



Strasbourg, 18.10.2022
COM(2022) 549 final

2022/0339 (NLE)

Proposal for a

COUNCIL REGULATION

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

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

Responses to a changing context

Russia's unprovoked war of aggression against Ukraine and its weaponisation of energy supplies has **exposed the Union's dependency on Russian fossil fuels**, tested our tools to ensure security of supply, and driven energy prices to unprecedented levels.

Over the last year, the Commission has put forward and implemented several initiatives, gradually moving from providing guidance to Member States to setting up an integrated security of supply strategy¹, underpinned by legal instruments where necessary. This included, most recently, the **emergency intervention to address high energy prices**,² featuring for instance a **coordinated reduction of electricity demand** (notably in peak hours), an improved Member States toolbox to **protect consumers and companies** from high energy prices, and a **solidarity contribution for the fossil sector**.

Following the "REPowerEU" Communication, the Commission and Member States have asked for the creation of an EU Energy Platform,³ with a view to ensuring security of supply. This Platform should support, in a spirit of solidarity, Member States and Energy Community Contracting Parties and their gas undertakings in obtaining additional supplies of LNG and pipeline gas to replace missing Russian gas supplies.

The need for further emergency action

The current situation causes **economic and social hardship**, placing a heavy burden on citizens and on the economy. Rising energy costs are leading to **reduced purchasing power** for citizens⁴ and **loss of competitiveness** for companies⁵. The shortage in gas and power supply and the relatively inelastic energy demand has led to **significant increases in prices and volatility of gas and electricity prices** in the EU. National measures to counter these trends may lead to fragmentation of the internal market and may not guarantee solidarity.

At the same time, the weaponisation of gas supply and the Russian Federation's manipulation of the markets through intentional disruptions of gas flows have led to skyrocketing energy prices in the Union, endangering not only the economy in the Union, but also seriously undermining security of supply. A coordinated and swift reply from the EU is therefore needed. Russian gas supplies decreased significantly, down to 9% of our pipeline gas supply in September 2022 and 14% when including LNG, compared to a 41% share of Russian pipeline gas and 45% when including LNG in 2021. The apparent sabotage of the Nord Stream 1 pipeline increases the need to substitute Russian gas volumes quickly and on a

¹ The Commission put forward the Energy Prices Toolbox in October 2021, the REPowerEU Communication and Plan in March and May 2022, including legislative proposals in the framework of Fit for 55, the Regulation on Gas Storage, the Save Gas for a Safe Winter plan with a Regulation on Gas Demand Reduction, and the Regulation on Emergency measures on high electricity prices.

² Proposal for a Council regulation on an emergency intervention to address high energy prices, 14 Sep 2022, COM(2022) 473.

³ COM(2022)230 final

⁴ Recent publications by Eurostat show that energy accounted for around half percentage points of the 9.1% total euro area annual inflation in August 2022.

⁵ The industrial price gap in the EU compared to China, for example, increased by 42 and 60 percentage points for electricity and gas, respectively, in the second quarter of 2022 compared to the second quarter of 2021; the price gap is even much higher with the United States.

lasting basis. Beside demand reduction, energy efficiency measures and the increase of renewable energy sources, the supply gap will need to be filled, where no other means of substitution are available, by **purchasing equivalent volumes of gas from other suppliers**, mostly LNG.

Compared to this winter, undertakings could face severe difficulties in meeting two additional challenges related to filling gas storage the following winter (2023/2024). First, it is highly probable that less and most likely no pipeline gas will arrive in the EU from Russia given the current political situation. Second, the target is to fill 90% of EU gas storage capacities as opposed to 80% for this winter as set out in the Gas Storage Regulation (EU) 2022/1032. In this situation, and building on existing legislation and other initiatives, aggregating the EU demand and joint purchasing could be a useful tool to help the Member States meet filling trajectories and targets enshrined in the Gas Storage Regulation.

Aims of this proposal

Therefore, the Commission proposes this emergency regulation, which **aims at mitigating the impact on the price for gas** by addressing demand and supply⁶, ensuring security of supply across the entire European Union, and enhancing solidarity.

The regulation contains **four main elements** that will work, in a coherent manner, towards lowering prices and reinforcing solidarity and security of supply.

First, aggregation of EU gas demand and **joint purchase of gas** will allow the EU to use its collective purchasing power to negotiate better prices, reduce the risk of Member States outbidding each other on the already tight market and, in doing so, counter-productively driving up prices. It will improve transparency and help smaller Member States in particular, which are in a less favourable situation as buyers. The short-term focus under Article 122 will be on coordinating and aggregating (pooling) demand to support the filling of gas storage for the next, fast approaching, filling season.

Second, the proposal contains an entire **package of measures on gas prices**, to address excessive price levels and to ensure fair gas and electricity prices also in a crisis situation. The current proposal provides certainty as to the price to be used in a context of gas scarcity, when an emergency situation is declared. It also proposes a complementary benchmark on liquefied natural gas (LNG) supplies to ensure a representative benchmark for LNG imports not influenced by Russia's manipulation. To deal with excessive volatility in the markets, it includes mechanisms to smoothen-out the volatility on futures markets by way of an intra-day price volatility management mechanism that limits extreme changes within a short time-period ("circuit breaker").

Third, a joint approach to limiting prices requires **solidarity** across the Union. As not all Member States have mutual solidarity agreements in place, the Commission proposes **directly applicable arrangements in the absence of such solidarity agreements**. It will also propose to extend the obligation to provide solidarity to non-connected Member States with LNG facilities. This will ensure that we will be prepared and ready to act in case these agreements will be needed. The Commission is also looking into the need for further proposals for situations where some regions are facing a larger supply crunch than others.

⁶ In addition, to address the challenges linked to gas prices in the EU, this proposal focusses on actual gas prices but also targets energy markets price volatility by introducing a tool to complement the existing volatility mechanisms and limit upward price spikes.

Finally, **further reduction of gas demand should be possible** while also ensuring consumers continue to be adequately protected against supply shortages. The EU already has strengthened its tools for savings in gas and electricity. However, the implementation of the agreed regulations to their fullest extent is needed in order to reach the necessary demand reduction targets. This will help withstand further gas supply disruption, and ease pressure on international gas markets, and therefore on prices. The Commission will closely monitor demand reduction measures and stands ready to trigger the EU alert or even revise the gas demand reduction targets if voluntary demand reduction measures prove insufficient to ensure sufficient gas supplies over the winter

Main elements of this proposal

- (1) Joint purchasing and efficient operation of gas infrastructure
 - (a) Joint purchasing

This proposal addresses these urgent issues by developing a temporary joint purchasing tool, in line with the request from Member States⁷. There is considerable time pressure for this tool to be ready no later than in early spring 2023, and in particular ahead of the next storage filling season. Bearing this in mind, it is proposed to move quickly to establish the central tenets of joint purchasing under Article 122 as soon as possible, and therefore a number of these elements should apply on a provisional basis.

The proposal for joint purchasing establishes a process consisting of two steps: first, demand aggregation of natural gas; second, possible joint purchasing under the Energy Platform.

- (i) First step: Demand aggregation

In the first step, gas purchasing companies would aggregate their demand using a service provider organising this process, contracted through a public procurement procedure by the Commission for this purpose. Companies can submit their demand for gas (in terms of volume, delivery time, duration and place) to the service provider via an IT tool to collect this data. The service provider would publish these data, with appropriate protection of confidential information, on its website, seeking offers through a public tender process for volumes of natural gas that meet the aggregated demand. This step would be voluntary except that – given the importance of storage filling – Member States would have to require that volumes equivalent to at least 15% (around 13.5 bcm for the EU as a whole) of their storage filling requirements for next year were included by their companies in the demand aggregation process.⁸ The companies which participated in demand aggregation under a mandatory obligation could still decide whether to actually purchase the gas or not after the aggregation process. Further, the gas purchased does not necessarily need to be used for storage filling.

Given the importance of storage filling in the coming year in particular, this mechanism to jointly purchase gas would benefit from market leverage from joint purchasing and help ease the uncertainties and abnormally high prices seen in the last filling season this year.

Given the need for urgency, the service provider should be an existing company with detailed knowledge of energy markets and appropriate IT tools and expertise to perform these tasks.

⁷ As foreseen by the European Council [ref conclusions], participation in the Energy Platform should also be open to Energy Community Contracting Parties.

⁸ The storage filling target is 90% for countries with underground storage facilities; for other Member States an equivalent obligation is applied for the winter 2023/24.

The joint purchasing is open to participation of companies from Energy Community Contracting Parties (Western Balkan, Ukraine, Moldova and Georgia).

(ii) Second step: Coordinated gas purchasing

In a second step, companies that have participated in the demand aggregation process described above may decide to form a gas purchasing consortium in order to enter into contracts with the suppliers that have offered gas under this process. They could thereby decide to purchase the gas on a joint basis, and coordinate elements of their positions such as volumes, prices, delivery points and time of delivery. A single gas purchasing consortium with strong buying power increases the likelihood of achieving better prices, but more than one gas purchasing consortium could emerge, given the very different demand pattern of undertakings across the EU. Respect of competition rules would have to be ensured (see “Consistency with other EU policies” below).

(iii) Ad hoc governance arrangements

The aforementioned measures should be accompanied by an adequate governance structure to ensure effective coordination to meet the objectives. Therefore, a Steering Board should be established on an ad hoc basis, composed of representatives of the Commission and Member States, to oversee both the process of (a) demand aggregation and (b) coordinated gas purchasing. The Steering Board can ensure transparency in the process and provide guidance so as to ensure that joint purchasing effectively respects security of supply and the principle of energy solidarity.

The proposal is carefully balanced and respects the principle of proportionality. There are certain necessary mandatory elements – for example on pooling of demand for the filling-in of gas storages – but these in no way constrain the freedom of undertakings to decide on whether to buy or not depending on the conditions that are offered through the demand aggregation process. The objective of joint purchasing is to support EU undertakings in their efforts to obtain additional gas and help to ensure more equal access to new or additional gas sources in the face of the current acute threat to the security of supplies. In addition, the proposal addresses the strong interest in a number of Member States to be able to operate in gas purchasing consortiums, subject to the relevant competition considerations.

In particular, as described, the tendering of aggregated demand for gas by the Service Provider could play a pivotal role in helping Member States to fill gas storages for the winter 2023/2024. Indeed, it could also therefore strengthen EU solidarity by helping ensure the fairer distribution of gas. Aggregation of demand and joint purchasing could also reduce the risk for individual gas undertakings in some Member States of overpaying for gas contracted on tight short term markets. It could also help smaller EU undertakings, including in landlocked countries that do not have the necessary experience in contracting LNG, to be able to pool their demand to contract LNG cargoes (which may be too large for individual undertakings to handle all at once), and also help them to structure LNG supply according to their particular needs. Joint purchasing could support particularly those undertakings that were previously purchasing gas only or mainly from Russian suppliers. Joint purchasing could grant a preferential treatment or support to supply of renewable gases such as biomethane and hydrogen, and to gas which would otherwise be vented or flared. Undertakings concluding contracts pursuant to this Regulation should be encouraged to use the UN Oil and Gas Methane Partnership 2.0 Standard to measure, report and verify methane emissions along the supply chain to the European Union. Finally, joint purchasing in the future could strengthen the potential for renewable energy supplies in helping to ensure access to future imports of hydrogen from non-EU sources.

(b) Efficient operation of pipelines and LNG terminals

The proposed regulation also addresses ways for the most efficient operation of pipelines and LNG terminals.

Diversification of supply sources away from Russian are changing the gas flow patterns in the EU. Therefore, the routes from LNG terminals to consumption centres may become more relevant than the currently predominant East-West direction of pipeline flows. However, such changes in gas flows may lead to congestion (contractual and physical) of the existing pipelines and the EU LNG terminals.

The existing congestion management measures for pipelines foresee “use-it-or-lose-it” procedures, which take at least six months before they show effect. Moreover, an administratively burdensome procedure to be performed by the National Regulatory Authority in the relevant Member States is necessary. This proposal grants the gas system operators tools to react rapidly to changes in gas flows and possible contractual congestion. In particular, the new rules could accelerate marketing of unused long-term capacities in case of short-term congestion.

Moreover, it is of the utmost importance to optimise the LNG absorption capacity of the EU LNG terminals and the usage of storage facilities. A **transparency platform and the development of an organised market of secondary capacities** are necessary, similar to those existing for the transport of gas via pipelines. The Commission proposal to revise the Gas Regulation of the Hydrogen and Gas Market Decarbonisation Package⁹ already contains provisions to this effect in Article 10 and Article 31. The current proposal frontloads these provisions as part of the crisis response now, in order to help avoid situations in the future where new sources of gas are procured, but LNG terminals or gas storage facilities are used inefficiently without the necessary transparency.

(2) Security of supply

(a) Demand reduction

An integral part of the EU security of supply response in the current challenging context is to pro-actively reduce the gas demand, to prepare for any potential supply disruptions while avoiding depleting the storage facilities. If necessary, the Commission will propose to trigger the Union alert pursuant to the Demand Reduction Regulation (Regulation (EU) 2022/1369).

In order to best anticipate and prepare for the winter 2023-24 and to fill underground storages up to 90%, as was agreed upon in Regulation (EU) 2022/1032, all demand of gas that can be reduced now will be of benefit. Therefore, efforts to reduce gas demand should be pursued beyond March 2023, in order to fill underground storages up to 90%, as was agreed upon in Regulation (EU) 2022/1032. The Commission will closely monitor demand reduction measures and stands ready to trigger the EU Alert or even revise the gas demand reduction targets if voluntary demand reduction measures prove insufficient to ensure sufficient gas supplies over the winter. Meanwhile, Member States should actively take all possible measures in line with the Gas Demand Regulation to reduce gas demand and in line with the European gas Demand Reduction Plan ‘Save Gas for a Safe Winter’, adopted in July 2022.

⁹ Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen COM/2021/803 final; proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

Such measures include public awareness campaigns, demand-reduction measures in the buildings operated by public authorities and the commercial and outdoor spaces.

To reinforce preparedness to possible emergencies in the winter, the proposal introduces the new provisions below related to security of supply. Given the importance that all consumer groups contribute to saving gas within their ability, this proposal includes provisions that allow Member States to exceptionally take measures to reduce the ‘non-essential consumption’ of protected customers provided it does not reduce the protection of their essential consumption. These measures will under no circumstances affect the vulnerable consumers who have no margin to reduce their consumption and will not lead to the disconnection of any protected customers. Member States could redefine who are protected consumers, as long as vulnerable households continue to be protected in all circumstances.

(b) Extension of solidarity protection obligation to critical gas fired power plants

Under the current regulatory framework, in Member States where critical gas-fired power plants play a key role for security of electricity supply, they would have to be curtailed first, to the possible detriment of the security of electricity supply of other Member States, before Member States are allowed to request solidarity measures under Regulation (EU) 2017/1938. To prevent such negative spill-over effects into electricity generation, it is proposed that Member States may trigger a solidarity request, under certain conditions, if gas-fired power plants, that are needed to ensure the electricity system’s adequacy, are at risk of not being supplied with critical gas volumes. For the same reason, Member States providing solidarity will be entitled to ensure that the operation of their critical gas-fired power plants is not endangered when providing solidarity to another Member State.

(c) Default rules for bilateral solidarity

Specific measures in this proposal introduce a default mechanism between the Member States to ensure they help each other to supply the “solidarity protected customers” (households and district heating and essential social services under certain conditions) and critical gas fired power plants, in an emergency leading to very severe shortage of gas. The current security of supply rules have introduced the principle of such solidarity but its actual use in a crisis requires detailed technical and financial arrangements which were supposed to be agreed bilaterally between Member States. However, only six out of more 40 required arrangements have been agreed so far. The proposed Regulation, therefore, spells out the rules and procedures that will automatically apply between Member States which have not agreed on bilateral solidarity arrangements. It builds on the Commission’s Recommendation (EU) 2018/177 and the standard template proposed by the Commission in Annex 2 of the COM (2021) 804 proposal, with the necessary updates to reflect the fact that the market and security of supply situation has considerably deteriorated since then.

This default solidarity mechanism applicable in the absence of other bilateral arrangements includes the following:

- The solidarity compensation to be paid by the Member State requesting solidarity to the Member State providing solidarity will be based on the average market price of gas of the last 30 days month preceding the request for assistance by the requesting Member State of the most relevant exchange. This averaging reflects the likely extreme volatility of prices in a situation of emergency.
- Possible costs resulting from judicial or arbitration proceedings after the curtailment of industry will not be included in the solidarity compensation to be paid between

Member States. If such costs are incurred, they would therefore have to be borne by the providing Member State pursuant to its own national rules. The reason is that the cost of compensation to industry resulting from curtailment is partially covered by the price of gas and, should a part remain from litigation, this part is highly uncertain and can largely exceed the costs of the gas. The uncertainty about indirect compensation costs therefore has proved to be a major obstacle to solidarity agreements. However, Member States will still be able to agree on different compensation conditions.

- The procedure to request and provide solidarity should, to the extent possible, prioritise voluntary market-based measures while operationalising the fact that solidarity may have to include measures such as release of strategic stocks or curtailment as last resort in a crisis. The proposal makes it clear that upon receipt of a solidarity request, the connected Member States must respond within 12 hours and provide the solidarity measures agreed within 3 days.

The current solidarity obligation applies between the Member States that are directly connected or via a third country. This proposal will also apply this obligation to Member States with LNG facilities which even if not directly connected could provide solidarity to a Member State in an emergency if endowed with the infrastructure necessary to receive this LNG.

(d) Allocation of capacity in a Union or regional emergency

Finally, the proposal points to the possibility of Union or regional emergency with major gas disruptions and supply shortages. In such a cases, the Union should be prepared to rapidly apply, solidarity mechanisms in a regionally coordinated manner to mitigate the emergency situation. Under these extraordinary circumstances, the Council should be able to decide on an efficient allocation of the gas capacities available to those Member States affected by a regional or Union emergency based on a proposal from the Commission. In such case, and in the absence of a bilateral solidarity agreement, the price for gas supplied under solidarity should be defined as the average market price of the last 30 days month preceding the request for assistance by the requesting Member State of the most relevant exchange (see also below, 3a).

(3) Action on the level of gas prices

(a) Price formula in the default solidarity agreements

As mentioned above, solidarity should be based on a fair compensation, both for the requesting as well as for the providing Member States. The gas price has become much more volatile since 2021, which makes the spot market price in crisis situations less appropriate as a basis for fair compensation. Therefore, this Regulation proposes to use the average market price of the last month preceding the request for assistance by the requesting Member State of the most relevant exchange to provide certainty to the different parties.

With the average market price of the last month, the compensation is still based on the ‘market price’, as stipulated in the 2018 Recommendation. However, the monthly average market price is more independent from a volatile environment and likely very high spot prices during crisis situations, and as such, limits any perverse incentives. The providing Member States still receive a fair compensation as the gas flows come from long term contracts and storages, all being purchased at less than the expected crisis spot prices.

(b) Development of a new complementary benchmark for LNG

The EU's LNG market is still emerging, and hub indexed pricing remains highly influenced by pipeline supplies and therefore by the Russian manipulation of natural gas supplies to the EU, as well as by existing infrastructure bottlenecks. The pricing of LNG imports within the EU is deemed to be unduly influenced by these constraints and questions remain as to the representativeness of the current indexes. At the same time, perceptions of malfunctioning in the financial markets for energy undermine public trust.

There is a need to provide for stable and predictable pricing for LNG imports, which are indispensable to replace the supply shortfalls caused by the likely halt of Russian gas imports. This proposal tasks the European Agency for the Cooperation of Energy Regulators ('ACER') to create within a short time frame an objective price assessment tool, and over time a benchmark, of the EU's LNG imports by collecting real-time information on all daily transactions. This new benchmark will rely on same day reporting of LNG imports - comprising LNG bids, offers and transactions that specify delivery or are delivered in the EU - by any person who engages in such an activity, regardless of its place of incorporation or domicile. This will provide more comprehensive information to buyers and increase price transparency.

The proposed Regulation grants ACER the necessary powers to collect the transaction data needed for the establishment of the LNG benchmark, building on and reinforcing the tasks and powers ACER already has under Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency and Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (hereinafter together referred to as 'REMIT').

(c) Gas 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 empowering the Commission to propose 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. Other Union gas trading hubs shall be linked to the corrected TTF spot price via a dynamic price corridor. 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.

(4) Action to reduce price volatility

(a) Intra-day price volatility management mechanism:

Financial Regulation (MiFID II) already 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. However, it appears that the number of times they have been

triggered by trading venues remains low, which is mainly due to the fact that the mechanisms in place are intended to prevent erroneous orders and not rapid price swings reflecting market uncertainty. Large volatility spikes on gas and electricity markets are making it difficult for energy firms to continue participating in those markets and meet their hedging needs while ensuring security of energy supply for the end-consumers. Therefore, this proposal lays down a requirement for trading venues to establish a new temporary **intra-day volatility management mechanism** aimed at **limiting large price movements in electricity and gas derivatives contracts within the same trading day**. Moreover, so as to focus on the most liquid contracts, and to avoid unintended disruptions on markets for less liquid derivatives, the intra-day volatility management mechanism should focus on front-month energy derivatives. In order to provide trading venues with the necessary time to set up the mechanism, trading venues are expected to implement preliminary tools that can broadly achieve the same objective as the intra-day volatility management mechanism.

This new mechanism should supplement any static or dynamic circuit breakers that trading venues have put in place and should apply in addition to them. To ensure uniform conditions for the implementation of the new volatility management mechanism, the Commission should be able to specify certain technical elements of its calibration in an implementing act. Additionally, to ensure that the new mechanism is well adapted to specific features of affected derivatives contracts, trading venues should be free to apply contract-specific volatility limits while respecting the requirements set down by law. The European Securities and Markets Authority will be tasked, based on reports regularly submitted by national competent authorities, to coordinate the application of this mechanism throughout the Union, and to document divergences in the way this mechanism is implemented.

(b) Non-legislative action accompanying this proposal

The actions proposed in this Regulation are complemented by other actions to be undertaken by ESMA and ACER with a view to strengthen the energy markets and their transparency.

ESMA and ACER are enhancing their cooperation with a view to strengthen their capabilities on monitoring and detection of possible market manipulation and abuse. ESMA and national competent authorities are also strengthening their respective market monitoring and surveillance activities on the energy derivatives market.

Energy companies are finding it increasingly difficult to effectively hedge their commercial risks on centrally cleared EU energy markets. Increasing margin requirements and the difficulties faced by certain energy companies to secure sufficient liquidity to meet margin requirements may push them to reduce hedging activities, and consequently expose them to further risks. To alleviate this stress, the Commission has adopted a delegated act, which would allow the use of uncollateralised bank guarantees and public guarantees, under specific conditions, as eligible collateral for meeting margin calls. This delegated act is in line with ESMA's proposal of 14 October. ESMA has also clarified that commercial papers and EU bonds are included in the list of eligible collateral to non-cash collaterals.

Consistency with existing policy provisions in the policy area

The proposed initiative sets out temporary, proportionate and extraordinary measures. It complements existing relevant EU initiatives and legislation, which ensures that citizens can benefit from secure gas supplies and that customers are protected against major supply disruptions.

It flows logically from existing initiatives, such as the “REPowerEU plan” and the proposal for a Hydrogen and Gas Market Decarbonisation Package¹⁰. In addition, the recently adopted Gas Storage Regulation (EU) 2022/1032¹¹ introduced storage obligations in response to the Russian invasion of Ukraine. Regulation 2022/1032 prescribes in Article 6a obligations to fill in gas storages in accordance to pre-set trajectories and targets. The proposed initiative is complementary to the EU legislation on internal market and security of supply.

Following the Russian invasion of Ukraine, the EU has set out the REPowerEU Plan with the aim to end the EU's dependency on Russian fossil fuels, as soon as possible and at the latest by 2027. To achieve this, the REPowerEU Plan sets out the EU Energy Platform established by the Commission and the Member States for the common purchase of gas, LNG and hydrogen. It announced that the Commission would be developing a joint purchasing mechanism. In these respects, the proposed initiative is fully consistent with the goals set out in REPowerEU.

The proposal reinforces and complements the Gas Security of Supply Regulation (EU) 2017/1938. The latter already includes an obligation to provide solidarity, as well as the notion of solidarity protected customers, which includes households and under certain circumstances essential social services and district heating. The proposal extends this solidarity obligation to safeguard the supply of critical volumes for gas fired power plants and operationalises it through a default mechanism in case of absence of bilaterally agreed solidarity arrangements.

The proposal also fully reflects the goal of the Demand Reduction Regulation (EU) 2022/1369 to pro-actively reduce gas demand to mitigate potential supply disruptions due to Russia's invasion of Ukraine. Demand reduction remains a key pillar of our security of supply response and the proposal strengthens this pillar by allowing Member States to undertake savings from non-essential consumption, while still protecting vulnerable and other protected customers.

The Commission proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen adopted under the Hydrogen and Gas Market Decarbonisation Package includes measures to enhance the transparency and access to LNG terminals and gas storage facilities. The current proposal includes the same provisions with shorter deadlines for their implementation, so it is fully consistent with the Gas Regulation. Moreover it is also consistent with the requirements of the recently adopted Gas Storage Regulation (EU) 2022/1032 introducing storage obligations in response to the Russian invasion of Ukraine.

Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 contains, in its Annex 1, point 2.2.5, provisions regarding a long term “use-it-or-lose-it” mechanism. These provisions have been adopted to prevent blocking of transport capacities by market participants in times when they cannot or do not plan to utilise them. Due to the crisis situation, the current proposal reduces administrative burden and

¹⁰ Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen COM/2021/803 final; proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

¹¹ Regulation (EU) 2022/1032 of the European Parliament and the Council of 29 June 2022 amending Regulation (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173/17 of 30 June 2022.

anticipates the application of these provisions. In particular, the current proposal reduces the time which elapses when the capacity is not used from six months to one month. The proposal is therefore consistent with the rules of internal market to prevent inefficient use of gas networks.

The provisions to enable ACER to publish an LNG benchmark build on and complement ACER's existing tasks under the REMIT legal framework.

In addition to the emergency intervention on the electricity market to tackle high prices, the Commission will improve the design of the electricity market for the longer term.

The main objective of this reform of the electricity market design will be to bring the benefits of affordable non-fossil technologies to consumers, while preserving the benefits of a common, market-based electricity system. The aim of this reform is to make sure that no energy carrier can cause market disruption like natural gas currently does, while taking into account the profound transformations needed for a decarbonised and largely electrified continent.

The Commission has committed to present the main elements of the reform by end 2022. This will serve as a basis to consult ministers and other stakeholders on a set of ideas brought forward by the Commission. This process is currently expected to lead to a Commission proposal 2023.

Consistency with other Union policies

European Green Deal

The proposal, aiming at fundamentally reinforcing security of supply and tackling high and volatile energy prices, is also consistent with the longer term objective of the Green Deal insofar as the demand reduction efforts will accelerate energy efficiency measures and structural changes.

Internal Market Policy

The proposal is compatible with the rules on the internal market for energy, including EU competition rules. Functioning cross-border energy markets are key to ensure security of supply in a situation of supply shortages.

Competition Policy

As concerns the rules on demand aggregation and joint purchasing, establishing ways of purchasing gas jointly in a more coordinated way is also in line with the decarbonisation path indicated in the Green Deal and the RepowerEU. The Energy Platform includes also renewable hydrogen in its scope.

The provisions to enable ACER to establish an LNG benchmark contribute to market transparency and, indirectly, to lower wholesale prices for gas and are therefore consistent with EU competition policy.

The rules on demand aggregation and joint purchasing can be applied in a manner compatible with EU competition rules, which allow joint purchasing between competing undertakings under certain conditions and which are applied in the light of prevailing market circumstances.

To reduce the risk of competition concerns, the service provider shall not be part of a vertically integrated undertaking active in the production or supply or consumption of natural gas within the Union or the Energy Community Contracting Parties.

In case of a severe supply disruption or supply shortage, joint purchasing among natural gas undertakings operating at the wholesale level is likely to be compatible with the EU competition rules where such crisis cooperation is (i) necessary for the purposes of addressing a severe supply disruption or shortage; (ii) temporary in nature; and (iii) proportionate to the objective pursued.

In general, joint purchasing is less likely to give rise to competition concerns where the participating undertakings do not have market power in the purchasing and selling markets. This being said, under the current exceptional market conditions, European gas undertakings and undertakings consuming gas are confronted with severe supply constraints which give very substantial negotiating power to parties on the supply side. A buying consortium for the purposes of increasing the negotiating power of gas purchasers should be accessible to any willing market participant on non-discriminatory terms, assembling participants active on a large variety of unrelated product and geographic markets, such that the representation of any given set of competitors, even if significant in terms of market shares on a given downstream or related market, will be limited relative to total participation. The buying consortium should be set up in a way that does not lead to any risk of competition distortion in the downstream or related markets in which participants may compete.

Participation by firms availing of the service provider in the demand aggregation mechanism of the service provider will be taken into account as a positive factor when balancing the possible risks and benefits of gas purchasing cooperation schemes under Union competition law, to the extent that such participation contributes to achieving greater efficiencies, thereby contributing significantly to counter-balancing any competition risks under the overall balancing test.

It will be particularly important to ensure that the transparency that is necessary for demand aggregation to function, as between individual participating undertakings and the service provider, the Commission and national competent authorities does not translate into wider transparency on volumes, delivery schedules or realised prices for individual participating undertakings, or indeed at the level of a given sector or sub-sector which could represent a downstream or related market on which competition should continue to play out.

While the Commission's Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements¹², state that combined market shares below 15% in the purchasing and selling market(s) are indicative of a lack of market power, a combined market share above that threshold in one or both markets does not automatically indicate that the joint purchasing arrangement is likely to give rise to restrictive effects on competition. A joint purchasing arrangement which does not fall within that safe harbour requires an assessment of its effects on the market, involving factors such as possible countervailing power of strong suppliers and the necessary governance and information-exchange arrangements to ensure continued competition on downstream markets, against the background of the current exceptional market circumstances.

¹² Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements Text with EEA relevance OJ C 11, 14.1.2011, p. 1:

The Commission stands ready to accompany companies in the design of such a consortium and to rapidly issue a decision, pursuant to Article 10 of Regulation 1/2003, on inapplicability of Articles 101 and/or 102 TFEU, if relevant safeguards are incorporated and respected. The Commission also stands ready to provide informal guidance to the extent that the participating undertakings in any other consortia face uncertainty with regard to the assessment of one or more elements of the joint purchasing arrangement under EU competition rules.¹³

Participants of the joint purchasing of gas might need financial guarantees if any of the undertakings is not ultimately able to pay for the final amount contracted. Member States or other stakeholders may provide financial support, including guarantees, to natural gas undertakings or undertakings consuming gas. The legal proposal mentions this possibility of financial aid to undertakings participating in joint purchasing. The proposal stresses that such support needs to be in accordance with State aid rules, where applicable.

Establishing ways of purchasing gas jointly in a more coordinated way, is also in line with the decarbonisation path indicated in the Green Deal and the RepowerEU. The Energy Platform includes also renewable hydrogen in its scope.

The provisions to enable ACER to establish an LNG benchmark contribute to market transparency and, indirectly, to lower wholesale prices for gas and are therefore consistent with EU competition policy.

LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

The legal basis for this instrument is Article 122(1) of the Treaty on the Functioning of the European Union ('TFEU'). This Article can only be applied for issues of severe difficulties and has to be applied in the spirit of solidarity.

The current shortage of gas supplies from the Russian Federation constitutes a severe difficulty in the supply of an energy product within the meaning of Article 122. EU leaders and Commission have identified the urgent need for additional measures for more coordinated action, on a temporary basis, in order to be better prepared for possible further gas disruptions in the coming two winters.

The current security of gas supply regulatory framework, notably the Gas Security of Supply Regulation (EU) 2017/1938, was designed to deal with short-term supply disruptions and not with a prolonged cut from our main supplier. Therefore, additional temporary emergency tools for security of gas supply are needed, among others to prevent undue cross-border restrictions and preventing that a prolonged gas supply disruption has major spill-over effects harming the electricity system's adequacy. Likewise, the notion of protected customers was designed for short periods of shortages, while in case of a prolonged disruption, Member States should be able to let protected customers also contribute to reducing demand via a reduction of non-essential consumption.

The solidarity provisions set out in the Gas Security of Supply Regulation (EU) 2017/1938 should be accompanied by bilaterally agreed solidarity arrangements, spelling out the legal, technical and financial details for solidarity. This solidarity obligation is not operational, due

¹³ Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters) (OJ C xx).

to a lack of agreements, justifying a need to complement the existing provisions by including a default solidarity mechanism in case of absence of bilaterally agreed arrangements.

The measures under the instrument allow undertakings in all Member States to prepare for possible further supply shortages in a coordinated manner and use the gas infrastructure in a more efficient way. It is expected that most of the European gas storages could be depleted during the winter period. In the absence of supplies from the Russian Federation, Member States could face difficulties in filling storages up to the necessary levels. This situation calls for the coordination in the purchasing of gas and the establishment of a joint purchasing process that could allow joint purchasing in practice.

Joint purchasing helps to ensure more equal access for undertakings across Member States to new or additional gas sources in urgent situations where solidarity is required. It could, in the spirit of solidarity, reduce the detrimental effect of outbidding, driving prices up and also help smaller undertakings benefit from more advantageous purchasing conditions resulting from aggregated demand.

Using joint purchasing could help the Member States to lessen the challenges in filling gas storages stemming from declining gas deliveries from the Russian Federation. For instance, it could help to coordinate gas purchases while maintaining prices at sustainable levels. It could also allow, through the ad-hoc Steering Board, for coordination of joint filling and storage management in view of the next filling season. Joint purchasing could therefore strengthen EU solidarity in purchasing and distribution of gas. In the spirit of solidarity, joint purchasing could support particularly those undertakings, that were purchasing gas only or mainly from Russian suppliers.

The urgency situation fully justifies the use of Article 122 TFEU in order to establish an entity as soon as possible by contracting the necessary services from existing entities.

The success of joint purchasing of gas will depend on the availability of capacities in LNG terminals and pipelines. This is even more important in current circumstances, where congestion of pipelines and terminals cause bottlenecks in the supply of gas, including for the filling of storages. Applying rules of transparency and selling of unused capacity of LNG terminals and unused capacities of pipelines allows to maximise the available capacity of gas infrastructure. Open, more efficient and non-discriminatory use of infrastructure increases cross-border and internal flows of gas and is a necessary condition to enable LNG reaches consumers across the EU. The rules which are currently in place are not sufficient to ensure it. It is necessary that rules enabling the capacities of LNG terminals and pipelines are put in place and applied as soon as possible.

The LNG price assessment should be published daily starting no later than two weeks after the entry into force of this Regulation making sure that an objective price reference is available for market participants as of the 2022/23 winter seasons. This price assessment should be complemented by the publication of an LNG benchmark by 1 March 2023 at the latest. Although the establishment of such a tool on a permanent basis should at a later stage be included in a more comprehensive revision of the REMIT legal framework, the on-going crisis situation requires urgent action already now to address the immediate situation of severe difficulties in the supply and accurate pricing of LNG deliveries to the Union on a temporary basis until such revision of the REMIT legal framework can be adopted. In this sense, the proposal on the LNG benchmark should also be seen as provisional in order to act as a

“bridge” to more permanent arrangements to be proposed under the ordinary legislative procedure.

It is therefore justified to base the proposed instrument on Article 122(1) TFEU.

Subsidiarity (for non-exclusive competence)

The planned measures of the present initiative are fully in line with the subsidiarity principle. Because of the scale and the significant effect of further cuts in gas supply on the part of the Russian Federation, there is a need for EU level action. A coordinated approach through joint purchasing with regional and broader scope and more efficient use of LNG terminals, gas storages and pipelines is necessary to minimise the risk of potential major disruptions during this and next winter and where Member States and their undertakings will need to seek replacement for the Russian supplies. This can be regulated efficiently at EU level instead of national level.

A coordinated approach at EU level is also necessary on security of supply measures, including demand reduction measures. Such a coordination is crucial to ensure that Member States have the possibility to respond in an efficient and timely manner to solidarity requests. While Member States will continue to have the possibility to enter into bilateral solidarity arrangements, default rules will be in place until such arrangements are concluded, allowing for all EU Member States to benefit from solidarity. This will ultimately ensure that the provision of bilateral solidarity is not hindered by the lack of administrative and financial arrangements between the Member States, while also allowing Member States to complement the default rules with negotiated conditions.

Given the unprecedented nature of the gas supply crisis and its cross-border effects, as well as the level of integration of the EU internal energy market, action at Union level is warranted as Member States alone cannot effectively address the risk of serious economic difficulties resulting from price hikes or significant supply disruptions in a coordinated manner.

This proposal sets the final result to be achieved, in the form of extending solidarity protection and setting default solidarity rules, while giving Member States autonomy in choosing the most effective means to meet such obligations and to agree solidarity measures bilaterally. The provisions related to demand reduction do not exceed what is necessary to safeguard security of supply by leaving to authorities in Member States to decide the savings from the non-essential consumption by protected customers, provided it does not affect vulnerable customers.

It is worth to stress that the current proposal foresees that private undertakings will remain parties to the contracts for gas supply established under the joint purchasing. Neither the Union nor the Commission will enter in gas supply contracts as a party.

By reason of its scale and effects, 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.

The establishment of an EU-wide benchmark for LNG transactions is also not possible at Member State level but can be better achieved at Union level. The previous experience with the TTF benchmark, which is linked to a trading hub in a single Member State, shows that a system of decentralised benchmarks may provide market participants with incomplete information and lead to higher prices.

Proportionality

The initiative complies with the proportionality principle. The policy intervention is proportional to the dimension and nature of the problems defined and the achievement of the set objectives.

In view of the unprecedented geopolitical situation and the significant threat for citizens and the EU economy, there is a clear need for coordinated action. The measures set out in the proposal do not go beyond what is necessary to achieve their objectives and are proportionate to those objectives. In particular, they build to the extent possible on existing approaches, such as the existing arrangements of the internal gas market.

More specifically, the current proposal foresees that demand aggregation and joint purchasing of gas take place on a voluntary basis, with only a limited exception as regards mandatory participation in demand aggregation for the purpose of filling gas storage facilities. Private undertakings will remain parties to the contracts for gas supply established under the joint purchasing.

Natural gas arriving through the entry points from the Russian Federation is excluded from participating in the mechanism as its inclusion would contradict the objective of the proposed Regulation which seeks to ensure sources alternative to Russian supplies. Moreover, undertakings controlled by the Russian Government or any Russian natural or legal person; or undertakings controlled by any other natural or legal person, listed in the sanctions of the Union established on the basis of Article 215 TFEU, are excluded from participating in joint purchasing as well as in participating in the service provider operating joint purchasing

The measures Member States will be able to take to reduce non-essential consumption of protected customers should be necessary and proportional, applying particularly in situations of a declared crisis pursuant to Article 11(1) and Article 12 of Regulation (EU) 2017/1938 or of a Union alert pursuant to Regulation (EU) 2022/1369. Despite the application of non-essential consumption reduction measures, protected customers will continue to benefit from protection against disconnection. Furthermore, such measures may not limit the protection required for the vulnerable customers, whose current consumption should be considered as essential.

The extension of solidarity to critical gas-fired power plants imposes restrictions on market operators that are necessary to ensure security of gas supply during a situation of reduced gas supply and increased demand during the winter season. They build on existing measures laid down in respectively Regulations (EU) 2022/1369 and (EU) 2017/1938, aiming at making those measures more effective under the current circumstances.

The obligation on market operators to provide ACER with information on LNG transactions is necessary and proportionate to achieve the objective of enabling ACER to establish an LNG benchmark; it is aligned with market operators' existing obligations under REMIT and ACER will keep sensitive business information confidential.

The measure to limit intra-day price volatility lays down requirements for trading venues and traders that are necessary in order to allow energy companies to continue participating in gas and electricity markets and meet their hedging needs, thus ensuring security of energy supply for final consumers.

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 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.

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

Stakeholder consultations

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

Fundamental rights

No negative impact has been identified on fundamental rights. The measures under this initiative will not affect the rights of customers who are categorised as protected under Regulation (EU) 2017/1938, including all household customers. Measures to reduce consumption shall only target non-essential uses and will not lead to disconnection of household customers or to reduced protection to customers who are most vulnerable. Exclusion from joint purchasing of undertakings from states which are subject to sanctions imposed by the EU will be limited to apply as long as such sanctions are in place. The initiative will enable to reduce the risks associated with gas shortage that would otherwise have major implications on the economy and society. The obligation on market operators to provide ACER with information on LNG transactions is necessary and proportionate to achieve the objective of enabling ACER to establish an LNG benchmark; it is aligned with market operators' existing obligations under REMIT and ACER will keep sensitive business information confidential.

BUDGETARY IMPLICATIONS

The budgetary implications are limited to the need to finance, through service contracts or other initiatives managed directly by the Commission, the setup of the mechanism by the service provider that will be operating demand aggregation for joint purchasing. Neither the Commission, nor the service provider operating joint purchasing, however, will purchase gas on behalf of the participating undertakings. These undertakings will enter in purchasing contracts with suppliers chosen through the purchasing mechanism. See the financial statement for more details.

The budgetary impact on the EU budget associated to this proposal also concerns the human resources and other administrative expenditures of the European Commission's Directorate-General (DG) for Energy, as well as of ACER.

The proposal sets out an enhanced Gas Security of Supply architecture, with new obligations for Member States and, correspondingly, a reinforced role for DG Energy in a wide range of areas – namely:

- Overall management and implementation of the Regulation (3 FTE),

- Preparation and implementation of a proposal for a Council measure which provides for a mechanism to allocate gas capacities to supply Member States for which a regional or Union emergency has been declared; management and implementation of the proposal, including the involvement of the crisis management group (2 FTE).
- Work to design competition law compliant implementation of gas purchasing consortium, requiring exchanges with industry (2 FTEs)
- Assessment of Member States requests for allowances regarding higher critical gas volumes (1 FTE).
- Follow-up to solidarity requests; facilitation of the implementation of solidarity agreements (1 FTE)
- Administrative assistance (1 FTE)
- The proposal also sets out new tasks for ACER to collect LNG transaction data for the purpose of establishing an LNG benchmark (5 FTE).

OTHER ELEMENTS

Not relevant.

Proposal for a

COUNCIL REGULATION

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Russian Federation's 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 the markets through intentional disruptions of gas flows have led to skyrocketing energy prices in the Union, endangering not only the economy in the Union, but also seriously undermining security of supply.
- (2) This requires a strong and coordinated response from the Union, to protect its citizens and its economy against excessive and manipulated market prices and to make sure that gas flows to all consumers in need across borders, also in situations of gas scarcity. To lower the dependency on supplies of natural gas from the Russian Federation and to bring excessive prices down, a better coordination of gas purchases from external suppliers is crucial.
- (3) Article 122(1) of the Treaty on the Functioning of the European Union enables the Council to decide on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate in the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. The high risk of a complete halt of Russian gas supplies and the extreme energy price increase undermining the Union's economy constitute such severe difficulties.
- (4) The Commission announced in its REPowerEU Communication the setting up of an EU Energy Platform¹⁴ together with the Member States for the common purchase of gas, Liquefied Natural Gas (LNG) and hydrogen. This announcement was endorsed by the European Council of 30 and 31 of May 2022. As part of the REPowerEU Plan, the Commission also presented the strategy for an EU external energy engagement¹⁵, which explains how the EU supports a global, clean and just energy transition to ensure sustainable, secure and affordable energy, including by diversifying the EU's

¹⁴ COM(2022) 108 final.

¹⁵ JOIN(2022) 23 final.

energy supply, in particular by negotiating political commitments with existing or new gas suppliers to increase gas deliveries to Europe.

- (5) The EU Energy Platform can play a pivotal role in seeking mutually beneficial partnerships that contribute to security of supply and lead to lower import prices of gas purchased from third countries, making full use of the Union's collective weight. Enhanced international outreach to gas suppliers (both pipeline and LNG) as well as the green hydrogen suppliers of the future is essential to this purpose. In particular a much stronger coordination with and among Member States vis-à-vis third countries via the EU Energy Platform would ensure the Union's collective weight is more effective.
- (6) In so far as a situation of severe difficulties in ensuring security of supply persists, joint purchasing should help to ensure more equal access for undertakings across Member States and in the Energy Community Contracting Parties to new or additional gas sources and help to ensure lower prices than might otherwise have pertained for those purchasing the gas through the service provider to the benefit of final consumers.
- (7) Joint purchasing could result in granting a more beneficial treatment or support to the supply of renewable gases such as biomethane and hydrogen, insofar as they can safely be injected into the gas system, and to the supply of gas which would otherwise be vented or flared. In the absence of a formal legal requirement in any relevant jurisdiction, undertakings concluding contracts pursuant to this Regulation are encouraged to use the UN Oil and Gas Methane Partnership 2.0 Standard to measure, report and verify methane emissions along the supply chain to the European Union.
- (8) Joint purchasing under this Regulation consists of a two-step process. As a first step, natural gas undertakings or undertakings consuming gas established within the Union or the Energy Community Contracting Parties would aggregate their gas demand through a service provider, contracted by the Commission. This would allow gas suppliers to make offers on the basis of large aggregated volumes, instead of many smaller offers of purchasers approaching them individually. In a second step, natural gas undertakings or undertakings consuming gas established within the Union or the Energy Community Contracting Parties may conclude gas purchase contracts, individually or in a coordinated manner with others, with natural gas suppliers or producers that have matched the aggregated demand.
- (9) As a situation of severe difficulties in ensuring security of supply persists, joint purchasing should help to ensure more equal access for undertakings across Member States to new or additional gas sources and help to ensure lower prices than might otherwise have pertained for those purchasing the gas through the service provider to the benefit of final consumers. A first reference to the possibility of a very limited form of joint purchasing of gas for balancing purposes is already included in the Commission's proposal for a Regulation on the internal markets for renewable and natural gases and for hydrogen¹⁶. However, the proposal dates from a time before the Russian Federation's military aggression against Ukraine; furthermore, no detailed concept was included in the proposal, which only concerned the very specific needs of transmission system operators for balancing energy. As an immediate and much more comprehensive solution to the problem of missing structures for coordinated gas purchasing is needed, it is appropriate to propose a temporary fast-track solution.

¹⁶ See Article 64 of the proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

- (10) Joint purchasing could, therefore, strengthen Union solidarity in purchasing and distributing gas. In the spirit of solidarity, joint purchasing should support particularly those undertakings that were previously purchasing gas only or mainly from Russian suppliers by helping them to obtain supplies from alternative natural gas suppliers or providers in advantageous conditions, as a result of the tendering of the aggregated demand.
- (11) The tendering of the aggregated demand for gas by the service provider should help to fill-in gas storages in the current emergency situation, should most of the European gas storages be depleted after the upcoming winter. Moreover, it should help to purchase gas in a more coordinated manner in the spirit of solidarity.
- (12) The current proposal is based on Article 122 TFEU with a view to the urgent need to establish joint purchasing swiftly and on a temporary basis. This would allow the rapid establishment of a service provider, which would enable the aggregation of demand. The service provider contracted by the Commission would have only some basic functionalities and the process it organises only has mandatory elements regarding participation in aggregating demand but would not yet include a mandatory coordination of the contractual conditions or an obligation to submit binding offers to purchase gas through it.
- (13) There should be no requirement on natural gas undertakings or undertakings consuming gas to buy gas through the service provider, by concluding gas supply contracts or memoranda of understanding with the gas suppliers or producers which have matched the aggregated demand. However, natural gas undertakings or undertakings consuming gas are strongly encouraged to explore forms of cooperation which are compatible with competition law, and to make use of the service provider to fully reap the full benefits of the joint purchasing. A mechanism could, therefore, be developed between the service provider and participating undertakings, setting out main conditions under which participating undertakings enter into a commitment to buy the gas matching aggregated demand.
- (14) It is important for the Commission and Member States to have a clear picture of intended and concluded gas supply contracts across the Union, in order to assess whether the objectives of security of supply and energy solidarity are met. Therefore, undertakings should inform the Commission of large planned gas purchases above 5 TWh. Therefore the Commission should issue recommendations to relevant Member States, warning against any negative impacts of planned purchases on functioning of joint purchasing, on security of supply, the internal market or energy solidarity.
- (15) Member States should assist the Commission in assessing whether the relevant gas purchases enhance security of supply in the Union and are compatible with the principle of energy solidarity. Therefore, an ad hoc Steering Board composed of representatives of the Member States and the Commission should be established to help coordinate.
- (16) The process of aggregating demand for the purpose of joint purchasing should be carried out by a suitable service provider. Therefore, the Commission should contract a service provider through a public procurement process¹⁷, which can develop an

¹⁷ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014,

appropriate IT tool and organise the process of aggregation of demand. Fees could be collected from participants of the joint purchasing to cover operating costs.

- (17) The aggregation of demand and the purchasing of natural gas are complex processes, which need to take into account various elements, which are not limited to prices, but also to volumes, delivery points and other parameters. Therefore, the selected service provider should have the necessary level of experience in managing and aggregating purchases of natural gas or associated services at an EU level. Also, the aggregation of demand and the purchasing of natural gas is a crucial element in ensuring security of gas supply to the Union.
- (18) Joint purchasing may take different forms. It can take place through tenders or auctions organised by the service provider that aggregates demand of natural gas undertakings and undertakings consuming gas, in order to match it with offers from natural gas suppliers or producers, through the use of a Joint Purchasing IT Tool.
- (19) One of the objectives of aggregation of demand and joint purchasing is to reduce the risk of unnecessary price increases driven by companies bidding for the same tranche of gas. Ensuring that the full benefits of joint purchasing passes through to final consumers ultimately depends on the decisions of undertakings themselves. Large companies should be restrained even if they can sell on the gas at higher prices. Undertakings benefiting from lower prices for the purchase of gas from joint purchasing should pass these benefits to consumers. The pass-through of lower prices would be an important indicator for the success of joint purchasing, as it is crucial for consumers.
- (20) Any action undertaken under the proposed Regulation shall comply with restrictive measures of the Union established on the basis of Article 215 TFEU. In particular, undertakings controlled by the Russian Government or any Russian natural or legal person, or undertakings targeted by Union restrictive measures (sanctions) of the Union established on the basis of Article 215 TFEU, or owned or controlled by any other natural or legal person, entity or body subject to such restrictive measures should be excluded from participating in joint purchasing as well as from organizing the process of joint purchasing. Those restrictive measures were adopted with a view to achieving the Union's common foreign and security policy objectives, in particular that of preserving peace, preventing conflicts and strengthening international and Union security, in accordance with the principles of the United Nations Charter. This is without prejudice to future sanctions adopted against Russia or other countries.
- (21) Natural gas originating in the Russian Federation that enters the Member States or Energy Community Contracting Parties through the entry points from the Russian Federation should not be purchased in joint purchasing. This is consistent with the objective of the proposed Regulation, that is, ensuring alternative sources to Russian supplies.
- (22) Participants of the joint purchasing of gas may need financial guarantees, if any of the undertakings would not be able to pay for the final amount contracted. Member States or other stakeholders might provide financial support, including guarantees, to participants in joint purchasing. Providing financial aid should take place in accordance with State aid rules, including the Temporary Crisis Framework, where applicable.

and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1–222.

- (23) Filling gas storages is vital to ensure security of supply in the Union. Due to the drop in supplies of natural gas from the Russian Federation, Member States may face challenges in filling the storage facilities to ensure security of gas supply for winter 2023/2024 as prescribed by Regulation (EU) 2022/1032¹⁸. Using the demand aggregation possibility of the service provider could help the Member States to lessen these challenges; it could, within the limits of competition law, notably support coordinated filling and storage management in view of the next filling season, avoiding the excessive price peaks caused, inter alia, by uncoordinated storage filling.
- (24) In order to ensure that joint purchasing may contribute to filling gas storages in line with the intermediary targets set out in Regulation (EU) 2022/1032, Member States should take appropriate measures to ensure that natural gas undertakings under their jurisdiction use the process organised by the service provider as one possible means to meet the filling targets.
- (25) Regulation (EU) 2022/1032 requires that Member States fill their storages up to 90% by November 2023. This target is higher than the target for November 2022 (80%). Joint purchasing could help the Member States to meet this new target. In doing so the Member States should require domestic undertakings to use the service provider to aggregate demand with sufficiently high volumes of gas in order to decrease the risk that storages cannot be filled. Member States should require that volumes equivalent to at least 15% (around 13.5 bcm for the EU as a whole) of their storage filling target volume for next year were included by their companies in the demand aggregation process. Member States without underground storage in their territory should participate in the demand aggregation process with volumes equivalent to their burden-sharing obligations.
- (26) In order to effectively use the joint purchasing and to conclude gas agreements with suppliers offering gas to the service provider, undertakings may coordinate conditions of the purchase, such as volumes, gas price, delivery points and time, within the limits of Union law. Natural gas undertakings participating in a gas purchasing consortium should, however, ensure that the information directly or indirectly exchanged is limited to what is strictly necessary to achieve the objective pursued, in line with Article 101 TFEU. In addition, the transparency and governance provisions in this Regulation will ensure that contracts of the buying consortium do not endanger security of supply or jeopardise energy solidarity, in particular where Member States are directly or indirectly involved in the purchase process.
- (27) Whilst more than one gas purchasing consortium may be formed, the most effective option would be to form a single gas purchasing consortium encompassing as many companies as possible to aggregate demand through the Service provider and designed in a way that is compatible with EU competition law. Additionally, joining forces into a single gas purchasing consortium will bring strengthened Union negotiation power into the market and enable advantageous conditions that would hardly be achieved by smaller Union undertakings or in case of acting in a more fragmented manner.
- (28) The set-up and implementation of gas purchasing consortia under this Regulation shall be done in compliance with the Union competition rules, as applicable in light of the current exceptional market circumstances. The Commission has indicated that it stands ready to accompany companies in the design of such a gas purchasing consortium and

¹⁸ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 30.6.2022, p. 17.

to issue a decision, pursuant to Article 10 of Regulation 1/2003, on inapplicability of Articles 101 and 102 TFEU if relevant safeguards are incorporated and respected. The Commission has also stated its readiness to provide informal guidance to the extent that the participating undertakings in any other consortia face uncertainty with regard to the assessment of one or more elements of their joint purchasing arrangement under the EU competition rules.¹⁹

- (30) In accordance with the principle of proportionality, the measures with respect to demand aggregation and joint purchasing do not go beyond what is necessary to achieve their objective, as they will be implemented on a voluntary basis, with only a limited exception as regards mandatory participation in demand aggregation for the purpose of filling gas storage facilities, and private undertakings will remain parties to the contracts for gas supply established under the joint purchasing.
- (31) In order to optimise the LNG absorption capacity of the EU LNG terminals and the usage of storage facilities, enhanced transparency arrangements and an organised market facilitating secondary trade in gas storage capacities and capacities of LNG facilities are necessary, similar to those existing for transport of gas via pipelines. This is particularly important in the times of emergency and changes in the gas flows from pipeline gas from the Russian Federation to LNG. The Commission proposal to revise the Gas Regulation of the Hydrogen and Gas Market Decarbonisation Package²⁰ contains provisions to this effect in Article 10 and Article 31. Frontloading these provisions as part of the crisis response is crucial to use the LNG terminals and gas storage facilities with the necessary transparency and more efficiently.
- (32) In relation to long term bookings of gas transportation capacities, the existing congestion management rules provide for “use-it-or-lose-it” procedures. These procedures, however, are slow (they take at least six months before they show effect) and require heavy administrative procedures of National Regulatory Authorities. Therefore these rules should be strengthened and simplified in order to grant the gas system operators tools to react rapidly to changes in gas flows and to address possible congestions. In particular, the new rules could accelerate marketing of unused long-term capacities which would otherwise remain unutilised, rendering the use of pipelines more efficient.
- (33) The transmission system operators should analyse the available information on the usage of the transmission network by the network users and should determine whether there is underutilization of the contracted firm capacity. Such underutilisation could be defined as the situation where a network user used or offered on the market less than on average 80% of the booked firm capacity in the last 30 days. In case of underutilisation, the transmission system operator should publish the available capacity for the next monthly auction and subsequently auction it.
- (34) The unprovoked and unjustified invasion of Ukraine by the Russian Federation has led to major uncertainties and disruptions in the European natural gas markets. As a result, these markets have for the past months translated the uncertainty on the supply, and the resulting market expectation into extremely high and volatile natural gas prices.

¹⁹ Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters) (OJ C xx).

²⁰ Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen COM/2021/803 final; proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

This has in turn put additional pressure on market participants and undermined the smooth functioning of the Union energy markets.

- (35) Directive 2014/65/EU of the European Parliament and of the Council²¹ sets out rules to ensure the proper functioning of trading venues, on which energy-related commodities derivatives are also traded. That Directive provides that Member States are to require a regulated market to have in place mechanisms to guarantee fair and orderly functioning financial markets. However, such mechanisms are not intended to set a limit on the intraday evolution of prices and have failed to prevent the episodes of exceptional volatility observed in the gas and electricity derivatives markets.
- (36) Given the difficulties faced by market participants in the trading venues on which energy-related commodity derivatives are traded, and the urgency to ensure that energy derivatives markets keep fulfilling their role in providing for the hedging needs of the real economy, it is appropriate to require trading venues on which energy-related commodity derivatives are traded to set up temporary intra-day volatility management mechanisms to apprehend excessive price movements more efficiently. In order to ensure that the mechanism applies to the most liquid contracts, and to avoid unintended disruptions on markets for less liquid derivatives, the intra-day volatility management mechanism should only apply to front month energy-related derivatives.
- (37) Trading venues offering front-month energy-related commodity derivatives often admit for participation various energy firms from all Member States. Such energy firms rely heavily on derivatives traded on such trading venues to ensure crucial supplies of gas and electricity across the Union. Excessive price movements occurring on commodity trading venues therefore affect the operation of energy firms across the whole Union, ultimately also adversely affecting end-consumers. Therefore, in a spirit of solidarity between Member States, coordination of the implementation and application of the intra-day volatility management mechanism should be undertaken, to ensure that operators essential for the security of energy supply in all Member States benefit from safeguards against large price movements that are detrimental to the continued operation of their business, which would also be detrimental to the end-consumers.
- (38) The intra-day volatility management mechanism should ensure that excessive movements in prices within a trading day are prevented. The mechanism should be based on the observed market price at regular intervals. Given the wide diversity of instruments in energy derivatives markets and the peculiarities of the trading venues associated with such instruments, the intra-day volatility management mechanisms should be adapted to the specificities of those instruments and markets. Therefore, price boundaries should be set up by trading venues taking into account the specificities of each front-month energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.
- (39) The intra-day volatility management mechanism should complement any static or dynamic circuit breakers that trading venues have already put in place in accordance with Directive 2014/65/EU before the entry into force of this Regulation.

²¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

- (40) In order to ensure transparency about the functioning of the intra-day volatility management mechanism that they implement, the trading venues should make public a description of its general features. However, to safeguard fair and orderly trading, the trading venues should not be required to publish all the technical parameters of the mechanism they put in place.
- (41) In order to ensure uniform conditions for the implementation of the intra-day volatility management mechanism, and to ensure the smooth operation of trading venues that offer trading in front-month energy-related commodity derivatives, implementing powers should be conferred on the Commission to specify the conditions of implementation of the intra-day volatility management mechanism, including to specify the frequency at which the price boundaries are renewed, or the measures to be taken if trading moves outside those price boundaries. The Commission should be able to take into account the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.
- (42) In order to give enough time to trading venues to robustly implement the intra-day volatility management mechanism as specified in this Regulation, trading venues should be given until 31 January 2023 to set up the intra-day volatility management mechanism. In order to ensure that trading venues are capable of dealing with excessive price movements quickly even before that mechanism is set up, they should have in place a preliminary mechanism that can broadly achieve the same objective as the intra-day volatility management mechanism.
- (43) The obligations and restrictions imposed on trading venues and traders by this measure do not go beyond what is necessary in order to allow energy companies to continue participating in gas and electricity markets and meet their hedging needs, thereby contributing to security of energy supply for final consumers.
- (44) In order to ensure an efficient application of the intra-day volatility management mechanism, competent authorities should supervise its implementation by trading venues, and report regularly to the European Securities and Markets Agency (ESMA) on such implementation. In order to ensure a consistent implementation of the intra-day volatility management mechanism, competent authorities should also ensure that divergences in the implementation of the mechanism by trading venues are duly justified.
- (45) To address potential divergences in the application of the intra-day volatility management mechanism between the Member States, and on the basis of the reports submitted by Competent authorities, ESMA should coordinate the action of the competent authorities of the Member States, and document any divergences observed in the way the intra-day volatility management mechanism is implemented by trading venues across jurisdictions in the Union.
- (46) Given the unprecedented reduction of natural gas supply from the Russian Federation and the persisting risk of further sudden supply disruptions, the Union faces the urgent need to diversify its gas supplies. However, the LNG market for Europe is still emerging and it is difficult to assess the accuracy of prices that prevail in this marketplace. In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries into the Union, the European Agency for the Cooperation of Energy Regulators ('ACER') should collect all the LNG market data that are necessary to establish a daily LNG price assessment.

- (47) This price assessment should be undertaken based on all transactions pertaining to LNG deliveries into the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries into the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transactions prices and, as of 1 March 2023, bids and offer prices for LNG deliveries to the Union. The daily publication of this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices. In view of the urgency of the measure, the first publication of the LNG price assessment should take place no later than two weeks after the entry into force of this Regulation.
- (48) The current empowerments vested on ACER by Regulation (EU) No 1227/2011 of the European Parliament and of the Council and Commission Implementing Regulation (EU) No 1348/2014 implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 (hereinafter together referred to as ‘REMIT’) do not suffice to create a complete and comprehensive dataset of all LNG deliveries into the Union. However, such a comprehensive and complete dataset for daily price assessment is necessary for the Union to manage, in a spirit of solidarity, its procurement policies for international LNG imports, in particular during the on-going crisis situation. Relevant data and information on LNG contracts are also necessary to ensure monitoring of price developments as well as perform data quality control and quality assurance. This ad hoc instrument should allow ACER to collect all market data that is required to establish a comprehensive and representative assessment of the price of LNG deliveries to the Union.
- (49) Although the establishment of a daily LNG price assessment and LNG benchmark on a permanent basis should at a later stage be included in a more comprehensive revision of the REMIT legal framework, the on-going crisis situation requires urgent action already now to address the immediate situation of severe difficulties in the supply and accurate pricing of LNG deliveries to the Union on a temporary basis until such revision of the REMIT legal framework can be adopted in accordance with the ordinary legislative procedure.
- (50) In order to immediately increase price transparency and planning security in the LNG import market, it should be specified that the relevant dataset should comprise both information on the price and quantity of completed LNG transactions, prices and quantities of bids and offers pertaining to LNG deliveries into the Union, as well as the price formula in the long-term contract from which the price is derived, if relevant.
- (51) All market participants subject to a reporting obligation should be defined as those engaged in either the purchase or sale of LNG cargoes destined for delivery into the Union. These LNG market participants should be subject to the obligations and prohibitions applying to market participants according to REMIT.
- (52) ACER, in cooperation with the Commission, should have a broad mandate to specify the quality and the substance of the market data it collects to establish a daily price assessment for LNG deliveries into the Union. It should also enjoy broad discretion in

the choice of its preferred transmission protocol. In order to achieve the highest possible quality in the market data to be reported, ACER should be empowered to specify all the parameters of the market data that should be reported to it. Such parameters should include, without being limited to, the reference units in which price data is reported, the reference units in which quantity data is reported, the forward tenors of transaction or pre-transaction bid and offer data, as well as the transmission protocols to be used to convey the required data to ACER.

- (53) ACER should also set out the methodology it employs to provide a daily LNG price assessment and LNG benchmark, as well as the process for a regular review of this methodology.
- (54) The price assessment published under this Regulation should provide more transparency to Member States and other market participants on the prevailing price of LNG imports to Europe. More price transparency should in turn allow Member States and private entities domiciled in the Union to act in a more informed and coordinated manner when purchasing LNG on global markets and in particular, when using the Service provider. More coordination in purchasing LNG should enable Member States to prevent outbidding each other or bidding prices that are not in line with the prevailing market price. Therefore, price assessments and benchmark spreads published under this Regulation are crucial in bringing about more solidarity between Member States in procuring limited LNG supplies.
- (55) The obligation on market operators to provide ACER with information on LNG transactions is necessary and proportionate to achieve the objective of enabling ACER to establish an LNG benchmark, in particular as it is aligned with market operators' existing obligations under REMIT and ACER will keep sensitive business information confidential.
- (56) The Title Transfer Facility (TTF) is a virtual pricing location in the Netherlands, which due to its high liquidity often serves as a pricing proxy for the European gas market, impacting contracts and hedging operations across the EU. Under specific conditions, after the other measures on gas prices have been implemented, a targeted emergency intervention in the TTF spot prices, may be needed. Upon a Commission proposal, the Council should adopt a decision measure to establish a dynamic market correction mechanism for natural gas transactions in the spot TTF market. The maximum price to be established must ensure the Union's security of supply and intra-EU flows of natural gas, and take into account the impact of gas prices on electricity prices. In order not to affect intra-EU flows which should continue to allow for natural gas to go where it is most needed, other Union gas trading hubs may be linked to the corrected TTF spot price via a dynamic price corridor. When deciding on proposals to introduce a market correction mechanism for gas trading hubs in the Union, alternative options, such as regulatory interventions into price setting mechanism used in gas purchase contracts, should be considered.
- (57) The Union is an attractive market for international gas supplies and seen as a reliable partner in energy trading. Before implementing any market intervention affecting imports, action should focus on engagement with international partners and on negotiated approaches to limit possible risks.
- (58) Facing the possibility of major gas disruptions and supply shortages, the Union should be prepared to rapidly apply different solidarity mechanisms in order to mitigate emergency situations. Under these extraordinary circumstances, the Council should be able to decide on an efficient gas allocation mechanism, including rules on pricing,

available to Member States in case of regional or Union emergency, based on a proposal from the Commission.

- (59) Regulation (EU) 2017/1938 already provides the possibility for Member States, during an emergency, to prioritise the gas supply to certain critical gas-fired power plants, given their importance to ensuring the electricity security of supply and avoiding grid imbalances. The critical gas-fired power plants and associated gas volumes may have an important impact on the gas volumes available for solidarity in an emergency. In that context, Member States should be, temporarily, able to request emergency solidarity measures when they are not able to secure those critical gas volumes necessary to ensure the continuation of electricity production in critical gas-fired power plants. For the same reason, Member States providing solidarity should also be entitled to ensure that the operation of their critical gas-fired power plants is not endangered when providing solidarity to another Member State.
- (60) Only the gas volumes needed for the power plants identified by Member States as critical for the European adequacy of the power system should be allowed to be requested when the solidarity mechanism is activated. A maximum limit of the critical gas volumes needed in each Member State to preserve security of supply should be established. The methodology used in the ENTSO-E Winter Outlook provides a basis for setting such limits. In exceptional and duly justified cases, Member States should have the possibility to exceed the maximum limit set out in this Regulation.
- (61) The restrictions imposed on market operators by this measure are necessary to ensure security of gas supply during a situation of reduced gas supply and increased demand during the winter season. They build on existing measures laid down in respectively Regulations (EU) 2022/1369 and (EU) 2017/1938, aiming at making those measures more effective under the current circumstances.
- (62) Certain customers, including households and customers providing essential social services, are particularly sensitive to the negative effects of gas supply disruptions. For this reason, Regulation (EU) 2017/1938 introduced a solidarity mechanism between Member States to mitigate the effects of a severe emergency within the Union and ensure that gas can flow to solidarity-protected customers. However, in certain cases, the use of gas also by protected customers could be considered as non-essential; the reduction of this type of use which clearly goes beyond what is needed would not undermine the objectives set out in Regulation (EU) 2017/1938, in particular as the missing gas consumed for non-essential purposes could lead to severe harm in other private or commercial sectors. Member States should therefore have the possibility to achieve gas savings also by reducing the non-essential consumption of protected customers under specific circumstances. However, any reduction measures taken by the Member States should strictly be limited non-essential consumption and by no means reduce the basic use of protected customers nor limit their ability to heat their homes adequately.
- (63) Member States and their competent authorities should be free to determine the applicable reduction measures and the activities corresponding to non-essential consumption, such as outdoor heating, the heating of residential swimming pools and other complementary residential facilities. By having the possibility to limit non-essential consumption Member States should be able to strengthen the safeguards and ensure that gas is being supplied to other essential sectors, services and industries, enabling them to continue their operation during a crisis.

- (64) Any measure to reduce non-essential consumption of protected customers should be necessary and proportional, applying particularly in situations of a declared crisis pursuant to Article 11(1) and Article 12 of Regulation (EU) 2017/1938 or of a Union alert pursuant to Regulation (EU) 2022/1369. Despite the application of non-essential consumption reduction measures, protected customers should continue to benefit from protection against disconnection. Member States should also ensure that such measures do not limit the protection required for the vulnerable customers whose current consumption should be considered as essential.
- (65) In case of emergency, Member States, as well as the Union, should ensure that gas flows within the internal market. This means that measures taken at a national level should not give rise to security of supply issues in another Member State while access to cross-border infrastructure should remain safe and technically possible at any time. The current legislative framework does not provide for a process which can effectively solve conflicts between two Member States on measures negatively affecting cross-border flows. As the EU gas and electricity grids are interconnected, this could not only lead to serious security of supply problems, but also weaken the Union's unity vis-à-vis third countries. The Commission should therefore be given the power to evaluate the national measures taken and to arbitrate, where necessary, within a reasonable time frame. To this end, the Commission should be able to request their modification in case it observes threats to the security of gas supply of other Member States or the Union. Given the exceptional nature of the current energy crisis, complying with the Commission's decision should take place without delays that can potentially hinder the Union's gas supply. Therefore, for the period of application of this Regulation, reconciliation procedures should be suspended for the sake of securing the functioning of the internal market.
- (66) The principle of energy solidarity is a general principle under Union law²² and applies to all Member States, and not only to neighbouring Member States. Furthermore, the efficient use of the existing infrastructure, including cross-border transmission capacities and LNG facilities, is important to safeguard the security of gas supply in a spirit of solidarity. In times of gas supply disruptions at national, regional or Union level, and a significant switch from pipeline gas to LNG, Member States should not only be able to benefit from supply possibilities from neighbouring pipelines, but also from supplies from countries which dispose of an LNG facility. Some Member States should be in a position to provide solidarity to other Member States, even if they are not directly connected via a gas pipeline nor through a third country or other Member States. It is therefore appropriate to expand the obligation to provide solidarity to non-connected Member States with LNG facilities.
- (67) In implementing the principle of energy solidarity, Regulation (EU) 2017/1938 introduced a solidarity mechanism intended to enhance cooperation and trust between the Member States in the event of a severe crisis. When adopting the measures needed to implement the solidarity mechanism, Member States have to agree on a number of technical, legal, and financial issues in their bilateral arrangements, pursuant to Article 13(10) of the same Regulation.
- (68) However, despite a legal obligation to conclude bilateral solidarity arrangements by 1 December 2018, only a few of such arrangements have been finalised, putting at risk the implementation of the legal obligation to provide solidarity support in an emergency. The Commission's proposal for a Regulation on the internal markets for

²² Judgment of the Court of Justice of 15 July 2021, Germany v Poland, C-848/19 P, ECLI:EU:C:2021:598.

renewable and natural gases and for hydrogen from December 2020 included a first model for a template solidarity agreement.²³ However, as this template was developed before the unprovoked aggression of Russia towards Ukraine, with a view to the current situation of extreme gas scarcity and exploding prices and the urgent need to have temporary default rules in place already for the coming winter, it is appropriate to create a temporary framework of default rules for the provision of the required solidarity measures pursuant to Article 13(1) and (2) of Regulation (EU) 2017/1938 which are effective and swiftly implementable, do not depend on long bilateral negotiations and are adapted to the current situation of excessive prices and highly volatile gas prices.

- (69) Solidarity should, in principle, be provided based on fair compensation directly paid by the requesting Member State or its delegated entities. The compensation should cover the gas price, any actual/potential storage costs, the cross-border transportation and associated costs. The compensation should be fair, both for the requesting as well as for the providing Member States.
- (70) The current crisis leads to price levels and regular price peaks which are far beyond the situation of a possible supply crisis at the time of the adoption of the Security of Supply Regulation. The price volatility currently characterising the gas market as a result of the existing gas crisis should therefore be considered when determining the amount of compensation for Member States providing solidarity. On the basis of solidarity, and in order to avoid pricing on extreme market circumstances, it would be problematic to take the fluctuating market price as the basis for the default price of the solidarity measure. The gas price should reflect the average price of the Member State's providing solidarity market during a specific period. Taking the average market price of the 30-day period preceding the request, the compensation is still based on the 'market price', as stipulated in the Commission Recommendation (EU) 2018/177 of 2 February 2018. The average market price is more independent from the volatility and very high spot prices during crisis situations, and as such, limits any perverse incentives. Using the very high crisis spot market prices as a basis for the compensation would undermine the solidarity dimension. The providing Member States will still receive a fair compensation as the biggest part of the gas will originate from long term contracts and storage, purchased at less than the crisis spot market prices.
- (71) As highlighted in Commission Recommendation (EU) 2018/177 of 2 February 2018, the cost of damages to curtailed industry may only be covered by compensation if it is not reflected in the gas price that the Member State requesting solidarity has to pay; the Member State that requested solidarity should not have to pay compensation for the same costs twice. Taking into account the exceptional circumstances where gas prices have reached unprecedented levels, a Member State receiving solidarity should not be automatically obliged to cover other costs, such as damages or costs of legal proceedings, occurring in the providing Member State.
- (72) However, Member States retain the possibility to agree bilaterally upon additional compensation, covering other costs, such as the costs incurred from an obligation to pay compensation in the providing Member State, including damages to curtailed industry. Such costs can be included in the compensation if the national legal

²³ See Article 64 of the proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

framework provides for the obligation to pay damages to curtailed industry, including compensation for economic damage, in addition to the gas price.

- (73) As a last-resort measure, solidarity can only be triggered by a requesting Member State where the market, fails to offer the necessary gas volumes, including those offered voluntarily by non-protected customers, to meet the demand from solidarity protected customers. Moreover, the measures in the requesting Member State's emergency plan, including forced curtailment down to the level of solidarity-protected customers, must have been exhausted.
- (74) The urgent nature and the consequences of a potential activation of the solidarity mechanism should entail the close cooperation between the involved Member States, the Commission and the competent crisis managers as designated by Member States in accordance with Article 10(1)(g) of Regulation (EU) 2017/1938. The request should, therefore, be communicated to all parties in due time and contain a minimum set of elements that allow the providing Member States to respond without delay. The providing Member States' response should include information on the amount of gas that could be delivered to the requesting Member State, also including those volumes that could be freed when non-market-based measures are applied. Member States may agree on additional technical and coordination arrangements to facilitate the timely response to a solidarity request. When providing solidarity, Member States and their competent authorities should ensure the network's operational safety and reliability.
- (75) The requesting Member State should be able to receive solidarity from multiple Member States. The default solidarity mechanism should be in place only in case the providing Member State does not have concluded any bilateral arrangement with the requesting Member State. In case of a bilateral agreement between the requesting and providing Member State, this arrangement should prevail and apply between them.
- (76) The Commission should be able to monitor the application of the default solidarity mechanism and, if deemed necessary, should be able to facilitate the matching of solidarity demand requests. To this end, the Commission should provide for an interactive platform, which should serve as a template and allow the continuous, real-time submission of solidarity requests and their coupling with the respective, available volumes.
- (77) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing power.
- (78) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and requires cooperation at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, and as set out in the aforementioned Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAS ADOPTED THIS REGULATION:

CHAPTER I - SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes rules on the expedited setting up of a facility allowing for joint demand aggregation and gas purchasing by undertakings established within the Union or the Energy Community Contracting Parties, as well as booking and a transparency platform for LNG and for gas storages, and rules on congestion management in gas transmission networks;

it also introduces mechanisms to protect citizens and the economy and against excessively high prices, by way of an ad hoc LNG price benchmark, to be developed by the European Agency for the Cooperation of Energy Regulators ('ACER'), a temporary intra-day volatility management mechanism for extreme price movements and the development of a market correction mechanism for gas exchanges;

it establishes rules for the case of the declaration of a gas emergency to distribute gas fairly across borders, to safeguard gas for the most critical customers and to ensure the provision of cross-border solidarity measures.

Article 2

Definitions

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

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

- (5) ‘ACER’ means the European Agency for the Cooperation of Energy Regulators, as established by Regulation (EU) 2019/942;
- (6) ‘LNG trading’ means bids, offers or transactions for the purchase or sale of LNG:
 - (a) that specify delivery in the Union, or
 - (b) that result in delivery in the Union, or
 - (c) in which one counterparty re-gasifies the LNG at a terminal in the Union;
- (7) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information as specified in Article 21(1).
- (8) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading;
- (9) ‘LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by ACER;
- (10) ‘LNG benchmark’ for the purpose of this Regulation means the determination of a spread between the daily LNG price assessment and the daily settlement price for the TTF Gas Futures front-month contract that ICE makes available to everyone as an end of day report free of cost on its website;
- (11) ‘trading venue’ means any of the following:
 - (a) ‘regulated market’ as defined in Article 4(1), point (21), of Directive 2014/65/EU;
 - (b) ‘multilateral trading’ facility as defined in Article 4(1), point (22), of Directive 2014/65/EU;
 - (c) ‘organised trading facility’ as defined in Article 4(1), point (23), of Directive 2014/65/EU;
- (12) ‘front-month energy-related commodity derivative’ means a commodity derivative, as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014 of the European Parliament and of the Council²⁴, traded on a trading venue and the underlying of which is electricity or gas, and whose expiration date is the nearest among the derivatives with a one month maturity traded on a given trading venue;
- (13) ‘competent authority’ means a competent authority as defined in Article 2(1), point (26), of Directive (EU) 2014/65/EU;
- (14) ‘critical gas volume for electricity generation’ means the maximum gas consumption needed in the power sector to ensure adequacy in a worst-case scenario simulated in the winter adequacy assessment pursuant to Article 9 of Regulation (EU) 2019/941 on risk-preparedness in the electricity sector.
- (15) ‘protected customer’ means a protected customer as defined in point 5 of Article 2 of Regulation (EU) 2017/1938;
- (16) ‘solidarity protected customer’ means a solidarity protected customer as defined in point 6 of Article 2 of Regulation (EU) 2017/1938.

²⁴ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

CHAPTER II – BETTER COORDINATION OF GAS PURCHASES

Section 1

Coordination of gas purchases in the Union

Article 3

Transparency and information exchange

- (1) Natural gas undertakings or undertakings consuming gas established in the EU or authorities or regulated entities of Member States, which intend to enter into negotiations with natural gas producers or suppliers on the purchase, trade or supply of gas of a volume above 5 TWh, shall inform the Commission of their intention to conclude a gas supply contract or a memorandum of understanding before concluding such a contract or memorandum of understanding in accordance with this Article.
- (2) Natural gas undertakings or undertakings consuming gas established in the EU or authorities or regulated entities of Member States shall inform the Commission at least six weeks before concluding a legally binding contract or memorandum of understanding referred to in paragraph 1, about the identity of the contract partner or partners, the relevant volumes, the relevant dates and, where applicable, the service provider organising such purchases on behalf of a Member State.
- (3) If the Commission considers that planned gas purchases of natural gas undertakings or undertakings consuming gas established in the EU or of authorities or regulated entities of Member States may have a negative impact on functioning of joint purchasing, the internal market, or on security of supply or energy solidarity, the Commission may issue a recommendation to the relevant Member States to take appropriate measures to avoid such negative impact.
- (4) The Commission shall inform the ad hoc Steering Board referred to in Article 4 before issuing any of the recommendations set forth in paragraph 3.
- (5) When providing information to the Commission in accordance with paragraphs 1 and 2, the entities providing the information may indicate whether any part of the information, be it commercial or other information the disclosure of which could harm the activities of the parties involved, is to be regarded as confidential and whether the information provided can be shared with other Member States.
- (6) Requests for confidentiality under this Article shall not restrict the access of the Commission itself to confidential information. The Commission shall ensure that access to the confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available. Commission representatives shall handle sensitive information with due confidentiality.
- (7) Without prejudice to Article 346 TFEU, information that is confidential shall be exchanged with the Commission and other relevant authorities only where such exchange is necessary for the application of this Regulation. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of such exchange. Such exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of the entities falling within the scope of this Regulation. The Facility shall not use the information collected for any other purpose than for carrying out the contract.

- (8) All servers and information shall be physically located and stored in the territory of the Union.

Article 4

Ad hoc Steering Board

- (1) An ad hoc Steering Board shall be established to facilitate the coordination of demand aggregation and joint purchasing.
- (2) The ad hoc Steering Board shall be established by the Commission within 6 weeks after entry into force of this Regulation; it shall be composed of one representative of each Member State and one of the Commission. The representatives of the Energy Community Contracting Parties may participate in the Steering Board upon invitation of the Commission on all matters of mutual concern. The Commission shall chair the ad hoc Steering Board.
- (3) The ad hoc Steering Board shall adopt its own Rules of Procedure by qualified majority within one month from the entry into application of this Regulation.
- (4) The ad hoc Steering Board shall assist on the assessment of the information provided to the Commission pursuant to Article 3, notably as to whether the relevant gas purchases enhance security of supply in the Union and are compatible with the principle of energy solidarity. The ad hoc Steering Board shall take into account the positive impacts of the participation of the undertakings in the joint purchasing organised by the Service provider on security of supply in the Union and energy solidarity, where applicable.

Section 2

Joint tenders and demand aggregation

Article 5

Temporary service contract with a service provider

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

undertakings consuming gas of the obligations arising from Article 6b of Regulation (EU) 2017/1938.

Article 6

Criteria for selecting the service provider

- (1) The service provider shall be selected by the Commission on the basis of the following eligibility criteria:
 - (a) The service provider shall be established and have its operational seat in the territory of a Member State.
 - (b) The service provider shall not be:
 - (i) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (ii) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (iii) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.
- (2) Without prejudice to other due diligence obligations, contractual obligations shall be put in place to ensure that the Service provider does not make any funds or economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies:
 - (a) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (c) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.
- (3) The Service provider shall not be part of a vertically integrated undertaking active in the production or supply of natural gas within the Union or the Energy Community Contracting Parties.
- (4) The Commission shall establish its selection and award criteria taking into account, *inter alia*, the following criteria to be specified in the call of tenders:

- (a) Level of experience in setting up and running tendering or auctioning processes for natural gas or associated services, such as transportation services, through the use of dedicated IT tools;
- (b) Level of experience in tailoring tendering or auctioning processes to different needs such as geographical focus or timing;
- (c) Level of experience in developing IT tools to aggregate demand from multiple participants and match it with supply;
- (d) Quality of the information system security, in particular in terms of data protection and internet security; and
- (e) Capacity of identification and accreditation of participants, both in terms of legal entity and financial capacity.

Article 7

Tasks of the service provider

- (1) The service provider shall organise the joint purchasing and, in particular:
 - (a) aggregate the demand of natural gas undertakings and undertakings consuming gas with the support of the Joint Purchasing IT tool;
 - (b) seek offers from natural gas suppliers or producers, to match the aggregated demand with the support of the Joint Purchasing IT tool, and allocate access rights to supply;
 - (c) Verify, accredit and register its users; and
 - (d) provide any ancillary services to its users or to the Commission necessary for the correct performance of the operations as provided in the contract referred to in Article 5.
- (2) The conditions regarding registration of users, publication and reporting shall be determined in the contract.

Article 8

Participation in the joint purchasing

- (1) Participation in the joint purchasing shall be open to all natural gas undertakings and undertakings consuming gas established within the Union or the Energy Community Contracting Parties. Natural gas undertakings and undertakings consuming gas shall not participate in aggregation of demand, if they are:
 - (a) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or

- (c) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.
- (2) Contractual obligations shall be put in place to ensure that no funds or economic resources resulting from participation in the process of joint purchasing organised by the Service provider are made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, which are:
 - (a) targeted by restrictions under Union restrictive measures adopted pursuant to Article 215 TFEU, in particular Union restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine, or in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures; or
 - (c) directly or indirectly owned or controlled by, or acting on behalf or at the direction of the Russian Federation or its Government or by any Russian natural or legal person or entity or body established in Russia.
- (3) Member States or other stakeholders may provide liquidity support, including guarantees, to participants in the process of joint purchasing organised by the Service provider, in accordance with State aid rules, where applicable. This may include guarantees to cover collateral needs or to cover the risk of additional costs following the insolvency of other buyers under the same joint purchasing contract.
- (4) The restrictions set forth in paragraphs 1 and 2 shall be applicable to Section 2 and Section 3 on the Gas Purchasing Consortia and, specifically, to Articles 5,7, 10, 11 and 12.

Article 9

Natural gas supplies excluded from joint purchasing

- (1) Natural gas supplies originating in the Russian Federation entering the Member States or Energy Community Contracting Parties through the following entry points shall not be subject to joint purchasing:
 - (a) Greifswald
 - (b) Lubmin II
 - (c) Imatra
 - (d) Narva
 - (e) Värskä
 - (f) Luhamaa
 - (g) Sakiai
 - (h) Kotlovka
 - (i) Kondratki
 - (j) Wysokoje

- (k) Tieterowka
- (l) Mozyr
- (m) Kobryn
- (n) Sudha (RU)/Ukraine
- (o) Belgorod RU/Ukraine
- (p) Valuyki RU/Ukraine
- (q) Serebryanka RU/Ukraine
- (r) Pisarevka RU/Ukraine
- (s) Sokhranovka RU/Ukraine
- (t) Prokhorovka RU/Ukraine
- (u) Platovo RU/Ukraine
- (v) Strandzha 2 (BG) /Malkoclar (TR)

Article 10

Mandatory use of the service provider

- (1) Member States shall take appropriate measures to ensure that natural gas undertakings under their jurisdiction participate in the process of demand aggregation organised by the service provider as one of the possible means to meet the filling targets enumerated in Article 6a of Regulation (EU) 2017/1938 and to implement the measures laid down in Article 6b of that Regulation for that purpose.
- (2) Member States with underground storage shall require natural gas undertakings under their jurisdiction to participate in the process of demand aggregation organised by the service provider with volumes at least equal to 15% of the total volume necessary to meet the target of 90% of the storage facilities referred to in paragraph 1 of Article 6a of Regulation (EU) 2017/1938.
- (3) Member States without underground storage facilities shall require natural gas undertakings under their jurisdiction to participate in the process of demand aggregation organised by the service provider with the volumes at least equal to 15% of the volumes corresponding to the cross-border filling obligations referred to in Article 6c (1) of Regulation (EU) 2017/1938.

Article 11

Gas Purchasing Consortium

Natural gas undertakings and undertakings consuming gas participating in demand aggregation organised by the service provider may coordinate elements of the conditions of the purchase contract or use joint purchase contracts in order to achieve better conditions with their suppliers, provided they comply with Union law, including Union competition law, in particular Articles 101 and 102 TFEU, as may be specified by the Commission in a decision pursuant to Article 10 of Regulation 1/2003, as well as with the transparency requirement pursuant to Article 3.

Section 3

Measures to enhance the use of LNG terminals and pipelines

Article 12

Secondary capacity booking platform for LNG and storage facilities users

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

Article 13

Transparency platform for LNG and storage facilities

- (1) LNG facility and storage facility operators shall establish, respectively, a European LNG Transparency Platform and a Storage Transparency platform within 2 months from [date of entry into force of the Regulation] to publish in a transparent and user-friendly manner the information required by Article 19 of Regulation 715/2009. Regulatory authorities may request those operators to make public any additional relevant information for system users.
- (2) LNG facilities that have been granted an exemption from third party access rules pursuant to Article 22 of Directive 2003/55/EC and Article 36 of Directive 2009/73/EC, and natural gas storage operators under the negotiated third party access regime referred to in Article 33(3) of Directive 2009/73/EC, shall make public tariffs for infrastructure within one month from [date of entry into force of the Regulation].

Article 14

More effective use of transmission capacities

- (1) Transmission system operators shall offer underutilised contracted firm capacity pursuant to paragraph 2 as a monthly capacity product and as daily and within-day capacity products for the month in case of an underutilisation pursuant to paragraph 2.
- (2) Contracted firm capacity shall be considered underutilised if a network user used or offered less than on average 80% of the booked firm capacity in the last 30 days. The transmission system operator shall continuously monitor the unused capacity and shall inform the network user on the amount of capacity to be withdrawn at the latest before notifying the amount of capacity to be offered for the upcoming rolling monthly capacity auction in accordance with Commission Regulation (EU) 2017/459.
- (3) The amount of capacity to be offered equals the difference between the average utilisation for the preceding month and 80% of the firm capacity which was contracted for a duration longer than a month.
- (4) Available capacity offered in an auction shall have priority over capacity included in an auction from this mechanism when allocating capacity.

- (5) If the offered capacity by the transmission system operator is sold, it will be withdrawn from the original holder of the contracted capacity. The original holder may use the withdrawn firm capacity on an interruptible basis.

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

Section 1

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

Article 15

Intra-day volatility management mechanism

- (1) By 31 January 2023, each trading venue on which front-month energy-related commodity derivatives are traded shall set up, for each front-month energy-related commodity derivative traded on it, an intra-day volatility management mechanism based on an upper and lower price boundary ('price boundaries') that defines the prices above and below which orders cannot be executed ('intra-day volatility management mechanism'). Trading venues shall ensure that the intra-day price volatility management mechanism prevents excessive movements of prices within a trading day for such front-month energy-related commodity derivative.
- (2) For each front-month energy-related commodity derivative traded on them, trading venues shall establish the applicable calculation method to determine the price boundaries relative to a reference price. The first reference price of the day shall be equal to the opening price. The subsequent reference prices shall be the last market price observed at regular intervals. In case of an interruption in trading during the trading day, the first reference price after the interruption shall be the opening price of the resumed trading.
- (3) The price boundaries shall be expressed either in absolute value, or in relative terms in the form of a percentage variation relative to the reference price. Trading venues shall adjust that calculation method to the specificities of each front-month energy related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile. The trading venue shall inform the competent authority of the method without undue delay.
- (4) Trading venues shall renew the price boundaries at regular intervals during trading hours, based on the reference price.
- (5) Trading venues shall without undue delay make public the features of the intra-day volatility management mechanism they have put in place.
- (6) The intra-day volatility management mechanism shall not replace any of the circuit breakers already established by trading venues in accordance with Directive 2014/65/EU before the date of entry into force of this Regulation and shall apply in addition to them.
- (7) Where a trading venue intends to modify the calculation method for the price boundaries applicable to a given front-month energy-related commodity derivative, it shall inform the competent authority of the intended modifications without undue delay.

- (8) The Commission may adopt implementing acts specifying the uniform conditions for the implementation of the intra-day volatility management mechanism, taking into account the specificities of each front-month energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile. In particular, in order to ensure the smooth operation of trading venues that offer trading in front-month energy-related commodity derivatives, the Commission may specify the intervals at which the price boundaries will be renewed or the measures to be taken if trading moves outside these price boundaries. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33.

Article 16

Role of competent authorities

- (1) Competent authorities shall supervise the implementation of the intra-day volatility management mechanism. Competent authorities shall ensure that divergences in the implementation of the intra-day volatility management mechanisms by trading venues established in their Member States are duly justified by the specificities of the trading venues or commodity derivative concerned.
- (2) Competent authorities shall ensure that trading venues implement appropriate preliminary mechanisms ensuring that excessive volatility in front-month energy-related commodity derivatives markets is mitigated until the set-up of the intra-day volatility management mechanism as referred to in Article 15(1).
- (3) Competent authorities shall report to the European Securities Authority (ESMA) on the implementation of the intra-day volatility management mechanism by trading venues they supervise within 3 weeks from the entry into force of this Regulation and at regular intervals thereafter.

Article 17

Coordination role of ESMA

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

Section 2

Tasking ACER to collect and publish objective price data

Article 18

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

- (1) As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than two weeks after the entry into force of this Regulation. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions.
- (2) ACER shall produce and publish a daily LNG benchmark starting no later than 31 March. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.
- (3) For this the purpose of carrying out its tasks under this section, ACER shall have the powers conferred to it under Regulation (EU) No 1227/2011 and under Commission Implementing Regulation (EU) No 1348/2014 and the market participant obligations and prohibitions of Regulation (EU) No 1227/2011 shall apply to LNG market participants.

Article 19

LNG price assessments and benchmark

- (1) The LNG price assessment shall be published daily, and no later than 18:00 CET for the outright transaction price assessment. By 1 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark no later than 19:00 or as soon as technically possible.
- (2) For the purposes of this Article, ACER may make use of the services of a third party.

Article 20

Provision of LNG market data to ACER

- (1) LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in Article 21, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before publication of the daily price assessment (18:00).
- (2) The Commission may adopt implementing acts specifying the point in time by which market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33.
- (3) Where appropriate, ACER shall, after consulting the Commission, issue guidance on:
 - (a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Commission Implementing Regulation (EU) No 1348/2014, including bids and offers, and
 - (b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required market data.
- (4) LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER.

Article 21

Market data quality

- (1) LNG market data shall include:

- (a) the parties to the contract, including buy/sell indicator;
 - (b) the reporting party;
 - (c) the transaction price;
 - (d) the contract quantities;
 - (e) the value of the contract;
 - (f) the arrival window for the LNG cargo;
 - (g) the terms of delivery;
 - (h) the delivery points;
 - (i) the timestamp information on all of the following:
 - (i) the time of placing the bid or offer;
 - (ii) the transaction time;
 - (iii) the time of reporting of the bid, offer or transaction;
 - (iv) the receipt of LNG market data by ACER.
- (2) LNG market participants shall provide ACER with LNG market data in the following units and currencies:
- (a) transaction, bid and offer unit prices shall be reported in currency specified in the contract and in €/MWh and include applied conversion and exchange rates if applicable;
 - (b) contract quantities shall be reported in the units specified in the contracts and in MWh;
 - (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;
 - (d) delivery point shall indicate a valid identifier listed by ACER (list of LNG facilities subject to reporting and Regulation (EU) No 1227/2011 and Commission Implementing Regulation (EU) No 1348/2014); the timestamp information shall be reported in UTC format;
 - (e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.
- (3) ACER shall issue guidance as to under which criteria a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its daily LNG price assessment and LNG benchmarks.

Article 22

Business continuity

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

Section 3

Article 23

Market correction mechanism

- (1) The Council, upon a proposal by the Commission, may adopt a decision providing for a temporary mechanism to limit episodes of excessive gas prices.
- (2) The decision referred to in paragraph 1 shall:
 - (a) determine a dynamic market correction mechanism for natural gas transactions in the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V. Other Union gas trading hubs may be linked to the corrected TTF spot price via a dynamic price corridor.
 - (b) be without prejudice to over-the-counter gas trades;
 - (c) not jeopardise the Union's security of gas supply;
 - (d) depend on progress made in implementing the gas savings target;
 - (e) not lead to an overall increase in gas consumption;
 - (f) be designed in such a manner that it will not prevent market-based intra-EU flows of gas,
 - (g) not affect the stability and orderly functioning of energy derivative markets; and
 - (h) take into account the gas market prices in the different organised market places across the Union

Article 24

Suspension of the Market correction mechanism

The Council, acting immediately, in line with a proposal from the Commission, following a possible recommendation from ACER, shall adopt a decision to suspend the market correction mechanism, if the reasons for the introduction are no longer valid, notably regarding episodes of excessive gas prices, or if unintended market disturbances occur, negatively affecting security of supply and intra-EU flows. The market correction mechanism shall apply only as long as this Regulation is in force.

CHAPTER IV - MEASURES FOR THE CASE OF A GAS EMERGENCY

Section 1

Allocation mechanism for the case of a regional or Union emergency

Article 25

Proposal for an allocation mechanism

- (1) The Council, upon a proposal by the Commission, may adopt a decision providing for a mechanism on price setting, aligned with the default conditions for solidarity arrangements, and to allocate gas capacities to supply Member States for which a regional or Union emergency has been declared in accordance with Article 12(1) of Regulation (EU) 2017/1938.

- (2) The decision shall ensure that during a significant disruption of gas supplies affecting a whole region, the access to available sources of gas is adequately shared between Member States.

Article 26

Involvement of the crisis management group

The proposal shall involve the crisis management group as referred to in Art 12(4) of Regulation (EU) 2017/1938 in the establishment and implementation of the allocation mechanism.

Section 2

Gas solidarity for electricity supply, essential industries and protected customers

Article 27

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

- (1) A solidarity measure pursuant to Article 13 (1) and (2) of Regulation (EU) 2017/1938 shall apply only if the requesting Member State has not been able to cover:
- (a) the deficit in gas supply to its solidarity protected customers or
 - (b) the critical gas volume for electricity security of supply as set out in Annex 1, despite the application of the measure referred to in Article 11(3). The conditions set out in Article 13(3) (b) to (d) shall apply.
- (2) The Member States which are obliged to provide solidarity pursuant to Article 13(1) or (2) of Regulation (EU) 2017/1938 shall be entitled to deduct from the solidarity offer
- (a) supplies to its protected customers to the extent essential volumes are affected; and
 - (b) supplies of critical gas volumes for electricity security of supply.
- (3) The critical gas volumes for electricity security of supply shall not exceed the volumes indicated in Annex 1. In case a Member State can demonstrate that a higher volume of gas is required to avoid an electricity crisis of a Member State, the Commission may, upon a duly reasoned request, decide to allow the deduction of higher volumes.

Article 28

Demand reduction measures concerning protected customers

- (1) Member States may, exceptionally and for the period of application of this Regulation, take measures to reduce the non-essential consumption of protected customers, as defined in Article 2(5) of Regulation (EU) 2017/1938, in particular when one of the crisis levels pursuant to Article 11(1) and Article 12 of Regulation (EU) 2017/1938, or the EU alert pursuant to Regulation (EU) 2022/1369 have been declared. Such measures shall be limited to non-essential uses of gas and shall take into account the elements set out in Article 6(2) of Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas.

- (2) The consumption of vulnerable consumers, as defined by Member States according to Article 3(3) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, shall under no circumstance be reduced, and Member States shall not disconnect protected customers as a result of the application of paragraph 1.

Article 29

Safeguards for cross-border flows

In case of a Commission request pursuant to Article 12(6), first subparagraph of Regulation (EU) 2017/1938 to terminate undue restrictions of cross-border gas flows or of access to gas infrastructure, or measures endangering gas supply in another Member State, the competent authority, as defined in Article 2(7) of Regulation (EU) 2017/1938, or Member State shall modify its action or take action in order to ensure compliance with Article 12(5) of Regulation (EU) 2017/1938. The procedure pursuant to Article 12(6), second subparagraph of that Regulation shall not apply.

Section 3

Rules for the provision of solidarity measures

Article 30

Temporary extension of solidarity obligations to Member States with LNG facilities

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

Article 31

Default rules for solidarity measures

- (1) Where two Member States have not agreed on the necessary technical, legal and financial arrangements pursuant to Article 13(10) of Regulation (EU) 2017/1938 (“solidarity agreement”), the delivery of gas pursuant to the obligation in Article 13(1) in case of an emergency shall be subject to the conditions in this Article.
- (2) The compensation for the solidarity measure pursuant to Article 13(8) of Regulation 2017/1938 shall not exceed reasonable costs. It shall in any event include:
- (a) the price in the Member State providing solidarity.
 - (b) the storage and transport costs to the delivery point;

- (c) other costs, if agreed between the requesting Member State and the Member State providing solidarity.
- (3) Unless the requesting Member State and the Member State providing solidarity agree on another price, the price for the gas supplied to the requesting Member State shall correspond to the average market price in the providing Member State during the 30 days preceding the request for solidarity; or the corresponding average market price at the closest accessible exchange virtual trading point, or at an agreed hub over the last month.
- (4) The Member States requesting solidarity shall bear the cost for transport and storage. The requesting Member State and the Member State providing solidarity are free to agree on further costs and conditions.
- (5) Unless the requesting Member State and the Member State providing solidarity agree on different compensation conditions, the compensation due pursuant to Article 13(8) of Regulation 2017/1938 shall not include
 - (a) costs for financial or other damages resulting from enforced firm load shedding of customers related to the provision of solidarity;
 - (b) costs for judicial or arbitration proceedings in the solidarity providing Member State.
- (6) Compensation for the gas volumes delivered in the context of a solidarity request pursuant to Article 13(8) of Regulation (EU) 2017/1938 shall be paid directly by the solidarity requesting Member State to the solidarity providing Member State or the entity the latter indicates in its solidarity offer.
- (7) The Member State to which the request for a solidarity measure is addressed shall provide the solidarity measures as soon as possible and no later than [3] days after the request. A Member State may refuse to provide solidarity to a Member State requesting solidarity only if it demonstrates that it
 - (a) has itself not enough gas to supply its solidarity protected customers or for the critical gas volumes for electricity security of supply, or
 - (b) does not have sufficient interconnection capacity, as set out in Article 13(7) of Regulation 2017/1938 and does not have the possibility to provide LNG.
- (8) In addition to the default rules provided for in this article, Member States may agree on technical arrangements and coordination of the provision of solidarity.
- (9) The provisions in this article shall be without prejudice to existing arrangements for the safe and reliable operation of the gas system.

Article 32

Procedure for solidarity measures in the absence of a solidarity agreement

- (1) The Member State requesting the application of the solidarity measures pursuant to Article 13 of Regulation (EU) 2017/1938 shall issue a solidarity request to another Member State, indicating at least the following information: requested gas volumes, information about gas pressure, calorific value, delivery point, the timing of the first possible delivery and the anticipated duration of deliveries.

- (2) The solidarity request shall be sent simultaneously to Member States potentially being able to provide solidarity measures, the Commission and to the national crisis managers designated pursuant to Article 10(1)(g) of Regulation (EU) 2017/1938.
- (3) The Member States receiving a solidarity request shall send a response that indicates the volume that can be supplied to the delivery points and at the time requested, including the volume resulting from possible curtailment or release of strategic stocks in case the volume that can be supplied by voluntary market measures is insufficient.
- (4) Solidarity requests shall be submitted at least 24 hours before the indicated delivery time. The response to solidarity requests shall be done within 24 hours. The confirmation of receipt and of the volume taken by the requesting Member State shall be done within 24 hours of the needed delivery time.
- (5) The request may be submitted for a period of one day or several days, and the response shall match the requested duration.
- (6) Where there are several Member States providing solidarity and bilateral solidarity arrangements are in place with one or several of them, those arrangements shall prevail between the Member States having agreed bilaterally. The default rules provided for in this article shall be only applicable in relation to the other Member States providing solidarity.
- (7) The Commission may facilitate the implementation of solidarity agreements, notably by a template in the form of a secured online platform to enable real-time transmission of requests and offers.

CHAPTER V - FINAL PROVISIONS

Article 33

Committee procedure

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

Article 34

Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union. Article 14 shall apply three months after entry into force of the Regulation.

It shall apply for a period of one year from its entry into force.

Article 35

Review

By 1 October 2023 at the latest, the Commission shall carry out a review of this Regulation in view of the general situation of 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. Title of the proposal/initiative

Proposal for a Council Regulation on joint purchasing of gases and efficient use of natural gas infrastructure during the energy crisis

1.2. Policy area(s) concerned

Policy area: Energy

Activity:

EU Energy Platform

Establishment of LNG price assessment/benchmark

1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action²⁵

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)

In the context of gas supplies disruption from the Russian Federation, “REPowerEU” Communication announces to develop joint purchasing arrangements for the common purchase of gas, LNG and hydrogen.

Therefore, this proposal should help gas undertakings in the Member States and Energy Community Contracting Parties to obtain additional supplies of LNG and pipeline gas to replace missing gas supplies from the Russian Federation. This mechanism should also create the basis for joint purchasing of hydrogen in the future.

The proposal aims also to strengthen the existing congestion management measures for pipelines in order to grant the gas system operators tools to react rapidly with the arising changes in the gas flows and possible contractual congestion. In particular, the new rules could accelerate marketing of unused long-term capacities.

Moreover, it is of the utmost importance to optimise the LNG absorption capacity of EU LNG terminals and the usage of storage facilities. A transparency platform and an organised market of secondary capacities are necessary, similar to those existing for transport of gas via pipelines.

LNG benchmark

Furthermore, there is a need to provide for stable and predictable pricing for LNG imports, which are indispensable to replace the supply shortfalls caused by the likely halt of Russian gas imports. This proposal tasks the European Agency for the Cooperation of Energy Regulators (‘ACER’) to create an objective price assessment

²⁵

As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

tool of the EU's LNG imports, by collecting real-time information on all daily transactions. This will provide more comprehensive information to buyers and increase price transparency.

Enhanced security of supply

An integral part of the EU security of supply response in the current challenging context is to pro-actively reduce the gas demand, to prepare ourselves for any potential supply disruptions while avoiding depleting the storage facilities. In order to best anticipate and prepare for the winter 2023-24 and to fill our underground storages up to 90%, as was agreed upon in Regulation 2022/1032, all demand of gas that can be reduced now will be of benefit. Therefore, the validity of the Demand Reduction Regulation should be extended beyond August 2023 and efforts to reduce gas demand should be maintained beyond March 2023.

In the meantime, to reinforce preparedness to possible emergencies in the winter, and given the importance that all consumer groups contribute to saving gas within their ability, this proposal includes provisions that allow Member States to exceptionally take measures to reduce the 'non-essential consumption' of protected customers provided it does not reduce the protection of vulnerable consumers who have no margin to reduce their consumption and provided that it does not lead to the disconnection of any protected customers.

This proposal introduce a default mechanism between the Member States to ensure they help each other to supply solidarity protected customers and critical gas fired power plants, in an emergency leading to very severe shortage of gas. Furthermore, it is proposed that Member States may trigger a solidarity request, under certain conditions, if gas-fired power plants, that are needed to ensure the electricity system's adequacy, are at risk of not being supplied with critical gas volumes.

Finally, the proposal points to the possibility of Union or regional emergency with major gas disruptions and supply shortages. In such a case, the Union should be prepared to rapidly apply different solidarity mechanisms in a regionally coordinated manner to mitigate the emergency situation.

1.4.2. Specific objective(s)

Specific objective 1

To establish a Facility which will implement the common purchase of natural gas and LNG

Specific objective 2

To support in avoiding congestion (contractual and physical) of the existing pipelines and the EU LNG terminals.

Specific objective 3

To accelerate marketing of unused long-term capacities in the gas flows.

Specific objective 4

To create a transparency platform and an organised market of secondary capacities for LNG, similar to those existing for transport of gas via pipelines.

Specific objective 5

To establish a daily LNG price assessment/benchmark by the European Agency for the Cooperation of Energy Regulators ('ACER')

Specific objective 6

To create a default solidarity mechanism between Member States in an emergency leading to very severe shortage of gas; to define in this context specific provisions regarding gas-fired power plants.

Specific objective 7

To allow Member States to exceptionally take measures to reduce the 'non-essential consumption' of protected customers provided it does not reduce the protection of vulnerable consumers.

Specific objective 8

To address the possibility of Union or regional emergency with major gas disruptions and supply shortages, so that the Union is prepared to rapidly apply different solidarity mechanisms in a regionally coordinated manner to mitigate the emergency situation.

1.4.3. *Expected result(s) and impact*

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

The proposal is an extraordinary measure to improve efficient use of Union's gas infrastructure in the spirit of solidarity and to help in seeking new sources and ways to supply gas, and if necessary also hydrogen in the future.

The proposal creates an LNG benchmark, which will provide more comprehensive information to buyers and increase price transparency.

The proposal reinforces the gas security of supply architecture of the Union, so that it is better prepared to deal with an emergency situation, should it arise.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

Specific objective 1

Creation of the Facility and its joint utilisation by different market participants.

Specific objective 2

Level of congestion (contractual and physical) of the existing pipelines and the EU LNG terminals.

Specific objective 3

Improvement of the marketing of unused long-term capacities in the gas flows.

Specific objective 4

Creation of a transparency platform and an organised market of secondary capacities for LNG, similar to those existing for transport of gas via pipelines.

Specific objective 5

Daily publication by ACER of LNG price assessment/benchmark

Specific objective 6

Member States to be able to deal with an emergency leading to very severe shortage of gas by means of a default solidarity mechanism.

Specific objective 7

Definition by Member States of the ‘non-essential consumption’ of protected customers provided in such a way that it does not reduce the protection of vulnerable consumers.

Specific objective 8

Ability of the Members States to act in a regionally coordinated manner to mitigate an emergency situation.

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 DG ENER, DG COMP and the Agency for the Cooperation of Energy Regulators, ACER,

In particular, the proposal sets out new tasks for ACER to establish and publish a daily LNG price assessment and LNG benchmark. ACER will need to comply with IOSCO principles for Price Reporting Agencies (PRA), which requires experienced assessors, continuity and succession planning, assessor supervision, audit trails and complaint handling. A number of 5 additional full-time equivalents will be needed in the form of 5 Temporary Agents (TA) to comply with the IOSCO requirements.

The new TAs are required to provide guidance on the intraday reporting of LNG, including bids and offers, to ensure data quality of the reported LNG data and to comply with best practices from other price reporting agencies complying with the IOSCO principles – a continuous task not currently covered by existing resources in ACER. Price assessments according to the IOSCO principles are set by a first reporter who covers that specific market, peer reviewed by a second reporter, and always signed-off by a senior reporter or editor prior to publication. Backups have to be ensured to ensure business continuity and complaint procedures have to be handled independently. 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.

ACER also needs additional resources (1) for consultancy to develop the price assessment methodology in the first year, (2) for IT consultancy to adapt ACER’s IT reporting system from current ex-post data collection under REMIT to the within-day data collection and analysis of bids, offers and trades required under the new piece of legislation, (3) to ensure the audit trail, and (4) for external audits from consultancy

from the second year of implementation onwards, and (5) for IT infrastructure and IT user support from the second year of implementation onwards, based on the assumption that it will be possible to reuse/upgrade the current REMIT infrastructure.

- 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.*

The unprecedented reduction by supplies of natural gas supplies from Russian Federation to Member States requires coordinated reply of the EU. Russian gas supplies decreased significantly, down to 9% of our pipeline gas supply in September 2022 and 14% when including LNG, compared to a 41% share of Russian pipeline gas and 45% when including LNG in 2021.

This proposal should help the Member States and Energy Community Contracting Parties and their gas undertakings to obtain additional supplies of LNG and pipeline gas to replace missing gas supplies from the Russian Federation. Beside gas demand reduction, energy efficiency measures and deployment of renewable sources, this gap will need to be met by purchasing of additional sources of gas, mostly LNG.

In addition, this mechanism could serve as a basis for the joint purchasing of hydrogen in the future.

Establishing an LNG price assessment/benchmark by ACER will provide more comprehensive information to buyers and increase price transparenc

The provisions for a reinforced framework for gas security of supply would allow to better tackle any potential upcoming emergency in a coordinated way and in a spirit of solidarity – thus bringing added value from the social, economic and political perspective.

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

Experience with Joint Purchasing in the field of natural gas is rather limited. However, the experience with Joint Purchasing for COVID-19 vaccines proved to be a useful tool. However it is important to stress that vaccines were purchased by Member States and gas needs to be purchased by undertakings. This imposes specific challenges.

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').

The provisions for a reinforced framework for gas security of supply are based on the experience with the implementation of the current legal framework and the preparedness work carried out during 2022.

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

The proposal is compatible with the Multiannual Financial Framework, although it will require reprogramming within Heading 1 as regards the contribution to ACER. The operational appropriations required by DG ENER will be met by the existing allocation in DG ENER budget lines.

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

The additional needs in human resources are needed for new tasks that will become permanent for gas security of supply and for competition law compliant implementation of the gas purchasing consortium, while existing tasks will not decrease in the foreseeable future. However under the current MFF, the Commission must operate in a context of stable staffing, and thus redeployment will need to be found within the institution.

1.6. Duration and financial impact of the proposal/initiative

limited duration

- in effect from [Day of Entry into force] to [Two Years after Entry into Force]
- Financial impact from 2022 to 2027 for commitment appropriations and from 2022 to 2028 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) planned²⁶

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

²⁶ 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 and DG COMP will follow the annual cycle of planning and monitoring, as implemented in the Commission and the executive agencies, including reporting the results through the Annual Activity Reports of DG ENER and DG COMP.

Furthermore, the performance of the mechanism will be monitored in accordance with Article 5 of the proposal.

The proposal also includes, under Article 6c, specific reporting requirements.

In line with its financial regulation, ACER has to provide, in the context of its Programming Document, an annual Work Programme including details on resources, both financial and human, per each of the activities carried out. ACER reports monthly to DG ENER on budget execution, including commitments, and payments by budget title, and vacancy rates by type of staff. DG ENER is directly represented in the governance bodies of ACER. Through its representatives in the Administrative Board, DG ENER will be informed of the use of the budget and the establishment plan at each of its meetings during the year.

Finally, also in line with financial rules, ACER is subject to annual requirements for reporting on activities and the use of resources through the Administrative Board and its Annual Activity Report.

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 will finance, through service contracts or other directly managed instruments, the setup of the mechanism by the entity that will be operating joint purchasing. The Commission, or the entity operating joint purchasing, however, will not purchase gas on behalf of the participating undertakings.

The Commission will seek to select this entity from existing energy exchanges and capacity allocation platforms. The expenditure will be implemented under direct management, in full application of the provisions of the Financial Regulation. The control strategy for procurements and grants in DG ENER includes specific ex-ante legal, operational and financial controls on the procedures (including, for procurement procedures and where appropriate, a review by the advisory committee for procurement and contracts) as well as on the signature of contracts and agreements. In addition, expenditure made to procure goods and services is subject to ex ante and, when necessary, ex-post and financial controls.

As regards the LNG price assessment and benchmarking and based on ACER expertise, 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 setup of the mechanism, the risks identified are linked to use of procurement procedures: delay, availability of data, timely information to the market, etc. These risks are covered under the Financial Regulation and mitigated by the set of internal controls deployed by DG ENER for procurement of this value.

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 and DG COMP 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.

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.

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. ²⁷	from EFTA countries ²⁸	from candidate countries ²⁹	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
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

²⁷ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

²⁸ EFTA: European Free Trade Association.

²⁹ 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)

Heading of multiannual financial framework	1	Single Market, Innovation and Digital
---	---	---------------------------------------

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)			TOTAL
○ Operational appropriations										
Budget line ³⁰ 02 20 04 02	Commitments	(1a)	1.000							1.000
	Payments	(2a)		0.500	0.500					1.000
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes ³¹										
Budget line		(3)								
TOTAL appropriations for DG ENER	Commitments	=1a+1b +3	1.000							1.000
	Payments	=2a+2b +3		0.500	0.500					1.000

³⁰ According to the official budget nomenclature.

³¹ 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)	1.000							1.000
	Payments	(5)		0.500	0.500					1.000
○ TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING 1 of the multiannual financial framework	Commitments	=4+ 6	1.000							1.000
	Payments	=5+ 6		0.500	0.500					1.000
	Payments	=5+ 6								

Heading of multiannual financial framework	1	Single Market, Innovation and Digital
---	---	---------------------------------------

Agency for the Cooperation of Energy Regulators (ACER)			2023	2024	2025	2026	2027	2028	TOTAL	
Title 1:	Commitments	(1)	0.785	0.785	0.785	0.785	0.785			3.925
	Payments	(2)	0.785	0.785	0.785	0.785	0.785			3.925
Title 2:	Commitments	(1a)		0.100	0.100	0.100	0.100			0.400
	Payments	(2a)		0.100	0.100	0.100	0.100			0.400
Title 3:	Commitments	(3a)	1.045	0.102	0.104	0.106	0.108			1.465
	Payments	(3b)	1.045	0.1020	0.104	0.106	0.108			1.465
TOTAL appropriations for the Agency for the Cooperation of Energy Regulators (ACER)	Commitments	=1+1a +3a	1.830	0.987	0.989	0.991	0.993			5.790
	Payments	=2+2a +3b	1.830	0.987	0.989	0.991	0.993			5.790

Heading of multiannual financial framework	7	'Administrative expenditure'
---	----------	------------------------------

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 2022	Year 2023	Year 2024	Year 2025	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG ENER									
○ Human resources		1.413	1.413	1.413	1.413				5.652
○ Other administrative expenditure		0.030	0.030	0.030	0.030				0.120
TOTAL DG ENER	Appropriations	1.443	1.443	1.443	1.443				5.772
DG COMP									
○ Human resources		0.314	0.314	0.314	0.314				1.256
○ Other administrative expenditure		0.000	0.000	0.000	0.000				0.000
TOTAL DG COMP	Appropriations	0.314	0.314	0.314	0.314				1.256

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	1.757	1.757	1.757	1.757				7.028
--	--------------------------------------	--------------	--------------	--------------	--------------	--	--	--	--------------

EUR million (to three decimal places)

		2022	2023	2024	2025	2026	2027	2028	TOTAL
TOTAL appropriations	Commitments	2.757	3.587	2.744	2.746	0.991	0.993		13,818

under HEADINGS 1 to 7 of the multiannual financial framework	Payments	1.757	4.087	3.244	2.746	0.991	0.993			13,818
--	----------	-------	-------	-------	-------	-------	-------	--	--	---------------

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)						TOTAL			
	OUTPUTS																			
	Type ³²	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ³³ ...																				
- Output																				
- Output																				
- Output																				
Subtotal for specific objective No 1																				
SPECIFIC OBJECTIVE No 2 ...																				
- Output																				
Subtotal for specific objective No 2																				
TOTALS																				

³² Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

³³ 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	Year 2024	Year 2025	Year 2026	Year 2027		TOTAL
--	--------------	--------------	--------------	--------------	--------------	--	-------

Temporary agents (AD Grades)	0.785	0.785	0.785	0.785	0.785			3.925
Temporary agents (AST grades)								
Contract staff								
Seconded National Experts								

TOTAL	0.785	0.785	0.785	0.785	0.785			3.925
--------------	--------------	--------------	--------------	--------------	--------------	--	--	--------------

Staff requirements (FTE):

	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027		TOTAL
--	--------------	--------------	--------------	--------------	--------------	--	-------

Temporary agents (AD Grades)	5	5	5	5	5			5
Temporary agents (AST grades)								
Contract staff								
Seconded National Experts								

TOTAL	5	5	5	5	5			5
--------------	----------	----------	----------	----------	----------	--	--	----------

Planned recruitment is the first half of 2023.

3.2.3.2. Estimated requirements of human resources for the Commission

- 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 ³⁴	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
--	-------------------------	-------------	-------------	-------------	--	--	--	--	--------------

HEADING 7 of the multiannual financial framework									
Human resources	1.727	1.727	1.727	1.727					6.908
Other administrative expenditure	0.030	0.030	0.030	0.030					0.120
Subtotal HEADING 7 of the multiannual financial framework	1.757	1.757	1.757	1.757					7.028

Outside HEADING 7³⁵ of the multiannual financial framework									
Human resources	0	0	0	0					0
Other expenditure of an administrative nature	0	0	0	0					0
Subtotal outside HEADING 7 of the multiannual financial framework	0	0	0	0					0

TOTAL	1.757	1.757	1.757	1.757					7.028
--------------	--------------	--------------	--------------	--------------	--	--	--	--	--------------

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.

³⁴ 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.

³⁵ 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.

Estimate to be expressed in full time equivalent units

	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)		
○ Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)	11	11	11	11			
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
○ External staff (in Full Time Equivalent unit: FTE)³⁶							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
XX 01 xx yy zz ³⁷	- 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)							
TOTAL	11	11	11	11			

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	<p>The proposal sets out an enhanced Gas Security of Supply architecture, with new obligations for Member States and, correspondingly, a reinforced role for DG Energy in a wide range of areas – namely:</p> <ul style="list-style-type: none"> • Overall management and implementation of the Regulation (3 FTE) • Preparation of a proposal for a Council measure which provides for a mechanism to allocate gas capacities to supply Member States for which a regional or Union emergency has been declared; management and implementation of the proposal, including the involvement of the crisis management group (2 FTE). • Assessment of Member States' requests for allowances regarding higher critical gas volumes (1 FTE). • Follow-up to solidarity requests; facilitation of the implementation of solidarity agreements (1.5 FTE)
-------------------------------	--

³⁶ AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

³⁷ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

	<ul style="list-style-type: none"> • Administrative assistance (1.5 FTE) <p>In addition, the proposal entails an enhanced role for DG Competition, namely:</p> <ul style="list-style-type: none"> • Work to design competition law compliant implementation of the gas purchasing consortium, requiring exchanges with industry (2 FTEs)
External staff	n.a.

3.2.4. *Compatibility with the current multiannual financial framework*

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

While DG ENER will use budget line 02 20 04 02 “Support activities for the European energy policy and internal energy market” for the operational expenditure related to the joint purchase mechanism, the tasks allocated to ACER will require reprogramming of the contribution to ACER to be offset by programme budget lines managed by DG ENER.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework³⁸.

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 ³⁹	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								

³⁸ 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.

³⁹ 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 ⁴⁰							
		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).

⁴⁰ 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.



Strasbourg, 18.10.2022
COM(2022) 549 final

ANNEX

ANNEX

to the

Proposal for a Council Regulation

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

ANNEX 1

a) Maximum critical gas volumes for electricity security of supply pursuant to Article 27 for the period between December 2022 to March 2023⁴¹

Values in mcm	December 2022	January 2023	February 2023	March 2023
AT	23.63	190.62	128.70	92.15
BE	301.43	385.33	355.18	351.35
BG	52.20	71.07	60.89	60.32
CY	-	-	-	-
CZ	4.47	49.64	34.80	28.28
DE	954.00	1,486.91	1,278.59	1,174.13
DK	223.49	266.47	229.26	240.13
EE	0.46	5.15	5.00	1.05
EL	191.87	272.49	257.23	180.03
ES	1,378.23	1,985.66	1,523.00	1,189.29
IE	327.82	336.05	325.06	337.76
FI	8.76	39.55	44.66	12.97
FR	757.04	786.51	737.04	670.75
HR	8.11	52.73	47.18	26.28
HU	12.01	77.83	53.59	34.50
IT	1,614.02	2,595.56	2,455.07	2,085.03
LV	71.54	72.70	70.46	63.05
LT	2.24	20.22	18.81	4.21
LU	-	-	-	-
MT	16.77	20.49	20.40	17.66
NL	284.60	550.35	413.20	402.55
PL	62.04	61.08	52.16	59.19
PT	384.15	397.92	350.12	380.53
RO	102.70	179.35	162.41	159.71
SI	11.17	13.67	11.86	9.27
SK	31.81	47.26	34.80	34.76
SE	14.99	16.15	14.23	13.50

⁴¹ The figures in Annex I a) and b) are based on data from the winter adequacy assessment pursuant to Article 9 of Regulation (EU) 2019/941 by the European Network of Transmission System Operators for Electricity (ENTSO-E). Annex I a) represents the individual monthly volumes calculated by ENTSO-E for the months December 2022 to March 2023; the figures in Table 1 b) for the months April 2023 to December 2023 represent the average of the values in the period between December 2022 and March 2023.

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

Values in mcm	Monthly value
AT	108.78
BE	348.32
BG	61.12
CY	-
CZ	29.29
DE	1,223.41
DK	239.84
EE	2.91
EL	225.40
ES	1,519.05
IE	331.67
FI	26.48
FR	737.83
HR	33.57
HU	44.48
IT	2,187.42
LV	69.44
LT	11.37
LU	-
MT	18.83
NL	412.68
PL	58.62
PT	378.18
RO	151.04
SI	11.49
SK	37.16
SE	14.72

Information Note – Proposal for a Council Regulation Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks

1. Proposal

On 18/10/2022 the European Commission issued a Proposal for Council Regulation on enhancing solidarity, better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks and a market correction mechanism.

Negotiations have concluded and agreement reached at an Extraordinary Energy Council on 24/11/2022, except for the proposed market correction mechanism, which the Commission is now bringing forward as a separate proposed regulation.

A number of Member States are withholding formal agreement, subject to reaching agreement on the now separate proposed regulation on the market correction mechanism.

2. Date of Commission proposal

18/10/2022

3. Number of Commission proposal

COM 2022 (549)

4. Number of Council proposal

2022/0339 (NLE)

5. Dealt with in Brussels by

Transport, Telecommunications and Energy Council.

6. Department with primary responsibility

Department of the Environment, Climate and Communications

7. Other Departments involved

D/Finance were consulted during the negotiations, particularly in relation to the proposal for a market correction mechanism, which has now been extracted and proposed as a separate regulation.

8. Background to, short summary and aim of the proposal

Following the Russian invasion of Ukraine and weaponisation of energy supplies, natural gas prices have seen unprecedented price peaks across the EU, reaching all-time highs in the second half of August this year.

In response to the continued Russian aggression against Ukraine, sabotage of the Nordstream pipeline, and Russian targeting of energy infrastructure in Ukraine, the Commission called for a targeted approach to ensuring a coordinated and unified approach to winter storage for 2023 and 2024. This would avoid the issue of internal competition and resultant natural gas price inflation which occurred in September/October 2022. It is an acceleration of 'REPowerEU' (May 2022) proposals for establishing an EU Energy Platform for the common purchase of gas. It provides a temporary fast-track solution for 'joint purchasing of gas for balancing purposes' to ensure equal access for undertaking across MS to new or additional gas sources, to the benefit of final consumers.

The negotiated regulation contains:

Chapter I - subject matter and definitions

Chapter II – Better coordination of gas purchases, which includes sections covering coordination of gas purchases within the Union; demand aggregation and joint purchasing of gas; and measures to enhance the use of LNG terminals, storage facilities and pipelines.

Chapter III - Measures to prevent excessive gas prices and excessive intra-day volatility in energy derivatives markets - which includes sections covering a temporary intra-day tool to manage excess volatility in energy derivatives markets; and tasking ACER [Agency for the Cooperation of Energy Regulators] to collect and publish objective price data.

Chapter IV - Measures for the case of a gas emergency – which contains sections covering gas solidarity for electricity supply, essential industries, and protected customers; rules for the provision of solidarity measures; and

Chapter V - Final provisions - which provides that the regulation shall apply for a period of one year from its entry into force.

Negotiations have concluded and agreement reached at an Extraordinary Energy Council on 24/11/2022, except for the proposed market correction mechanism, which the Commission is now bringing forward as a separate proposed regulation. A number of Member States are withholding formal agreement, subject to reaching agreement on the now separate proposed regulation on the market correction mechanism.

9. Legal basis of the proposal

The legal basis for this instrument is Article 122(1) of the Treaty on the Functioning of the European Union ('TFEU'). Article 122(1) of the Treaty on the Functioning of the European Union enables the Council to decide, on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. The risk of a complete halt of Russian gas supplies by the end of 2022 constitutes such a situation.

10. Voting Method

Qualified Majority Voting, but only in the European Council.

11. Role of the EP

The European Parliament played no role in approving this Regulation. Under Article 122(1) of the Treaty on the Functioning of the European Union ('TFEU'), the Regulation will be approved by an Extraordinary Council of Energy Ministers without the regulation being submitted to, or approved by, the European Parliament.

12. Category of proposal

EU regulation, which is directly applicable.

13. Implications for Ireland & Ireland's Initial View

Ireland has been generally supportive of the proposals.

Regarding the solidarity arrangements, Ireland would require an agreement to be in place with the UK to be able to seek to put arrangements in place with other Member States and is therefore one step removed presently.

While Ireland is not excluded from participating in the Joint purchasing platform, it is unclear the degree to which we can benefit given that all our imported natural gas is from Great Britain and we are not directly connected to another Member State.

14. Impact on the public

The impact on the public is envisaged to be neutral.

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

Given the expedited nature of the negotiations, there has been very limited scope for consultation. D/Finance were consulted with respect to the market correction mechanism, which has now been brought forward as a separate proposed regulation by the Commission.

16. Are there any subsidiarity issues for Ireland?

No subsidiary issues have been identified for Ireland.

17. Anticipated negotiating period

Negotiations have concluded and agreement reached at an Extraordinary Energy Council on 24/11/2022, except for the proposed market correction mechanism, which the Commission is now bringing forward as a separate proposed regulation. A number of Member States are withholding formal agreement, subject to reaching agreement on the now separate proposed regulation on the market correction mechanism.

18. Proposed implementation date

In the negotiated regulation, Chapter V - Final Provisions - provides that the regulation shall apply for a period of one year from its entry into force. A number of Member States are withholding formal agreement, subject to reaching agreement on the now separate proposed regulation on the market correction mechanism, which will affect the implementation date.

19. Consequences for national legislation

Article 288 of the Treaty on the Functioning of the European Union specifies that a regulation shall have general application and shall be binding in its entirety and directly applicable in all Member States.

20. Method of Transposition into Irish law

If required, it is anticipated that any implementing legislation required would be via secondary legislation under the European Communities Act 1972.

21. Anticipated Transposition date

N/A, as this is an EU regulation

22. Consequences for the EU budget in Euros annually

The Commission's proposal outlined that that the budgetary implications are limited to the need to finance, through service contracts or other initiatives managed directly by the Commission, the setup of the mechanism by the service provider that will be operating demand aggregation for joint purchasing.

The budgetary impact on the EU budget associated to this proposal also concerns the human resources and other administrative expenditures of the European Commission's Directorate General (DG) for Energy, as well as of ACER. The proposal sets out an enhanced Gas Security of Supply architecture, with new obligations for Member States and, correspondingly, a reinforced role for DG Energy in a wide range of areas.

The Commission's proposal does not set out a monetary figure for these envisaged costs.

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Noel Regan, Principal Officer, Wholesale Gas Policy Division
Department of the Environment, Climate and Communications
29-31 Adelaide Road, Dublin, D02 X285
T: 01 6782676
E: Noel.Regan@decc.gov.ie

28 November 2022