

Brussels, 22 December 2023

Mr Cristian-Silviu BUȘOI

Chair, European Parliament Committee on Industry, Research and Energy
B-1047 Brussels

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design

Dear Mr Cristian-Silviu BUȘOI,

Following the outcome of the informal trilogue between the representatives of the three institutions held on 13 December 2023 in the European Parliament regarding the above mentioned proposal, the draft compromise texts were agreed today by the Permanent Representatives Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its positions at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the exact form as set out in the compromise texts contained in the Annexes to this letter, but subject to revision by the legal linguists of both institutions, the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's positions and the acts shall be adopted in the wording which corresponds to the European Parliament's positions.

On behalf of the Council I also wish to thank you for your close cooperation and expert Chairmanship which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Mr Raúl FUENTES MILANI
Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Ms Kadri Simson, Commissioner,
Mr Nicolas Gonzalez Casares, Rapporteur



Council of the
European Union

Brussels, 22 December 2023

**Interinstitutional File:
2023/0077 (COD)**

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design

The Annex contains the consolidated compromise text of the above draft Regulation and Directive, subject to revisions by the legal linguists of both Institutions.

2023/0077 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) 2019/943 and (EU) 2019/942 ■ to improve the Union's electricity market design

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Very high prices and volatility in electricity markets have been observed since September 2021. As set out by the European Agency for the Cooperation of Energy Regulators ('ACER') in its April 2022 assessment of EU wholesale electricity market design¹, this is mainly a consequence of the high price of gas, which is used as an input to generate electricity.
- (2) The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, and related international sanctions since February 2022 have ***led to a gas crisis***, disrupted global energy markets, exacerbated the problem of high gas prices, and have had significant knock-on impacts on electricity prices. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity. ***The reduced availability of several nuclear reactors and the low hydropower output further amplified the increase in electricity prices.***

¹ European Union Agency for the Cooperation of Energy Regulators, ACER's Final Assessment of the EU Wholesale Electricity Market Design, April 2022.

- (3) In response to this situation, the *Commission presented in October 2021 the Communication entitled “Tackling rising energy prices: a toolbox for action and support” which* contained a toolbox of measures that the *Union* and its Member States may use to address the immediate impact of high energy prices on households and businesses, including income support, tax breaks, *energy* savings and storage measures ■ and to strengthen resilience against future price shocks. In its Communication of 8 March 2022 entitled ‘REPowerEU: Joint European Action for more affordable, secure and sustainable energy’², the Commission outlined a series of additional measures to strengthen the toolbox and to respond to rising energy prices. On 23 March 2022, the Commission also established a temporary State Aid regime to allow certain subsidies to soften the impact of high energy prices.³
- (4) On 18 May 2022 the Commission presented the REPowerEU plan⁴ that introduced additional measures focusing on energy savings, diversification of energy supplies, *increased energy efficiency target* and accelerated roll-out of renewable energy aiming at ending the Union’s dependency on Russian fossil fuels, including a proposal to increase the Union’s 2030 target for renewables to 45%. Furthermore, the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design⁵, in addition to setting out additional short-term measures to tackle high energy prices, identified potential areas for improving the electricity market design and announced the intention to assess these areas with a view to *changing* the legislative framework.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU: Joint European Action for more affordable, secure and sustainable energy, ■

³ Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia C 131 I/01, C/2022/1890.

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU Plan, COM(2022)230.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action, COM(2022) 236 final.

- (5) *In order* to address urgently the price crisis and security concerns and to tackle the price hikes for citizens, *the Union adopted several legal acts, such as Regulation (EU) 2022/1032 of the European Parliament and of the Council*⁶ *establishing* a strong gas storage regime⁷, *Council Regulation (EU) 2022/1369*⁸ *providing* effective demand reduction measures for gas and electricity⁹, *Council Regulation (EU) 2022/1854*¹⁰ *establishing* price limiting regimes to avoid windfall profits in both gas and electricity markets¹¹ *and Council Regulation (EU) 2022/2577*¹² *establishing* measures to accelerate the permit-granting procedures for renewable energy installations¹³.

⁶ *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 (Text with EEA relevance), OJ L 173 OJ L 173, 30.6.2022, p17.*

⁷ **■** *Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261 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 (Text with EEA relevance), OJ L 173*

⁸ *Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 206, 8.8.2022, pOJ L 261. 1)*

⁹ *Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261, OJ L 335, 29.12.2022.*

¹⁰ *Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261I, 7.10.2022, p. 1)*

¹¹ *Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261.*

¹² *Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy (OJ L 335, 29.12.2022, p.36).*

¹³ *Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022.*

- (6) A well-integrated **energy** market which builds on the Clean energy for all Europeans package¹⁴ adopted in 2018 and 2019¹⁵ ("**Clean Energy Package**") should allow the Union to reap the economic benefits of a single energy market in **all** circumstances, ensuring security of supply and sustaining the decarbonisation process **to achieve the climate neutrality objective**. Cross-border interconnectivity also ensures **a** safer, more reliable and efficient operation of the power system, **and better resilience to short-term price shocks**.

¹⁴ **Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, (OJ L 328, 21.12.2018, p. 1 1); 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 (recast), OJ L 328, 21.12.2018, p. 82); Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, (OJ L 328, 21.12.2018, p. 210); 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 (recast), OJ L 158, 14.6.2019, p. 22); Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 125).**

¹⁵ **Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ L 328, 21.12.2018, p. 1; 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 (recast), OJ L 328, 21.12.2018, p. 82; Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, OJ L 328, 21.12.2018, p. 210; 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 (recast), OJ L 158, 14.6.2019, p. 22; Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54; Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 125.**

(7) *Strengthening the internal energy market and achieving the climate and energy transition objectives require a substantial upgrade of the Union's electricity network to be able to host vast increases of renewable capacity, with weather-dependent variability in generation amounts and changing electricity flow patterns across Europe, as well as new demand such as electric vehicles and heat pumps. Investments in grids, within and across borders, are crucial to the proper functioning of the internal market, including security of supply. This is necessary to integrate renewable energy and demand in a context where these locate further apart than in the past; and ultimately to delivery on the Union climate and energy targets. Therefore, any reform of the Union's electricity market should contribute to a more integrated European electricity network, with a view to ensure that each Member State reaches a level of electricity interconnectivity in line with the electricity interconnection target for 2030 of at least 15 % laid down in Article 4, point (d)(1), of Regulation (EU) 2018/1999, that this interconnection capacity is used as much as possible for cross-border trade and that the Union's electricity network and connectivity infrastructure are built or upgraded, such as the Union Projects of Common Interest as established by the framework concerning the Trans-European Networks for Energy. Adequate connectivity should be provided to all Union citizens and undertakings as it can bring major opportunities for them to participate in the energy transition and the digital transformation of the Union. Special consideration should be given to the outermost regions as referred to in Article 349 of the Treaty on the Functioning of the Union (TFEU), which recognises their specific constraints and provides for the adoption of specific measures in their regard.*

- (8) The current electricity market design has also helped the emergence of new and innovative products, services and measures on retail electricity markets, supporting energy efficiency and renewable energy uptake and enhancing choice so as to help consumers reduce their energy bills also through small-scale generation installations and emerging services for providing demand response. Building on and seizing the potential of the digitalisation of the energy system, such as active participation by consumers, should be a key element of our future electricity markets and systems. At the same time, there is a need to respect consumer choices and allow consumers to benefit from a variety of contract offers, ***and shield household consumers from high prices in times of crisis. Energy system integration should be intended as the planning and operation of the energy system as a whole, across multiple energy carriers, infrastructures, and consumption sectors, by creating stronger links between them, in synergy with each other and supported by digitalisation with the objective of delivering secure, affordable, reliable and sustainable energy.***
- (9) In the context of the energy crisis, the current electricity market design has ■ revealed a number of ■ shortcomings ***and unexpected consequences*** linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.
- (10) A faster deployment of renewable energy and clean flexible technologies constitutes the most sustainable and cost-effective way of structurally reducing the demand for fossil fuels for electricity generation and for direct consumption through electrification and energy system integration. Thanks to their low operational costs, renewable sources can positively impact electricity prices across the Union and reduce ■ consumption of fossil fuels.

- (11) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, including the most vulnerable ones, and ultimately, shield them from energy crises and avoid more households falling into *an* energy poverty trap. *Those changes* should mitigate the impact of high fossil fuel prices, notably that of gas, on electricity prices, aiming to allow households and companies to reap the benefits of affordable and secure energy from sustainable renewable and low carbon sources in the longer term, *as well as the role of energy efficient solutions in reducing overall energy costs, which may reduce the need for power grid and generation capacity expansion.*
- (12) The reform of the electricity market design should *aim to achieve affordable and competitive electricity prices for all consumers. As such, it should* benefit not *only* household consumers but also the competitiveness of the Union's industries by facilitating their possibilities to make the clean tech investments they require to meet their net zero transition paths. The energy transition in the Union needs to be supported by a strong clean technology manufacturing basis. These reforms will support the affordable electrification of industry and the Union's position as a global leader in terms of research and innovation in clean energy technologies.
- (13) Well-functioning and efficient short-term markets are a key tool for the integration of renewable energy and flexibility sources in the market and facilitate energy system integration in a cost-effective manner.

- (14) Intraday markets are particularly important for the integration of variable renewable energy sources in the electricity system at the least cost as they give the possibility to market participants to trade shortages or surplus of electricity closer to the time of delivery. Since variable renewable energy generators are only able to accurately estimate their production close to the delivery time, it is crucial for them to have a maximum of trading opportunities via access to a liquid market as close as possible to the time of delivery of the electricity. *The gate closure time of the cross zonal intraday market should therefore be shortened and defined closer to real time in order to maximize the opportunities for market participants to trade shortages and surplus of electricity and contribute to better integrating variable renewables in the electricity system. In case this change creates security of supply risks and to allow for a cost-efficient transition into the shorter cross zonal gate closure time, the transmission system operators should have the possibility to request a derogation, based on an impact assessment and subject to regulatory approval, in order to ask for an extension of the implementation timeline. This request should include an action plan with concrete steps towards the implementation of the new intraday gate closure time.*

- (15) It is therefore important for the intraday markets to adapt to the participation of variable renewable energy technologies such as solar and wind **energy** as well as to the participation of demand **response** and **energy** storage. The liquidity of the intraday markets should be improved with the sharing of the order books between market operators within a bidding zone, also when the cross-zonal capacities are set to zero or after the gate closure time of the intraday market. *In order to ensure that order books are shared between nominated electricity market operators (NEMOs) in the day-ahead and intraday market coupling timeframes, NEMOs should submit all orders to the single day-ahead and intraday coupling and should not organise the trading of day-ahead and intraday products, or products with the same characteristics, outside the single day-ahead and intraday coupling. To address the inherent risk of discrimination in the trading of day-ahead and intraday products inside and outside the single day-ahead and intraday coupling, and the consequent draining of liquidity in the Union's coupled electricity markets, this obligation should apply to NEMOs, to undertakings which directly or indirectly exercise control over a NEMO and to undertakings that are directly or indirectly controlled by a NEMO. To improve the transparency on the markets, the market participants should provide information by generation unit where applicable, without prejudice of the presentation of bids in accordance to the relevant framework in each Member State.*
- (16) In addition, the short-term electricity markets should ensure that small-scale flexibility service providers can participate by lowering the minimum bid size.

(17) To ensure the efficient integration of electricity generated from variable renewable energy sources and to reduce the need for fossil-fuel based electricity generation in *situations* of electricity *price crisis*, it should be possible for *the Member State to request* system operators to design a peak shaving product enabling *additional* demand response *in order* to contribute to decreasing **█** consumption in the electricity system. *The proposal for a peak shaving product should be assessed by the concerned regulatory authority in terms of achieving a reduction of electricity demand and impact on wholesale electricity price during peak hours.* As the peak shaving product aims to reduce and shift the electricity consumption *and in order to avoid increasing of greenhouse gas emissions, the activation of the peak shaving product should not imply starting fossil fuel-based generation located behind the metering point.* As the peak shaving product *is intended to be applied only in limited situations of electricity price crisis, its procurement may take place up to one week ahead of releasing additional demand response capacities.* System operators should be able to activate the peak shaving product before or within the day-ahead market. *Alternatively, it should be possible for the peak shaving product to be activated automatically based on a predefined electricity price.* In order to verify volumes of activated demand reduction, the system operator should use a baseline reflecting the expected electricity consumption without the activation of the peak shaving product, *and based on a methodology developed in consultation with market participants and approved by the regulatory authority. ACER should perform an assessment of the impact of using a peak shaving products on the European electricity market, having due consideration of undue distortion or redirection of demand response towards peak shaving products, and should be able to issue recommendations to regulatory authorities to be taken into account in their assessment at national level.*

Furthermore, ACER should assess the impact of developing peak shaving products on the European electricity market under normal circumstances. In light of this assessment, the Commission should where appropriate, submit a legislative proposal to amend Regulation (EU) 2019/943 in order to introduce peak shaving products outside electricity price crisis situations.

- (18) In order to be able to actively participate in the electricity markets and to provide their flexibility, consumers are progressively equipped with smart metering systems. However, in a number of Member States the roll-out of smart metering systems is still slow *so it is imperative that Member States improve the conditions for the installation of smart metering systems, with the objective of reaching a full coverage as soon as possible. However, transmission and distribution system operators, and relevant market participants including independent aggregators should be able to use, upon customer consent, the data from dedicated measurement devices, in accordance with article 23 and 24 of Directive (EU) 2019/944 and relevant Union legislation, including data protection and privacy law, in particular Regulation (EU) 2016/679. In addition, only* in those instances where smart metering systems are not yet installed and in instances where smart metering systems do not provide for the sufficient level of data granularity, transmission and distribution system operators, *upon customer consent, should* use data from dedicated *measurement* devices for the observability and settlement of flexibility services such as demand response and energy storage. Enabling the use of data from dedicated *measurement* devices for observability and settlement should facilitate the active participation of the consumers in the market and the development of their demand response. The use of data from these dedicated *measurement* devices should be accompanied by quality requirements relating to the data.
- (19) This Regulation establishes a legal basis for *the* processing of personal data in *accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council*¹⁶. Member States should ensure that all personal data protection principles and obligations laid down in *Regulation (EU) 2016/679* are met, including on data minimisation. Where the objective of this *Regulation* can be achieved without processing of personal data, *data controllers* should rely on anonymised and aggregated data.

¹⁶ *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).*

- (20) Consumers and suppliers need effective and efficient forward markets to cover their long-term price exposure and decrease the dependence on short-term prices. To ensure that energy customers all over the *Union are able to* fully benefit from the advantages of integrated electricity markets and competition across the Union, the *Commission* should *assess the impact of measures to improve the functioning of the Union's electricity forward market such as the frequency of allocation, the maturity and the nature of long-term transmission rights, ways to strengthen the secondary market and the possible introduction of regional virtual hubs.*
- (21) *The part of the assessment related to the possible establishment of regional virtual hubs should, among other, cover the implications regarding pre-existing intergovernmental agreements related to cross-border joint ownership of power plants. If introduced, virtual hubs would reflect the aggregated price of multiple bidding zones and provide a reference price, which should be used by market operators to offer forward hedging products. To that extent, virtual hubs should not be understood as entities arranging or executing transactions. The regional virtual hubs, by providing a reference price index, would enable the pooling of liquidity and provide additional hedging opportunities to market participants.*

In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to set out, where necessary, detailed rules on the design of the Union's electricity forward market as regards the establishment of regional virtual hubs. The implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

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- (22) To enhance the possibilities of market participants for hedging, the role of the single allocation platform established in accordance with Commission Regulation (EU) 2016/1719 should be expanded. The single allocation platform should *act as an entity offering allocation and facilitating trading of financial long-term transmission rights on behalf of the transmission system operators between the different bidding zones and, where relevant, the regional virtual hubs.*
- (23) Network tariffs should incentivise transmission and distribution system operators to use flexibility services through further developing innovative solutions to optimise the existing grid and to procure flexibility services, in particular demand response or storage. For this purpose, network tariffs should be designed so as to take into account the operational and capital expenditures of system operators or an efficient combination of both so that they can operate the electricity system cost-efficiently. *The requirement for cost-reflectiveness should not restrict the opportunity to redistribute costs efficiently in cases where locational- or time-variant network charges are applied.* This would further contribute to integrating renewables at the least cost for the electricity system and enable final customers to value their flexibility solutions. *Regulatory authorities will play a central role in ensuring that sufficient investment is provided for the necessary grid development, expansion and reinforcement. Regulatory authorities should promote public acceptance and the use of anticipatory investments, encouraging the acceleration of grid development to meet the accelerated deployment of renewable generation, including where appropriate in designated renewables acceleration areas, and smart electrified demand.*

- (24) Offshore renewable energy sources, such as offshore wind, ocean energy and floating photovoltaic, will play an instrumental role in building a power system largely based on renewables and in ensuring climate neutrality by 2050. There are, however, substantial obstacles to their wider and efficient deployment preventing the massive scale up needed to achieve those objectives. Similar obstacles could arise for other offshore technologies in the future. *In order to reduce investment risk for offshore project developers, instruments such as power purchase agreements or two-way contracts for differences can facilitate the development. For offshore hybrid projects connected to more than one market in an offshore bidding zone, there is an additional risk associated with the unique topographical situation related to market access. To reduce the risks for such projects, transmission system operators should compensate where, in the validated results of capacity calculation, they have either not made available the capacity agreed in the connection agreement on the interconnector or have not made available the capacity on the critical network elements pursuant to the capacity calculation rules in Article 16(8) ,or both. Transmission system operators should pay no compensation if, in the validated capacity calculation results, they have made available the capacity of the interconnector at or above the connection agreement requirements and they have made available the capacity on critical network elements according to the rules of Article 16(8). In the respective connection agreement with the offshore renewable plant operator, transmission system operators should strive to give the total agreed capacity as firm, not flexible, and in line with the framework for connection agreements in revised Directive (EU) 944/2019. Member States should be informed sufficiently in advance about the connection agreement. Compensation should be payable either if the available transmission capacities are reduced to the extent that the full amount of electricity generation that the offshore renewable plant would have otherwise been able to export cannot be delivered to the surrounding markets or where despite being able to export there is a corresponding price decrease in the offshore bidding zone due to capacity reductions, as compared to without capacity reductions, or both. The compensation should be paid from congestion income. It should apply where, and should be provided by, one or more transmission system operators who have not made sufficient capacity available to export the electricity generation capability on their respective interconnector up to the capacity agreed in the connection agreement. In the interest of regional fairness, if this insufficient capacity is due to other transmission system operators having not made available the capacity on their critical network elements, pursuant to the capacity calculation rules in Article 16 (8)*

of Regulation (EU) 2019/943, the costs of compensation should be shared proportionately between these transmission system operators in line with the polluter-pays principle. In addition, any compensation not covered by this proportionate sharing may be divided between the relevant parties in the Member States involved in the offshore hybrid project as part of their cost sharing arrangements. This compensation should not result in overcompensation and is intended to balance the reduced revenues of offshore renewable electricity generation plant operators due to reduced access to interconnected markets. It should only be related to the production capability available to the market, which may be weather dependent and excludes the outage and maintenance operations of the offshore project. The compensation in case of lack of access to the transmission network should not be interpreted as constituting priority dispatch and should be aligned with the principles of non-discrimination and maximisation of cross-border capacities for trade in Article 16 of Regulation (EU) 2019/943. Moreover, there should not be double-compensation for the same risk covered under this provision, for example if the risk is already covered under a contract for difference, or other relevant support scheme. Details of this compensation mechanism and the methodology for the implementation to be developed including the conditions under which the measure may expire, such as the existence of enough demand within the offshore bidding zone (e.g. a large electrolyser) or direct access to a sufficient number of markets for the risk to disappear, are intended to be further elaborated in an implementing act including where relevant through amendments to Commission Regulation (EU) 2015/1222.

- (25) In the day-ahead wholesale market, the power plants with lower marginal costs are dispatched first, but the price received by all market participants is set by the last plant needed to cover the demand, which is the plant with the highest marginal costs, when the markets clear. In this context, the energy crisis has shown that a surge in the price of gas and hard coal can translate into exceptional and lasting increases of the prices at which the gas and coal-fired generation facilities bid in the day-ahead wholesale market. That in turn has led to exceptionally high prices in the day-ahead market across the Union, as gas and coal-fired generation facilities are often the plants with the highest marginal costs needed to meet the demand for electricity.
- (26) Given the role of the price in the day-ahead market as a reference for the price in other wholesale electricity markets, and the fact that all market participants receive the clearing price, the technologies with significantly lower marginal costs have consistently recorded high revenues.
- (27) To reach the Union's decarbonisation targets and the objectives set out in REPowerEU to become more energy independent, the Union needs to accelerate the deployment of renewables at a much faster pace. In view of the investment needs required to achieve these goals, the market should ensure that a long-term price signal is established.

(28) In this framework, Member States should strive to create the right market conditions for long-term market-based instruments, such as power purchase agreements ('PPAs'). PPAs are bilateral purchase agreements between producers and buyers of electricity, ***concluded on a voluntary basis and based on market price conditions without regulatory interventions in price-setting***. They provide long-term price stability for the customer and the necessary certainty for the producer to take the investment decision. Nevertheless, only a handful of Member States have active PPA markets and buyers are typically limited to large companies, not least because PPAs face a set of barriers, in particular the difficulty to cover the risk of payment default from the buyer in these long-term agreements. Member States should take into consideration the need to create a dynamic PPA market when setting the policies to achieve the energy decarbonisation objectives set out in their integrated national energy and climate plans. ***When designing measures directly affecting PPAs, Member States should respect possible legitimate expectations and take into account the effects on existing and future PPAs.***

(29) *In accordance with* Directive (EU) 2018/2001 of the European Parliament and of the Council¹, Member States are to assess the regulatory and administrative barriers to long-term renewables PPAs, and *to* remove unjustified barriers *and disproportionate and discriminatory procedures and charges*, and promote the uptake of, such agreements. In addition, Member States are to describe policies and measures facilitating the uptake of renewables PPAs in their integrated national energy and climate plans. Without prejudice to that obligation to report on the regulatory context affecting the PPA market, Member States should ensure that instruments to reduce the financial risks associated to the buyer defaulting on its long-term payment obligations in the framework of PPAs are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. *Member States should be able to* decide to set up a guarantee scheme at market prices *if private guarantees are not accessible or insufficiently accessible. In that case*, Member States should include provisions to avoid lowering the liquidity in the electricity markets, such as by using financial PPAs. Member States *could decide to facilitate the aggregation of demand for PPAs from customers that individually face barriers to entry to the PPA market, but collectively should be able to provide an attractive offer for PPAs to producers. Member States* should not provide support to PPAs that purchase generation from fossil fuels. *Member States should be able to limit guarantee schemes they back to the exclusive support of new renewable generation, in line with their decarbonisation policies, in particular where the market for renewables PPAs is not sufficiently developed.* While the default approach should be non-discrimination between consumers, Member States could decide to target these instruments to specific categories of consumers, applying objective and non-discriminatory criteria. In this framework, Member States should *ensure appropriate coordination, including with facilities* provided at Union level, for instance by the European Investment Bank ('EIB').

- (30) Member States have at their disposal several instruments to support the development of PPA markets when designing and allocating public support. Allowing renewable energy project developers participating in a public support tender to reserve a share of the generation for sale through a PPA would contribute to nurture and grow PPA markets. In addition, as part of these tenders' evaluation Member States should endeavour to apply criteria to incentivise the access to the PPA market for actors that face entry barriers, such as small and medium-sized enterprises ('SMEs'), giving preference to bidders presenting a *signed PPA or a commitment to sign a PPA for part of the project's generation from one or several potential buyers that face difficulties to access the PPA market.*
- (31) *To contribute to the transparency and development of PPA markets in the EU, ACER should publish an annual assessment on those markets, assess the need to develop and issue standard contracts for PPAs for voluntary use and develop them if the assessment concludes there is such a need.*
- (32) *Member States should pay particular attention to cross-border PPAs and remove unjustified barriers specifically related to them, allowing consumers in Member States with limited capacity to access power generated in other regions without discrimination.*
- (33) *When, based on the related assessment, the Commission concludes that Member States require support in the removal of barriers in PPA markets, it should issue a guidance. The main focus of such guidance should be the removal of barriers preventing the expansion of PPA markets, including cross-border PPAs. Such barriers could take many forms, including regulatory barriers, and in particular disproportionate or discriminatory procedures or charges, the role of guarantees of origin or the treatment of PPAs in the access of offtakers or potential offtakers to financing solutions.*

- (34) *Regulation (EU) 2018/1999 provides for the use of the Union renewable energy financing mechanism as a tool to facilitate the achievement of the Union's binding target of renewable energy in 2030. According to Directive (EU) 2023/2413, Member States should collectively endeavour to increase the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 to 45 % in addition to the binding EU level target of 42.5 %. Therefore, the Commission should assess whether measures at Union level could contribute to the achievement of the additional 2.5 % share, complementing national measures. In this context, the Commission should analyse the possibility to use the Union renewable energy financing mechanism to organise EU-level renewable energy auctions in line with the relevant regulatory framework.*
- (35) Where Member States decide to support publicly financed investments by “direct price support schemes” in *new* low carbon, non-fossil fuel electricity *generation-facilities* to achieve the Union's decarbonisation objectives, those schemes should be structured by way of two-way contracts for difference *or equivalent schemes with the same effects* such as to include, in addition to a revenue guarantee, an upward limitation of the market revenues of the generation assets concerned. *Whereas the obligation pursuant to this Regulation should only apply to support for investments in new power generating facilities, Member States should be able to decide to grant support schemes in the form of two-way contracts for difference or equivalent schemes with the same effects also for new investments aimed at substantially repowering existing power generation facilities, or at substantially increasing their capacity or prolonging their lifetime.*
- (36) *To ensure legal certainty and predictability, the obligation to structure direct support schemes by means of two-way contracts for difference or equivalent schemes with the same effects should only apply to contracts under direct price support schemes for investments in new power generating facilities concluded as of three years after the date of entry into force of this Regulation. That transitional period should be five years for offshore hybrid assets connected to two or more bidding zones due to the complexity of such projects.*

- (37) *The participation of market participants in direct price support schemes in the form of two-way contracts for difference or equivalent schemes with the same effects should be voluntary.*
- (38) *The obligation to use two-way contracts for difference or equivalent schemes with the same effects is without prejudice to Article 6(1) of Directive (EU) 2018/2001.*
- (39) *While Directive [XXX EMD] amends Article 4(3) second subparagraph of the Directive (EU) 2018/2001, the remaining provisions of Article 4 of Directive (EU) 2018/2001, which sets out design principles for the support schemes for energy from renewable sources, remain fully applicable.*
- (40) ■ Two-way contracts for difference *or equivalent schemes with the same effects* would ensure that revenues of producers stemming from new investments in electricity generation which benefit from public support become more independent from the volatile prices of fossil fuels-based generation which typically sets the price in the day-ahead market.

(41) *Design principles in accordance with this Regulation should apply to direct price support schemes in the form of two-way contracts for difference or equivalent schemes with the same effects. In the assessment of such two-way contracts for difference or equivalent schemes with the same effects under State aid rules, the Commission should check the compliance with provisions of Union law which are intrinsically linked to State aid rules, such as the design principles for two-way contracts for difference or equivalent schemes with the same effects contained in this Regulation. The design of these two-way contract for differences or equivalent schemes with the same effects should preserve the incentives for the generating facility to operate and participate efficiently in the electricity markets, in particular to reflect market circumstances. In its assessment, the Commission should ensure that the design of two-way contracts for difference or equivalent schemes with the same effects does not lead to distortions to competition and trade in the internal market. The Commission should notably ensure that the distribution of revenues to undertakings does not distort the level playing field in the internal market in particular in cases where no competitive bidding process can be applied. Two-way contracts for difference or equivalent schemes with the same effects could vary in duration and could include inter alia injection-based contracts for difference with one or several strike prices, a floor price, or capability or yardstick contracts for differences. The obligation to use two-way contracts for difference or equivalent schemes with the same effects does not apply to support schemes not directly linked to electricity generation, such as storage, and which do not use direct price support, such as investment aid in the form of upfront grants, tax measures or green certificates amongst others. To incentivise that the counterparties fulfil their contractual obligations, two-way contracts for difference or equivalent schemes with the same effects should include penalty clauses in case of undue unilateral early termination of the contract.*

- (42) However, to the extent that the limitation to set out direct price support schemes in the form of two-way contracts for difference *or equivalent schemes with the same effects* narrows down the types of direct price support schemes that Member States *are able to* adopt as regards renewable energy sources, it should be limited to low carbon, non-fossil fuel technologies, with low and stable operational costs and to technologies which typically do not provide flexibility to the electricity system, while excluding technologies that are at early stages of their market deployment. This is necessary to ensure that the economic viability of generation technologies with high marginal costs is not jeopardised and to maintain the incentives of the technologies which can offer flexibility to the electricity system to bid in the electricity market based on their opportunity costs. In addition, the limitation to set out direct price support schemes in the form of two-way contracts for difference *or equivalent schemes with the same effects* should not apply to emerging technologies for which other types of direct price support schemes may be better placed to incentivise their uptake. The limitation should be without prejudice to the possible exemption for small-scale installations and demonstration projects pursuant to *Directive (EU) 2023/2413* and consider the specificities of renewable energy communities in accordance with **■** that Directive.
- (43) In view of the need to provide regulatory certainty *for the* producers, the obligation for Member States to apply direct price support schemes for the production of electricity in the form of two-way contracts for difference *or equivalent schemes with the same effects* should apply only to investments *in new* electricity *generation-facilities* from the sources specified in the recital above.

(44) Thanks to the upward limitation of the market revenues, direct price support schemes in the form of two-way contracts for difference *or equivalent schemes with the same effects* should provide an additional source of revenues for Member States in periods of high energy prices. To further mitigate the impact of high electricity prices on the energy bills of consumers, Member States should ensure that the revenues collected from producers subject to direct price support schemes in the form of two-way contracts for difference *or equivalent schemes with the same effects, or the equivalent in financial value of those revenues*, are passed on to *final customers, including household consumers, small and medium enterprises and energy intensive undertakings. When distributing the revenues to households, Member States should in particular be able to favour vulnerable customers or those in energy poverty. In the light of the wider benefits for electricity customers resulting from investments in renewable energy, energy efficiency, and low carbon energy deployment, it should also be possible for Member States to use the revenues from two-way contract for difference or equivalent schemes with the same effects, or the equivalent in financial value of those revenues, to finance investments to reduce electricity costs for final customers and, including as regards specific economic activities such as investments in distribution grid development, renewable energy sources and electric vehicle charging infrastructure. It should also be possible for Member States to use such revenues, or the equivalent in financial value of those revenues, to finance the costs of the direct price support schemes.* The redistribution of revenues should be done in a way that ensures that *customers* are still to some extent exposed to the price signal, so that they reduce their consumption when the prices are high, or shift it to periods of lower prices (which are typically periods with a higher share of RES production). *In particular, Member States should be able to consider the consumption in off-peak hours to preserve incentives to flexibility.* Member States should ensure that the level *playing field* and competition between the different suppliers is not affected by the redistribution of revenues to the final electricity consumers. *These principles should not be compulsory for revenues generated by contracts under direct price support schemes concluded before the date of application of the obligation to use two-way contracts for difference or equivalent schemes with the same effects. It is possible for Member States to distribute revenues from two-way contracts for difference or equivalent schemes with the same effects without that distribution constituting a retail price regulation pursuant to Article 5 of Directive (EU) 2019/944.*

- (45) Furthermore, Member States should ensure that the direct price support schemes, or equivalent schemes with the same effects, irrespective of their form, do not undermine the efficient, competitive and liquid functioning of the electricity markets, preserving the incentives of producers to react to market signals, including stop generating when electricity prices are below their operational costs, and of final customers to reduce consumption when electricity prices are high. Member States should ensure that support schemes do not constitute a barrier for the development of commercial contracts such as PPAs.
- (46) Thus, two-way contracts for difference *or equivalent schemes with the same effects* and power purchase agreements play complementary roles in advancing the energy transition and bringing the benefits of renewables and low carbon energy to consumers. Subject to the requirements set out in *this* Regulation, Member States should be free to decide which instruments they use to achieve their decarbonisation objectives. Through PPAs, private investors contribute to additional renewable and low carbon energy deployment while locking low and stable electricity prices over the long-term. Likewise, through two-way contracts for difference *or equivalent schemes with the same effects*, the same objective is achieved by public entities on behalf of consumers. Both instruments are necessary to achieve the Union's decarbonisation targets through renewable and low carbon energy deployment, while bringing forward the benefits of low-cost electricity generation for consumers.

(47) The accelerated deployment of renewables necessitates a growing availability of flexibility solutions to ensure their integration to the grid and to enable the electricity system and grid to adjust to the variability of electricity generation and consumption across different time horizons. ***In order to foster non-fossil flexibility***, regulatory authorities, ***or other authorities or entities designated by a Member State***, should periodically assess the need for flexibility ***at national level*** in the electricity system based on the input of transmission and distribution system operators ***and on a common European methodology subject to public consultation and approved by ACER***. The assessment of the flexibility needs of the electricity system should take into account all existing and planned investments (including existing assets that are not yet connected to the grid) on sources of flexibility such as flexible electricity generation, interconnectors, demand ■ response, energy storage or the production of renewable fuels, in view of the need to decarbonise the energy system. ***ACER should periodically assess the national reports and draw up a report at Union level providing recommendations on issues of cross-border relevance. On the basis of the national flexibility assessment***, Member States should define ***an indicative*** national objective for non-fossil flexibility, ***including the respective specific contributions of both*** demand side response and ***energy storage to that objective***, which should also be reflected in their integrated national energy and climate plans ***in accordance with Regulation (EU) 2018/1999 of the European Parliament and of the Council¹***. ***In light of those plans, the Commission should be able to draw up a Union strategy on demand response and energy storage that is consistent with the Union's 2030 targets for energy and climate. It should be possible for the Commission to accompany the Union strategy, where appropriate, by a legislative proposal.***

- (48) To achieve the *indicative* national objective for non-fossil flexibility, *including the respective specific contributions of demand response and energy storage, and where flexibility needs are not being addressed by the removal of market barriers and existing investments*, Member States *should be able to apply non-fossil flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility. Furthermore, Member States that already apply a capacity mechanism should consider to promote the participation of non-fossil flexibility such as demand response and energy storage by redesigning criteria or features without prejudice to the application of Article 22 of Regulation (EU) 2019/943.* Member States that *already* apply a capacity mechanism *should also be able to apply non-fossil flexibility support schemes if these are necessary to achieve the indicative national objective for non-fossil flexibility, in particular while adapting their capacity mechanisms to further* promote the participation of non-fossil flexibility such as demand **█** response and storage. *These schemes should cover new investments in non-fossil flexibility, including investments on existing assets, including those aimed at further developing demand response flexibility.*
- (49) To support environmental protection objectives the *CO₂* emissions' limit, set out in Article 22(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council, should be seen as an upper limit. Therefore, Member States could set technical performance standards and *CO₂* emissions' limits that restrict participation in capacity mechanisms to flexible, fossil-free technologies in full alignment with the Guidelines on State aid for climate, environmental protection and energy¹⁷ which encourage Member States to introduce green criteria in capacity mechanisms.

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¹⁷ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

(50) *As uncoordinated capacity mechanisms can have a significant impact on the internal electricity market, the Clean Energy Package introduced a comprehensive framework to better assess the need and improve the design of capacity mechanisms. Notwithstanding the necessity to limit distortions to competition and the internal market, together with an appropriate regulatory framework, capacity mechanisms can play an important role in ensuring resource adequacy, in particular during the transition towards a carbon-free system and for insufficiently interconnected energy systems. Therefore, while capacity mechanisms should no longer be considered as measures of last resort, their necessity and design should be periodically assessed in light of the evolving regulatory framework and market circumstances. However, the procedure for the adoption of capacity mechanisms has proved to be complex. To address potential possibilities of streamlining and simplifying the process of applying for a capacity mechanism, and to ensure that adequacy concerns can be addressed by Member States in a timely manner while providing the necessary controls to prevent harm for the internal market, the Commission should within 6 months [of the entry into force of this regulation] submit a comprehensive report assessing such possibilities. In that context, the Commission should request that the Agency amends the methodology for the European resource adequacy assessment in line with the applicable process, as appropriate. After consultation with the Member States, the Commission should come forward with proposals with a view to streamlining and simplifying the process for assessing capacity mechanisms as appropriate within 9 months after entry into force of this Regulation.*

- (51) The connection of new generation and demand installations, in particular renewable energy plants, often faces delays in grid connection procedures. One of the reasons for such delays is the lack of available grid capacity at the location chosen by the investor, which implies the need for grid extensions or reinforcements to connect the installations to the system in a safe manner. A new requirement for electricity system operators, both at transmission and distribution levels, to publish and update information on the capacity available *for new connections* in their areas of operation would contribute to decision-making by investors on the basis of information of grid capacity availability within the system and thus to the required acceleration in the deployment of renewable energy. ***This information should be updated on a regular basis, at least monthly by transmission system operators and at least quarterly by distribution system operators. While Member States might decide not to apply this requirement to electricity undertakings which serve less than 100 000 connected customers or serving small isolated systems, they should encourage these undertakings to provide system users with this information on an annual basis and promote cooperation between distribution system operators for this purpose. System operators should also publish the criteria used to determine the available grid capacities, such as existing demand and generation capacities, the assumptions made for assessing the possible further integration of additional system users, including the relevant information on possible energy curtailment, and the expectation of upcoming relevant network developments.***
- (52) Furthermore, to tackle the problem of lengthy reply times on requests for connection to the grid, transmission system operators should provide clear and transparent information to system users about the status and treatment of their connection requests. Transmission system operators should ■ provide such information within a period of three months from the submission of the request ***and update it on a regular basis and at least quarterly.***

- (53) *Since Estonia, Latvia and Lithuania are not yet synchronised with the European electricity system, they face very specific challenges when organising balancing markets and the market-based procurement of ancillary services. While synchronisation is well underway, one of the critical prerequisites for stable synchronous system operation is the availability of sufficient balancing capacity reserves for frequency regulation. However, being dependent on the Russian synchronous area for frequency management, the Baltic countries were not yet in the position to develop an own functioning balancing market. The Russian war of aggression against Ukraine has substantially increased the risk for security of supply resulting from the absence of own balancing markets. Therefore, the requirements of Article 6(9), (10), (11) of Regulation (EU) 2019/943 and of Commission Art 41(2) of Regulation (EU) 2017/2195, which are designed to apply to existing balancing markets, do not yet reflect the situation in Estonia, Latvia and Lithuania, in particular as the development of balancing market requires time and new investments in balancing capacity. Estonia, Latvia and Lithuania should therefore, irrespective of those requirements, be entitled to conclude longer-term contracts to procure balancing capacity for a transitional period.*
- (54) *The transitional periods for Estonia, Latvia and Lithuania should phase out as soon as possible after the synchronisation, and be used to develop the appropriate markets instruments offering short-term balancing reserves and other indispensable ancillary services, and should be limited to the time necessary for this process.*

- (55) *The Baltic States are foreseen to be synchronized with the continental Europe synchronous area by one double circuit line connecting Poland and Lithuania. Upon synchronization, the capacity of this line will have to be, in large part, kept for reliability margins in a case of unexpected outage in the Baltic System and resulting unintended deviations. Transmission system operators should continue offering maximum capacity for cross-border trading, compliant with operational security limits and considering possible contingencies in the Polish and Lithuanian systems, including those resulting from outages of HVDC lines or disconnection of the Baltic States from the continental Europe synchronous area. The specific situation of this interconnection should be taken into consideration for the calculation of the total capacity and contingencies pursuant to Article 16(8) of Regulation (EU) 2019/943.*
- (56) *Capacity mechanisms should be open to the participation of all resources that are capable of providing the required technical performance, which may include gas-fired power plants, provided they satisfy the emission limit in Article 22(4) as well as any national emissions threshold or other objective environmental criteria which Member States may wish to apply to hasten the transition away from fossil fuels.*

(57) *To support environmental protection objectives, Article 22(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council sets out requirements regarding CO₂ emission limits for capacity mechanisms. However, during their transition to a carbon-free system and in the aftermath to the energy crisis, Member States applying capacity mechanisms which were approved before the entry into force of Regulation (EU) 2019/943, can exceptionally derogate, and as a last resort mechanism, from this CO₂ emission limit for a limited period of time. Such derogation should however be limited to existing generation capacity that started commercial production before 4 July 2019, i.e. before the entry into force of the Clean Energy Package. The request for derogation should be accompanied by a report from the Member State concerned, which should assess the impact of the derogation in terms of greenhouse gas emissions and on the energy transition. Such report should also contain a plan with milestones to transition away from the participation of generation capacity that does not meet the CO₂ emission limits in capacity mechanisms. Upon the granting of the derogation, Member States should be allowed to organise procurement processes which meet all the requirements in Chapter IV of Regulation (EU) 2019/943 of the European Parliament and of the Council, except for those regarding CO₂ emission limits. Generation capacity that does not meet the CO₂ emission limits should not be procured for a period longer than one year and for a delivery period which do not exceed the duration of the derogation. The additional procurement process open to participation of generation capacity that does not meet the CO₂ emission limits should be preceded by a procurement process aimed at maximizing the participation of capacity that meets the CO₂ emission limits, including by letting capacity prices rising high enough to incentivise investments in such capacity.*

- (58) *The Commission should review this regulation in order to ensure the resilience of the electricity market design in times of crisis and its ability to support the Union's decarbonisation objectives, further enhance market integration and promote the necessary infrastructure investments as well as the development of a PPA market. On the basis of such review, the Commission should submit a comprehensive report to the European Parliament and to the Council and may adopt a legislative proposal, where appropriate. In the report, the Commission should assess, in particular, the effectiveness of the structure and functioning of short-term electricity markets, as well as their potential inefficiencies and possible remedies and tools to be applied in crisis or Emergency situations and the suitability of Union legal and financial framework on distribution grids. The report should also cover the ability to deliver on the Union's renewable and internal energy market objectives; and the potential and viability of the establishment of one or several Union market platforms for PPAs.*
- (59) The measures envisaged by *this* Regulation are also without prejudice to the application of Directive 2014/65/EU *of the European Parliament and of the Council*¹, Regulation (EU) 2016/1011 *of the European Parliament and of the Council*² and Regulation (EU) 648/2012 *of the European Parliament and of the Council*³.
- (60) *To the extent that any of the measures envisaged by this Regulation constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU. The Commission is competent to assess the compatibility of State aid with the internal market.*
- (61) *Since the objectives of this Regulation, namely to improve the design of the integrated electricity market, in particular to prevent unduly high electricity prices, 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.*

Article 1

Amendments to Regulation (EU) 2019/943 ■

Regulation (EU) 2019/943 is amended as follows:

(1) Article 1 is amended as follows:

(-a) point (a) is replaced by the following:

‘(a) set the basis for an efficient achievement of the objectives of the Energy Union and the objective to achieve climate neutrality by 2050 at the latest, in particular the climate and energy framework for 2030 by enabling market signals to be delivered for increased efficiency, higher share of renewable energy sources, security of supply, flexibility, system integration through multiple energy carriers, sustainability, decarbonisation and innovation;’

(a) point (b) is replaced by the following:

‘(b) set fundamental principles for well-functioning, integrated electricity markets, which allow all resource providers and electricity customers non-discriminatory market access, enable the development of forward electricity markets to allow suppliers and consumers to hedge or protect themselves against the risk of future volatility in electricity prices, empower *and protect* consumers, ensure competitiveness on the global market, enhance *security of supply and* flexibility through demand response, energy storage and other non-fossil flexibility solutions, ensure energy efficiency, facilitate aggregation of distributed demand and supply, and enable market and sectoral integration and market-based remuneration of electricity generated from renewable sources;’

(b) the following point is added:

‘(e) support long-term investments in renewable energy generation, **flexibility and grids to** enable consumers ■ to make their energy bills **affordable and** less dependent from fluctuations of short-term electricity market prices, in particular fossil fuel prices in the medium to long-term;

(ea) set a framework for the adoption of measures to address electricity price crisis;’

(2) In Article 2, the following points are added:

‘(72) ‘peak hour’ means an hour **where, based on the forecasts of transmission system operators and, where applicable, nominated electricity market operators, the gross electricity consumption or the gross consumption** of electricity generated from **sources other than renewable sources as referred to in Article 2(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council or the day-ahead wholesale electricity price are expected to be the highest**, taking cross-zonal exchanges into account;

(73) ‘peak shaving’ means the ability of market participants to reduce electricity consumption **from the grid** at peak hours **at the request of the** system operator;

(74) ‘peak shaving product’ means a market-based product through which market participants can provide peak shaving to ■ system operators;

(75) ‘**regional** virtual hub’ means a non-physical region covering more than one bidding zone for which **a reference** price is set in application of a methodology;

(76) ‘two-way contract for difference’ means a contract signed between a power generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration; █

(77) ‘power purchase agreement’ or ‘PPA’ means a contract under which a natural or legal person agrees to purchase electricity from an electricity producer on a market basis;

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(79) ‘dedicated *measurement* device’ means a device *linked* to or embedded in an asset that *provides* demand response or flexibility services on the electricity market or to transmission and distribution system operators;

(80) ‘flexibility’ means the ability of an electricity system to adjust to the variability of generation and consumption patterns and grid availability, across relevant market timeframes.’’

(2a) *In Article 2, point (22) is replaced by the following*

(22) *‘capacity mechanism’ means a measure to ensure the achievement of the necessary level of resource adequacy by remunerating resources for their availability, excluding measures relating to ancillary services or congestion management;*

(3) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Transmission system operators and NEMOs, ■ shall jointly organise the management of the integrated day-ahead and intraday markets in accordance with Regulation (EU) 2015/1222. Transmission system operators and NEMOs shall cooperate at Union level or, where more appropriate, at a regional level in order to maximise the efficiency and effectiveness of Union electricity day-ahead and intraday trading. The obligation to cooperate shall be without prejudice to the application of Union competition law. In their functions relating to electricity trading, transmission system operators and NEMOs shall be subject to regulatory oversight by the regulatory authorities pursuant to Article 59 of Directive (EU) 2019/944 and ACER pursuant to Articles 4 and 8 of Regulation (EU) 2019/942 *and the transparency obligations and effective supervision against market manipulation as laid down in the relevant provisions in Regulation [REMIT II].*’

(b) paragraph 2 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) maximise the opportunities for all market participants to participate in cross-zonal and intra-zonal trade in a non-discriminatory way and as close as possible to real time across and within all bidding zones; ’

(ii) the following point (ca) is inserted:

‘(ca) be organised in such a way as to ensure the sharing of liquidity between all NEMOs, at all times, both for cross-zonal and for intra-zonal trade. For the day-ahead market, from one hour before the gate closure time until the latest point in time where day-ahead trade is allowed, NEMOs shall both submit all orders for day-ahead products or products with same characteristics to the single day-ahead coupling and shall not organise trading with day-ahead products or products with same characteristics outside the single day-ahead coupling. For the intraday market, from the single intraday coupling gate opening time until the latest point in time when intraday trading is allowed in a given bidding zone, NEMOs shall both submit all orders for intraday products and products with same characteristics to the single intraday coupling and NEMOs shall not organise trading with intraday products or products with same characteristics outside the intraday coupling. This obligation shall apply to NEMOs and to undertakings which directly or indirectly exercise control over a NEMO and to undertakings which are directly or indirectly controlled by a NEMO.

(f) be transparent and, where applicable, provide information by generation units while at the same time protecting the confidentiality of commercially sensitive information and ensuring trading occurs in an anonymous manner;’

(4) the following Articles ■ are inserted:

‘ Article 7a

Peak shaving product

1. ***Where a regional or Union-wide electricity price crisis is declared in accordance with Article 66a of Directive (EU) 2019/944, and without prejudice to Article 40(5) and (6) of thereof Member States may request system operators to propose the procurement of peak shaving products in order to achieve a reduction of electricity demand during peak hours. Such procurement shall be limited to the duration set out in the decision adopted pursuant to Article 66a (1) of Directive (EU) 2019/944.***
2. ***When requested pursuant to paragraph 1, system operators shall, after consulting stakeholders, submit a proposal ■ setting out the dimensioning and conditions for the procurement and activation of the peak shaving product to the regulatory authority of the Member State concerned for its approval.***
- 2a. ***The concerned national regulatory authority shall assess the proposal in terms of achieving a reduction of electricity demand and impact on wholesale electricity price during peak hours. The assessment shall take into consideration the need for the peak shaving product not to unduly distort the functioning of the electricity markets, and not to cause a redirection of demand response services towards peak shaving products. Based on this assessment, the regulatory authority may request the system operator to amend the proposal.***

2b. The proposal for peak shaving product shall comply with the following requirements:

- (a) the dimensioning of the peak shaving product shall be based on an analysis of the need for an additional service to ensure security of supply ***without endangering grid stability, of its impact on the market and of its expected costs and benefits***. The dimensioning shall take into account the forecast of demand, the forecast of electricity generated from renewable energy sources, the forecast of other sources of flexibility in the system, ***such as energy storage, and the wholesale price impact of the avoided dispatch***. The dimensioning of the peak shaving product shall be limited to ensure that ***forecasted costs*** do not exceed the ***expected benefits of the product***;
- (b) the procurement of a peak shaving product shall be based on objective, transparent, ***market-based*** , non-discriminatory criteria and be limited to demand response; ***It shall not exclude participating assets from accessing other markets***;
- (c) the procurement of the peak shaving product shall take place using **■** competitive bidding, ***which can be continuous***, with selection based on the lowest cost of meeting pre-defined technical and environmental criteria ***and shall allow the effective participation of consumers, directly or through aggregation***;
- (ca) ***the minimum bid size shall not be higher than 100 kW, including through aggregation***;
- (d) contracts for a peak shaving product shall not be concluded more than ***a week*** before its activation **■** ;

- (e) the activation of the peak shaving product shall not reduce cross-zonal capacity;
 - (f) the activation of the peak shaving product shall take place *before or within* the day-ahead market and *may be done based on a predefined electricity price*;
 - (g) the *activation of* peak shaving product shall not imply starting *fossil fuel-based* generation located behind the metering point, *avoiding the increasing of greenhouse gas emissions*.
3. The actual reduction of consumption resulting from the activation of a peak shaving product shall be measured against a baseline, reflecting the expected electricity consumption without the activation of the peak shaving product. *Where a system operator procures a peak shaving product, it shall develop a baseline methodology in consultation with market participants and, where relevant, taking into account the Implementing Act adopted pursuant to Article 59.1.e, and submit it to the regulatory authority for its approval.*
4. Regulatory authorities shall approve the proposal of the ■ system operators seeking to procure a peak shaving product and the baseline methodology submitted in accordance with paragraphs 2 and 3 or shall request the ■ system operators to amend the proposal where it does not meet the requirements set out in these paragraphs.
- 4a. By six months after the end of a crisis, the Agency shall assess the impact of using peak shaving products on the European electricity market, after consulting stakeholders. The assessment shall take into consideration the need for these products not to unduly distort the functioning of the electricity markets, and not to cause a redirection of demand response services towards peak shaving products. The Agency may issue recommendations that national regulatory authorities shall take into account in their assessment pursuant to paragraph 2a.*

- 4b. *By 30 June 2025, the Agency shall assess the impact of developing peak shaving products on the European electricity market under normal market circumstances, after consulting stakeholders. The assessment shall take into consideration the need for these products not to unduly distort the functioning of the electricity markets, and not to cause a redirection of demand response services towards peak shaving products. Based on this assessment, the Commission may submit a legislative proposal to amend this Regulation in order to introduce peak shaving products outside electricity price crisis situations.*

Article 7b

Dedicated *measurement* device

1. *Without prejudice to Article 19 of Directive (EU) 2019/944, transmission and distribution system operators, and relevant market participants including independent aggregators, may use, upon the consent of the final customer, data from dedicated *measurement* devices for the observability and settlement of demand response and flexibility services, including from storage systems. This use of data from dedicated metering devices for the purposes of this article should be in accordance with article 23 and 24 of Directive (EU) 2019/944 and relevant Union legislation, including data protection and privacy law, in particular Regulation (EU) 2016/679. In case the data are used for research purposes, information shall be aggregated and anonymised.*

- 1a. Where a final customer does not have a smart meter installed or where the smart meter of a final customer does not deliver the necessary data to provide demand response or flexibility services, including through an independent aggregator, transmission system operators and distribution system operators shall accept the data from a dedicated measurement device, where available, for the settlement of demand response and flexibility services, including storage systems, and shall not discriminate against that final customer in their procurement of flexibility services. This obligation shall apply upon the establishment and subject to compliance with the rules and requirements established by the Member States pursuant to paragraph 3.*
2. Member States shall establish requirements for a dedicated *measurement* device data validation process to check and ensure the quality *and consistency* of the respective data, *and interoperability, in accordance with Articles 23 and 24 of Directive (EU) 2019/944 and relevant Union legislation.* ■
- (5) Article 8 is amended as follows:
- (a) paragraph 1 is replaced by the following:
- ‘1. NEMOs shall allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time. From 1 January 2026, the intraday cross-zonal gate closure time shall not be more than 30 minutes ahead of real time.*
- The regulatory authorities of a Member State may, at the request of the relevant transmission system operator, grant a derogation from the requirement in the first subparagraph until 1 January 2029. The request shall be submitted to the regulatory authority concerned and shall include:*

- (a) an impact assessment, taking into account feedback from relevant NEMOs and market participants, in accordance with Article 9 of Regulation (EU) 2015/1222, demonstrating the negative impacts of such a measure on the security of supply in the national electricity system, cost-efficiency including in relation to existing balancing platforms in accordance with Regulation (EU) 2017/2195, integration of renewable energy and greenhouse gas emissions; and*
- (b) an action plan aiming to shorten the intraday cross-zonal gate closure time to 30 minutes by no later than 1 January 2029.*

The regulatory authority may, at the request of the relevant transmission system operator, grant a further derogation from the requirement referred to in the first subparagraph by a maximum of 2,5 years counting from the expiry of the period referred to in the second subparagraph. The request from the relevant transmission system operator shall be submitted to the regulatory authority of the requesting transmission system operator, the ENTSO for Electricity and ACER no later than 30 June 2028 and shall include:

- (a) a new impact assessment justifying the need for a further derogation, based on risks to the security of supply in the national electricity system, cost-efficiency, the integration of renewable energy and greenhouse gas emissions, taking into account feedback from market participants and NEMOs; and*
- (b) a revised action plan to shorten the intraday cross-zonal gate closure time to 30 minutes by the date for which extension is requested and no later than the date requested for the derogation.*

ACER shall issue an opinion on the cross-border impact of a further derogation within six months of receipt of a request for such derogation. The regulatory authority concerned shall take that opinion into account before deciding upon a request for further derogation.

By 1 December 2027, the Commission, after consulting NEMOs, ENTSO for Electricity, ACER and relevant stakeholders, shall submit a report to the European Parliament and to the Council assessing the impact of the implementation of the decreasing of the cross-zonal gate closure time established in this Article, the costs and benefits, the feasibility and practical solutions towards further decreasing it in order to allow market participants to trade energy as close to real time as possible. The report shall consider the impacts on the electricity system security, the cost-efficiency, the benefits to the integration of renewable energy and to the reduction of greenhouse gas emissions.; ’

(b) paragraph 3 is replaced by the following:

‘3. NEMOs shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of *100 kW* or less, to allow for the effective participation of *demand* response, energy storage and small-scale renewables including direct participation by customers, *as well as through aggregation.*.’

(6) Article 9 is replaced by the following:

‘ Article 9

Forward markets

1. *In accordance with Regulation (EU) 2016/1719, transmission system operators shall issue long-term transmission rights or have equivalent measures in place to allow market participants, including owners of power-generating facilities using renewable energy, to hedge price risks, unless an assessment of the forward market on the bidding zone borders performed by the relevant competent regulatory authorities shows that there are sufficient hedging opportunities in the concerned bidding zones.*
2. *Long-term transmission rights shall be allocated, on a regular basis, in a transparent, market based and non-discriminatory manner through a single allocation platform. The frequency of allocation and the maturities of the long-term cross-zonal capacity shall support the efficient functioning of the forward market.*
3. *The design of the Union's forward market shall comprise the necessary tools to improve the ability of market participants to hedge price risks in the internal electricity market. ■*
4. *Within 18 months from the entry into force of this amending Regulation, the Commission shall, after having consulted relevant stakeholders, assess the impact of possible measures to achieve the objective under paragraph 3 above. This impact assessment shall inter alia cover:*
 - (a) possible changes to the frequency of allocation for long-term transmission rights;*
 - (b) possible changes to the maturities of these long-term transmission rights, in particular maturities extended up to at least three years;*
 - (c) possible changes to the nature of these long-term transmission rights;*
 - (d) ways to strengthen the secondary market; and*
 - (e) the possible introduction of regional virtual hubs for the forward market.*

5. *As regards regional virtual hubs for the forward market, the assessment under paragraph 4 above shall cover the following elements:*

- (a) **█** *the adequate geographical scope of the regional virtual hubs, including the bidding zones that would constitute these hubs and specific situations of bidding zones belonging to two or more virtual hubs, aiming to maximise the price correlation between the reference prices and the prices of the bidding zones constituting regional virtual hubs;*
- (aa) *the level of electricity interconnectivity of Member States, in particular of those Member States below the interconnection targets for 2020 and 2030 laid down in Article 4, point (d)(1), of Regulation (EU) 2018/1999;*
- (b) *the methodology for the calculation of the reference prices for the regional virtual hubs for the forward market, aiming to maximise the correlations between the reference price and the prices of the bidding zones constituting a regional virtual hub; █*
- (c) *the possibility for bidding zones to form part of more than one regional virtual hub;*
- (d) **█** *the way to maximise trading opportunities for hedging products referencing the regional virtual hubs for the forward market as well as for long term transmission rights from bidding zones to regional virtual hubs;*
- (da) *the ways to ensure that the single allocation platform referred to in paragraph 2 shall offer allocation and facilitate trading of long-term transmission rights.*
- (db) *the implications regarding pre-existing intergovernmental agreements and rights.*

6. ***Based on the outcome of this assessment, the Commission shall, within 24 months from the entry into force of this amending Regulation, adopt an implementing act in accordance with Article 59(1) to further detail the specific measures and tools to achieve the objectives in paragraph 3 and their precise features.***
7. The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall ***act as an entity offering allocation and facilitating trading of long-term transmission rights on behalf of transmission system operators. It shall*** have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council.
█ █
█
█
█
8. Where a regulatory authority considers that there are insufficient hedging opportunities available for market participants, and after consultation of relevant financial market competent authorities in case the forward markets concern financial instruments as defined under ***point (15) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council¹***, it may require power exchanges or transmission system operators to implement additional measures, such as market-making activities, to improve the liquidity of the forward market. **█**

9. *Subject to compliance with Union competition law and with Directive (EU) 2014/65 and Regulations (EU) 648/2012 of the European Parliament and of the Council and 600/2014 of the European Parliament and of the Council, market operators may develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity may be limited to trades within a Member State or bidding zone.'*

(7) Article 18 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Tariff methodologies shall reflect the fixed costs of transmission system operators and distribution system operators and shall consider both capital and operational expenditure to provide appropriate incentives to transmission system operators and distribution system operators over both the short and long run, including anticipatory investments, in order to increase efficiencies ■ including energy efficiency; foster market *integration, the integration of renewable energy* and security of supply; support the use of flexibility services, *enable the use of flexible connections; promote efficient and timely* investments, including solutions to optimise the existing grid; facilitate *energy storage*, demand response and related research activities; *contribute to the achievements of the objectives set out in the national energy and climate plans, to reduce environmental impact and promote acceptance; and* facilitate innovation in the interest of consumers in areas such as digitalisation, flexibility services and interconnection, *in particular to develop the required infrastructure to reach the minimum electricity interconnection target for 2030 laid down in Article 4, point (d)(1), of Regulation (EU) 2018/1999;*”

(aa) paragraph 3 is replaced by the following:

‘ *Where appropriate, the level of the tariffs applied to producers or final customers, or both shall provide locational investment signals at Union level, such as incentives via tariff structure to reduce re-dispatching and power grid reinforcement costs and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.*’;

(b) paragraph 8 is replaced by the following:

“8. Transmission and distribution tariff methodologies shall provide incentives to transmission and distribution system operators for the most cost-efficient operation and development of their networks including through the procurement of services. For that purpose, regulatory authorities shall recognise relevant costs as eligible, *including costs related to anticipatory investments*, shall include those costs in transmission and distribution tariffs, and shall, *where appropriate*, introduce performance targets in order to provide incentives to transmission and distribution system operators to increase *overall system efficiency* in their networks, including through energy efficiency, the use of flexibility services and the development of smart grids and intelligent metering systems.

(c) in paragraph 9, point (f) is replaced by the following:

‘(f) methods to ensure transparency in the setting and structure of tariffs, including anticipatory investments *determined after consultation to relevant stakeholders, consistent with relevant Union and national energy objectives and taking into account the acceleration areas as established in accordance with the Directive (EU) 2018/2001 on the promotion of renewable energy sources*’;

(d) in paragraph 9, the following point ■ is added:

‘(i) incentives for efficient investments in networks, including *resources providing flexibility* and flexible connection agreements.’

(8) in Article 19, paragraph 2 is amended as follows:

(a) point (b) is replaced by the following:

‘(b) maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion; or’;

(b) the following point ■ is added:

‘(c) compensating offshore *renewable electricity* generation plant operators in an offshore bidding zone *directly connected to two or more bidding zones* if access to interconnected markets has been reduced in such a way that *it results in the offshore renewable electricity plant operator not being able to export its electricity generation capability to the market and, where relevant, a corresponding price decrease in the offshore bidding zone, as compared to without capacity reductions. The compensation applies where, in the validated capacity calculation results*, one or more transmission system operators *either* have not made *available the capacity agreed in connection agreement* on the interconnector or *have not made available the capacity on* the critical network elements *pursuant to the capacity calculation rules in Article 16(8), or both. The transmission system operators which are responsible for the reduction of access to interconnected markets shall be responsible for the compensation to offshore renewable electricity generation plant operators. On an annual basis, this compensation shall not exceed the total congestion income generated on interconnectors between the concerned bidding zones.*’

(9) The following chapter ■ is inserted:

‘ Chapter IIIa

Specific investment incentives to achieve the Union’s decarbonisation objectives

Article 19a

Power purchase agreements

1. ***Without prejudice to Directive (EU) 2018/2001, on the promotion of renewable sources, Member States shall promote the uptake of power purchase agreements (‘PPAs’), including by removing unjustified barriers and disproportionate or discriminatory procedures or charges, with a view to providing price predictability and reaching the objectives set out in their integrated national energy and climate plan with respect to the ■ decarbonisation dimension referred to in point (a) of Article 4 of Regulation (EU) 2018/1999, including with respect to renewable energy, while preserving competitive and liquid electricity markets and cross-border trade.***
- 1a. ***When carrying out the revision of this Regulation according to article 69, the Commission, in consultation with relevant stakeholders, shall assess the potential and viability of one or several EU market platforms for PPAs, to be used on a voluntary basis, including the interplay of these potential platforms with other existing electricity market platforms and the pooling of demand for PPAs through aggregation.***

2. Member States ***in a coordinated manner*** shall ensure that instruments, such as guarantee schemes at market prices, to reduce the financial risks associated to off-taker payment default in the framework of PPAs are in place and accessible to customers that face entry barriers to the PPA market and are not in financial difficulty. ***Such instruments may include, but are not limited to, state-backed guarantee schemes at market prices, private guarantees, or facilities pooling demand for PPAs, in compliance with relevant Union law.*** For this purpose, Member States shall ***ensure appropriate coordination, including with relevant Union-level facilities.*** Member States ***may*** determine what categories of customers are targeted by these instruments, applying non-discriminatory criteria ***among and within the categories of customers.***
3. ***Without prejudice to Articles 107 and 108 TFEU, if a guarantee scheme*** for PPAs ***is*** backed by the Member ***State, it*** shall include provisions to avoid lowering the liquidity in electricity markets and shall not provide support to the purchase of generation from fossil fuels. ***Member States may decide to limit those guarantee schemes to the exclusive support of the purchase of new renewable generation according to the Member State's decarbonisation policies, including in particular where the market for renewables PPAs is not sufficiently developed.***
4. ■ Support schemes for electricity from renewable sources, shall allow the participation of projects which reserve part of the electricity for sale through a ***renewable*** PPA or other market-based arrangements ***provided this does not negatively affect competition in the market, in particular in cases where the two parties involved in this PPA are controlled by the same entity.***

- 4a. *In the design of such support schemes Member States shall endeavour to make use of evaluation criteria to incentivise bidders to facilitate the access of customers that face entry barriers to the PPA market, provided this does not negatively affect competition in the market.***
5. PPAs shall specify the bidding zone of delivery and the responsibility for securing cross-zonal transmission rights in case of a change of bidding zone in accordance with Article 14 ■
6. PPAs shall specify the conditions under which customers and producers may exit from PPAs, such as any applicable exit fees and notice periods, in *compliance* with Union competition law.
- 6a. *Member States, when designing measures directly affecting PPAs shall respect possible legitimate expectations and shall take into account the effect of those measures on existing and future PPAs.***
- 6b. *By 31 January 2026 and every two years thereafter, the Commission shall assess whether barriers persist and whether there is sufficient transparency in the PPAs markets.***

The Commission may draw up specific guidance on removal of barriers in the PPA markets, including disproportionate or discriminatory procedures or charges.

Article 19ab

Voluntary standardised PPAs and information on PPAs

- 1. ACER shall publish an annual assessment on the PPA market at Union and Member State level as part of the monitoring report referred to in Article 15 of Regulation (EU) 2019/942.*
- 2. By 3 months after the entry into force of this Regulation, ACER shall assess, in close coordination with the relevant institutions and stakeholders, the need to develop and issue standard contracts for Power Purchase Agreements for voluntary use, adapted to the needs of the different categories of counterparties.*

In case the assessment concludes that there is a the need to develop and issue such an standard contracts, ACER together with the NEMOs and, after consulting the relevant stakeholders, shall develop these standard contracts considering the following elements:

- The use of those standard contracts shall be voluntary for the contracting parties.*
- Standard contracts shall have, inter alia, the following characteristics:*
 - a) offer a variety of contract durations;*
 - b) provide different price formulas;*
 - c) consider the offtaker's load profile and the generator's generation profile.*

Article 19ac

Union level measures to contribute to the achievement of the additional share of energy from renewable sources

1. *The Commission shall assess whether measures at Union level can contribute to the achievement of the Member States collective endeavour of an additional 2.5 % share of energy from renewable sources in the Union's gross final consumption of energy in 2030 in line with Directive (EU) 2023/2413, complementing national measures. The Commission shall analyse the possibility to use the Union renewable energy financing mechanism to organise Union level renewable energy auctions in line with the relevant regulatory framework.*

Article 19b

Direct price support schemes *in the form of two-way contracts for difference for investments* ■

1. Direct price support schemes for *investments in new power-generating facilities* for the generation of electricity from the sources listed in paragraph 2 shall take the form of *two-way contracts* for differences *or of equivalent schemes with the same effects*.

The first subparagraph shall apply to contracts under direct price support schemes for investments in new generation concluded as of three years after [the date of entry into force of this Regulation]. For offshore hybrid asset projects connected to two or more bidding zones, the transitional period shall be five years after [the date of entry into force of this Regulation].

The participation of market participants in direct price support schemes in the form of two-way contracts for difference and in equivalent schemes with the same effects shall be voluntary.

- 1a. All direct price support schemes in the form of two-way contracts for difference and equivalent schemes with the same effects shall be designed to:*
- (a) preserve incentives for the generating facility to operate and participate efficiently in the electricity markets, in particular to reflect market circumstances;*
 - (b) prevent any distortive effect of the support scheme on the operation, dispatch and maintenance decisions of the generating facility or on bidding behaviour in day-ahead, intraday, ancillary services and balancing markets;*
 - (c) ensure that the level of the minimum remuneration protection and of the upward limit to excess remuneration are aligned with the cost of the new investment, the market revenues, to guarantee the long-term economic viability of the power generating facility while avoiding overcompensation;*
 - (d) avoid undue distortions to competition and trade in the internal market, notably by determining remuneration amounts through a competitive bidding process that it is open, clear, transparent and non-discriminatory. In cases where no competitive bidding process can be conducted, contracts for difference or equivalent schemes with the same effects – and the applicable strike prices - shall be designed to ensure that the distribution of revenues to undertakings does not create undue distortions to competition and trade in the internal market. ;*
 - (e) avoid distortions to competition and trade in the internal market. resulting from the distribution of revenues to undertakings;*
 - (f) include penalty clauses applicable in the case of undue unilateral early termination of the contract.*

- 1b. In the assessment of two-way contracts for difference or equivalent schemes with the same effects under Articles 107 and 108 TFEU, the Commission shall ensure compliance with the design principles pursuant to paragraph 1a.**
2. Paragraph 1 shall apply to ■ investments in *new* generation of electricity from the following sources:
- (a) wind energy;
 - (b) solar energy;
 - (c) geothermal energy;
 - (d) hydropower without reservoir;
 - (e) nuclear energy;
3. ***The revenues, or the equivalent in financial value of those revenues, arising from direct price support schemes in the form of two-way contracts for difference and from equivalent schemes with the same effects referred to in paragraph 1 shall be distributed to final customers.***

Notwithstanding the requirement in the first subparagraph, the revenues, or the equivalent in financial value of those revenues, may also be used to finance the costs of the direct price support schemes or investments to reduce electricity costs for final customers.

The distribution of revenues to final customers shall be designed to maintain incentives to reduce their consumption or shift it to periods when electricity prices are low and not to undermine competition between electricity suppliers.

■

4. *In line with the third subparagraph of Article 4(3) of Directive (EU) 2018/2001, Member States may exempt small-scale renewables installations and demonstration projects from the obligation under paragraph 1.*

Article 19c

Assessment of flexibility needs

1. *No later than one year after the approval by ACER of the methodology pursuant to paragraph 6 of this Article, and every two years thereafter, the regulatory authority, or another authority or entity designated by a Member State, shall adopt a report on the estimated needs for flexibility ■ for a period of at least the next 5 to 10 years at national level, in view of the need to cost effectively achieve security and reliability of supply and decarbonise the electricity system, taking into account the integration of variable renewable electricity sources and the different sectors, as well as the interconnected nature of the electricity market, including interconnection targets and potential availability cross-border flexibility.*

The report shall :

(a) be consistent with the European Resource Adequacy Assessment and national adequacy assessments pursuant to Articles 23 and 24 of this Regulation.

(b) be based on the data and analyses provided by the transmission and distribution system operators of that Member State pursuant to paragraph 3 and using the common methodology pursuant to paragraph 4 and, when duly justified, additional data and analysis.

Where the Member State has designated a transmission system operator or another entity for this purpose, the regulatory authority shall approve or amend the report.

2. The report shall *at least*:
 - (a) *evaluate the different types of needs for flexibility, at least on a seasonal, daily and hourly basis, to integrate electricity generated from renewable sources in the electricity system. This evaluation shall assess, inter alia, different assumptions in respect to electricity market prices, generation and demand;*
 - (b) *consider the potential of non-fossil flexibility resources such as demand response and energy storage, including aggregation and interconnection, to fulfil this need, both at transmission and distribution levels.*
 - (c) *evaluate the barriers for flexibility in the market and propose relevant mitigation measures and incentives, including the removal of regulatory barriers and possible improvements to markets and system operation services or products*
 - (ca) *evaluate the contribution of digitalization of electricity transmission and distribution networks; and*
 - (d) *take into account flexibility needs that is expected to be available in other Member States.*
3. The *electricity* transmission and distribution system operators of each Member State shall provide the data and analyses *referred to in paragraph 4 that are needed for the preparation of the report referred to in paragraph 1 to the regulatory authority or, where relevant, the authority or entity designated in paragraph 1. If duly justified, the regulatory authority or, where relevant, the authority or entity designated in paragraph 1 may ask the relevant transmission system operators and distribution system operators to provide additional input to the report, beyond the requirements referred to in paragraph 4. Relevant transmission or distribution system operators will coordinate with hydrogen and gas sectors system operators in order to gather the relevant information in case needed in application of this article.*

4. The ENTSO for Electricity and the EU DSO entity shall coordinate transmission and distribution system operators as regards the data and analyses to be provided in accordance with paragraph 3. In particular, they shall:
 - (a) define the type **■** and format *of data* that transmission and distribution system operators shall provide to the regulatory authorities *or, where relevant, the authority or entity designated in paragraph 1*;
 - (b) develop a methodology for the analysis by transmission and distribution system operators of the flexibility needs, taking into account at least all *available* sources *in a cost-efficient manner in the different timeframes, including in other Member States*; planned investments *in* interconnection, *and flexibility at* transmission and distribution level as well as the need to decarbonise the electricity system *in order to meet the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, in compliance with the Paris Agreement. The methodology shall contain guiding criteria on how to assess the capability of the different flexibility sources to cover the needs.*
5. The ENTSO for Electricity and the EU DSO entity shall closely cooperate with each other regarding the coordination of transmission and distribution system operators *as regards the provision of data and analyses pursuant to paragraph 4.*

6. By *nine months after the entry into force of this Regulation*, the ENTSO for Electricity and the EU DSO entity shall jointly submit to ACER a proposal regarding the type of data and format to be submitted to regulatory authorities, *or, where relevant, the authority or entity designated in paragraph 1*, and the methodology *for the analysis of the flexibility needs* referred to in paragraph 4. Within three months of receipt of the proposal, ACER shall either approve the proposal or amend it. In the latter case, ACER shall consult *the Electricity Coordination Group*, the ENTSO for Electricity and the EU DSO entity before adopting the amendments. The adopted proposal shall be published on ACER's website.
7. The regulatory authorities *or, where relevant, the authority or entity designated in paragraph 1*, shall submit the reports referred to in paragraph 1 to *the European Commission and* ACER and publish them. Within 12 months of receipt of the reports, ACER shall issue a report analysing them and providing recommendations on issues of cross-border relevance regarding the findings of the regulatory authorities *or, where relevant, the authority or entity designated in paragraph 1, including recommendations on removing barriers to the entry of non-fossil flexibility resources.*

Among the issues of cross-border relevance, the Agency shall assess:

- a) how to better integrate the flexibility needs analysis referred to in paragraph 1 with the methodology for the European resource adequacy assessments in accordance with Article 23 and the methodology for the Union-Wide Ten Year Network Development Plan, ensuring consistency between them. The results would be taken into account in further revisions of these methodologies according to the relevant EU legislation.*
- b) the estimated need for flexibility in the electricity system at Union level and its projected economically available potential for a period of the next 5 to 10 years taking into account the national reports;*
- c) the potential introduction of further measure to unleash flexibility potential in the electricity markets and system operation;*

The European Scientific Advisory Board on Climate Change may, on its own initiative, provide input to ACER on how to ensure compliance with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective.

- 7b. ENTSO-E shall update the Union-wide network development plan to include the results of the flexibility needs assessments. The national assessment of flexibility needs referred to in paragraph 1 shall be considered by transmission and distribution system operators in their network development plans.*

Article 19d

Indicative national objective for *non-fossil flexibility*

No later than 6 months after the submission of the report pursuant to Article 19c(1) of this Regulation, each Member State shall define, based on this report, an indicative national objective for non-fossil flexibility, including the respective specific contributions of both demand response and energy storage to that objective. Member states may achieve this objective by realising the identified potential of non-fossil flexibility, via the removal of identified market barriers or support schemes as envisaged in Article 19e. This indicative national objective, including the respective specific contributions of demand response and energy storage to that objective, as well as measures to achieve this objective shall also be reflected in Member States' integrated national energy and climate plans as regards the dimension 'Internal Energy Market' in accordance with Articles 3, 4 and 7 of Regulation (EU) 2018/1999 and in their integrated biennial progress reports in accordance with Article 17 of Regulation (EU) 2018/1999. Member States may define provisional indicative objectives pursuant to Article 19c(1) of this Regulation.

Following the assessment carried out in line with Article 9 of Regulation (EU) 2018/1999, the Commission, after receiving the national indicative objective defined and communicated by the Member States according to paragraph 1, shall submit a report to the European Parliament and to the Council assessing the national reports.

On the basis of the conclusions of the report elaborated with the first information communicated by Member States, the Commission may draw up a Union strategy on flexibility, with a particular focus on demand response and energy storage, to facilitate their deployment that is consistent with the Union's 2030 targets for energy and climate as defined in Article 2, point (11), of Regulation (EU) 2018/1999 and the climate-neutrality objective laid down in Article 2 of Regulation (EU) 2021/1119 which may be accompanied, where appropriate, by a legislative proposal.

Article 19e

Non-fossil flexibility support schemes

1. *Where investments in non-fossil flexibility are insufficient to achieve the indicative national objective or, where relevant, provisional indicative objectives, identified in accordance with Article 19d, Member States may apply non-fossil flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility without prejudice to Articles 12 and 13. Member States which apply a capacity mechanism shall consider to make the necessary adaptations in the design of the capacity mechanisms to promote the participation of non-fossil flexibility such as demand side response and storage, without prejudice to the possibility for those Member States to use the non-fossil flexibility support schemes mentioned in this paragraph.*
2. *The possibility for Member States to apply measures pursuant to paragraph 1 shall not preclude them from addressing their indicative targets identified in Article 19d by other means.*

■

Article 19f

Design principles for *non-fossil* flexibility support schemes

■ Non-fossil flexibility *support schemes* applied by Member States in accordance with Article 19e(1) shall:

- (a) not go beyond what is necessary to *achieve the indicative national objective, or where relevant the provisional indicative objective*, identified *in accordance with Article 19d* in a cost-effective manner;
- (b) be limited to new investments in non-fossil flexibility *resources* such as demand side response and *energy* storage;
- (ba) *endeavour to take into consideration locational criteria to ensure that investments in new capacity take place in optimal locations*;
- (c) ■ not imply starting fossil fuel-based generation located behind the metering point;
- (d) select capacity providers by means of an open, transparent, competitive, *voluntary*, non-discriminatory and cost-effective process;
- (e) prevent undue distortions to the efficient functioning of the electricity markets including preserving efficient operation incentives and price signals and the exposure to price variation and market risk;
- (f) provide incentives for the integration in the electricity market in a market-based and market-responsive way, while avoiding unnecessary distortions of electricity markets as well as taking into account possible system integration costs and grid *congestion and* stability;
- (g) set out a minimum level of participation in the market in terms of activated energy, which takes into account the technical specificities of *the asset delivering the flexibility*

- (h) apply appropriate penalties to capacity providers which do not respect the minimum level of participation in the market referred to in point (g), or which do not follow efficient operation incentives and *price* signals referred to in point (e);
- (i) *promote the opening to the cross-border participation of those resources that are capable of providing the required technical performance, where a cost-benefit analysis is positive. ■*

(9a) Article 21 is amended as follows:

[a] paragraph 1 is replaced by the following:

‘ Member States may, while implementing the measures referred to in Article 20(3) of this Regulation in accordance with Article 107, 108 and 109 of the TFEU, introduce capacity mechanisms.

[b] paragraph 7 is deleted.

[c] paragraph 8 is replaced by the following:

8. Capacity mechanisms shall be approved by the Commission for no longer than 10 years. The amount of the committed capacities shall be reduced on the basis of the implementation plans referred to in Article 20. Member States shall continue to apply the implementation plan after the introduction of the capacity mechanism.’

(9b) In Article 22(1) point (a) is deleted.

(10) in Article 37 (1), point (a) is replaced by the following:

“(a) carrying out the coordinated capacity calculation in accordance with the methodologies developed pursuant to the forward capacity allocation guideline, the capacity allocation and congestion management guideline and the electricity balancing guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;”

(11) Article 50 is amended as follows:

(a) the following paragraph 4a is added:

“4a.

- Transmission system operators shall publish in a clear and transparent manner, information on the capacity available for new connections in their respective areas of operation ***with high spatial granularity, while respecting public security and data confidentiality, including the capacity under connection request and the possibility of flexible connection*** in congested areas. ***The publication shall include information on the criteria used to calculate available capacity for new connections. Transmission system operators shall update that information on a regular basis, at least monthly.***
- Transmission system operators shall **■** provide clear and transparent information to system users about the status and treatment of their connection requests ***including, where relevant, those related to flexible connection agreements.*** They shall provide such information within **■** three months from the submission of the request. ***Where the requested connection is neither granted nor permanently rejected, transmission system operators shall update that information on a regular basis and at least quarterly.*** ’

(12) in Article 57, the following paragraph 3 is added:

- ‘3. Distribution system operators and transmission system operators shall cooperate with each other in publishing information on the capacity available for new connections in their respective areas of operation in a consistent manner and giving sufficient granular visibility to developers of new energy projects and other potential network users.’

(13) in Article 59 (1), point (b) is replaced by the following:

- “(b) **■** capacity-allocation and congestion- management rules pursuant to Article 6 of Directive (EU) 2019/944 and Articles 7 to 10, 13 to 17, 19 and 35 to 37 of this Regulation, including rules on day-ahead, intraday and forward capacity calculation methodologies and processes, grid models, bidding zone configuration, redispatching and countertrading, trading algorithms, single day-ahead and intraday coupling, *different governance options, the firmness of allocated cross-zonal capacity, congestion income distribution, the details and specific features of the tools referred to in Article 9(3) by reference to the elements specified in paragraphs (4) and (5) thereof*, the allocation *and facilitation of trading* of financial long-term transmission rights by the single allocation platform *as well as the frequency, maturity and specific nature of such long-term transmission rights*, cross-zonal transmission risk hedging, nomination procedures, and capacity allocation and congestion management cost recovery, *and methodology for compensating offshore renewable electricity plant operators for capacity reductions;* ” ’

(13a) in Article 59(2), point (a) is replaced by the following:

‘(a) network connection rules including rules on the connection of transmission-connected demand facilities, transmission-connected distribution facilities and distribution systems, connection of demand units used to provide demand response, requirements for grid connection of generators and other system users, requirements for high-voltage direct current grid connection, requirements for direct current-connected power park modules and remote-end high-voltage direct current converter stations, and operational notification procedures for grid connection;’ ”

(13b) Article 69 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘ By 30 June 2026, the Commission shall review this Regulation and shall submit a comprehensive report to the European Parliament and to the Council on the basis of that review, accompanied by a legislative proposal where appropriate.

The Commission's report shall assess, among others:

(a) The effectiveness of the current structure and functioning of the short-term electricity markets, including in crisis or emergency situations, and, more generally, the potential inefficiencies concerning the internal electricity market and the different options for the introduction of possible remedies and tools to be applied in crisis or emergency situations in view of the experience at international level and of the evolution and new developments in the Union electricity market;

- (b) *the suitability of the current Union legal and financing framework on distribution grids to deliver on the Union's renewable and internal energy market objectives.*
- (c) *in line with Article 19a, the potential and viability of the establishment of one or several EU market platforms for PPAs, to be used on a voluntary basis, including the interplay of these potential platforms with other electricity market platforms and the pooling of demand for PPAs through aggregation.*
4. *By ... [six month after the date of entry into force of this amending Regulation], the Commission shall submit to the European Parliament and to the Council a detailed report assessing possibilities of streamlining and simplifying the process of applying a capacity mechanism under Chapter IV of this Regulation, so as to ensure that adequacy concerns can be addressed by Member States in a timely manner. In that context, the Commission shall request that ACER amends the methodology for the European resource adequacy assessment referred to in Article 23 in accordance with the process set out in Articles 23 and 27, as appropriate.*

By ... [nine months after the date of entry into force of this amending Regulation] the Commission shall, after consultation with Member States, come forward with proposals with a view to simplifying the process of assessing capacity mechanisms as appropriate.'

(13a) In Article 64, the following paragraph is added:

(2a) By way of derogation from Article 6(9), (10) and (11), Estonia, Latvia and Lithuania, may conclude financial contracts for balancing capacity up to five years before the start of the provision of the balancing capacity. The duration of such contracts shall not extend beyond eight years after Estonia, Latvia and Lithuania have joined the continental European synchronous area.

The national regulators of Estonia, Latvia and Lithuania may allow their domestic transmission system operators to allocate cross-zonal capacity on a market-based process as described in Article 41 of Commission Regulation (EU) 2017/2195, without volume limitations until six months after the moment when the co-optimised allocation process is fully implemented and operational pursuant to paragraph 3 of Article 38 of Commission Regulation (EU) 2017/2195.

(13d) In Article 64, the following paragraph is inserted.

By way of derogation from Article 22(4)(b), Member States may request that generation capacity that started commercial production before 4 July 2019 and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity and more than 350 kg CO₂ of fossil fuel origin on average per year per installed kW_e may, subject to compliance with Articles 107 and 108 TFEU, exceptionally be committed or receive payments or commitments for future payments after 1 July 2025 under a capacity mechanism approved by the Commission before the entry into force of Regulation 2019/943.

2d. The Commission shall assess the impact of the request in terms of greenhouse gas emissions. The Commission may grant the derogation after having assessed the report under subparagraph 2e and provided that the following conditions are fulfilled:

- (a) the Member State has carried out, after the date of entry into force of Regulation (UE) 2019/943, a competitive bidding process in line with the provisions of Article 22 and for a delivery period after 1 July 2025, which aims at maximising the participation of capacity providers which meet the requirements in Article 22(4);***
- (b) the amount of capacity offered in the competitive bidding process referred to in letter point (a) is not sufficient to address the adequacy concern as identified pursuant to Article 20 (1) for the delivery period covered by that bidding process;***
- (c) the generation capacity that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity is committed or receives payments or commitments for future payments for a period not exceeding one year, and for a delivery period which does not exceed the duration of the derogation, and is procured through an additional procurement process which complies with all requirements in Article 22 except for those set out in point (b) of paragraph 4 and only for the amount of capacity that is needed to solve the adequacy concern identified in letter b).***

The derogation pursuant to this paragraph may be applied until 31 December 2028, provided that the conditions in points (a) to (c) are complied with for the entire duration of the derogation.

2e. The application for the derogation shall be accompanied by a report from the Member State which shall include:

(a) An assessment of the impact of the derogation in terms of greenhouse gas emissions, and on the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response.

(b) a plan with milestones to transition away from the participation of generation capacity referred to in the first subparagraph in capacity mechanisms by the date of the expiry of the derogation, including a plan to procure the necessary replacement capacity in line with the indicative national trajectory for the overall share of renewable energy and an assessment of the investment barriers causing the lack of sufficient bids in the competitive bidding procedure referred to in point (a).

(14) The following Article ■ is added:

“ Article 69a

Interaction with Union financial legislation

Nothing in this Regulation shall derogate from the provisions of Directive (EU) 2014/65, Regulation (EU) 648/2012 and Regulation (EU) 600/2014 when market participants or market operators engage in activities related to financial instruments in particular as defined under ***point (15) of Article 4(1)*** of Directive (EU) 2014/65.“

(15) in Annex I point 1.2 is replaced by the following:

“1.2. Coordinated capacity calculation shall be performed for all allocation timeframes.”

Article 2

Amendments to Regulation (EU) 2019/942

Regulation (EU) 2019/942 is amended as follows:

(1) Article 2 is amended as follows:

■

■ ■

(b) point (d) is replaced by the following:

“(d) issue individual decisions on the provision of information in accordance with Article 3(2), Article 7(2), point (b), and Article 8, point (c); on approving the methodologies, terms and conditions in accordance with Article 4(4), Article 5(2), (3) and (4); on bidding zones reviews as referred to in Article 5(7); on technical issues as referred to in Article 6(1); on arbitration between regulators in accordance with Article 6(10); related to regional coordination centres as referred to in Article 7(2), point (a); on approving and amending methodologies and calculations and technical specifications as referred to in Article 9(1); on approving and amending methodologies as referred to in Article 9(3); on exemptions as referred to in Article 10; on infrastructure as referred to in Article 11, point (d); on matters related to wholesale market integrity and transparency pursuant to Article 12 ■ ; and on approving and amending proposals from the ENTSO for electricity and the EU DSO entity related to the methodology concerning the data and analysis to be provided as regards the flexibility needs pursuant to Article 5(10). ”; ”

(c) the following points are added:

(aa) issue opinions and recommendations addressed to the single allocation platform established in accordance with Regulation (EU) 2016/1719.

(2) in Article 3(2), the following subparagraph is added:

“ This paragraph shall also apply to the single allocation platform established in accordance with Regulation (EU) 2016/1719 ”;

(3) in Article 4, the following paragraph ■ is added:

“9. paragraphs 6, 7 and 8 shall also apply to the single allocation platform established in accordance with Regulation (EU) 2016/1719.”;

(4) in Article 5(8), the following ■ subparagraph is added:”

‘ ACER shall monitor the single allocation platform established in accordance with Regulation (EU) 2016/1719.”’

■

■

(6) in Article 5, the following paragraph ■ is added:

“9. ACER shall approve and where necessary amend the joint proposal from the ENTSO for electricity and the EU DSO entity related to the methodology concerning the data and analysis to be provided as regards the flexibility needs pursuant to Article 19c(4) of Regulation (EU) 2019/943.”’

(6a) *in Article 6, paragraph 9, is amended as follows:*

9. ACER shall submit opinions to the relevant regulatory authority and to the Commission pursuant to Article 8(1) and 16(3) of Regulation (EU) 2019/943.”

(7) Article 15 is amended as follows:

(a) in paragraph (4), the following subparagraph ■ is added:

“ACER shall issue a report on the impact of using peak shaving products during a crisis pursuant to Article 7a(5) of Regulation (EU) 2019/943 and a report on the impact of developing peak shaving products under normal market circumstances pursuant to Article 7a(4b) of Regulation (EU) 2019/943.

(b) the following paragraph is added:

“5. ACER shall issue a report analysing the national assessments of the flexibility needs and providing recommendations on issues of cross-border relevance regarding the findings of the regulatory authorities, or of other authorities or entities designated by Member States, pursuant to Article 19c(7) of Regulation (EU) 2019/943.”

Article 5

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

For the European Parliament

The President


For the Council

The President

2023/0077(COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending  Directives (EU) 2018/2001 and (EU) 2019/944 to improve the
Union's electricity market design**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Very high prices and volatility in electricity markets have been observed since September 2021. As set out by the European Agency for the Cooperation of Energy Regulators ('ACER') in its April 2022 assessment of EU wholesale electricity market design¹⁸, this is mainly a consequence of the high price of gas, which is used as an input to generate electricity.
- (2) The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, and related international sanctions since February 2022 have ***led to a gas crisis***, disrupted global energy markets, exacerbated the problem of high gas prices, and have had significant knock-on impacts on electricity prices. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity. ***The reduced availability of several nuclear reactors and the low hydropower output further amplified the increase in electricity prices.***

¹⁸ European Union Agency for the Cooperation of Energy Regulators, ACER's Final Assessment of the EU Wholesale Electricity Market Design, April 2022.

- (3) In response to this situation, the *Commission presented in October 2021 the Communication entitled “Tackling rising energy prices: a toolbox for action and support” which* contained a toolbox of measures that the *Union* and its Member States should be able to use to address the immediate impact of high energy prices on households and businesses, including income support, tax breaks, *energy* savings and storage measures ■ and to strengthen resilience against future price shocks. In its Communication of 8 March 2022 entitled ‘REPowerEU: Joint European Action for more affordable, secure and sustainable energy’¹⁹, the Commission outlined a series of additional measures to strengthen the toolbox and to respond to rising energy prices. On 23 March 2022, the Commission also established a temporary State Aid regime to allow certain subsidies to soften the impact of high energy prices.²⁰
- (4) On 18 May 2022 the Commission presented the REPowerEU plan²¹ that introduced additional measures focusing on energy savings, diversification of energy supplies, *increased energy efficiency target* and accelerated roll-out of renewable energy aiming at ending the Union’s dependency on Russian fossil fuels, including a proposal to increase the Union’s 2030 target for renewables to 45%. Furthermore, the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design²², in addition to setting out additional short-term measures to tackle high energy prices, identified potential areas for improving the electricity market design and announced the intention to assess these areas with a view to *changing* the legislative framework.

¹⁹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU: Joint European Action for more affordable, secure and sustainable energy, ■

²⁰ Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia C 131 I/01, C/2022/1890.

²¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU Plan, COM(2022)230.

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action, COM(2022) 236 final.

- (5) *In order* to address urgently the price crisis and security concerns and to tackle the price hikes for citizens, *the Union adopted several legal acts, such as Regulation (EU) 2022/1032 of the European Parliament and of the Council²³ establishing a strong gas storage regime²⁴, Council Regulation (EU) 2022/1369²⁵ providing effective demand reduction measures for gas and electricity²⁶, Council Regulation (EU) 2022/1854²⁷ establishing price limiting regimes to avoid windfall profits in both gas and electricity markets²⁸ and Council Regulation (EU) 2022/2577²⁹ establishing measures to accelerate the permit-granting procedures for renewable energy installations³⁰.*

²³ *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 (Text with EEA relevance), OJ L 173 OJ L 173, 30.6.2022, p17.*

²⁴ ■

²⁵ *Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 206, 8.8.2022, pOJ L 261. 1)*

²⁶ ■

²⁷ *Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261I, 7.10.2022, p. 1)*

²⁸ ■

²⁹ *Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy (OJ L 335, 29.12.2022, p.36).*

³⁰ ■

- (6) A well-integrated **energy** market which builds on the Clean energy for all Europeans package³¹ adopted in 2018 and 2019³² ("**Clean Energy Package**") should allow the Union to reap the economic benefits of a single energy market in *all* circumstances, ensuring security of supply and sustaining the decarbonisation process *to achieve the climate neutrality objective*. Cross-border interconnectivity also ensures *a safer, more reliable and efficient operation of the power system, and better resilience to short-term price shocks*.
- (7) *Strengthening the internal energy market and achieving the climate and energy transition objectives require a substantial upgrade of the Union's electricity network to be able to host vast increases of renewable capacity, with weather-dependent variability in generation amounts and changing electricity flow patterns across Europe, as well as new demand such as electric vehicles and heat pumps. Investments in grids, within and across borders, are crucial to the proper functioning of the internal market, including security of supply. This is necessary to integrate renewable energy and demand in a context where these locate further apart than in the past; and ultimately to delivery on the Union climate and energy targets. Therefore, any reform of the Union's electricity market should contribute to a more integrated European electricity network, with a view to ensure that each Member State reaches a level of electricity interconnectivity in line with the electricity interconnection target for 2030 of at least 15 % laid down in Article 4, point (d)(1), of Regulation (EU) 2018/1999, that this interconnection capacity is used as much as possible for cross-border trade and that the Union's electricity network and connectivity infrastructure are built or upgraded, such as the Union Projects of Common Interest as established by the framework concerning the Trans-European Networks for Energy. Adequate connectivity should be provided to all Union citizens and undertakings*

³¹ *Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, (OJ L 328, 21.12.2018, p. 11); 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 (recast), OJ L 328, 21.12.2018, p. 82); Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, (OJ L 328, 21.12.2018, p. 210); 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 (recast), OJ L 158, 14.6.2019, p. 22); Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 125).*

³² .

as it can bring major opportunities for them to participate in the energy transition and the digital transformation of the Union. Special consideration should be given to the outermost regions as referred to in Article 349 of the Treaty on the Functioning of the Union (TFEU), which recognises their specific constraints and provides for the adoption of specific measures in their regard.

- (8) The current electricity market design has also helped the emergence of new and innovative products, services and measures on retail electricity markets, supporting energy efficiency and renewable energy uptake and enhancing choice so as to help consumers reduce their energy bills also through small-scale generation installations and emerging services for providing demand response. Building on and seizing the potential of the digitalisation of the energy system, such as active participation by consumers, should be a key element of our future electricity markets and systems. At the same time, there is a need to respect consumer choices and allow consumers to benefit from a variety of contract offers, *and shield household consumers from high prices in times of crisis. Energy system integration should be intended as the planning and operation of the energy system as a whole, across multiple energy carriers, infrastructures, and consumption sectors, by creating stronger links between them, in synergy with each other and supported by digitalisation with the objective of delivering secure, affordable, reliable and sustainable energy.*

- (9) In the context of the energy crisis, the current electricity market design has revealed a number of shortcomings *and unexpected consequences* linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.
- (10) A faster deployment of renewable energy and clean flexible technologies constitutes the most sustainable and cost-effective way of structurally reducing the demand for fossil fuels for electricity generation and for direct consumption through electrification and energy system integration. Thanks to their low operational costs, renewable sources can positively impact electricity prices across the Union and reduce consumption of fossil fuels.
- (11) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, including the most vulnerable ones, and ultimately, shield them from energy crises and avoid more households falling into *an* energy poverty trap. *Those changes* should mitigate the impact of high fossil fuel prices, notably that of gas, on electricity prices, aiming to allow households and companies to reap the benefits of affordable and secure energy from sustainable renewable and low carbon sources in the longer term, *as well as the role of energy efficient solutions in reducing overall energy costs, which may reduce the need for power grid and generation capacity expansion.*

- (12) The reform of the electricity market design should *aim to achieve affordable and competitive electricity prices for all consumers. As such, it should* benefit not *only* household consumers but also the competitiveness of the Union's industries by facilitating their possibilities to make the clean tech investments they require to meet their net zero transition paths. The energy transition in the Union needs to be supported by a strong clean technology manufacturing basis. These reforms will support the affordable electrification of industry and the Union's position as a global leader in terms of research and innovation in clean energy technologies.
- (13) The connection of new generation and demand installations, in particular renewable energy plants, often faces delays in grid connection procedures. One of the reasons for such delays is the lack of available grid capacity at the location chosen by the investor, which implies the need for grid extensions or reinforcements to connect the installations to the system in a safe manner. A new requirement for electricity system operators, both at transmission and distribution levels, to publish and update information on the capacity available *for new connections* in their areas of operation would contribute to decision-making by investors on the basis of information of grid capacity availability within the system and thus to the required acceleration in the deployment of renewable energy. *This information should be updated on a regular basis, at least monthly by transmission system operators and at least quarterly by distribution system operators. While Member States might decide not to apply this requirement to electricity undertakings which serve less than 100 000 connected customers or serving small isolated systems, they should encourage these undertakings to provide system users with this information on an annual basis and promote cooperation between distribution system operators for this purpose. System operators should also publish the criteria used to determine the available grid capacities, such as existing demand and generation capacities, the assumptions made for assessing the possible further integration of additional system users, including the relevant information on possible energy curtailment, and the expectation of upcoming relevant network developments.*

- (14) Furthermore, to tackle the problem of lengthy reply times on requests for connection to the grid, transmission and distribution system operators should provide clear and transparent information to system users about the status and treatment of their connection requests. Transmission and distribution system operators should **█** provide such information within a period of three months from the submission of the request *and update it on a regular basis and at least quarterly.*
- (15) *In areas where electricity grids have limited or no network capacity, network users requesting grid connection should be able to benefit from establishing a flexible, non-firm, connection agreement. A flexible connection agreement should be able to, for example, take into account energy storage or limit the times in which a generation power plant can inject electricity to the grid or the capacity that can be exported, enabling its partial connection. System operators should offer the possibility of establishing flexible connection agreements in such areas. Regulatory authorities should develop frameworks for system operators to establish such flexible connections, ensuring that network reinforcements that provide the structural solutions are prioritised, connection agreements are made firm as soon as the networks are ready, flexible connections are enabled as a permanent solution for areas where network reinforcement is not efficient and, to the extent possible, give visibility to the network users requesting grid connection on the expected curtailment levels under the flexible connection agreement.*

- (16) During the energy crisis, consumers have been exposed to extremely volatile wholesale energy prices and had limited opportunities to engage in the energy market. Consequently, many households, have been facing *financial* difficulties *and have been unable to pay* their bills. Vulnerable consumers and the energy poor are the hardest hit³³, but middle-income households have also been exposed to such difficulties. *High energy prices could also have a negative impact on consumer health, well-being and overall quality of life.* It is therefore important to update consumer rights and protections, allowing consumers to benefit from the energy transition, decouple their electricity bills from short term price movements on energy markets and rebalance the risk between suppliers and consumers.
- (17) Consumers should have access to a wide range of offers so that they can choose a contract according to their needs. However, suppliers have reduced their offers, fixed-price contracts have become scarce, and the choice of offers has become limited. Consumers should always have the possibility to opt for an affordable fixed price and fixed term *electricity supply* contract and suppliers should not unilaterally modify the terms and conditions *of a contract or terminate it* before such contract expires. *This does not change the fact that dynamic price contracts remain essential and that an increasing penetration of renewable energy sources can help consumers to reduce their energy bills. Member States should be able to exempt suppliers with more than 200 000 final customers who only offer dynamic price contracts from the obligation to offer fixed price and fixed term electricity supply contracts, provided that this does not have a negative impact on competition and retains sufficient choice of fixed price and fixed term contracts.*

³³ Particular groups are more at risk of being affected by energy poverty or more susceptible to the adverse impacts of energy poverty, such as women, persons with disabilities, older persons, children, and persons with a minority racial or ethnic background.

- (18) When suppliers' do not ensure that their electricity portfolio is sufficiently hedged changes in wholesale electricity prices can leave them financially at risk and, result in their failure, passing on costs to consumers and other network users. Hence, it should be ensured that suppliers are appropriately hedged when offering fixed price contracts. An appropriate hedging strategy should take into account the suppliers' access to its own generation and its capitalisation as well as its exposure to changes in wholesale market prices, ***the size of the supplier or the market structure. The existence of appropriate hedging strategies can be ensured by general rules overseen without undertaking a specific review of the positions or strategies of individual suppliers. Stress tests and reporting requirements on suppliers could be tools used to assess supplier hedging strategies.***
- (19) Consumers should be able to choose the supplier which offers them the price and service which best suits their needs. Advances in metering and sub-metering technology combined with information and communication technology mean that it is now technically possible to have multiple suppliers for a single premises ■ If they ***wish to do so***, customers should be able to use these possibilities to choose a separate supplier ***in particular*** for electricity to power appliances such as heat pumps or electric vehicles which have a particularly high consumption or which also have the capability to shift their electricity consumption automatically in response to price signals. ***For this purpose, customers should be allowed to have more than one metering and billing point covered by the single connection point for their premises allowing different appliances to be metered and supplied separately. Metering points should be clearly distinguished from each other and should comply with applicable technical rules. The rules for the allocation of the associated costs should be determined at national level. Some smart metering systems should be able to directly cover more than one metering point and therefore enable customers to have more than one electricity supply contract at the same time. Suppliers should have balancing responsibility only for metering and billing points to which they supply. Moreover, through the facilitation of dedicated measurement solutions***, attached to or embedded in appliances with flexible, controllable loads, final customers can participate in other incentive-based demand response schemes that provide flexibility services on the electricity market and to transmission and distribution system operators. Overall, such arrangements should ***facilitate energy sharing***, contribute to the increased uptake of demand response and to consumer empowerment allowing ***customers*** to have more control over their energy use and bills, while providing to the electricity system additional flexibility in order to cope with demand and supply fluctuations.

- (20) Due to the increasing complexity of energy offers and different marketing practices, consumers have often difficulties to fully understand what they sign up to. In particular, there is a lack of clarity on how the price is set, the conditions for the renewal of the contract, the consequences of terminating a contract or the reasons for changing conditions by the supplier. Therefore, the key information on energy offers should be provided to consumers by suppliers or market participants engaged in aggregation in a short and easily understandable manner prior to signing the contract.
- (21) To ensure continuity of supply for consumers *particularly in cases* of supplier failure, Member States should **implement a supplier-of-last-resort regime. It should be possible** to appoint *the supplier* of last resort *either before or at the moment of supplier failure. Such a supplier of last resort* may be treated as a provider of universal service. A supplier of last resort might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of Directive (EU) 2019/944 of the European Parliament and of the Council³⁴. However, this does not imply an obligation of Member States to supply at a certain fixed minimum price. *Where a Member State obliges a supplier of last resort to supply electricity to a customer who does not receive market based offers, the conditions of Article 5 apply, and this obligation can only involve a regulated price to the extent that customer is entitled to benefit from regulated prices. When assessing whether offers received by non-household customers were market-based, Member States should take into account the individual commercial and technical circumstances. Where, before the entry into force of this Directive, a Member State has already appointed a supplier of last resort through a fair, transparent and non-discriminatory procedure, it is not necessary to run a new procedure for appointing the supplier of last resort.*

³⁴ *Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).*

- (22) Energy sharing can create resilience against the effects of high and volatile wholesale market prices on consumers' energy bills, empowers a wider group of consumers that do not otherwise have the option of becoming an active customer due to financial or spatial constraints, such as energy poor and vulnerable consumers, and leads to increased uptake of renewable energy by mobilising additional private capital investments and diversifying remuneration pathways. With the integration of appropriate price signals and storage facilities, electricity sharing can help lay the foundation to help tap into the flexibility potential of smaller consumers. ***The provisions on energy sharing complement the provisions concerning self-consumption in Article 21 of Directive (EU) 2018/2001 and Article 15 of this Directive, notably with respect to collective self-consumption.***
- (23) Active customers that own, lease or rent a storage or generation facility should have the right to share excess production ***at a price or free of charge*** and empower other consumers to become active, or to share the renewable energy generated or stored by jointly leased, rented or owned facilities, ***of up to 6 MW capacity***, either directly or through a third-party facilitator.
- In the case of customers participating in energy sharing schemes larger than small and medium enterprises, the size of the installed capacity of the generation facility associated to the energy sharing scheme should be of a maximum of 6 MW and the energy sharing should take place within a local or limited geographic area, as defined by the Member States.***
- Any payment for sharing of excess production for a price can either be settled directly between active customers or automated through a peer-to-peer trading platform.*** Energy sharing arrangements are either based on private contractual agreement between active customers or organised through a legal entity. A legal entity that incorporates the criteria of a renewable energy community as defined in Directive (EU) 2018/2001 ■ or a citizen energy community as defined in Directive (EU) 2019/944 ■ could share with their members electricity generated from facilities they have in full ownership. The protection and empowerment framework for energy sharing should pay particular attention to energy poor and vulnerable consumers.

- (24) Energy sharing operationalises the collective consumption of self-generated or stored electricity injected into the **public** grid by more than one jointly acting active customers. Member States should put in place the appropriate IT infrastructure to allow for the administrative matching within a certain timeframe of **customer's total metered** consumption with self-generated or stored renewable energy **which is deducted from the total consumption** for the purpose of calculating the energy component of the energy bill **issued by the customer's supplier and thereby reducing the customer's bill**. The output of these facilities should be distributed among the aggregated consumer load profiles based on static, variable or dynamic calculation methods that can be pre-defined or agreed upon by the active customers. **Active customers engaged in energy sharing are financially responsible for the imbalances they cause. This should be without prejudice to the possibility for active customers to delegate their balancing responsibilities to other market participants. All consumer rights and obligations set out in this Directive apply to final customers involved in energy sharing schemes. However, households with an installed capacity up to 10.8 kW for single households and up to 50 kW for multi-apartment blocks should not be required to comply with the obligations of suppliers. Member States should be able to adjust these thresholds to reflect national circumstances, up to 30kW for single households and to between 40kW and 100 kW for multi-apartment blocks.**
- (25) **Plug-in mini-solar systems could, together with other systems and technologies, contribute to the increased uptake of renewable energy and citizen engagement in the energy transition. Member States should be able to promote these systems easing administrative and technical burdens. Regulatory authorities should be able to set the network tariffs for the injection of electricity coming from plug-in mini-solar system or methodology for calculating those tariffs. Depending on the situation in a Member State, it would be possible for these to be very low or even zero, while being cost-reflective, transparent and non-discriminatory.**

- (26) Vulnerable customers *and those affected by energy poverty* should be adequately protected from electricity disconnections and should, as well, not be put in a position that forces them to disconnect. *Member States should therefore ensure that vulnerable and energy poor customers are fully protected from electricity disconnections, by taking the appropriate measures, including the prohibition of disconnections or other equivalent actions.* The role of suppliers and all relevant national authorities to identify appropriate measures, in both the short and the long-term, which should be made available to vulnerable customers *and those affected by energy poverty* to manage their energy use and costs remain essential, including by means of close cooperation with social security systems. *There are multiple tools and good practices available to Member States which include, but are not limited to, year-round or seasonal disconnection prohibitions, debt prevention and sustainable solutions to support customers in hardship paying for their energy bills.*
- (27) *Consumers have the right to use through complaint procedures managed by their suppliers as well as out of court dispute resolution procedures, in order to see their rights enforced effectively and not be disadvantaged in case of disagreement with suppliers, notably regarding bills or the amount due. Where customers use these procedures, suppliers should not terminate contracts on the basis of the facts which are still in dispute. Both suppliers and customers should continue to meet their contractual rights and obligations, notably to supply electricity and to pay for that electricity and complaint procedures should not become the ground for abuses allowing customers not to honor their contractual obligations, including paying their bills. Member States should put in place appropriate measures to avoid that these complaint or dispute resolution procedures are used in a distorted way.*

(28) Public interventions in price setting for the supply of electricity would constitute, in principle, a market-distortive measure. Such interventions should, where appropriate, therefore only be carried out as public service obligations and would be subject to specific conditions. Under this Directive regulated prices would be possible for energy poor and vulnerable households, including below costs, and, as a transition measure, for households and micro-enterprises *whether or not there would be an electricity price crisis*. In times of crisis, when wholesale and retail electricity prices would increase significantly, Member States should be allowed to extend, temporarily, the application of regulated prices also to SMEs. For both households and SMEs, Member States should be temporarily allowed to set regulated prices below costs as long as this does not create distortion between suppliers and suppliers are compensated for the costs of supplying below cost *during an electricity price crisis*. However, it needs to be ensured that such price regulation is targeted and does not create incentives to increase consumption. Hence, *the temporary extension of* price regulation should be limited to 80% of median household consumption for households, and 70% of the previous year's consumption for SMEs. The *Council, acting on a proposal from the Commission*, should determine *by means of an implementing decision when a regional or Union-wide* electricity price crisis exists. *The assessment of whether such a price crisis exists should be based on a comparison with prices in times of normal market operation and therefore exclude the impact of previous crises declared pursuant to this Directive. The decision* should also specify the validity of that determination, during which the temporary extension of regulated prices applies, which may be for up to one year. *Where the conditions continue to be fulfilled for considering that a regional or Union-wide electricity price crisis exists, it should be possible for the Council, upon a proposal from the Commission, to extend the period of validity of the implementing decision. Conferring implementing powers on the Council adequately takes into account the political nature of the decision to trigger the extended possibilities for public interventions in price setting for the supply of electricity, which requires a delicate balancing of different policy considerations, as well as the horizontal implications of such a decision for Member States. In the case of vulnerable or energy poor customers the price regulation applied by Member States could cover 100% of the price according to article 5 of this Directive. In any event, the declaration of a regional or Union-wide electricity price crisis should ensure a level playing field across all Member States affected by the decision so that the internal market is not unduly distorted.*

- (29) *Member States should be able to provide support , in compliance with Articles 107 and 108 TFEU, for additional electricity costs of industrial consumers in times of electricity crisis and exceptionally severe increases of prices.*
- (30) *Since Estonia, Latvia and Lithuania are not yet synchronised with the European electricity system, they face very specific challenges when organising balancing markets and the market-based procurement of ancillary services. While synchronisation is well underway, one of the critical prerequisites for stable synchronous system operation is the availability of sufficient balancing capacity reserves for frequency regulation. However, being dependent on the Russian synchronous area for frequency management, the Baltic countries were not yet in the position to develop an own functioning balancing market. The Russian war of aggression against Ukraine has substantially increased the risk for security of supply resulting from the absence of own balancing markets. Estonia, Latvia and Lithuania should therefore be exempted from the requirements of certain provisions of Article 40(4) and 54(2) of Directive (EU) 944/2019 insofar as this is necessary to ensure system security for a transitional period. The transitional periods for Estonia, Latvia and Lithuania should phase out as soon as possible after the synchronisation, and be used to develop the appropriate markets instruments offering short-term balancing reserves and other indispensable ancillary services, and should be limited to the time necessary for this process.*
- (31) *Considering that the Cypriot transmission system is not connected to any Member State, Cyprus faces very specific challenges when organising balancing markets and the market-based procurement of ancillary services. Cyprus should be exempted from the requirements of Article 40 (4) and 54 (2) of Directive (EU) 944/2019 insofar as this is necessary to ensure system security for a transitional period, namely until the Cypriot transmission system is connected to other Member States via interconnectors.*

- (32) This Directive establishes a legal basis for *the* processing of personal data in *accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council*³⁵. Member States should ensure that all personal data protection principles and obligations laid down in *Regulation (EU) 2016/679* are met, including on data minimisation. Where the objective of this Directive can be achieved without processing of personal data, *data controllers* should rely on anonymised and aggregated data.
- (33) *To the extent that any of the measures envisaged by this Directive constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU. The Commission is competent to assess the compatibility of State aid with the internal market.*
- (34) Directive (EU) 2019/944 of the European Parliament and of the Council and Directive (EU) 2018/2001 of the European Parliament and of the Council should be amended accordingly.
- (35) *Since the objectives of this Directive, namely to improve the design of the integrated electricity market, in particular to prevent unduly high electricity prices, 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 Directive does not go beyond what is necessary to achieve those objectives.*

³⁵ *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).*

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive (EU) 2019/944 █

Directive (EU) 2019/944 █ is amended as follows:

(1) Article 2 is amended as follows:

(a) point (8) is replaced by the following:

“(8) ‘active customer’ means a final customer, or a group of jointly acting final customers, who consumes or stores electricity generated within its premises located within confined boundaries or self-generated or shared electricity within other premises █ , or who sells self-generated electricity or participates in flexibility or energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity. █

█

(b) the following points are inserted:

(10a) ‘energy sharing’ means the self-consumption by active customers of renewable energy either:

- (a) generated or stored offsite or on sites between them by a facility they own, lease, or rent in whole or in part; or
- (b) the right to which has been transferred to them by another active customer whether free of charge or for a price.

“(15a) ‘fixed term, fixed price electricity supply contract’ means an electricity supply contract between a supplier and a final customer that guarantees the same contractual conditions, including the price, *during the whole duration of the contract*, while it may, within a fixed price, include a flexible element with for example peak and off peak price variations, *and where changes in the resulting bill can only result from elements that are not determined by suppliers, such as taxes and levies*;

■ ■

(24a) ‘supplier of last resort’ means a supplier who is designated ■ to take over the supply of electricity to customers of a supplier which has ceased to operate;

(24aa) ‘energy poverty’ means energy poverty as defined in Article 2, point (52) of Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency;’

(24b) ‘flexible connection agreement’ means a set of agreed conditions for connecting electrical capacity to the grid, that includes conditions to limit and control the electricity injection to and withdrawal from the transmission or distribution network;

█ █

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(bb) point (31) is replaced by the following:

‘(31) ‘energy from renewable sources’ or ‘renewable energy’ means energy from renewable sources or renewable energy as defined in Article 2, point (1), of Directive (EU) 2018/2001, as amended by Directive 2023/2413;’

(2) Article 4 is replaced by the following:

“ Article 4

Free choice of supplier

Member States shall ensure that all customers are free to purchase electricity from *suppliers* of their choice. Member States shall ensure that all customers are free to have more than one electricity supply contract *or energy sharing agreement* at the same time, and that for this purpose customers are entitled to have more than one metering and billing point covered by the single connection point for their premises. *Where technically feasible, smart metering systems deployed in accordance with Article 19, may be used to allow customers to have more than one electricity supply contract or energy sharing agreement at the same time.*”

(2a) the following Article is inserted:

Article 6a

Flexible connection agreements

1. The regulatory authority, or other competent authority where Member States has so provided, shall develop a framework for transmission system operators and distribution system operators to offer the possibility of establishing flexible connection agreements in those areas where there is limited or no network capacity availability for new connections, which shall be published in accordance with Article 31(3) and Article 50(4a), first subparagraph, of Regulation (EU) 2019/943. This framework shall ensure that: as a general rule, flexible connections do not delay the network reinforcements in the identified areas; a conversion from flexible to firm connection agreements once the network is developed is ensured based on established criteria; and, for areas where the regulatory authority, or other competent authority where Member States has so provided, deems network development not to be the most efficient solution, enable where relevant flexible connection agreements as a permanent solution, including for energy storage.

2. The framework may ensure that flexible connection agreements in accordance with paragraph 1 specify at least the following:

(a) the maximum firm injection and withdrawal of electricity from and to the grid, as well as the additional flexible injection and withdrawal capacity that can be connected and differentiated by time blocks throughout the year;

(b) the network charges applicable to both the firm and flexible injection and withdrawal capacities;

(c) the agreed duration of the flexible connection agreement and the expected date for granting connection to the entire requested firm capacity.

The system user connecting through a flexible grid connection shall be required to install a power control system that is certified by an authorised certifier. ”

(3) Article 11 is amended as follows:

(a) the title is replaced by the following:

‘ Entitlement to a fixed term, fixed price *electricity supply contract* and dynamic electricity price contract;’

(b) paragraph 1 is replaced by the following:

‘1. **█** Member States shall ensure that the national regulatory framework enables suppliers to offer fixed-term, fixed-price *electricity supply* contracts and dynamic electricity price contracts. Member States shall ensure that final customers who have a smart meter installed can request to conclude a dynamic electricity price contract and that all final customers can request to conclude a fixed-term, fixed-price electricity *supply* contract of a duration of at least one year, with at least one supplier and with every supplier that has more than 200 000 final customers.

By way of derogation from the first subparagraph, Member States may exempt a supplier with more than 200 000 final customers from the obligation to offer fixed term fixed price contracts if:

(a) that supplier only offers dynamic price contracts, and

(b) the exemption does not have a negative impact on competition, and;

(c) there remains sufficient choice of fixed term fixed price contract for customers.

Member States shall ensure that suppliers do not modify unilaterally the terms and conditions of fixed-term, fixed-price electricity supply contracts or terminate them before their maturity.’

(c) the following paragraphs ■ are inserted:

‘1a. Prior to the conclusion or extension of any contract, final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language. This summary shall include at least information on total price, *its breakdown, explanation on whether the price is fixed, variable or dynamic, supplier’s email address and a consumer support hotline and, where relevant, one-time payments, promotions, additional services and discounts and shall set out the rights referred to in Article 10(3) and 10(4).*

The Commission shall provide guidance in this regard. ■

1b. Member States shall ensure that final customers with fixed-term, fixed-price electricity supply contracts are not excluded from their participation, when they decide so, in demand response and energy sharing and from actively contributing to the achievement of the national electricity system flexibility needs. ’

(d) paragraph 2 is replaced by the following:

‘2. ■ Member States shall ensure that final customers are fully informed by the suppliers of the opportunities, costs and risks of *the respective types of electricity* contracts, and shall ensure that suppliers are required to provide information to the final customers accordingly, including with regard to the need to have an adequate electricity meter installed. Regulatory authorities shall:

(a) monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.

(b) *take appropriate measures where impermissible termination fees are identified in accordance with Article 12(3).*’

(4) The following Articles are inserted:

“ Article 15a”

Right to energy sharing

1. All households, small and medium sized enterprises and public bodies *and, where Member States have decided so, other categories of final customers, shall* have the right to participate in energy sharing as active customers *in a non-discriminatory manner, within the same bidding zone or a more limited geographical area as determined by the Member State.*

2. Active customers shall be entitled to share renewable energy between themselves based on private agreements or through a legal entity. *Participation in energy sharing cannot constitute part of the primary commercial or professional activity of the customers engaged in energy sharing.*

3. Active customers may *appoint* a third party *as an energy sharing organizer for purposes of:*

(a) Communication on the energy sharing arrangements with other relevant entities, such as suppliers and network operators, including on aspects related the applicable tariffs and charges, taxes or levies.

(b) provide support at managing and balancing the behind-the-meter flexible loads, distributed renewable generation and storage assets that are part of the relevant energy sharing arrangement.

(c) contracting and billing of active customers participating in energy sharing.

(d) installation and operation, including metering and maintenance, of the generation or storage facility;

The energy sharing organizer or another third party may own or manage a storage or renewable energy generation facility of up to 6 MW, without being considered an active customer except in the case it is one of the active customers participating in the energy sharing project. The energy sharing organizer shall provide non-discriminatory services and transparent prices, tariffs, and terms of services, and for point (d) Articles 10, 12 and 18 shall apply. Member States shall set the framework for the application of the provisions on this paragraph at national level.

4. Member States shall ensure that active customers participating in energy sharing:
- (a) are entitled to have the shared electricity ***injected into the grid deducted from*** their total metered consumption within a time interval no longer than the imbalance settlement period and without prejudice to applicable ***non-discriminatory*** taxes, levies and ***cost-reflective*** network charges;
 - (b) benefit from all consumer rights and obligations as final customers under this Directive ■ ;
 - (c) ***are not required to comply with supplier obligations where energy is shared between households with an installed capacity up to 10.8 kW for single households and up to 50 kW for multi-apartment blocks; Member States may adapt these thresholds according to the following:***
 - i) in the case of households, the threshold can be increased up to a capacity of 30 kW.***
 - ii) for multi-apartment blocks to increase it up to a capacity of 100 kW or decrease it up to a minimum of 40 kW, this reduction only in case of duly justified specific circumstances due to a reduced average size of multi-apartments.;***
 - (d) have access to ***voluntary*** template contracts with fair and transparent terms and conditions for ***energy sharing*** agreements ■ ; in case of conflicts arising over such agreements, final customers shall have access to out of court dispute settlement ***with other participants of energy sharing agreements*** in accordance with Article 26;

- (e) are not subject to unfair and discriminatory treatment by market participants or their balance responsible parties;
 - (f) are informed of the possibility for changes in bidding zones in accordance with Article 14 of Regulation (EU) 2019/943 and of the fact that the right to share energy is restricted ***in accordance with paragraph 1.***
 - (g) ***notify energy sharing arrangements to the relevant system operators and market participants, including the relevant suppliers either directly or through an energy sharing organizer.***
5. ***In the case of customers participating in energy sharing schemes larger than small and medium enterprises, the following additional conditions will apply:***
- (a) ***The size of the installed capacity of the generation facility associated to the energy sharing scheme shall be of a maximum of 6 MW.***
 - (b) ***the energy sharing takes place within a local or limited geographic area, as defined by the Member States.***
6. Member States shall ensure that relevant transmission or distribution system operators or other designated bodies:
- (a) monitor, collect, validate and communicate metering data related to the shared electricity with relevant final customers and market participants at least every month, and in accordance with Article 23, ***and for that purpose, implement the appropriate IT systems;***

- (b) provide a relevant contact point to:
 - i) register energy sharing arrangements;
 - ii) *facilitating practical information for energy sharing;*
 - iii) receive information on relevant metering points, changes in location and participation, and,
 - iv) where applicable, validate calculation methods in a clear, transparent and timely manner.;
- 7. Member States shall take appropriate and non-discriminatory measures to ensure that energy poor and vulnerable households can access energy sharing schemes. Those measures may include financial support measures or production allocation quota.
- 8. *Member States shall ensure that energy sharing projects owned by public authorities make the shared electricity accessible to vulnerable or energy poor customers or citizens. In doing so, Member States will do their utmost to promote that the amount of this accessible energy is at least 10% on average of the energy shared,*
- 8. *Member States may promote the introduction of plug-in mini-solar systems of up to 800 W capacity in and on buildings.*
- 9. *The Commission shall provide additional guidance to the Member States without increasing administrative burden in order to facilitate a standardised approach with regard to renewable energy sharing and ensure a level playing field for renewable energy communities and citizen energy communities.*
- 10. *This Article shall be without prejudice to the right of customers to choose their supplier in accordance with Article 4 and to applicable national rules for the authorisation of suppliers.*

1. **█** Regulatory authorities, *or where a Member State has designated an alternative independent competent authority for that purpose, such designated competent authority, taking into account the size of the supplier or the market structure and including, if relevant, by carrying out stress tests* shall ensure that *electricity* suppliers:
 - (a) have in place and implement appropriate hedging strategies, to limit the risk of changes in wholesale electricity supply to the economic viability of their contracts with customers, while maintaining liquidity on and price signals from short-term markets;
 - (b) *take all reasonable steps to limit their risk of supply failure.*
2. Supplier hedging strategies may include the use of power purchase agreements *or other appropriate instruments, such as forward contracts*. Where sufficiently developed markets for power purchase agreements exist which allow effective competition, Member States may require that a share of suppliers' risk exposure to changes in wholesale electricity prices is covered using power purchase agreements for electricity generated from renewable energy sources matching the duration of their risk exposure on the consumer side, subject to compliance with Union competition law.
3. Member States shall endeavour to ensure the accessibility of hedging products for citizen energy communities and renewable energy communities *and to put in place enabling conditions with this aim"'*

(5) The following Articles are inserted:

“ Article 27a

Supplier of last resort

1. *Where* Member States *have not already put in place a regime for* suppliers of last resort, *they shall implement such a supplier of last resort regime to ensure continuity of supply* at least for household customers. Suppliers of last resort shall be appointed in a fair , transparent and non-discriminatory procedure.
2. Final customers who are transferred to suppliers of last resort shall *continue to benefit from all* their rights as customers *as* laid down in *this Directive*.
3. Member States shall ensure that suppliers of last resort promptly communicate the terms and conditions to transferred customers and ensure seamless continuity of service for those customers for *the period needed to find a new supplier, and* at least 6 months.
4. Member States shall ensure that final customers are provided with information and encouragement to switch to a market-based offer.
5. Member States may require *a* supplier of last resort to supply electricity to household customers *and small and medium enterprises* who do not receive market based offers. In such cases, the conditions set out in Article 5 shall apply.”

Article 28a

Protection from disconnections ■

*1. Member States shall ensure that vulnerable **and energy poor** customers are **fully** protected from electricity disconnections, **by taking the appropriate measures, including the prohibition of disconnections or other equivalent actions**. This shall be provided as part of the concept of vulnerable customers pursuant to Article 28 (1) ■ and without prejudice to the measures set out in **Article 10(11)**.*

When notifying the Commission about the transposition of this Directive, Member States shall demonstrate the measures adopted to implement the first subparagraph.

2. Member States shall ensure that suppliers do not terminate contracts and do not disconnect on grounds on which they are handling a complaint in accordance with Article 10(9) or which are the matter of out of court dispute settlement in accordance with Article 26, and shall not affect the parties contractual rights and obligations. Member States may take appropriate measures to avoid abuses of processes.

3. Member States shall take appropriate measures to enable customers to avoid disconnection, which may include:

- (a) Promoting voluntary codes for suppliers and customers on aimed at preventing and managing situations of customers in arrears; these arrangements may concern support to customers to manage their energy use and costs, including flagging unusual high energy spikes or usage in winter and summer seasons, offering appropriate flexible payment plans, debt advice measures, self metering readings, improved communications with customers and support agencies.*
- (b) Promoting consumer education and awareness of customers about their rights and debt management.*
- (c) Access to finance, vouchers or subsidies to support payment of bills.*
- (d) encouraging and facilitating the provision of meter readings every three months, or where relevant for shorter billing periods, where a system of regular self-reading by the final customer has been implemented to meet the obligations of points 2(a) and 2(b) of Annex I of this Directive in relation to frequency of billing and the provision of billing information.“*

(6) in Article 27, paragraph 1 is replaced by the following:

“1. Member States shall ensure that all household customers, and, where Member States consider it appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, Member States shall impose on distribution system operators an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 59(7). This Directive does not prevent Member States from strengthening the market position of the household customers and small and medium-sized non-household customers by promoting the possibilities for the voluntary aggregation of representation for that class of customers.””

(7) Article 31 is amended as follows:

(a) Paragraph 2 and 3 are replaced by the following:

2. ***In any event, the distribution system operator shall not discriminate between system users or classes of system users, including renewable energy communities and citizen energy communities, particularly in favour of its related undertakings.***

“3. **■** Distribution system ***operators*** shall provide system users with the information they need for efficient access to, including use of, the system. In particular, **■** distribution system ***operators*** shall publish in a clear and transparent manner, information on the capacity available for new connections in its area of operation, ***with high spatial granularity, while respecting public security and data confidentiality***, including ***the capacity under connection request and the possibility of flexible connection*** in congested areas. ***The publication shall include information on the criteria used to calculate available capacity for new connections. Distribution system operators shall update that information on a regular basis, and in any event, at least quarterly.***

Distribution system operators shall also provide clear and transparent information to system users about the status and treatment of their connection requests. They shall provide such information within a period of three months from the submission of the request. ***Where the requested connection is neither granted nor permanently rejected, distribution system operators shall update that information on a regular basis and, in any event, at least quarterly.***

(b) the following paragraphs are inserted:

3a. Distribution system operators shall provide system users the option to request grid connection and submit relevant documents exclusively in digital form.

3b. Member States may decide not to apply paragraph 3 to integrated electricity undertakings which serve less than 100 000 connected customers, or serving small isolated systems. Member States may apply a lower threshold of connected customers.

Member States shall encourage integrated electricity undertakings which serve less than 100 000 connected customers to provide system users with the information described in paragraph 3 on an annual basis and promote cooperation between distribution system operators for this purpose.

(7a) in Article 33, paragraph 1 is replaced by the following:

1. Without prejudice to Directive 2014/94/EU, Member States shall provide the necessary regulatory framework to facilitate the connection of publicly accessible and private recharging points with smart charging functionalities and bidirectional charging functionalities in accordance with Article 20a of Directive (EU) 2018/2001 to the distribution networks. Member States shall ensure that distribution system operators cooperate on a non-discriminatory basis with any undertaking that owns, develops, operates or manages recharging points for electric vehicles, including with regard to connection to the grid.

(8) In Article 40 the following paragraph is inserted:

“**6a.** The requirements in paragraphs 5 and 6 shall not apply with regard to the peak shaving product procured in accordance with Article 7a of Regulation (EU) 2019/943.””

(9) Article 59 is amended as follows:

(a) In paragraph 1, point (c) is replaced by the following:

“(c) **■** in close coordination with the other regulatory authorities, ensuring the compliance of the single allocation platform established in accordance with Regulation (EU) 2016/1719, the ENTSO for Electricity and the EU DSO entity with their obligations under this Directive, Regulation (EU) 2019/943, the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943, and other relevant Union law, including as regards cross-border issues, as well as with ACER's decisions, and jointly identifying non-compliance of the single allocation platform, the ENTSO for Electricity and the EU DSO entity with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942; ’

(b) In paragraph 1, point (z) is replaced by the following:

“(z) **■** monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity, ***energy sharing, renewable energy communities*** and citizen energy communities, including ***obstacles and restrictions preventing*** the connection of flexible distributed energy generation within a reasonable time in accordance with Article 58, point (d).’;

(c) paragraph 4 is replaced by the following:

“4. The regulatory authority located in the Member State in which the single allocation platform, the ENTSO for Electricity or the EU DSO entity has its seat shall have the power to impose effective, proportionate and dissuasive penalties on those entities where they do not comply with their obligations under this Directive, Regulation (EU) 2019/943 or any relevant legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties. ’

(9a) In Article 66, the following paragraphs are added:

6. ***By way of derogation from Article 40(4), the transmission system operators in Estonia, Latvia and Lithuania shall be able to rely on balancing services provided by domestic electricity storage providers, transmission system operators related undertakings, and other facilities owned by transmission system operators.***

By way of derogation from Article 54(2), Estonia, Latvia and Lithuania may allow their transmission system operators and transmission system operators related undertakings to own, develop manage and operate storage without following an open, transparent and non-discriminatory tendering procedure and may allow such storage to buy or sell electricity in the balancing markets.

The derogations from Article 40(4) and Article 54(2) shall apply up to three years after Estonia, Latvia and Lithuania have joined the continental European synchronous area. When necessary to preserve security of supply, the Commission may grant an extension of the initial three year period by a maximum of five years.

7. *By way of derogation from Articles 40(4) and 54(2), Cyprus may allow its transmission system operator to own, develop manage and operate storage without following an open, transparent and non-discriminatory tendering procedure.*

The derogations from Articles 40(4) and 54(2) shall apply until the transmission system in Cyprus is connected to other Member States' transmission systems via interconnection.

- (10) the following Article **■** is inserted

“ Article 66a

Access to affordable energy during an electricity price crisis

1. *The Council, on a proposal from the Commission, by means of an implementing decision, may declare a regional or Union-wide electricity price crisis, if the following conditions are met:*
 - (a) very high **average** prices in wholesale electricity markets **of** at least two and a half times the average price during the previous 5 years, **and at least 180 EUR/MWh** which is expected to continue for at least 6 months. *The calculation of the average price during the previous 5 years shall not take into account those periods where a regional or Union-wide electricity price crisis was declared;*
 - (b) sharp increases in electricity retail prices **in the range of 70%** occur which are expected to continue for at least 3 months;

■

2. The **■** decision declaring a regional or Union-wide electricity price crisis *shall specify* the period of validity of that decision which may be for a period of up to one year. *That period may be prolonged in accordance with the procedure set out in paragraph 8 for consecutive periods of up to one year.*
3. *The declaration of a regional or Union-wide electricity price crisis shall ensure a fair competition and trade across all Member States affected by the decision so that the internal market is not unduly distorted.*
4. *The Commission shall present a proposal for declaring a regional or Union-wide electricity price crisis, including the proposed period of validity of the decision, where that the conditions in paragraph 1 are fulfilled.*
5. *The Council, acting by a qualified majority, may amend a Commission proposal submitted pursuant to paragraphs 4 and 8.*
6. Where the *Council* has adopted a decision pursuant to paragraph 1, Member States may, for the duration of the validity of that decision apply *temporary* targeted public interventions in price setting for the supply of electricity to small and medium sized enterprises. Such public interventions shall:
 - (a) be limited to at most 70% of the beneficiary's consumption during the same period of the previous year and retain an incentive for demand reduction;
 - (b) comply with the conditions set out in Article 5(4) and (7);
 - (c) where relevant, comply with the conditions set out in paragraph 7.*(ca) be designed to minimise any negative fragmentation in the internal market within the Union.*

7. Where the *Council* has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision, by way of derogation from Article 5(7), point (c), when applying targeted public interventions in price setting for the supply of electricity pursuant to Article 5(6) or paragraph 3 of this Article, exceptionally and temporarily set a price for the supply of electricity which is below cost provided that the following conditions are fulfilled:
- (a) the price set for households only applies to at most 80% of median household consumption and retains an incentive for demand reduction;
 - (b) there is no discrimination between suppliers;
 - (c) suppliers are compensated for supplying below cost *in a transparent and non-discriminatory manner*;
 - (d) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.
- (da) measures proposed do not distort the internal electricity market.*

8. *In due time before the expiry of the period specified pursuant to paragraph 2, the Commission shall assess whether the conditions in paragraph 1 continue to be fulfilled. If the Commission considers that the conditions in paragraph 1 continue to be fulfilled, it shall present to the Council a proposal for prolonging the period of validity of a decision adopted pursuant to paragraph 1. Where the Council decides to prolong the period of validity, paragraphs 6 and 7 shall apply during such prolonged period.*

The Commission shall continuously assess and monitor the impacts resulting from the measures adopted under the declared electricity price crisis and publish on a regular basis the results of such assessments;

■

(11) *in Article 69, paragraph 2 is replaced by the following:*

- ‘ *By 31 December 2025, the Commission shall review the implementation of this Directive and shall submit a report to the European Parliament and to the Council. If appropriate, the Commission shall submit a legislative proposal together with or after submitting the report.*

The Commission’s review shall, in particular, assess the service quality offered to final customers and whether customers, especially those who are vulnerable or in energy poverty, are adequately protected under this Directive.

Article 2

Amendment to Directive (EU) 2018/2001

Directive (EU) 2018/2001 is amended as follows:

(1) Article 4(3) is amended as follows:

(a) the second subparagraph is replaced by the following:

‘ To that end, with regard to direct price support schemes, support shall be granted in the form of a market premium, which could be, inter alia, sliding or fixed. *The first* sentence shall not apply to support for electricity from the renewable sources listed in Article 19b(2) of Regulation (EU) *2019/943 of the European Parliament and of the Council¹*, to which Article 19b(1) of that Regulation applies.’

1 *Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).*’

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Article 3

Transposition

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by... [six months from the date of entry into force of [this Directive]].*

By way of derogation from the first subparagraph of this Article, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1, points (2) and (4) by [24 months from the date of entry into force of this Directive].

They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. *Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.*

Article 4

Entry into force

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

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President
