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⁽¹⁾ Text with EEA relevance.

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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2022/2576

of 19 December 2022

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

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 unprovoked and unjustified war of 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 the 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 of 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 (TFEU) 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 increase in energy prices undermining the Union's economy constitute such severe difficulties.
- (4) The Commission announced in its communication of 18 May 2022 entitled 'REPowerEU plan' the setting up of an EU Energy Purchase Platform together with the Member States for the common purchase of gas, liquified natural gas (LNG) and hydrogen. That announcement was endorsed by the European Council of 30 and 31 May 2022. As part of the REPowerEU Plan, the Commission also presented the strategy for an EU external energy engagement, which explains how the Union supports a global, clean and just energy transition to ensure sustainable, secure and affordable energy, including by diversifying the Union's energy supply, in particular by negotiating political commitments with existing or new gas suppliers to increase gas deliveries and thus to replace Russian gas deliveries to Europe.

- (5) The EU Energy Purchase 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 for this purpose. In particular a much stronger coordination with and among Member States vis-à-vis third countries via the EU Energy Purchase Platform would ensure the Union's collective weight is more effective.
- (6) As a situation of severe difficulties in ensuring security of supply persists, joint purchasing should help ensure more equal access for undertakings across Member States to new or additional gas sources and, to the benefit of final consumers, help ensure lower prices than might otherwise have applied to those purchasing the gas through the service provider individually.
- (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 will be able to use the UN Oil and Gas Methane Partnership 2.0 reporting framework to measure, report and verify methane emissions along the supply chain to the Union.
- (8) The new mechanism developed under this Regulation should consist of two steps. As a first step, natural gas undertakings or undertakings consuming gas established in the Union 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 to purchasers approaching them individually. In a second step, natural gas undertakings or undertakings consuming gas established in the Union 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, demand aggregation and joint purchasing should help ensure more equal access for undertakings across Member States to new or additional gas sources and, to the benefit of final consumers, help ensure lower prices than might otherwise have applied to undertakings purchasing the gas through the service provider. 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 hydrogen. However, that proposal dates from a time before the Russian Federation's war of aggression against Ukraine. Furthermore, no detailed concept was included in that 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.
- (10) Demand aggregation and joint purchasing could, therefore, strengthen Union solidarity in purchasing and distributing gas. In a 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 demand aggregation and joint purchasing.
- (11) The demand aggregation and joint purchasing should help fill up gas storage facilities in the current emergency situation, should most of the European gas storage facilities be depleted after the upcoming winter. Moreover, those measures should help purchase gas in a more coordinated manner in the spirit of solidarity.
- (12) It is therefore necessary to urgently and on a temporary basis establish demand aggregation and joint purchasing. 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 would only have 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) No requirement should be imposed 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 that 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 benefits of the joint purchasing. A mechanism could, therefore, be developed between the service provider and participating undertakings, setting out the 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 the 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 or authorities of Member States should inform the Commission and the Member States in which those undertakings are established of large planned gas purchases above 5 TWh/year. This should in particular apply to basic information regarding new or renewed contracts. The Commission should be allowed to issue recommendations to the natural gas undertakings or authorities of the relevant Member States, in particular where further coordination could improve the functioning of joint purchasing or where the launch of a tender for the purchase of gas or planned gas purchases may have a negative impact on security of supply, the internal market or energy solidarity. The issuing of a recommendation should not prevent natural gas undertakings or authorities of the relevant Member States from proceeding with the negotiations in the meantime.
- (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 this assessment.
- (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 procurement procedure in accordance with the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹⁾, which is able to develop an appropriate information technology tool ('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) When allocating access rights to the supply among undertakings aggregating demand, the service provider should apply methods that would not discriminate between smaller and larger participants of the demand aggregation and should be fair regardless of gas volumes requested by individual undertakings. For instance, the service provider should allocate access rights in proportion to the gas volumes that individual undertakings declared to buy for the given delivery time and destination. This might be relevant in cases when supply does not sufficiently cover demand in the Union market.
- (18) 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 include 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 the Union level. Also, the aggregation of demand and the purchasing of natural gas is a crucial element in ensuring the security of the gas supply and safeguarding the principle of energy solidarity in the Union.
- (19) The protection of commercially sensitive information is of utmost importance when information is made available to the Commission, the members of the ad hoc Steering Board or the service provider setting up or managing the IT tool for demand aggregation. The Commission should therefore apply effective instruments to protect this

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

information against any unauthorised access and cybersecurity risks. Any personal data that might be processed as part of demand aggregation and joint purchasing should be processed in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽²⁾ and Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽³⁾.

- (20) Joint purchasing could take different forms. It could take place through tenders or auctions organised by the service provider that aggregates the demand of natural gas undertakings and undertakings consuming gas, in order to potentially match it with offers from natural gas suppliers or producers, through the use of an IT Tool.
- (21) One of the objectives of demand aggregation and joint purchasing is to reduce the risk of unnecessary price increases driven by undertakings bidding for the same tranche of gas. Ensuring that the full benefits of joint purchasing reach final consumers ultimately depends on the decisions of the undertakings themselves. Large undertakings should be restrained even if they can sell the gas at higher prices. Undertakings benefiting from lower prices for the purchase of gas from joint purchasing should pass those benefits to the consumers. The pass-through of lower prices would be an important indicator for the success of joint purchasing, as it is crucial for consumers.
- (22) Demand aggregation and joint purchasing should be open to natural gas undertakings and undertakings consuming gas established in the Union. In particular, industrial consumers which use gas intensively in their production processes, such as producers of fertilisers, steel, ceramic and glass, may also benefit from joint purchasing by enabling them to pool their demand, to contract gas and LNG cargoes, and to structure supply according to their particular needs. The process of organising the joint purchasing should have transparent rules on how to join it and should ensure its openness.
- (23) Opening of demand aggregation and joint purchasing also for Western Balkans and the three associated Eastern Partnership countries is a declared political aim of the Union. Therefore, undertakings established in the Energy Community Contracting Parties should be allowed to participate in the demand aggregation and joint purchasing established by this Regulation provided that necessary arrangements are in place.
- (24) It is necessary to lower the dependency of the Union on gas supplied from the Russian Federation. Undertakings controlled by the Russian Federation or any Russian natural or legal person, or undertakings targeted by Union restrictive measures 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 therefore be excluded from participating in joint purchasing as well as from organising the process of joint purchasing.
- (25) In order to prevent the objective of diversification from the gas supplied from the Russian Federation being put at risk or jeopardised by participation in demand aggregation and joint purchasing of undertakings or other bodies controlled by Russian natural or legal persons or undertakings established in the Russian Federation, participation of those entities should also be excluded.
- (26) Moreover, natural gas originating in the Russian Federation should not be subject to joint purchasing. For this purpose, natural gas entering the Member States or Energy Community Contracting Parties through specific entry points should not be subject to joint purchasing since natural gas originating in the Russian Federation is likely to enter the Member States or Energy Community Contracting Parties through those entry points.

⁽²⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽³⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (27) 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 volume contracted. Member States or other stakeholders might provide financial support, including guarantees, to participants in joint purchasing. Providing financial support should take place in accordance with Union State aid rules, including the Temporary Crisis Framework adopted by the Commission on 23 March 2022, as amended on 28 October 2022, where applicable.
- (28) Filling gas storage facilities 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 gas storage facilities to ensure the security of the gas supply for winter 2023/2024 as prescribed by Regulation (EU) 2022/1032 of the European Parliament and of the Council ⁽⁴⁾. Using the demand aggregation possibility of the service provider could help the Member States to diminish those challenges. It could, within the limits of competition law, in particular 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.
- (29) In order to ensure that joint purchasing contributes to filling gas storage facilities in line with the intermediate targets set out in Regulation (EU) 2022/1032, Member States should take appropriate measures to ensure that natural gas undertakings and undertakings consuming gas under their jurisdiction use the process organised by the service provider as one possible means to meet the filling targets.
- (30) Regulation (EU) 2022/1032 requires that Member States fill their gas storage facilities up to 90 % by 1 November 2023. This target is higher than the target for 1 November 2022 (80 %). Joint purchasing could help the Member States 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 their gas storage facilities cannot be filled. Member States should require that volumes equivalent to at least 15 % of their storage filling target volume for next year, which is equivalent to around 13,5 billion cubic metres for the Union as a whole, be included by their undertakings in the demand aggregation process. Member States without underground gas storage facilities in their territory should participate in the demand aggregation process with volumes equivalent to 15 % of their burden-sharing obligation under Article 6c of Regulation (EU) 2017/1938 of the European Parliament and of the Council ⁽⁵⁾.
- (31) Demand aggregation and joint purchasing does not prescribe the management of gas storage facilities, including strategic gas storage facilities, and is without prejudice to Regulations (EU) 2017/1938 and (EU) 2022/1032.
- (32) In order to effectively use the joint purchasing and to conclude gas agreements with suppliers offering gas to the service provider, undertakings should be able to coordinate conditions of the purchase, such as volumes, gas price, delivery points and time, within the limits of Union law. 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 of this Regulation should 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.
- (33) 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 undertakings as possible to aggregate demand through the service provider and designed in a way that is compatible with Union competition law. Additionally, joining forces into a single gas purchasing consortium should bring strengthened Union negotiation power into the market and enable advantageous conditions that would hardly be achieved by smaller undertakings or in the case of fragmented action.

⁽⁴⁾ 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).

⁽⁵⁾ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

- (34) The set-up and implementation of gas purchasing consortia under this Regulation should be done in compliance with the Union's competition rules, as applicable in light of the current exceptional market circumstances. The Commission has indicated that it is ready to accompany undertakings in the design of such a gas purchasing consortium and to issue a decision, pursuant to Article 10 of Council Regulation (EC) No 1/2003 ⁽⁶⁾, on the 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 Union competition rules.
- (35) 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 those measures 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 concluded under the joint purchasing.
- (36) In order to optimise the LNG absorption capacity of the Union's LNG facilities and the usage of gas 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 times of emergency and changes in gas flows from pipeline gas from the Russian Federation to LNG. The Commission proposals for a Directive on common rules for the internal markets in renewable and natural gases and in hydrogen and for a Regulation on the internal markets for renewable and natural gases and for hydrogen contain provisions to this effect. Frontloading those provisions as part of the crisis response is crucial to use the LNG facilities and gas storage facilities more efficiently and with the necessary transparency. Regarding Europe-wide transparency platforms, it should be possible for Member States to use the existing Union's transparency platforms for LNG facilities and gas storage facilities to ensure a swift implementation of this Regulation. As regards a secondary booking platform, the LNG facility operators and gas storage facility operators should be able to make use of their existing platforms by enriching them with the necessary features.
- (37) In relation to long-term bookings of gas transportation capacities, the existing congestion management rules provide for 'use-it-or-lose-it' procedures. Those procedures, however, are slow as they take at least six months before they show effect, and require the heavy administrative procedures of national regulatory authorities. Therefore those rules should be strengthened and simplified in order to provide the gas system operators with 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.
- (38) 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 underutilisation of the contracted firm capacity. Such underutilisation should be defined as the situation where a network user has used or offered on the market on average less than 80 % of the booked firm capacity in the last 30 days. In the case of underutilisation, the transmission system operator should publish the available capacity for the next monthly auction and subsequently auction it. Alternatively, the national regulatory authorities should be able to decide to use a firm day ahead 'use-it-or-lose-it' mechanism instead. In this latter case, the mechanism should apply to all interconnection points, whether congested or not.
- (39) Companies purchasing gas or offering to deliver gas to predefined destinations via joint purchasing should secure transport capacities from the points of delivery of gas to its destination. The applicable internal market rules, including the gas network codes, apply to help in securing the transport capacities. The national regulatory authorities, transmission system operators, LNG facility operators and gas storage facility operators as well as

⁽⁶⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

booking platforms should explore possibilities of how to improve the infrastructure usage in an affordable manner by exploring the possibility for development of new transport capacity products linking intra-EU interconnection points, LNG facilities and gas storage facilities while respecting applicable internal market rules, in particular the Commission Regulation (EU) 2017/459 ⁽⁷⁾.

- (40) While the extraordinary crisis circumstances lead to changes of flow patterns in the European gas networks, resulting in extraordinarily high congestion rents at certain interconnection points in the Union, some flexibilities could be found in dialogue with the relevant regulatory authorities of the impacted Member States under the existing rules, if appropriate with the facilitation of the Commission.
- (41) The invasion of Ukraine by the Russian Federation has led to major uncertainties and disruptions in the European natural gas markets. As a result, those markets have for the past months reflected the uncertainty on the supply, and this uncertainty has turned the resulting market expectation into extremely high and volatile natural gas prices. This has in turn put additional pressure on market participants and undermined the smooth functioning of the Union energy markets.
- (42) Directive 2014/65/EU of the European Parliament and of the Council ⁽⁸⁾ sets out rules to ensure the proper functioning of trading venues on which energy-related commodity derivatives are also traded. That Directive provides that Member States are to require a regulated market to have mechanisms in place to guarantee fair and orderly functioning financial markets. However, such mechanisms are not intended to set a limit on the intra-day evolution of prices and have failed to prevent the episodes of exceptional volatility observed in the gas and electricity derivatives markets.
- (43) 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 such mechanisms apply to the most relevant contracts, they should apply to energy-related derivatives the maturity of which does not exceed 12 months.
- (44) Trading venues offering 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 trading venues on which energy-related commodity derivatives are traded 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 mechanisms should be undertaken, to ensure that operators essential for the security of the 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.
- (45) The intra-day volatility management mechanisms should ensure that excessive movements in prices within a trading day are prevented. Those mechanisms 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 limits should be set up by trading venues taking into account the specificities of each relevant energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.

⁽⁷⁾ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (OJ L 72, 17.3.2017, p. 1).

⁽⁸⁾ 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).

- (46) When determining the opening price for the purpose of setting the first reference price in a trading day, the trading venue should rely on the methodology it normally applies to determine the price at which a specific energy-related commodity derivative first trades upon the start of the trading day. In determining the opening price after any interruption of trading that might occur during the trading day, the trading venue should apply the methodology it deems most appropriate to ensure that orderly trading resumes.
- (47) Trading venues should be able to implement the intra-day volatility management mechanism either by integrating it into their existing circuit breakers already established in accordance with Directive 2014/65/EU, or as an additional mechanism.
- (48) In order to ensure transparency in the functioning of the intra-day volatility management mechanism that they implement, the trading venues should without undue delay make public a description of its general features for whenever they apply a modification. 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.
- (49) Where the information collected by the European Securities and Markets Agency (ESMA) about the implementation of the volatility management mechanism by trading venues on which energy-related commodity derivatives are traded in the Union show that higher consistency of implementation of the mechanism is needed to ensure more efficient management of excessive price volatility across the Union, the Commission should be able to specify uniform conditions of implementation of the intra-day volatility management mechanism, such as 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.
- (50) 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 granted until 31 January 2023 to set up that 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.
- (51) The obligations and restrictions imposed on trading venues and traders by the intra-day volatility management mechanisms do not go beyond what is necessary in order to allow energy firms to continue participating in gas and electricity markets and meet their hedging needs, thereby contributing to the security of the energy supply for final consumers.
- (52) In order to ensure an efficient application of the intra-day volatility management mechanisms, competent authorities should supervise their implementation by trading venues, and report regularly to ESMA on such implementation. In order to ensure a consistent implementation of the intra-day volatility management mechanisms, competent authorities should also ensure that divergences in the implementation of those mechanisms by trading venues are duly justified.
- (53) To address potential divergences in the application of the intra-day volatility management mechanisms 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 mechanisms are implemented by trading venues across jurisdictions in the Union.

- (54) Given the unprecedented reduction of the 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 to the Union, the European Union Agency for the Cooperation of Energy Regulators (ACER) established by Regulation (EU) 2019/942 of the European Parliament and of the Council ⁽⁹⁾ should collect all the LNG market data that are necessary to establish a daily LNG price assessment.
- (55) The price assessment should be undertaken based on all transactions pertaining to LNG deliveries to the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to 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 the 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 transaction prices and, as of 31 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 the 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 urgent need to introduce the LNG price assessment, the first publication of that assessment should take place no later than 13 January 2023.
- (56) The current empowerments vested on ACER by Regulation (EU) No 1227/2011 of the European Parliament and of the Council ⁽¹⁰⁾ and Commission Implementing Regulation (EU) No 1348/2014 ⁽¹¹⁾ (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.
- (57) 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, 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 can be adopted in accordance with the ordinary legislative procedure.
- (58) 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 prices and quantities 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.
- (59) LNG 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. Those LNG market participants should be subject to the obligations and prohibitions applying to market participants in accordance with the REMIT.

⁽⁹⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).

⁽¹⁰⁾ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

⁽¹¹⁾ 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 (OJ L 363, 18.12.2014, p. 121).

- (60) 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.
- (61) 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.
- (62) 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 to bringing about more solidarity between Member States in procuring limited LNG supplies.
- (63) 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 the REMIT and ACER will keep sensitive business information confidential.
- (64) In addition to the circuit breaker and the LNG benchmark other interventions are available including a temporary dynamic price corridor, as requested in the conclusions of the European Council of 20 and 21 October 2022, taking into account the following safeguards: it should apply to 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 temporary dynamic price corridor; and it should be without prejudice to over-the-counter gas trades, should not jeopardise the Union's security of gas supply, should depend on progress made in implementing the gas savings target, should not lead to an overall increase in gas consumption, should be designed in such a manner that it will not prevent market-based intra-EU flows of gas, should not affect the stability and orderly functioning of energy derivative markets and should take into account the gas market prices in the different organised market places across the Union.
- (65) 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, by way of derogation from Article 13(1), (3) and (8) of Regulation (EU) 2017/1938, be, temporarily, able to request emergency solidarity measures also 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 supplies to their solidarity protected customers or other essential services, such as district heating, and the operation of their critical gas-fired power plants are not endangered when providing solidarity to another Member State.
- (66) A maximum limit of the critical gas volumes needed in each Member State to preserve the security of the electricity supply should be established so as to avoid unnecessary or abusive solidarity requests or undue limitations to solidarity provided to a Member State in need. The methodology used in the European Network of Transmission System Operators for Electricity (ENTSO-E) Winter Outlook provides a basis identifying critical gas volume for electricity security of supply and for setting such limits. The critical gas volumes for electricity security of supply calculated by ENTSO-E reflect the volumes of gas absolutely needed for ensuring pan-European electricity adequacy

using all market resources, always considering gas to be the last in the order of merit. The ENTSO-E methodology is based on a large sample of worst case climate and forced outages scenarios. The fact that the ENTSO-E methodology does not take into account all combined heat and power does not prevent Member States from considering district heating installations of protected customers as protected pursuant to the definition of Regulation (EU) 2017/1938. Member States for which the electricity generation relies exclusively on LNG deliveries with no significant storage capacities, critical gas volumes for electricity security of supply should be adapted accordingly. The critical gas volume for electricity security of supply can be lower than the historic level of gas consumed for electricity generation since electricity adequacy can be provided by other means, including by providing supplies between Member States.

- (67) This however does not exclude that actual minimum gas volumes required by a Member State requesting solidarity or a Member State providing solidarity could be higher than the values modelled by ENTSO-E to avoid an electricity crisis. In such cases, the Member State requesting solidarity or the Member State providing solidarity should be able to exceed the maximum values set out in this Regulation if it can justify that this is necessary to avoid an electricity crisis, such as cases that require to call upon frequency restoration reserves and alternative fuels, or in exceptional scenarios which were not taken into account in the ENTSO-E Winter Outlook, in particular considering the hydrological levels or unexpected developments. Critical gas volume for electricity security of supply by definition includes all the gas needed to ensure a stable electricity supply, and therefore includes the electricity required to produce and transport gas as well as crucial sectors of critical infrastructure and installations crucial for the functioning of military, national security and humanitarian aid services.
- (68) The restrictions imposed on market operators by the extension of solidarity protection to critical gas volumes are necessary to ensure security of the gas supply during a situation of reduced gas supply and increased demand during the winter season. Those restrictions build on existing measures laid down in Regulation (EU) 2017/1938 and Council Regulation (EU) 2022/1369 ⁽¹³⁾ respectively, aiming at making those measures more effective under the current circumstances.
- (69) This Regulation is without prejudice to the freedom of the Member States to take into account the potential long-lasting damage to industrial installations when prioritising the demand that should be reduced or curtailed to be able to provide solidarity to another Member State.
- (70) 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, where such reduction is physically feasible without affecting essential uses. However, any reduction measures taken by the Member States should strictly be limited to non-essential consumption and by no means reduce the basic use by protected customers nor limit their ability to heat their homes adequately.
- (71) 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.

⁽¹³⁾ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

- (72) 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 without prejudice to interruption of supplies due to technical reasons.
- (73) Member States are free to decide on whether and how to distinguish between essential consumption and non-essential consumption of protected customers. A Member State requesting solidarity measures which decides not to make this distinction, should not be required to demonstrate that the non-essential consumption could be reduced before the request for solidarity. A Member State providing solidarity should not be required to make a distinction between essential and non-essential customers to determine the volume of gas available for solidarity measures.
- (74) In the case of an emergency, Member States, as well as the Union, should ensure that gas flows within the internal market. This means that measures taken at 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 Union's 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. By derogation from Article 12(6) of Regulation (EU) 2017/1938, 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 the modification of such national measures if it observes threats to the security of the 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.
- (75) The principle of energy solidarity is a general principle under Union law ⁽¹³⁾ 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 the gas supply in a spirit of solidarity. In times of gas supply disruptions at Union, regional or national level, and a significant switch from pipeline gas to LNG, Member States in a severe crisis situation 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 or through a third country or other Member States, provided that the Member State requesting solidarity has exhausted all market-based measures in its emergency plan, including LNG purchases in the global market. It is therefore appropriate to expand the obligation to provide solidarity to non-connected Member States with LNG facilities, taking into account the differences between pipeline gas and LNG markets and infrastructure, including LNG vessels and carriers, in imposing obligations on operators, and taking into account the lack of enforcement powers with respect to LNG assets such as LNG carriers and including possibilities to swap between natural gas and LNG if there is no gas liquefaction facility on the territory of a Member State providing solidarity.
- (76) A Member State with LNG facilities, when providing solidarity to another Member State, should not be held responsible for bottlenecks or other potential issues that may occur outside its own territory or that result from lack of enforcement powers over LNG vessels and carriers owned by a third-country operator, where such bottlenecks or other issues impact the actual flow of gas and ultimately prevent the volume of gas needed reaching the Member State requesting solidarity. Where the Member State providing solidarity does not have enforcement powers, it should not be held responsible for the lack of swapping of an LNG cargo for natural gas.

⁽¹³⁾ Judgment of the Court of Justice of 15 July 2021, *Germany v Poland*, C-848/19 P, ECLI:EU:C:2021:598.

- (77) 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. To facilitate the implementation of the solidarity mechanism, Member States are required to agree on a number of technical, legal and financial issues in their bilateral arrangements, pursuant to Article 13(10) of Regulation (EU) 2017/1938.
- (78) Despite a legal obligation to conclude bilateral solidarity arrangements by 1 December 2018, only a few 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 renewable and natural gases and for hydrogen included a first model for a template solidarity agreement. However, as that template was developed before the invasion of Ukraine by the Russian Federation, 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 by derogation from 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. In particular, clearer default rules should be introduced for the compensation of the costs of the gas provided and, in a spirit of solidarity between the Member States, for the limitation of potential additional costs the Member State providing solidarity may charge. The rules on solidarity measures pursuant to Article 13 of Regulation (EU) 2017/1938 should remain applicable unless expressly provided otherwise.
- (79) Solidarity should, in principle, be provided based on fair compensation directly paid by the Member State requesting solidarity or its delegated entities. The compensation should cover the gas price, any actual or potential storage costs, the cross-border transportation and associated costs. The compensation should be fair, both for the Member States requesting solidarity as well as for the Member States providing solidarity.
- (80) The current crisis is leading 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 Regulation (EU) 2017/1938. The intra-day 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 in extreme market circumstances, it would be problematic to take the fluctuating intra-day market price as the basis for the default price of the solidarity measure. The gas price should reflect the average day-ahead market price of the day preceding solidarity request in the Member State providing solidarity. Taking this into account, the compensation is still based on the market price, as stipulated in Commission Recommendation (EU) 2018/177 ⁽¹⁴⁾. The average day-ahead market price is more independent from the volatility and very high spot prices during crisis situations, and as such, limits any perverse incentives.
- (81) As highlighted in Recommendation (EU) 2018/177, 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 and 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 fully cover other costs, such as damages or costs of legal proceedings, occurring in the Member State providing solidarity, unless another solution is agreed upon in a solidarity agreement. Experience has shown that the obligation for the receiving Member State to bear the full financial risk for all direct or indirect compensation costs which may possibly result from the provision of solidarity

⁽¹⁴⁾ Commission Recommendation (EU) 2018/177 of 2 February 2018 on the elements to be included in the technical, legal and financial arrangements between Member States for the application of the solidarity mechanism under Article 13 of Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply (OJ L 32, 6.2.2018, p. 52).

measures is a key obstacle to the conclusion of solidarity agreements. The unlimited liability should therefore be alleviated in the default rules for solidarity agreements, to enable the conclusion of the outstanding agreements as soon as possible, as those agreements are a cornerstone of Regulation (EU) 2017/1938, reflecting the Union principle of energy solidarity. As far as the compensation for indirect costs does not exceed 100 % of the price for gas, is justified and is not covered by the price of gas, those costs should be covered by the receiving Member State.

However, if the requested cost goes beyond 100 % of the price for gas the Commission should, after consulting relevant competent authorities, establish a fair cost compensation and therefore have the possibility to verify whether the limitation of the cost compensation is appropriate. The Commission should therefore be able to allow for a different compensation than that set out in Regulation (EU) 2017/1938 in individual cases, taking into account the specific circumstances of the case, including measures to save gas and reduce gas demand, and the principle of energy solidarity. In the assessment, the Commission should give due consideration to avoid excessive indirect costs as a consequence of curtailment or disconnection of customers of gas.

- (82) The rules of this Regulation related to the payment of compensation for solidarity measures between Member States are without prejudice to the principles of compensation for damages under national constitutional law.
- (83) The conclusion of solidarity arrangements with neighbouring Member States, as required pursuant to Article 13(10) of Regulation (EU) 2017/1938, is the most appropriate instrument to implement the obligation to provide solidarity measures pursuant to Article 13(1) and (2) of that Regulation. Member States should therefore be allowed to depart from the default compensation rules set out in this Regulation if they agree on other rules in a solidarity agreement. In particular, Member States should retain the possibility to agree bilaterally upon additional compensation, covering other costs, such as the full costs incurred from an obligation to pay compensation in the Member State providing solidarity, including damages to curtailed industry. In bilateral solidarity agreements, such costs can be included in the compensation if the national legal framework provides for the obligation to pay damages to curtailed industry, including compensation for economic damage, in addition to the gas price.
- (84) As a last-resort measure, default solidarity mechanism should only be triggered by a Member State requesting solidarity where the market fails to offer the necessary gas volumes, including LNG and those offered voluntarily by non-protected customers, to meet the demand from solidarity protected customers. Pursuant to Regulation (EU) 2017/1938, Member States are required to have exhausted all measures in their emergency plans including forced curtailment down to the level of solidarity-protected customers.
- (85) 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), point (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 Member States providing solidarity to respond without delay. The response of the Member States providing solidarity should include information on the volume of gas that could be delivered to the Member State requesting solidarity, 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.
- (86) The Member State requesting solidarity should be able to receive solidarity from multiple Member States. The default solidarity mechanism should be triggered only if the Member State providing solidarity has not concluded any bilateral arrangement with the Member State requesting solidarity. In the case of a bilateral arrangement between the Member State requesting solidarity and the Member State providing solidarity, that arrangement should prevail and apply between them.

- (87) 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.
- (88) Member States and the Energy Community Contracting Parties may also conclude voluntary arrangements for the application of solidarity measures.
- (89) 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 ⁽¹⁵⁾.
- (90) 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 to achieve that objective,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation establishes temporary rules on:
 - (a) the expedited setting up of a service allowing for demand aggregation and joint gas purchasing by undertakings established in the Union;
 - (b) secondary capacity booking and transparency platforms for LNG facilities and for gas storage facilities; and
 - (c) congestion management in gas transmission networks.
2. This Regulation introduces temporary mechanisms to protect citizens and the economy against excessively high prices, by way of a temporary intra-day volatility management mechanism for excessive price movements and an ad hoc LNG benchmark, to be developed by the European Union Agency for the Cooperation of Energy Regulators (ACER).
3. This Regulation establishes temporary measures, for the case of a gas emergency, to distribute gas fairly across borders, to safeguard gas supplies for the most critical customers and to ensure the provision of cross-border solidarity measures.

Article 2

Definitions

For the purposes 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 liquefied natural gas (LNG), which is responsible for the commercial, technical or maintenance tasks related to those functions, but shall not include final customers;

⁽¹⁵⁾ 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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (2) '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 the LNG terminals used for storage;
- (3) 'gas storage facility' means a facility used for the stocking of natural gas and owned 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;
- (4) 'service provider' means an undertaking established in the Union and contracted by the Commission through a procurement procedure under Regulation (EU, Euratom) 2018/1046 to organise the joint purchasing and fulfil the tasks set out in Article 7 of this Regulation;
- (5) 'IT tool' means an IT tool through which the service provider aggregates the demand of natural gas undertakings and undertakings consuming gas and seeks offers from natural gas suppliers or producers to match that aggregated demand;
- (6) 'LNG trading' means bids, offers or transactions for the purchase or sale of LNG:
- (a) that specify delivery in the Union;
 - (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' means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis;
- (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) '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 Council ⁽¹⁶⁾, traded on a trading venue and the underlying of which is electricity or gas, and whose maturity does not exceed 12 months;
- (13) 'competent authority', unless otherwise specified, means a competent authority as defined in Article 4(1), point (26), of Directive 2014/65/EU;
- (14) 'critical gas volume for electricity security of supply' 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 ⁽¹⁷⁾ of the European Parliament and of the Council;

⁽¹⁶⁾ 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).

⁽¹⁷⁾ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1).

- (15) 'protected customer' means a protected customer as defined in Article 2, point (5), of Regulation (EU) 2017/1938;
- (16) 'solidarity protected customer' means a solidarity protected customer as defined in Article 2, point (6), of Regulation (EU) 2017/1938.

CHAPTER II

BETTER COORDINATION OF GAS PURCHASES

SECTION 1

Coordination of gas purchases in the Union

Article 3

Transparency and information exchange

1. For the sole purpose of better coordination, natural gas undertakings or undertakings consuming gas established in the Union or authorities of Member States, which intend to launch a tender to purchase gas or open the negotiations with natural gas producers or suppliers from third countries on the purchase of gas, of a volume above 5 TWh/year, shall inform the Commission and where applicable the Member State in which those undertakings are established of the conclusion of a gas supply contract or a memorandum of understanding or the launch of a tender to purchase gas.

The notification pursuant to the first subparagraph shall be given at least six weeks before the intended conclusion or launch, or within a shorter period provided that the negotiations are opened closer to the date of signing of the contract, but no later than two weeks before the intended conclusion or launch. Such notification shall be limited to the following basic information:

- (a) the identity of the contract partner or partners or the purpose of the tender to purchase gas;
- (b) the relevant volumes;
- (c) the relevant dates; and
- (d) the service provider organising such purchases or tenders on behalf of a Member State, where applicable.

2. If the Commission considers that further coordination with regards to the launch of a tender for the purchase of gas or planned gas purchases of natural gas undertakings or undertakings consuming gas established in the Union or of authorities of Member States could improve the functioning of joint purchasing or that the launch of a tender for the purchase of gas or planned gas purchases may have a negative impact on the internal market, on security of supply or on energy solidarity, the Commission may issue a recommendation to the natural gas undertakings or undertakings consuming gas established in the Union or authorities of Member States to consider appropriate measures. In such a case the Commission, where applicable, shall inform the Member State in which the undertaking is established.

3. The Commission shall inform the ad hoc Steering Board referred to in Article 4 before issuing any of the recommendations set out in paragraph 2.

4. When providing information to the Commission in accordance with paragraph 1, 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.

5. 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 confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available. Commission representatives shall handle such information with due confidentiality.

6. 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 and apply effective instruments to protect the data physically. 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 six 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 ad hoc 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 its establishment.

4. The Commission shall consult the ad hoc Steering Board on the draft recommendation provided by the Commission pursuant to Article 3(2), in particular as to whether the relevant gas purchases or a tender for the purchase of gas enhance security of supply in the Union and are compatible with the principle of energy solidarity.

5. The Commission shall also inform the ad hoc Steering Board about the impact 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.

6. Where confidential information is forwarded to them in accordance with Article 3(6), members of the ad hoc Steering Board shall handle such information with due confidentiality. The information exchanged shall be limited to information that is relevant and proportionate to the purpose of such exchange.

SECTION 2

Demand aggregation and joint purchasing

Article 5

Temporary service contract with a service provider

1. By derogation from Article 176 of Regulation (EU, Euratom) 2018/1046, the Commission shall contract the necessary services of an entity established in the Union through a procurement procedure under Regulation (EU, Euratom) 2018/1046, acting as a service provider to fulfil the tasks set out in Article 7 of this Regulation.

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 that 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 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 information necessary for the fulfilment of the tasks set out 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 10.

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 have experience in cross-border transactions;
 - (c) the service provider shall not be:
 - (i) targeted by 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 between the Commission and the service provider shall be put in place to ensure that the service provider when carrying out its tasks in accordance with Article 7 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 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 as referred to Article 2, point (20), of Directive 2009/73/EC of the European Parliament and of the Council ⁽¹⁸⁾, except for an entity unbundled in accordance with Chapter IV of that Directive.

⁽¹⁸⁾ 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 and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

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, with the support 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 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 demand aggregation and joint purchasing and, in particular:
 - (a) aggregate the demand of natural gas undertakings and undertakings consuming gas with the support of the IT tool;
 - (b) seek offers from natural gas suppliers or producers, to match the aggregated demand with the support of the IT tool;
 - (c) allocate access rights to supply, taking into account a proportionate distribution between smaller and larger participants of offered gas volumes among the natural gas undertakings and undertakings consuming gas participating in aggregating demand. Where the aggregated demand exceeds the received supply offers, the allocation of access rights shall be proportionate to the demand declared by the participating undertakings during the demand aggregation stage for a given delivery time and location;
 - (d) verify, accredit and register the users of the IT tool; and
 - (e) provide any ancillary services to the users of the IT tool, including services to facilitate the conclusion of contracts, or to the Commission necessary for the correct performance of the operations as provided in the service contract referred to in Article 5.
2. The conditions relating to the tasks of the service provider, namely regarding registration of users, publication and reporting, shall be determined in the service contract referred to in Article 5.

Article 8

Participation in the demand aggregation and joint purchasing

1. Participation in the demand aggregation and joint purchasing shall be open and transparent to all natural gas undertakings and undertakings consuming gas established in the Union regardless of the volume requested. Natural gas undertakings and undertakings consuming gas shall be precluded from participating as suppliers, producers and purchasers in demand aggregation and joint purchasing, if they are:
 - (a) targeted by 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 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. Natural gas undertakings and undertakings consuming gas established in the Energy Community Contracting Parties may participate in the demand aggregation and joint purchasing provided that the necessary measures or arrangements are in place to allow their participation in the demand aggregation and joint purchasing pursuant to this Section.

Article 9

Natural gas supplies excluded from joint purchasing

Natural gas supplies originating in the Russian Federation shall not be subject to joint purchasing, including natural gas supplies entering the Member States or Energy Community Contracting Parties through the following entry points:

- (a) Greifswald
- (b) Lubmin II
- (c) Imatra
- (d) Narva
- (e) Värskä
- (f) Luhamäa
- (g) Sakiai
- (h) Kotlovka
- (i) Kondratki
- (j) Wysokoje
- (k) Tietarowka
- (l) Mozyr
- (m) Kobryn

- (n) Sudzha (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 and undertakings consuming gas 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 referred to in Article 6a and 20 of Regulation (EU) 2017/1938.
2. Member States with underground gas storage facilities shall require natural gas undertakings and undertakings consuming gas 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 filling targets referred to in Articles 6a and 20 of Regulation (EU) 2017/1938.
3. Member States without underground gas storage facilities shall require natural gas undertakings and undertakings consuming gas 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 volumes corresponding to the cross-border filling targets referred to in Article 6c and 20 of Regulation (EU) 2017/1938.
4. The natural gas undertakings and undertakings consuming gas participating in demand aggregation under a mandatory obligation may decide not to purchase the gas after the aggregation process. The gas purchased may be used for other purposes than storage filling.

Article 11

Gas purchasing consortium

Natural gas undertakings and undertakings consuming gas participating in demand aggregation organised by the service provider may, on a transparent basis, 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 (EC) No 1/2003, as well as with the transparency requirement pursuant to Article 3 of this Regulation.

SECTION 3

Measures to enhance the use of LNG facilities, gas storage facilities and pipelines*Article 12***Secondary capacity booking platform for LNG facility users and gas storage facility users**

LNG facility users and gas storage facility users, who wish to re-sell their contracted capacity on the secondary market, as defined in in Article 2, point (6), of Regulation (EC) No 715/2009 of the European Parliament and of the Council ⁽¹⁹⁾, shall be entitled to do so. By 28 February 2023, LNG facility operators and gas storage facility operators, individually or regionally, shall set up or make use of an existing transparent and non-discriminatory booking platform for LNG facility users and gas storage facility users to re-sell their contracted capacity on the secondary market.

*Article 13***Transparency platforms for LNG facilities and gas storage facilities**

1. By 28 February 2023, LNG facility operators and gas storage facility operators shall publish all the information required by Article 19 of Regulation (EC) No 715/2009 on a European LNG Transparency Platform and a European Storage Transparency platform, respectively, in a transparent and user-friendly manner. Regulatory authorities may request those operators to make public any additional information relevant for system users.
2. LNG facilities that have been granted an exemption from third party access rules pursuant to Article 36 of Directive 2009/73/EC, and gas storage facility operators under the negotiated third party access regime referred to in Article 33(3) of that Directive, shall make public final tariffs for infrastructure by 31 January 2023.

*Article 14***More effective use of transmission capacities**

1. Transmission system operators shall offer underutilised contracted firm capacity at interconnection points and virtual interconnection points as a monthly capacity product and as daily and within-day capacity products for the month in the event 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 at an interconnection point or virtual interconnection point in the preceding calendar month. The transmission system operator shall monitor the unused capacity and shall inform the network user on the amount of capacity to be withdrawn at the relevant interconnection point or virtual interconnection point at the latest before notifying the amount of capacity to be offered for the upcoming rolling monthly capacity auction in accordance with Regulation (EU) 2017/459.
3. The amount of capacity to be offered shall equal the difference between the average utilisation for the preceding calendar month and 80 % of the firm capacity which was contracted for a duration longer than a month.
4. Available capacity offered in an auction in accordance with Regulation (EU) 2017/459 shall have priority over underutilised capacity included in an auction pursuant to paragraph 2 when allocating capacity.

⁽¹⁹⁾ 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 (OJ L 211, 14.8.2009, p. 36).

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

6. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent that the capacity is not reallocated by the transmission system operator.

7. Before offering underutilised firm capacity in accordance with this Article, the transmission system operator shall analyse the potential effects at every interconnection point it operates and shall inform the competent national regulatory authority. By derogation from paragraphs 1 to 6 of this Article, and regardless of whether those interconnection points are congested or not, national regulatory authorities may decide to introduce one of the following mechanisms at all interconnection points:

- (a) a firm day ahead use-it-or lose-it mechanism in accordance with Regulation (EU) 2017/459 and taking into consideration point 2.2.3 of Annex I of Regulation (EC) No 715/2009;
- (b) an oversubscription and buy-back scheme in accordance with point 2.2.2 of Annex I of Regulation (EC) No 715/2009 offering at least 5 % additional capacity in relation to the technical capacity at the relevant interconnection point; or
- (c) at least offer initially not nominated capacity on a day-ahead and within-day basis, to be allocated as interruptible capacity.

Paragraphs 1 to 6 of this Article shall automatically apply if one of the alternative mechanisms pursuant to the first subparagraph is not applied by 31 March 2023.

8. Before taking the decision referred to in paragraph 7, the national regulatory authority shall consult with the national regulatory authority of the adjacent Member State and take account of that authority's opinions. In the case that the entry-exit system is covering more than one Member State where more than one transmission system operator is active, national regulatory authorities of the concerned Member States shall decide jointly on the application of paragraph 7.

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. As soon as possible, but by no later than 31 January 2023, each trading venue on which energy-related commodity derivatives are traded shall set up, for each 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 may not 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 energy-related commodity derivatives. When setting up the intra-day volatility management mechanism, trading venues shall also ensure that the implementation of those measures does not prevent the formation of reliable end-of-day closing prices.

2. For each 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 price determined upon the opening of the relevant trading session. The subsequent reference prices shall be the last market price observed at regular intervals. In the event 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 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 or whenever they have applied a modification.
6. Trading venues shall implement the intra-day volatility management mechanism either by integrating it into their existing circuit breakers already established in accordance with Directive 2014/65/EU or as an additional mechanism.
7. Where a trading venue intends to modify the calculation method for the price boundaries applicable to a given energy-related commodity derivative, it shall inform the competent authority of the intended modifications without undue delay.
8. Where the information collected by the European Securities and Market Authority (ESMA) in accordance with Article 16(3) show that further consistency of implementation of the mechanism is needed to ensure more efficient management of excessive price volatility across the Union, the Commission may adopt implementing acts specifying the uniform principles for the implementation of the intra-day volatility management mechanism, taking into account the specificities of each 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 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 those price boundaries including provisions to ensure the formation of reliable closing prices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29.

Article 16

Role of competent authorities

1. Competent authorities shall supervise the implementation of the intra-day volatility management mechanisms. 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 energy-related commodity derivative concerned.
2. Competent authorities shall ensure that trading venues implement appropriate preliminary mechanisms ensuring that excessive volatility in 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 ESMA on the implementation of the intra-day volatility management mechanism by trading venues they supervise within three weeks from the date referred to in Article 15(1) and at least on a quarterly basis.

*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 16(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 competent authorities. By 30 June 2023, 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 the amendment of this Regulation to the Council.

*SECTION 2****Empowering 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 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.
2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.
3. By way of derogation from Article 3(4), point (b), of Regulation (EU) No 1227/2011, the market participant obligations and prohibitions of Regulation (EU) No 1227/2011 shall apply to LNG market participants. The powers conferred on ACER under Regulation (EU) No 1227/2011 and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.

*Article 19***Publication of LNG price assessments and benchmark**

1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET 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 the publication of the daily LNG price assessment (18:00 CET).

2. The Commission may adopt implementing acts specifying the point in time by which LNG 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 29.

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 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 LNG 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, where possible using already existing and available procedures.

Article 21

LNG 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 date and time of placing the bid or offer;
 - (ii) the transaction date and time;
 - (iii) the date and 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 the currency specified in the contract and in EUR/MWh and shall 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 such as referred to in the list of LNG facilities subject to reporting pursuant to Regulation (EU) No 1227/2011 and 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 regarding the criteria under which 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, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of LNG market data contributors.

CHAPTER IV

MEASURES FOR THE CASE OF A GAS EMERGENCY

SECTION 1

Gas solidarity for electricity supply, essential industries and protected customers

Article 23

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

1. By way of derogation from Article 13(3) of Regulation (EU) 2017/1938, a solidarity measure pursuant to Article 13(1) and (2) of that Regulation shall apply only if the Member State requesting solidarity has not been able to cover:
 - (a) the deficit in gas supply to its solidarity protected customers or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 24 of this Regulation, the essential volumes of consumption of gas to its solidarity protected customers;
 - (b) the critical gas volume for electricity security of supply, despite the application of the measure referred to in Article 11(3) of Regulation (EU) 2017/1938. The conditions set out in Article 13(3), points (b), (c) and (d), of Regulation (EU) 2017/1938 shall apply.
2. The Member States which are obliged to provide solidarity pursuant to paragraph 1 shall be entitled to deduct from the solidarity offer:
 - (a) supplies to its solidarity protected customers to the extent essential volumes are affected or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 24, the supplies of the essential volumes of consumption of gas of its solidarity protected customers;
 - (b) supplies of critical gas volumes for electricity security of supply;
 - (c) supplies of gas volumes for the electricity needed for the production and transportation of gas; and
 - (d) gas volumes necessary for the operations of security of supply critical infrastructure as referred to in Annex II as well as other installations crucial for the functioning of military, national security and humanitarian aid services.
3. The critical gas volumes for electricity security of supply as referred to in paragraph 1, point (b), and paragraph 2, points (b) and (d), shall not exceed the volumes indicated in Annex I. If 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.

4. If Member States whose electricity system is synchronised only with the electricity system of a third country are requested to provide solidarity measures, they may exceptionally deduct higher volumes of gas in the event that the electricity system is desynchronised from that third country's system for as long as isolated power system services or other services to the power transmission system operator are required to ensure the safe and reliable operation of the power system.

Article 24

Demand reduction measures concerning protected customers

1. Member States may, exceptionally, take temporary measures to reduce the non-essential consumption of protected customers, as defined in Article 2, point (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 Union alert pursuant to Regulation (EU) 2022/1369, has 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 Regulation (EU) 2022/1369. Such exceptional measures may be taken only after an assessment is carried out by the competent authorities, as defined in Article 2, point (7), of Regulation (EU) 2017/1938, with regard to the conditions to determine such non-essential volumes of gas.

2. As a result of measures referred to in paragraph 1 of this Article, the consumption of vulnerable customers, as defined by Member States in accordance with Article 3(3) of Directive 2009/73/EC, shall under no circumstance be reduced, and Member States shall not disconnect protected customers as a result of the application of paragraph 1 of this Article.

Article 25

Safeguards for cross-border flows

In the 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 the gas supply in another Member State, the competent authority, as defined in Article 2, point (7), of Regulation (EU) 2017/1938, or the Member State, as referred to in Article 12(6), first subparagraph of that Regulation, shall instead of following the procedure provided for in Article 12(6), second subparagraph, of Regulation (EU) 2017/1938, modify its action or take action in order to ensure compliance with Article 12(5) of that Regulation.

SECTION 2

Rules for the provision of solidarity measures

Article 26

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 Member State requesting solidarity, but also to Member States with LNG facilities, provided the necessary capacity in the relevant infrastructure, including the LNG vessels and carriers, is available.

2. Article 13, paragraphs 2 to 9, of Regulation (EU) 2017/1938 shall apply to Member States with LNG facilities unless otherwise provided in this Regulation.

3. Member States with LNG facilities that are not directly connected to a Member State requesting solidarity may agree bilaterally with any other Member State on the necessary technical, legal and financial solidarity arrangements that apply to the provision of solidarity.

4. The default rules for the provision of solidarity measures pursuant to Article 27 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 27***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) of that Regulation in the event of an emergency shall be subject to the conditions set out in this Article.
2. The compensation for the solidarity measure shall not exceed reasonable costs and, by derogation from Article 13(8) of Regulation (EU) 2017/1938, it shall in any event include:
 - (a) the price for gas in the Member State providing solidarity;
 - (b) the storage and transport costs, including possible fees resulting from the deviation of LNG cargoes to the interconnection point requested;
 - (c) litigation costs for related judicial or arbitration proceedings involving the Member State providing solidarity;
 - (d) other indirect costs that are not covered by the price for gas, such as the reimbursement of financial or other damages resulting from enforced firm load shedding of customers related to the provision of solidarity, provided that those indirect costs do not exceed 100 % of the price for gas.
3. If a Member State requests compensation for indirect costs pursuant to paragraph 2, point (d), exceeding 100 % of the gas price, the Commission shall, after consulting the relevant competent authorities, decide whether a higher compensation is appropriate, taking into account the specific contractual and national circumstances of the case and the principle of energy solidarity.
4. Unless the Member State requesting solidarity and the Member State providing solidarity agree on another price, the price for the gas supplied to the Member State requesting solidarity shall correspond to the day-ahead market price in the Member State providing solidarity the day preceding the request for solidarity or the corresponding day-ahead market price at the closest accessible exchange, at the closest accessible virtual trading point, or at an agreed hub over the day preceding the request for solidarity.
5. Compensation for the gas volumes delivered in the context of a solidarity request pursuant to Article 28 shall be paid directly by the Member State requesting solidarity to the Member State providing solidarity or the entity both Member States indicate in their response to the solidarity request and the confirmation of receipt and of the volume to be taken.
6. The Member State to which the request for a solidarity measure is addressed shall provide the solidarity measure as soon as possible and no later than three days after the request. A Member State may refuse to provide solidarity to a Member State requesting solidarity only if it demonstrates that:
 - (a) it does not have enough gas for the volumes referred to in Article 23(2); or
 - (b) it does not have sufficient interconnection capacity available, as set out in Article 13(7) of Regulation (EU) 2017/1938, and it does not have the possibility to provide sufficient volumes of LNG.
7. 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.
8. This Article shall be without prejudice to existing arrangements for the safe and reliable operation of the gas system.

*Article 28***Procedure for solidarity measures in the absence of a solidarity agreement**

1. The Member State requesting the application of the solidarity measures shall issue a solidarity request to another Member State, indicating at least the following information:
 - (a) contact details of the competent authority of the Member State;

- (b) contact details of the relevant transmission system operators of the Member State (if relevant);
- (c) contact details of the third party acting on behalf of the Member State (if relevant);
- (d) delivery period including timing of the first possible delivery and the anticipated duration of deliveries;
- (e) delivery and interconnection points;
- (f) gas volume in kWh for each interconnection point;
- (g) gas quality.

2. The solidarity request shall be sent simultaneously to Member States potentially being able to provide solidarity measures, to the Commission and to the crisis managers designated pursuant to Article 10(1), point (g), of Regulation (EU) 2017/1938.

3. The Member States receiving a solidarity request shall send a response that indicates the contact details referred to in paragraph 1, points (a), (b) and (c), and the volume and quality that can be supplied to the interconnection points at the time requested as referred to in paragraph 1, points (d) to (g). The response shall indicate the volume resulting from possible curtailment, or where it is strictly indispensable, release of strategic stocks if the volume that can be supplied by voluntary measures is insufficient.

4. Solidarity requests shall be submitted at least 72 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 to be taken by the Member State requesting solidarity shall be done within 24 hours of the delivery time needed.

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 only be applicable in relation to the other Member States providing solidarity.

7. The Commission may facilitate the implementation of solidarity agreements, in particular by means of a template accessible on a secured online platform to enable real-time transmission of requests and offers.

CHAPTER V

FINAL PROVISIONS

Article 29

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 30

Review

By 1 October 2023, the Commission shall carry out a review of this Regulation in view of the general situation of the gas supply to the Union and shall 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.

*Article 31***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.

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

Article 14 shall apply from 31 March 2023.

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

Done at Brussels, 19 December 2022.

For the Council

The President

J. SÍKELA

ANNEX I

(a) Maximum critical gas volumes for electricity security of supply pursuant to Article 23 for the period between December 2022 to March 2023 (values in million cubic metres) ⁽¹⁾:

Member State	December 2022	January 2023	February 2023	March 2023
AT	74,24	196,83	152,20	139,35
BE	399,05	458,77	382,76	398,99
BG	61,49	71,26	61,55	63,29
CY	-	-	-	-
CZ	17,26	49,64	34,80	28,28
DE	2 090,53	2 419,56	2 090,59	1 863,77
DK	249,48	295,56	254,87	268,09
EE	5,89	5,78	5,00	1,05
EL	209,95	326,68	317,18	232,80
ES	1 378,23	1 985,66	1 597,27	1 189,29
IE	372,76	375,29	364,26	375,74
FI	28,42	39,55	44,66	12,97
FR	876,37	875,58	802,53	771,15
HR	10,95	66,01	59,99	48,85
HU	82,13	133,97	126,44	93,72
IT	2 166,46	3 304,99	3 110,79	2 774,67
LV	89,26	83,56	84,96	66,19
LT	16,13	20,22	18,81	4,21
LU	-	-	-	-
MT	32,88	34,84	31,43	33,02
NL	684,26	762,31	556,26	480,31
PL	158,14	158,64	136,97	148,64
PT	409,97	415,22	368,54	401,32
RO	130,35	179,35	162,41	159,71
SI	12,98	15,15	13,35	12,80
SK	33,99	47,26	34,80	34,76
SE	18,05	18,61	17,71	15,76

⁽¹⁾ The figures in Annex I, parts (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), except for Malta for which the electricity generation relies exclusively on LNG deliveries with no significant storage capacities. Given the specificity of the low-calorific gas, the values for the Netherlands in this table should be multiplied with a conversion factor of 37,89 divided by 35,17. Annex I, part (a), represents the individual monthly volumes calculated by ENTSO-E for the months December 2022 to March 2023; the figures in Annex I, part (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 23 for the period between April 2023 to December 2023 (values in million cubic metres):

Member State	Monthly value
AT	140,66
BE	409,89
BG	64,40
CY	-
CZ	32,50
DE	2 116,11
DK	267,00
EE	4,43
EL	271,65
ES	1 537,61
IE	372,01
FI	31,40
FR	831,41
HR	46,45
HU	109,06
IT	2 839,23
LV	80,99
LT	14,84
LU	-
MT	33,03
NL	620,79
PL	150,60
PT	398,76
RO	157,96
SI	13,57
SK	37,70
SE	17,53

ANNEX II

Security of supply critical infrastructure pursuant to Article 23(2), point (d)

Sector	Subsector	
I Energy	1. Electricity	Infrastructures and facilities for generation and transmission of electricity in respect of supply electricity
	2. Oil	Oil production, refining, treatment, storage and transmission by pipelines
	3. Gas	Gas production, refining, treatment, storage and transmission by pipelines LNG terminals
II Transport	4. Road transport	
	5. Rail transport	
	6. Air transport	

COUNCIL REGULATION (EU) 2022/2577**of 22 December 2022****laying down a framework to accelerate the deployment of renewable energy**

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 war of 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 the 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, not only endangering the economy in the Union, but also seriously threatening security of supply. A fast deployment of renewable energy sources can help to mitigate the effects of the current energy crisis, by forming a defence against Russia's actions. Renewable energy can significantly contribute to counter Russia's weaponisation of energy by strengthening the Union's security of supply, reducing volatility in the market and lowering energy prices.
- (2) In recent months, Russia's actions have further aggravated the situation in the market, in particular by increasing the risk of a complete halt of Russian gas supplies to the Union in the near future, a situation which has affected the Union's security of supply. That sharply increased the volatility of energy prices in the Union and increased gas and electricity prices to all-time highs during the summer leading to growing electricity retail prices which are expected to continue gradually trickling down to most consumer contracts, increasingly burdening households and businesses. The aggravated situation in the energy markets has substantially contributed to the general inflation in the euro area, slowing down economic growth across the Union. That risk will persist regardless of any temporary reduction of wholesale prices and will be even more pertinent next year, as recognised in the emergency proposal by the Commission accompanying the Communication from the Commission of 18 October 2022 on Energy Emergency - preparing, purchasing and protecting the EU together. European energy companies could face severe difficulties in filling gas storage facilities next year, as it is highly probable that less or even no pipeline gas will reach the Union from Russia given the current political situation. In addition, the target for 2023, set out in Regulation (EU) 2022/1032 of the European Parliament and of the Council ⁽¹⁾, is to fill 90% of the Union's gas storage capacities as opposed to 80% for this winter. Also, unpredictable events such as sabotage of pipelines and other risks of disruption to security of supply could create additional strain on gas markets. Additionally, the competitiveness outlook of European renewable energy technology industries has been weakened by recent policies in other world regions aimed at providing support and speeding up the scale up of entire renewable energy technology value chains.
- (3) In this context, and in order to tackle the exposure of European consumers and businesses to high and volatile prices which are causing economic and social hardship, to ease the required reduction in energy demand by replacing natural gas supplies with energy from renewable sources and to increase security of supply, the Union needs to take further immediate and temporary action to accelerate the deployment of renewable energy sources, in particular by means of targeted measures which are capable of accelerating the pace of deployment of renewables in the Union in the short term.

⁽¹⁾ 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).

- (4) Those urgent measures have been selected because of their nature and potential to contribute to solutions for the energy emergency in the short term. More particularly, several of the measures in this Regulation can be implemented by Member States rapidly in order to streamline the permit-granting process applicable to renewable energy projects, without requiring burdensome changes to their national procedures and legal systems and ensuring a positive acceleration of the deployment of renewables in the short term. Some of those measures are of general scope, such as the introduction of a rebuttable presumption that renewable energy projects are of overriding public interest for the purposes of the relevant environmental legislation, or the introduction of clarification regarding the scope of certain environmental directives as well as the simplification of the permit-granting framework for the repowering of renewable energy power plants by focusing on the impact stemming from the changes or extensions compared to the original project. Other measures target specific technologies, such as the significantly shorter and faster permit-granting for solar energy equipment on existing structures. It is appropriate to implement those emergency measures as quickly as possible, and to adapt them as necessary to accurately address the current challenges.
- (5) It is necessary to introduce additional urgent and targeted measures addressed to specific technologies and types of projects which have the highest potential for quick deployment and immediate effect on the objectives of reducing price volatility and reducing the demand for natural gas without constraining the overall energy demand. In addition to the acceleration of the permit-granting processes, with regard to solar energy equipment on artificial structures it is appropriate to promote and accelerate the deployment of small-scale solar installations, including for renewables self-consumers and collective self-consumers, such as local energy communities, since those are the options that cost least, are most accessible and have the least environmental or other type of impact for a fast roll-out of new renewable installations. In addition, those projects directly support households and companies that are facing high energy prices and shield consumers from price volatility. The repowering of renewable energy power plants is an option for rapidly increasing renewable energy production with the least impact on the grid infrastructure and the environment, including in the case of those renewable energy production technologies, such as wind power, for which permit-granting processes are typically longer. Lastly, heat pumps are a direct renewable alternative for natural gas boilers and have the potential to significantly reduce the demand for natural gas during the heating season.
- (6) Due to the urgent and exceptional energy situation, Member States should be able to introduce exemptions from certain assessment obligations set in Union environmental legislation for renewable energy projects and for energy storage projects and electricity grid projects that are necessary for the integration of renewable energy into the electricity system. In order for those exemptions to be introduced, two conditions should be met, namely that the project is located in a dedicated renewable or grid area and that such area should have been subject to a strategic environmental assessment. In addition, proportionate mitigation measures or, where not available, compensation measures should be adopted to ensure species protection.
- (7) This Regulation should apply to permit-granting processes that have a starting date within the period of its application. In view of the objective of this Regulation, and the emergency situation and exceptional context of its adoption, in particular the fact that a short term acceleration of the pace of deployment of renewables in the Union justifies the application of this Regulation to pending permit-granting processes, Member States should be allowed to apply this Regulation, or certain of its provisions, to pending permit-granting processes for which a final decision of the relevant authority has not been taken, provided that the application of those rules duly respects the pre-existing rights of third parties and their legitimate expectations. Member States should therefore ensure that the application of this Regulation to pending permit-granting processes is proportionate and appropriately protects the rights and legitimate expectations of all interested parties.
- (8) One of the temporary measures consists of the introduction of a rebuttable presumption that renewable energy projects are of overriding public interest and serving public health and safety for the purposes of the relevant Union environmental legislation, except where there is clear evidence that those projects have major adverse effects on the environment which cannot be mitigated or compensated for. Renewable energy plants, including heat pumps or wind energy, are crucial to fight climate change and pollution, reduce energy prices, decrease the Union's dependence on fossil fuels and ensure the Union's security of supply. Presuming renewable energy plants, including heat pumps, are of overriding public interest and serve public health and safety would allow such projects to benefit, where necessary, from a simplified assessment for specific derogations foreseen in the relevant Union environmental legislation with immediate effect. Taking into consideration their national specificities, Member States should be allowed to restrict the application of this presumption to certain parts of their territories or certain technologies or projects. It is possible for Member States to consider applying this presumption in their relevant national legislation on landscaping.

- (9) This reflects the important role that renewable energy can play in the decarbonisation of the Union's energy system, by offering immediate solutions to replace fossil-fuel based energy and by addressing the aggravated situation in the market. In order to eliminate bottlenecks in the permit-granting process and operation of renewable energy plants in the planning and permit-granting process, the construction and operation of energy plants from renewable sources and the development of the related grid infrastructure should be given priority when balancing legal interests in the individual case, at least for projects which are recognised as being of public interest. As regards the protection of species, this priority should only be given if, and to the extent that, appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken and sufficient financial resources, as well as areas, are made available for this purpose.
- (10) Solar energy is a key source of renewable energy to put an end to the Union's dependency on Russian fossil fuels while achieving the transition towards a climate-neutral economy. Solar photovoltaic energy, which is one of the sources of electricity available that costs least, and solar thermal technologies, which provide renewable heating at low cost per unit of heat, can be rolled out rapidly, and can be of direct benefit to citizens and businesses. In this context, in line with the Communication from the Commission of 18 May 2022 entitled 'EU Solar Energy Strategy', the development of a resilient industrial solar value chain in the Union will be supported, including through the Solar PV Industry Alliance that will be launched at the end of 2022. Accelerating and improving permit-granting processes for renewable energy projects will help underpin the expansion of the Union's clean energy technology manufacturing capacity. The current circumstances and, in particular, the very high volatility of energy prices call for immediate action to ensure significantly faster permit-granting processes in order to significantly accelerate the pace of the installation of solar energy equipment on artificial structures, which is generally less complex than installation on the ground, and which can rapidly contribute to mitigate the effects of the current energy crisis, provided that grid stability, grid reliability and grid safety are maintained. Those installations should therefore benefit from shorter permit-granting processes compared to other renewable energy projects.
- (11) The maximum deadline for the permit-granting process for the installation of solar energy equipment and its related co-located storage and grid connections in existing or future artificial structures created for purposes different than solar energy production should be of 3 months. A specific derogation from the requirement to carry out environmental impact assessments under Directive 2011/92/EU of the European Parliament and of the Council ^(*) should also be introduced for those installations given that they are not likely to raise concerns related to competing uses of space or environmental impact. Investing in small decentralised solar energy installations to become renewable self-consumers is one of the most efficient means for energy consumers to reduce their energy bills and their exposure to price volatility. Member States should be allowed to exclude certain areas or structures from the scope of this shorter deadline and this derogation for certain justified reasons.
- (12) Self-consumption installations including those for collective self-consumers, such as local energy communities, also contribute to reducing overall natural gas demand, to increasing resilience of the system and to the achievement of the Union's renewable energy targets. The installation of solar energy equipment with a capacity below 50 kW, including installations of renewables self-consumers, is not likely to have major adverse effects on the environment or the grid and does not raise safety concerns. In addition, small installations do not generally require capacity expansion at the grid connection point. In view of the immediate positive effects of such installations for consumers and the limited environmental impacts they may give rise to, it is appropriate to further streamline the permit-granting process applicable to them, provided that they do not exceed the existing capacity of the connection to the distribution grid, by introducing the concept of administrative positive silence in the relevant permit-granting processes in order to promote and accelerate the deployment of those installations and to be able to reap their benefits in the short term. Member States should be allowed to apply a lower threshold than 50 kW due to their internal constraints, provided that the threshold remains higher than 10,8 kW. In any event, during the permit-granting process of 1 month, the relevant authorities or entities may reject the applications received for such installations for reasons related to grid safety, stability and reliability by way of a duly motivated response.

^(*) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

- (13) Repowering existing renewable energy plants has a significant potential to rapidly increase renewable power generation, thus allowing the reduction of gas consumption. Repowering enables the continued use of sites with significant renewable energy potential, which reduces the need to designate new sites for renewable energy projects. Repowering a wind energy power plant with more efficient turbines allows the existing capacity to be maintained or increased whilst having fewer, bigger and more efficient turbines. Repowering also benefits from the existing grid connection, a likely higher degree of public acceptance and knowledge of environmental impacts.
- (14) It is estimated that onshore wind capacity of 38 GW is reaching the end of its normal operational life of 20 years between 2021 and 2025. Decommissioning those capacities instead of repowering would lead to a substantial reduction of the currently installed renewable energy capacity, further complicating the situation in the energy market. An immediate simplification and acceleration of the permit-granting processes for repowering are crucial for maintaining and increasing the renewable energy capacity in the Union. To this end, this Regulation introduces additional measures to further streamline the permit-granting process applicable to the repowering of renewable energy projects. In particular, the maximum deadline of 6 months applicable to the permit-granting process for the repowering of renewable energy projects should include all relevant environmental impact assessments. Moreover, whenever the repowering of a renewable energy plant, or the upgrade of a related grid infrastructure which is necessary to integrate renewable energy into the electricity system, is subject to a screening or environmental impact assessment, it should be limited to assessing the potential significant impacts resulting from the change or extension compared to the original project.
- (15) In order to promote and accelerate the repowering of existing renewable energy plants, a simplified procedure for grid connections should be immediately established where the repowering results in a limited increase in total capacity compared to the original project.
- (16) When repowering a solar installation, increases in efficiency and capacity can be achieved without increasing the space occupied. Thus, the repowered installation would not have a different impact on the environment than the original installation as long as the space used is not increased in the process, and the originally required environmental mitigation measures continue to be complied with.
- (17) Heat pump technology is key to producing renewable heating and cooling from ambient energy, including from wastewater treatment plants and geothermal energy. Heat pumps also allow the use of waste heat and cold. The rapid deployment of heat pumps which mobilises underused renewable energy sources such as ambient energy, geothermal energy and waste heat from industrial and tertiary sectors, including data centres, makes it possible to replace natural gas and other fossil fuel-based boilers with a renewable heating solution, while increasing energy efficiency. This will accelerate the reduction in the use of gas for the supply of heating, both in buildings as well as in industry. In order to accelerate the installation and use of heat pumps, it is appropriate to introduce targeted shorter permit-granting processes for such installations, including a simplified procedure for the connection of smaller heat pumps to the electricity grid where there are no safety concerns, no further works are needed for grid connections and there is no technical incompatibility of the system components, unless no such procedure is required by national law. Thanks to a quicker and easier installation of heat pumps, the increased use of renewables in the heating sector, which accounts for almost half of the Union's energy consumption, will contribute to security of supply and help tackle a more difficult market situation.
- (18) When applying the deadlines for the installation of solar energy equipment, the repowering of renewable energy power plants and for the deployment of heat pumps, the time during which the plants, their grid connections and the related necessary grid infrastructure are being built or repowered should not be counted within those deadlines except when it coincides with other administrative stages of the permit-granting process. In addition, the time spent on the administrative stages necessary for completing significant upgrades to the grid required in order to ensure grid stability, grid reliability and grid safety should not be counted within those deadlines.
- (19) In order to further facilitate the deployment of renewable energy, Member States should be allowed to retain the possibility to further shorten the deadlines of the permit-granting process.

- (20) The provisions of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention') regarding access to information, public participation in decision-making, and access to justice in environmental matters, and in particular, the obligations of Member States relating to public participation and to access to justice, remain applicable.
- (21) The principle of energy solidarity is a general principle under Union law as stated by the European Court of Justice in its judgment of 15 July 2021, in Case C-848/19 P ⁽³⁾, Germany v Poland and it applies to all Member States. In implementing the principle of energy solidarity, this Regulation allows for cross-border distribution of the effects of faster deployment of renewable energy projects. The measures set out in this Regulation are directed at renewable energy installations in all Member States and capture a wide scope of projects, including on existing structures, new installations of solar energy equipment and repowering of existing installations. Given the degree of integration of Union energy markets, any increase in renewable energy deployment in a Member State should be beneficial also to other Member States in terms of security of supply and lower prices. It should help renewable electricity flow across the borders to where it is most needed and ensure that renewable electricity produced at low cost is exported to Member States where electricity production is more expensive. In addition, the newly installed renewable energy capacities in the Member States will have an impact on the overall gas demand reduction across the Union.
- (22) Article 122(1) of the Treaty on the Functioning of the European Union allows the Council to decide, on a proposal from the Commission and in a spirit of solidarity between the Member States, upon the measures appropriate for the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. In the light of recent events and Russia's recent actions, the high risk of a complete halt of Russian gas supplies, combined with the uncertain outlook for alternatives, poses a significant threat of disruption of the energy supplies, increasing energy prices further and consequently adding pressure on the Union's economy. Therefore, urgent action is necessary.
- (23) Considering the scale of the energy crisis, the level of its social, economic and financial impact and the need to act as soon as possible, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*. Its validity is limited to 18 months, with a review clause in order for the Commission to propose extending its validity, if necessary.
- (24) Since the objectives 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 to achieve those objectives,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation establishes temporary rules of an emergency nature to accelerate the permit-granting process applicable to the production of energy from renewable energy sources, with a particular focus on specific renewable energy technologies or types of projects which are capable of achieving a short term acceleration of the pace of deployment of renewables in the Union.

This Regulation applies to all permit-granting processes that have a starting date within the period of its application and is without prejudice to national provisions establishing shorter deadlines than those laid down in Articles 4, 5 and 7.

⁽³⁾ Judgment of the Court of Justice of 15 July 2021, Germany v Poland, C-848/19 P, ECLI:EU:C:2021:598.

Member States may also apply this Regulation to ongoing permit granting processes which have not resulted in a final decision before 30 December 2022, provided that this shortens the permit granting process and that pre-existing third party legal rights are preserved.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Article 2 of Directive (EU) 2018/2001 of the European Parliament and of the Council ⁽⁴⁾ shall apply. In addition, the following definitions shall apply:

- (1) 'permit-granting process' means the process:
 - (a) comprising all relevant administrative permits issued to build, repower and operate plants for the production of energy from renewable sources including heat pumps, co-located energy storage facilities, and assets necessary for their connection to the grid, including grid connection permits and environmental impact assessments where those are required; and
 - (b) comprising all administrative stages starting from the acknowledgment of the reception of the complete application by the relevant authority and ending with the notification of the final decision on the outcome of the process by the relevant authority;
- (2) 'solar energy equipment' means equipment that converts energy from the sun into thermal or electrical energy, including solar thermal and solar photovoltaic equipment.

Article 3

Overriding public interest

1. The planning, construction and operation of plants and installations for the production of energy from renewable sources, and their connection to the grid, the related grid itself and storage assets shall be presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual case, for the purposes of Article 6(4) and Article 16(1)(c) of Council Directive 92/43/EEC ⁽⁵⁾, Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council ⁽⁶⁾ and Article 9(1)(a) of Directive 2009/147/EC of the European Parliament and of the Council ⁽⁷⁾. Member States may restrict the application of those provisions to certain parts of their territory as well as to certain types of technologies or to projects with certain technical characteristics in accordance with the priorities set in their integrated national energy and climate plans.

2. Member States shall ensure, at least for projects which are recognised as being of overriding public interest, that in the planning and permit-granting process, the construction and operation of plants and installations for the production of energy from renewable sources and the related grid infrastructure development are given priority when balancing legal interests in the individual case. Concerning species protection, the preceding sentence shall only apply if and to the extent that appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken and sufficient financial resources as well as areas are made available for that purpose.

⁽⁴⁾ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

⁽⁵⁾ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

⁽⁶⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

⁽⁷⁾ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

*Article 4***Accelerating the permit-granting process for the installation of solar energy equipment**

1. The permit-granting process for the installation of solar energy equipment and co-located energy storage assets, including building-integrated solar installations and rooftop solar energy equipment, in existing or future artificial structures, with the exclusion of artificial water surfaces, shall not exceed 3 months, provided that the primary aim of such structures is not solar energy production. By way of derogation from Article 4(2) of Directive 2011/92/EU, and Annex II, points 3(a) and (b), read alone or in conjunction with point 13(a) of Annex II to that Directive, such installations of solar energy equipment shall be exempted from the requirement, if applicable, of being subjected to a determination whether the project requires an environmental impact assessment, or from the requirement to carry out a dedicated environmental impact assessment.
2. Member States may exclude certain areas or structures from the provisions of paragraph 1, due to reasons of cultural or historical heritage protection, or for reasons related to national defence interests or safety.
3. For the permit-granting process regarding the installation of solar energy equipment, including for renewables self-consumers, with a capacity of 50 kW or less, the absence of a reply by the relevant authorities or entities within 1 month following the application shall result in the permit being considered as granted, provided that the capacity of the solar energy equipment does not exceed the existing capacity of the connection to the distribution grid.
4. Where the application of the capacity threshold referred to in paragraph 3 of this Article leads to a significant administrative burden or constraints to the operation of the electricity grid, Member States may apply a lower threshold provided that it remains above 10,8 kW.
5. All decisions resulting from the permit-granting processes referred to in paragraph 1 of this Article shall be made public in accordance with existing obligations.

*Article 5***Repowering of renewable energy power plants**

1. The permit-granting process for the repowering of projects, including the permits related to the upgrade of the assets necessary for their connection to the grid where the repowering results in an increase in capacity, shall not exceed 6 months including environmental impact assessments where required by relevant legislation.
2. Where the repowering does not result in an increase in the capacity of the renewable energy power plant beyond 15%, and without affecting the need to assess any potential environmental impacts pursuant to paragraph 3 of this Article, grid connections to the transmission or distribution grid shall be permitted within 3 months following application to the relevant entity unless there are justified safety concerns, or there is technical incompatibility with the system components.
3. Where the repowering of a renewable energy power plant, or the upgrade of a related grid infrastructure which is necessary to integrate renewables into the electricity system, is subject to a determination whether the project requires an environmental impact assessment procedure or an environmental impact assessment pursuant to Article 4 of Directive 2011/92/EU, such prior determination and/or environmental impact assessment shall be limited to the potential significant impacts stemming from the change or extension compared to the original project.

4. Where the repowering of solar installations does not entail the use of additional space and complies with the applicable environmental mitigation measures established for the original installation, the project shall be exempted from the requirement, if applicable, of being subjected to a determination whether the project requires an environmental impact assessment pursuant to Article 4 of Directive 2011/92/EU.

5. All decisions resulting from the permit-granting processes referred to in paragraphs 1 and 2 of this Article shall be made public in accordance with existing obligations.

Article 6

Acceleration of the permit-granting process of renewable energy projects and for related grid infrastructure which is necessary to integrate renewables into the system

Member States may exempt renewable energy projects, as well as energy storage projects and electricity grid projects which are necessary to integrate renewable energy into the electricity system, from the environmental impact assessment under Article 2(1) of Directive 2011/92/EU and from the species protection assessments under Article 12(1) of Directive 92/43/EEC and under Article 5 of Directive 2009/147/EC, provided that the project is located in a dedicated renewable or grid area for a related grid infrastructure which is necessary to integrate renewable energy into the electricity system, if Member States have set any renewable or grid area, and that the area has been subjected to a strategic environmental assessment in accordance with Directive 2001/42/EC of the European Parliament and of the Council⁽⁸⁾. The competent authority shall ensure that, on the basis of existing data, appropriate and proportionate mitigation measures are applied in order to ensure compliance with Article 12(1) of Directive 92/43/EEC and Article 5 of Directive 2009/147/EC. Where those measures are not available, the competent authority shall ensure that the operator pays a monetary compensation for species protection programmes in order to secure or improve the conservation status of the species affected.

Article 7

Acceleration of the deployment of heat pumps

1. The permit-granting process for the installation of heat pumps below 50 MW electrical capacity shall not exceed 1 month, whilst in the case of ground source heat pumps it shall not exceed 3 months.

2. Unless there are justified safety concerns, further works are needed for grid connections or there is technical incompatibility of the system components, connections to the transmission or distribution grid shall be permitted following notification to the relevant entity for:

(a) heat pumps of up to 12 kW electrical capacity; and

(b) heat pumps installed by a renewables self-consumer of up to 50 kW electrical capacity, provided the capacity of the renewables self-consumer's renewable electricity generation installation amounts to at least 60% of the capacity of the heat pump.

3. Member States may exclude certain areas or structures from the provisions of this Article, due to reasons of cultural or historical heritage protection, or for reasons related to national defence interests or safety.

4. All decisions resulting from the permit-granting processes referred to in paragraphs 1 and 2 of this Article shall be made public in accordance with existing obligations.

⁽⁸⁾ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

*Article 8***Timelines for the permit-granting process for the installation of solar energy equipment, the repowering of renewable energy power plants and for the deployment of heat pumps**

When applying the deadlines referred to in Articles 4, 5 and 7, the following time shall not be counted within those deadlines except when it coincides with other administrative stages of the permit-granting process:

- (a) the time during which the plants, their grid connections and, with a view to ensuring grid stability, grid reliability and grid safety, the related necessary grid infrastructure are being built or repowered; and
- (b) the time spent on the administrative stages necessary for significant upgrades to the grid required in order to ensure grid stability, grid reliability and grid safety.

*Article 9***Review**

By 31 December 2023 at the latest, the Commission shall carry out a review of this Regulation in view of the development of the security of supply and energy prices and the need to further accelerate the deployment of renewable energy. It shall 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.

*Article 10***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*.

It shall apply for a period of 18 months from its entry into force.

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

Done at Brussels, 22 December 2022.

For the Council
The President
M. BEK

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**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Whereas:

- (1) The Russian Federation's ('Russia') unprovoked and unjustified war of aggression against Ukraine and the unprecedented reduction of natural gas supplies from Russia to Member States threaten the security of supply in the Union and Member States. At the same time, Russia's weaponisation of gas supply and market manipulation through intentional disruptions of gas flows have led to skyrocketing energy prices in the Union. Changing supply routes, resulting in congestion in the European gas infrastructure, the need to find alternative gas supply sources and price formation systems which are not adapted to the situation of a supply shock have contributed to price volatility and price hikes. Higher natural gas prices endanger the economy of the Union through sustained high inflation caused by higher electricity prices, undermining consumer purchasing power, as well as through raising the cost of manufacturing, particularly in energy-intensive industry, and seriously threaten the security of supply.
- (2) In 2022, natural gas prices were exceptionally volatile, with some benchmarks reaching all-time highs in August 2022. The abnormal level of the natural gas prices registered in August 2022 was the result of multiple factors, including a tight supply-demand balance linked to storage refilling and the reduction of pipeline flows, fears of further supply disruptions and market manipulations by Russia, and a price formation mechanism which was not tailored to such extreme demand and supply shifts and which aggravated the excessive price hike. While prices over the previous decade were within a band between EUR 5/MWh and EUR 35/MWh, European natural gas prices reached levels which were 1 000 % higher than the average prices seen before in the Union. Dutch Title Transfer Facility (TTF) Gas Futures (3-month/quarterly products) that are traded on the ICE Index ⁽²⁾ exchange have been traded at levels slightly below EUR 350/MWh and the TTF day-ahead gas that is traded on European Energy Exchange hit EUR 316/MWh. Gas prices have never before reached levels such as those observed in August 2022.
- (3) Following the damage to the Nord Stream 1 pipeline which was likely caused by an act of sabotage in September 2022, there is no likelihood that gas supplies from Russia to the Union will resume at pre-war levels in the near future. European consumers and businesses remain exposed to a manifest risk of further potential episodes of economically damaging gas price spikes. Unpredictable events, such as accidents or the sabotage of pipelines, that disrupt gas supplies to Europe or that dramatically increase demand may threaten the security of supply. Market tensions triggered by the fear of sudden scarcity, are likely to persist beyond this winter and into next year, as the adaptation to supply shocks and the establishment of new supply relationships and infrastructure is expected to continue for one or more years.
- (4) While derivatives relating to other virtual trading point ('VTPs') exist, the TTF in the Netherlands is commonly seen as the 'standard' pricing proxy on European gas markets. This is because of its typically high liquidity, which is due to several factors, including its geographical location, which allowed the TTF in a pre-war environment to receive natural gas from several sources, including significant volumes from Russia. As such, it is widely used as a reference

⁽¹⁾ Opinion of 2 December 2022 (not yet published in the Official Journal).

⁽²⁾ ICE Index is one of the main energy exchanges in Europe. For gas, it provides regulated futures and options trading for the Dutch TTF trading hub.

price in pricing formulas of gas supply contracts, as well as a price basis in hedging or derivatives operations across the Union, including in hubs not directly linked to the TTF. According to market data, the TTF hub accounted for approximately 80 % of natural gas traded in the first eight months of 2022 in the Union and the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') combined.

- (5) However, the disruptive changes in Union energy markets since February 2022 have influenced the functioning and effectiveness of the traditional price formation mechanisms in the wholesale gas market, notably on the TTF benchmark. Whilst the TTF was a good proxy for gas prices in other regions of Europe in the past, as of April 2022 it has become detached from prices at other hubs and trading places in Europe, as well as from the price assessments made for liquefied natural gas ('LNG') imports by price reporting agencies. This is largely because the gas system of North-Western Europe presents particular infrastructural limitations both in terms of pipeline transmission (West-East) and in terms of LNG regasification capacity. Such limitations were partly responsible for the general increase of gas prices since the beginning of the crisis in Europe following Russia's weaponisation of energy. The abnormal spread between the TTF and other regional hubs in August 2022 indicates that, under the current specific market circumstances, the TTF may not be a good proxy of the market situation outside North-Western Europe, where markets are facing infrastructure constraints. During scarcity episodes in the North-Western European market, other regional markets outside North-Western Europe may experience more favourable market conditions and are therefore unduly impacted through contract indexation to the TTF. Whilst the TTF still accomplishes its objective of balancing supply and demand in North-Western Europe, action is required to limit the effect of any abnormal episodes of excessively high TTF prices for other regional markets in the Union. Deficiencies in the price formation, to a lesser extent, may also exist in other hubs.
- (6) Different measures are available to address problems with the current price formation mechanisms. A possibility for European companies affected by the recent market disruptions and by deficiencies in the price formation system is to enter into a renegotiation of the existing TTF-based contracts. As price references linked to TTF Gas Futures have a different relevance than in the past and are not necessarily representative of the gas market situation outside North-Western Europe, certain purchasers may seek to address the current issues with price formation and the TTF benchmark by way of a renegotiation with their contract partners, either under the explicit terms of the existing contract or according to the general principles of contract law.
- (7) In the same vein, importing companies or Member States acting on their behalf may engage with international partners in order to renegotiate existing contracts or to agree on new supply contracts with more appropriate pricing formulas, adapted to the current situation of volatility. Coordinated purchasing via the IT tool created under Council Regulation (EU) 2022/2576 ⁽³⁾ may provide opportunities to lower the price of energy imports, in turn lowering the necessity of market intervention.
- (8) Furthermore, Directive 2014/65/EU of the European Parliament and of the Council ⁽⁴⁾ already includes some safeguards to limit episodes of extreme volatility, for instance by requiring that regulated markets as defined in Article 4(1), point (21), of that Directive have so-called short-term 'circuit breakers' which limit extreme price increases for certain hours. The temporary intra-day tool to manage excess volatility in energy derivatives markets, introduced by Regulation (EU) 2022/2576, contributes to limiting extreme volatility of prices in energy derivatives markets within a day. However, such mechanisms only work in the short term, and are not intended to prevent market prices from reaching excessive levels.

⁽³⁾ Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders (see page 1 of this Official Journal).

⁽⁴⁾ 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).

- (9) Demand reduction constitutes a further important element to tackle the problem of extreme price peaks. Reducing demand for gas and electricity can have a dampening effect on market prices and can therefore contribute to mitigating the problems with abnormally high gas prices. Therefore, this Regulation should, in line with the Conclusions of the European Council of 20-21 October 2022, ensure that the activation of the mechanism established by this Regulation does not lead to an overall increase in gas consumption.
- (10) In summer 2022, efforts of state-subsidised entities to buy gas for storage without consideration of the impact of uncoordinated purchasing on prices contributed to driving up price benchmarks and in particular TTF prices. Better coordination, where appropriate, between Member States using state-financed entities to purchase gas for filling underground gas storage facilities is therefore important to avoid extreme price peaks in future. The use of the joint purchasing mechanism established by Regulation (EU) 2022/2576 can play an important role in limiting episodes of excessively high gas prices in that regard.
- (11) Whilst existing measures are available to tackle some of the elements leading to the issues with price formation in gas markets, those existing measures do not guarantee an immediate and sufficiently certain remedy for the current problems.
- (12) It is therefore necessary to establish a temporary market correction mechanism (the 'MCM') for natural gas transactions in the main markets for TTF derivatives and derivatives linked to other VTPs with maturities between month-ahead and year-ahead, as an instrument against episodes of excessively high gas prices with immediate effect.
- (13) In its conclusions of 20-21 October 2022, the European Council called on the Commission to urgently present a proposal for a temporary dynamic price corridor on natural gas transactions to immediately limit episodes of excessively high gas prices, taking into account the safeguards set out in Article 23(2) of the Commission's proposal for Regulation (EU) 2022/2576.
- (14) The following safeguards should, on the one hand, be considered when designing the MCM and, on the other hand, be used to guarantee that possible activation of the MCM will be terminated if the conditions for its activation are no longer in place or if unintended market disturbances occur: the MCM should apply to natural gas transactions in the TTF, a 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; it should be without prejudice to over-the-counter ('OTC') gas trades; it should not jeopardise the Union's security of gas supply; it should not depend on progress made in implementing the gas savings target; it should not lead to an overall increase in gas consumption; it should be designed in such a manner that it would not prevent market-based intra-Union flows of gas; it should not affect the stability and orderly functioning of energy derivative markets; and it should take into account the gas market prices in different organised marketplaces across the Union.
- (15) The MCM should be designed to meet two basic criteria, in particular to act as an effective instrument against episodes of extraordinarily high gas prices and to be activated only if prices reach exceptional levels compared to global markets, in order to avoid significant market disturbances and disruptions of supply contracts, potentially resulting in severe risks for the security of supply.
- (16) The intervention through the MCM should be limited to addressing the most important deficiencies in the price formation system. The TTF month-ahead settlement price for derivatives is by far the most widely used benchmark in gas supply contracts across the Union, followed by maturities of two-months ahead and year-ahead. However, shifts of trade to derivatives linked to other VTPs may lead to distortions on Union energy or financial markets, for instance through arbitrage by market participants between corrected and non-corrected derivatives, to the detriment of consumers. Derivatives linked to all VTPs in the Union should therefore, in principle, be included in the MCM. However, the application of the MCM to derivatives linked to VTPs other than TTF is complex and

requires additional technical preparation. With a view to the urgent need to introduce the MCM for the most important derivative, TTF derivative, the Commission should be given the power to define the technical details of the application of the MCM to derivatives linked to other VTPs and the selection of derivatives linked to other VTPs which may be excluded on the basis of pre-defined criteria by means of an implementing act.

- (17) The establishment of the MCM should send a clear signal to the market that the Union will not accept excessively high gas prices which result from imperfect price formation. It should also provide certainty to market players as regards reliable limits for gas trading, and could result in important economic savings for both companies and households that will not be left exposed to excessively high energy price episodes.
- (18) The MCM should introduce a dynamic safety ceiling for the price from month-ahead to year-ahead derivatives. The dynamic safety ceiling should be activated if the derivatives price reaches a pre-defined level, and if the price hike does not correspond to a similar hike at regional or world market level.
- (19) A dynamic safety ceiling should therefore ensure that trading orders which would be significantly above LNG prices in other regions of the world are not accepted. Appropriate benchmarks should be used to determine a reference price reflecting global LNG price trends. The reference price should be based on LNG price assessments representative of the European market conditions and, due to the particular importance of the United Kingdom and Asia as competitors in the global LNG market, also on an appropriate benchmark for the United Kingdom and Asian regions. In contrast to pipeline gas, LNG is traded world-wide. Therefore, LNG prices better reflect the gas price developments at global level and can serve as a benchmark to assess whether price levels in continental hubs abnormally diverge from international prices.
- (20) The sample of LNG prices taken into account should be sufficiently broad to be informative even in the event that a specific LNG price is not available on a given day. In view of building a representative basket of European and international prices and in order to ensure that the entities providing the price information are subject to relevant Union regulation, price assessments should be selected by reporting agencies which are listed in the register of administrators and benchmarks established by Regulation (EU) 2016/1011 of the European Parliament and of the Council ⁽⁵⁾. As timely information is key for the dynamic MCM, only price information from entities providing information relating to the day of publication should be taken into account. In order to allow European Union Agency for the Cooperation of Energy Regulators ('ACER') established by Regulation (EU) 2019/942 of the European Parliament and of the Council ⁽⁶⁾ to exercise its market supervision duties under this Regulation, and to calculate the reference price on time, it is necessary to oblige the reporting agencies that publish price assessments to provide assessments to ACER by 21:00 CET, provided that they are available, in order to allow ACER to publish a reference price before the end of the day. While such reporting obligations concern only existing data and do not place significant additional burden on the reporting agencies and are frequent in energy and financial market regulation, ACER should ensure confidential treatment of the information received, protect any intellectual property rights related to that information and use that information solely for regulatory purposes. ACER should be able to issue guidance on the format in which the relevant data is to be provided.
- (21) Due to their high liquidity, it is appropriate to also include front-month derivatives related to the National Balancing Point ('NBP') of the United Kingdom. The daily price assessment carried out by ACER pursuant to Regulation (EU) 2022/2576 should be part of the basket of LNG price assessments.

⁽⁵⁾ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

⁽⁶⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).

- (22) While the benchmarks taken into account for the reference price are a good proxy for global LNG price trends, they cannot simply substitute derivative prices. This is mainly because the reference price reflects prices at different locations than the TTF and other VTPs in the Union. For instance, they do not take into account the costs related to possible infrastructure congestions faced when moving gas from the LNG terminal to where the TTF hub is located. TTF prices are therefore usually higher than the prices taken into account for the reference price. The difference amounted to around EUR 35/MWh on average between June and August 2022. Furthermore, it is of key importance for the security of supply that the corrected TTF-derivative price is set at a sufficiently high level to attract LNG imports from other regions in the world. Security of supply premium should therefore be put on the reference price for the calculation of the corrected TTF-derivative price. The formula for the safety ceiling should be fully dynamic, based on a dynamically developing basket of prices reflecting world market prices, and should serve as a certain safety margin to ensure that the security of supply is not at risk. The dynamic safety ceiling can vary every day on the basis of the evolution of global prices contained in the basket.
- (23) The safety ceiling should not be static. The safety ceiling should be adjusted in a dynamic manner and on a daily basis. The publication of a daily settlement price allows the dynamic safety ceiling to remain in line with LNG market developments, and to preserve the price formation process on exchanges and mitigate possible impacts on the orderly functioning of derivatives markets. A dynamic design of the safety ceiling will also reduce risks for central counterparties and limit the impact on participants in futures markets, such as clearing members and their clients. The dynamic safety ceiling should not correct market prices below a certain limit.
- (24) To avoid any risk that a dynamic bidding limit for the price of the month-ahead to year-ahead derivatives result in illegal collusive behaviour amongst natural gas suppliers or traders, financial regulators, ACER and competition authorities should observe the gas and energy derivatives markets particularly carefully during the period when the MCM is activated.
- (25) The MCM should be temporary in nature and should only be activated to limit episodes of exceptionally high natural gas prices, which are also unrelated to prices at other gas exchanges. To this end, two cumulative conditions should be met for the MCM to operate.
- (26) The MCM should only be activated when front-month TTF derivative settlement prices reach a pre-defined exceptionally high level, so as to ensure that the MCM corrects market deficiencies and does not significantly interfere with demand and supply and normal price setting. Unless set at a sufficiently high level, the safety ceiling could prevent market participants from effectively hedging their risks, as the formation of reliable prices for products with a delivery date in the future and the functioning of derivatives markets could be harmed. If the MCM were to be triggered to bring prices artificially down instead of correcting market malfunctioning, it would have a serious negative impact on market participants, including energy firms, who could face difficulties in meeting margin calls and liquidity constraints, potentially resulting in defaults. Some market actors, in particular smaller ones, may be prevented from hedging their positions, further exacerbating volatility in spot markets, and resulting in possibly higher price spikes. Given the significant trading volumes, such development would constitute a manifest risk for the economy which should be prevented by the design of the MCM. Past experiences, such as the exceptional price hike evidenced in August 2022, should therefore guide the definition of the price levels at which the MCM should be triggered. Available data show that in August 2022, the front-month prices for TTF-derivatives reached levels above EUR 180/MWh. The aim of the MCM should be to avoid abnormal prices at a level reached in August 2022.
- (27) Moreover, the MCM should only be activated when TTF prices reach levels which are significantly and abnormally high compared to LNG prices which reflect world market trends. If prices on global markets increase at the same pace and level as TTF prices, the activation of the MCM could impede the purchase of supplies on the global markets, which may result in risks for security of supply. Therefore, the MCM should only be triggered in situations where TTF prices are significantly higher than prices on global markets over a longer duration. Likewise, if the difference to TTF prices were to reduce or disappear, the MCM should be deactivated, in order to avoid any risk for security of supply.

- (28) To be fully compatible with Council Regulation (EU) 2022/1369 ⁽⁷⁾ and the demand reduction targets set out in that Regulation, the Commission should be able to suspend the activation of the MCM if it negatively affects the progress made in implementing the voluntary demand reduction targets pursuant to Regulation (EU) 2022/1369, or if it leads to an overall increase in gas consumption by 15 % in one month or 10 % in two consecutive months compared to the respective average consumption during comparable months in previous years. To address regional or Union-wide variations caused by seasonality, weather changes and other factors such as the COVID-19 crisis, gas consumption should be measured against consumption in the five years preceding the date of entry into force of this Regulation, in line with the approach in Regulation (EU) 2022/1369 and on the basis of data on gas consumption and demand reduction received from Member States pursuant to that Regulation. The dampening effect on natural gas prices that the MCM may entail should not end up in artificially incentivising natural gas consumption in the Union to the point that it damages the efforts necessary to reduce natural gas demand in accordance with the voluntary and mandatory demand reduction targets pursuant to Regulation (EU) 2022/1369 and demand reduction targets pursuant to Council Regulation (EU) 2022/1854 ⁽⁸⁾. The Commission should ensure that the activation of the MCM does not slow down the progress of Member States in meeting their energy saving targets.
- (29) Depending on the level of the intervention, the MCM may entail financial risks, contractual risks and risks for the security of supply. The level of risk depends on the frequency with which the MCM is activated and may therefore interfere with the normal functioning of the market. The lower the threshold for intervention, the more frequently the MCM will be triggered, and therefore the more likely it is that the relevant risk will materialise. As such, the conditions for the activation of the MCM should therefore be set at a level linked to abnormal and extraordinarily high levels of the TTF month-ahead price, while at the same time ensuring that it is an effective instrument against episodes of excessively high gas prices that do not reflect international market developments.
- (30) It is important that the MCM is designed in such a manner so as not to alter the fundamental contractual equilibrium of gas supply contracts, but rather to address episodes of abnormal market behaviour. If the triggers for the intervention are set at a level where they correct existing problems with price formation and do not intend to interfere with the demand and supply equilibrium, the risk that the contractual equilibrium of existing contracts will be altered through the MCM or its activation can be minimised.
- (31) In order to ensure that the MCM has an immediate effect, the dynamic bidding limit should be activated immediately and automatically, without the need for a further decision by ACER or the Commission.
- (32) To ensure that possible problems resulting from the activation of the MCM are identified early on, the Commission should mandate the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽⁹⁾ ('ESMA') and ACER to issue a report on possible negative effects from the MCM on financial and energy markets and on security of supply.
- (33) ACER should continuously monitor whether the conditions for the operation of the MCM are fulfilled. ACER is the best placed authority to carry out such monitoring, because it has a Union-wide view of gas markets and the necessary expertise in the operation of gas markets, and is already mandated to monitor trading activities in wholesale energy products under Union law. ACER should therefore monitor the evolution of the front-month TTF settlement price and compare it to the reference price, determined by the average price of LNG price assessments linked to European trading hubs, in order to verify whether the conditions that justify the activation or deactivation of the MCM are met. Once the conditions for activation of the MCM are met, ACER should publish a notice immediately on its website stating that the triggering conditions for the activation of the MCM have been met. The

⁽⁷⁾ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

⁽⁸⁾ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261 I, 7.10.2022, p. 1).

⁽⁹⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

following day, market operators should not accept any orders above the dynamic bidding limit and TTF derivatives market participants should not submit such orders. Market operators and TTF derivatives market participants should monitor the website of ACER where the daily reference price should be published. A similar dynamic bidding limit should apply to derivatives linked to other VTPs under the conditions defined in the implementing act concerning the application of the MCM to such derivatives.

- (34) The activation of the MCM may engender undesirable and unforeseeable effects on the economy, including risks for security of supply and for financial stability. To ensure a swift reaction in case unintended market disturbances occur, efficient safeguards should be established, based on objective criteria, which ensure that the MCM can be suspended at any time. In the event of unintended market disturbances, based on the results of ACER monitoring and concrete indications that a market correction event is imminent, the Commission should be able to request an opinion from ESMA, ACER, and, where appropriate, European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group established under Regulation (EU) 2017/1938 of the European Parliament and of the Council ⁽¹⁰⁾ (the 'GCG') on the impact of a possible market correction event on security of supply, intra-Union flows of gas and financial stability for the Commission to be able to suspend, by means of an implementing decision, the activation of the MCM by ACER swiftly if need be.
- (35) Beyond a daily review on whether the requirements for the dynamic bidding limit are still in place, additional safeguards should be established in order to avoid unintended market disturbances.
- (36) The dynamic bidding limit should not affect OTC transactions, as applying that limit to OTC transactions would raise serious monitoring issues and may lead to problems with the security of supply. However, a review mechanism should apply to assess whether the exclusion of OTC transactions may lead to significant shifts of TTF derivatives trading to OTC markets, thereby endangering the stability of financial or energy markets.
- (37) The MCM should be automatically deactivated if its operation is no longer justified by the situation in the natural gas market. Unless market disturbances occur, the MCM should only be deactivated after a certain period of time, to avoid frequent activation and deactivation. The MCM should therefore be automatically deactivated after 20 days if the dynamic bidding limit is at EUR 180/MWh for a certain period. The deactivation of the MCM should not require any assessment by ACER or the Commission, but should happen automatically once the conditions are fulfilled.
- (38) Should there be a significant reduction in the supply of gas and in the event that the gas supply is insufficient to meet the remaining gas demand, pursuant to Regulation (EU) 2017/1938, the Commission may declare a regional or Union emergency at the request of a Member State which has declared an emergency, and is to declare a regional or Union emergency if two or more Member States have declared an emergency. In order to prevent a situation from occurring where the continued activation of the MCM leads to security of supply problems, the MCM should be automatically deactivated where the Commission has declared a regional or Union emergency.
- (39) It is of key importance that the MCM includes an effective instrument to suspend, based on objective criteria, the dynamic safety ceiling immediately and at any time if the dynamic safety ceiling were to lead to serious market disturbances, affecting the security of supply and intra-Union flows of gas.
- (40) As it is important to thoroughly assess all safeguards to be taken into account when assessing a possible suspension of the MCM, the MCM should be suspended by means of an implementing decision of the Commission. When taking such a decision, which should be without undue delay, the Commission should assess whether the application of the dynamic bidding limit jeopardises the Union's security of supply, is accompanied by a sufficient demand reduction

⁽¹⁰⁾ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

effort, prevents market-based intra-Union flows of gas, negatively affects energy derivatives markets, accounts for gas market prices in various organised marketplaces across the Union or where it may negatively affect existing gas supply contracts. In such cases, the Commission should suspend the MCM by means of an implementing decision. Considering the need to react swiftly, the Commission should not be required to act in accordance with a committee procedure.

- (41) The MCM should not jeopardise the Union's security of gas supply by constraining price signals that are essential in attracting necessary gas supplies and intra-Union flows of gas. Gas providers may in fact potentially withhold supplies when the MCM is activated to maximise profits by selling shortly after the deactivation of the safety ceiling. In case the MCM would lead to such risks for the Union's security of gas supply, but where no regional or Union emergency is declared, the Commission should immediately suspend the MCM. The elements to be taken into account in the assessment of security of supply risks should include a potential significant deviation of one of the components of the reference price compared to the historical trend, and a significant drop of quarterly LNG imports into the Union compared to the same quarter of the previous year.
- (42) As unrestricted intra-Union flows of gas are a key element of security of supply in the Union, the activation of the MCM should also be suspended if it unduly restricts intra-Union flows of gas, endangering the Union's security of supply.
- (43) The MCM should not end up diminishing the role that price signals fulfil in the Union's internal market in natural gas and prevent market-based intra-Union flows of gas, as it is essential that natural gas continues to flow where it is needed most.
- (44) The MCM should not unduly jeopardise the continued proper functioning of the energy derivatives markets. Those markets play a key role in enabling market participants in hedging their positions in order to manage risks, in particular with regard to price volatility. Moreover, price interventions through the MCM can result in considerable financial losses for market participants in the derivatives markets. Given the size of the market for gas in the Union, such losses may not only affect the specialised derivatives markets, but may have significant knock-on effects on other financial markets. Price interventions could also lead to a detrimental increase in margin call due to uncertainty. A substantial increase in margin calls could result in considerable financial and liquidity losses for market participants, leading to the default of a clearing member or a final client. Relevant market participants should act in good faith and not unduly change risk management procedures resulting in an increase of margin calls, in particular if not in line with normal market procedures. Therefore, the Commission should immediately suspend the MCM if it jeopardises the orderly functioning of the derivatives market, for instance where it leads to a significant decrease in TTF derivatives transactions within the Union or to a significant shift of TTF-derivative transactions to trading venues outside the Union. In that regard, it is important that the Commission takes into account available expertise from relevant Union bodies. ESMA is an independent authority that contributes to safeguarding the stability of the Union's financial system, notably by promoting stable and orderly financial markets, such as the derivative markets.

The Commission should therefore take into account reports from ESMA on such aspects. In addition, the Commission should take into account any advice of the European Central Bank ('ECB') relating to the stability of the financial system in line with Article 127(4) Treaty on the Functioning of the European Union ('TFEU') and Article 25.1 of Protocol 4 on the statute of the European system of central banks and of the European Central Bank annexed to TFEU (the 'Protocol'). Given the volatility of financial markets and the potentially large impact of market interventions therein, it is important to ensure that the Commission can suspend the MCM quickly. Therefore, the report of ESMA should be issued no later than 48 hours or within the same day in urgent cases after the Commission's request.

- (45) The MCM should be designed to address only exceptional increases in gas prices caused by deficiencies in the price formation mechanism and as such should not have an impact on the validity of existing gas supply contracts. However, in situations where ACER or the Commission observes that the activation of the MCM has a negative impact on existing gas supply contracts, the Commission should suspend the MCM.

- (46) The design and suspension possibilities of the MCM should take into account that natural gas traders may move the natural gas trade to regions outside the Union, thereby reducing the effectiveness of the MCM. This would be the case, for instance, if traders started engaging in OTC gas trade, which is less transparent, less subject to regulatory scrutiny, and carries greater risks of defaulting on obligations for the parties involved. This would also be the case if traders, whose hedging may be limited by the MCM, sought hedges in other jurisdictions, resulting in the clearing counterpart needing to rebalance the cash underpinning derivatives positions to reflect the capped settlement price, triggering margin calls.
- (47) ACER, ESMA, ENTSOG and the GCG should assist the Commission in monitoring the MCM.
- (48) In carrying out its tasks under this Regulation, the Commission should also have the possibility of consulting the ECB, and to seek its advice, in accordance with the ECB's role pursuant to Article 127(5) TFEU in order to contribute to the smooth conduct of policies relating to the prudential supervision of credit institutions and to the stability of the financial system and pursuant to Article 25.1 of the Protocol to offer advice to and be consulted by, inter alia, the Commission on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system. Such a consultation process should be organised in a manner that allows a swift suspension of the MCM, if need be.
- (49) Given the urgent need to address the problems notably in TTF-derivatives price setting in the Union, a swift implementation of the MCM is crucial. ESMA and ACER should carry out an assessment on the impact of the MCM ('effects assessment'), to analyse whether the fast implementation of the MCM could lead to unintended negative consequences for financial or energy markets or for security of supply. The effects assessment should be submitted to the Commission by 1 March 2023. It should notably analyse the elements necessary for the implementing act on the details of the modalities for the extension of the MCM to derivatives linked to other VTPs and verify whether the key elements of the MCM are still appropriate in light of developments as regards the financial and energy market or security of supply. ESMA and ACER should publish a preliminary data report concerning the introduction of the MCM by 23 January 2023. Taking into account the results of the effects assessment, the Commission should, where appropriate, propose an amendment to this Regulation without undue delay with a view to adapting the choice of the products covered by the MCM.
- (50) The Commission may also propose other amendments to this Regulation, based on the effects assessment, or following a market correction event or a suspension decision, or in light of market and security of supply developments.
- (51) In order to preserve the sound functioning of derivatives markets, in particular the risk management processes of the central clearing counterparties ('CCPs'), and to minimise the need to call for additional margin as collateral, parties should be allowed to offset or reduce positions in TTF derivatives market in an orderly manner if they wish to do so. Therefore, the dynamic bidding limit should not apply to contracts entered into before the entry into force of this Regulation, nor to trades that allow market participants to offset or reduce positions resulting from TTF derivatives contracts entered into before the entry into force of this Regulation.
- (52) CCPs play a key role in assuring the orderly functioning of markets for TTF derivatives by mitigating counterparty risk. It is therefore necessary that the activities of CCPs, in particular in managing defaulting positions, are not hindered by the MCM. To that end, the dynamic bidding limit should not apply to trades executed as part of a default management process organised by a CCP.
- (53) The MCM is necessary and proportionate in achieving the objective of correcting excessively high gas prices at the TTF and derivatives linked to other VTPs. All Member States are concerned by the indirect effects of the price hikes, such as increasing energy prices and inflation. As regards the deficiencies in the price formation system, such deficiencies play a different role in various Member States, with price increases being more representative in some Member States (e. g. Central European Member States) than in other Member States (e. g. Member States at the periphery or with other supply possibilities). In order to avoid a fragmented action, which could divide the integrated Union gas market, common action is needed in a spirit of solidarity. This is also crucial in order to ensure

the security of supply in the Union. Moreover, common safeguards, which may be more necessary in Member States without supply alternatives than in Member States with supply alternatives, should ensure a coordinated approach as an expression of energy solidarity. Indeed, while the financial risks and benefits are very different for various Member States, the MCM should constitute a solidary compromise, in which all Member States agree to contribute to the market correction and accept the same limits for the price formation, even though the level of malfunction of the price formation mechanism and the financial impacts of derivatives prices on the economy are different in some Member States. The MCM would therefore strengthen Union solidarity in avoiding excessively high gas prices, which are unsustainable even for short periods of time for many Member States. The MCM will help to ensure that gas supply undertakings from all Member States are able to purchase gas at reasonable prices in the spirit of solidarity.

- (54) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers to define the technical details of the application of the MCM to derivatives linked to other VTPs 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 ⁽¹¹⁾.
- (55) The volatile and unpredictable situation of the natural gas market entering the winter seasons makes it important to ensure that the MCM can be applied as soon as possible, if the conditions justifying its activation are met. This Regulation should therefore enter into force on 1 February 2023. The dynamic bidding limit should apply from 15 February 2023. The obligation to provide a preliminary data report by ESMA and ACER should apply retroactively as of 1 January 2023 in order to obtain the required information as soon as possible,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes a temporary market correction mechanism ('MCM') for orders placed for trading TTF derivatives and derivatives linked to other virtual trading points ('VTPs') in accordance with Article 9, to limit episodes of excessively high gas prices in the Union which do not reflect world market prices.

Article 2

Definitions

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

- (1) 'TTF 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 Council ⁽¹²⁾, traded on a regulated market, the underlying of which is a transaction in the Title Transfer Facility (TTF), a virtual trading point operated by Gasunie Transport Services B.V.;

⁽¹¹⁾ 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 powers (OJ L 55, 28.2.2011, p. 13).

⁽¹²⁾ 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).

- (2) 'derivative linked to other VTP' means a commodity derivative as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014, traded on a regulated market, the underlying of which is a transaction in gas in a virtual trading point in the Union;
- (3) 'virtual trading point' or 'VTP' means a non-physical commercial point within an entry-exit system where gas is exchanged between a seller and a buyer without the need to book transmission or distribution capacity;
- (4) 'front-month TTF derivative' means a TTF derivative whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given regulated market;
- (5) 'front-year TTF derivative' means a TTF derivative whose expiration date is the nearest among the derivatives with twelve months maturity traded on a given regulated market;
- (6) 'reference price' means, insofar as available, the daily average price of:
- the LNG Northwest Europe Marker price assessment defined as the daily average of 'Daily Spot Northwest Europe Marker (NWE)' administered by Platts Benchmark B.V. (the Netherlands) and the 'Northwest Europe des - half-month 2' administered by Argus Benchmark Administration B.V. (the Netherlands); with a conversion of LNG price assessments in USD per Metric Million British Thermal Units (MMBtu) into EUR per MWh, on the basis of the European Central Bank's (ECB) Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kWh;
 - the LNG Mediterranean Marker price assessment defined as the daily average of 'Daily Spot Mediterranean Marker (MED)' administered by Platts Benchmark B.V. (the Netherlands), and of the daily average of 'Iberian peninsula des - half-month 2', 'Italy des - half-month 2' and 'Greece des - half-month 2' administered by Argus Benchmark Administration B.V. (the Netherlands); with a conversion of LNG price assessments in USD per MMBtu into EUR per MWh, on the basis of the ECB's Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kWh;
 - the LNG Northeast Asia Marker price assessment defined as the daily average of 'LNG Japan/Korea DES 2 Half-Month' administered by Platts Benchmark B.V. (the Netherlands), and 'Northeast Asia des (ANEA) - half-month 2' administered by Argus Benchmark Administration B.V. (the Netherlands); with a conversion of LNG price assessments USD per MMBtu into EUR per MWh, on the basis of the ECB's Euro foreign exchange rate and a conversion rate of 1 MMBtu to 0.293071 kWh;
 - the front-month NBP derivative settlement price, as published by ICE Futures Europe (the United Kingdom); with a conversion of Sterling pence per therm into EUR per MWh, on the basis of the ECB's Euro foreign exchange rate and a conversion rate of 1 therm to 29.3071 kWh;
 - the price of the daily price assessment carried out by ACER pursuant to Article 18 of Regulation (EU) 2022/2576;
- (7) 'regulated market' means a regulated market defined in Article 4(1), point (21), of Directive 2014/65/EU;
- (8) 'market operator' means a market operator defined in Article 4(1), point (18), of Directive 2014/65/EU.

CHAPTER II

MARKET CORRECTION MECHANISM

Article 3

Price monitoring

1. ACER shall constantly monitor the development of the reference price and the front-month TTF derivative settlement price, and the front-month derivative settlement price of derivatives linked to other VTPs.

2. For the purpose of paragraph 1, Platts Benchmark B.V. (the Netherlands) shall notify ACER every day no later than 21:00 (CET) of the daily LNG price assessments of the following markers: the 'Daily Spot Mediterranean Marker (MED)', the 'Daily Spot Northwest Europe Marker (NEW)' and the 'Japan Korea Marker (JKM)'.
3. For the purpose of paragraph 1, Argus Benchmark Administration B.V. (the Netherlands) shall notify ACER every day no later than 21:00 (CET) of the daily LNG price assessments of the following markers: the 'Northwest Europe des - half-month 2', the 'Iberian peninsula des - half-month 2', the 'Italy des - half-month 2', the 'Greece des - half-month 2' and the 'Northeast Asia des (ANEA) - half-month 2'.
4. ACER shall calculate the daily reference price every day based on the information received pursuant to paragraph 1. ACER shall publish the daily reference price daily on its website no later than 23:59 CET.

Article 4

Market correction event

1. The MCM for the front-year TTF derivative settlement price shall be activated when a market correction event occurs. A market correction event shall be considered to occur when the front-month TTF derivative settlement price, as published by ICE Endex B.V. (the Netherlands):
 - (a) exceeds EUR 180/MWh for three working days; and
 - (b) is EUR 35 higher than the reference price during the period referred to in point (a).
2. Upon adoption of the implementing act referred to in Article 9(1), a market correction event related to derivatives linked to other VTPs shall also occur under the conditions defined in that implementing act pursuant to the criteria set out in Article 9(2).
3. If ACER observes that a market correction event has occurred, it shall publish a notice stating that a market correction event has occurred ('market correction notice') in a clear and visible manner on its website no later than 23:59 CET and shall inform the Council, the Commission, ECB and ESMA of the market correction event.
4. Market operators on the TTF derivatives market and TTF derivatives market participants shall monitor the website of ACER on a daily basis.
5. As from the day after the publication of a market correction notice, market operators shall not accept and TTF derivatives market participants shall not submit orders for TTF derivatives that are due to expire in the period from the expiry date of the front-month TTF derivative to the expiry date of the front-year TTF derivative with prices of EUR 35 above the reference price published by ACER on the previous day ('dynamic bidding limit'). If the reference price is below EUR 145/MWh, the dynamic bidding limit shall remain at the sum of EUR 145 and EUR 35 .
6. Upon adoption of the implementing act referred to in Article 9(1), a dynamic bidding limit shall apply to derivatives linked to other VTPs under the conditions defined in that implementing act pursuant to the criteria set out in Article 9(2).
7. Once activated by ACER, the dynamic bidding limit shall apply for a minimum of 20 working days, unless suspended by the Commission in accordance with Article 6 or deactivated in accordance with Article 5(1).
8. In order for the Commission to be able to suspend, by means of an implementing decision, the activation of the MCM by ACER swiftly if need be, in case there are, based on the results of ACER monitoring pursuant to Article 3(1), concrete indications that a market correction event pursuant to Article 4(1), point b, is imminent, the Commission shall without delay invite ECB, ESMA and, where appropriate, the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group (the 'GCG') to provide an assessment of the impact of a possible market

correction event on the security of supply, intra-Union flows of gas and financial stability. That assessment shall take into account price developments in other relevant organised marketplaces, notably in Asia or the United States, as reflected in the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both administered by Platts Benchmark B.V. (the Netherlands) and published by S&P Global Inc. (New York).

9. After having assessed the effect of the dynamic bidding limit on gas and electricity consumption and progress with the demand reduction targets provided for in Articles 3 and 5 of Regulation (EU) 2022/1369 and in Articles 3 and 4 of Regulation (EU) 2022/1854, the Commission may also propose an amendment to Regulation (EU) 2022/1369 in order to adapt it to the new situation.

10. In the case of a market correction event, the Commission shall, without undue delay, ask the ECB for advice on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets.

Article 5

Deactivation of the MCM

1. The dynamic bidding limit shall be deactivated, 20 working days from the occurrence of the market correction event in accordance with Article 4(5) or afterwards, if the reference price is below EUR 145/MWh for three consecutive working days.

2. Where a regional or a Union emergency has been declared by the Commission, notably in case of a significant deterioration of the gas supply situation leading to a situation where the gas supply is insufficient to meet the remaining gas demand ('rationing'), in accordance with Article 12(1) of Regulation (EU) 2017/1938, the dynamic bidding limit shall be deactivated.

3. ACER shall publish a notice on its website without delay and notify the Council, the Commission, ECB and ESMA that a deactivation event as referred to in paragraph 1 has occurred ('deactivation notice').

Article 6

Suspension of the MCM

1. ESMA, ACER, ENTSOG and the GCG shall constantly monitor the effects of the dynamic bidding limit on financial and energy markets and on security of supply in the case of the activation of the MCM.

2. On basis of the monitoring referred to in paragraph 1, the Commission shall suspend the MCM at any time by means of an implementing decision, where unintended market disturbances or manifest risks of such disturbances occur that negatively affect security of supply, intra-Union flows of gas or financial stability ('suspension decision'). In the assessment, the Commission shall take into account whether the activation of MCM:

- (a) jeopardises the Union's security of gas supply; the elements to be taken into account in the assessment of the risks for the security of supply shall be a potential significant deviation of one the components of the reference price compared to the historical trend and a significant drop of quarterly LNG imports into the Union compared to the same quarter of the previous year;
- (b) occurs during a period where the mandatory demand reduction targets pursuant to Article 5 of Regulation (EU) 2022/1369 are not met at Union level, negatively affects the progress made in implementing the gas savings target pursuant to Article 3 of Regulation (EU) 2022/1369, taking into account the need to ensure that price signals incentivise demand reduction, or leads to an overall increase in gas consumption by 15 % in one month or by 10 % in two consecutive months compared to the respective average consumption for the same months during the five consecutive years preceding 1 February 2023, on the basis of data on gas consumption and demand reduction received from Member States pursuant to Article 8 of Regulation (EU) 2022/1369;

- (c) prevents market-based intra-Union flows of gas according to ACER monitoring data;
- (d) affects, on the basis of ESMA's report on the impact of the activation of the MCM by ESMA and any advice of the ECB requested by the Commission for that purpose, the stability and orderly functioning of energy derivative markets, in particular; where it leads to a significant increase of margin calls or a significant decrease in TTF derivatives transactions within the Union in one month, compared to the same month of the previous year or to a significant shift of TTF-derivative transactions to trading venues outside the Union;
- (e) leads to substantial differences between gas market prices in the different organised marketplaces across the Union, and at other relevant organised marketplaces, such as in Asia or the United States, as reflected in the 'Joint Japan Korea Marker' or the 'Henry Hub Gas Price Assessment', both administered by Platts Benchmark B.V. (the Netherlands);
- (f) affects the validity of existing gas supply contracts, including long-term gas supply contracts.

3. A suspension decision shall be taken without undue delay and be published in the *Official Journal of the European Union*. From the day following publication of a suspension decision, and for as long as specified in the suspension decision, the dynamic bidding limit shall cease to apply.

4. ACER, ESMA, ENTSOG and the GCG shall assist the Commission in the tasks pursuant to Articles 4, 5 and 6. The report of ESMA pursuant to paragraph (2), point (d), of this Article shall be issued no later than 48 hours or within the same day in urgent cases upon a request by the Commission.

5. In carrying out its tasks pursuant to Articles 4, 5 and 6, the Commission may consult the ECB for advice on any matter relating to its task pursuant to Article 127(5) TFEU to contribute to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 7

Professional secrecy

1. Any confidential information received, exchanged, or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in this Article.
2. The obligation of professional secrecy applies to all persons who work or who have worked for ACER or for any authority or market undertaking or natural or legal person to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority.
3. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.
4. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions, and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

Article 8

Effects assessment

1. ESMA and ACER shall assess the effects of the MCM on financial and energy markets and on security of supply, notably to verify whether the key elements of the MCM are still appropriate in light of the developments as regards the financial and energy market and security of supply.

2. ESMA and ACER shall in the effects assessment in particular carry out an analysis concerning the criteria set out in Article 9(2). That assessment shall notably verify whether the limitation to TTF-derivatives led to arbitrage by market participants between corrected and non-corrected derivatives with negative impact on financial or energy markets, and to the detriment of consumers.
3. ESMA and ACER shall also assess whether:
 - (a) the exclusion of over-the-counter ('OTC') trading from the scope of this Regulation led to significant shifts of TTF derivatives trading to OTC markets, endangering the stability of financial or energy markets;
 - (b) the MCM led to a significant decrease in TTF derivatives transactions within the Union, or to a significant shift of TTF derivative transactions to trading venues outside the Union;
4. ESMA and ACER shall additionally assess whether the following needs to be reviewed:
 - (a) the elements taken into account for the reference price;
 - (b) the conditions set out in Article 4(1);
 - (c) the dynamic bidding limit.
5. The reports from ESMA and ACER pursuant to paragraph 1 shall be submitted to the Commission by 1 March 2023. ESMA and ACER shall publish a preliminary data report concerning introduction of the MCM by 23 January 2023.

Article 9

Extension of the MCM to derivatives linked to other VTPs

1. On the basis of the assessment referred to in Article 8(1), the Commission, shall by means of an implementing act, define the technical details of the application of the MCM to derivatives linked to other VTPs by 31 March 2023 in accordance with paragraph 2 of this Article. That implementing act shall be adopted in accordance with Article 11(2).

In the event that the application of the MCM to derivatives linked to other VTPs leads to significant negative effects on financial or gas markets pursuant to the criteria set out in paragraph 2 of this Article, the Commission shall, exceptionally, exclude certain derivatives from the scope of application of the MCM.

2. The Commission shall select the technical details of the implementation, as well as those derivatives linked to other VTPs, which may have to be excluded from the scope of application of the MCM, in particular on the basis of the following criteria:
 - (a) availability of information on the prices of derivatives linked to other VTPs;
 - (b) the liquidity of the derivatives linked to other VTPs;
 - (c) the impact of the extension of the MCM to derivatives linked to other VTPs would have on intra-Union flows of gas and security of supply;
 - (d) the impact of the extension of the MCM to derivatives linked to other VTPs would have on the stability of financial markets, taking into account the impact on possible additional margins as collateral.

Article 10

Review

The Commission may, where appropriate, propose an amendment to this Regulation to include derivatives traded OTC in the scope of this Regulation, or to review the elements taken into account for the reference price, notably considering giving different weight to those elements, the conditions for the activation of the MCM set out in Article 4(1), points (a) and (b), and the dynamic bidding limit. Before submitting such a proposal, the Commission shall consult the ECB, ESMA, ACER, ENTSOG and the GCG and, where appropriate, other relevant stakeholders.

*Article 11***Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER III

FINAL PROVISIONS*Article 12***Entry into force**

1. This Regulation shall enter into force on 1 February 2023. It shall apply from the same day for a period of one year.
2. Article 4 shall apply from 15 February 2023.
3. Article 8(2) shall apply from 1 January 2023.
4. This Regulation shall not apply to the following:
 - (a) TTF derivative contracts concluded before 1 February 2023;
 - (b) buying and selling of TTF derivatives in order to offset or reduce TTF derivatives contracts concluded before 1 February 2023;
 - (c) buying and selling of TTF derivatives as part of a CCP default management procedure, including OTC trades registered in the regulated market for clearing purposes.

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

Done at Brussels, 22 December 2022.

For the Council
The President
M. BEK

COMMISSION DELEGATED REGULATION (EU) 2022/2579**of 10 June 2022****supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided by an undertaking in the application for authorisation in accordance with Article 8a of that Directive****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽¹⁾, and in particular Article 8a(6), second subparagraph in conjunction with Article 8a(6), first subparagraph, point (a), thereof,

Whereas:

- (1) Under Article 8a of Directive 2013/36/EU, investment firms that meet the conditions set out in Article 4(1), point (1)(b), of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽²⁾ should apply for an authorisation as credit institutions. Those undertakings should provide sufficient information to the competent authorities as to enable them to carry out a comprehensive assessment of the applicant credit institutions.
- (2) The list of information to be provided in an application by entities seeking to obtain the authorisation referred to in Article 8a of Directive 2013/36/EU should be specified in a regulation. Such information should include the identification details and historical information of the applicant credit institution, including its existing licensing, activities proposed, current financial situation, programme of operations, and initial capital.
- (3) To ensure consistency and harmonisation of the authorisation information required for applicant credit institutions, this Regulation should refer to the Commission Delegated Regulation (EU) 2022/2580 ⁽³⁾ on the information to be provided for the authorisation of credit institutions, the requirements applicable to shareholders and members with qualifying holdings and obstacles which may prevent the effective exercise of supervisory functions and should aim to expand its scope to the investment firms that classify as credit institutions.
- (4) Article 4(1) of Regulation (EU) No 575/2013 identifies a type of credit institutions which takes deposits or other repayable funds from the public and grants credits for its own account and another which is the one covered by the scope of this Regulation. Differently, credit institutions the business of which includes taking deposits or other repayable funds from the public and granting credits for its own account should follow the requirements of Delegated Regulation (EU) 2022/2580.
- (5) The list of information requirements provided in this Regulation for the applicant credit institutions should take into consideration the specificities of the investment firms' business model and any prior licences granted by a competent authority.

⁽¹⁾ OJ L 176, 27.6.2013, p. 338.

⁽²⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽³⁾ Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities (OJ L 335, 7.10.2022, p. 64).

- (6) Competent authorities may need to expand the requested information in order to be in a position to assess thoroughly the applicant credit institution, taking into account the range of different business models and legal forms that applicant institutions may take. This Regulation should enable competent authorities to require additional information from an investment firm when assessing the application for a credit institution.
- (7) The competent authority may consider waiving some information requirements in light of the size, nature, scale and complexity of the activities of the applicant credit institution concerned, and taking into account the principle of proportionality and the implementation burden on the institutions. However, this should not compromise the possibility of conducting a comprehensive assessment of the application for a credit institution.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (9) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Scope of required information

1. An application for the authorisation of a credit institution within the meaning of Article 4(1), point (1)(b), of Regulation (EU) No 575/2013 shall comply with the requirements regarding credit institutions laid down in Articles 3 to 10 of Delegated Regulation (EU) 2022/2580.
2. Competent authorities may require additional information, provided that such information is proportionate and relevant for the purposes of the authorisation assessment.
3. Unless the competent authority requires otherwise, the applicant is not required to provide the information set out in paragraph 1 where this information is already held by the competent authority, including where it has been requested and obtained from another competent authority, provided that the applicant certifies that such information is accurate and complete on the date of the application's submission.
4. An applicant credit institution may omit from the application information that is solely relevant to activities not indicated in the information set out in the programme of operations pursuant to Article 5 of Delegated Regulation (EU) 2022/2580, provided that the applicant identifies in the application the information omitted and cites this provision as the basis for the omission.
5. Following the assessment of the information submitted in the application, the competent authority may require the applicant to provide additional information or explanations, where the authority considers it necessary for the purposes of verifying whether all requirements for authorisation have been satisfied.
6. The applicant credit institution shall ensure that the information submitted in the application is up to date to ensure the completeness and accuracy of the information on the applicant credit institution's situation.

⁽⁴⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

*Article 2***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 10 June 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2022/2580**of 17 June 2022****supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽¹⁾, and in particular Article 8(2), points (a) and (c) thereof,

Whereas:

- (1) The information to be provided in an application for authorisation as a credit institution, as referred to in Article 8(1) of Directive 2013/36/EU, should be sufficiently detailed and comprehensive to enable the competent authority to assess whether an applicant credit institution meets the requirements laid down in Articles 10 to 14 of that Directive and in national law.
- (2) The information submitted in an application for authorisation as a credit institution should be true, accurate, complete and up-to-date from the moment of submission of the application until authorisation and the commencement of activities. For that purpose, competent authorities should be informed of any changes to the information provided in the initial application, and competent authorities should be able to enquire whether any changes or updates have occurred before commencement of the activities. To ensure that competent authorities have a complete overview of the applicant credit institution, competent authorities should be permitted to request, where necessary, specific clarifications or additional information regarding an application for authorisation as a credit institution.
- (3) To ensure efficiency and to avoid duplication, competent authorities should be able to waive the requirement to submit information that they already have, or to submit information that concerns activities that the applicant credit institution will not carry out in the event it is authorised.
- (4) An application for authorisation as a credit institution should describe the applicant credit institution and contain information about any previous commercial activities of the applicant credit institution and its subsidiaries, and about any licences, authorisations, registrations or other permissions held, pending for approval, refused or revoked.
- (5) An application for authorisation as a credit institution should contain a programme of activities, describing the activities, including those referred to in Annex I of Directive 2013/36/EU, which will be performed in the event the authorisation is granted.
- (6) To enable competent authorities to assess the overall risk profile of an applicant credit institution, to protect all stakeholders involved, including in particular depositors, and to ensure the stability of the financial markets in which the applicant credit institution will operate, an application for authorisation as a credit institution should contain information about the operational structure, business lines and target markets of the applicant credit

⁽¹⁾ OJ L 176, 27.6.2013, p. 338.

institution, including the geographic distribution of the business. Furthermore, applicant credit institutions should provide in the application information about their membership, if any, of a deposit guarantee scheme as defined in Article 2(1), point (1), of Directive 2014/49/EU of the European Parliament and of the Council ⁽²⁾.

- (7) To enable competent authorities to assess the financial soundness of applicant credit institutions, an application for authorisation as a credit institution should contain financial information about the applicant credit institution, including, where appropriate, at individual, consolidated and sub-consolidated levels. For the same reason, competent authorities should be able to determine the quality, origin and composition of an applicant credit institution's initial capital, as well as the ability of an applicant credit institution to comply with prudential requirements. An application for authorisation as a credit institution should therefore contain information about the amount of capital issued or to be issued and about the composition of own funds, and proof, where relevant, that the initial capital will be paid in full before the commencement of activities. To ensure that competent authorities can assess whether the activity that generated the initial capital is legitimate, an application for authorisation as a credit institution should also contain information about the origin of that initial capital.
- (8) It is necessary to ensure that an applicant credit institution is under sound and prudent management and robust governance from the outset, in accordance with the requirements that a credit institution has to meet as a matter of on-going supervision. The information provided in an application for authorisation as a credit institution should therefore enable competent authorities to assess the reputation, honesty, integrity, independence of mind and time commitment of each member of the management body of an applicant credit institution, as well as the knowledge, skills and experience of the members of the management body, both individually and collectively. The information provided in an application for authorisation as a credit institution should also enable competent authorities to assess, in specified cases where not already having been assessed as members of the management body, the reputation, honesty, integrity, knowledge, skills and experience of the heads of internal control functions and of the chief financial officer. That information should also enable competent authorities to assess the suitability of the heads of internal control functions and the chief financial officer, where those persons are not part of the management body, of credit institutions that are significant as referred to in Article 76(3) of Directive 2013/36/EU where those credit institutions are not part of a group, are part of a group and are the consolidating credit institution, or are part a group and the consolidating credit institution is not a significant credit institution as referred to in Article 76(3) of Directive 2013/36/EU.
- (9) It is necessary to ensure transparency of the shareholding structure of the applicant credit institution and to prevent criminals and their associates from holding, or being the beneficial owners of, qualifying holdings in credit institutions. Applications for authorisation as a credit institution should therefore contain information about the persons or entities that have or will have, in case of authorisation of the applicant credit institution, qualifying holdings in that credit institution. For the same reason, and where no person or other entity has or will have, in case of authorisation of the applicant credit institution, a qualifying holding in the credit institution, applications for authorisation as a credit institution should contain information about the persons who are or will be, in case of authorisation of the applicant credit institution, the twenty largest shareholders or members and about each person who has or will have, in case of authorisation, close links with the credit institution.
- (10) To assess past events related to the applicant credit institution and to assess the suitability of its shareholders and members, and of the members of the management body, the applicant credit institution should provide the competent authorities with all information about past convictions and pending criminal investigations, civil and administrative cases and other adjudicative actions of the applicant credit institution, its shareholders and members, and of the members of the management body.
- (11) Competent authorities should be able to assess whether there are any obstacles that could prevent the effective exercise of their supervisory functions, taking into account all relevant information, circumstances or situations and having regard to features relating to geographic presence, group structure and supervisory arrangements as set out in Directive 2013/36/EU.

⁽²⁾ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

- (12) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA).
- (13) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽³⁾.
- (14) This Regulation should apply from XX.XX.XXXX in order to grant the competent authorities and applicant credit institutions sufficient time to comply with the requirements laid down in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Information about the identity of the applicant credit institution

An application for authorisation as a credit institution shall contain all of the following information about the applicant credit institution's identity:

- (a) the name and contact details of the person to contact regarding the application;
- (b) where relevant, the name and contact details of the principal professional adviser involved in the preparation of the application;
- (c) the applicant credit institution's current name, trading name and logo, and, where applicable, any intended changes to those names or that logo;
- (d) the applicant credit institution's legal form;
- (e) the date and jurisdiction of the applicant credit institution's incorporation or formation;
- (f) the address of the applicant credit institution's registered office and, where different, of its head office and of its principal place of business;
- (g) where different from the contact details provided under point (a), the contact details of the applicant credit institution;
- (h) where the applicant credit institution is registered in a central register, commercial register, companies register or similar public register, the name of that register and the registration number of the applicant credit institution or an equivalent means of identification in that register;
- (i) where available, the applicant credit institution's Legal Entity Identifier (LEI);
- (j) the date of the accounting year end for the applicant credit institution;
- (k) where available, the website address of the applicant credit institution;
- (l) the articles of association of the applicant credit institution or equivalent constitutional documents, and, where applicable, evidence of registration with the register designated by the law of the Member State concerned in accordance with Article 16 of Directive (EU) 2017/1132 of the European Parliament and of the Council ⁽⁴⁾.

⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽⁴⁾ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

*Article 2***Information about the history of the applicant credit institution**

An application for authorisation as a credit institution shall contain a summary of the history of the applicant credit institution and of its subsidiaries, including all of the following information:

- (a) details about any licence, authorisation, registration or other permission of the applicant credit institution or of any of its subsidiaries to carry out activities in the financial services sector, granted by a public authority or other entity performing public functions in any Member State or third country and which falls within one or more of the following categories:
 - (i) the licence, authorisation, registration or permission has been granted;
 - (ii) the application for such licence, authorisation, registration or permission is pending or has been refused;
 - (iii) the licence, authorisation, registration or permission has been revoked;
 - (iv) after being applied for or granted, the applicant credit institution or one of its subsidiaries has decided not to proceed with such application or relinquish such licence, authorisation, registration or permission;
- (b) details about any significant event relating to the applicant credit institution or to any of its subsidiaries which has taken place or is taking place and which can reasonably be considered to be relevant for the authorisation, including any of the following matters:
 - (i) if the applicant credit institution or any of its subsidiaries has ever been subject to a declaration of a moratorium of any indebtedness, to a restructuring or reorganisation process affecting its creditors, measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims, to a dissolution, to winding-up proceedings as defined in Article 2 of Directive 2001/24/EC of the European Parliament and of the Council ^(*), or to administration, insolvency or similar proceedings;
 - (ii) if the applicant credit institution or any of its subsidiaries has ever been the subject of any administrative penalty, civil or administrative judgment, arbitration or other adjudicative dispute resolution award or decision or any judgment on the commission of a criminal offence, resulting in a finding against the applicant credit institution or any of its subsidiaries, which was not set aside and against which no appeal is pending or can be filed, with the exception of administrative penalties imposed pursuant to Article 65, 66 or 67 of Directive 2013/36/EU and of criminal convictions, in respect of which information shall also be provided for rulings still subject to appeal, including:
 - (1) any unsatisfied judgments or awards outstanding;
 - (2) any settlements reached with any legal or natural person, having regard to the monetary terms of the settlements or to the circumstances in which those settlements have been reached, in a subject matter which relates to the financial services sector;
 - (3) any criminal conviction or civil or administrative penalty or other civil or administrative measure taken by any authority in the financial services sector or other authority because of:
 - fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or a failure to put in place adequate policies and procedures to prevent such events;
 - breach of legislation or regulatory requirements relating to the financial services sector or to consumer protection;
 - carrying out of any unauthorised regulated activity;

^(*) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).

- (4) any other formal complaints made against the applicant credit institution or any of its subsidiaries by any of its clients or former clients which have been resolved in favour of the complainant by a non-judicial third party;
- (iii) whether the applicant credit institution or any of its subsidiaries is, as of the date of the application, involved in any proceedings, criminal, civil or administrative investigations or other events referred to in any of the items listed in point (b);
- (c) information on the events listed in point (b)(ii), including the name and address of the criminal or civil court or civil or administrative authority concerned, the date of the event, the amount involved, the outcome of the proceedings and an explanation of the circumstances of the event triggering the proceedings;
- (d) the elements necessary to calculate the applicable fees where, pursuant to Union or national law, any application fee or supervisory fee that is to be paid by the applicant credit institution is calculated on the basis of the activities or the characteristics of the applicant credit institution;
- (e) evidence of payment of any of the fees referred to in point (d).

Article 3

Programme of activities of the applicant credit institution

An application for authorisation as a credit institution shall contain a programme of the activities of the applicant credit institution, including:

- (a) a list of the activities that the applicant credit institution intends to carry out, including the activities listed in Annex I to Directive 2013/36/EU;
- (b) a description of how the programme of operations (the business plan) aligns with the proposed activities.

An applicant credit institution may omit from the application information that is solely relevant to activities not listed in the programme of activities, provided that it identifies in the application which information has been omitted and cites this provision as the basis for that omission.

Article 4

Financial information about the applicant credit institution

An application for authorisation as a credit institution shall contain all of the following financial information:

- (a) forecast information on the applicant credit institution at an individual level and, where applicable, at consolidated level and sub-consolidated level, indicating the share represented by the credit institution, with a base case and stress scenario basis, including:
 - (i) forecast accounting plans for the three years following authorisation as a credit institution or, depending on national law, the commencement of activities, detailing the business lines for each of the different activities carried out, where relevant for each country or relevant geographic area, including:
 - (1) forecast balance sheets;
 - (2) forecast profit and loss accounts or income statements, detailing fixed and variable costs and providing an indication of the sensitivity of the business to major indicators, including volume, price, geography and exposure, and an explanation of the measures aimed at reducing the exposure to those risks;
 - (3) forecast cash flow statements, where applicable;
 - (ii) planning assumptions for the forecasts referred to in point (i), as well as explanations of the figures in the plans, and in particular the assumptions underlying the stress scenario basis;

- (iii) forecast calculations of the applicant credit institution's own funds requirements and capital buffers, as referred to in Directive 2013/36/EU and in Part Three of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁹⁾, of its liquidity requirements as referred to in Part Six of that Regulation, and of the leverage ratio requirements as referred to in Part Seven of that Regulation, for the three years following authorisation as a credit institution;
 - (iv) the funding profile, including any source of financing, the level of diversification, and its terms and conditions of the funding;
 - (v) a summary of the internal liquidity adequacy assessment, at individual level and, where applicable, at consolidated, sub-consolidated and individual levels, as applicable, demonstrating that the applicant credit institution's liquidity resources will be adequate to meet its individual liquidity requirements;
- (b) statutory financial statements of the applicant credit institution, at individual level and, where applicable, at consolidated and sub-consolidated level, approved by the statutory auditor or audit firm, covering at least the last three financial years preceding the application, or, where the applicant credit institution has less than three years of activity, covering the period since the beginning of that activity, including:
- (i) the balance sheet;
 - (ii) the profit and loss accounts or income statements;
 - (iii) cash flow statements;
 - (iv) the annual reports and financial annexes and any other documents filed with the competent registry or authority and, where applicable, a report by the applicant credit institution's auditor covering the three financial years preceding the application or, where the applicant credit institution has less than three years of activity, covering the period since the beginning of that activity;
 - (v) in the case of statements prepared on a consolidated or sub-consolidated basis, the share of the applicant credit institution;
- (c) an outline of any indebtedness incurred or expected to be incurred by the applicant credit institution prior to the commencement of its activities as a credit institution, including, where applicable, the name of the lenders, the maturities and terms of such indebtedness, the use of proceeds and, where the lender is not a supervised financial institution, information on the origin of the borrowed funds or on the funds expected to be borrowed;
- (d) an outline of any security interests, guarantees or indemnities granted or expected to be granted by the applicant credit institution prior to the commencement of its activities as a credit institution;
- (e) where available, information about the credit rating of the applicant credit institution and the overall rating of its group;
- (f) where, pursuant to Article 11(1), (2) and (3), and Article 14(1) of Regulation (EU) No 575/2013, the applicant credit institution or its parent undertaking is to comply with Parts Two to Six or with Part Eight of that Regulation, an analysis of the scope of consolidated supervision, including information on which group entities will be included in the scope of consolidated supervision, and an analysis of the effect of any potential waiver, derogation, exclusion or specific method or treatment referred to in Part One, Title II of that Regulation;
- (g) an outline of the following frameworks and policies of the applicant credit institution:
- (i) the risk management framework, explaining the applicant credit institution's high-level strategy for identifying and managing risks to its business, including money laundering and terrorist financing risks, outlining the strategy for managing those risks and including a risk tolerance and appetite statement and measures to align the assessed risk with the risk appetite;
 - (ii) the liquidity risk management policy;
 - (iii) the funding concentration and diversification policy;

⁽⁹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (iv) the collateral management policy;
 - (v) the deposit policy;
 - (vi) the credit and lending policy;
 - (vii) the concentration risk policy;
 - (viii) the provisioning policy;
 - (ix) the dividend distribution policy;
 - (x) the trading book policy;
- (h) a description of the applicant credit institution's process for developing a recovery plan, as defined in Article 2(1), point (32), of Directive 2014/59/EU of the European Parliament and of the Council ⁽⁷⁾, and, where applicable, a group recovery plan, as defined in Article 2(1), point (33), of that Directive.
- (i) a statement or confirmation that, before or at the latest on the date of authorisation, the applicant credit institution shall become a member of a deposit guarantee scheme officially recognised in the Member State where the application is submitted, in accordance with Article 4(3) of Directive 2014/49/EU, and shall identify the deposit guarantee scheme.
- (j) any institutional protection scheme, as referred to in Article 113(7) of Regulation (EU) No 575/2013, that the applicant credit institution has entered into or proposes to enter into.

Article 5

Information about the programme of operations, the structural organisation, internal control systems and the auditors of the applicant credit institution

1. An application for authorisation as a credit institution shall contain the following information about the programme of operations (the business plan), the structural organisation, the internal control systems, and the auditors of the applicant credit institution:
- (a) the programme of operations for at least the first three years following authorisation as a credit institution or, depending on national law, the commencement of activities which shall contain, on a base case and stress scenario basis, information on planned business and on the structure and organisation of the applicant credit institution, including the following items:
- (i) an overview of the geographical distribution of the activities intended to be carried out by the applicant credit institution in the home Member State and in any other Member State or third country, including through branches or subsidiaries or by direct provision of services, and future expansion plans;
 - (ii) an explanation of the initial and on-going viability of the business model;
 - (iii) an overview of target markets, customer segmentation, products and services and delivery channels such as branches, internet, post, agencies and subsidiaries;
 - (iv) an overview of the organisation and structure of the group of which the applicant credit institution is part, describing the activities of the entities in the group and indicating the parent undertakings, financial holding companies and mixed financial holding companies within the group;
 - (v) an overview of all the likely business and regulatory risk factors, including money laundering and terrorist financing risks, and an explanation of how these will be monitored and controlled;
 - (vi) an indication of whether an implementation plan covering the period until the applicant credit institution is fully operational is needed and, where available, the overview of any such plan;

⁽⁷⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- (vii) an overview of the applicant credit institution's overall strategy, including strategic goals and any identified competitive advantages, and of the reasons for its establishment and why it has decided to carry on the business for which it seeks authorisation;
- (b) information on the organisation, structure and governance arrangements of the applicant credit institution, including the organisational chart and each of the following items:
 - (i) a description of the applicant credit institution's arrangements, processes and mechanisms referred to in Article 74(1) of Directive 2013/36/EU;
 - (ii) the terms of reference of the management body;
 - (iii) a description of the human, technical and legal resources allocated to the various planned activities, including IT, commercial, legal, internal control and compliance functions;
 - (iv) a description of the interactions between the applicant credit institution's various functions;
 - (v) the name of each payment, clearing or settlement system of which the applicant credit institution intends to be, directly or indirectly, a member during the first year of operation;
- (c) the following information on the internal control framework:
 - (i) an overview of the internal organisation, including devoted budgetary and human resources, of the compliance function, risk management function, internal audit function, including an explanation of how the applicant credit institution will satisfy its legal and prudential requirements, including anti-money laundering and counter-terrorist financing requirements, the identity of the persons responsible for the internal control functions and a description of the institution's compliance, internal control and risk management systems and procedures and of the reporting lines to the management body;
 - (ii) an outline of the following policies and procedures dealing with matters relevant to activities identified pursuant to Article 3:
 - (1) whistleblowing policy;
 - (2) conflicts of interest policy;
 - (3) complaints handling policy;
 - (4) market abuse policy;
 - (5) policy promoting diversity of the management body;
 - (6) remuneration policy for staff members whose professional activities have a material impact on the applicant credit institution's risk profile;
 - (iii) an outline of the systems and policies for assessing and managing the risks of money laundering and terrorist financing as identified in the high-level strategy referred to in Article 4, point (g)(i), including an overview of the key procedures that have been put in place to counter the risk that the applicant credit institution might be used to further financial crime;
- (d) a description of the internal audit resources and an outline of the methodology and internal audit plan for the three years following authorisation as a credit institution;
- (e) an outline of the following policies and plans of the applicant credit institution:
 - (i) the internal audit policy;
 - (ii) the product governance policy;
 - (iii) the consumer protection policy;
 - (iv) the business continuity plan and policy, including an overview of available back-up and recovery systems and of plans ensuring the availability of key staff in business continuity situations;
- (f) the following information on the organisation of operations and activities of the applicant credit institution:
 - (i) an outline of external and intra-group outsourcing to support the applicant credit institution's operations or internal control activities, including information about all of the following:

- (1) the outsource supplier;
 - (2) any link of the outsource supplier with the applicant credit institution;
 - (3) the location of the outsource supplier;
 - (4) the rationale for outsourcing;
 - (5) the human resources of the outsource supplier;
 - (6) the applicant credit institution's internal control system for managing the outsourcing;
 - (7) any contingency plans in the event that the outsource supplier cannot provide continuity of service;
 - (8) any retained functions regarding outsourced activities;
- (ii) an outline of oversight responsibilities and arrangements, systems and controls for each outsourced function that is critical or important to the applicant credit institution's management and operations;
 - (iii) an outline of the service level agreements and arrangements for each outsourcing function that is critical or important to the applicant credit institution's management and operations;
 - (iv) a description of the applicant credit institution's IT infrastructure, including the systems in use or to be used, its hosting arrangements, the organisation of its IT function, IT structure, IT strategy and IT governance, IT security policies and procedures, and any systems and controls in place or to be put in place for the provision of online banking facilities.

2. An application for registration as a credit institution shall set out the name, address, and contact details of the applicant credit institution's statutory auditors or audit firm.

Article 6

Information about the capital at authorisation of the applicant credit institution

1. An application for authorisation as a credit institution shall contain evidence of the applicant credit institution's issued capital, paid-up capital and capital which is not yet paid up, and shall specify the types and amounts of own funds that correspond to the initial capital.
2. Where the initial capital has not been paid-up in full at the time of submitting the application for authorisation as a credit institution, the application for authorisation as a credit institution shall set out the plan and implementation deadline for ensuring that the initial capital is paid up in full before the authorisation to commence the activity as a credit institution is effective.
3. An application for authorisation as a credit institution shall provide an explanation of the available funding sources for own funds and, where available, evidence of the availability of those funding sources, including:
 - (a) a summary of the use of private financial resources, including their availability and source;
 - (b) a summary of access to financial markets, including details of financial instruments issued or to be issued;
 - (c) a summary of any agreements or contracts entered into in respect of own funds, including, in relation to borrowed funds or to funds expected to be borrowed, the name of the lenders and the details of the facilities granted, the use of proceeds and, where the lender is not a supervised financial institution, information on the origin of the borrowed funds or on the funds expected to be borrowed;
 - (d) the identity of the payment service provider used to transfer financial resources to the applicant credit institution.

4. An application for authorisation as a credit institution shall contain an assessment of the amounts, types and distribution of internal capital that the applicant credit institution considers to be adequate to cover the nature and level of the risks to which the applicant credit institution will be or might be exposed, and an analysis, including projections, showing that the capital resources will be sufficient to meet the own funds requirements once the credit institution has been authorised, and thereafter for a period of at least three years following authorisation as a credit institution of severe but plausible stress.

The stress scenario and methodology referred to in the first subparagraph shall take into account the scenario and methodology used in the most recent annual supervisory stress test carried out by the competent authority pursuant to Article 100(1) of Directive 2013/36/EU, if any such supervisory stress test was carried out, and the information shall be provided both for the applicant credit institution on an individual basis as well as for the consolidated situation, where applicable.

Article 7

Information about the effective direction of the applicant credit institution

1. An application for authorisation as a credit institution shall contain the information referred to in Annex I in relation to each of the proposed or appointed members of the applicant credit institution's management body.

2. Where the competent authority considers that the applicant credit institution is a significant institution in terms of its size, internal organisation and the nature, scope and complexity of its activities, as referred to in Article 76(3) of Directive 2013/36/EU, the application for authorisation as a credit institution shall, for the heads of the internal control functions and the chief financial officer where they are not part of the management body, contain the information listed in Annex I, except for the information referred to in point 1, points (f) and (g), and points 2, 4 and 5 of that Annex.

3. An application for authorisation as a credit institution shall contain a description of the powers, individual tasks, duties and proxies of the proposed or appointed members of the applicant credit institution's management body, and, in the case of applicant credit institutions as referred to in paragraph 2, of the heads of internal control functions and the chief financial officer who are not part of the management body.

4. For the purposes of this Article, the following definitions shall apply:

- (a) 'chief financial officer' means the person that is overall responsible for managing the financial resources, financial planning and financial reporting;
- (b) 'control function' means a function that is independent from the business unit it controls and that is responsible for providing an objective assessment of the credit institution's risks, review or report on those, including the risk management function, the compliance function and the internal audit function;
- (c) 'heads of internal control functions' means the persons at the highest hierarchical level in charge of effectively managing the day-to-day operation of the independent risk management, compliance and audit functions;

Article 8

Information about shareholders or members with qualifying holdings in the applicant credit institution

1. An application for authorisation as a credit institution shall contain the information referred to in point 1 of Annex II about all natural and legal persons and other entities that have or, if the authorisation is obtained, will have a qualifying holding in the credit institution, and information about their holdings.

2. Where the person referred to in paragraph 1 is a natural person, the application for authorisation as a credit institution shall contain the information referred to in point 2 of Annex II, in addition to the information referred to in paragraph 1.

3. Where the person referred to in paragraph 1 is a legal person, or is an entity which is not a legal person that holds or will hold the qualifying holding in its own name, the application for authorisation as a credit institution shall contain the information referred to in point 3 of Annex II, in addition to the information referred to in paragraph 1.
4. Where a trust already exists or is created following the subscription of a person to the share capital of the applicant credit institution, the application for authorisation as a credit institution shall include the information referred to in point 4 of Annex II, in addition to the information referred to in paragraph 1.
5. Where a person has or, if the authorisation is obtained, will have a qualifying holding in that credit institution and is a member of an entity that is not a legal person, whereby the qualifying holding in the credit institution will be treated as an asset of that entity, the application for authorisation as a credit institution shall contain the following information:
 - (a) the identity of all members of that entity, together with the information referred to in point 2 of Annex II where those members are natural persons, or the information referred to in point 3 of that Annex where those members are legal persons;
 - (b) a summary of the terms of the agreement or agreements governing the entity.

Article 9

Information about the 20 largest shareholders in, or members of, the applicant credit institution, other than shareholders or members with qualifying holdings

Where no person or other entity has or, if the authorisation is obtained, will have a qualifying holding in the credit institution, the application for the authorisation as a credit institution shall contain:

- (a) the chart referred to in point 1(a) of Annex II;
- (b) the information referred to in the list in point 1(b) of Annex II;
- (c) a list of the 20 largest shareholders in, or members of, the applicant credit institution, as the case may be;
- (d) where the credit institution has fewer than 20 shareholders or members, a list of all its shareholders or members;
- (e) information on whether any of the shareholders or members referred to in point (c) or (d) are subject to supervision by a competent authority.

Article 10

Additional information

1. Competent authorities may require that an application for authorisation as a credit institution contains additional information to the information referred to in Articles 1 to 9 provided that that information meets both of the following conditions:
 - (a) that additional information is necessary to verify whether all requirements for authorisation laid down by the Member State pursuant to Article 8(1) of Directive 2013/36/EU have been satisfied;
 - (b) the amount of information required is proportionate to the purpose of the verification referred to in point (a) and the information is relevant for that verification.
2. In duly justified cases, following the assessment of the information submitted in the application for authorisation as a credit institution, competent authorities may require applicant credit institution to provide supplementary information, or additional explanations, where those authorities consider it necessary to verify whether all requirements for authorisation have been satisfied.
3. The information in an application for authorisation as a credit institution shall be true, accurate and complete up to the point of authorisation. The applicant shall inform the competent authority of any changes to the information provided in the initial application. Competent authorities may require information about whether any changes have occurred after the submission of the application and before commencement of the activities.

*Article 11***Waiver**

Competent authorities may waive the requirement to provide any or all of the information referred to in Articles 1 to 9 where either of the following conditions is met:

- (a) the competent authority already has the information and the information is still true, accurate, complete and up to date on the day on which the authorisation is granted and is certified as being so by the applicant credit institution;
- (b) the requirement to provide information is subject to a waiver as set out in Article 21 of Directive 2013/36/EU.

*Article 12***Potential obstacles to effective supervision**

When assessing whether there are potential obstacles to effective supervision as referred to in Article 14(3) of Directive 2013/36/EU, competent authorities shall consider all relevant information, and shall take into account:

- (a) the interactions of the laws, regulations or administrative provisions of a third country governing the natural or legal persons to which the credit institution has or, if the authorisation is obtained, will have close links, any difficulties involved in the enforcement of those laws, regulations or administrative provisions and any difficulties in obtaining information from the authorities in such third countries or from such persons;
- (b) the possibility of exchanging information with the authority, if any, supervising the persons having close links with the credit institution;
- (c) the complexity and transparency of the structure of the group of the credit institution or of the person or persons having close links;
- (d) the location of the members of the group of the credit institution or of the person or persons having close links;
- (e) the activities performed or to be performed by the members of the group of the credit institution or of the person or persons having close links.

*Article 13***Entry into force and date of application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from XX.XX.XXXX.

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

Done at Brussels, 17 June 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Information about the effective direction of the applicant credit institution

1. Personal individual details and information on good repute, honesty, integrity, knowledge, skills, experience, and details and information on independence of mind and time commitment, as follows:
 - (a) the person's full name and, where different, name at birth;
 - (b) the person's gender, place and date of birth, address and contact details, nationality, and personal identification number or copy of an ID card or equivalent;
 - (c) details of the position held or to be held by the person, including whether the position is executive or non-executive, the start date or planned start date and duration of mandate, and a description of the person's key duties and responsibilities;
 - (d) a curriculum vitae containing details of education and experience (including professional experience, academic qualifications, other relevant training), including the name and nature of all organisations for which the person has worked and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought relevant to banking or management experience;
 - (e) a list of reference persons including contact information, preferably from employers in the banking or financial services sector, including their full name, institution, position, telephone number, email, nature of the professional relationship and information about whether any non-professional relationship exists or existed with this individual;
 - (f) history, including all of the following:
 - (i) criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases and disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, through an official certificate or, where such certificate does not exist, any reliable source of information concerning the absence of criminal convictions, investigations and proceedings;
 - (ii) a statement of whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding;
 - (iii) information about investigations, enforcement proceedings or sanctions by a supervisory authority which the individual has been directly or indirectly involved in;
 - (iv) information about refusal of registration, authorisation, membership or licence to carry out a trade, business or profession, or the withdrawal, revocation or termination of registration, authorisation, membership or licence, or expulsion by a regulatory or government body or by a professional body or association;
 - information about dismissal from employment or a position of trust, fiduciary relationship or similar situation, or the fact that the person was asked to resign from employment in such a position, excluding redundancies;
 - information about whether another competent authority has assessed the reputation of the individual as an acquirer or as a person who directs the business of an institution, including the identity of that authority, the date of the assessment and information about the outcome of that assessment, and the consent of the individual, where required, to seek such information to be able to process and use the provided information for the suitability assessment;
 - information about whether an authority from another, non-financial, sector has assessed the individual, including the identity of that authority and information about the outcome of that assessment;
 - (g) a description of all financial and non-financial interests that could create potential conflicts of interest, including, but not limited to:
 - (i) any financial interests, including loans, shareholdings, guarantees or security interests, whether granted or received, and non-financial interests or relationships, including close relations such as spouse, registered partner, cohabitant, child, parent or other relation with whom the person shares living accommodation, between the person or his or her close relatives or any company that the person is closely connected with,

and the applicant credit institution, its parent undertaking or subsidiaries, including any members of the management body, the head of an internal control function or the chief financial officer, or any person holding a qualifying holding in the applicant credit institution;

- (ii) whether or not the person conducts any business or has any commercial relationship, or has had such relationship over the past 2 years, with any of the persons listed in point (f), or is involved in any legal proceedings with any such persons;
 - (iii) whether or not the person and his or her close relatives have any competing interests with the applicant credit institution, its parent undertaking or its subsidiaries;
 - (iv) whether or not the person is being proposed on behalf of a significant shareholder or member with a qualifying holding and, where so, the identity of such shareholder or member;
 - (v) any financial obligations to the applicant credit institution, its parent or its subsidiaries;
 - (vi) any positions of national or local political influence held over the past 2 years;
 - (vii) where a material conflict of interest is identified, a statement of how that conflict was satisfactorily mitigated or remedied, including a reference to the relevant part of the institution's conflicts of interest policy or any bespoke conflict management or mitigation arrangements;
- (h) details to show that the person has sufficient time to commit to the mandate, including:
- (i) the estimated minimum time, per year and per month, that the person will devote to the performance of his or her functions within the applicant credit institution;
 - (ii) a list of the predominantly commercial mandates that the person holds and whether Article 91(4) of Directive 2013/36/EU applies;
 - (iii) where the privileged counting rules apply, an explanation of any synergies that exist between the companies;
 - (iv) a list of mandates which are pursuing predominantly non-commercial activities or are set up for the sole purposes of managing the economic interests of the person concerned;
 - (v) the size of the companies or organisations where the mandates referred to in point (iv) are held, including total assets, whether or not the company is listed and the number of employees of those companies or organisations;
 - (vi) a list of any additional responsibilities associated with the mandates referred to in point (v) of this point (g), including chairing a committee;
 - (vii) the estimated time in days per year dedicated to each mandate;
 - (viii) the number of meetings per year dedicated to each mandate.
2. A description of any committee of the management body that is planned at the time of the application as a credit institution, including its members and powers.
3. The results of any suitability assessment of each person performed by the applicant credit institution, including the following information:
- (a) the relevant board minutes;
 - (b) the suitability assessment or document;
 - (c) a statement of whether or not the individual has been assessed as having the requisite experience and, if not, details of the training plan imposed, including the content, provider and date by which the training plan will be completed.

4. A statement regarding the applicant credit institution's overall assessment of the collective suitability of the management body, including relevant board minutes or suitability assessment report or documents.
 5. A description of how the diversity of qualities and competences was taken into account when selecting the members of the management body.
-

ANNEX II

Information to enable competent authorities to assess shareholders or members with qualifying holdings

1. Information about the identity and participation of all persons and entities that have or will have, in the case of authorisation of the applicant credit institution, a qualifying holding in the credit institution and other information relevant to the assessment of suitability, including all of the following:
 - (a) a chart setting out the shareholder structure of the applicant credit institution, including the breakdown of its capital and voting rights;
 - (b) the names of all persons and entities that have or will have qualifying holdings, indicating in respect of each such person or entity:
 - (i) the number and type of shares or other holdings subscribed or to be subscribed;
 - (ii) the nominal value of such shares or other holdings;
 - (iii) any premium paid or to be paid;
 - (iv) any security interests or encumbrances created over such shares or other holdings, including the identity of the secured parties;
 - (v) where applicable, any commitments made by such persons or entities aimed at ensuring that the applicant credit institution will comply with applicable prudential requirements;
 - (c) details about the financial or business reasons of the persons or other entities referred to in point (b) for owning that holding and details of their strategy regarding the holding, including the period for which those persons or entities intend to hold the holding and any intention they may have to increase, reduce or maintain the level of the holding in the foreseeable future;
 - (d) details about the intentions of the persons or other entities in respect of the applicant credit institution and about the influence that those persons or entities intend to exercise over the applicant credit institution, including in respect of the dividend policy, details about the strategic development and the allocation of resources of the applicant credit institution, and details about whether or not those persons or entities intend to act as active minority shareholders, including the rationale for such intention;
 - (e) information on the willingness of the persons or entities referred to in point (b) to support the applicant credit institution with additional own funds if needed for the development of its activities or in case of financial difficulties;
 - (f) the content of any intended shareholder's or member's agreements with other shareholders or members in relation to the applicant credit institution;
 - (g) an analysis of whether the qualifying holding will have any impact, including as a result of the persons' or entities' referred to in point (b) close links to the applicant credit institution, on the ability of the applicant credit institution to provide timely and accurate information to the competent authorities;
 - (h) the identity of each member of the management body or of senior management who will direct the business of the applicant credit institution and will have been appointed by, or following a nomination from, such shareholders or members, together with, to the extent not already provided, the information set out in Annex I, points (1) (a) to (f);
 - (i) an explanation of the sources of funding for any proposed acquisition of shares or other holdings in the applicant credit institution, including where applicable:
 - (i) details about the use of private financial resources, including their availability and source;
 - (ii) details about the means of payment for the intended acquisition and the network used to transfer funds;
 - (iii) details about access to capital sources and financial markets, including details of financial instruments to be issued;

- (iv) information on the use of borrowed funds, including the name of the lenders and details of the facilities granted, such as maturities, terms, security interests and guarantees, as well as information on the source of revenue to be used to repay such borrowings;
- (v) information on any financial arrangement with other persons who are or will be shareholders or members of the applicant credit institution;
- (vi) information on any assets which are to be sold to help finance the proposed participation, such as conditions of sale, price, appraisal and details about the characteristics of those assets, including information on when and how they were acquired.

For the purposes of point (i)(iv), where the lender is not a credit institution or a financial institution authorised to grant credit, the applicant credit institutions shall inform the competent authorities about the origin of the borrowed funds.

2. The following information about natural persons that have, or will have in the case of authorisation of the applicant credit institution, a qualifying holding in the credit institution:
 - (a) personal details, including all of the following:
 - (i) the persons' names and, if different, the persons' names at birth;
 - (ii) the date and place of birth;
 - (iii) the persons' citizenship;
 - (iv) the persons' personal national identification number, where available;
 - (v) the persons' address, contact details
 - (vi) a copy of an official identity document;
 - (b) a detailed curriculum vitae, stating the relevant education and training, and any professional experience in acquiring and managing holdings in companies, and any professional activities or other functions currently performed;
 - (c) a statement containing the following information about the natural person and any undertaking that was directed or controlled by that person over the last 10 years and of which the applicant credit institution is aware after due and careful enquiry:
 - (i) subject to national legislative requirements concerning the disclosure of spent convictions, information about any criminal conviction or proceedings where the person or undertaking has been found against and which were not set aside;
 - (ii) information about any civil or administrative decisions concerning the person or undertaking that are relevant for the assessment of suitability or otherwise to the authorisation of the applicant credit institution and any administrative sanctions or measures that were imposed as a consequence of a breach of laws or regulations, including disqualification as a company director, in each case which was not set aside and against which no appeal is pending or may be filed, except in the case of administrative penalties imposed under Article 65, 66 or 67 of Directive 2013/36/EU, and of criminal convictions in respect of which information shall also be provided for rulings still subject to appeal;
 - (iii) any bankruptcy, insolvency or similar procedures;
 - (iv) any pending criminal investigations;
 - (v) any civil or administrative investigations, enforcement proceedings, sanctions or other enforcement decisions against the person or undertaking concerning matters which may reasonably be considered to be relevant to the authorisation of the applicant credit institution or to the sound and prudent management of a that applicant credit institution;
 - (vi) where such documents can be obtained, an official certificate or any other equivalent document evidencing that any of the events set out in point (i) to(v) of this point (c) has occurred in respect of the person or undertaking;
 - (vii) any refusal of registration, authorisation, membership or licence to carry out trade, business or a profession;

- (viii) any withdrawal, revocation or termination of a registration, authorisation, membership or licence to carry out a trade, business or a profession;
 - (ix) any expulsion by a regulatory or government body or by a professional body or association;
 - (x) any position of responsibility within an entity subject to any criminal conviction or civil or administrative penalty or other civil or administrative measure that is relevant for the assessment of the suitability or authorisation process taken by any authority or any on-going investigation, in each case for conduct failings, including in respect of fraud, dishonesty, corruption, money laundering, terrorist financing or other financial crime or of failure to put in place adequate policies and procedures to prevent such events, held at the time when the alleged conduct occurred, together with details of such occurrences and of the involvement, if any, in them;
 - (xi) any dismissal from employment or a position of trust, any removal from a fiduciary relationship, save as a result of the relationship concerned coming to an end by passage of time, and any similar situation;
- (d) where another supervisory authority has already assessed the reputation of the person concerned, the identity of that authority and the outcome of that assessment;
- (e) the current financial position of the person, including details concerning sources of revenues, assets and liabilities, security interests and guarantees, whether granted or received;
- (f) a description of the business activities of the person and of any undertaking which the person directs or controls;
- (g) financial information, including credit ratings and publicly available reports on any undertakings directed or controlled by the person;
- (h) a description of the financial interests of the person, including credit operations, guarantees and security interests, whether granted or received, and of any non-financial interests of the person, including family or close relationships with any of the following natural or legal persons:
- (i) any other current shareholder or member of the applicant credit institution;
 - (ii) any person entitled to exercise voting rights of the applicant credit institution in any of the following cases or combination of them:
 - voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights held by them, a lasting common policy towards the management of the issuer in question;
 - voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
 - voting rights attached to shares which are lodged as collateral with that person, provided the person controls the voting rights and declares his or her intention of exercising them;
 - voting rights attached to shares in which that person has the life interest;
 - voting rights which are held, or may be exercised within the meaning of the first four items of this point (ii) by an undertaking controlled by that person;
 - voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;
 - voting rights held by a third party in its own name on behalf of that person;
 - voting rights which that person may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
 - (iii) any person that is, according to national legislation, a member of the administrative, management or supervisory body or of the senior management of the applicant credit institution;
 - (iv) the applicant credit institution or any other member of its group;

- (i) to the extent any conflict of interest arises from the relationships referred to in point (h), proposed methods for managing such conflict;
 - (j) a description of any links to politically exposed persons, as defined in Article 3(9) of Directive (EU) 2015/849 of the European Parliament and of the Council; ⁽¹⁾
 - (k) any other interests or activities of the person that may be in conflict with those of the applicant credit institution and proposed methods for managing those conflicts of interest.
3. Information about legal persons that have or will have, in the case of authorisation of the applicant credit institution, a qualifying holding in the credit institution:
- (a) the name of the legal person;
 - (b) where the legal person is registered in a central register, commercial register, companies register or similar public register, the name of the register in which the legal person is entered, the registration number or an equivalent means of identification in that register and a copy of the registration certificate;
 - (c) the addresses of the legal person's registered office and, where different, of its head office, and principal place of business;
 - (d) contact details;
 - (e) corporate documents or agreements governing the legal person and a summary explanation of the main legal features of the legal form of the legal person;
 - (f) whether the legal person has ever been or is regulated by a competent authority in the financial services sector or other government body;
 - (g) the information referred to in:
 - (i) point (f) of point (2) in relation to the legal person;
 - (ii) point (d) of point (2) in relation to the legal person;
 - (iii) points (g) and (i) of point (2) in relation to the legal person, any person who effectively directs the business of the legal person or any undertaking under the legal person's control;
 - (iv) point (c) of point (2) in relation to the legal person, any undertaking under the legal person's control, and any shareholder exerting significant influence on the legal person;
 - (h) a description of the financial interests of the legal person, of persons who effectively direct the business of the legal person, or, where applicable, the group to which the legal person belongs, as well as the persons who effectively direct the legal person's business, including credit operations, guarantees and security interests, whether granted or received, as well as of any non-financial interests of any such legal person, including, where applicable, family or close relationships, with any of the following natural or legal persons:
 - (i) any other current shareholder or member of the applicant credit institution;
 - (ii) any person entitled to exercise voting rights of the applicant credit institution in any of the following cases or combination of them:
 - voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights held by them, a lasting common policy towards the management of the issuer in question;
 - voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;

⁽¹⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- voting rights attached to shares which are lodged as collateral with that person, provided the person or entity controls the voting rights and declares its intention of exercising them;
 - voting rights attached to shares in which that person has the life interest;
 - voting rights which are held, or may be exercised within the meaning of the first four items of this point (ii), by an undertaking controlled by that person;
 - voting rights attached to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;
 - voting rights held by a third party in its own name on behalf of that person;
 - voting rights which that person may exercise as a proxy where the person can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;
- (iii) any politically exposed person, as defined in Article 3(9) of Directive (EU) 2015/849;
- (iv) any person that is, according to national legislation, a member of the administrative, management or supervisory body, or of the senior management of the applicant credit institution;
- (v) the applicant credit institution or any other member of its group,
- (i) to the extent any conflict of interest arises from the relationships referred to in point (h), proposed methods for managing such conflicts;
- (j) a list of each person who effectively directs the business of the legal person, their name, date and place of birth, address, contact details, their national identification number, where available, and detailed curriculum vitae stating relevant education and training, previous professional experience, any professional activities or other relevant functions currently performed, together with the information referred to in points (c) and (d) of point (2) in respect of each such person;
- (k) the shareholding structure of the legal person, including the identity of all shareholders exerting significant influence and their respective share capital and voting rights and information on any shareholder agreements;
- (l) where the legal person is part of a group, a detailed organisational chart of the structure of the group and information on the share of capital and voting rights of shareholders with significant influence over the entities of the group and on the activities currently performed by the entities of the group;
- (m) where the legal person is part of a group, information on the relationships between any credit institution, insurance or re-insurance undertaking or investment firm within the group and any other group entities, and the names of the supervisory authorities;
- (n) where the legal person is part of a group, the identification of any credit institution, insurance or re-insurance undertaking or investment firm within the group, the names of the relevant competent authorities, as well as an analysis of the perimeter of prudential consolidation of the credit institution and the group, including information about which group entities would be included in the scope of consolidated supervision requirements and at which levels within the group those requirements would apply on a full or sub-consolidated basis;
- (o) annual financial statements, at individual level and, where applicable, at consolidated and sub-consolidated group levels, for the last three financial years, where the legal person has been in operation for that period of time, or such shorter period of time for which the legal person has been in operation and financial statements were prepared, approved by the statutory auditor or audit firm as defined in Article 2, points (2) and (3), of Directive 2006/43/EC of the European Parliament and of the Council ⁽²⁾, where applicable, including each of the following items:
- (i) the balance sheet;

⁽²⁾ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

- (ii) the profit and loss accounts or income statement;
 - (iii) the annual reports and financial annexes and any other documents registered with the registry or competent authority of the legal person, including, as set out as relevant in the annual reports, financial annexes and any other registered documents, the planning assumptions used, at least under base case and stress scenarios;
 - (p) where the legal person has its head office in a third country, all of the following information:
 - (i) where the legal person is supervised by an authority of a third country in the financial services sector, a certificate of good-standing, or equivalent where not available, from such third country authority in relation to the legal person;
 - (ii) where the legal person is supervised by an authority of a third country in the financial services sector and where that authority issues such declarations, a declaration by that third country authority that there are no obstacles or limitations to the provision of information necessary for the supervision of the applicant credit institution;
 - (iii) general information about the regulatory regime of that third country as applicable to the legal person, including information on the extent to which the third country's anti-money laundering and counter-terrorist financing regime is consistent with the recommendations of the Financial Action Task Force;
 - (q) where the legal person is a collective investment undertaking:
 - (i) the identity of the unit holders controlling the collective investment undertaking or having a holding enabling those unit holders to prevent the taking of decisions by the collective investment undertaking;
 - (ii) details of the investment policy and any restrictions on investment;
 - (iii) the name and position of the persons responsible, whether individually or as a committee, for determining and making the investment decisions for the collective investment undertaking, as well as a copy of any management mandate or, where applicable, terms of reference of the committee;
 - (iv) a detailed description of the applicable anti-money laundering legal framework and of the anti-money laundering procedures of the collective investment undertaking;
 - (v) a detailed description of the performance of former holdings of the collective investment undertaking in other credit institutions, insurance or re-insurance undertakings or investment firms, indicating whether such holdings were approved by a competent authority and, if so, the identity of the authority;
 - (r) where the person is a sovereign wealth fund:
 - (i) the name of the public body in charge of determining the investment policy of the sovereign wealth fund;
 - (ii) details of the investment policy of the sovereign wealth fund and any restrictions on investment;
 - (iii) the names and positions of the individuals responsible for making the investment decisions for the sovereign wealth fund;
 - (iv) details of any influence exerted by the public body referred to in point (i) on the day-to-day operations of the sovereign wealth fund and the applicant credit institution.
4. For the purposes of this point 3, a group shall include the members of the entity and the subsidiaries of such members. The following information about subscriptions arising from trust arrangements:
- (a) the identity of all trustees who will manage assets under the terms of the trust document and of each person who is a beneficiary or a settlor of the trust property and, where applicable, their respective shares in the distribution of income generated by the trust property;
 - (b) a copy of any document establishing or governing the trust;

- (c) a description of the main legal features of the trust and its functioning;
 - (d) the method of financing the trust and resources ensuring the financial soundness of the trust to support the applicant, and in particular:
 - (i) a description of the investment policy of the trust and possible restrictions on investments, including information on the factors influencing investment decisions and the exit strategy in relation to the applicant credit institution;
 - (ii) information about past and existing investments by financial sector entities and operating results in relation to those investments in relation to the trust;
 - (iii) an indication and overview of sources of funding and, where available, the annual financial statements of the trust.
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COMMISSION IMPLEMENTING REGULATION (EU) 2022/2581**of 20 June 2022****laying down implementing technical standards for the application of Directive 2013/36/EU of the European Parliament and of the Council with regard to provision of information in applications for authorisation of a credit institution****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽¹⁾, and in particular Article 8(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2022/2580 ⁽²⁾ sets out which information is to be provided to the competent authorities in applications for authorisation as a credit institution.
- (2) For the purposes of harmonisation, it is important that applicants for authorisation as a credit institution submit the information required for such authorisation in a uniform manner, using the same standard forms, templates and procedures across the Union.
- (3) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (4) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽³⁾.
- (5) In order to provide competent authorities and applicant credit institutions with sufficient time to adapt to the requirements laid down in this Regulation, its date of application should be deferred,

HAS ADOPTED THIS REGULATION:

*Article 1***Submission of the application for authorisation as a credit institution**

1. Applicants for authorisation as a credit institution shall submit the information set out in Articles 1 to 9 of Delegated Regulation (EU) 2022/2580 to their competent authority by filling in the template set out in the Annex to this Regulation.

⁽¹⁾ OJ L 176, 27.6.2013, p. 338.

⁽²⁾ Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities (OJ L 335, XX.XX.XXXX, p. 64).

⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

2. Competent authorities shall indicate on their website the contact details for submitting an application for authorisation as a credit institution and shall indicate whether that application is to be submitted in paper format, in electronic form or both.

Article 2

Assessment of completeness of applications for authorisation as a credit institution

1. Applications for authorisation as a credit institution shall be deemed to be complete if those applications contain all the information required by Delegated Regulation (EU) 2022/2580.
2. Where the information provided in the application is assessed and found to be incomplete, the competent authorities shall send, in paper format or by electronic means, a request the applicants concerned indicating the further information required, and shall provide to those applicants the opportunity to submit the information identified.
3. Upon an application being assessed as complete, the competent authority shall inform the applicant of that fact, together with the date of receipt of the complete application or, as the case may be, the date of receipt of the information that completed the application.
4. Competent authorities may require the applicant to provide additional explanations and supplementary information for the purposes of assessing the application.

Article 3

Applications for authorisation as a credit institution subject to this Regulation

This Regulation shall apply to applications for authorisation as a credit institution submitted on or after XX.XX.XXXX.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from the XX.XX.XXXX.

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

Done at Brussels, 20 June 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Information provided for the purposes of the application for authorisation

Date: ...

Reference number:

Name of the applicant:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

This is an application for authorisation as a credit institution submitted in accordance with Commission Delegated Regulation (EU) 2022/2580 ⁽¹⁾.

We certify that the information provided in this application is true, accurate, complete and not misleading. Unless specifically stipulated otherwise, the information is up-to-date on the date of this application. Where certain information indicates a future date, it is explicitly indicated in the application and we undertake to notify the authority in writing without delay if any such information should turn out to be untrue inaccurate, incomplete or is misleading.

[Name of the applicant]

By:

Name:

Position:

Table 1

Presentation of information about the applicant credit institution (Article 1 of Delegated Regulation (EU) 2022/2580)

1.1. Contact persons for the purposes of the application (Article 1, points (a) and (b), of Delegated Regulation (EU) 2022/2580)	
Details of person to contact regarding the application	
Title	
Full name	
Position	
Telephone number	
Mobile number	
Facsimile (if available)	
Email	
Principal professional adviser involved in the preparation of the application (if any)	
Title	
Full name	
Position	
Telephone number	
Mobile number	

⁽¹⁾ OJ L 335, XX.XX.XXXX, p. 64.

Facsimile (if available)	
Email	
1.2. Identification of the applicant credit institution (Article 1, points (c) to (k), of Delegated Regulation (EU) 2022/2580)	
Name of the applicant credit institution and any other trading name used or to be used by the applicant credit institution	
Proposed plans (if any) to change the name of the applicant credit institution and an explanation of the proposed changes	
Logo	
Legal form of the applicant credit institution	
Date of incorporation or formation	
Jurisdiction of incorporation or formation	
Address of the applicant credit institution's registered office and, if different, its head office, and principal place of business	
Contact details for the applicant credit institution if different from the details provided under Section 1.1 of this table: telephone, mobile number, facsimile (if available), and email	
Where the applicant credit institution is registered in a central register, commercial register, companies register or similar public register, the name of that register and the registration number of the applicant credit institution or an equivalent means of identification in that register	
The Legal Entity Identifier (LEI), if any, of the applicant credit institution	
The date of the accounting year-end for the applicant credit institution	
The website address, if any, of the applicant credit institution	

1.3. Constitutional documents (Article 1, point (l), of Delegated Regulation (EU) 2022/2580)

Annex under which is provided a copy of the articles of association of the applicant credit institution or equivalent constitutional documents and, where applicable, evidence of registration with the register designated by the law of the Member State concerned in accordance with Article 16 of Directive (EU) 2017/1132 of the European Parliament and of the Council ⁽²⁾

1.4. History of the applicant credit institution and its subsidiaries (Article 2, points (a) to (c), of Delegated Regulation (EU) 2022/2580)

Confirmation of whether the applicant credit institution has previously carried out commercial or other activities (yes/no) (if yes, complete the remaining fields in Section 1.4 of this table)

Details of licences, authorisations, registrations or other permissions of the applicant credit institution or of any of its subsidiaries to carry out activities in the financial services sector granted by a public authority or other entity performing public functions in any Member State or third country falling within the categories set out in Article 2, point (a)(i) to (iv), of Delegated Regulation (EU) 2022/2580

Details about any significant events relating to the applicant credit institution or to any of its subsidiaries which have taken place or are taking place which may be reasonably considered to be relevant for the authorisation, including any of the matters set out in Article 2, point (b), of Delegated Regulation (EU) 2022/2580

Information on any events set out in the declaration including the name and address of the relevant criminal or civil court, or civil or administrative authority, the date of the event, the amount involved, the outcome of the proceedings and an explanation of the circumstances of the event triggering the proceedings

⁽²⁾ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

1.5. Applicable fees (Article 2, points (d) and (e), of Delegated Regulation (EU) 2022/2580)

Elements necessary to calculate any applicable fees where, pursuant to Union or national law, any application fee or supervisory fee that is to be paid by the applicant credit institution is calculated on the basis of the activities or the characteristics of the applicant credit institution

Annex under which can be found evidence of the payment of any application fee, where applicable pursuant to Union or national law

Table 2

Programme of activities (Article 3 of Delegated Regulation (EU) 2022/2580)**Activities (Article 3 of Delegated Regulation (EU) 2022/2580)**

Annex under which can be found the programme of activities, including (a) the list of the activities that the applicant credit institution intends to carry out, including the activities listed in Annex I to Directive 2013/36/EU, and (b) the description of how the programme of operations aligns with the proposed activities

Table 3

Financial information (Article 4 of Delegated Regulation (EU) 2022/2580)**3.1. Forecast information (Article 4, point (a), of Delegated Regulation (EU) 2022/2580)**

Annex under which can be found forecast information on the applicant credit institution at an individual level and, where applicable, at consolidated group and sub-consolidated levels as required by Article 4, point (a), of Delegated Regulation (EU) 2022/2580

3.2. Statutory financial statements (Article 4, point (b), of Delegated Regulation (EU) 2022/2580)

Annex under which can be found the statutory financial statements of the applicant credit institution at an individual level and, where applicable, at a consolidated group and sub-consolidated levels as required by Article 4, point (b), of Delegated Regulation (EU) 2022/2580

3.3. Indebtedness (Article 4, point (c), of Delegated Regulation (EU) 2022/2580)

Annex under which can be found the outline of any indebtedness incurred or expected to be incurred by the applicant credit institution prior to the commencement of its activities as a credit institution as required by Article 4, point (c), of Delegated Regulation (EU) 2022/2580

3.4. Security interests, guarantees and indemnities (Article 4, point (d), of Delegated Regulation (EU) 2022/2580)

Annex under which can be found the outline of any security interests, guarantees or indemnities granted or expected to be granted by the applicant credit institution prior to the commencement of its activities as a credit institution

3.5. Credit rating (Article 4, point (e), of Delegated Regulation (EU) 2022/2580)

Where available, the credit rating of the applicant credit institution and the overall rating of its group

3.6. Consolidated supervision (Article 4, point (f), of Delegated Regulation (EU) 2022/2580)

Annex under which can be found, where applicable, the analysis of the scope of consolidated supervision pursuant to the consolidation requirements as required by Article 4, point (f), of Delegated Regulation (EU) 2022/2580

3.7. Frameworks and policies (Article 4, point (g)(i) to (x), of Delegated Regulation (EU) 2022/2580)

Outline of the risk management framework as required by Article 4, point (g), of Delegated Regulation (EU) 2022/2580

Outline of the liquidity risk management policy

Outline of the funding concentration and diversification policy	
Outline of the collateral management policy	
Outline of the deposit policy	
Outline of the credit and lending policy	
Outline of the concentration risk policy	
Outline of the provisioning policy	
Outline of the dividend distribution policy	
Outline of the trading book policy	
3.8. Process for developing a recovery plan (Article 4, point (h), of Delegated Regulation (EU) 2022/2580)	
Description of the applicant credit institution's process for developing a recovery plan as defined in Article 2(1), point (32), of Directive 2014/59/EU of the European Parliament and of the Council ⁽³⁾ , and, where applicable, a group recovery plan, as defined in Article 2(1), point (33), of that Directive	
3.9 deposit guarantee scheme (Article 4, point (i), of Delegated Regulation (EU) 2022/2580)	
A statement or confirmation that, before or at the latest on the date of authorisation, the applicant credit institution shall become a member of a deposit guarantee scheme officially recognised in the Member State where the application is submitted, as required by Article 4(3) of Directive 2014/49/EU	
Name of the deposit guarantee scheme	
3.10. Institutional protection scheme (Article 4, point (j), of Delegated Regulation (EU) 2022/2580)	
Name of any institutional protection scheme, as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁴⁾ , that the applicant credit institution has entered into or proposes to enter into	

⁽³⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽⁴⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

Table 4

Programme of operations, structural organisation, internal control systems and auditors (Article 5 of Delegated Regulation (EU) 2022/2580)

4.1. Programme of operations (Article 5(1), point (a), of Delegated Regulation (EU) 2022/2580)	
Annex under which can be found the programme of operations as required by Article 5(1), point (a), of Delegated Regulation (EU) 2022/2580	
4.2. Organisation, structure and governance arrangements (Article 5(1), point (b), of Delegated Regulation (EU) 2022/2580)	
Annex under which can be found the description of the organisation, structure and governance arrangements of the applicant credit institution as required by Article 5(1), point (b), of Delegated Regulation (EU) 2022/2580	
4.3. Internal control framework (Article 5(1), point (c), of Delegated Regulation (EU) 2022/2580)	
Annex under which can be found the overview of the internal organisation (including devoted budgetary and human resources) of the compliance function, risk management function and internal audit function as required by Article 5(1), point (c) (i), of Delegated Regulation (EU) 2022/2580	
Outline of the whistleblowing policy	
Outline of the conflicts of interest policy	
Outline of the complaints handling policy	
Outline of the market abuse policy	
Outline of the policy promoting diversity in the management body	
Outline of the remuneration policy for staff members whose professional activities have a material impact on the applicant credit institution's risk profile	
Outline of the systems and policies for assessing and managing the risks of money laundering and terrorist financing, including an overview of the key procedures that have been put in place to counter the risk that the applicant credit institution might be used to further financial crime	

4.4. Internal audit resources (Article 5(1), point (d) of Delegated Regulation (EU) 2022/2580)

Description of the internal audit resources and an outline of the methodology and internal audit plan for the next three years from authorisation, including the audit of externalised services

4.5. Policies and plans (Article 5(1), point (e) of Delegated Regulation (EU) 2022/2580)

Outline of the internal audit policy

Outline of the product governance policy

Outline of the consumer protection policy

Outline of the business continuity plan and policy, including an overview of available back-up and recovery systems and of plans ensuring the availability of key staff in business continuity situations

4.6. Structure of the applicant credit institution (Article 5(1), point (f) of Delegated Regulation (EU) 2022/2580)

Outline of external and intra-group outsourcing to support the applicant credit institution's operations or internal control activities, including the information referred to in Article 5(1), point (f)(i), of Delegated Regulation (EU) 2022/2580

Outline of oversight responsibilities and arrangements, systems and controls for each outsourced function that is critical or important to the applicant credit institution's management and operations

Outline of the service level agreements and arrangements for each outsourcing function that is critical or important to the applicant credit institution's management and operations

Description of the applicant credit institution's IT infrastructure, including the systems in use or to be used, its hosting arrangements, the organisation of its IT function, IT structure, IT strategy and IT governance, IT security policies and procedures, and any systems and controls in place or to be put in place for the provision of online banking facilities

4.7. Statutory auditors or audit firm (Article 5(2) of Delegated Regulation (EU) 2022/2580)

Name	
Address	
Point of contact (name, telephone number, email address)	

Table 5

Initial capital (Article 6 of Delegated Regulation (EU) 2022/2580)**5.1. Initial capital and own funds (Article 6(1) and (2) of Delegated Regulation (EU) 2022/2580)**

Annex under which can be found evidence of the applicant credit institution's issued capital, paid-up capital and capital which is not yet paid-up	
Description of the types and amounts of own funds that correspond to the initial capital	
Where the initial capital has not been paid up in full at the time of submitting the application, the description of the plan and implementation deadline for ensuring that the initial capital is paid-up in full before the authorisation to commence the activity as a credit institution is effective	

5.2. Available funding sources for own funds (Article 6(3) of Delegated Regulation (EU) 2022/2580)

Explanation of the available funding sources for own funds and annex under which can be found evidence of the availability of those funding sources as required by Article 6(3) of Delegated Regulation (EU) 2022/2580	
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5.3. Amounts, types and distribution of internal capital (Article 6(4) of Delegated Regulation (EU) 2022/2580)

Annex under which can be found the assessment of the amounts, types and distribution of internal capital considered by the applicant credit institution as adequate to cover the nature and level of the risks to which the applicant credit institution will or might be exposed, and the analysis as required by Article 6(4) of Delegated Regulation (EU) 2022/2580	
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Table 6

Effective direction (Article 7 of Delegated Regulation (EU) 2022/2580)**6.1. Members of the management body (complete a separate copy of this section of the table for each individual) (Article 7(1) of Delegated Regulation (EU) 2022/2580)**

Name and, where different, any other previous names	
Gender	
Place of birth	
Date of birth	
Address	
Telephone number	
Mobile	
Email address	
Nationality	
Personal identification number or annex under which a copy of the ID card or equivalent can be found	
Details of the position held or to be held by the person, including whether the position is executive or non-executive, the start date or planned start date and duration of mandate, and a description of the person's key duties and responsibilities	
Annex under which can be found a curriculum vitae required by point 1(d) of Annex I to Delegated Regulation (EU) 2022/2580	
Annex under which can be found a list of reference persons including contact information, preferably from employers in the banking or financial services sector, including full name, institution, position, telephone number, email, nature of the professional relationship and information if any non-professional relationship exists or existed with this individual	
Annex under which can be found criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures) notably through an official certificate or, in cases where such a certificate does not exist, any reliable source of information concerning the absence of criminal conviction, investigations and proceedings	

Annex under which can be found a statement of whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding	
Annex under which can be found information on matters set out in point 1(f)(iii), of Annex I to Delegated Regulation (EU) 2022/2580	
Annex under which can be found a description of all financial and non-financial interests that could create potential conflicts of interest as required by point 1(g), of Annex I to Delegated Regulation (EU) 2022/2580	
Annex under which details can be found to show that the individual has sufficient time to commit to the mandate as required by point 1(h), of Annex I to Delegated Regulation (EU) 2022/2580	
Details of the result of any assessment of the suitability of the individual performed by the applicant credit institution as described in point 3 of Annex I to Commission Delegated Regulation (EU) 2022/2580	
6.2. Other information required in relation to members of the management body (Article 7(1) of, and points 2, 4 and 5 of Annex I to, Delegated Regulation (EU) 2022/2580)	
Description of any committee of the management body that is planned at the time of the application, including its members and powers	
Statement regarding the applicant credit institution's overall assessment of the collective suitability of the management body, including relevant board minutes or suitability assessment report or documents	
Description of how the diversity of qualities and competences was taken into account when selecting the members of the management body	
6.3. Heads of internal control function and chief financial officer who are not members of the management body (complete a separate copy of this section of the table for each individual) (Article 7(2) of Delegated Regulation (EU) 2022/2580)	
Name and, where different, any other previous names	
Gender	
Place of birth	
Date of birth	
Address	

Telephone number	
Mobile	
Email address	
Nationality	
Personal identification number or annex under which a copy of the ID card or equivalent can be found	
Details of the position held or to be held by the person, including whether the position is executive or non-executive, the start date or planned start date and duration of mandate, and a description of the person's key duties and responsibilities	
Annex under which can be found a curriculum vitae as required by point 1(d), of Annex I to Delegated Regulation (EU) 2022/2580	
Annex under which can be found a list of reference persons including contact information, preferably from employers in the banking or financial services sector, including full name, institution, position, telephone number, email, nature of the professional relationship and information if any non-professional relationship exists or existed with this individual	
Annex under which can be found criminal records and relevant information on criminal investigations and proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director, bankruptcy, insolvency and similar procedures) notably through an official certificate or, in cases where such a certificate does not exist, any reliable source of information concerning the absence of criminal conviction, investigations and proceedings	
Annex under which can be found a statement of whether criminal proceedings are pending or the person or any organisation managed by him or her has been involved as a debtor in insolvency proceedings or a comparable proceeding	
Annex under which can be found information on matters set out in point 1(f)(iii), of Annex I to Delegated Regulation (EU) 2022/2580	
Details of the result of any assessment of the suitability of the individual performed by the applicant credit institution as described in point 3 of Annex I to Delegated Regulation (EU) 2022/2580	

6.4. Powers, responsibilities and proxies conferred upon members of the applicant credit institution's management body (Article 7(3) of Delegated Regulation (EU) 2022/2580)

Description of the powers, responsibilities and proxies conferred upon the members of the applicant credit institution's management body and, where relevant in accordance with Article 7(2) of Delegated Regulation (EU) 2022/2580, conferred upon the heads of internal control functions and the chief financial officer who are not part of the management body

Table 7

Shareholders and members with qualifying holdings (Article 8 of Delegated Regulation (EU) 2022/2580)

7.1. Shareholders and members (legal and natural persons) (Article 8(1) of Delegated Regulation (EU) 2022/2580)

Annex under which can be found in relation to each natural and legal person with a qualifying holding the information referred to in Article 8(1) of Delegated Regulation (EU) 2022/2580

7.2. Further information in relation to natural persons (Article 8(2) of Delegated Regulation (EU) 2022/2580)

Annex under which can be found in relation to each natural person with a qualifying holding the additional information referred to in Article 8(2) of Delegated Regulation (EU) 2022/2580

7.3. Further information in relation to legal persons or entities which are not legal persons and which hold or will hold participations in their own name (Article 8(3) of Delegated Regulation (EU) 2022/2580)

Annex under which can be found in relation to each legal person or entity which is not a legal person and which holds or shall hold participations in its own name the additional information referred to in Article 8(3) of Delegated Regulation (EU) 2022/2580

7.4. Trusts (Article 8(4) of Delegated Regulation (EU) 2022/2580)

Annex under which can be found the information referred to in Article 8(4) of Delegated Regulation (EU) 2022/2580

7.5. Members of an entity that is not a legal person where the holding in the applicant credit institution will be treated as an asset of the entity (Article 8(5) of Delegated Regulation (EU) 2022/2580)

Annex under which can be found the information referred to in Article 8(5) of Delegated Regulation (EU) 2022/2580

Table 8

20 largest shareholders or members (Article 9 of Delegated Regulation (EU) 2022/2580)

8.1. Shareholder structure (Article 9 of Delegated Regulation (EU) 2022/2580)	
Annex under which can be found a chart setting out the shareholder structure of the applicant credit institution, including the breakdown of the capital and voting rights	
8.2. List of names of all persons and other entities with a shareholding and other relevant details (Article 9 of Delegated Regulation (EU) 2022/2580)	
Annex under which can be found a list of the names of all persons and other entities with a shareholding of a kind described in Article 9 of Delegated Regulation (EU) 2022/2580 indicating in respect of each such person or entity: — the number and type of shares or other holdings subscribed or to be subscribed; — the nominal value of such shares or other holdings; — any premium paid or to be paid; — any security interests or encumbrances created over such shares or other holdings, including the identity of the secured parties; and — where applicable, any commitments made by such persons or entities aimed at ensuring that the credit institution will comply with applicable prudential requirements	

Table 9

Items of information required in accordance with Article 10(1) of Delegated Regulation (EU) 2022/2580

Information required by the competent authority in accordance with Article 10(1) of Delegated Regulation (EU) 2022/2580 (complete as applicable presenting in the left column a description of the information required and in the right column the information)	

Table 10

Items of information omitted from the application in accordance with Article 11 of Delegated Regulation (EU) 2022/2580

10.1.	Information omitted in accordance with Article 11, point (a), of Delegated Regulation (EU) 2022/2580 (complete with a list of the information as applicable)
10.2.	Information omitted in accordance with Article 11, point (b), of Delegated Regulation (EU) 2022/2580 (complete with a list of the information as applicable)

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 2/2022 OF THE EPA COMMITTEE ESTABLISHED BY THE STEPPING STONE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN GHANA, OF THE ONE PART, AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE OTHER PART

of 30 November 2022

as regards the adoption of the Rules of Procedure for dispute settlement [2022/2582]

THE EPA COMMITTEE,

Having regard to the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part ⁽¹⁾ ('the Agreement'), signed in Brussels on 28 July 2016, and in particular Article 59 thereof,

Whereas:

Article 59(1) of the Agreement provides that dispute settlement procedures are to be governed by the Rules of Procedure, which are to be adopted by the EPA Committee within three months after its establishment, and Article 64(2) of the Agreement mentions that the Code of Conduct is annexed to those Rules of Procedure,

HAS ADOPTED THIS DECISION:

Article 1

The Rules of Procedure for dispute settlement, as set out in the Annex to this Decision, are hereby adopted.

Article 2

This Decision shall enter into force on the date of its adoption.

⁽¹⁾ OJ L 287, 21.10.2016, p. 3.

ANNEX

RULES OF PROCEDURE FOR DISPUTE SETTLEMENT**A. DEFINITIONS**

1. In Chapter 3 (Dispute settlement procedures) of the Agreement and under these Rules of Procedure, the following definitions apply:
 - (a) 'administrative staff' means, in respect of a panellist, individuals under the direction and control of a panellist, other than assistants;
 - (b) 'adviser' means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;
 - (c) 'assistant' means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;
 - (d) 'complaining Party' means any Party that requests the establishment of panel under Article 49 (Initiation of the arbitration procedure) of the Agreement;
 - (e) 'day' means a calendar day;
 - (f) 'panel' means a panel established under Article 50 (Establishment of the arbitration panel) of the Agreement;
 - (g) 'panellist' or 'arbitrator' means a member of a panel;
 - (h) 'Party complained against' means the Party that is alleged to be in violation of the covered provisions;
 - (i) 'representative of a Party' means an employee or any individual appointed by a government department, agency or any other public entity of a Party who represents the Party for the purposes of a dispute under the Agreement.

B. NOTIFICATIONS

2. Any request, notice, written submission or other document of:
 - (a) the panel shall be sent to both Parties at the same time;
 - (b) a Party which is addressed to the panel shall be copied to the other Party at the same time; and
 - (c) a Party which is addressed to the other Party shall be copied to the panel at the same time, as appropriate.
3. Any notification referred to under Rule 2 shall be made by email or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.
4. All notifications shall be addressed to the Directorate-General for Trade of the European Commission and to Chief Director, Ministry of Trade and Industry of Ghana, respectively.
5. Minor errors of a clerical nature in a request, notice, written submission or other document related to the panel proceedings may be corrected by delivery of a new document clearly indicating the changes.
6. If the last day for delivery of a document falls on non-working day of the institutions of the European Union or of the government of Ghana, the time period for the delivery of the document shall end on the first following working day.

C. APPOINTMENT OF PANELLISTS

7. If, pursuant to paragraph 3 of Article 50 (Establishment of the arbitration panel) of the Agreement, a panellist is selected by lot, the co-chair of the EPA Committee from the complaining Party shall promptly inform the co-chair of the Party complained against of the date, time and venue of the lot. The co-chair of the EPA Committee from the complaining Party, or his or her delegate, shall be requested to and shall conduct the lot as envisaged in paragraphs 3 and 4 of Article 50 (Establishment of the arbitration panel) of the Agreement. The co-chair of the EPA Committee from the complaining Party may delegate such selection by lot of the panellist.

8. The co-chair of the EPA Committee from the complaining Party shall select by lot the panellist or chairperson, within five days from the expiry of the time period referred to in paragraph 2 of Article 50 (Establishment of the arbitration panel), if any of the sub-lists referred in paragraph 1 of Article 64 (List of arbitrators):

- (a) is not established, amongst those individuals who have been formally proposed by one or both Parties for the establishment of that particular sub-list; or
- (b) no longer contains at least five individuals, amongst those individuals who remain on that particular sub-list.

The co-chair of the EPA Committee from the complaining Party may delegate such selection by lot of the panellist.

9. The co-chair of the EPA Committee from the complaining Party shall notify, in writing, each individual who has been selected to serve as a panellist of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days from the date on which he or she was informed of his or her appointment. For the purposes of determining the date of establishment of the panel under paragraph 5 of Article 50 (Establishment of the arbitration panel) of the Agreement, the date on which the panellists are selected shall be considered to be the date on which the last of the three selected panellists has notified their acceptance of appointment.

D. TERMS OF REFERENCE

10. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

'to examine, in the light of the relevant provisions of the Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with the provisions of the Agreement referred to in Article 46 (Scope) and to deliver a report in accordance with Articles 51 (Interim panel report) and 52 (Arbitration panel ruling).'

11. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in Rule 10.

E. FUNCTIONS OF THE PANEL

12. The panel:

- (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;
- (b) shall set out, in its decisions and reports, the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and conclusions that it makes; and
- (c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

13. The panel shall also take into account relevant interpretations in reports of World Trade Organization (WTO) panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

F. ORGANISATIONAL MEETING

14. Unless the Parties agree otherwise, they shall meet the panel within seven days of its establishment in order to determine such matters that the Parties or the panel deem appropriate, including:

- (a) the remuneration and expenses to be paid to the panellists, unless agreed earlier. The remuneration shall be in accordance with WTO standards;
- (b) the remuneration to be paid to assistants, unless agreed earlier. The total amount of the remuneration of an assistant or assistants of each panellist shall not exceed 50 % of the remuneration of that panellist;

- (c) the timetable of the proceedings; and
- (d) *ad hoc* procedures to protect confidential information.

15. Panellists and representatives of the Parties may take part in this meeting *via* telephone or video conference.

G. WRITTEN SUBMISSIONS

16. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the panel. The Party complained against shall deliver its written submission no later than 20 days after the date of delivery of the written submission of the complaining Party.

H. OPERATION OF THE PANEL

17. The chairperson of the panel shall preside at all its meetings. The panel may delegate to the chairperson the authority to make administrative and procedural decisions.
18. Unless otherwise provided in Chapter 3 (Dispute settlement procedures) of the Agreement or in these Rules of Procedure, the panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
19. Only panellists may take part in the deliberations of the panel, but the panel may permit their assistants to be present at its deliberations.
20. The drafting of any decision and report shall remain the exclusive responsibility of the panel and shall not be delegated.
21. Where a procedural question arises that is not covered by the Chapter 3 (Dispute settlement procedures) of the Agreement, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
22. When the panel considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Chapter 3 (Dispute settlement procedures) of the Agreement, or to make any other procedural or administrative adjustment, it shall first consult the Parties and subsequently inform them, in writing, of the reasons for the change or adjustment and of the time period or adjustment needed.

I. REPLACEMENT

23. When a Party considers that a panellist does not comply with the requirements of the Code of Conduct for Panellists and Mediators (Annex to these Rules of Procedure) and for that reason should be replaced, that Party shall notify the other Party within 15 days from when it obtained sufficient evidence of the panellist's alleged failure to comply with the requirements of that Code of Conduct.
24. The Parties shall consult within 15 days of the notification referred to in Rule 23. They shall inform the panellist of his or her alleged failure and they may request the panellist to take steps to ameliorate the failure. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article 50 (Establishment of the arbitration panel) of the Agreement.
25. If the Parties fail to agree on the need to replace the panellist, other than the chairperson of the panel, either Party may request that this matter be referred to the chairperson of the panel, whose decision shall be final.

If the chairperson of the panel finds that the panellist does not comply with the requirements of the Code of Conduct for Panellists and Mediators, the new panellist shall be selected in accordance with Article 50 (Establishment of the arbitration panel) of the Agreement.

26. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons established under Article 64 (Lists of arbitrators) of the Agreement. His or her name shall be drawn by lot by the co-chair of the EPA Committee from the requesting Party, or the chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final.

If this person finds that the chairperson does not comply with the requirements of the Code of Conduct for Panellists and Mediators, the new chairperson shall be selected in accordance with Article 50 (Establishment of the arbitration panel) of the Agreement.

27. The time period for the delivery of the report or decision shall be extended for the time necessary for the appointment of the new panellist.

J. SUSPENSION AND TERMINATION

28. At the request of both Parties, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of the suspension period at the written request of both Parties, or at the end of the suspension period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the panel's work at the expiry of the suspension period, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated. In the event of a suspension of the work of the panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended.

K. HEARINGS

29. On the basis of the timetable determined pursuant to Rule 14, after consulting with the Parties and the other panellists, the chairperson of the panel shall notify the Parties of the date, time and venue of the hearing. This information shall be made publicly available by the Party on whose territory the hearing takes place, unless the hearing is closed to the public.
30. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Ghana and in Accra if the complaining Party is the European Union. The Party complained against shall bear the expenses derived from the logistical administration of the hearing.
31. The panel may convene additional hearings if the Parties so agree.
32. All panellists shall be present during the entirety of the hearing.
33. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:
- (a) representatives of a Party;
 - (b) advisers;
 - (c) assistants and administrative staff;
 - (d) interpreters, translators and court reporters of the panel; and
 - (e) experts, as decided by the panel pursuant to Article 60 (Information and technical advice) of the Agreement.
34. No later than five days before the date of a hearing, each Party shall deliver to the panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.
35. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time in both argument and rebuttal argument:

Argument

- (a) argument of the complaining Party;
- (b) argument of the Party complained against.

Rebuttal Argument

- (a) reply of the complaining Party;
- (b) counter-reply of the Party complained against.

36. The panel may direct questions to either Party at any time during the hearing.
37. The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments.
38. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 10 days after the date of the hearing.

L. QUESTIONS IN WRITING

39. The panel may submit, at any time during the proceedings, questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
40. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the panel. The other Party shall have an opportunity to provide comments in writing on the Party's responses within five days after the delivery of such copy.
41. At the request of a Party, or upon its own initiative, the panel may seek, from the Parties, relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

M. CONFIDENTIALITY

42. Each Party and the panel shall treat as confidential any information submitted by the other Party to the panel that the other Party has designated as confidential. When a Party submits to the panel a written submission, which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information, which shall be disclosed to the public.
43. Nothing in these Rules of Procedure shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.
44. The panel shall hold the relevant parts of the session in private when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the panel hearings when the hearings are held in closed session.

N. EX PARTE CONTACTS

45. The panel shall not meet or communicate with a Party in the absence of the other Party.
46. A panellist shall not discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other panellists.

O. AMICUS CURIAE SUBMISSIONS

47. Unless the Parties agree otherwise within five days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from natural persons of a Party or legal persons established in the territory of a Party that are independent from the governments of the Parties, provided that they:
 - (a) are received by the panel within 10 days of the date of the establishment of the panel;
 - (b) are concise and in no case longer than 15 pages, including any annexes, typed at double space;
 - (c) are directly relevant to a factual or a legal issue under consideration by the panel;
 - (d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives and its source of financing;

- (e) specify the nature of the interest that the person has in the panel proceedings; and
- (f) are drafted in the languages chosen by the Parties in accordance with Rules 54 and 55 of these Rules of Procedure.

48. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within 10 days of the delivery, to the panel.

49. The panel shall list in its report all the submissions it has received pursuant to Rule 47. The panel shall not be obliged to address in its report the arguments made in such submissions; however, if it does, it shall also take into account any comments made by the Parties pursuant to Rule 48.

P. URGENT CASES

50. In cases of urgency referred to in paragraph 2 of Article 52 (Arbitration panel ruling) of the Agreement, the panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure except for the time periods referred to in Rule 10. The panel shall notify the Parties of those adjustments.

51. If a Party so requests, the panel shall decide, within 10 days of its establishment, whether the case concerns matters of urgency.

Q. COSTS

52. Each Party shall bear its own expenses derived from the participation in the panel procedure.

53. Without prejudice to Rule 30, the Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and their assistants.

R. TRANSLATION AND INTERPRETATION

54. During the consultations referred to in Article 47 (Consultations) of the Agreement or during the mediation referred to in Article 48 (Mediation) of the Agreement, and no later than the meeting referred to in Rule 14 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the panel.

55. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language. Each Party shall provide at the same time a translation in the language chosen by the other Party, unless its submissions are written in one of the working languages of the WTO. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

56. Panel reports and decisions shall be issued in the language or languages chosen by the Parties. If the Parties have not agreed on a common working language, the interim and final report of the panel shall be issued in one of the working languages of the WTO.

57. Any Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.

58. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred for translation of a ruling shall be borne equally by the Parties.

S. OTHER PROCEDURES

59. The time periods laid down in these Rules of Procedure shall be adjusted in accordance with the special time periods provided for the adoption of a report or decision by the panel in the proceedings provided for in Article 54 (The reasonable period of time for compliance), Article 55 (Review of any measure taken to comply with the arbitration panel ruling), Article 56 (Temporary remedies in case of non-compliance) and Article 57 (Review of any measure taken to comply after the adoption of appropriate measures) of the Agreement.

ANNEX

CODE OF CONDUCT**I. DEFINITIONS****1. In this Code of Conduct:**

- (a) 'administrative staff' means, in respect of a panellist, individuals under the direction and control of a panellist, other than assistants;
- (b) 'assistant' means an individual who, under the terms of appointment of an panellist, conducts research or provides assistance to that panellist;
- (c) 'candidate' means an individual whose name is on the list of panellists referred to in Article 64 (Lists of arbitrators) of the Agreement and who is under consideration for selection as a panellist under Article 50 (Establishment of the arbitration panel) of the Agreement;
- (d) 'mediator' means an individual who has been selected as mediator in accordance with Article 48 (Mediation) of the Agreement;
- (e) 'panellist' or 'arbitrator' means a member of a panel.

II. GOVERNING PRINCIPLES**2. In order to preserve the integrity and impartiality of the dispute settlement mechanism each candidate and panellist shall:**

- (a) get acquainted with this Code of Conduct;
 - (b) be independent and impartial;
 - (c) avoid direct or indirect conflicts of interests;
 - (d) avoid impropriety and the appearance of impropriety or bias;
 - (e) observe high standards of conduct; and
 - (f) not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.
3. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
4. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence him or her.
5. A panellist shall not allow past or existing financial, business, professional, personal, or social relationships or responsibilities to influence his or her conduct or judgement.
6. A panellist shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

III. DISCLOSURE OBLIGATIONS

7. Prior to the acceptance of his or her appointment as a panellist under Article 50 (Establishment of the arbitration panel) of the Agreement, a candidate requested to serve as a panellist shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests.
8. The disclosure obligation under paragraph 7 is a continuing duty which requires a panellist to disclose any such interests, relationships or matters that may arise during any stage of the proceedings.

9. A candidate or a panellist shall communicate to the EPA Committee for consideration by the Parties any matters concerning actual or potential violations of this Code of Conduct at the earliest time he or she becomes aware of them.

IV. DUTIES OF PANELLISTS

10. Upon acceptance of his or her appointment, a panellist shall be available to perform and shall perform his or her duties thoroughly and expeditiously throughout the proceedings, and with fairness and diligence.
11. A panellist shall consider only the issues raised in the proceedings and necessary for a decision and shall not delegate this duty to any other person.
12. A panellist shall take all appropriate steps to ensure that his or her assistants and administrative staff are aware of, and comply with, the obligations incurred by panellists under Parts II, III, IV and VI of this Code of Conduct.

V. OBLIGATIONS OF FORMER PANELLISTS

13. Each former panellist shall avoid actions that may create the appearance that he or she was biased in carrying out the duties or derived advantage from the decision of the panel.
14. Each former panellist shall comply with the obligations in Part VI of this Code of Conduct.

VI. CONFIDENTIALITY

15. A panellist shall not, at any time, disclose any non-public information concerning the proceedings or acquired during the proceedings for which he or she has been appointed. A panellist shall not, in any case, disclose or use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
16. A panellist shall not disclose a decision of the panel or parts thereof prior to its publication in accordance with Chapter 3 (Dispute settlement procedures) of the Agreement.
17. A panellist shall not, at any time, disclose the deliberations of a panel, or any panellist's view, nor make any statements on the proceedings for which he or she has been appointed or on the issues in dispute in the proceedings.

VII. EXPENSES

18. Each panellist shall keep a record and render a final account of the time devoted to the proceedings and of his or her expenses, as well as the time and expenses of his or her assistants and administrative staff.

VIII. MEDIATORS

19. This Code of Conduct shall apply to mediators *mutatis mutandis*.
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CORRIGENDA

Corrigendum to Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816

(Official Journal of the European Union L 135 of 22 May 2019)

1 On page 99, Article 7(1), first subparagraph:

for: '1. The use of the ESP shall be reserved to the Member State authorities and Union agencies having access, to at least one of the EU information systems in accordance with the legal instruments governing those EU information systems, to the CIR and the MID in accordance with this Regulation, to Europol data in accordance with Regulation (EU) 2016/794 or to the Interpol databases in accordance with Union or national law governing such access.'

read: '1. The use of the ESP shall be reserved to the Member State authorities and Union agencies having access, to at least one of the EU information systems in accordance with the legal instruments governing those EU information systems, to the CIR and the MID in accordance with this Regulation, to Europol data in accordance with Regulation (EU) 2016/794 or to the Interpol databases in accordance with Union or national law governing such access.'

2. On page 100, Article 7(3):

for: '3. The Member State authorities referred to in paragraph 1 may use the ESP to search data related to persons or their travel documents in the Central-SIS referred to in Regulations (EU) 2018/1860 and (EU) 2018/1861.'

read: '3. The Member State authorities referred to in paragraph 1 may use the ESP to search data related to persons or their travel documents in the Central-SIS referred to in Regulation (EU) 2018/1862.'

Corrigendum to Council Decision (EU) 2022/2417 of 26 July 2022 on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the Republic of Moldova on the carriage of freight by road

(Official Journal of the European Union L 318 of 12 December 2022)

1. The title on the contents page and the title on page 1:

for: '... of 26 July 2022 ...',

read: '... of 5 December 2022 ...'.

2. On page 3, where the place and date of adoption are cited:

for: 'Done at Brussels, 26 July 2022.',

read: 'Done at Brussels, 5 December 2022.'.

Corrigendum to Council Decision (EU) 2022/2435 of 26 July 2022 on the conclusion, on behalf of the European Union, of the Agreement between the European Union and Ukraine on the carriage of freight by road

(Official Journal of the European Union L 319 of 13 December 2022)

1. The title on the contents page and the title on page 5:

for: '... of 26 July 2022...'

read: '... of 5 December 2022...'

2. On page 7, where the place and date of adoption are cited:

for: 'Done at Brussels, 26 July 2022.'

read: 'Done at Brussels, 5 December 2022.'

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