

Update Alert – December 2022

Agreements of the Council of the European Union to approve the regulation of (i) simplification of the processing of projects and (ii) a temporary mechanism to limit the increase in gas prices



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On 19 December 2022, the Council of the European Union has reached two agreements that seek on the one hand, to increase investment in projects in the renewable energy sector through the simplification of the permits necessary for their development; and on the other hand, the regulation of a temporary mechanism to limit excessive alterations and increases in the price of gas.

As regards the first of the agreements, the Commission proposed a number of targeted amendments to existing energy legislation, namely the Renewable Energy Directive (RED), the Energy Performance of Buildings Directive (EPBD) and the Energy Efficiency Directive (EED) 1. The Council has now fixed its position in respect of such proposal. The second of the agreements concerns the proposal for a Council regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices.

Temporary mechanism to limit the increase in gas prices

The proposal Regulation¹ establishes a temporary market correction mechanism for excessive price increases in gas that is not related to prices in other international and Liquefied Natural Gas (LNG) markets.

This measure arises in response to the situation provoked by the war in Ukraine, which has caused a reduction in the sources of gas that supplied energy on European territory. Faced with this situation, the need to look for alternative gas distribution channels has resulted in the congestion of gas infrastructure in Europe and, ultimately, in a very significant increase in gas prices and their volatility.²

► **Market correction event**

A market correction mechanism for the front-year TTF derivative settlement price shall apply as of 15 February 2023. The market correction mechanism is activated through a market correction event, which shall occur when the following circumstances occur:

- (a) a rise in the Dutch one-month maturity TTF market price, so that the price exceeds EUR 180/MWh for 3 business days; and
- (b) is EUR 35 higher than the reference price during the GNL period referred to above.

The idea of this measure is that the possible variation of prices will be continuously monitored. In cases where the price correction must take place, ACER shall publish on its website no later than 23h59 CET a notice that a market correction event has occurred ('market correction notice') and inform the Commission, ESMA, the European Central Bank ('ECB') and the Council of the market correction event. Likewise, regulated markets operators and participants shall monitor the website of ACER on a daily basis.

It is a dynamic mechanism, insofar as it is calculated as the sum of the price of the global LNG markets plus €35/MWh.

In addition, it will apply to derivatives contracts of other virtual gas trading platforms in the European Union, no later than 31 March 2023, provided that their inclusion does not have negative effects on the financial or gas markets.

Finally, the mechanism expressly excludes OTC (over-the-counter) transactions, although the European Commission is empowered to include them, after consultation with the European Central Bank, the European Securities Markets Authority (ESMA), ACER, the Gas Coordination Group and the European Network Operator for Gas (ENTSOG).

Once activated by ACER, the dynamic bidding limit shall apply at least for 20 working days, unless suspended by the Commission for intended reasons.

► **Deactivation of the market correction mechanism**

A series of guidelines are established to deactivate the mechanism. Specifically, two scenarios are foreseen.

At first point, the dynamic bidding limit shall be deactivated after 20 working days since the market correction event, if the reference price is below 145 EUR/MWh for three consecutive working days.

Likewise, the dynamic bidding limit shall be deactivated when a regional or a Union emergency is 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.

► **Suspension of the market correction mechanism**

The agreement also provides for a suspension mechanism for the market correction mechanism. In this sense, several entities³ shall constantly monitor the effects of the dynamic bidding limit on financial and energy markets and security of supply in the case of the activation of the market correction mechanism. The Commission shall suspend the market correction mechanism at any time, where unintended market disturbances or manifest risks of such disturbances occur, negatively affecting security of supply, intra-EU flows or financial stability ('suspension decision').

► **Entry into force and application period**

The regulation will enter into force on 15 February 2023. The regulation is temporary and will apply for one year.

Simplification of the processing of renewable energy projects

The Council reached an agreement (general approach⁴) on targeted amendments to the RED that has been proposed under the REPowerEU plan⁵. One of the novelties introduced by such amendment is that Member states will design dedicated 'go-to areas' for renewables with shortened and simplified permitting processes in areas with lower environmental risks.

The general approach set the Council's position on the proposed Directive, which is yet pending to be negotiated with the Parliament. Once the new RED is adopted, different deadlines are set for the transposition by Member States of the different agreed measures.

The impact of these new regulations may be limited in Spain as the Spanish Government already approved back in March 2022, through Royal Decree 6/2022⁶ and further amendments, several measures for accelerating the permitting process of renewable projects in Spain (including the shortening of timelines and the possibility of having, under certain circumstances, a very limited environmental assessment). However, the approval of this new Directive may require amending the the permitting process and administrative milestones set in the Spanish regulation In any case, the final text, once approved, shall be further analysed.

It should also be noted that a Regulation has also been approved for laying down a framework to accelerate the deployment of renewable energy, which contains urgent and complementary measures to those foreseen in the amendment to the renewable energy Directive. This Regulation will apply temporarily (18 months)⁷ and is aimed at shortening the permitting process of certain type of renewable energy facilities until the new RED enters into force.

The Council also confirmed the target of at least 40% of the share of energy from renewable sources in 2030 in the Union's gross final consumption, as set in its general approach on the revisions of renewable energy directive, adopted in June 2022. The Commission's proposal in REPowerEU was to increases the target to at least 45% in 2030. The current target in the 2018 renewable energy directive is 32.5 % in 2030.

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ED None

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Notes

- 1 <https://www.consilium.europa.eu/media/61078/repower-st16240-en22.pdf>
- 2 Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency
- 3 European Securities and Markets Authority (ESMA), European Union Agency for the Cooperation of Energy Regulators (ACER), the Gas Coordination Group and European Network of Transmission System Operators for Gas (ENTSOG)
- 4 Political agreement at Council level which may be adopted pending a position from Parliament at first reading on a legislative proposal
- 5 <https://www.consilium.europa.eu/media/61078/repower-st16240-en22.pdf>
- 6 Real Decreto-ley 6/2022, de 29 de marzo, por el que se adoptan medidas urgentes en el marco del Plan Nacional de respuesta a las consecuencias económicas y sociales de la guerra en Ucrania, as further amended
- 7 [pdf \(europa.eu\)](#)