business day by no later than 18h00 CET.
- (2) In case the condition referred to in Article 3(2)(b) is no longer met during 10 consecutive trading days before the end of the month after the market correction event, or afterwards ('deactivation event'), ACER shall without delay publish a notice in the Official Journal of the European Union and notify to the Commission and ESMA that the condition referred to in Article 3(2)(b) is no longer met ('deactivation notice'). From the day following publication of a deactivation notice, the bidding limit referred to in Article 3(4) shall cease to apply.

#### *Article 5*

##### **Suspension of the market correction mechanism**

- (1) ESMA, the ECB, ACER, the Gas Coordination Group and ENTSOG shall constantly monitor the effects of the bidding limit on markets and security of supply.
- (2) On basis of this monitoring, the Commission shall, by decision, suspend the market correction mechanism at any time, if unintended market disturbances or manifest risks of such disturbances occur, negatively affecting security of supply, intra-EU flows or financial stability ('suspension decision'). In the assessment, the Commission shall notably take into account if the continued activation of the market correction mechanism
  - (a) jeopardises the Union's security of gas supply, which is notably deemed to be the case if the Commission has declared a regional or Union emergency pursuant to Article 12 of Regulation (EU) 2017/1938, or may lead to any rationing of gas;
  - (b) occurs during a period where the mandatory demand reduction targets pursuant to Article 5 of Council Regulation (EU) 2022/1369 are not met at EU level, negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of Council Regulation (EU) 2022/1369, or leads to an overall increase in gas consumption, on the basis of data on gas consumption and demand reduction received from Member States pursuant to Article 8 of Council Regulation (EU) 2022/1369;
  - (c) prevents market-based intra-EU flows of gas according to ACER monitoring data;
  - (d) affects, on the basis of a report on the impact of the activation of the market correction measure by ESMA and an opinion of the ECB requested by the Commission for that purpose, the stability and orderly functioning of energy derivative markets;
  - (e) takes into account the gas market prices in the different organised market places across the Union, and at other relevant organised market places, such as

in Asia or the U.S., as reflected in the ‘Joint Japan Korea Marker’ or the ‘Henry Hub Gas Price Assessment’, both published by S&P Global Inc., New York;

- (f) affects the validity of existing gas supply contracts, including long-term gas supply contracts.
- (3) A suspension decision shall be taken without undue delay and be published in the Official Journal of the European Union. From the day following publication of a suspension decision, and for as long as specified in the suspension decision, the bidding limit referred to in Article 3(4) shall cease to apply.
- (4) ACER, the ECB, ESMA, the Gas Coordination Group and ENTSOG shall assist the Commission in the tasks pursuant to Articles 3, 4 and 5. The report of ESMA and the opinion of the ECB pursuant to paragraph (2)(d) shall be issued no later than 48 hours or within the same day in urgent cases upon a request from the Commission.
- (5) The market correction mechanism shall apply only for as long as this Regulation is in force.
- (6) Following a market correction event or a suspension decision, or in the light of market and security of supply developments, the Council, upon a proposal from the Commission, may decide to review the conditions for the activation of the market correction mechanism set out in Article 3(2)(a) and (b). Before submitting such a proposal, the Commission should consult ECB, ESMA, ACER, the Gas Coordination Group, ENTSOG and other relevant stakeholders.

### **CHAPTER III - FINAL PROVISIONS**

#### *Article 6*

##### **Entry into force and review**

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union. It shall apply for a period of one year from its entry into force. By 1.11.2023 at the latest, the Commission shall carry out a review of this Regulation in view of the general situation of the gas supply to the Union, and present a report on the main findings of that review to the Council. The Commission may, based on that report, propose to prolong the validity of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

*For the Council*  
*The President*

## **LEGISLATIVE FINANCIAL STATEMENT**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

#### **1.1. Title of the proposal/initiative**

#### **1.2. Policy area(s) concerned**

#### **1.3. The proposal/initiative relates to:**

#### **1.4. Objective(s)**

*1.4.1. General objective(s)*

*1.4.2. Specific objective(s)*

*1.4.3. Expected result(s) and impact*

*1.4.4. Indicators of performance*

#### **1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

*1.5.3. Lessons learned from similar experiences in the past*

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

#### **1.6. Duration and financial impact of the proposal/initiative**

#### **1.7. Management mode(s) planned**

### **2. MANAGEMENT MEASURES**

#### **2.1. Monitoring and reporting rules**

#### **2.2. Management and control system(s)**

*2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

*2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

#### **2.3. Measures to prevent fraud and irregularities**

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

**3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

**3.2. Estimated financial impact of the proposal on appropriations**

*3.2.1. Summary of estimated impact on operational appropriations*

*3.2.2. Estimated output funded with operational appropriations*

*3.2.3. Summary of estimated impact on administrative appropriations*

*3.2.4. Compatibility with the current multiannual financial framework*

*3.2.5. Third-party contributions*

**3.3. Estimated impact on revenue**

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Proposal for a Council Regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices

#### 1.2. Policy area(s) concerned

Policy area: Energy

Activity: Establishment of a Market Correction Mechanism

#### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>10</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

Market Correction Mechanism

The Title Transfer Facility (TTF) is a virtual pricing location in the Netherlands, which due to its high liquidity often serves as a price reference for the European gas market, impacting contracts and hedging operations across the EU. However, the TTF is primarily a physical pipeline index for gas injection in the Dutch network, serving mainly as the hub for North-western Europe. Currently, the TTF is trading at a premium to most EU trading hubs, which for the most part reflect the shortage in supplies from Russian and the region's infrastructure bottlenecks.

The fact that the TTF is used as a price reference and basis for hedging of gas contracts across the different EU hubs shows its relevance in setting the natural gas price in the EU.

As a last resort measure, this emergency proposal aims at tackling situations of excessive natural gas prices, by establishing a maximum dynamic price at which natural gas transactions can take place in the TTF month-ahead markets under specific conditions. This limit will be triggered if specific market events occur, and will require permanent monitoring, not only on a monthly basis to ascertain whether the correction mechanism should be maintained but also a more systematic monitoring to ensure that no undue impact on different aspects, ranging from security of supply to unintended market disturbances, negatively affecting security of supply and intra-EU flows, in which event the correction mechanism needs to be immediately suspended.

##### 1.4.2. Specific objective

To establish a market correction mechanism to prevent excessive TTF-month ahead levels not reflecting LNG prices.

<sup>10</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The proposal will contribute to the optimal functioning of the most liquid derivatives market in the EU, avoiding overpricing of the NWE infrastructure bottlenecks and its undue impact on gas prices across the EU.

1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

Creation of a team of experts responsible for monitoring market developments that will lead to the triggering of the market correction mechanism.

**1.5. Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

Taking into account the dimension of the energy crisis and the scale of its social, economic and financial impact, the Commission deems suitable to act by way of a regulation which is of general scope and directly and immediately applicable. This would result in a swift, uniform and Union-wide cooperation mechanism.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

This proposal should help the contention of the TTF futures levels, addressing and minimising price spikes such as the ones that took place in August 2022, while maintaining the EU's attractiveness for LNG cargoes.

1.5.3. *Lessons learned from similar experiences in the past*

The Market Correction Mechanism would be an unprecedented intervention to the European liberalised and integrated gas market and/or the financial markets for commodities. Due to the unknown impacts, a strong set of conditions and safety triggers has been included, as well as strong monitoring requirements

1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

No operational appropriations needed.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

No need for a different approach has been contemplated at this stage.

Additional human resources with high level expertise are needed in the Commission (DG ENER) for these new tasks. However, under the current MFF, the Commission must operate in a context of stable staffing, and thus redeployment within the DG and across Commission services will need to be contemplated as far as possible. A separate Legislative Financial Statement foresees additional staff for the European Agency for the Cooperation of Energy Regulators (ACER).

## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- in effect from 2023 as long as the energy crisis remains
- Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>11</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

### Comments

Monitoring to be undertaken by the Commission services, supported by the European Agency for the Cooperation of Energy Regulators (ACER).
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<sup>11</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>



## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The tasks directly implemented by DG ENER will follow the annual cycle of planning and monitoring, as implemented in the Commission, including reporting the results through the Annual Activity Report of DG ENER and of ACER.

Furthermore, the performance of the mechanism will be monitored in accordance with Article 4 of the proposal.

The proposal also includes, under Article 5c, specific reporting requirements.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The Commission, with the support of the European Agency for the Cooperation of Energy Regulators (ACER), will carry out the triggering and monitoring of the market monitoring mechanism, which cannot be delegated due to the level of responsibility linked to such tasks.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

As regards the implementation of the tasks related to the triggering and monitoring of the mechanism, the risks identified are linked to the insufficient number of human resources and the level of expertise needed to undertake these key tasks in the Commission. The list of laureates resulting from the EPSO/AD/401/22 energy specialist competition will help recruit the necessary experts in the Commission.

#### 2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

DG ENER reports annually, in its Annual Activity Report, on the cost of control of its activities. The risk profile and cost of controls for procurement activities are in line with the requirements.

The tasks assigned in relation to the setup of the mechanism by DG ENER will not result in additional controls or change in the ratio of control costs.

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

DG ENER adopted a revised Anti-fraud Strategy (AFS) in 2020. DG ENER AFS is based on the Commission Antifraud Strategy and a specific risk assessment carried out internally to identify the areas most vulnerable to fraud, the controls already in place and the actions necessary to improve DG ENER's capacity to prevent, detect and correct fraud.

The contractual provisions applicable to public procurement ensure that audits and on-the-spot checks can be carried out by the Commission services, including OLAF, using the standard provisions recommended by OLAF.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>12</sup>	from EFTA countries <sup>13</sup>	from candidate countries <sup>14</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
01	02 20 04 02	Diff.	NO	NO	NO	NO

- New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>12</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>13</sup> EFTA: European Free Trade Association.

<sup>14</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated financial impact of the proposal on appropriations

#### 3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	1	Single Market, Innovation and Digital
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DG: ENER			Year 2022	Year 2023	Year 2024	Year 2025	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
• Operational appropriations										
Budget line <sup>15</sup> 02 20 04 02	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>16</sup>										
Budget line		(3)								
<b>TOTAL appropriations for DG ENER</b>	Commitments	=1a+1b +3								
	Payments	=2a+2b +3								

<sup>15</sup> According to the official budget nomenclature.

<sup>16</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADING 1</b> of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

**If more than one operational heading is affected by the proposal / initiative, repeat the section above:**

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 6</b> of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

<b>Heading of multiannual financial framework</b>	<b>7</b>	'Administrative expenditure'
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year N 2023	Year N+1 2024	Year N+2 2025	Year N+3 2026	Year N+4 2027		TOTAL
DG: ENER								
• Human resources		0,942	0,942	0,942	0,942	0,942		<b>4,710000</b>
• Other administrative expenditure								
<b>TOTAL DG ENER</b>	Appropriations	0,942	0,942	0,942	0,942	0,942		<b>4,710000</b>

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,942	0,942	0,942	0,942	0,942		<b>4,710000</b>
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EUR million (to three decimal places)

		Year N <sup>17</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		TOTAL
<b>TOTAL appropriations</b>	Commitments	0,942	0,942	0,942	0,942	0,942		<b>4,710000</b>

<sup>17</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<b>under HEADINGS 1 to 7 of the multiannual financial framework</b>	Payments	0,942	0,942	0,942	0,942	0,942			<b>4,710000</b>

### 3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						<b>TOTAL</b>	
	<b>OUTPUTS</b>																	
	Type <sup>18</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>19</sup> ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
<b>TOTALS</b>																		

<sup>18</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>19</sup> As described in point 1.4.2. 'Specific objective(s)...'

### 3.2.3. Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N <sup>20</sup> 2023	Year N+1 2024	Year N+2 2025	Year N+3 2026	Year N+4 2027			TOTAL
--	---------------------------------	---------------------	---------------------	---------------------	------------------	--	--	-------

<b>HEADING 7 of the multiannual financial framework</b>								
Human resources	0,942	0,942	0,942	0,942	0,942			<b>4,710000</b>
Other administrative expenditure								
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	0,942	0,942	0,942	0,942	0,942			<b>4,710000</b>

<b>Outside HEADING 7<sup>21</sup> of the multiannual financial framework</b>								
Human resources	0	0	0	0	0			
Other expenditure of an administrative nature	0	0	0	0	0			
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>	0	0	0	0	0			

<b>TOTAL</b>	<b>0,942</b>	<b>0,942</b>	<b>0,942</b>	<b>0,942</b>	<b>0,942</b>			<b>4,710000</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>20</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<sup>21</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year N 2023	Year N+1 2024	Year N+2 2025	Year N+3 2026	Year N+4 2027		
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 (Headquarters and Commission's Representation Offices)	6	6	6	6	6		
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>22</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
<b>XX 01 xx yy zz</b> <sup>23</sup>	- at Headquarters						
	- in Delegations						
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>		

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	This unprecedented mechanism entails close monitoring tasks – including on the functioning of commodity markets and security of supply – that are not currently part of the Commission's role. Due to the level of responsibility linked to such task – and the extremely negative effects that may arise from failure to undertake this task properly – it is paramount to the Commission's reputation that no risks that may undermine its delivery are undertaken. For these tasks, DG ENER will recruit six economic analysts with an energy background and use the list of laureates resulting from the EPSO/AD/401/22 energy specialist competition.
External staff	n.a.

<sup>22</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>23</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).



3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>24</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>24</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue
  - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>25</sup>							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article .....									

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>25</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

**FRAMEWORK OF THE PROPOSAL/INITIATIVE**

**1.1. Title of the proposal/initiative**

**1.2. Policy area(s) concerned**

**1.3. The proposal/initiative relates to:**

**1.4. Objective(s)**

*1.4.1. General objective(s)*

*1.4.2. Specific objective(s)*

*1.4.3. Expected result(s) and impact*

*1.4.4. Indicators of performance*

**1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

*1.5.3. Lessons learned from similar experiences in the past*

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

**1.6. Duration and financial impact of the proposal/initiative**

**1.7. Management mode(s) planned**

**2. MANAGEMENT MEASURES**

**2.1. Monitoring and reporting rules**

**2.2. Management and control system(s)**

*2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

*2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

**2.3. Measures to prevent fraud and irregularities**

**3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

**3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

**3.2. Estimated financial impact of the proposal on appropriations**

*3.2.1. Summary of estimated impact on operational appropriations*

*3.2.2. Estimated output funded with operational appropriations*

*3.2.3. Summary of estimated impact on administrative appropriations*

*3.2.4. Compatibility with the current multiannual financial framework*

*3.2.5. Third-party contributions*

**3.3. Estimated impact on revenue**

## LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

#### 1.2. Proposal for a Council Regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices Policy area(s) concerned

Policy area: Energy

Activity: Establishment of a Market Correction Mechanism

#### 1.3. The proposal relates to

a new action

a new action following a pilot project/preparatory action<sup>26</sup>

the extension of an existing action

a merger of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

Market Correction Mechanism

The Title Transfer Facility (TTF) is a virtual pricing location in the Netherlands, which due to its high liquidity often serves as a price reference for the European gas market, impacting contracts and hedging operations across the EU. However, the TTF is primarily a physical pipeline index for gas injection in the Dutch network, serving mainly as the hub for North-western Europe. Currently, the TTF is trading at a premium to most EU trading hubs, which for the most part reflect the shortage in supplies from Russian and the region's infrastructure bottlenecks.

The fact that the TTF is used as a price reference and basis for hedging of gas contracts across the different EU hubs shows its relevance in setting the natural gas price in the EU.

As a last resort measure, this emergency proposal aims at tackling situations of excessive natural gas prices, by establishing a maximum dynamic price at which natural gas transactions can take place in the TTF month-ahead markets under specific conditions. This limit will be triggered if specific market events occur, and will require permanent monitoring, not only on a monthly basis to ascertain whether the correction mechanism should be maintained but also a more systematic monitoring to ensure that no undue impact on different aspects, ranging from security of supply to unintended market disturbances, negatively affecting security of supply and intra-EU flows, in which event the correction mechanism needs to be immediately suspended.

##### 1.4.2. Specific objective(s)

Specific objective

<sup>26</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

To establish a market correction mechanism to prevent excessive TTF-month ahead levels not reflecting LNG prices.

1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The proposal will contribute to the optimal functioning of the most liquid derivatives market in the EU, avoiding overpricing of the NWE infrastructure bottlenecks and its undue impact on gas prices across the EU.

1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

Creation of a team of experts responsible for monitoring market developments that will lead to the triggering of the market correction mechanism.

**1.5. Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

Taking into account the dimension of the energy crisis and the scale of its social, economic and financial impact, the Commission deems suitable to act by way of a regulation which is of general scope and directly and immediately applicable. This would result in a swift, uniform and Union-wide cooperation mechanism.

The proposal will require additional resources for the Agency for the Cooperation of Energy Regulators, ACER. In particular, the proposal sets out new tasks for ACER to monitor gas markets and assist the Commission, along the following lines:

Triggering, and later deactivating, the market correction mechanism: given the high political sensitivity and significant implications of these actions, this needs to be done meticulously. In addition, this requires continuous monitoring, so back-up needs to be ensured. Two (2) FTEs are estimated for this work (1 data analyst, 1 gas expert). Importantly, in order to comply with the IOSCO PRA principles for the LNG price assessments/benchmark, these need to be different people from those performing the price assessment/benchmark. Otherwise, the latter work would not be performed according to the required standards, which would undermine market acceptance of the price assessments/benchmarks and therefore undermine the idea of performing them in the first place;

Monitoring intra-EU gas flows: this requires significantly more granular data on gas flows than currently monitored at ACER; new data in new tools would need to be collected. Two (2) FTEs are estimated for this work (1 data analyst, 1 gas expert), plus consultancy on the data collection and analysis tool;

Assisting the Commission, together with the ECB and ESMA, on tasks in the various articles: for potential support on demand reduction, gas price formation outside the EU, and long-term gas supply contracts, two (2) FTEs are estimated.

Of the 6 FTEs, 1 should be senior so that this person could coordinate and lead the work in this area. This peer review process for price assessments needs to be in place to make sure that pricing procedures and methodologies according to the IOSCO principles are correctly and consistently applied and to ensure integrity and quality of the published prices.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this*

*point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

This proposal should help the contention of the TTF futures levels, addressing and minimising price spikes such as the ones that took place in August 2022, while maintaining the EU's attractiveness for LNG cargoes.

*1.5.3. Lessons learned from similar experiences in the past*

The Market Correction Mechanism would be an unprecedented intervention to the European liberalised and integrated gas market and/or the financial markets for commodities. Due to the unknown impacts, a strong set of conditions and safety triggers has been included, as well as strong monitoring requirements.

ACER has extensive experience with collecting and processing market data in the framework of Regulation (EU) No 1227/2011 and under Commission Implementing Regulation (EU) No 1348/2014 ('REMIT').

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The necessary appropriations related to the requested posts in ACER will be financed from existing DG ENER Programmes

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

Additional human resources with high level expertise are needed in the Commission (DG ENER) for these new tasks. However, under the current MFF, the Commission must operate in a context of stable staffing, and thus redeployment within the DG and across Commission services will need to be contemplated as far as possible.

ACER shall also be granted additional tasks, namely on monitoring of gas markets and in assisting the Commission, for which it will need additional human resources.



## 1.6. Duration and financial impact of the proposal/initiative

### **limited duration**

- Proposal/initiative in effect from [DD/MM]2023 as long as the energy crisis remains
- Financial impact from 2023 to 2027 for commitment appropriations and payment appropriations.

### **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>27</sup>

### **Direct management** by the Commission through

- executive agencies

### **Shared management** with the Member States

### **Indirect management** by entrusting budget implementation tasks to:

- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

### Comments

Monitoring to be undertaken by the Commission services, in some technical aspects supported by the European Agency for the Cooperation of Energy Regulators (ACER).

<sup>27</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: <https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>.

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The tasks directly implemented by DG ENER will follow the annual cycle of planning and monitoring, as implemented in the Commission, including reporting the results through the Annual Activity Report of DG ENER.

The tasks implemented by ACER will follow the annual cycle of planning and monitoring, as implemented in the Agency, including reporting the results through the Consolidated Annual Activity Report of ACER.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The Commission, assisted by ACER, is responsible for the triggering and monitoring of the market monitoring mechanism, which cannot be delegated due to the level of responsibility linked to such tasks.

It is more cost-effective to allocate the new task to an existing agency which already works on similar tasks. DG ENER established a control strategy for managing its relations with ACER, part of the 2017 Internal Control Framework of the Commission. ACER revised and adopted its own Internal Control Framework in December 2018

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

As regards the implementation of the tasks related to the triggering and monitoring of the mechanism, the risks identified are linked to the insufficient number of human resources and the level of expertise needed to undertake these key tasks in the Commission.

As a specialist body, ACER is better positioned to find additional experts and achieve synergies with existing staff.

#### 2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The tasks assigned in relation to the setup of the mechanism by DG ENER will not result in additional controls or change in the ratio of control costs. Similarly, the allocation of additional tasks to the existing mandate of ACER is not expected to generate specific additional controls at ACER, therefore, the ratio of control costs over value of funds managed will remain unaltered.

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

ACER applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach. In March 2019 ACER adopted a new Anti-Fraud Strategy, repealing Decision 13/2014 of the Administrative Board of ACER. The new strategy, spanning over a three-year period, is based on the following elements: an annual risks assessment, the prevention and management of conflicts of interest, internal rules on whistleblowing, the policy and procedure for the management of sensitive functions, as well as measures related to ethics and integrity.

Both the ACER Regulation and the contractual provisions applicable to public procurement ensure that audits and on-the-spot checks can be carried out by the Commission services, including OLAF, using the standard provisions recommended by OLAF.

## 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>28</sup>	from EFTA countries <sup>29</sup>	from candidate countries <sup>30</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
01	02 10 06	Diff.	YES	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>28</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>29</sup> EFTA: European Free Trade Association.

<sup>30</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	<b>01</b>	Single Market, Innovation and Digital
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ACER (Agency for the Cooperation of Energy Regulators)			Year 2023 <sup>31</sup>	Year 2024	Year 2025	Year 2026	2027			TOTAL
Title 1:	Commitments	(1)	0,942	0,942	0,942	0,942	0,942			<b>4,710</b>
	Payments	(2)	0,942	0,942	0,942	0,942	0,942			<b>4,710</b>
Title 2:	Commitments	(1a)								
	Payments	(2a)								
Title 3:	Commitments	(3a)								
	Payments	(3b)								
<b>TOTAL appropriations for ACER</b>	Commitments	=1+1a +3a	0,942	0,942	0,942	0,942	0,942			<b>4,710</b>
	Payments	=2+2a +3b	0,942	0,942	0,942	0,942	0,942			<b>4,710</b>

<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’
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EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration	TOTAL

<sup>31</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.



3.2.2. *Estimated impact on [body]'s appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs  <input type="checkbox"/>			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL			
	OUTPUTS																			
	Type <sup>33</sup>	Average cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	N <sup>o</sup>	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>34</sup> ...																				
- Output																				
- Output																				
- Output																				
Subtotal for specific objective No 1																				
SPECIFIC OBJECTIVE No 2 ...																				
- Output																				
Subtotal for specific objective No 2																				
<b>TOTAL COST</b>																				

<sup>33</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>34</sup> As described in point 1.4.2. ‘Specific objective(s)...’

### 3.2.3. Estimated impact on ACER's human resources

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2023 <sup>35</sup>	Year 2024	Year 2025	Year 2026	2027			TOTAL
--	----------------------------	--------------	--------------	--------------	------	--	--	-------

Temporary agents (AD Grades)	0,942	0,942	0,942	0,942	0,942			<b>4,710</b>
Temporary agents (AST grades)								
Contract staff								
Seconded National Experts								

<b>TOTAL</b>	<b>0,942</b>	<b>0,942</b>	<b>0,942</b>	<b>0,942</b>	<b>0,942</b>			<b>4,710</b>
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Staff requirements (FTE):

	Year 2023 <sup>36</sup>	Year 2024	Year 2025	Year 2026	2027			TOTAL
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Temporary agents (AD Grades)	6	6	6	6	6			<b>6</b>
Temporary agents (AST grades)								
Contract staff								
Seconded National Experts								

<b>TOTAL</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>			<b>6</b>
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<sup>35</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<sup>36</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

Please indicate the planned recruitment date and adapt the amount accordingly (if recruitment occurs in July, only 50 % of the average cost is taken into account) and provide further explanations.



### 3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>○ External staff (in Full Time Equivalent unit: FTE)<sup>37</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) <sup>38</sup>	- at Headquarters <sup>39</sup>						
	- in Delegations						
<b>01 01 01 02</b> (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>							

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary

<sup>37</sup> AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

<sup>38</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>39</sup> Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

### 3.2.4. Compatibility with the current multiannual financial framework

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>40</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue
  - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>41</sup>					
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	
Article .....							

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

<sup>40</sup> See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

<sup>41</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

Specify the method for calculating the impact on revenue.