COUNCIL REGULATION (EU) 2023/2920

of 21 December 2023

amending Regulation (EU) 2022/2578 as regards the prolongation of its period of application

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Regulation (EU) 2022/2578 [1] establishes a temporary market correction mechanism ('MCM') for orders placed for trading derivatives linked to the Union's virtual trading points ('VTPs') with maturities between month-ahead and year-ahead. The MCM therefore applies to any commodity derivative, traded on a regulated market, the underlying of which is a transaction in gas in any VTP in the Union.

(2) The MCM is to be activated when a market correction event occurs, that is, when the front-month Title Transfer Facility ('TTF') derivative settlement price, as published by ICE Endex B.V. (the Netherlands), exceeds EUR 180/MWh and is EUR 35 higher than the reference price for three working days. Regulation (EU) 2022/2578 sets a dynamic bidding limit, according to which, upon the occurrence of a market correction event, market operators are not to accept and market participants are not to submit orders for derivatives with prices of EUR 35/MWh above the reference price published by the European Union Agency for the Cooperation of Energy Regulators ('ACER') on the previous day.

(3) In their effects assessment reports published on 1 March 2023 in accordance with Article 8 of Regulation (EU) 2022/2578, the European Securities and Markets Authority ('ESMA') and ACER analysed a number of indicators to assess the impact of the MCM since the entry into force of that Regulation. ESMA and ACER concluded that the MCM had not been activated and no negative effects on the security of supply, intra-Union flows of gas or financial stability had arisen until the publication of their respective reports.

(4) Building on the indicators analysed by ESMA and ACER in their reports of 1 March 2023, the Commission extended the analysis in order to assess market developments subsequent to the time period analysed by those reports. No negative effects have been identified since Regulation (EU) 2022/2578 entered into force and the MCM has never been activated.

(5) However, severe difficulties persist for the Union's security of energy supply. The global situation on the gas market remains very tight. Gas prices are still considerably higher than they were prior to the beginning of the crisis in Europe following Russia's weaponisation of energy and Russia's war of aggression against Ukraine, with inevitable consequences on Union citizens' purchasing power and on the competitiveness of Union businesses.

(6) Gas market volatility is also a consequence of the market tightness resulting from geopolitical risks, and represents an additional risk for the economy of the Union. The episodes of pronounced price volatility observed in summer and early autumn of 2023, when prices increased by more than 50 % in a few weeks, show that markets are still fragile and remain vulnerable to even relatively small shocks on demand and supply, as evidenced by price movements following recent events such as the strike in Australian liquefied natural gas (LNG) facilities, or the disruption of the Balticconnector. The ongoing crisis in the Middle East constitutes an additional significant geopolitical risk with a potential impact on gas prices and supply.

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

(7) Global gas markets are currently very tight and are expected to remain tight for a certain time. Global LNG supply has grown only modestly in the past two years because of limited liquefaction capacity additions, outages at major export facilities and declining feed gas supply at LNG plants. Significant new LNG liquefaction capacity is set to become operational only in the course of 2025. Hence, market balances are expected to remain precarious in the immediate future.

(8) Furthermore, due to the significant decrease in Russian pipeline gas imports over the past year, the availability of gas supplies to the Union is considerably lower when compared to the pre-crisis situation. With the current level of gas imports, the Union is expected to receive approximately 20 billion cubic metres (bcm) of Russian pipeline gas in 2023, approximately 110 bcm less than in 2021. Therefore, a serious risk remains that gas shortages will occur in the Union in the short term. In view of the current tight market conditions, prices can spike again as a result of unpredictable events and sudden shocks such as: a rebound in Asian LNG demand, which could reduce the availability of gas on the global gas market; extreme weather conditions potentially affecting hydropower storage and nuclear production, which would require higher recourse to gas-fired power generation; and further possible gas supply disruptions, including a complete halt of gas imports from Russia, and further disruptions of critical infrastructure, such as the acts of sabotage against the Nord Stream 1 pipeline in September 2022 or the disruption of the Balticconnector pipeline in October 2023.

(9) Persistent severe difficulties expose the entire Union to risks of energy shortage and high energy prices. The level of gas prices could have a negative impact on the economic situation of the Union, on its industrial competitiveness and on the purchasing power of its citizens.

(10) Under those conditions, in particular in a situation of several geopolitical risks with a potential impact on gas prices, the fear of scarcity can trigger significant reactions which can have serious repercussions on gas prices. Given the current tight supply and demand balance, even moderate disruptions to the supply of gas could have a dramatic impact on gas prices and could cause serious and lasting harm to the economy and to the citizens of the Union.

(11) At the peak of the crisis, the Union adopted a strong and coordinated response to protect its citizens and its economy against excessively high prices and to make sure that gas flows to all consumers in need across borders, including in situations of gas scarcity. The Union's response pursuant to the 'REPowerEU Plan', as announced by the Commission in its communication of 18 May 2022, and subsequent initiatives, including the measures set out in Regulation (EU) 2022/2578, has contributed to an improvement in the situation. Should those measures cease to apply, the stabilised, albeit fragile, situation that the Union has achieved would be at risk and the resilience to possible future events and sudden shocks would deteriorate.

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

(13) Taking into account the fact that Regulation (EU) 2022/2578 will cease to apply on 31 January 2024, the prolongation of its period of application constitutes an emergency measure, in a spirit of solidarity between Member States in response to persistent severe difficulties in the supply of energy which entail a risk of imminent crisis and excessively high prices.

(14) Furthermore, a prolongation of the period of application of Regulation (EU) 2022/2578 is consistent with the REPowerEU Plan, which aims to protect Union citizens and the Union economy against excessive prices and energy supply shortages.

(15) This Regulation should enter into force on 1 February 2024 in order to ensure a continuous protection against excessively high prices throughout the 2023/2024 winter season.

(16) The prolongation should be temporary and should remain in force until 31 January 2025. It is necessary and proportionate due to the persistent nature of the severe difficulties and risks for the Union's security of gas supply and gas prices, and due to the uncertainty of the current situation.

(17) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(18) Regulation (EU) 2022/2578 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) 2022/2578

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

'It shall apply until 31 January 2025.'.

Article 2

Entry into force

This Regulation shall enter into force on 1 February 2024.

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

Done at Brussels, 21 December 2023.

For the Council
The President
P. NAVARRO RÍOS