



EUROPEAN CENTRAL BANK
EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 December 2022

on a proposal for a Council regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices

(CON/2022/44)

Introduction and legal basis

On 25 November 2022, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices¹ (hereinafter ‘the proposed regulation’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the ECB, and the European System of Central Banks’ contribution to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty and Article 3.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The ECB takes note of the proposed regulation and its objective of establishing a temporary market correction mechanism and acknowledges the serious challenges excessively high energy prices pose for EU citizens and the Union economy.

The proposed regulation establishes a market correction mechanism for natural gas transactions in the front-month TTF derivatives market, which is activated where two conditions are both met (‘market correction event’). The proposed regulation sets out that the Union’s Agency for the Cooperation of Energy Regulators (ACER) is responsible for monitoring whether these conditions are met, and, where it observes that a market correction event has occurred, must without delay publish a notice in the Official Journal of the European Union (‘market correction notice’) and inform the European Commission, the European Securities and Markets Authority (ESMA) and the ECB of the market correction event. The proposed regulation also provides for the suspension of the market correction mechanism at any time by the Commission, if unintended market disturbances or manifest risks of such disturbances occur, negatively affecting security of supply, intra-EU flows or financial stability (‘suspension decision’).

¹ COM (2022) 668 final.

The ECB acknowledges that mechanisms aimed at moderating extreme price levels and volatility in wholesale gas markets may, in principle, alleviate a number of risks to financial stability, including the risks exposed during periods of elevated and volatile gas prices in 2022. However, the ECB considers that the current design of the proposed market correction mechanism may, in some circumstances, jeopardise financial stability in the euro area. The mechanism's current design may increase volatility and related margin calls, challenge central counterparties' ability to manage financial risks, and may also incentivise migration from trading venues to the non-centrally cleared over-the-counter (OTC) market. These considerations, relevant to the stability of the financial system, should be taken into account by the Council in its deliberations on the proposed regulation.

Specific observations

1. The role of the ECB

- 1.1 The proposed regulation foresees several instances where the ECB is required to, or may, play a role in providing opinions, reports, monitoring and assistance to the Commission in carrying out its tasks under the proposed regulation.

First, in respect of the activation of the market correction mechanism, where, based on the results of ACER's monitoring, there are concrete indications that a market correction event is imminent, the Commission, in order to be able to swiftly suspend the activation of the market correction mechanism, must request an opinion from the ECB, ESMA and, where appropriate, from the European Network of Transmission System Operators for Gas (ENTSOG) and from the Gas Coordination Group established pursuant to Regulation (EU) 2017/1938 of the European Parliament and of the Council² on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability³.

Second, in case of a market correction event, the Commission must, without undue delay, ask the ECB for a report on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets⁴.

Third, in respect of the suspension of the market correction mechanism, the proposal requires ESMA, the ECB, ACER, the Gas Coordination Group and ENTSOG to constantly monitor the effects of the bidding limit on markets and security of supply⁵.

Fourth, when considering whether to adopt a suspension decision, the Commission must take into account if the continued activation of the market correction mechanism affects the stability and orderly functioning of energy derivative markets, inter alia, on the basis of a report on the impact of the activation of the market correction measure by ESMA and an opinion of the ECB requested by

2 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).

3 Article 3(3) of the proposed regulation.

4 Article 3(8) of the proposed regulation.

5 Article 5(1) of the proposed regulation.

the Commission for that purpose. The ECB's opinion must be issued no later than 48 hours, or within the same day in urgent cases, upon a request from the Commission⁶.

Fifth, ACER, the ECB, ESMA, the Gas Coordination Group and ENTSOG are required to assist the Commission in its tasks established by the proposed regulation⁷.

Finally, before submitting a proposal to the Council for review of the conditions for the activation of the mechanism, the Commission should consult the ECB⁸.

- 1.2 The ECB recalls that, pursuant to Article 127(5) TFEU and Article 3.3 of the Statute of the ESCB, the ESCB is required to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. Moreover, pursuant to Article 25.1 of the Statute of the ESCB, the ECB may offer advice to, and be consulted by, the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system. In that context, and in accordance with the principle of mutual sincere cooperation pursuant to Article 13(2) TEU, the ECB stands ready, within the limits of the powers conferred on it in the Treaties, to support the Commission in the exercise of its tasks established by the proposed regulation. The ECB is also aware of the importance and difficulty of the subject matter of the proposed regulation and the potential effects on the financial markets.
- 1.3 However, the ECB considers that the references to the role of the ECB in providing opinions, reports, monitoring and assistance to the Commission in carrying out its tasks under the proposed regulation should be further clarified to accurately reflect the ECB's tasks and independence under the Treaties and the clear allocation of technical expertise and responsibilities under Union law⁹. *First*, such clarification is necessary to ensure that the proposed regulation, to be adopted with Article 122(1) TFEU as its legal basis, does not confer new tasks on the ECB. The conferral of new tasks or responsibilities on the ECB can only take place in those specific and limited instances enumerated under the Treaties, for example pursuant to Article 127(6) TFEU, and subject to the limits set out in those provisions¹⁰. *Second*, such clarification is necessary to reflect the roles prescribed for other

6 Article 5(2)(d) and Article 5(4) of the proposed regulation.

7 Article 5(4) of the proposed regulation.

8 Article 5(6) of the proposed regulation.

9 See paragraph 1 of Opinion CON/2018/20 of the European Central Bank of 11 April 2018 on a proposal for a regulation on the establishment of the European Monetary Fund (OJ C 220, 25.6.2018, p. 2). All ECB opinions are available on EUR-Lex.

10 See paragraph 3.1 of Opinion CON/2016/11 of the European Central Bank of 11 March on (a) a proposal for a regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation; and (b) a proposal for a regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (OJ C 219, 17.6.2016, p. 2); see the general observations of Opinion CON/2017/39 of the European Central Bank of 4 October 2017 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ C 385, 15.11.2017, p. 3); see paragraph 2 of Opinion CON/2020/22 of the European Central Bank of 23 September 2020 on proposals for regulations amending the Union securitisation framework in response to the COVID-19 pandemic (OJ C 377, 9.11.2020, p. 1); ; and Recommendation ECB/2017/18 of 22 June 2017 for a Decision of the European Parliament and of the Council amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (OJ C 212, 1.7.2017, p. 14).

authorities and bodies under Union law, which may be more relevant for the subject matter of the proposed regulation. For example, ESMA is responsible, *inter alia*, for contributing to the integrity, transparency, efficiency and orderly functioning of financial markets¹¹. *Third*, clarifying the ECB's role under the proposed regulation would avoid an overly formalistic involvement of the ECB and would better facilitate effective cooperation within tight timeframes. *Finally*, such clarification is more in line with the task conferred on the ESCB pursuant to Article 127(5) TFEU and Article 3.3 of the Statute of the ESCB to contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document, accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 2 December 2022.



The President of the ECB

Christine LAGARDE

11 See Article 1(5)(b) of 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).



Technical working document
produced in connection with ECB Opinion CON/2022/44¹ on a proposal for a Council
regulation establishing a market correction mechanism to protect citizens and the economy
against excessively high prices
Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>Amendment 1 Recital 28 of the proposed regulation</p>	
<p>‘(28) In order to ensure that the market correction mechanism has an immediate effect, the bidding limit should immediately and automatically be activated, without the need for a further decision by by the European Agency for the Cooperation of Energy Regulators (‘ACER’) or the Commission. To ensure that possible problems resulting from the activation are identified early on, the Commission should mandate the ECB and the European Securities and Markets Authority (‘ESMA’) to issue a report on possible negative effects from the mechanism on financial markets.’</p>	<p>‘(28) In order to ensure that the market correction mechanism has an immediate effect, the bidding limit should immediately and automatically be activated, without the need for a further decision by by the European Agency for the Cooperation of Energy Regulators (‘ACER’) or the Commission. To ensure that possible problems resulting from the activation are identified early on, the Commission should mandate the ECB and the European Securities and Markets Authority (‘ESMA’) to issue a report on possible negative effects from the mechanism on financial markets.’</p>
<p><u>Explanation</u></p> <p><i>The ECB suggests to further clarify the references to the role of the ECB in providing opinions, reports, monitoring and assistance to the European Commission in carrying out its tasks under the proposed regulation to accurately reflect the ECB's tasks and independence under the Treaties, and the clear allocation of technical expertise and responsibilities under Union law. To that end, the ECB proposes to delete the references to the ECB's role under the proposed regulation and replace them with a new recital 41a and a new Article 5(4a), as outlined in Amendments 5 and 11 below.</i></p> <p><i>See paragraph 1.3 of the ECB Opinion.</i></p>	

¹ This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

² Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB ²
Amendment 2 Recital 30 of the proposed regulation	
<p>‘(30) The activation of the market correction mechanism may engender undesirable and unforeseeable effects on the economy, including risks to security of supply and to financial stability. To ensure a swift reaction in case unintended market disturbances occur, efficient safeguards should be incorporated, ensuring that the mechanism can be suspended at any time. In case there are, based on the results of ACER monitoring, concrete indications that a market correction event is imminent, the Commission should be able to request an opinion from the ECB, ESMA, ACER, and, where appropriate, ENTSOG and the Gas Coordination Group on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be.’</p>	<p>‘(30) The activation of the market correction mechanism may engender undesirable and unforeseeable effects on the economy, including risks to security of supply and to financial stability. To ensure a swift reaction in case unintended market disturbances occur, efficient safeguards should be incorporated, ensuring that the mechanism can be suspended at any time. In case there are, based on the results of ACER monitoring, concrete indications that a market correction event is imminent, the Commission should be able to request an opinion from the ECB, ESMA, ACER, and, where appropriate, ENTSOG and the Gas Coordination Group on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be.’</p>
<p><u>Explanation</u></p> <p><i>See explanation for Amendment 1.</i></p>	
Amendment 3 Recital 38 of the proposed regulation	
<p>‘(38) The market correction mechanisms should not unduly jeopardise the continued proper functioning of the energy derivatives markets. These 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 market correction mechanism can result in considerable financial losses for market participants in the derivatives markets. Given the size of the market for gas in the EU, such losses</p>	<p>‘(38) The market correction mechanisms should not unduly jeopardise the continued proper functioning of the energy derivatives markets. These 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 market correction mechanism can result in considerable financial losses for market participants in the derivatives markets. Given the size of the market for gas in the EU, such losses</p>

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>may not only affect the specialised derivatives markets, but may have significant knock-on effects on other financial markets. Therefore, the Commission should immediately suspend the market correction mechanism if it jeopardises the orderly functioning of the derivatives market. In that regard, it is important that the Commission takes into account available expertise from relevant EU bodies. The European Securities and Markets Authority is an independent authority that contributes to safeguarding the stability of the EU'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 these 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 of Protocol IV to the TFEU. 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 market correction mechanism quickly. Therefore, the report of ESMA and the opinion of the ECB should be issued no later than 48 hours or within the same day in urgent cases after the Commission's request.'</p>	<p>may not only affect the specialised derivatives markets, but may have significant knock-on effects on other financial markets. Therefore, the Commission should immediately suspend the market correction mechanism if it jeopardises the orderly functioning of the derivatives market. In that regard, it is important that the Commission takes into account available expertise from relevant EU bodies. The European Securities and Markets Authority is an independent authority that contributes to safeguarding the stability of the EU'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 these 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 of Protocol IV to the TFEU. 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 market correction mechanism quickly. Therefore, the report of ESMA and the opinion of the ECB should be issued no later than 48 hours or within the same day in urgent cases after the Commission's request.'</p>
<p><u>Explanation</u></p> <p>See explanation for Amendment 1.</p>	
<p>Amendment 4</p> <p>Recital 41 of the proposed regulation</p>	
<p>'(41) ACER, the European Central Bank, ESMA, the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group established under Regulation</p>	<p>'(41) ACER, the European Central Bank, ESMA, the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas Coordination Group established under Regulation</p>

Text proposed by the Commission	Amendments proposed by the ECB ²
(EU) 2017/1938 should assist the Commission in monitoring the market correction mechanism.'	(EU) 2017/1938 should assist the Commission in monitoring the market correction mechanism.'
<u>Explanation</u> <i>See explanation for Amendment 1.</i>	
Amendment 5 Recital 41a of the proposed regulation (new)	
No text	'(41a) In carrying out its tasks under this Regulation, the Commission should also have the possibility to consult the European Central Bank (ECB), and seek its advice, in accordance with the ECB's role pursuant to Article 127(5) TFEU to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system and pursuant to Article 25.1 of the Statute of the European System of Central Banks and of the European Central Bank 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.'
<u>Explanation</u> <i>See explanation for Amendment 1.</i>	
Amendment 6 Article 3(3) of the proposed regulation	
'(3) In case there are, based on the results of ACER monitoring pursuant to Article 4(1), concrete indications that a market correction event pursuant to Article 3(2)(b) is imminent, the Commission shall request an opinion from the European Central Bank ('ECB'), European Securities and Markets Authority ('ESMA') and, where appropriate, from the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas	'(3) In case there are, based on the results of ACER monitoring pursuant to Article 4(1), concrete indications that a market correction event pursuant to Article 3(2)(b) is imminent, the Commission shall request an opinion from the European Central Bank ('ECB'), European Securities and Markets Authority ('ESMA') and, where appropriate, from the European Network of Transmission System Operators for Gas ('ENTSOG') and the Gas

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>Coordination Group established pursuant to Regulation (EU) 2017/1938 on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be.</p> <p>[...]</p>	<p>Coordination Group established pursuant to Regulation (EU) 2017/1938 on the impact of a possible market correction event on security of supply, intra-EU flows and financial stability for the Commission to be able to suspend the activation of the market correction mechanism by ACER swiftly if need be.</p> <p>[...]</p>
<p><u>Explanation</u></p> <p><i>See explanation for Amendment 1. In respect of this provision, the ECB notes that, under Article 127(5) TFEU, it does not have competence to provide advice on the impact of a possible market correction event on security of supply or intra-EU flows.</i></p>	
<p>Amendment 7</p> <p>Article 3(8) of the proposed regulation</p>	
<p>'(8) In case of a market correction event, the Commission shall, without undue delay, ask the ECB for a report on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets'</p>	<p>'(8) In case of a market correction event, the Commission shall, without undue delay, ask the ECB for a report on the risk of unintended disturbances for the stability and orderly functioning of energy derivative markets'</p>
<p><u>Explanation</u></p> <p><i>See explanation for Amendment 1.</i></p>	
<p>Amendment 8</p> <p>Article 5(1) of the proposed regulation</p>	
<p>'(1) ESMA, the ECB, ACER, the Gas Coordination Group and ENTSOG shall constantly monitor the effects of the bidding limit on markets and security of supply.'</p>	<p>'(1) ESMA, the ECB, ACER, the Gas Coordination Group and ENTSOG shall constantly monitor the effects of the bidding limit on markets and security of supply.'</p>
<p><u>Explanation</u></p> <p><i>See explanation for Amendment 1. In respect of this provision, the ECB notes that, under Article 127(5) TFEU, it does not have competence to monitor the impact of the bidding limit on security of supply.</i></p>	
<p>Amendment 9</p> <p>Article 5(2)(d) of the proposed regulation</p>	
<p>'(d) affects, on the basis of a report on the impact of the activation of the market correction measure</p>	<p>'(d) affects, on the basis of a report on the impact of the activation of the market correction measure</p>

Text proposed by the Commission	Amendments proposed by the ECB ²
by ESMA and an opinion of the ECB requested by the Commission for that purpose, the stability and orderly functioning of energy derivative markets;'	by ESMA and an opinion of the ECB requested by the Commission for that purpose, the stability and orderly functioning of energy derivative markets;'
<u>Explanation</u> <i>See explanation for Amendment 1.</i>	
Amendment 10 Article 5(4) of the proposed regulation	
'(4) ACER, the ECB, ESMA, the Gas Coordination Group and ENTSOG shall assist the Commission in the tasks pursuant to Articles 3, 4 and 5. The report of ESMA and the opinion of the ECB pursuant to paragraph (2)(d) shall be issued no later than 48 hours or within the same day in urgent cases upon a request from the Commission.'	'(4) ACER, the ECB, ESMA, the Gas Coordination Group and ENTSOG shall assist the Commission in the tasks pursuant to Articles 3, 4 and 5. The report of ESMA and the opinion of the ECB pursuant to paragraph (2)(d) shall be issued no later than 48 hours or within the same day in urgent cases upon a request from the Commission.'
<u>Explanation</u> <i>See explanation for Amendment 1.</i>	
Amendment 11 Article 5(4a) of the proposed regulation (new)	
No text	'(4a) In carrying out its tasks pursuant to Articles 3, 4 and 5, 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 pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.'
<u>Explanation</u> <i>See explanation for Amendment 1.</i>	
Amendment 12 Article 5(6) of the proposed regulation	
'Following a market correction event or a suspension decision, or in the light of market and	'Following a market correction event or a suspension decision, or in the light of market and

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>security of supply developments, the Council, upon a proposal from the Commission, may decide to review the conditions for the activation of the market correction mechanism set out in Article 3(2)(a) and (b). Before submitting such a proposal, the Commission should consult ECB, ESMA, ACER, the Gas Coordination Group, ENTSOG and other relevant stakeholders.'</p>	<p>security of supply developments, the Council, upon a proposal from the Commission, may decide to review the conditions for the activation of the market correction mechanism set out in Article 3(2)(a) and (b). Before submitting such a proposal, the Commission should consult—ECB, ESMA, ACER, the Gas Coordination Group, ENTSOG and other relevant stakeholders.'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p>See explanation for Amendment 1.</p>	