Energy Council Reaches Agreement on Gas Price Cap, Gas Price Measures and Renewable Energy Permitting

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At the Energy Council on 19 December, EU Member States reached an agreement on the Council Regulation establishing a market correction mechanism which will cap gas prices on specific energy exchanges. The Energy Council also adopted the Council Regulations on improved coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks, as well as an accelerated framework to renewable energy permitting.

1. Council Regulation on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks

a) Joint purchasing and efficient operation of gas infrastructure

The Council Regulation establishes a temporary joint purchasing tool that will come into force in early spring 2023, ahead of the next storage-filling season, and aims to ensure EU solidarity in purchasing and distributing gas. It is meant to ensure more equal access for consumers across Member States to new or additional gas sources. According to the Regulation, the joint purchasing process should include the following elements:

- **Demand aggregation:** Gas purchasing companies will be able to aggregate demand using a service provider contracted by the Commission. The service provider will publish aggregated demand for offers for volumes of natural gas. Member States can require companies with a demand of at least 15 percent of the Member State's storage filling requirements to participate in the aggregation process, albeit without the obligation for the company to purchase the gas after the aggregation process, or to use this gas for storage filling. Companies will need to notify the Commission and Member States if they plan to purchase more than 5TWh/year.
- **Joint purchasing through the Energy Platform:** Companies will be able to form a gas purchasing consortium in order to enter into contracts with suppliers, decide on gas purchases and coordinate on key elements such as volumes, prices, delivery points and time of delivery, with respect for competition rules.
- **Ad hoc governance arrangements:** A steering board will be established, composed of Commission and Member State representatives, to oversee the processes of demand aggregation and coordinated gas purchasing. They will ensure transparency and provide guidance to ensure security of supply and energy solidarity.

Due to supply diversification away from Russia, gas flow patterns in the EU are changing significantly. This may lead to contractual and physical congestion of existing pipelines and EU LNG terminals. Current "use-it-or-lose-it" procedures, which manage pipeline capacity by re-auctioning capacity in cases of systematically underutilised contracted capacity, are not fit for purpose as they take at least six months to take effect. The Regulation grants gas system operators tools to react to changes in flows and contractual congestion more quickly, in particular by accelerating the marketing of unused long-term capacities in cases of short-term congestion.

In order to deal with these expected changes in gas flows, the Council Regulation frontloads provisions from the Gas Regulation of the Hydrogen and Gas Market Decarbonisation Package. Specifically, the proposal will implement an LNG Transparency Platform and a Storage Transparency Platform, as well as developing an organised market for secondary capacities.

b) Security of supply

The Regulation puts forward a number of measures to be taken by Member States in order to ensure security of supply. These measures include demand reduction, an extension of the solidarity protection obligation to critical gas-fired power plants, default rules for bilateral solidarity and the allocation of capacity in a Union or regional emergency. Many of these measures refer to the Save Gas for a Safe Winter plan that was presented by the Commission on 20 July 2022.

Demand Reduction

The European Commission has stressed the importance of demand reduction in ensuring security of supply, while holding up the Council Regulation on coordinated demand-reduction measures for gas as a reliable regulatory framework to achieve this. This includes the possibility of triggering a Union alert set out within this regulation. These alerts trigger mandatory demand reduction, with gas consumption to be lowered by 15% from 1 August 2022 to 31 March 2023.

This Council Regulation will take the following actions:

- Introducing an amendment, via an implementing act, to address recent developments, which would include an extension of the reduction period past March 2023 or a revision of the gas demand reduction target if needed.
- Implementing proposed provisions to take exceptional measures to reduce the 'non-essential consumption' of so-called Protected Customers, provided this does not affect the protection of essential consumption. These rationing measures will under no circumstances affect vulnerable consumers, who are defined as such by Member States and which could, for example, refer to energy poverty.
    - Protected Customers, as defined by the 2017 Security of Gas Supply Regulation, are household customers connected to a gas distribution network and the following enterprises or services:
        - SMEs connected to a gas distribution network
        - Essential social services connected to a gas distribution or transmission network
        - A district heating installation that delivers heating to all aforementioned categories, in case there is no possibility for fuel switching

Extension of solidarity protection obligation to critical gas fired power plants
Given that gas-fired power plants would have to be curtailed first before Member States are allowed to request solidarity measures under the [2017 Security of Gas Supply Regulation](), Member States will be able to request solidarity measures in order to avoid security of electricity supply issues. Under this Regulation, Member States may trigger a solidarity request if gas-fired power plants are at risk of not being supplied with critical gas volumes. Member States providing solidarity will also be entitled to ensure the operation of their critical gas-fired power plants first.

Default rules for bilateral solidarity
While the Commission has in the past emphasised the role of bilateral solidarity agreements, a lack of new agreements has led to the proposal of default rules for bilateral solidarity. Given that only six out of 40 required arrangements have been agreed to so far, the Council agreed on a default mechanism to ensure supply for 'solidarity protected consumers' – household customers connected to a gas distribution network, district heating installations and essential social services –and critical gas-fired power plants.

This default mechanism, which only applies in the absence of other bilateral agreements, includes:

- A definition of solidarity compensation, which includes the price for gas in the Member State providing solidarity in the day-ahead market, storage and transport costs, litigation costs for related judicial and arbitration proceedings and other indirect costs, provided that these do not exceed 100% of the price for gas.
- A deadline of three days to provide solidarity measures following the request for solidarity.
- An extension of the solidarity obligation to Member States with LNG facilities that are not directly connected with the solidarity requesting party.

c) Action on the level of gas prices

The Regulation provides two measures to act on the level of gas prices: the price formula in the default solidarity agreements and the development of a new complementary benchmark for LNG.

The Regulation proposes using the average market price of the last month preceding the request for assistance by the requesting Member State of the most relevant exchange. This is implemented to limit perverse incentives, while ensuring fair compensation for gas initially delivered under more advantageous long-term contracts.

Price setting for gas in the EU is largely based on the Title Transfer Facility (TTF), a virtual pricing location in the Netherlands. The TTF serves as a price reference, even though it is primarily a physical pipeline index focused on north-western Europe and is heavily impacted by changes in levels of Russian natural gas supplies and existing infrastructure bottlenecks. The Commission is therefore looking to develop a complementary LNG benchmark.

Development of a new complementary benchmark for LNG
Even though LNG imports are seaborne, they are priced at the same benchmark as the TTF. To decouple LNG from Russian pipeline gas, the European Commission has proposed a new complementary benchmark. The European Agency for the Cooperation of Energy Regulators (ACER) has been tasked with creating an objective price assessment tool which could act as a benchmark for EU LNG imports based on real-time information on daily transactions. In order to do so, the regulation grants ACER the necessary powers to collect the transaction data needed to establish the LNG benchmark.

On a practical level, the Regulation will mandate ACER to:

- produce and publish a daily LNG price assessment no later than two weeks after the regulation enters into force; and
- produce and publish a daily LNG benchmark starting no later than 31 March.

To produce these price assessments and benchmarks, LNG market participants will be required to provide ACER with the necessary market data, which includes parties to the contract, transaction price, contract quantities, terms of delivery and more.

d) Action to reduce price volatility

As the existing mechanisms to mitigate risks linked to significant volatility in financial markets were not designed to set a limit on the intra-day evolution of prices, they are not useful in the current energy crisis. The Regulation therefore requires all trading venues on which energy-related commodity derivatives are traded to set up temporary intra-day volatility management mechanisms, which allows them to prevent excessive price changes. This new mechanism should be established by 31 January 2023 and only apply to front-month energy-related derivatives (the most liquid contracts).

The new mechanism will be based on the observed market price at regular intervals. Furthermore, while setting up the mechanism, trading venues will consider the specificities of each front-month energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.

The Regulation sets several additional requirements for trading venues to ensure that the mechanism is designed transparently and objectively. For example, trading venues will be required to make a description of the general features of the mechanism public. However, in order to ensure fair and orderly trading, all the technical parameters of the mechanism should not be disclosed.

The European Commission will be empowered to further specify the conditions to implement the intra-day volatility management mechanism through secondary legislation. Among other things, it will include the frequency at which the price boundaries are renewed or the measures to be taken if trading moves outside those price boundaries. While setting up further conditions, the Commission will take into account the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.

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Furthermore, to ensure the coherent application of the intra-day volatility management mechanism, the European Securities and Markets Authority (ESMA) will receive regular updates from national regulators. ESMA should also coordinate with national regulators to avoid potential divergences in the application of the intra-day volatility mechanism.

The intra-day volatility management mechanism will not replace any of the circuit breakers already established by trading venues in line with the MIFID II Directive.

In regards to circuit breakers, ESMA is already carrying out the revision of the existing rules, such as ESMA Guidelines and other ESMA Level 3 measures, to further clarify certain existing concepts and reduce, in justified cases, the level of discretion left to trading venues while increasing transparency.

2. Council Regulation laying down a framework to accelerate the deployment of renewable energy

This Council Regulation front-loads some suggested amendments to the Renewable Energy Directive (RED) first presented as part of REPowerEU. The proposal temporarily accelerates permitting options to boost the rollout of renewable energy in order to mitigate the current energy crisis. By adopting this Council Regulation, the Commission looks to bridge the gap between the ongoing crisis and the eventual implementation of the amended RED, with the European Parliament set to vote on the proposal in December 2022.

The Council Regulation includes the following initiatives:

- **Overriding public interest**: The planning, construction and operation of renewable energy plants and installations, as well as their connection to the grid, the grid itself and storage assets, will be considered in overriding public interest, which will be taken into account when balancing legal interests. Member States retain the right to restrict this rule to a part of their territory or specific technologies.
- **Solar energy permitting**: The permit-granting process for the installation of solar energy equipment and energy storage assets will have a three-month deadline. A lack of a response to applications for 50kW or less within a month will result in a de facto agreement. However, relevant entities in Member States may reject applications for reasons related to grid safety, stability and reliability.
- **Repowering renewable energy power plants**: The permit-granting process for the repowering of projects, including grid connection upgrades when repowering results in increased capacity, will not exceed six months, including environmental assessments. In cases of a capacity increase of under 15%, grid connections will be permitted within three months following application.
- **Heat pump deployment**: The permit-granting process for the installation of heat pumps will not exceed three months, with a shortened one-month process for heat pumps under 50 MW.

- **Grid upgrade deadline exemption:** When plants, grid connections or grid infrastructure is being built or repowered, these time periods should not be included within the aforementioned shortened deadlines.

These permitting changes will enter into force on the day following publication in the Official Journal of the European Union and will apply for a period of 18 months. A review, which will take into account developments in security of supply and energy prices, will be carried out by 1 July 2023.

3. Council Regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices

The market correction mechanism adopted by the Energy Council functions as a safety ceiling on TTF-derivatives, which translates to a price cap on gas sold on wholesale energy exchanges. The market correction mechanism, which will apply from 15 February 2023 to month-ahead, three months-ahead and year-ahead derivative contracts, will activate automatically under the following conditions:

- The month-ahead price on TTF exceeds €180/MWh for three working days.
- The month-ahead price on TTF is €35 higher than a global LNG reference price over the course of the same three working days.

Due to these conditions, the bidding limit will be dynamic by following the global LNG reference price plus €35/MWh. This limit will apply for at least 20 working days, with automatic deactivation if the limit is below €180/MWh for three consecutive working days, or in the event of a regional or Union emergency declared by the European Commission. This will notably apply in cases of major supply issues requiring rationing.

The Regulation may be suspended by the Commission via an implementing decision under the following conditions:

- Gas demand increases by 15% in one month or 10% in two months;
- LNG imports decrease significantly; or
- traded volumes on the TTF drop significantly compared to the same period one year ago.

It may also be suspended more generally in cases of risks to security of energy supply, financial stability, intra-EU flows of gas and risks of increased gas demand.

As it is a temporary Council Regulation, the mechanism will only apply until 15 February 2024. By 23 January 2023, ESMA and ACER will publish a preliminary data report on the introduction of the market correction mechanism, with a key element assessment to follow on 1 March 2023.

Next steps

With this political agreement, the Council Regulations will come into force following publication in the Official Journal of the European Union. This concludes the European Union's energy crisis response in 2022.

Other initiatives that are expected to address the current energy crisis include:

- REPowerEU, which will be reassessed in order to enhance its effect on the European energy market;
- a revision of the EU's internal electricity market rules, expected by Q1 2023; and
- a proposal for an EU Hydrogen Bank, expected by Q3 2023.

Please note that this is a highly fluid situation, with major policy packages being presented at short notice. Other initiatives are also possible and current timelines are subject to change.

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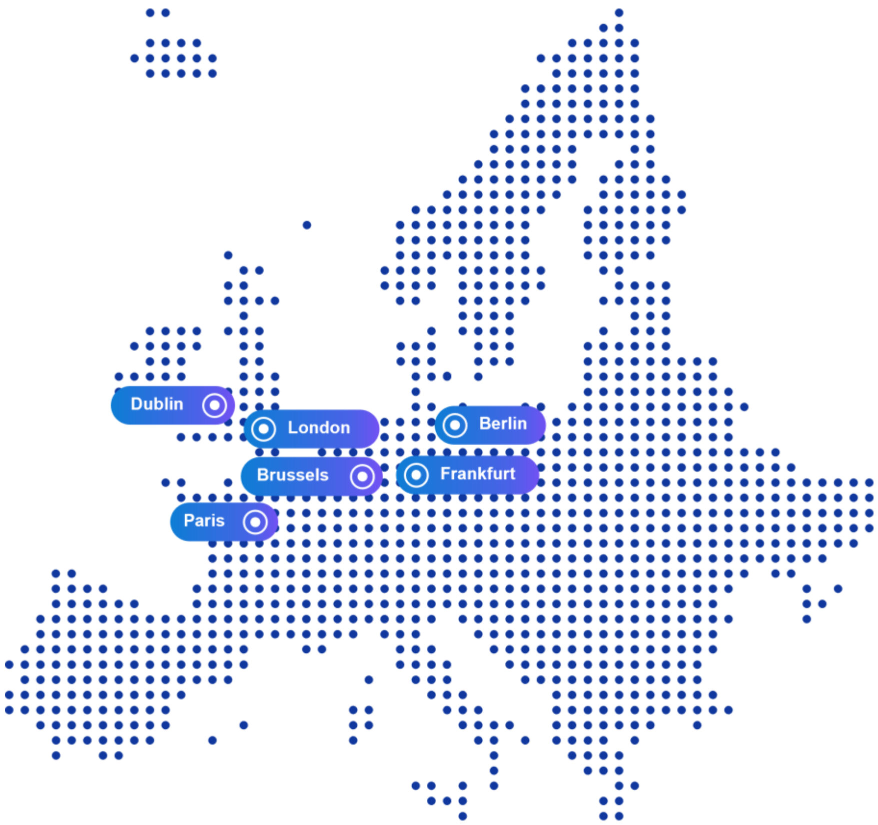

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