

## BACKGROUND DOCUMENTS

of the 115<sup>th</sup> ACER Board of Regulators Meeting

29 March 2023

Item	Agenda point	Direct link
EC proposal for long-term electricity market design adjustments & REMIT	3.1	-
Implementing Act on the technical details of the application of the MCM to derivatives	3.1	-

*Below are the documents that are not available for download from ACER's website:*



Strasbourg, 14.3.2023  
COM(2023) 148 final

2023/0077 (COD)

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**

(Text with EEA relevance)

{SWD(2023) 58 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

##### 1.1. Policy context

Energy prices significantly increased throughout 2021 and 2022. This resulted from reductions in gas supply, particularly after the start of Russia's war against Ukraine and the weaponisation of energy as well as from domestic shortfalls in hydropower and nuclear power. The price rises also resulted from increased energy demand, as the global economy picked up after the COVID-19 pandemic. These price rises were rapidly felt by households, industry and businesses across the EU, and governments immediately took steps to mitigate them. At the European level, the EU swiftly provided an energy prices toolbox<sup>1</sup> with measures to address high prices, in particular for the most vulnerable consumers (including income support, tax breaks, gas saving and storage measures), as well as the REPowerEU plan<sup>2</sup> with further measures and funding to boost energy efficiency and renewable energy in order to reduce dependence on Russian fossil fuels. This was followed by the creation of a temporary State Aid regime<sup>3</sup> to allow certain measures to soften the impact of high prices, a strong gas storage regime<sup>4</sup>, effective demand reduction measures for gas<sup>5</sup> and electricity<sup>6</sup>, faster renewable energy and grid permitting processes<sup>7</sup>, and price limiting regimes to avoid windfall profits in both the gas and electricity markets<sup>8</sup>.

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<sup>1</sup> 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 - Tackling rising energy prices: a toolbox for action and support, COM(2021) 660 final.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 10.6.2022, p. 17.

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

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

<sup>7</sup> 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.

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

These short-term measures helped Member States to deal with the immediate fall-out of the energy crisis. However, the crisis also showed how exposed consumers and industries are and our lack of resilience to energy price spikes. The impact of fossil fuel-based generation on setting electricity prices was seen as excessive by businesses and citizens, while Member States' ability to cushion short term prices with longer term contracts appeared inadequate. For this reason, the European Commission President announced in the 2022 State of the Union Address<sup>9</sup> the need for a fundamental reform of the electricity market design.

Whilst the EU's internal energy market delivers huge gains and growth across Europe, the recent energy crisis has highlighted that the energy market design's short-term focus can distract from broader, longer-term goals. The reflection of short-term prices in consumers bills led to price shocks where energy bills of many consumers tripled or quadrupled, even as the costs of wind and solar power were declining; the sudden exposure to volatile and high prices triggered some supplier bankruptcies; many industrial enterprises in energy intensive sectors were obliged to shut down. Therefore, the proposal includes a set of measures aimed to create a buffer between short-term markets and electricity bills paid by consumers, in particular by way of incentivizing longer term contracting, to improve the functioning of short-term markets to better integrate renewables and enhance the role of flexibility and to empower and protect consumers.

The recent price volatility has also highlighted the lack of flexibility in the electricity grid, with prices set too often by gas-fired generation and with a general lack of low carbon flexible supply, demand response and energy storage. As more wind and solar power enter the system, low-carbon flexible technologies will be needed to balance the variable supply with variable demand. In parallel with this proposal, the Commission is making recommendations for the advancement of storage innovation, technologies, and capacities.

More broadly, the sensitivity of the electricity price to fossil fuel prices highlighted the need to speed up the deployment of renewables together with the flexibility of the power system to displace fossil fuels. REPowerEU provides such a boost to renewable energy and with it, a boost to economic growth and quality jobs creation. It builds on the European Green Deal's drive to improve European competitiveness through innovation and the transition to a net zero economy and is closely aligned with the Commission's Green Deal Industrial Plan. To facilitate the investments needed in the face of recent price volatility, uncoordinated

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<sup>9</sup> SPEECH/22/5493.

regulatory interventions and grid and regulatory barriers to entry, fundamental reform is needed. Finally, in the Report on the final outcome of the Conference on the Future of Europe, citizens asked the EU institutions to take measures to “Enhance European energy security, and achieve the EU’s energy independence” and to ‘Reduce dependency of EU from foreign actors in economically strategic sectors’, including energy<sup>10</sup>

## 1.2. Objectives of the proposal

The proposal is addressing consumer, industry and investors’ concerns over exposure to volatile short-term prices, driven by high prices of fossil fuels. It will optimize the electricity market design by complementing the short-term markets with a greater role for longer-term instruments, allowing consumers to benefit from more fixed priced contracts, and facilitating investments in clean technologies. Ultimately, it will mean that less fossil fuel generation is needed and will lead to lower prices for consumers during future fossil fuel crisis due to the low operational costs of renewable and low carbon energy.

The proposal is putting forward measures to protect consumers from such volatility, empower them with greater contract choice and more direct access to renewable and low carbon energy. To improve investment conditions for businesses, in particular those pursuing decarbonisation pathways, it proposes measures to counter exposure to short term price spikes through power purchase agreements and more prudential obligations for energy suppliers. It also proposes measures to improve the way variable renewable and low carbon energies are integrated into the short-term market. This includes measures boosting the use of demand response and storage, among other forms of non-fossil flexibility. The proposal also improves and clarifies access to longer term contracts for developers (both State supported such as contracts for difference, and private, such as power purchase agreements) in order to provide secure, stable revenues for renewable and low carbon energy developers and bring down risk and capital costs while avoiding windfall profits in periods of high prices.

Whilst the current market design has over many decades delivered an efficient, increasingly integrated market, the energy crisis has highlighted a number of shortcomings relating to: (i) insufficient tools to protect consumers, including businesses, against high short term prices; (ii) the excessive influence of fossil fuel prices on electricity prices and the failure for low cost renewables and low carbon energy to be better reflected in electricity bills; (iii) the impact of extreme price volatility and regulatory interventions on investment; (iv) the lack of

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<sup>10</sup> [Report on the final outcome of the Conference on the Future of Europe](#) Report - Proposals 3 and 17

sufficient non-fossil flexibility (such as storage or demand response) that could reduce dependence on gas-fired generation; (v) the limited choice of supplier contract types; (vi) the difficulties to directly access renewable energy through energy sharing; and (vii) the need for robust monitoring of the energy market to better protect against market abuse.

**To protect consumers** from volatile prices, the proposal will provide for the right to fixed price contracts as well as dynamic price contracts, the right to multiple contracts and to better and clearer contract information. Consumers will be offered variety of contracts that best fits their circumstances. In this way, consumers, including small businesses, can lock in secure, long-term prices to mitigate the impact of sudden price shocks, and/or they may choose to have dynamic pricing contracts with suppliers if they wish to take advantage of price variability to use electricity when it is cheaper (e.g., to charge electric cars or use heat pumps). Such a combination of both dynamic and fixed pricing allows to keep market incentives for consumers to adjust their electricity demand, while providing more certainty also for those who wish to invest in renewable energy sources (rooftop solar panels for instance) and stability of costs. In addition to the existing protection framework for energy poor and vulnerable consumers, the proposal will also provide access to regulated retail prices for households and SME consumers in the event of a crisis and stabilise the supply industry by requiring that suppliers make more effort to guard against high price spikes by making greater use of forward contracts with generators (locking in future prices) and by requiring Member States to establish a supplier of last resort regime. The proposal will empower consumers by creating the right to share renewable energy directly, without the need to create energy communities. Greater energy sharing (e.g., sharing surplus roof top solar power with a neighbour) can improve the use made of low cost renewable energy and provide greater access to direct use of renewable energy for consumers who might not otherwise have such access.

**To enhance stability and predictability of the cost of energy, thereby contributing to the competitiveness of the EU economy** facing excessive volatile prices, the proposal intends to enhance market access to more stable longer-term contracts and markets. Power purchase agreements (PPAs) - long-term private contracts between a generator (typically renewable or low carbon) and a consumer – can protect against price volatility, but they are currently mostly available only to large energy consumers in very few Member States. A barrier to the growth of this market is the credit risk that a consumer will not always be able to buy the electricity over the whole period. To address this, Member States should ensure that

instruments to reduce the financial risks associated to off-taker payment default in the framework of PPAs, including guarantee schemes at market prices, are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. To further encourage the growth of the market for such agreements, renewable and low carbon energy project developers participating in a public support tender should be allowed to reserve a share of the generation for sale through a PPA. In addition, Member States should endeavour to apply in some of these tenders' evaluation criteria to incentivise the access to the PPA market for customers that face entry barriers. Finally, the obligation on suppliers to hedge appropriately may also boost demand for PPAs (which are a way of locking in future prices).

Some forms of public support guarantee the energy producer a minimum price by the government but allow for the producer to nevertheless earn the full market price even when this market price is very high. With the recent high prices much (cheap) publicly supported energy has been receiving these high market prices. To curb this and so stabilise prices, investment support should be structured as “two-way” (two-way contract for difference), which set a minimum price but also a maximum price, so any revenues above the ceiling are paid back. The proposal will apply to new investments for the generation of electricity, which include investments in new power-generating facilities, investments aimed at repowering existing power-generating facilities, investments aimed at extending existing power-generating facilities or at prolonging their lifetime. Moreover, the proposal will require that such money is then channelled to support all electricity consumers in proportion to their consumption to mitigate the effect of high prices.

A further means of guarding against volatile prices is to use long term contracts that lock in future prices (“forward contracts”). This market shows low liquidity in many Member States but could be boosted across the EU, so that more suppliers or consumers can guard against excessively volatile prices over longer periods of time. The proposal will create regional reference prices via a hub to increase price transparency and oblige system operators to allow transmission rights longer than a year, so that if a forward contract is between parties across regions or borders, they can ensure transmission of the electricity.

Finally, to ensure markets that behave competitively and prices are set transparently, regulators' ability to monitor energy market integrity and transparency will be enhanced.

The third objective is to **boost renewable energy investment**, in order to ensure that deployment triples, in line with European Green Deal goals. This will be achieved partly by

improving the markets for long term contracts. Power purchase agreements and contracts for difference not only provide consumers with stable prices, they also give renewable energy suppliers reliable revenues. This lowers their financial risk and greatly reduces their cost of capital. This creates a virtuous circle where stable revenues lower costs and boost demand for renewable energy.

Renewable energy is also a better investment when its ability to produce power is not curtailed due to technical constraints in the system. The more flexible the system is (generation that can rapidly turn on or off, storage that can absorb or put power onto the system, or responsive consumers who can increase or decrease their demand for power) the more stable prices can be and the more renewable energy the system can integrate. For this reason, the proposal requires Member States to assess their needs for power system flexibility, establish objectives to deliver on these needs. Member States can design or redesign capacity mechanisms in order to promote low-carbon flexibility. Moreover, the proposal opens the possibility for Member States to introduce new support schemes for non-fossil flexibility such as demand side response and storage.

System operators should also play an enhanced role integrating renewables into the grid, partly by increasing transparency surrounding availability of grid connection capacity. First, this clearer information would enhance renewable energy developers' ability to develop renewables in areas where the grid is less congested. Second, renewable energy can be more efficiently traded and balanced in the system if trades between market participants can take place closer to "real time". If offers to supply electricity are made minutes before consumption rather than hours before consumption, the offers from wind and solar power producers are more accurate, more wind and solar power can be consumed and the "imbalance costs" of the system are reduced. Thus, trading deadlines will be brought closer to real time.

### **Consistency with existing policy provisions in the policy area**

The proposed initiative is strongly linked and complementary to the legislative proposals brought forward in the context of the European Green Deal Package and speed up the decarbonisation objectives laid down in REPowerEU Plan, in particular as regards the proposal to revise the Renewable Energy Directive ("RED II"), which is the main EU instrument dealing with the promotion of renewable energy. The proposed initiative is



complementary in that it aims to enable the acceleration in the uptake of renewable energy. The proposal seeks to ensure more stable long-term sources of revenue to unleash further renewable and low carbon energy investments, while improving the functioning of short-term markets, which are key for the integration of renewables in the electricity system. In addition, the proposal seeks to enable energy sharing to allow consumers to engage in the market and help to speed up the energy transition.

Reducing energy consumption through price signals, energy efficiency measures or voluntary efforts can often be the cheapest, safest and cleanest way to reduce our reliance on fossil fuels, to support security of supply and to reduce our energy bills. The proposal will facilitate the active participation of the consumers in the market and the development of their demand response. It will also enable non-fossil flexibility such as demand side flexibility and storage to compete on a level playing field so that the role of natural gas in the short-term market in providing flexibility is progressively reduced. Therefore, the proposal is in line with the proposed increase of the 2030 target for energy efficiency to 13%, as set out in the proposed amendments to Renewable Energy, Energy Performance of Buildings and Energy Efficiency Directives<sup>11</sup> accompanying the REPowerEU Plan<sup>12</sup>.

There is also an important link between the proposal and the Energy Performance of Buildings Directive which is the main EU instrument to help reach the building and renovation goals set out in the European Green Deal. The proposal is strongly linked in particular to provisions on sub-metering and demand response in addition to the Commission's proposal, as part of the European Green Deal Package and expressed under the EU Solar Strategy Communication, on the gradual mandatory integration of solar photovoltaic in order to make public, commercial and residential buildings climate neutral.

- **Consistency with other Union policies**

The proposal's objectives to protect and empower consumers, improve competitiveness of EU industry and boost renewables and low carbon investment are wholly consistent with the framework of the European Green Deal and coherent and complementary to current initiatives, including the legislative proposal for a "Net-zero Industry Act" which is being

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<sup>11</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022) 222 final.

<sup>12</sup> 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 final.

adopted in parallel. It responds to the issues that were identified in the Commission's Communication laying out a "Green Industrial Plan for the net-zero age" issued on 1 February 2023<sup>13</sup>, namely that the competitiveness of many companies has been severely weakened by high energy prices and that long-term price contracts could play an important role to enable electricity users benefit from more predictable and lower costs of renewable power. Last but not least, the legislative proposal is complementary to the ongoing revision of relevant financial market regulations such as the Market Abuse Regulation<sup>14</sup>. The proposal also builds on the Council Recommendation on ensuring a fair transition towards climate neutrality whereby Member States are invited to continue to mobilise public and private financial support to invest into renewable energy, tackle mobility challenges and promote cost-saving opportunities linked to the circular economy<sup>15</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The proposal is based on Article 194(2) of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for proposing measures aiming inter alia to ensure the functioning of the energy market, promote energy efficiency and energy saving and the development of new and renewable forms of energy.<sup>16</sup> In the field of energy, the EU has a shared competence pursuant to Article 4(2)(i) TFEU.

- **Subsidiarity (for non-exclusive competence)**

### **The need for EU action**

The unprecedented nature of the energy price crisis has shone a spotlight on EU electricity markets. Despite the growing shares of low-cost renewables electricity across the EU, there is a continuing influence of fossil-fuel generated electricity on overall energy bills. Households and businesses across the EU have experienced skyrocketing energy prices during the crisis.

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<sup>13</sup> 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 - A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62 final.

<sup>14</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014, p. 1.

<sup>15</sup> Council Recommendation of 16 June 2022 (2022/C 243/04)

<sup>16</sup> Article 194(1) TFEU.

This is an issue of EU-wide relevance which can only be addressed with action at EU level. The increased integration of EU electricity markets requires closer coordination between national actors, also in the context of market monitoring and surveillance. National policy interventions in the electricity sector have a direct impact on neighbouring Member States due to energy interdependence, grid interconnections and ongoing electricity market integration. To preserve the functioning of the electricity system and cross-border trade and investments and to accelerate, in a coordinated way, the energy transition towards a more integrated and more energy-efficient energy system based on renewable generation, a common approach is needed.

The amendments proposed set out a balance between obligations and flexibility left to the Member States on how to achieve the main objectives pursued of ensuring that the lower cost of renewable electricity will be reflected in consumer bills and of boosting the deployment of renewable energy.

Furthermore, the objective of the proposed measures can only be achieved by action at EU level, not at individual Member States' level, since the proposed action requires changes to the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation (EU) 2019/943 and the Electricity Directive (EU) 2019/944 as well as to existing REMIT framework.

- **EU added value**

EU action to address the shortcomings of the current electricity market design brings added value because it is more efficient and effective than individual Member States' actions, thus avoiding a fragmented approach. The measures proposed to address the shortcomings identified will be more ambitious and cost-effective if driven by a common legal and policy framework. In addition, action at Member State level would only be possible within the constraints of the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation and Electricity Directive as well as REMIT Regulation and not be able to achieve the necessary changes to that framework. Consequently, the objectives of this initiative cannot be achieved only by Member States themselves and this is where action at EU-level provides an added value.

- **Proportionality**

The proposed amendments to the Electricity Regulation, the Electricity Directive, the REMIT Regulation and the ACER Regulation are considered proportionate.

The proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for undertakings and national administrations. However, the envisaged economic impacts are necessary and proportionate to achieve the objective of incentivising the use of such long-term contracts and ensuring that the energy bills of European households and companies as well as the revenues of non-fossil fuel technologies with low variable costs become more independent from the fluctuation of prices in short-term markets and thus more stable over longer periods of time.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered necessary in order to achieve the envisaged objectives of ensuring better integration of renewable and low carbon energy and reducing dependency on fossil fuels for flexibility, and ultimately reaching carbon neutrality in the Union with lower costs for consumers. They are also proportionate to these objectives, since the impact on businesses appears minimal compared to the current framework and the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

It is also proportionate with the objectives pursued not to envisage measures amending existing provisions in the Electricity Regulation and the Electricity Directive where any issues identified with regard to existing provisions can be addressed through their manner of application or implementation. One such instance relates to the measures concerning resource adequacy in Chapter IV of the Electricity Regulation, in particular, the process for Member States to introduce capacity mechanisms, which could be simplified without amending the relevant provisions.

The measures envisaged to strengthen consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators. However, the additional burdens are necessary and proportionate to achieve the objective of ensuring consumers have access to better information and variety of offers, decoupling their electricity bills from short term movements on energy markets and rebalancing the risk between suppliers and consumers.

The measures envisaged to improve the REMIT framework may increase reporting obligations for market participants due to a broader scope of REMIT. These measures are necessary to achieve the objective of increasing transparency and monitoring capacities and

ensuring more effective investigation and enforcement of cross-border cases in the EU so that consumers and market participants have confidence in the integrity of energy markets, prices reflect a fair and competitive interplay between supply and demand and no profits can be drawn from market abuse. They are also proportionate to that objective, since the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

Finally, the overall package of measures proposed is considered appropriate given the overarching imperative of achieving climate neutrality at the least cost for consumers while ensuring security of supplies.

- **Choice of the instrument**

The proposal will amend the Electricity Regulation, the Electricity Directive, the REMIT Regulation, the ACER Regulation and the Renewables Energy Directive. Given that the proposal aims to add a limited set of new provisions and amend a limited set of existing provisions in these instruments, the recourse to an amending act is adequate. For the same reason, it also appears appropriate to use the instrument of an amending regulation to introduce amendments both to existing regulations and existing directives.

### **3. STAKEHOLDER CONSULTATIONS AND STAFF WORKING DOCUMENT**

- **Stakeholder consultations**

In preparation for the present initiative, the Commission has conducted a public consultation from 23 January 2023 to 13 February 2023. The consultation was open to everybody.

The Commission received 1369 replies to this consultation. More than 700 of those have come from citizens, around 450 from businesses and business associations, around 40 from national or local administrations or from national regulators and around 70 from network operators. Also, around 20 energy communities, 15 trade unions and 20 consumers organisations participated. A significant number of NGOs, think tanks and research or other academic organisations submitted responses as well. An overview of stakeholders' opinions is available in the Staff Working Document accompanying this legislative initiative.

In addition, the Commission organised an online targeted stakeholder consultation meeting on 15 February 2023 which counted with the participation of around 70 market actors, non-governmental organisations, network operators, ACER and national regulators, think tanks and academics. The consultation overall highlighted that the stakeholders considered that:

- Short-term markets and the pricing mechanism based on marginal pricing should be preserved, as they function well and provide the right price signals. Short-term (day-ahead and intraday) markets are well-developed, and they result from years of implementation of EU energy legislation.
- Short-term markets need to be complemented by instruments incentivizing longer term price signals, such as the ones indicated in consultation by the Commission, in particular power purchase agreements ('PPA'), contracts for difference, and enhanced forward markets. The right balance between the different tools should be established. Nonetheless, there should not be mandatory schemes, and the freedom of choosing the relevant contracts should be preserved.
- The benefits of non-fossil flexibility solutions such as demand response and storage were acknowledged, especially in the context of an increasing share of renewables. Their market participation should be facilitated.
- The future electricity markets will have to be adapted to a high share of renewable energy. Furthermore, there should be more emphasis on the local dimension and grid development. These challenges could be addressed by the solutions presented in the public consultation.
- Consumer protection is essential, as is affordability of energy, but preserving the signals for demand response is equally important. Emerging solutions such as energy communities, self-consumption, energy sharing should be enabled and incentivized.

- **Staff Working Document**

Given the urgency of the initiative, a Staff Working Document has been produced instead of an impact assessment. The Staff Working Document underpinning the present proposal sets out the explanation and rationale behind the Commission's proposals for a structural response to the high energy prices experienced by households and businesses and to ensure secure, clean and affordable energy for households and businesses into the future as well as presents the available evidence of relevance for the proposed measures.

The Staff Working Document concludes that the package of proposed reforms is expected to significantly improve the structure and functioning of the European electricity market. It is another building block to enable the delivery of the Green Deal objectives and in addition it takes stock of the shortcomings revealed by the energy crisis and seeks to address them.

The document shows that the reform will contribute to protecting and empowering consumers currently facing high and volatile prices by creating a buffer between them and short-term markets. This proposal will decouple the high prices of fossil-fuel technologies operating in the electricity market from the energy bills of consumers and businesses. More long-term contracting opportunities in the form of PPAs, contracts for difference and forward markets will ensure that the part of the electricity bill exposed to short-term markets can be greatly reduced. In addition, including a hedging obligation on suppliers and an obligation to also offer fixed price contracts will significantly increase the options to reduce the exposure of price volatility for electricity bills. Consumers will also have better information on offers before signing up and Member States will have an obligation to establish suppliers of last resort. Besides, they can enable access to regulated retail prices in a crisis. The right to share energy is a new feature that will empower consumers and support the decentralised rollout of renewable energy as it grants consumers more control over their energy bills.

The Staff Working Document explains how this reform will also enhance the competitiveness of EU industry in a way that is fully complementary to the Net-zero Industry Act. Member States will be required to ensure that the right conditions exist for PPA markets to develop, thereby providing industry access to affordable and clean electricity over the long-term. The improvements to the forward markets will provide far greater access to cross-border renewable energy for industries and suppliers up to three years in advance, a significant improvement compared to today. Overall, public support schemes for renewable energy will increase the energy independence in Member States and the penetration of renewables into the system while supporting local jobs and skills.

The document demonstrates that this reform will accelerate the rollout of renewables and tap into the full potential of firm generation capacity and flexibility solutions to enable Member States to integrate ever higher levels of renewables. The Commission proposes that Member States assess their need for power system flexibility and allows the introduction of new support schemes for demand response and storage. The proposal also introduces extra possibilities for renewables to trade closer to real time at cross-border and national level. In this way, the market can better support the integration of renewables and the business case for flexibility solutions that can contribute to security of supply.

Finally, the Staff Working Document describes how this proposal responds to the request from the European Council to assess ways of optimising the functioning of the electricity market design in the context of the energy crisis. It aims to protect consumers, creating a

buffer between them and short-term electricity markets through longer-term contracting and to make those short-term markets work in a more efficient way for renewables and flexibility solutions, with better regulatory oversight. This proposal ensures that the market rules remain fit for purpose to drive the cost-effective decarbonisation of the electricity sector and increase its resilience to energy price volatility.

- **Collection and use of expertise**

The preparation of the present legislative proposal and the Staff Working Document is based on a large body of material, which is referenced in the footnotes in the Staff Working Document, and on the responses to the public consultation.

- **Fundamental rights**

The present proposal may have an impact on a number of fundamental rights established by the Charter on Fundamental Rights of the EU, in particular: the freedom to conduct a business (Article 16) and the right to property (Article 17). As explained above, however, to the extent that the proposed measures limit the exercise of these rights, these impacts are considered necessary and proportionate to achieve the objectives of the proposal and therefore constitute legitimate limitations of such rights as allowed under the Charter.

On the other hand, the proposal enhances the protection of fundamental rights, such as the respect for private and family life (Article 7), the right to protection of personal data (Article 8), the prohibition of discrimination (Article 21), access to services of general economic interest (Article 36), the integration of a high level of environmental protection (Article 37) and the right to an effective remedy (Article 47), in particular through a number of provisions concerning consumer empowerment, rights and protection.

- **Regulatory fitness and simplification**

The proposed amendments to the Electricity Directive, the Electricity Regulation, the REMIT Regulation and the ACER Regulation focus on what is considered necessary to address the shortcomings of the current electricity market design in the context of the energy crisis and to contribute in a cost-effective manner to the Union's climate ambition. They do not constitute a full revision of these instruments.

The proposal may increase administrative requirements for national administrations and undertakings, albeit in a proportionate way as explained above. For example, the proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for



undertakings and national administrations. However, the envisaged economic impacts will positively benefit businesses and consumers.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered minimal compared to the current framework, as the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

The measures envisaged to strengthened consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators with the objective to improve choice, increase protection and facilitate active market participation by consumers, notably households. However, the additional burdens are minimal because these frameworks are being rolled out across Europe and therefore streamlining of rules is needed.

The measures envisaged to improve the REMIT framework may increase reporting obligations on certain market participants, albeit in a proportionate way. These are however considered minimal compared to the current framework as the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

#### **4. BUDGETARY IMPLICATIONS**

The budgetary impact associated to the proposal on improving the EU's electricity market design concerns the resources of the European Union Agency for the Cooperation of Energy Regulators (ACER) and of DG Energy which are described in the Legislative Financial Statement accompanying the proposal. Essentially, for the new tasks to be carried out by ACER 4 additional full time equivalent (FTE) for ACER from 2025 onwards, as well as corresponding financial resources will be required. DG Energy's workload will increase by 3 FTE.

The budgetary impact associated to the proposal amending REMIT concerns the resources of the European Union Agency for the Cooperation of Energy Regulators (ACER) and of DG Energy which are described in the Legislative Financial Statement accompanying the proposal. Essentially, the new tasks to be carried out by ACER, especially regarding the enhanced investigatory powers require a phasing in of 25 additional full time equivalent (FTE) in ACER from 2025, as well as corresponding financial resources, although most of the additional staff will be funded by fees. To this end Commission Decision (EU) 2020/2152 of

17 December 2020 on fees due to ACER for tasks under REMIT will need to be adapted. DG Energy's workload will increase by 2 FTE.

## **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the transposition and compliance of Member States and other actors with the measures that shall be ultimately adopted and take enforcement measures if and when required. For monitoring and implementation purposes, the Commission will notably be supported by ACER, in particular in relation to the REMIT Regulation. The Commission will also liaise with ACER and the national regulatory authorities in relation to the Electricity Regulation and the Electricity Directive.

Moreover, to facilitate the implementation, the Commission will be available for bilateral meetings and calls with Member States in case of specific questions.

- **Explanation of the specific provisions of the proposals**

The amendments concerning the Electricity Regulation provide clarifications to the scope and subject matter of the Regulation, emphasising the importance of undistorted market signals to provide for increased flexibility as well as the role of long-term investments to mitigate the volatility of short-term market prices on the electricity bills of consumers including energy intensive industries, SMEs and households. It clarifies certain main principles for trading in the day-ahead and intraday markets. It provides for new rules concerning the procurement by TSOs of demand response in the form of a peak shaving product and rules allowing transmission system operators and distribution system operators to use data from dedicated metering devices. It sets out new rules concerning forward electricity markets, to improve their liquidity. It includes new rules aiming to clarify and incentivise the role and use of longer-term contracts in the form of power purchase agreements and two-way contracts for difference. It provides for new rules regarding the assessment of the flexibility needs by Member States, the possibility for them to introduce flexibility support schemes and design principles for such flexibility support schemes. It also introduces new transparency requirements for transmission system operators as regards the capacity available for new connections in the grid.

The amendments concerning the Electricity Directive provide for new rules on the protection and empowerment of consumers. The amendment regarding Free Choice of Supplier introduces new requirements to ensure that customers are able to have more than one supplier on their premises, by enabling multiple meters (sometimes called submeters) for a single connection point.

The amendments regarding consumer empowerment and protection ensure that customers are offered a variety of contracts that best fits their circumstances, by ensuring that all customers have a least one fixed term, fixed price offer. Furthermore, customers must be provided with clear pre-contractual information in relation to these offers.

A new right for households and small and medium sized enterprises is also established to participate in energy sharing- that is the self-consumption by active customers of renewable energy generated or stored offsite either from facilities they own, lease, rent in whole or in part or which has been transferred to them by another active customer.

Important new protections for customers are also introduced to ensure continuous supply of electricity– including the requirement for Member States to appoint suppliers of last resort who take responsibility for the customers of failed suppliers and protection from disconnection for vulnerable customers. Suppliers will also be required to put in place risk management to limit the risk of failure, by implementing appropriate hedging strategies. These will be overseen by national regulatory authorities.

The amendments to the Electricity Directive introduce new transparency requirements for distribution system operators as regards the capacity available for new connections in the grid. It clarifies the role of regulatory authorities regarding the single allocation platform established in accordance with Regulation (EU) 2016/1719.

The amendments concerning REMIT Regulation adapt the scope of REMIT to current and evolving market circumstances by inter alia extending the scope of data reporting to new electricity balancing markets and coupled markets as well algorithmic trading. It ensures stronger, more established and regular cooperation between energy and financial regulators, including ACER and ESMA regarding derivative wholesale energy products. It will as well improve process for the collection of inside information and market transparency by enhancing the oversight of ACER and adjustment of inside information definition. Amendments to REMIT Regulation enhance supervision of reporting parties such as Registered Reporting Mechanisms (RRMs) and persons professionally arranging transactions

(PPATs). Amendments improve data sharing possibilities between ACER, relevant national authorities and the Commission. REMIT amendment introduces stronger role for ACER in investigations of significant cross-border cases to fight against the REMIT breaches. It also sets-out the framework for harmonisation of fines set by regulatory authorities at national level.

The amendments concerning the ACER Regulation aim to clarify the role of ACER as regards the single allocation platform established in accordance with Regulation (EU) 2016/1719 and as regards the new rules introduced in the Electricity Regulation concerning forward markets and flexibility support schemes. It also clarifies the role and competences of ACER in accordance with the amendment to REMIT Regulation. The amendment RED II aims to clarify the scope of application of the rules concerning the types of direct price support schemes for renewable energy sources that Member States may introduce.

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**

(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 design<sup>17</sup>, 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 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.
- (3) In response to this situation, the Communication on Energy Prices presented by the Commission in October 2021 contained a toolbox of measures that the EU and its Member States may use to address the immediate impact of high energy prices on households and

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<sup>17</sup> European Union Agency for the Cooperation of Energy Regulators, ACER's Final Assessment of the EU Wholesale Electricity Market Design, April 2022.

businesses (including income support, tax breaks, gas 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’<sup>18</sup> 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.<sup>19</sup>

- (4) On 18 May 2022 the Commission presented the REPowerEU plan<sup>20</sup> that introduced additional measures focusing on energy savings, diversification of energy supplies 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 Design<sup>21</sup>, 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 change the legislative framework.
- (5) To address urgently the price crisis and security concerns and to tackle the price hikes for citizens, and based on a series of Commission proposals, the Union adopted a strong gas storage regime<sup>22</sup>, effective demand reduction measures for gas and electricity<sup>23</sup>, price limiting regimes to avoid windfall profits in both gas and electricity markets<sup>24</sup> and measures to accelerate the permit-granting procedures for renewable energy installations<sup>25</sup>.
- (6) A well-integrated market which builds on the Clean Energy for all Europeans Package adopted in 2018 and 2019<sup>26</sup> should allow the Union to reap the economic benefits of a single energy

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<sup>18</sup> 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, COM/2022/108 final

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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

<sup>23</sup> 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 261

<sup>24</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261.

<sup>25</sup> 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.

<sup>26</sup> 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.

market in normal market circumstances, ensuring security of supply and sustaining the decarbonisation process. Cross-border interconnectivity also ensures safer, more reliable and efficient operation of the power system.

- (7) 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.
- (8) In the context of the energy crisis, the current electricity market design has however also revealed a number of important shortcomings 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.
- (9) 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 direct consumption of fossil fuels.
- (10) 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 energy poverty trap. These 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.
- (11) The reform of the electricity market design should benefit not just 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.
- (12) 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.
- (13) 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

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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.

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.

- (14) It is therefore important for the intraday markets to adapt to the participation of variable renewable energy technologies such as solar and wind as well as to the participation of demand side response and 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. Furthermore, the gate closure time of the intraday market should be set closer to the time of delivery 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.
- (15) In addition, the short-term electricity markets should ensure that small-scale flexibility service providers can participate by lowering the minimum bid size.
- (16) 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 times when there is high demand for electricity combined with low levels of electricity generation from variable renewable energy sources, it should be possible for transmission system operators to design a peak shaving product enabling demand response to contribute to decreasing peaks of consumption in the electricity system at specific hours of the day. The peak shaving product should contribute to maximize the integration of electricity produced from renewable sources into the system by shifting the electricity consumption to moments of the day with higher renewable electricity generation. As the peak shaving product aims to reduce and shift the electricity consumption, the scope of this product should be limited to demand side response. The procurement of the peak shaving product should take place in such a way that it does not overlap with the activation of balancing products which aim at maintaining the frequency of the electricity system stable. In order to verify volumes of activated demand reduction, the transmission system operator should use a baseline reflecting the expected electricity consumption without the activation of the peak shaving product.
- (17) 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. 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 should be able to use data from dedicated metering devices for the observability and settlement of flexibility services such as demand response and energy storage. Enabling the use of data from dedicated metering 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 metering devices should be accompanied by quality requirements relating to the data.
- (18) This Regulation establishes a legal basis for processing of personal data in compliance with Article 6(1)(c) GDPR. Member States should ensure that all personal data protection principles and obligations laid down in the GDPR are met, including on data minimisation. Where the objective of this Directive can be achieved without processing of personal data, providers should rely on anonymised and aggregated data.
- (19) 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 EU can fully benefit from the advantages of integrated electricity markets



and competition across the Union, the functioning of the Union's electricity forward market should be improved via the establishment of regional virtual hubs with a view to overcome the existing market fragmentation and the low liquidity experienced in many bidding zones. Regional virtual hubs should cover multiple bidding zones while ensuring an adequate price correlation. Some bidding zones may not be covered by a virtual hub in terms of contributing to the hub reference price. However, market participants from these bidding zones should still be able to hedge through a hub.

- (20) Virtual hubs should 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, should enable the pooling of liquidity and provide better hedging opportunities to market participants.
- (21) 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 offer trading of financial long-term transmission rights between the different bidding zones and the regional virtual hubs. The orders submitted by market participants for financial transmission rights shall be matched by a simultaneous allocation of long term cross zonal capacity. Such matching and allocation should be performed on a regular basis, to ensure enough liquidity and, hence, efficient hedging possibilities to market participants. The long-term transmission rights should be issued with frequent maturities (ranging from month ahead to at least three years ahead), in order to be aligned with the typical hedging time horizon of market participants. The single allocation platform should be subject to monitoring and enforcement to ensure that it performs its tasks properly.
- (22) 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. This would further contribute to integrating renewables at the least cost for the electricity system and enable final customers to value their flexibility solutions.
- (23) 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. These obstacles include investment risks associated with the unique topographical situation of offshore hybrid projects connected to more than one market. In order to reduce investment risk for these offshore project developers and to ensure that the projects in an offshore bidding zone have full market access to the surrounding markets, transmission system operators should guarantee access of the offshore project to the capacity of the respective hybrid interconnector for all market time units. If the available transmission capacities are reduced to the extent that the full amount of electricity generation that the offshore project would have otherwise been able to export cannot be delivered to the market, the transmission system operator or operators responsible for the need to limit the capacity should, in future, be enabled to compensate the offshore project operator commensurately using congestion income. This

compensation 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 details, including the conditions under which the measure may expire, are intended to be defined in an implementing Regulation.

- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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. 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.
- (28) According to Article 15(8) of Directive (EU) 2018/2001 of the European Parliament and of the Council, Member States are to assess the regulatory and administrative barriers to long-term renewables PPAs, and shall remove unjustified barriers to, 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 in line with Articles 107 and 108 TFEU. Member States could decide to set up a guarantee scheme at market prices. Member States should include provisions to avoid lowering the liquidity in the electricity markets, such as by using financial PPAs. Member States should not provide support to PPAs that purchase generation from fossil fuels. 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 take into account the potential role of instruments provided at Union level, for instance by the European Investment Bank ('EIB').

- (29) 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 tender 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 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.
- (30) Where Member States decide to support publicly financed new investments ("direct price support schemes") in low carbon, non-fossil fuel electricity generation to achieve the Union's decarbonisation objectives, those schemes should be structured by way of two-way contracts for difference such as to include, in addition to a revenue guarantee, an upward limitation of the market revenues of the generation assets concerned. New investments for the generation of electricity should include investments in new power generating facilities, investments aimed at repowering existing power generating facilities, investments aimed at extending existing power generating facilities or at prolonging their lifetime.
- (31) Such two-way contracts for difference 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.
- (32) However, to the extent that the limitation to set out direct price support schemes in the form of two-way contracts for difference narrows down the types of direct price support schemes that Member States can 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 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 Article 4 (3) of (EU) 2018/2001 of the European Parliament and of the Council and consider the specificities of renewable energy communities in accordance with Article 22 (7) of that Directive.
- (33) In view of the need to provide regulatory certainty of 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 should apply only to new investments for the generation of electricity from the sources specified in the recital above.
- (34) Thanks to the upward limitation of the market revenues direct price support schemes in the form of two-way contracts for difference 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 are passed on to all final electricity customers, including

households, SMEs and industrial consumers, based on their consumption. The redistribution of revenues should be done in a way that ensures that consumers 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). 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.

- (35) Furthermore, Member States should ensure that the direct price support schemes, 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.
- (36) Thus, two-way contracts for difference 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 the present 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, 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.
- (37) 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. Regulatory authorities should periodically assess the need for flexibility in the electricity system based on the input of transmission and distribution system operators. 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 side response, energy storage or the production of renewable fuels, in view of the need to decarbonise the energy system. On this basis, Member States should define a national objective for non-fossil flexibility such as demand side response and storage which should also be reflected in their integrated national energy and climate plans.
- (38) To achieve the national objective for non-fossil flexibility such as demand side response and storage investment needs, Member States can design or redesign capacity mechanisms in order to create a green and flexible capacity mechanism. Member States that apply a capacity mechanism in line with the existing rules should promote the participation of non-fossil flexibility such as demand side response and storage by introducing additional criteria or features in the design.
- (39) To support environmental protection objectives the CO<sub>2</sub> 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 CO<sub>2</sub> 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 energy<sup>27</sup> which encourage Member States to introduce green criteria in capacity mechanisms.

- (40) In addition, if Member States do not apply a capacity mechanism or if the additional criteria or features in the design of their capacity mechanism are insufficient to achieve national objective for demand response and storage investment needs they could apply flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility such as demand side response and storage.
- (41) 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 grid capacity available 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.
- (42) 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 endeavour to provide such information within a period of three months from the submission of the request.
- (43) 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 difficulties when paying their bills. Vulnerable consumers and the energy poor are the hardest hit<sup>28</sup>, but middle-income households have also been exposed to such difficulties. 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.
- (44) 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 contract and suppliers should not unilaterally modify the terms and conditions before such contract expires.
- (45) 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.

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<sup>27</sup> Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

<sup>28</sup> 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.

- (46) 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 so wish, customers should be able to use these possibilities to choose a separate supplier notably 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. Moreover, with fast-responding dedicated metering devices which are 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 contribute to the increased uptake of demand response and to consumer empowerment allowing them 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.
- (47) 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.
- (48) To ensure continuity of supply for consumers in case of supplier failure, Member States should be obliged to appoint suppliers of last resort which may be treated as the provider of universal service. That supplier might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of Article 35 of Directive (EU) 2019/944 of the European Parliament and of the Council. However, this does not imply an obligation of Member States to supply at a certain fixed minimum price.
- (49) 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.
- (50) Active customers that own, lease or rent a storage or generation facility should have the right to share excess production and empower other consumers to become active, or to share the renewable energy generated or stored by jointly leased, rented or owned facilities, either directly or through a third-party facilitator. 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 of the European Parliament and of the Council or a citizen energy community as defined in Directive (EU) 2019/944 of the European Parliament and of the Council can 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.

- (51) Energy sharing operationalises the collective consumption of self-generated or stored electricity injected into the 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 consumption with self-generated or stored renewable energy for the purpose of calculating the energy component of the energy 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.
- (52) Vulnerable customers should be adequately protected from electricity disconnections and should, as well, not be put in a position that forces them to disconnect. 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 to manage their energy use and costs remain essential, including by means of close cooperation with social security systems.
- (53) Public interventions in price setting for the supply of electricity constitute, in principle, a market-distortive measure. Such interventions may therefore only be carried out as public service obligations and are subject to specific conditions. Under this Directive regulated prices are possible for energy poor and vulnerable households, including below costs, and, as a transition measure, for households and micro-enterprises. In times of crisis, when wholesale and retail electricity prices increase significantly, and this is having a negative impact on the wider economy, 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. However, it needs to be ensured that such price regulation is targeted and does not create incentives to increase consumption. Hence, such price regulation should be limited to 80% of median household consumption for households, and 70% of the previous year's consumption for SMEs. The Commission should determine when such an electricity price crisis exists and consequently when this possibility becomes applicable. The Commission 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. To the extent that any of the measures envisaged by the present Regulation constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU.
- (54) The measures envisaged by the present Regulation are also without prejudice to the application of Directive 2014/65/EU, Regulation (EU) 2016/1011 and Regulation (EU) 648/2012.
- (55) Regulation (EU) 2019/942 of the European Parliament and of the Council, Regulation (EU) 2019/943 of the European Parliament and of the Council, 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.
- (56) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

HAS ADOPTED THIS REGULATION:

*Article 1*

Amendments to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity

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

(1) Article 1 is amended as follows:

[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 consumers, ensure competitiveness on the global market, enhance 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 and enable consumers’ to make their energy bills less dependent from fluctuations of short-term electricity market prices, in particular fossil fuel prices in the medium to long-term.’

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

‘(72) ‘peak hour’ means an hour with the highest electricity consumption combined with a low level of electricity generated from renewable energy sources, taking cross-zonal exchanges into account;

(73) ‘peak shaving’ means the ability of market participants to reduce electricity consumption at peak hours determined by the transmission system operator;

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



(75) ‘virtual hub’ means a non-physical region covering more than one bidding zone for which an index 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; the contract is designed to preserve incentives for the generating facility to operate and participate efficiently in the electricity markets and complies with the principles set out in Article 4(2) and Article 4(3), first and third subparagraphs, of Directive (EU) 2018/2001;

(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;

(78) ‘market revenue’ means realised income an electricity producer receives in exchange for the sale and delivery of electricity in the Union, regardless of the contractual form in which such exchange takes place, and excluding any support granted by Member States;

(79) ‘dedicated metering device’ means a device attached to or embedded in an asset that sells 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.’

(3) Article 7 is amended as follows:

[a] paragraph 1 is replaced by the following:

‘1. Transmission system operators and NEMOs, or an entity designated by them, 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.’

[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, both for cross-zonal and for intra-zonal trade;’

(4) the following Articles 7a and 7b are inserted:

#### ‘Article 7a

#### Peak shaving product

1. Without prejudice to Article 40(5) and 40(6) of the Electricity Directive, transmission system operators may procure peak shaving products in order to achieve a reduction of electricity demand during peak hours.
2. Transmission system operators seeking to procure a peak shaving product shall submit a proposal setting out the dimensioning and conditions for the procurement of the peak shaving product to the regulatory authority of the Member State concerned. The proposal of the transmission system operator 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. The analysis shall take into account a reliability standard or objective and transparent grid stability criteria approved by the regulatory authority. The dimensioning shall take into account the forecast of demand, the forecast of electricity generated from renewable energy sources and the forecast of other sources of flexibility in the system. The dimensioning of the peak shaving product shall be limited to ensure that the expected benefits of the product do not exceed the forecasted costs;
  - (b) the procurement of a peak shaving product shall be based on objective, transparent, non-discriminatory criteria and be limited to demand response;
  - (c) the procurement of the peak shaving product shall take place using a competitive bidding process, with selection based on the lowest cost of meeting pre-defined technical and environmental criteria;
  - (d) contracts for a peak shaving product shall not be concluded more than two days before its activation and the contracting period shall be no longer than one day;
  - (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 after the closure of the day-ahead market and before the start of the balancing market;

- (g) the peak shaving product shall not imply starting generation located behind the metering point.
- 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. Transmission system operators shall develop a baseline methodology in consultation with market participants and submit it to the regulatory authority.
- 4. Regulatory authorities shall approve the proposal of the transmission 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 transmission system operators to amend the proposal where it does not meet the requirements set out in these paragraphs.

## Article 7b

### Dedicated metering device

- 1. “Member States shall allow transmission system operators and distribution system operators to use data from dedicated metering devices for the observability and settlement of demand response and flexibility services, including from storage systems.
- 2. Member States shall establish requirements for a dedicated metering device data validation process to check and ensure the quality of the respective data.’;

(5) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘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. By 1 January 2028, the intraday cross-zonal gate closure time shall be at the earliest 30 minutes ahead of real time.’

(b) paragraph 3 is replaced by the following:

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

[6] Article 9 is replaced by the following:

## Article 9

### Forward markets

1. By 1 December 2024 the ENTSO for Electricity shall submit to ACER, after having consulted ESMA, a proposal for the establishment of regional virtual hubs for the forward market. The proposal shall:
  - (a) define the geographical scope of the virtual hubs for the forward market, including the bidding zones constituting these hubs, aiming to maximise the price correlation between the reference prices and the prices of the bidding zones constituting virtual hubs;
  - (b) include a methodology for the calculation of the reference prices for the virtual hubs for the forward market, aiming to maximise the correlations between the reference price and the prices of the bidding zones constituting a virtual hub; such methodology shall be applicable to all virtual hubs and based on predefined objective criteria;
  - (c) include a definition of financial long-term transmission rights from bidding zones to the virtual hubs for the forward market;
  - (d) maximise the trading opportunities for hedging products referencing the virtual hubs for the forward market as well as for long term transmission rights from bidding zones to virtual hubs.
2. Within six months of receipt of the proposal on the establishment of the regional virtual hubs for the forward market, ACER shall evaluate it and either approve or amend it. In the latter case, ACER shall consult the ENTSO for Electricity before adopting the amendments. The adopted proposal shall be published on ACER's website.
3. The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council.
4. The single allocation platform shall:
  - (a) offer trading of long-term transmission rights between each bidding zone and virtual hub; where a bidding zone is not part of a virtual hub it may issue financial long-term transmission rights to a virtual hub or to other bidding zones that are part of the same capacity calculation region;
  - (b) allocate long-term cross-zonal capacity on a regular basis and in a transparent, market-based and non-discriminatory manner; the frequency of allocation of the long-term cross-zonal capacity shall support the efficient functioning of the forward market;
  - (c) offer trading of financial transmission rights that shall allow holders of these financial transmission rights to remove exposure to positive and negative price spreads, and with frequent maturities of up to at least three years ahead.
5. 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 Article 4(1)(15), 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. Subject to compliance with Union competition law and with Directive (EU) 2014/65 and Regulations (EU) 648/2012 and 600/2014, market operators shall be free to 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, to foster market integration and security of supply, to support the use of flexibility services, efficient investments including solutions to optimise the existing grid and facilitate demand response and related research activities, and to facilitate innovation in the interest of consumers in areas such as digitalisation, flexibility services and interconnection”;

[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, shall include those costs in transmission and distribution tariffs, and shall introduce performance targets in order to provide incentives to transmission and distribution system operators to increase efficiencies 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;’

[d] in paragraph 9, the following point (i) is added:

‘(i) incentives for efficient investments in networks, including on flexibility resources 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 (c) is added:

‘(c) compensating offshore generation plant operators in an offshore bidding zone if access to interconnected markets has been reduced in such a way that one or more transmission system operators have not made enough capacity available on the interconnector or the critical network elements affecting the capacity of the interconnector, resulting in the offshore plant operator not being able to export its electricity generation capability to the market.’

[9] The following chapter IIIa is inserted:

### Chapter IIIa

#### Specific investment incentives to achieve the Union’s decarbonisation objectives

#### Article 19a

#### Power purchase agreements

1. Member States shall facilitate power purchase agreements (‘PPAs’) with a view to reaching the objectives set out in their integrated national energy and climate plan with respect to the dimension decarbonisation referred to in point (a) of Article 4 of Regulation (EU) 2018/1999, while preserving competitive and liquid electricity markets.
2. Member States 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 in line with Articles 107 and 108 TFEU. For this purpose, Member States shall take into account Union-level instruments. Member States shall determine what categories of customers are targeted by these instruments, applying non-discriminatory criteria.
3. Guarantee schemes for PPAs backed by the Member States shall include provisions to avoid lowering the liquidity in electricity markets and shall not provide support to the purchase of generation from fossil fuels.
4. In the design of the support schemes for electricity from renewable sources, Member States shall allow the participation of projects which reserve part of the electricity for sale through a

PPA or other market-based arrangements and endeavour to make use of evaluation criteria to incentivise the access to the PPA market for customers that face entry barriers. In particular, such evaluation criteria may give 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 entry barriers to the PPA 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 accordance with Union competition law.

#### Article 19b

##### Direct price support schemes for new investments in generation

1. Direct price support schemes for new investments for the generation of electricity from the sources listed in paragraph 2 shall take the form of a two-way contract for differences. New investments for the generation of electricity shall include investments in new power-generating facilities, investments aimed at repowering existing power-generating facilities, investments aimed at extending existing power-generating facilities or at prolonging their lifetime.
2. Paragraph 1 shall apply to new investments in generation of electricity from the following sources:
  - (a) wind energy;
  - (b) solar energy;
  - (c) geothermal energy;
  - (d) hydropower without reservoir;
  - (e) nuclear energy;
3. Direct price support schemes in the form of two-way contracts for difference shall:
  - (a) be designed so that the revenues collected when the market price is above the strike price are distributed to all final electricity customers based on their share of consumption (same cost / refund per MWh consumed);
  - (b) ensure that the distribution of the revenues to final electricity customers is designed so as not to remove the incentives of consumers to reduce their consumption or shift it to periods when electricity prices are low and not to undermine competition between electricity suppliers;

#### Article 19c

##### Assessment of flexibility needs

1. By 1 January 2025 and every two years thereafter, the regulatory authority of each Member State shall assess and draw up a report on the need for flexibility in the electricity system for a

- period of at least 5 years, in view of the need to cost effectively achieve security of supply and decarbonise the power system, taking into account the integration of different sectors. The report shall be based on the data and analyses provided by the transmission and distribution system operators of that Member State pursuant to paragraph 2 and using the methodology pursuant to paragraph 3.
2. The report shall include an evaluation of the need for flexibility to integrate electricity generated from renewable sources in the electricity system and consider, in particular, the potential of non-fossil flexibility such as demand side response and storage to fulfil this need, both at transmission and distribution levels. The report shall distinguish between seasonal, daily and hourly flexibility needs.
  3. The transmission and distribution system operators of each Member State shall provide the data and analyses needed for the preparation of the report referred to in paragraph 1 to the regulatory authority.
  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 2. In particular, they shall:
    - (a) define the type of data and format that transmission and distribution system operators shall provide to the regulatory authorities;
    - (b) develop a methodology for the analysis by transmission and distribution system operators of the flexibility needs, taking into account at least all existing sources of flexibility and planned investments at interconnection, transmission and distribution level as well as the need to decarbonise the electricity system.
  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.
  6. By 1 March 2024, 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 and the methodology referred to in paragraph 3. 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 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 shall submit the reports referred to in paragraph 1 to 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.

#### Article 19d

##### Indicative national objective for demand side response and storage

Based on the report of the regulatory authority pursuant to Article 19c(1), each Member State shall define an indicative national objective for demand side response and storage. This indicative national 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.

#### Article 19e

##### Flexibility support schemes

1. Member States which apply a capacity mechanism in accordance with Article 21 shall consider the promotion of the participation of non-fossil flexibility such as demand side response and storage by introducing additional criteria or features in the design of the capacity mechanism.
2. Where the measures introduced in accordance with paragraph 1 to promote the participation of non-fossil flexibility such as demand response and storage in capacity mechanisms are insufficient to achieve the flexibility needs identified in accordance with 19d, Member States may apply flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility such as demand side response and storage.
3. Member States which do not apply a capacity mechanism may apply flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility such as demand side response and storage.

#### Article 19f

##### Design principles for flexibility support schemes

Flexibility support scheme for non-fossil flexibility such as demand response and storage applied by Member States in accordance with Article 19e(2) and (3) shall:

- (a) not go beyond what is necessary to address the identified flexibility needs in a cost-effective manner;
- (b) be limited to new investments in non-fossil flexibility such as demand side response and storage;
- (c) must not imply starting fossil fuel-based generation located behind the metering point;
- (d) select capacity providers by means of an open, transparent, competitive, 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 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 storage and demand response;

- (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 prices signals;
- (i) be open to cross-border participation.’;

(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, including in congested areas if flexible energy storage connections can be accommodated, and update that information regularly, at least quarterly.

Transmission 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 ”;

(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 including the possibility of being operated by a single entity, the firmness of allocated cross-

zonal capacity, congestion income distribution, the allocation of financial long-term transmission rights by the single allocation platform, cross-zonal transmission risk hedging, nomination procedures, and capacity allocation and congestion management cost recovery;”;

(14) The following Article 69a 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 Article 4(1)(15) 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 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

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 is amended as follows:

(1) Article 2 is amended as follows:

(a) points (8) and (49) 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 located within the same bidding zone, 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.”;

“(49) 'non-frequency ancillary service' means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections,

inertia for local grid stability, short-circuit current, black start capability, island operation capability and peak shaving;”

(b) the following points are added:

(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, while it may, within a fixed price, include a flexible element with for example peak and off peak price variations;

(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, 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.

(10b) ‘peer-to-peer trading’ of renewable energy means peer-to-peer trading as defined in point (18) of Article 2 of Directive (EU) 2018/2001.

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

(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 the supplier of their choice. Member States shall ensure that all customers are free to have more than one electricity supply contract 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.”

(3) Article 11 is amended as follows:

(a) the title is replaced by the following:

‘Entitlement to a fixed term, fixed price 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 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 price 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.

(c) the following paragraph 1a is 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, promotions, additional services, discounts and include the rights referred to in points (a), (b), (d), (e) and (f) of Article 10(3). The Commission shall provide guidance in this regard.

(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 dynamic electricity price 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 monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.

(4) The following Articles are inserted:

“Article 15a”

Right to energy sharing

1. All households, small and medium sized enterprises and public bodies have the right to participate in energy sharing as active customers.
  - (a) Active customers shall be entitled to share renewable energy between themselves based on private agreements or through a legal entity.
  - (b) Active customers may use a third party that owns or manages for installation, operation, including metering and maintenance a storage or renewable energy generation facility for the purpose of facilitating energy sharing, without that third party being considered an active customer.
  - (c) Member States shall ensure that active customers participating in energy sharing:
    - (d) are entitled to have the shared electricity netted with their total metered consumption within a time interval no longer than the imbalance settlement period and without prejudice to applicable taxes, levies and network charges;
    - (e) benefit from all consumer rights and obligations as final customers under this Directive, except in case of energy sharing between households with an installed capacity up to 10.8 kW and up to 50 kW for multi-apartment blocks using peer-to-peer trading agreements;
    - (f) have access to template contracts with fair and transparent terms and conditions for peer-to-peer trading agreements between households, and for agreements on leasing, renting or investing in storage and renewable energy generation facilities for the purpose of energy sharing; in case of conflicts arising over such agreements, final customers shall have access to out of court dispute settlement in accordance with Article 26;
    - (g) are not subject to unfair and discriminatory treatment by market participants or their balance responsible parties;
    - (h) 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 to within one and the same bidding zone.
    - (i) Member States shall ensure that relevant transmission or distribution system operators or other designated bodies:
      - (j) 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;
      - (k) provide a relevant contact point to register energy sharing arrangements, receive information on relevant metering points, changes in location and participation, and, where applicable, validate calculation methods in a clear, transparent and timely manner.
2. 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.

#### “Article 18a

##### Supplier risk management

1. National Regulatory Authorities shall ensure that suppliers 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.

2. Supplier hedging strategies may include the use of power purchase agreements. 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.”

(5) The following Article XX is inserted:

#### “Article 27a

##### Supplier of last resort

1. Member States shall appoint suppliers of last resort at least for household customers. Suppliers of last resort shall be appointed in a fair, open, transparent and non-discriminatory procedure.
2. Final customers who are transferred to suppliers of last resort shall not lose their rights as customers, in particular those rights laid down in Articles 4, 10, 11, 12, 14, 18 and 26.
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 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 the supplier of last resort to supply electricity to household customers who do not receive market based offers. In such cases, the conditions set out in Article 5 shall apply.”

#### Article 28a

##### Protection from disconnections for vulnerable customers

Member States shall ensure that vulnerable customers are protected from electricity disconnections. This shall be provided as part of the concept of vulnerable customers pursuant to Article 28 (1) of this Directive and without prejudice to the measures set out in Article 10(11).

(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) In Article 31, paragraph 3 is replaced by the following:

“3. The distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system. In particular, the distribution system operator shall publish in a clear and transparent manner information on the capacity available for new connections in its area of operation, including in congested areas if flexible energy storage connections can be accommodated, and update that information regularly, 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.”

(8) Article 40 is amended as follows:

[a] a new paragraph is added after paragraph 6:

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, subparagraph (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, subparagraph (z) is replaced by the following:

(z) The regulatory authority shall have the following duties: monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity and citizen energy communities, including related to the connection of flexible distributed energy generation within a reasonable time in accordance with Article 58(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.

(10) the following Article 66a is inserted

#### “Article 66a

##### Access to affordable energy during an electricity price crisis

1. The Commission may by decision declare a regional or Union-wide electricity price crisis, if the following conditions are met:
  - (a) very high prices in wholesale electricity markets at least two and a half times the average price during the previous 5 years which is expected to continue for at least 6 months;
  - (b) sharp increases in electricity retail prices of at least 70% occur which are expected to continue for at least 6 months; and
  - (c) the wider economy is being negatively affected by the increases in electricity prices.
2. The Commission shall specify in its decision declaring a regional or Union-wide electricity price crisis the period of validity of that decision which may be for a period of up to one year.
3. Where the Commission has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision apply 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 4.
4. Where the Commission 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; and
  - (d) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.

(11) in Article 71, paragraph 1 is replaced by the following:

‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2 points 8 and 49, Articles 3 and 5, Article 6(2) and (3), Article 7(1), point (j) and (l) of Article 8(2), Article 9(2), Article 10(2) to (12), Article 11(3) and (4), Articles 12 to 24, Articles 26, 28 and 29, Article 31(1), (2) and (4) to (10); Articles 32 to 34 and 36, Article 38(2), Articles 40 and 42, point (d) of Article 46(2), Articles 51 and 54, Articles 57 to 58, Article 59(1) points (a), (b) and (d) to (y), Article 59(2) and (3), Article 59(5) to (10), Articles 61 to 63, points (1) to (3), (5)(b) and (6) of Article 70 and Annexes I and II by 31 December 2020. They shall immediately communicate the text of those provisions to the Commission.

However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with:

- (a) point (5)(a) of Article 70 by 31 December 2019;
- (b) point (4) of Article 70 by 25 October 2020.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2 points 10a, 10b, 15a, 24a, Article 4, Article 11(1), (1a) and (2), Article 15a, Article 18a, Article 27(1), Article 27a, Article 28a, Article 31(3), Article 40(7), Article 59(1) points (c) and (z), Article 59(4) and Article 66a by six months after entry into force of this Regulation.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.’

### *Article 3*

Amendment to 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

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. This sentence shall not apply to support for electricity from the renewable sources listed in Article 19b(2) of Regulation (EU) 2019/944, to which Article 19b(1) of that Regulation applies.’

(2) in Article 36, paragraph 1 is replaced by the following:

‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2 to 13, 15 to 31 and 37 and Annexes II, III and V to IX, by 30 June 2021. However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4(3), second subparagraph, by [six months after entry into force of this Regulation].

They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.’

#### Article 4

Amendments to 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

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

(1) Article 2 is amended as follows:

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

‘(a) issue opinions and recommendations addressed to transmission system operators, the ENTSO for Electricity, the ENTSO for Gas, the EU DSO Entity, the single allocation platform established in accordance with Regulation (EU) 2016/1719, regional coordination centres and nominated electricity market operators 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;’

(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, on approving and amending proposals from the ENTSO for electricity related to the regional virtual hubs pursuant to Article 5(9); 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). ”;

(2) in Article 3(2), the following fourth 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 9 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 second subparagraph is added:”;

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

(5) In Article 5, the following paragraph 9 is added:

“9. ACER shall approve and where necessary amend the proposal from the ENTSO for electricity on the establishment of the regional virtual hubs for the forward market pursuant to Article 9(2) of Regulation (EU) 2019/943.”

(6) In Article 5. the following paragraph 10 is added:

“10. 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 19e(5) of Regulation (EU) 2019/943.”

(7) in Article 15, the following paragraph 5 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 pursuant to Article 19e(6) of Regulation (EU) 2019/943.”;

*Article 5*

*Entry into force*

This Regulation shall enter into force on the [xxx] 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 Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'**

## **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

### **1.1. Title of the proposal/initiative**

### **1.2. Policy area(s) concerned**

### **1.3. The proposal/initiative relates to:**

### **1.4. Objective(s)**

*1.4.1. General objective(s)*

*1.4.2. Specific objective(s)*

*1.4.3. Expected result(s) and impact*

*1.4.4. Indicators of performance*

### **1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*

*1.5.3. Lessons learned from similar experiences in the past*

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

### **1.6. Duration and financial impact of the proposal/initiative**

### **1.7. Method(s) of budget implementation planned**

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

### **2.2. Management and control system(s)**

*2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

*2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

### **2.3. Measures to prevent fraud and irregularities**

## **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

### **3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**



**3.2. Estimated financial impact of the proposal on appropriations**

3.2.1. *Summary of estimated impact on operational appropriations*

3.2.2. *Estimated output funded with operational appropriations*

3.2.3. *Summary of estimated impact on administrative appropriations*

3.2.3.1. *Estimated requirements of human resources*

3.2.4. *Compatibility with the current multiannual financial framework*

3.2.5. *Third-party contributions*

**3.3. Estimated impact on revenue**

## LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation (EU) of the European Parliament and of the Council amending Regulation (EU) 2019/943, Directive (EU) 2019/944, Directive (EU) 2018/2001 and Regulation (EU) 2019/942 to improve the EU's electricity market design.

#### 1.2. Policy area(s) concerned

Policy area: Energy

Activity: European Green Deal

#### 1.3. The proposal relates to

a new action

a new action following a pilot project/preparatory action<sup>29</sup>

the extension of an existing action

a merger of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

See explanatory memorandum

##### 1.4.2. Specific objective(s)

The following specific objectives focus on those which are addressed by provisions which require additional resources for ACER and DG Energy.

Specific objective No 1:

Facilitating forward markets. Defining the new forward market trading hubs.

Specific objective No 2

Facilitating flexibility solutions, in particular demand response

Specific objective No 3:

<sup>29</sup>

As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Ensuring supplier hedging and fair rules as regards suppliers of last resort. Giving customers a right to energy sharing.

#### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The additional resources will allow ACER and DG Energy to carry out the tasks necessary to fulfil their mandate under EU legislation as per the requirements under this proposal.

#### 1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

See explanatory memorandum as regards monitoring progress and achievements of the initiative.

- (a) Effectiveness and timeliness: indicators should allow to monitor performance by providing information on progress on a regular basis and on achievements along the programming period.
- (b) Efficiency: processes should be optimised for collection and processing of data, avoiding unnecessary or duplicative requests for information.
- (c) Relevance of the indicators and the need to limit the associated administrative burden.
- (d) Clarity: indicators should be delivered in a clear and understandable form, with supporting metadata and in a form that facilitates proper interpretation and meaningful communication.

### 1.5. **Grounds for the proposal/initiative**

#### 1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

The following assessment, to the extent that it concerns ACER, takes into account the estimates of resources needs in 2023 for comparable tasks as identified in 2020/2021 by an independent consultant.

**Specific objective No 1:** Defining the new forward market trading hubs (Article 9):

A new provision is introduced requiring ENTSO-E to submit to ACER a proposal for the establishment of virtual hubs for the forward market. Within 6 months ACER shall either approve or amend it. After the establishment of such virtual hubs, it can be expected that ACER will need to continue monitoring them. ACER will also have a role in enforcing possible failure of compliance by the single allocation platform with EU legislation.

ACER

The design of such hub is of critical importance for their possibility to attract forward liquidity and replace the zonal products. The zone to hub model represents a significant

paradigm shift compared to the existing design. In particular, the following new tasks will have to be performed:

Design (including detailed studies) on price formation of forward trading hubs (at least Core and Nordic, potentially others) as well as the approval of a new methodology of the topic

Design (including detailed studies) on long-term transmission rights products to be offered (geographical reach and design)

Potential decisions on hedging opportunities stemming from the new requirements following escalations from NRAs

Monitoring activities linked to the new hub design (LTTR volumes, hub liquidity, LTTR valuation, ...)

Given the increasing importance of forward markets it is estimated that at least 1 FTE will be required for work related to virtual hubs and the single allocation platform.

#### ENER

Given that forward markets will increase in importance and complement, but not replace electricity markets over shorter time-frames (day-ahead, intraday, balancing) it is estimated that ensuring proper implementation of the new provisions will result in new workload for ENER totalling 1 FTE.

#### **Specific objective No 2: Facilitating flexibility solutions, in particular demand response**

Every two years the regulatory authority of each Member State shall assess and produce a report on the need for flexibility in the electricity system based on data and analyses from network operators. ENTSO-E and the EU DSO entity shall coordinate the network operators as regards this data and analyses. For this purpose ENTSO-E and the EU DSO shall propose a methodology. Within 6 months ACER shall either approve or amend it. The regulatory authorities shall submit their national assessments to ACER. ACER then shall issue a report within 12 months.

Member States shall set a national objective for demand side response and include them in their National Energy and Climate Plans. Those Member States which apply a capacity mechanism shall consider demand side response in the design of the capacity mechanism. Other provisions stipulate when financial support can be given to flexibility support schemes and design principles for such schemes.

Also related to this specific objective are new provisions are also introduced related to “peak shaving products” and on the use of data from metering devices.

#### ACER

Workload of ACER for approving or amending the methodology related to data and analysis of flexibility needs can be expected to be similar to the one for approving of amending ENTSO-E's draft methodology for the European Resource Adequacy Assessment, hence requiring 0.75 FTE. Workload of ACER for preparing the report on flexibility every two years can be expected to be similar to the one for the as well biennial best practice report on transmission and distribution tariffs methodologies pursuant to Article 18(9) of Regulation (EU) 2019/943, hence requiring 0.5 FTE. Additional workload can be expected due to the impact of facilitating flexibility solutions on assessing resource adequacy: ACER's workload related to the European Resource Adequacy Assessment will likely increase. Furthermore, in case ENTSO-E or the EU DSO do not comply with their obligations under EU law, ACER may need to request information by Decision pursuant to Article 3(2) or ACER together with the national regulators may need to take action pursuant to Articles 4(6) to 4(8) of Regulation (EU) 2019/942 may need to be taken. Therefore, it is estimated that overall 2 FTE are needed for implementing specific objective 2.

#### ENER

Specific objective 2 will make the Commission's assessment of capacity mechanisms (both the required preceding implementation plan as well as the State aid process) more complex. Furthermore, Member States will report national objectives for demand side response under the National Energy and Climate Plan process, information which will need to be processed by the Commission. Therefore, it is estimated that this will create new workload for ENER totalling 1 FTE.

#### **Specific objective No 3: Ensuring supplier hedging and fair rules as regards suppliers of last resort. Giving customers a right to energy sharing.**

#### ACER

Not applicable

#### ENER

Specific objective No 3 includes new rules in the Electricity Directive whose proper transposition and implementation by Member States need to be monitored by the Commission. Furthermore, given that it directly concerns consumers, may lead to a significant number of complaints, letters etc. Therefore, it is estimated that this will create new workload for ENER totalling 1 FTE.

#### **Overhead**

#### ACER

Those additional FTE as described above do not include overhead. One additional FTE, preferably an AST replacing interim staff employed in the Corporate Services Department.

#### ENER

Not applicable

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

See explanatory memorandum

- 1.5.3. *Lessons learned from similar experiences in the past*

The experience with previous legislative proposals has shown that staffing needs of ACER are easily underestimated. In order to avoid a repeat of the experience with the third internal market package of 2009, where underestimating the staffing needs resulted in structural understaffing (only comprehensively solved starting with the EU budget for 2022), for this proposal staffing needs are estimated for several years into the future.

- 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

This initiative is included in the Commission Work Programme for 2023 as part of the European Green Deal.

- 1.5.5. *Assessment of the different available financing options, including scope for redeployment*

The FTE are needed for additional tasks while existing tasks will not decrease in the foreseeable future.

**1.6. Duration and financial impact of the proposal/initiative**

**limited duration**

Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

Financial impact from YYYY to YYYY

**unlimited duration**

Implementation with a start-up period from YYYY to YYYY,  
followed by full-scale operation.

**1.7. Method(s) of budget implementation planned<sup>30</sup>**

**Direct management** by the Commission through

executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

international organisations and their agencies (to be specified);

the EIB and the European Investment Fund;

bodies referred to in Articles 70 and 71;

public law bodies;

bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

<sup>30</sup> Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>



## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

According to its financial regulation, ACER has to provide, in the context of its Programming Document, an annual Work Programme including details on resources, both financial and human, per each of the activities carried out.

ACER reports monthly to DG ENER on budget execution, including commitments, and payments by budget title, and vacancy rates by type of staff.

In addition, DG ENER is directly represented in the governance bodies of ACER. Through its representatives in the Administrative Board, DG ENER will be informed of the use of the budget and the establishment plan at each of its meetings during the year.

Finally, also in line with financial rules, ACER is subject to annual requirements for reporting on activities and the use of resources through the Administrative Board and its Annual Activity Report.

The tasks directly implemented by DG ENER will follow the annual cycle of planning and monitoring, as implemented in the Commission and the executive agencies, including reporting the results through the Annual Activity Report of DG ENER.

### **2.2. Management and control system(s)**

#### **2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed***

While ACER will have to develop new expertise, it is nevertheless most cost-effective to allocate the new tasks under this proposal to an existing agency which already works on similar tasks.

DG ENER established a control strategy for managing its relations with ACER, part of the 2017 Internal Control Framework of the Commission. ACER revised and adopted its own Internal Control Framework in December 2018.

#### **2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them***

Main risk are wrong estimates as regards the workload created by this proposal, given that it introduces new tasks. This risk needs to be accepted, since, as experience has shown, if additional resources needs are not included in the initial proposal, it is very difficult to remedy this situation later on.

That the proposal includes several new tasks mitigates this risk, since while the workload of some future tasks may be underestimated, others may be overestimated, providing scope for possible future redeployment.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The allocation of additional tasks to the existing mandate of ACER is not expected to generate specific additional controls at ACER, therefore, the ratio of control costs over value of funds managed will remain unaltered.

Similarly, the tasks assigned for DG ENER will not result in additional controls or change in the ratio of control costs.

### 2.3. **Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

ACER applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach.

In March 2019 ACER adopted a new Anti-Fraud Strategy, repealing Decision 13/2014 of the Administrative Board of ACER. The new strategy, spanning over a three-year period, is based on the following elements: an annual risks assessment, the prevention and management of conflicts of interest, internal rules on whistleblowing, the policy and procedure for the management of sensitive functions, as well as measures related to ethics and integrity.

DG ENER also adopted a revised Anti-fraud Strategy (AFS) in 2020. The ENER AFS is based on the Commission Anti-fraud Strategy and a specific risk assessment carried out internally to identify the areas most vulnerable to fraud, the controls already in place and the actions necessary to improve DG ENER's capacity to prevent, detect and correct fraud.

Both the ACER Regulation and the contractual provisions applicable to public procurement ensure that audits and on-the-spot checks can be carried out by the Commission services, including OLAF, using the standard provisions recommended by OLAF.

## 3. **ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

### 3.1. **Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>31</sup>	from EFTA countries <sup>32</sup>	from candidate countries and potential candidates <sup>33</sup>	From other third countries	other assigned revenue
02	02 10 06 and ITER budget line	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>31</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>32</sup> EFTA: European Free Trade Association.

<sup>33</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	01	Single Market, Innovation and Digital
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ACER			Year	Year	Year	Year	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
			2024	2025	2026	2027				
Title 1:	Commitments	(1)	0,684	0,684	0,684	0,684				<b>2,736</b>
	Payments	(2)	0,684	0,684	0,684	0,684				<b>2,736</b>
Title 2:	Commitments	(1a)								
	Payments	(2a)								
Title 3:	Commitments	(3a)								
	Payments	(3b)								
<b>TOTAL appropriations for ACER</b>	Commitments	=1+1a +3a	<b>0,684</b>	<b>0,684</b>	<b>0,684</b>	<b>0,684</b>				<b>2,736</b>
	Payments	=2+2a +3b	<b>0,684</b>	<b>0,684</b>	<b>0,684</b>	<b>0,684</b>				<b>2,736</b>

<b>Heading of multiannual financial framework</b>	<b>7</b>	'Administrative expenditure'						
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EUR million (to three decimal places)

		Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: ENER									
○ Human Resources		0,513	0,513	0,513	0,513				<b>2,052</b>
○ Other administrative expenditure									
<b>TOTAL DG ENER</b>	Appropriations	0,513	0,513	0,513	0,513				<b>2,052</b>

<b>TOTAL appropriations under HEADING 7<sup>34</sup> of the multiannual financial framework</b>	(Total commitments = Total payments)	0,513	0,513	0,513	0,513				<b>2,052</b>
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EUR million (to three decimal places)

		Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments	1,197	1,197	1,197	1,197				<b>4,788</b>
	Payments	1,197	1,197	1,197	1,197				<b>4,788</b>

<sup>34</sup> *The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.*

3.2.2. *Estimated impact on [body]'s appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Amounts in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)										TOTAL	
	OUTPUTS																	
	Type <sup>35</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>36</sup> ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
<b>TOTAL COST</b>																		

Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

<sup>35</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>36</sup> As described in point 1.4.2. ‘Specific objective(s)...’

### 3.2.3. Estimated impact on ACER's human resources

#### 3.2.3.1. Summary

The proposal/initiative does not require the use of appropriations of an administrative nature

The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)	0,513	0,513	0,513	0,513	<b>2,052</b>
Temporary agents (AST grades)	0,171	0,171	0,171	0,171	<b>0,684</b>
Temporary agents (AST/SC grades)					
Contract staff					
Seconded National Experts					

<b>TOTAL</b>	<b>0,684</b>	<b>0,684</b>	<b>0,684</b>	<b>0,684</b>	<b>2,736</b>
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Staff requirements (FTE):

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)	3	3	3	3	<b>3</b>
Temporary agents (AST grades)	1	1	1	1	<b>1</b>
Temporary agents (AST/SC grades)					
Contract staff					
Seconded National Experts					

<b>TOTAL</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
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Planned recruitment date for the FTEs is the 1 January 2024.



### 3.2.3.2. Estimated requirements of human resources for the parent DG

The proposal/initiative does not require the use of human resources.

The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)	3	3	3	3			
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>○ External staff (in Full Time Equivalent unit: FTE)<sup>37</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) <sup>38</sup>	- at Headquarters <sup>39</sup>						
	- in Delegations						
<b>01 01 01 02</b> (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>			

<sup>37</sup> AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

<sup>38</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>39</sup> Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	<p>Three additional FTEs (ADs) are needed for the following additional tasks:</p> <ul style="list-style-type: none"> <li>• To ensure proper implementation of the new provisions</li> <li>• Furthermore, Member States will report national objectives for demand side response under the National Energy and Climate Plan process. This information will need to be processed by the Commission.</li> <li>• To monitor the proper transposition and implementation by Member States of the new rules in the Electricity Directive. Furthermore, given that it directly concerns consumers, it may lead to a significant number of complaints, letters etc.</li> </ul>
External staff	N/A

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The initiative has been triggered by the current energy crisis and hence was not factored in when the MFF headings were calculated. This specific initiative being new, it will require reprogramming both for the line of the contribution to ACER and the line that will support additional work within DG ENER. The budgetary impact on ACER as described in this legislative financial statement will be offset by a compensatory reduction on programmed spending in the ITER budget line.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>40</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>40</sup> See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

**3.3. Estimated impact on revenue**

The proposal/initiative has no financial impact on revenue.

The proposal/initiative has the following financial impact:

on own resources

on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>41</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>41</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.



Strasbourg, 14.3.2023  
COM(2023) 147 final

2023/0076 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market**

(Text with EEA relevance)

{SWD(2023) 58 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

##### 1.1. Policy context

Energy prices significantly increased throughout 2021 and 2022. This resulted from reductions in gas supply, particularly after the start of Russia's war against Ukraine and the weaponisation of energy as well as from domestic shortfalls in hydropower and nuclear power. The price rises also resulted from increased energy demand, as the global economy picked up after the COVID-19 pandemic. These price rises were rapidly felt by households, industry and businesses across the EU, and governments immediately took steps to mitigate them. At the European level, the EU swiftly provided an energy prices toolbox<sup>1</sup> with measures to address high prices, in particular for the most vulnerable consumers (including income support, tax breaks, gas saving and storage measures), as well as the REPowerEU plan<sup>2</sup> with further measures and funding to boost energy efficiency and renewable energy in order to reduce dependence on Russian fossil fuels. This was followed by the creation of a temporary State Aid regime<sup>3</sup> to allow certain measures to soften the impact of high prices, a strong gas storage regime<sup>4</sup>, effective demand reduction measures for gas<sup>5</sup> and electricity<sup>6</sup>, faster renewable energy and grid permitting processes<sup>7</sup>, and price limiting regimes to avoid windfall profits in both the gas and electricity markets<sup>8</sup>.

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<sup>1</sup> 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 - Tackling rising energy prices: a toolbox for action and support, COM(2021) 660 final.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 10.6.2022, p. 17.

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

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

<sup>7</sup> 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.

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

These short-term measures helped Member States to deal with the immediate fall-out of the energy crisis. However, the crisis also showed how exposed consumers and industries are and our lack of resilience to energy price spikes. The impact of fossil fuel-based generation on setting electricity prices was seen as excessive by businesses and citizens, while Member States' ability to cushion short term prices with longer term contracts appeared inadequate. For this reason, the European Commission President announced in the 2022 State of the Union Address<sup>9</sup> the need for a fundamental reform of the electricity market design.

Whilst the EU's internal energy market delivers huge gains and growth across Europe, the recent energy crisis has highlighted that the energy market design's short-term focus can distract from broader, longer-term goals. The reflection of short-term prices in consumers bills led to price shocks where energy bills of many consumers tripled or quadrupled, even as the costs of wind and solar power were declining; the sudden exposure to volatile and high prices triggered some supplier bankruptcies; many industrial enterprises in energy intensive sectors were obliged to shut down. Therefore, the proposal includes a set of measures aimed to create a buffer between short-term markets and electricity bills paid by consumers, in particular by way of incentivizing longer term contracting, to improve the functioning of short-term markets to better integrate renewables and enhance the role of flexibility and to empower and protect consumers.

The recent price volatility has also highlighted the lack of flexibility in the electricity grid, with prices set too often by gas-fired generation and with a general lack of low carbon flexible supply, demand response and energy storage. As more wind and solar power enter the system, low-carbon flexible technologies will be needed to balance the variable supply with variable demand. In parallel with this proposal, the Commission is making recommendations for the advancement of storage innovation, technologies, and capacities.

More broadly, the sensitivity of the electricity price to fossil fuel prices highlighted the need to speed up the deployment of renewables together with the flexibility of the power system to displace fossil fuels. REPowerEU provides such a boost to renewable energy and with it, a boost to economic growth and quality jobs creation. It builds on the European Green Deal's drive to improve European competitiveness through innovation and the transition to a net zero economy and is closely aligned with the Commission's Green Deal Industrial Plan. To facilitate the investments needed in the face of recent price volatility, uncoordinated

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<sup>9</sup> SPEECH/22/5493.

regulatory interventions and grid and regulatory barriers to entry, fundamental reform is needed. Finally, in the Report on the final outcome of the Conference on the Future of Europe, citizens asked the EU institutions to take measures to “Enhance European energy security, and achieve the EU’s energy independence” and to ‘Reduce dependency of EU from foreign actors in economically strategic sectors’, including energy<sup>10</sup>

## 1.2. Objectives of the proposal

The proposal is addressing consumer, industry and investors’ concerns over exposure to volatile short-term prices, driven by high prices of fossil fuels. It will optimize the electricity market design by complementing the short-term markets with a greater role for longer-term instruments, allowing consumers to benefit from more fixed priced contracts, and facilitating investments in clean technologies. Ultimately, it will mean that less fossil fuel generation is needed and will lead to lower prices for consumers during future fossil fuel crisis due to the low operational costs of renewable and low carbon energy.

The proposal is putting forward measures to protect consumers from such volatility, empower them with greater contract choice and more direct access to renewable and low carbon energy. To improve investment conditions for businesses, in particular those pursuing decarbonisation pathways, it proposes measures to counter exposure to short term price spikes through power purchase agreements and more prudential obligations for energy suppliers. It also proposes measures to improve the way variable renewable and low carbon energies are integrated into the short-term market. This includes measures boosting the use of demand response and storage, among other forms of non-fossil flexibility. The proposal also improves and clarifies access to longer term contracts for developers (both State supported such as contracts for difference, and private, such as power purchase agreements) in order to provide secure, stable revenues for renewable and low carbon energy developers and bring down risk and capital costs while avoiding windfall profits in periods of high prices.

Whilst the current market design has over many decades delivered an efficient, increasingly integrated market, the energy crisis has highlighted a number of shortcomings relating to: (i) insufficient tools to protect consumers, including businesses, against high short term prices; (ii) the excessive influence of fossil fuel prices on electricity prices and the failure for low cost renewables and low carbon energy to be better reflected in electricity bills; (iii) the impact of extreme price volatility and regulatory interventions on investment; (iv) the lack of

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<sup>10</sup> [Report on the final outcome of the Conference on the Future of Europe](#) Report - Proposals 3 and 17



sufficient non-fossil flexibility (such as storage or demand response) that could reduce dependence on gas-fired generation; (v) the limited choice of supplier contract types; (vi) the difficulties to directly access renewable energy through energy sharing; and (vii) the need for robust monitoring of the energy market to better protect against market abuse.

**To protect consumers** from volatile prices, the proposal will provide for the right to fixed price contracts as well as dynamic price contracts, the right to multiple contracts and to better and clearer contract information. Consumers will be offered variety of contracts that best fits their circumstances. In this way, consumers, including small businesses, can lock in secure, long-term prices to mitigate the impact of sudden price shocks, and/or they may choose to have dynamic pricing contracts with suppliers if they wish to take advantage of price variability to use electricity when it is cheaper (e.g., to charge electric cars or use heat pumps). Such a combination of both dynamic and fixed pricing allows to keep market incentives for consumers to adjust their electricity demand, while providing more certainty also for those who wish to invest in renewable energy sources (rooftop solar panels for instance) and stability of costs. In addition to the existing protection framework for energy poor and vulnerable consumers, the proposal will also provide access to regulated retail prices for households and SME consumers in the event of a crisis and stabilise the supply industry by requiring that suppliers make more effort to guard against high price spikes by making greater use of forward contracts with generators (locking in future prices) and by requiring Member States to establish a supplier of last resort regime. The proposal will empower consumers by creating the right to share renewable energy directly, without the need to create energy communities. Greater energy sharing (e.g., sharing surplus roof top solar power with a neighbour) can improve the use made of low cost renewable energy and provide greater access to direct use of renewable energy for consumers who might not otherwise have such access.

**To enhance stability and predictability of the cost of energy, thereby contributing to the competitiveness of the EU economy** facing excessive volatile prices, the proposal intends to enhance market access to more stable longer-term contracts and markets. Power purchase agreements (PPAs) - long-term private contracts between a generator (typically renewable or low carbon) and a consumer – can protect against price volatility, but they are currently mostly available only to large energy consumers in very few Member States. A barrier to the growth of this market is the credit risk that a consumer will not always be able to buy the electricity over the whole period. To address this, Member States should ensure that

instruments to reduce the financial risks associated to off-taker payment default in the framework of PPAs, including guarantee schemes at market prices, are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. To further encourage the growth of the market for such agreements, renewable and low carbon energy project developers participating in a public support tender should be allowed to reserve a share of the generation for sale through a PPA. In addition, Member States should endeavour to apply in some of these tenders' evaluation criteria to incentivise the access to the PPA market for customers that face entry barriers. Finally, the obligation on suppliers to hedge appropriately may also boost demand for PPAs (which are a way of locking in future prices).

Some forms of public support guarantee the energy producer a minimum price by the government but allow for the producer to nevertheless earn the full market price even when this market price is very high. With the recent high prices much (cheap) publicly supported energy has been receiving these high market prices. To curb this and so stabilise prices, investment support should be structured as “two-way” (two-way contract for difference), which set a minimum price but also a maximum price, so any revenues above the ceiling are paid back. The proposal will apply to new investments for the generation of electricity, which include investments in new power-generating facilities, investments aimed at repowering existing power-generating facilities, investments aimed at extending existing power-generating facilities or at prolonging their lifetime. Moreover, the proposal will require that such money is then channelled to support all electricity consumers in proportion to their consumption to mitigate the effect of high prices.

A further means of guarding against volatile prices is to use long term contracts that lock in future prices (“forward contracts”). This market shows low liquidity in many Member States but could be boosted across the EU, so that more suppliers or consumers can guard against excessively volatile prices over longer periods of time. The proposal will create regional reference prices via a hub to increase price transparency and oblige system operators to allow transmission rights longer than a year, so that if a forward contract is between parties across regions or borders, they can ensure transmission of the electricity.

Finally, to ensure markets that behave competitively and prices are set transparently, regulators' ability to monitor energy market integrity and transparency will be enhanced.

The third objective is to **boost renewable energy investment**, in order to ensure that deployment triples, in line with European Green Deal goals. This will be achieved partly by

improving the markets for long term contracts. Power purchase agreements and contracts for difference not only provide consumers with stable prices, they also give renewable energy suppliers reliable revenues. This lowers their financial risk and greatly reduces their cost of capital. This creates a virtuous circle where stable revenues lower costs and boost demand for renewable energy.

Renewable energy is also a better investment when its ability to produce power is not curtailed due to technical constraints in the system. The more flexible the system is (generation that can rapidly turn on or off, storage that can absorb or put power onto the system, or responsive consumers who can increase or decrease their demand for power) the more stable prices can be and the more renewable energy the system can integrate. For this reason, the proposal requires Member States to assess their needs for power system flexibility, establish objectives to deliver on these needs. Member States can design or redesign capacity mechanisms in order to promote low-carbon flexibility. Moreover, the proposal opens the possibility for Member States to introduce new support schemes for non-fossil flexibility such as demand side response and storage.

System operators should also play an enhanced role integrating renewables into the grid, partly by increasing transparency surrounding availability of grid connection capacity. First, this clearer information would enhance renewable energy developers' ability to develop renewables in areas where the grid is less congested. Second, renewable energy can be more efficiently traded and balanced in the system if trades between market participants can take place closer to "real time". If offers to supply electricity are made minutes before consumption rather than hours before consumption, the offers from wind and solar power producers are more accurate, more wind and solar power can be consumed and the "imbalance costs" of the system are reduced. Thus, trading deadlines will be brought closer to real time.

### **Consistency with existing policy provisions in the policy area**

The proposed initiative is strongly linked and complementary to the legislative proposals brought forward in the context of the European Green Deal Package and speed up the decarbonisation objectives laid down in REPowerEU Plan, in particular as regards the proposal to revise the Renewable Energy Directive ("RED II"), which is the main EU instrument dealing with the promotion of renewable energy. The proposed initiative is complementary in that it aims to enable the acceleration in the uptake of renewable energy. The proposal seeks to ensure more stable long-term sources of revenue to unleash further

renewable and low carbon energy investments, while improving the functioning of short-term markets, which are key for the integration of renewables in the electricity system. In addition, the proposal seeks to enable energy sharing to allow consumers to engage in the market and help to speed up the energy transition.

Reducing energy consumption through price signals, energy efficiency measures or voluntary efforts can often be the cheapest, safest and cleanest way to reduce our reliance on fossil fuels, to support security of supply and to reduce our energy bills. The proposal will facilitate the active participation of the consumers in the market and the development of their demand response. It will also enable non-fossil flexibility such as demand side flexibility and storage to compete on a level playing field so that the role of natural gas in the short-term market in providing flexibility is progressively reduced. Therefore, the proposal is in line with the proposed increase of the 2030 target for energy efficiency to 13%, as set out in the proposed amendments to Renewable Energy, Energy Performance of Buildings and Energy Efficiency Directives<sup>11</sup> accompanying the REPowerEU Plan<sup>12</sup>.

There is also an important link between the proposal and the Energy Performance of Buildings Directive which is the main EU instrument to help reach the building and renovation goals set out in the European Green Deal. The proposal is strongly linked in particular to provisions on sub-metering and demand response in addition to the Commission's proposal, as part of the European Green Deal Package and expressed under the EU Solar Strategy Communication, on the gradual mandatory integration of solar photovoltaic in order to make public, commercial and residential buildings climate neutral.

- **Consistency with other Union policies**

The proposal's objectives to protect and empower consumers, improve competitiveness of EU industry and boost renewables and low carbon investment are wholly consistent with the framework of the European Green Deal and coherent and complementary to current initiatives, including the legislative proposal for a "Net-zero Industry Act" which is being adopted in parallel. It responds to the issues that were identified in the Commission's Communication laying out a "Green Industrial Plan for the net-zero age" issued on 1 February

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<sup>11</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022) 222 final.

<sup>12</sup> 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 final.

2023<sup>13</sup>, namely that the competitiveness of many companies has been severely weakened by high energy prices and that long-term price contracts could play an important role to enable electricity users benefit from more predictable and lower costs of renewable power. Last but not least, the legislative proposal is complementary to the ongoing revision of relevant financial market regulations such as the Market Abuse Regulation<sup>14</sup>. The proposal also builds on the Council Recommendation on ensuring a fair transition towards climate neutrality whereby Member States are invited to continue to mobilise public and private financial support to invest into renewable energy, tackle mobility challenges and promote cost-saving opportunities linked to the circular economy<sup>15</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The proposal is based on Article 194(2) of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for proposing measures aiming inter alia to ensure the functioning of the energy market, promote energy efficiency and energy saving and the development of new and renewable forms of energy.<sup>16</sup> In the field of energy, the EU has a shared competence pursuant to Article 4(2)(i) TFEU.

### **• Subsidiarity (for non-exclusive competence)**

#### **The need for EU action**

The unprecedented nature of the energy price crisis has shone a spotlight on EU electricity markets. Despite the growing shares of low-cost renewables electricity across the EU, there is a continuing influence of fossil-fuel generated electricity on overall energy bills. Households and businesses across the EU have experienced skyrocketing energy prices during the crisis.

This is an issue of EU-wide relevance which can only be addressed with action at EU level. The increased integration of EU electricity markets requires closer coordination between national actors, also in the context of market monitoring and surveillance. National policy

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<sup>13</sup> 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 - A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62 final.

<sup>14</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014, p. 1.

<sup>15</sup> Council Recommendation of 16 June 2022 (2022/C 243/04)

<sup>16</sup> Article 194(1) TFEU.

interventions in the electricity sector have a direct impact on neighbouring Member States due to energy interdependence, grid interconnections and ongoing electricity market integration. To preserve the functioning of the electricity system and cross-border trade and investments and to accelerate, in a coordinated way, the energy transition towards a more integrated and more energy-efficient energy system based on renewable generation, a common approach is needed.

The amendments proposed set out a balance between obligations and flexibility left to the Member States on how to achieve the main objectives pursued of ensuring that the lower cost of renewable electricity will be reflected in consumer bills and of boosting the deployment of renewable energy.

Furthermore, the objective of the proposed measures can only be achieved by action at EU level, not at individual Member States' level, since the proposed action requires changes to the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation (EU) 2019/943 and the Electricity Directive (EU) 2019/944 as well as to existing REMIT framework.

- **EU added value**

EU action to address the shortcomings of the current electricity market design brings added value because it is more efficient and effective than individual Member States' actions, thus avoiding a fragmented approach. The measures proposed to address the shortcomings identified will be more ambitious and cost-effective if driven by a common legal and policy framework. In addition, action at Member State level would only be possible within the constraints of the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation and Electricity Directive as well as REMIT Regulation and not be able to achieve the necessary changes to that framework. Consequently, the objectives of this initiative cannot be achieved only by Member States themselves and this is where action at EU-level provides an added value.

- **Proportionality**

The proposed amendments to the Electricity Regulation, the Electricity Directive, the REMIT Regulation and the ACER Regulation are considered proportionate.

The proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for undertakings and national administrations. However, the envisaged economic

impacts are necessary and proportionate to achieve the objective of incentivising the use of such long-term contracts and ensuring that the energy bills of European households and companies as well as the revenues of non-fossil fuel technologies with low variable costs become more independent from the fluctuation of prices in short-term markets and thus more stable over longer periods of time.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered necessary in order to achieve the envisaged objectives of ensuring better integration of renewable and low carbon energy and reducing dependency on fossil fuels for flexibility, and ultimately reaching carbon neutrality in the Union with lower costs for consumers. They are also proportionate to these objectives, since the impact on businesses appears minimal compared to the current framework and the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

It is also proportionate with the objectives pursued not to envisage measures amending existing provisions in the Electricity Regulation and the Electricity Directive where any issues identified with regard to existing provisions can be addressed through their manner of application or implementation. One such instance relates to the measures concerning resource adequacy in Chapter IV of the Electricity Regulation, in particular, the process for Member States to introduce capacity mechanisms, which could be simplified without amending the relevant provisions.

The measures envisaged to strengthen consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators. However, the additional burdens are necessary and proportionate to achieve the objective of ensuring consumers have access to better information and variety of offers, decoupling their electricity bills from short term movements on energy markets and rebalancing the risk between suppliers and consumers.

The measures envisaged to improve the REMIT framework may increase reporting obligations for market participants due to a broader scope of REMIT. These measures are necessary to achieve the objective of increasing transparency and monitoring capacities and ensuring more effective investigation and enforcement of cross-border cases in the EU so that consumers and market participants have confidence in the integrity of energy markets, prices reflect a fair and competitive interplay between supply and demand and no profits can be

drawn from market abuse. They are also proportionate to that objective, since the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

Finally, the overall package of measures proposed is considered appropriate given the overarching imperative of achieving climate neutrality at the least cost for consumers while ensuring security of supplies.

- **Choice of the instrument**

The proposal will amend the Electricity Regulation, the Electricity Directive, the REMIT Regulation, the ACER Regulation and the Renewables Energy Directive. Given that the proposal aims to add a limited set of new provisions and amend a limited set of existing provisions in these instruments, the recourse to an amending act is adequate. For the same reason, it also appears appropriate to use the instrument of an amending regulation to introduce amendments both to existing regulations and existing directives.

### **3. STAKEHOLDER CONSULTATIONS AND STAFF WORKING DOCUMENT**

- **Stakeholder consultations**

In preparation for the present initiative, the Commission has conducted a public consultation from 23 January 2023 to 13 February 2023. The consultation was open to everybody.

The Commission received 1369 replies to this consultation. More than 700 of those have come from citizens, around 450 from businesses and business associations, around 40 from national or local administrations or from national regulators and around 70 from network operators. Also, around 20 energy communities, 15 trade unions and 20 consumers organisations participated. A significant number of NGOs, think tanks and research or other academic organisations submitted responses as well. An overview of stakeholders' opinions is available in the Staff Working Document accompanying this legislative initiative.

In addition, the Commission organised an online targeted stakeholder consultation meeting on 15 February 2023 which counted with the participation of around 70 market actors, non-governmental organisations, network operators, ACER and national regulators, think tanks and academics. The consultation overall highlighted that the stakeholders considered that:

- Short-term markets and the pricing mechanism based on marginal pricing should be preserved, as they function well and provide the right price signals. Short-term (day-ahead and intraday) markets are well-developed, and they result from years of implementation of EU energy legislation.



- Short-term markets need to be complemented by instruments incentivizing longer term price signals, such as the ones indicated in consultation by the Commission, in particular power purchase agreements ('PPA'), contracts for difference, and enhanced forward markets. The right balance between the different tools should be established. Nonetheless, there should not be mandatory schemes, and the freedom of choosing the relevant contracts should be preserved.
- The benefits of non-fossil flexibility solutions such as demand response and storage were acknowledged, especially in the context of an increasing share of renewables. Their market participation should be facilitated.
- The future electricity markets will have to be adapted to a high share of renewable energy. Furthermore, there should be more emphasis on the local dimension and grid development. These challenges could be addressed by the solutions presented in the public consultation.
- Consumer protection is essential, as is affordability of energy, but preserving the signals for demand response is equally important. Emerging solutions such as energy communities, self-consumption, energy sharing should be enabled and incentivized.

- **Staff Working Document**

Given the urgency of the initiative, a Staff Working Document has been produced instead of an impact assessment. The Staff Working Document underpinning the present proposal sets out the explanation and rationale behind the Commission's proposals for a structural response to the high energy prices experienced by households and businesses and to ensure secure, clean and affordable energy for households and businesses into the future as well as presents the available evidence of relevance for the proposed measures.

The Staff Working Document concludes that the package of proposed reforms is expected to significantly improve the structure and functioning of the European electricity market. It is another building block to enable the delivery of the Green Deal objectives and in addition it takes stock of the shortcomings revealed by the energy crisis and seeks to address them.

The document shows that the reform will contribute to protecting and empowering consumers currently facing high and volatile prices by creating a buffer between them and short-term markets. This proposal will decouple the high prices of fossil-fuel technologies operating in the electricity market from the energy bills of consumers and businesses. More long-term

contracting opportunities in the form of PPAs, contracts for difference and forward markets will ensure that the part of the electricity bill exposed to short-term markets can be greatly reduced. In addition, including a hedging obligation on suppliers and an obligation to also offer fixed price contracts will significantly increase the options to reduce the exposure of price volatility for electricity bills. Consumers will also have better information on offers before signing up and Member States will have an obligation to establish suppliers of last resort. Besides, they can enable access to regulated retail prices in a crisis. The right to share energy is a new feature that will empower consumers and support the decentralised rollout of renewable energy as it grants consumers more control over their energy bills.

The Staff Working Document explains how this reform will also enhance the competitiveness of EU industry in a way that is fully complementary to the Net-zero Industry Act. Member States will be required to ensure that the right conditions exist for PPA markets to develop, thereby providing industry access to affordable and clean electricity over the long-term. The improvements to the forward markets will provide far greater access to cross-border renewable energy for industries and suppliers up to three years in advance, a significant improvement compared to today. Overall, public support schemes for renewable energy will increase the energy independence in Member States and the penetration of renewables into the system while supporting local jobs and skills.

The document demonstrates that this reform will accelerate the rollout of renewables and tap into the full potential of firm generation capacity and flexibility solutions to enable Member States to integrate ever higher levels of renewables. The Commission proposes that Member States assess their need for power system flexibility and allows the introduction of new support schemes for demand response and storage. The proposal also introduces extra possibilities for renewables to trade closer to real time at cross-border and national level. In this way, the market can better support the integration of renewables and the business case for flexibility solutions that can contribute to security of supply.

Finally, the Staff Working Document describes how this proposal responds to the request from the European Council to assess ways of optimising the functioning of the electricity market design in the context of the energy crisis. It aims to protect consumers, creating a buffer between them and short-term electricity markets through longer-term contracting and to make those short-term markets work in a more efficient way for renewables and flexibility solutions, with better regulatory oversight. This proposal ensures that the market rules remain

fit for purpose to drive the cost-effective decarbonisation of the electricity sector and increase its resilience to energy price volatility.

- **Collection and use of expertise**

The preparation of the present legislative proposal and the Staff Working Document is based on a large body of material, which is referenced in the footnotes in the Staff Working Document, and on the responses to the public consultation.

- **Fundamental rights**

The present proposal may have an impact on a number of fundamental rights established by the Charter on Fundamental Rights of the EU, in particular: the freedom to conduct a business (Article 16) and the right to property (Article 17). As explained above, however, to the extent that the proposed measures limit the exercise of these rights, these impacts are considered necessary and proportionate to achieve the objectives of the proposal and therefore constitute legitimate limitations of such rights as allowed under the Charter.

On the other hand, the proposal enhances the protection of fundamental rights, such as the respect for private and family life (Article 7), the right to protection of personal data (Article 8), the prohibition of discrimination (Article 21), access to services of general economic interest (Article 36), the integration of a high level of environmental protection (Article 37) and the right to an effective remedy (Article 47), in particular through a number of provisions concerning consumer empowerment, rights and protection.

- **Regulatory fitness and simplification**

The proposed amendments to the Electricity Directive, the Electricity Regulation, the REMIT Regulation and the ACER Regulation focus on what is considered necessary to address the shortcomings of the current electricity market design in the context of the energy crisis and to contribute in a cost-effective manner to the Union's climate ambition. They do not constitute a full revision of these instruments.

The proposal may increase administrative requirements for national administrations and undertakings, albeit in a proportionate way as explained above. For example, the proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for undertakings and national administrations. However, the envisaged economic impacts will positively benefit businesses and consumers.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered minimal compared to the current framework, as the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

The measures envisaged to strengthened consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators with the objective to improve choice, increase protection and facilitate active market participation by consumers, notably households. However, the additional burdens are minimal because these frameworks are being rolled out across Europe and therefore streamlining of rules is needed.

The measures envisaged to improve the REMIT framework may increase reporting obligations on certain market participants, albeit in a proportionate way. These are however considered minimal compared to the current framework as the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

#### **4. BUDGETARY IMPLICATIONS**

The budgetary impact associated to the proposal on improving the EU's electricity market design concerns the resources of the European Union Agency for the Cooperation of Energy Regulators (ACER) and of DG Energy which are described in the Legislative Financial Statement accompanying the proposal. Essentially, for the new tasks to be carried out by ACER 4 additional full time equivalent (FTE) for ACER from 2025 onwards, as well as corresponding financial resources will be required. DG Energy's workload will increase by 3 FTE.

The budgetary impact associated to the proposal amending REMIT concerns the resources of the European Union Agency for the Cooperation of Energy Regulators (ACER) and of DG Energy which are described in the Legislative Financial Statement accompanying the proposal. Essentially, the new tasks to be carried out by ACER, especially regarding the enhanced investigatory powers require a phasing in of 25 additional full time equivalent (FTE) in ACER from 2025, as well as corresponding financial resources, although most of the additional staff will be funded by fees. To this end Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to ACER for tasks under REMIT will need to be adapted. DG Energy's workload will increase by 2 FTE.

## 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the transposition and compliance of Member States and other actors with the measures that shall be ultimately adopted and take enforcement measures if and when required. For monitoring and implementation purposes, the Commission will notably be supported by ACER, in particular in relation to the REMIT Regulation. The Commission will also liaise with ACER and the national regulatory authorities in relation to the Electricity Regulation and the Electricity Directive.

Moreover, to facilitate the implementation, the Commission will be available for bilateral meetings and calls with Member States in case of specific questions.

- **Explanation of the specific provisions of the proposals**

The amendments concerning the Electricity Regulation provide clarifications to the scope and subject matter of the Regulation, emphasising the importance of undistorted market signals to provide for increased flexibility as well as the role of long-term investments to mitigate the volatility of short-term market prices on the electricity bills of consumers including energy intensive industries, SMEs and households. It clarifies certain main principles for trading in the day-ahead and intraday markets. It provides for new rules concerning the procurement by TSOs of demand response in the form of a peak shaving product and rules allowing transmission system operators and distribution system operators to use data from dedicated metering devices. It sets out new rules concerning forward electricity markets, to improve their liquidity. It includes new rules aiming to clarify and incentivise the role and use of longer-term contracts in the form of power purchase agreements and two-way contracts for difference. It provides for new rules regarding the assessment of the flexibility needs by Member States, the possibility for them to introduce flexibility support schemes and design principles for such flexibility support schemes. It also introduces new transparency requirements for transmission system operators as regards the capacity available for new connections in the grid.

The amendments concerning the Electricity Directive provide for new rules on the protection and empowerment of consumers. The amendment regarding Free Choice of Supplier introduces new requirements to ensure that customers are able to have more than one supplier

on their premises, by enabling multiple meters (sometimes called submeters) for a single connection point.

The amendments regarding consumer empowerment and protection ensure that customers are offered a variety of contracts that best fits their circumstances, by ensuring that all customers have a least one fixed term, fixed price offer. Furthermore, customers must be provided with clear pre-contractual information in relation to these offers.

A new right for households and small and medium sized enterprises is also established to participate in energy sharing- that is the self-consumption by active customers of renewable energy generated or stored offsite either from facilities they own, lease, rent in whole or in part or which has been transferred to them by another active customer.

Important new protections for customers are also introduced to ensure continuous supply of electricity– including the requirement for Member States to appoint suppliers of last resort who take responsibility for the customers of failed suppliers and protection from disconnection for vulnerable customers. Suppliers will also be required to put in place risk management to limit the risk of failure, by implementing appropriate hedging strategies. These will be overseen by national regulatory authorities.

The amendments to the Electricity Directive introduce new transparency requirements for distribution system operators as regards the capacity available for new connections in the grid. It clarifies the role of regulatory authorities regarding the single allocation platform established in accordance with Regulation (EU) 2016/1719.

The amendments concerning REMIT Regulation adapt the scope of REMIT to current and evolving market circumstances by inter alia extending the scope of data reporting to new electricity balancing markets and coupled markets as well algorithmic trading. It ensures stronger, more established and regular cooperation between energy and financial regulators, including ACER and ESMA regarding derivative wholesale energy products. It will as well improve process for the collection of inside information and market transparency by enhancing the oversight of ACER and adjustment of inside information definition. Amendments to REMIT Regulation enhance supervision of reporting parties such as Registered Reporting Mechanisms (RRMs) and persons professionally arranging transactions (PPATs). Amendments improve data sharing possibilities between ACER, relevant national authorities and the Commission. REMIT amendment introduces stronger role for ACER in investigations of significant cross-border cases to fight against the REMIT breaches. It also

sets-out the framework for harmonisation of fines set by regulatory authorities at national level.

The amendments concerning the ACER Regulation aim to clarify the role of ACER as regards the single allocation platform established in accordance with Regulation (EU) 2016/1719 and as regards the new rules introduced in the Electricity Regulation concerning forward markets and flexibility support schemes. It also clarifies the role and competences of ACER in accordance with the amendment to REMIT Regulation. The amendment RED II aims to clarify the scope of application of the rules concerning the types of direct price support schemes for renewable energy sources that Member States may introduce.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market**

(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) Open and fair competition in the internal markets for electricity and for gases and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council establishes a comprehensive framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against attempts of market manipulation, Regulation (EU) No 1227/2011 should be amended to further increase insufficient transparency and monitoring capacities as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.
- (2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council<sup>17</sup>, including with respect to

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<sup>17</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament



the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.

- (3) The definition of inside information should also be adjusted to mirror Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.
- (4) This Regulation is without prejudice to Regulations (EU) 596/2014, 600/2014 and 648/2012, and Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.
- (5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities.
- (6) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the European Agency for the Cooperation of Energy Regulators (the 'Agency' or 'ACER') should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. This should include the possibility for ACER to publish information on organised market places, IIPs, RRM according to applicable data protection laws in the interest of improving transparency of wholesale energy markets and provided it does not distort competition on those energy markets.

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and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

- (7) Organised market places which carry out activities relating to the trading of wholesale energy products that are financial instruments under Article 4(1)(15) of Directive (EU) 2014/65 shall be duly authorized pursuant to the requirements of that Directive.
- (8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale energy markets. Many market participants use algorithmic trading and high frequency algorithmic techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011.
- (9) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data that the Agency receives is of utmost importance to ensure effective monitoring and detection of potential breaches to achieve the objective of Regulation (EU) No 1227/2011. Inconsistencies in the quality, formatting, reliability and cost of trading data have a detrimental effect on transparency, consumer protection and market efficiency. It is essential that the information received by the Agency is accurate and complete for it to effectively carry out its tasks and functions.
- (10) To improve the Agency's market monitoring and make data collection more complete, the current reporting regime needs improvement. The data collected should be expanded to overcome gaps in the data collection and include coupled markets, new balancing markets, contracts for balancing markets and products that have potential delivery in the Union. Organised market places should be required to provide the full order book data set to the Agency. Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.
- (11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered.
- (12) To streamline and make the reporting of data to the Agency more effective, the information should be provided through Registered Reporting Mechanisms (RRMs) and the operation of RRM should be authorised by the Agency. The RRM should at all times comply with the conditions for authorisation and data protection law. The Agency should also establish a register of all RRM in the Union.
- (13) In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the collection of inside information needs to be aligned with the current processes for trade data reporting.
- (14) Persons professionally arranging and executing transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic access providers and shared order-book providers should be considered as persons professionally arranging transactions.
- (15) Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management foresees the possibility of third country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since the market coupling operator uses a specific algorithm to match bids and offers in an optimal manner, this may result in orders to trade being placed in a third

country participating in the Union single day-ahead and intraday coupling but resulting in a contract for the supply of electricity with delivery in the Union. The placing of such orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union should be covered by the definition of wholesale energy product pursuant to this Regulation.

- (16) In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries to the Union, the Agency should collect all the LNG market data that are necessary to establish a daily LNG price assessment. The price assessment should be undertaken based on all transactions pertaining to LNG deliveries to the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023, bids and offer prices for LNG deliveries to the Union. The daily publication of this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices.
- (17) Delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and reduce the burden imposed on market participants. Therefore a clear legal basis should be provided for such delegation. National regulatory authorities should be able to delegate tasks and responsibilities to another national regulatory authority. Introducing specific conditions and limiting the scope for the delegation to what is necessary for the effective supervision of cross-border market participants or groups should be possible. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter.
- (18) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Penalties for breaches of that Regulation should be proportionate, effective and dissuasive and reflect the type of the breaches, taking into account the *ne bis in idem* principle. Administrative sanctions, penalty payments and supervisory measures are complementary parts of an effective enforcement regime. A harmonised supervision of the wholesale energy market requires a consistent approach among national regulatory authorities.
- (19) To date, the supervision and enforcement of activities under Regulation (EU) No 1227/2011 have been the responsibility of the Member States. Market abuse behaviours are increasingly cross-border in nature, often affecting several Member States. Enforcement action against cross-border market abuses can present jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to pursue the investigation in question.
- (20) Market abuse cases involving multiple cross-border elements and market participants established outside the Union are also particularly challenging from an enforcement perspective. The current supervisory set-up is not appropriate for the desired level of

market integration. The absence of a mechanism to ensure the best possible supervisory decisions for cross-border cases, where joint action by national regulatory authorities and the Agency currently requires complicated arrangements and where there is a patchwork of supervisory regimes must be addressed. There is therefore a need to set up an efficient and effective supervisory and investigatory regime for this type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone.

- (21) The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. Complexity of cross-border cases and the need to ensure sufficient resources for such cases requires involvement of the Agency, in particular in more integrated energy market. Since the entry into force of Regulation (EU) No 1227/2011, the Agency has gained significant experience in monitoring and collecting relevant data on the wholesale energy markets in the Union to ensure their integrity and transparency. Building on this experience, the Agency should be empowered to carry out investigations to fight against the breaches of the provisions of Regulation (EU) No 1227/2011. The Agency should carry out such investigations in cooperation with the national regulatory authorities with the purpose of supporting and complementing their enforcement activities. Equally, in the context of an investigation by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency.
- (22) The Agency should be empowered to carry out investigations by conducting on-site inspections and by issuing requests for information to the persons under investigations, in particular where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. In undertaking the on-site inspections and in issuing requests for information to the persons under investigations, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which in turn should provide the Agency with full assistance, including where a person refuses to be subject to the inspection or to provide the requested information. It is important that the procedural guarantees and fundamental rights of the persons concerned of the persons subject to the Agency's investigations are fully respected. The confidentiality of the information submitted by the persons subject to the investigation should be safeguarded exchanged in accordance with applicable Union data protection rules.
- (23) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Regulation (EU) No 1227/2011**

Regulation (EU) No 1227/2011 is amended as follows:

[1] Article 1 is amended as follows:

[a] Second paragraph is amended as follows:

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

[b] In Article 1(3) the following second subparagraph is added:

“The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member States shall in particular exchange relevant information and data on a regular, at least quarterly, basis regarding potential breaches of Regulation (EU) No 596/2014 of the European Parliament and of the Council involving wholesale energy products covered by this Regulation.

[2] Article 2 is amended as follows:

[a] point (1) is amended as follows:

in the second subparagraph, the following point (e) is added:

“(e) information conveyed by a client or by other persons acting on the client’s behalf and relating to the client’s pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products”;

[b] the third subparagraph is replaced by the following:

“Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the

prices of wholesale energy products. Information may be deemed to be of precise nature if it relates to a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, including future circumstances or future events, and also if it relates to the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event.

An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

For the purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision(s);

[c] paragraph (2), point (a) is replaced by the following:

(2) *'market manipulation' means:*

(a) entering into any transaction, issuing any order to trade or engaging in any other behaviour relating to wholesale energy products which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or

(iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

[d] in paragraph (2), the following point (c) is added and preceded by the word 'or' at the end of point (b):

“(c) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input

knew or ought to have known that it was false or misleading, or engaging in any other behaviour which leads to the manipulation of the calculation of a benchmark.”;

[e] at the end of paragraph (2) the following subparagraph is added:

“Market manipulation may designate the conduct of a legal person, but also, in accordance with European Union or national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.”;

[f] in paragraph (4), point (a) is replaced by the following:

“(4) ‘wholesale energy products’ means the following contracts and derivatives, irrespective of where and how they are traded:

(a) *contracts for the supply of electricity or natural gas where delivery is in the Union or contracts for the supply of electricity or natural gas which may result in delivery in the Union;*”;

[g] paragraph (7) is replaced by the following:

“(7) ‘market participant’ means any person, including transmission system operators and persons professionally arranging or executing transactions when trading on their own account, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets;”;

[h] the following new paragraph (8a) is inserted:

“(8a) ‘person professionally arranging or executing transactions’ means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products;”;

[i] the following new paragraph (10a) is added:

“(10a) ‘the Agency’ or ‘ACER’ means the European Union Agency for the Cooperation of Energy Regulators;”;

[j] the following points are inserted:

“(16) ‘registered reporting mechanism’ or ‘RRM’ means a person registered under this Regulation to provide the service of reporting details of transactions, including orders to trade, and fundamental data to the Agency on behalf of market participants;

(17) ‘inside information platform’ or ‘IIP’ means a person registered under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants.

(18) ‘algorithmic trading’ means trading in wholesale energy products where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access);

(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.

(21) ‘LNG trading’ means bids, offers or transactions for the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.

(22) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.

(23) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading.

(24) ‘LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by ACER.



(25) ‘LNG benchmark’ means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.”;

[3] in Article 3(1) the following second subparagraph is added:

“The use of inside information by cancelling or amending an order concerning a wholesale energy product to which the information relates, where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider trading.”;

[4] Article 4 is amended as follows:

[a] in paragraph 1 the following 2<sup>nd</sup> subparagraph is added:

“Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. and complete, correct and timely assessment of the information by the public.”;

[b] paragraph 4 is replaced by the following:

The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes a complete and effective public disclosure but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article.

[5] The following Article 4a is inserted:

#### “Article 4a

##### Authorisation and supervision of IIPs

1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP complies with the requirements of this Article and has authorised the operation. The register of IIPs shall be publicly available and shall contain information on the services for which the IIP is registered. The Agency shall regularly review the compliance of IIPs with this Regulation. Where the Agency has withdrawn a registration in accordance with paragraph 5, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.
2. An IIP shall have adequate policies and arrangements in place to make public the inside information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available for all purposes free of charge. The IIP shall efficiently and consistently disseminate

such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.

3. The inside information made public by an IIP in accordance with paragraph 2 shall include, at least, the following details depending on the type of inside information:
  - (a) the message ID and event status;
  - (b) the publication date, the time and the start and stop of the event;
  - (c) the market participant name and the market participant identification;
  - (d) the bidding or balancing zone concerned;
  - (e) and, where applicable:
    - (a) the type of unavailability and the type of event;
    - (b) the unit of measurement;
    - (c) the unavailable, the available and the installed or technical capacity;
    - (d) the reason for the unavailability;
    - (e) the fuel type;
    - (f) the affected asset or unit and its identification code.

4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of inside information, minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

The IIP shall have systems in place that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request re-transmission of any such erroneous reports.

5. The Agency may withdraw the registration of an IIP where the latter:
  - (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;
  - (b) obtained the registration by making false statements or by any other irregular means;
  - (c) no longer meets the conditions under which it was registered;
  - (d) has seriously and systematically infringed this Regulation.

When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP.

6. The Commission shall, by means of implementing acts, specify:
  - (a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;
  - (b) the content of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;
  - (c) the concrete organisational requirements for the implementation of paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).”;

[6] The following Article 5a is added:

#### “Article 5a

##### Algorithmic trading

1. A market participant that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or the systems otherwise functioning in a way that may create or contribute to a disorderly market. The market participant shall also have in place effective systems and risk controls to ensure that the trading systems comply with this Regulation and with the rules of an organised market place to which it is connected. The market participant shall have in place effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this paragraph.
2. A market participant that engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of its Member State and to the Agency.

The national regulatory authority of the Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the trading system is subject, the key compliance and risk controls that

it has in place to ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems.

The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

3. A market participant that provides direct electronic access to an organised market place shall notify the competent authorities of its home Member State and the Agency accordingly.

The national regulatory authority of the home Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 1 and evidence that those have been applied.

The market participant shall arrange for records to be kept in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

4. This article is without prejudice to obligations under Directive (EU) 2014/65.”; [7] in Article 7, paragraph 1 is replaced by the following:

“1. ACER shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation or attempts thereof. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.”;

[ ] New articles from 7a to 7d are added:

#### “Article 7a

##### Tasks and powers of ACER to carry out price assessments and benchmarks

1. As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.

2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price

for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.

3. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on ACER under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.

#### Article 7b

##### Publication of LNG price assessments and benchmark

1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.
2. For the purposes of this Article, ACER may make use of the services of a third party.

#### Article 7c

##### Provision of LNG market data to ACER

1. LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET).
2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29.
3. Where appropriate, ACER shall, after consulting the Commission, issue guidance on:
  - (a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and

(b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.

4. LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, where possible using already existing and available procedures.

#### Article 7d

##### Business continuity

ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of LNG market data contributors.”;

[8] Article 8 is amended as follows:

[a] the following paragraph 1a is inserted:

“(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places, those market places shall make available to the Agency data relating to the order book or, upon the Agency’s request, give the Agency access to the order book so that it is able to monitor trading.”;

[b] in paragraph 2, the second subparagraph is replaced by the following:

“Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing transaction reporting systems for monitoring trading activity to detect market abuse.”

[c] in paragraph 3, the first subparagraph is replaced by the following:

3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Regulation (EU) 600/2014 or Regulation (EU) 648/2012 shall not be subject to double reporting obligations relating to those transactions.

[d] paragraph 4 is amended as follows:

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

(d) an organised market place, a trade-matching system or other person professionally arranging or executing transactions;

(ii) the following second subparagraph is added:

“The information shall be provided through registered reporting mechanisms.”;

[e] paragraph 5 is replaced by the following:

“5. Market participants shall provide ACER and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, and with inside information publicly disclosed in accordance with Article 4, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.”;

[9] in Article 9, paragraph 1 is replaced by the following:

“1. Market participants entering into transactions which are required to be reported to ACER in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident. Market participants resident or established in a third country shall declare an office , in a Member State in which they are active and register with the national regulatory authority of that Member State.”;

[10] the following Article 9a is inserted:

#### “Article 9a

##### Authorisation and supervision of the Registered Reporting Mechanisms

1. The operation of an RRM shall be subject to prior authorisation by the Agency in accordance with this Article.

The Agency shall authorise parties as RRM where:

- (a) the RRM is a legal person established in the Union; and
- (b) the RRM meets the requirements laid down in this Article.

The authorisation to operate as RRM shall be effective and valid for the entire territory of the Union, and shall allow the RRM provider to provide the services for which it has been authorised throughout the Union.

An authorised RRM shall comply at all times with the conditions for authorisation referred to in this Article. An authorised RRM shall, without undue delay, notify ACER of any material changes to the conditions for authorisation.

The Agency shall establish a register of all RRMs in the Union. The register shall be publicly available and shall contain information on the services for which the RRM is authorised and it shall be updated on a regular basis. Where the Agency has withdrawn an authorisation of an RRM in accordance with paragraph 4, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.

2. The Agency shall regularly review the compliance of RRMs with this Regulation. For this purpose, RRMs shall report on an annual basis about their activities to the Agency.
3. RRMs shall have adequate policies and arrangements in place to report the information required under Article 8 as quickly as possible, and no later than within the timing laid down in the implementing acts adopted pursuant to paragraph 5 of this Article.

RRMs shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM that is also an OMP or market participant shall treat all information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

RRMs shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The RRM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at according to the timing laid down in the implementing acts adopted pursuant to Article 8(2) and (6).

RRMs shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate details of the error or omission to the market participant and request re-transmission of any such erroneous reports.



RRMs shall have systems in place to enable the RRM to detect errors or omissions caused by the RRM itself and to enable the RRM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the Agency.

4. The Agency may withdraw the authorisation of an RRM where RRM:
- (a) does not make use of the authorisation within 18 months, expressly renounces the authorisation or has provided no services for the preceding 18 months;
  - (b) obtained the authorisation by making false statements or by any other irregular means;
  - (c) no longer meets the conditions under which it was authorised;
  - (d) has seriously and systematically infringed this Regulation.

An RRM whose authorisation has been withdrawn shall ensure orderly substitution including the transfer of data to other RRM and the redirection of reporting flows to other RRM.

The Agency shall, where relevant, without undue delay, notify the national competent authority in the Member State where the RRM is established of a decision to withdraw the authorisation of an RRM.

5. The Commission shall by means of implementing acts specify :
- (a) the means by which an RRM shall comply with the information obligation referred to in paragraph 1; and
  - (b) the concrete organisational requirements for the implementation of paragraphs 2 and 3.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).”;

[11] Article 10 is amended as follows:

[a] paragraph 1 is replaced by the following:

*“1. ACER shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with the Commission, national regulatory authorities, competent financial market authorities national competition authorities, ESMA and other relevant authorities at Union level. Before establishing such mechanisms, ACER shall consult with those authorities.”;*

[b] the following paragraph 1a is inserted:

*“(1a) National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the competent financial market*

authorities, the national competition authorities, the national tax authorities and EUROFISC and other relevant authorities at national level. Before establishing such mechanisms, the national regulatory authority shall consult with the Agency and with those parties.”;

[c] the following paragraph 2a is inserted:

“2a. National regulatory authorities shall give access to the mechanisms referred to in paragraph 1a of this Article only to authorities which have set up systems enabling the national regulatory authority to meet the requirements of Article 12(1).”;

[13] Article 12 is amended as follows:

[a] in paragraph 1, the second subparagraph is replaced by the following:

“The Commission, national regulatory authorities, competent financial authorities of the Member States, national tax authorities and EUROFISC, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Article 4(2), Article 7(2) Article 8(5) or Article 10 and shall take steps to prevent any misuse of such information including according to applicable data protection laws.”;

[b] paragraph 2 is replaced by the following

“2. Subject to Article 17, ACER may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. ACER shall not be prevented from publishing information on organised market places, IIPs, RRM according to applicable data protection laws.”;

[14] Article 13 is amended as follows:

[a] paragraph 1 is replaced by the following:

“1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligations set out in Articles 4, 8, 9 and 15 are applied.

National regulatory authorities shall be competent to investigate all the acts carried out on their national wholesale energy markets and enforce this Regulation thereto, irrespective of where the market participant registered pursuant to Article 9(1) carrying out those acts is resident or established.

Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function . Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

- (a) directly;
- (b) in collaboration with other authorities; or
- (c) by application to the competent judicial authorities.

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging or executing transactions as referred to in point (d) of Article 8(4).”;

[b] the following paragraphs (3) to (9) are added:

“3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a and 13b.

4. The Agency may exercise its powers to ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied where:

- (a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or
- (b) acts are being or have been carried on wholesale energy products for delivery in at least two Member States and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in a third country but registered pursuant to Article 9(1); or
- (c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b); or
- (d) the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least three Member States.

5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least three Member States.

6. In exercising its powers, the Agency shall take into account the investigations in progress or already carried out in respect of the same cases by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.

7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18. The Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.”;

[15] The following articles 13a to 13d are inserted:

#### “Article 13a

##### On-site inspections by the Agency

1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned.
2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement.
3. The officials of and other persons authorised by the Agency to conduct an on-site inspection may enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6 and shall have all the powers referred in this Article. They shall also have the power to seal any premises, property and books or records for the period of, and to the extent necessary for the inspection.
4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.
5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.
6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin, the legal remedies available under Regulation (EU) 2019/942 as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.

7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall enjoy the powers set out in this Article . Officials of the national regulatory authority may also attend the on-site inspection upon request.
8. Where the officials of, as well as those authorised or appointed by, the Agency find that a person opposes an inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.
9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraphs 7 and 8 requires authorisation by a judicial authority according to applicable national law, the Agency shall also apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure.
10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:
  - (a) that the decision of the Agency is authentic; and
  - (b) that any measures to be taken are proportionate and not arbitrary or excessive having regard to the subject matter of the inspection.

For the purposes of point (b) of the first subparagraph, the national judicial authority may ask the Agency for detailed explanations, in particular relating to the grounds the Agency has for suspecting that a breach referred to in Article 13(3) has taken place, the seriousness of the suspected breach and the nature of the involvement of the person subject to the investigation. By way of derogation from Article 28 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.

## Article 13b

### Request for information

1. At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation. In its request the Agency shall:
  - (a) refer to this Article as the legal basis for the request;
  - (b) state the purpose of the request;
  - (c) specify what information is required, and following which data format;
  - (d) set a time-limit, proportionate to the request, within which the information is to be provided;

- (e) inform the person that the reply to the request for information shall not be incorrect or misleading.
- 2. For the purpose of information requests as referred to in paragraph 1, the Agency shall have the power to issue decisions. In such a decision the Agency shall, in addition to the requirements in paragraph 1 indicate the right to appeal the decision before the Agency’s Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942.
- 3. The persons referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.
- 4. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance in ensuring the fulfilment of the obligation referred to in paragraph 3, including through the imposition of penalties in accordance with applicable national law.
- 5. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency may draw conclusions on the basis of available information.
- 6. The Agency shall, without delay, send a copy of the request pursuant to paragraph 1 or the decision pursuant to paragraph 2 to the national regulatory authorities of the concerned Member States.

#### Article 13c

##### Procedural guarantees

- 1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:
  - (a) the right not to make self-incriminating statements;
  - (b) the right to be assisted by a person of choice;
  - (c) the right to use any of the official languages of the Member State where the on-site inspection takes place;
  - (d) the right to comment on facts concerning them;
  - (e) the right to receive a copy of the record of interview and either approve it or add observations.
- 2. The Agency shall seek evidence for and against the market participant, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.
- 3. The Agency shall carry out on-site inspections and request information in full respect of applicable confidentiality and Union data protection rules.

#### Article 13d

##### Mutual assistance

- 1. In order to ensure compliance with the relevant requirements set out in this Regulation, national regulatory authorities and the Agency shall assist each other.”;

[15] Article 15 is amended as follows:

“Article 15

Obligations of persons professionally arranging or executing transactions

Any person professionally arranging or executing transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.

Persons professionally arranging or executing transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:

- (a) identify breaches of Article 3, 4 or 5 ;
- (b) guarantee that their employees carrying out surveillance activities for the purpose of this Article are preserved from any conflict of interest and act in an independent manner.”;

[16] Article 16 is amended as follows:

[a] in paragraph 1, the fourth sub-paragraph is replaced by the following:

“National regulatory authorities, competent financial authorities , the national competition authority and the national tax authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.”;

[b] in paragraph 2, the following third subparagraph is added:

“No later than 30 days before adopting a final decision on a breach of this Regulation, national regulatory authorities shall inform the Agency and provide it with a summary of the case and the envisaged decision. The Agency shall maintain a public list of such decisions under this Regulation, including the date of the decision, the name of the persons sanctioned, the Article of this Regulation that has been breached and the sanction applied. For the purpose of that publication, national regulatory authorities shall provide this information to the Agency within seven days of the issuance of the decision.”;

[c] in paragraph 3, the following point (e) is added:

“(e) the Agency and the national regulatory authorities shall inform the competent national tax authorities and EUROFISC where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a tax fraud.”;

[16] the following Articles 16a and 16b are inserted:

#### “Article 16a

##### Delegation of tasks and responsibilities

1. National regulatory authorities may, with the consent of the delegate, delegate tasks and responsibilities to other national regulatory authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their national regulatory authorities enter into such delegation agreements and may limit the scope of delegation to what is necessary for the effective supervision of market participants or groups.
2. The national regulatory authorities shall inform the Agency of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest one month after informing the Agency.
3. The Agency may give an opinion on the intended delegation agreement within one month of being informed.
4. The Agency shall publish, by appropriate means, any delegation agreement as concluded by the national regulatory authorities, in order to ensure that all parties concerned are informed appropriately.

#### Article 16b

##### Guidelines and recommendations

1. The Agency shall, with a view to establish consistent, efficient and effective supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to all national regulatory authorities or all market participants and issue recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles 4a, 8 and 9a.
2. The Agency shall, where appropriate, conduct public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations.
3. The national regulatory authorities and market participants shall make every effort to comply with those guidelines and recommendations.
4. Within two months of the issuance of a guideline or recommendation, each national regulatory authority shall confirm whether it complies or intends to comply with that guideline or recommendation. If a national regulatory authority does not comply or does not intend to comply, it shall inform the Agency, stating its reasons.



5. The Agency shall publish the information that a national regulatory authority does not comply or does not intend to comply with that guideline or recommendation. The Agency may also decide to publish the reasons provided by the national regulatory authority for not complying with that guideline or recommendation. The national regulatory authority shall receive advanced notice of such publication.
6. If required by that guideline or recommendation, market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.
7. The Agency shall include the guidelines and recommendations that it has issued in the report referred to in Article 19(1)(k) of Regulation (EU) 2019/942.”;

[18] in Article 17, paragraph 3 is replaced by the following:

“3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation.”;

[19] Article 18 is replaced by the following:

“1. The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

Without prejudice to any criminal sanctions and supervisory powers of national regulatory authorities under Article 13, Member States shall, in accordance with national law, provide for national regulatory authorities to have the power to adopt appropriate administrative sanctions and other administrative measures in relation to the breaches of this Regulation referred to in Article 13(1).

The Member States shall notify, in detail, those provisions to the Commission and to the Agency and shall notify it without delay of any subsequent amendment affecting them.

2. Member States shall, in accordance with national law, and the ne bis in idem principle, ensure that the national regulatory authorities have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this Regulation:

- (a) adopt a decision requiring the person to bring the breach to an end;

- (b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;
- (c) issue public warnings or notices;
- (d) adopt a decision imposing periodic penalty payments;
- (e) adopt a decision imposing administrative pecuniary sanctions;

in respect of legal persons, maximum administrative pecuniary sanctions of at least:

- i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;
- ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;
- iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.

in respect of natural persons, maximum administrative pecuniary sanctions of at least:

- i. for breaches of Articles 3 and 5, EUR 5 000 000;
- ii. for breaches of Article 4 and 15, EUR 1 000 000;
- iii. for breaches of Article 8 and 9, EUR 500 000.

Notwithstanding paragraphs (e), the amount of the fine shall not exceed 20 % of the annual turnover of the legal person concerned in the preceding business year. In the case of natural persons, the amount of the fine shall not exceed 20 % of the yearly income in the preceding calendar year. Where the person has directly or indirectly benefited financially from the breach, the amount of the fine shall be at least equal to that benefit.

3. Member States shall ensure that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.”;

## *Article 2*

Amendments to Regulation (EU) 2019/942

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

[1] in Article 6, paragraph 8 is deleted.

[2] in Article 12, point (c) is replaced by the following:

(c) Pursue and coordinate investigations pursuant to Articles 13, 13a, 13b and Article 16 of Regulation (EU) No 1227/2011.

[3] in Article 32, paragraph 1 is replaced by the following:

“1. Fees shall be due to ACER for collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Articles 4 and 4a of Regulation (EU) No 1227/2011. The fees shall be paid by registered reporting mechanisms and inside information platforms. Revenues from those fees may also cover the costs of ACER for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.”.

### *Article 3*

Amendments to Commission Implementing Regulation (EU) No 1348/2014

Commission Implementing Regulation (EU) No 1348/2014 is amended as follows:

[1] Article 7a is added:

#### “Article 7a

##### LNG market data quality

1. LNG market data shall include:
  - (a) the parties to the contract, including buy/sell indicator;
  - (b) the reporting party;
  - (c) the transaction price;
  - (d) the contract quantities;
  - (e) the value of the contract;
  - (f) the arrival window for the LNG cargo;
  - (g) the terms of delivery;
  - (h) the delivery points;
  - (i) the timestamp information on all of the following:
    - (i) the date and time of placing the bid or offer;
    - (ii) the transaction date and time;
    - (iii) the date and time of reporting of the bid, offer or transaction;
    - (iv) the receipt of LNG market data by ACER.
2. LNG market participants shall provide ACER with LNG market data in the following units and currencies:

- (a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable;
  - (b) contract quantities shall be reported in the units specified in the contracts and in MWh;
  - (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;
  - (d) delivery point shall indicate a valid identifier listed by ACER such as referred to in the list of LNG facilities subject to reporting pursuant to Regulation (EU) No 1227/2011 and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format; (to be replaced with cross-references as appropriate)
  - (e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.
3. ACER shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its daily LNG price assessment and LNG benchmarks.”.

#### *Article 4*

#### *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 Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## **LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

#### **1.1. Title of the proposal/initiative**

#### **1.2. Policy area(s) concerned**

#### **1.3. The proposal/initiative relates to:**

#### **1.4. Objective(s)**

*1.4.1. General objective(s)*

*1.4.2. Specific objective(s)*

*1.4.3. Expected result(s) and impact*

*1.4.4. Indicators of performance*

#### **1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*

*1.5.3. Lessons learned from similar experiences in the past*

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

#### **1.6. Duration and financial impact of the proposal/initiative**

#### **1.7. Method(s) of budget implementation planned**

### **2. MANAGEMENT MEASURES**

#### **2.1. Monitoring and reporting rules**

#### **2.2. Management and control system(s)**

*2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

*2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

#### **2.3. Measures to prevent fraud and irregularities**

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**
- 3.2. Estimated financial impact of the proposal on appropriations**
  - 3.2.1. Summary of estimated impact on operational appropriations*
  - 3.2.2. Estimated output funded with operational appropriations*
  - 3.2.3. Summary of estimated impact on administrative appropriations*
    - 3.2.3.1. Estimated requirements of human resources*
  - 3.2.4. Compatibility with the current multiannual financial framework*
  - 3.2.5. Third-party contributions*
- 3.3. Estimated impact on revenue**

## LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation (EU) of the European Parliament and of the Council amending Regulation (EU) No 1227/2011 and Regulation (EU) 2019/942 to improve the EU's protection against market manipulation.

#### 1.2. Policy area(s) concerned

Policy area: Energy

Activity: European Green Deal

#### 1.3. The proposal relates to

a new action

a new action following a pilot project/preparatory action<sup>18</sup>

the extension of an existing action

a merger of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

See explanatory memorandum

##### 1.4.2. Specific objective(s)

See section "Grounds for the proposal initiative" below

<sup>18</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

#### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The additional resources will allow ACER and DG Energy to carry out the tasks necessary to fulfil their mandate under EU legislation as per the requirements under this proposal.

#### 1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

See explanatory memorandum as regards monitoring progress and achievements of the initiative.

- (a) Effectiveness and timeliness: indicators should allow to monitor performance by providing information on progress on a regular basis and on achievements along the programming period.
- (b) Efficiency: processes should be optimised for collection and processing of data, avoiding unnecessary or duplicative requests for information.
- (c) Relevance of the indicators and the need to limit the associated administrative burden.
- (d) Clarity: indicators should be delivered in a clear and understandable form, with supporting metadata and in a form that facilitates proper interpretation and meaningful communication.

### 1.5. **Grounds for the proposal/initiative**

#### 1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

### **ACER**

#### Specific objective 1: Authorisation and supervisory powers over registered reporting mechanisms and platforms for the disclosure of inside information

Under this legislative proposal, ACER will be in charge of authorizing and supervising Inside Information Platforms (IIPs) and Registered Reporting Mechanisms (RRMs) which goes beyond the current registration of these entities.

The supervisory duties would consist of authorisation of IIPs and RRM and day-to-day supervision and would thus be aligned with ESMA's supervisory powers over trade repositories, approved reporting mechanisms and other data reporting services. ACER will also have direct investigative powers vis-a-vis IIPs and RRM and receives additional powers for issuing guidelines and recommendations to better clarify the perimeter of the data collection.

IIPs and RRM are relatively new structures, and the number of registrations is expected to be high. Given the large number of RRM (104 as per 1 January 2023) and IIPs (19 as per 1 January 2023) and following the new legal framework, ACER will need to increase its supervisory efforts for the above-mentioned new supervisory activities. Therefore, the Agency shall hire additional specialised staff for



the supervision of these entities. Those needs in term of human resources can be estimated at 5 FTEs (including 1 IT expert for running the respective business IT systems and their cyber security).

### Specific objective 2: Centralisation of collection of STORs at EU level at ACER and monitoring EU wide PPAETs at ACER

The current Article 15 of REMIT led to a decentralisation of knowledge of potential situations of market abuse across the EU as NRAs are not obliged to share suspicious transaction or order reports (STORs) that they receive under Article 15 with other NRAs nor with ACER (although some of them do). At the same time, it has not enabled the surveillance team from ACER to benefit from the knowledge included in these STORs for the benefit of developing an EU wide monitoring strategy.

The proposed REMIT amendments will attribute to ACER the collection of all STORs from all PPAETs across Europe (ACER as a central hub).

In order to calculate the human resources necessary for this activity, ACER estimated the number of STORs to be received from 2024 until 2026, departing from the number of STORs that it is aware for the year of 2022 (mostly STORs that are included in cases notified to the Agency), and correcting it by the additional scope of Article 15 (now also including suspicious breaches of Article 4 and all STORs). ACER estimated that the number of STORs would growth at 2/3 the yearly growth that was observed in the past 6 years. The number of STORs to be received by ACER was then estimated at 236 in 2024, 248 in 2025 and 260 in 2026.

In order to fulfil the subtasks associated with this activity, ACER foresees the need to have 2 additional FTEs.

As regards PPAETs, ACER will have the responsibility to verify whether PPAETs that operate EU wide (i.e., offering products for three or more delivery zones in different member states) maintain effective arrangements and procedures to identify breaches of Articles 3, 4 and 5 of REMIT.

In order to calculate the human resources necessary for this activity, ACER estimated the number of PPAETs that ACER would be monitoring from 2025 until 2027. ACER departed from the list of current PPAETs and identified the ones that fulfil the criteria included in the new Article 15 (i.e., PPAETs arranging or executing transactions in at least three Member States). ACER expects then to be monitoring 34 PPAETs (i.e., less than 30% of the total number of PPAETs).

In order to fulfil the subtasks associated with this activity (PPAET audits and PPAET coordination), it is estimated that 1 additional FTE is needed.

### Specific objective 3: ACER complementary powers to investigate and to enforce potential breaches of REMIT

REMIT is amended so that ACER, under specific circumstances (at least three products delivered in different Member States are affected; or two or more products delivered in different Member States are affected and the legal or natural person carrying out the acts is registered or established in a third Member State or outside the EU), can ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied.

These powers will result in a new set of tasks for the Agency, including all the procedural tasks related to the investigation opening, information gathering (processing of requests of information, oral hearings, and organisation of inspections, ...), information analysis, and preliminary conclusions on infringements (reports).

At the end of 2022, there were 13 cases in stock that would fulfil this criteria (around 3.7% of the total stock of cases), 9 of which notified in 2022. The annual growth rate of the number of new cases that would follow under ACER jurisdiction for the period 2024 to 2026 was estimated at 13.6%/year,

which corresponds to two thirds of the annual growth rate observed between 2017 and 2022 for the same type of cases. Based on these assumptions, the stock of cases that would be ACER jurisdictional can then be estimated as 19 in 2024, 21 in 2025, and 24 in 2026. At the same time, ACER will also have the discretion to investigate the most significant cases among those that fulfil the criteria mentioned above.

Using experience with similar tasks performed by DG COMP, in order to fulfil the subtasks associated with this activity it is estimated that ACER needs 11 additional FTE.

Taking into account possible difficulties in recruiting qualified staff, the in total 19 additional FTE will be phased in from 2025 to 2027.

#### Overhead

Those additional FTE as described above do not include overhead. Applying an overhead ratio of 30%, this means additional 6 FTE, which should take the form of 3 ASTs and 3 AST/SCs preferably to replace interim staff. Those additional FTE are inter alia needed for recruiting the additional staff, hence they are needed from 2025 onwards.

#### **ENER**

Currently less than 0.5 FTE work on REMIT in DG Energy. Given the more prominent role of REMIT against the background of the current energy crisis, workload in ENER has increased, hence around 2 FTE are needed.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

See explanatory memorandum

- 1.5.3. *Lessons learned from similar experiences in the past*

The experience with previous legislative proposals has shown that staffing needs of ACER are easily underestimated. In order to avoid a repeat of the experience with the third internal market package of 2009, where underestimating the staffing needs resulted in structural understaffing (only comprehensively solved starting with the EU budget for 2022), for this proposal staffing needs are estimated for several years into the future.

- 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

This initiative is included in the Commission Work Programme for 2023 as part of the European Green Deal.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

The FTE are needed for additional tasks while existing tasks will not decrease in the foreseeable future. The proposal also provides for extending permanently ACER's power related to the implementation of the LNG benchmark (5 FTE under the LFS accompanying Commission proposal COM(2022)549 of 18.10.2022).

As far as legally possible, additional FTE will be financed by the existing fee scheme for ACER's tasks under REMIT. To this end the proposal extends ACER's fee raising powers to the newly introduced inside information platforms and clarifies that also costs for ACER exercising its enhanced investigation and enforcement powers shall be eligible for being funded by fees. The deletion of the current point (a) of Article 32(1) does not reduce ACER's revenues, since so far no use has been made of this clause, since due to the low number of cases the administrative costs of setting up and implementing a fee scheme would be disproportionate.

Subject to the revision of the fees decision<sup>19</sup>, it is estimated that around  $\frac{2}{3}$  of the additional FTEs would be covered by fees.

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<sup>19</sup> Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to the European Union Agency for the Cooperation of Energy Regulators for collecting, handling, processing and analysing of information reported under Regulation (EU) 1227/2011 of the European Parliament and the Council.

**1.6. Duration and financial impact of the proposal/initiative**

**limited duration**

Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

Financial impact from YYYY to YYYY

**unlimited duration**

Implementation with a start-up period from YYYY to YYYY,  
followed by full-scale operation.

**1.7. Method(s) of budget implementation planned<sup>20</sup>**

**Direct management** by the Commission through

executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

international organisations and their agencies (to be specified);

the EIB and the European Investment Fund;

bodies referred to in Articles 70 and 71;

public law bodies;

bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

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<sup>20</sup> Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

According to its financial regulation, ACER has to provide, in the context of its Programming Document, an annual Work Programme including details on resources, both financial and human, per each of the activities carried out.

ACER reports monthly to DG ENER on budget execution, including commitments, and payments by budget title, and vacancy rates by type of staff.

In addition, DG ENER is directly represented in the governance bodies of ACER. Through its representatives in the Administrative Board, DG ENER will be informed of the use of the budget and the establishment plan at each of its meetings during the year.

Finally, also in line with financial rules, ACER is subject to annual requirements for reporting on activities and the use of resources through the Administrative Board and its Annual Activity Report.

The tasks directly implemented by DG ENER will follow the annual cycle of planning and monitoring, as implemented in the Commission and the executive agencies, including reporting the results through the Annual Activity Report of DG ENER.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

While ACER will have to develop new expertise, it is nevertheless most cost-effective to allocate the new tasks under this proposal to an existing agency which already works on similar tasks.

DG ENER established a control strategy for managing its relations with ACER, part of the 2017 Internal Control Framework of the Commission. ACER revised and adopted its own Internal Control Framework in December 2018.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

Main risk are wrong estimates as regards the workload created by this proposal, given that it introduces new tasks. This risk needs to be accepted, since, as experience has shown, if additional resources needs are not included in the initial proposal, it is very difficult to remedy this situation later on.

That the proposal includes several new tasks mitigates this risk, since while the workload of some future tasks may be underestimated, others may be overestimated, providing scope for possible future redeployment.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The allocation of additional tasks to the existing mandate of ACER is not expected to generate specific additional controls at ACER, therefore, the ratio of control costs over value of funds managed will remain unaltered.

Similarly, the tasks assigned for DG ENER will not result in additional controls or change in the ratio of control costs.

**2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

ACER applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach.

In March 2019 ACER adopted a new Anti-Fraud Strategy, repealing Decision 13/2014 of the Administrative Board of ACER. The new strategy, spanning over a three-year period, is based on the following elements: an annual risks assessment, the prevention and management of conflicts of interest, internal rules on whistleblowing, the policy and procedure for the management of sensitive functions, as well as measures related to ethics and integrity.

DG ENER also adopted a revised Anti-fraud Strategy (AFS) in 2020. The ENER AFS is based on the Commission Anti-fraud Strategy and a specific risk assessment carried out internally to identify the areas most vulnerable to fraud, the controls already in place and the actions necessary to improve DG ENER's capacity to prevent, detect and correct fraud.

Both the ACER Regulation and the contractual provisions applicable to public procurement ensure that audits and on-the-spot checks can be carried out by the Commission services, including OLAF, using the standard provisions recommended by OLAF.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>21</sup>	from EFTA countries <sup>22</sup>	from candidate countries and potential candidates <sup>23</sup>	From other third countries	other assigned revenue
02	02 10 06 and ITER Budget line	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>21</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>22</sup> EFTA: European Free Trade Association.

<sup>23</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	01	[Single Market, Innovation and Digital]
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ACER			Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
Title 1 <sup>24</sup> :	Commitments	(1)		0,684	0,946	1,288				<b>2,918</b>
	Payments	(2)		0,684	0,946	1,288				<b>2,918</b>
Title 2:	Commitments	(1a)								
	Payments	(2a)								
Title 3 <sup>25</sup> :	Commitments	(3a)								
	Payments	(3b)								
<b>TOTAL appropriations for ACER</b>	Commitments	=1+1a +3a		<b>0,684</b>	<b>0,946</b>	<b>1,288</b>				<b>2,918</b>
	Payments	=2+2a +3b		<b>0,684</b>	<b>0,946</b>	<b>1,288</b>				<b>2,918</b>

<sup>24</sup> Expenditure under Title 1 corresponds to staff to be funded under EU Contribution. The remaining two thirds of the staff required should be funded via Fees and Charges.

<sup>25</sup> Expenditure foreseen under Title 3 of EUR 4,2 million over 2025-2027 should be funded via Fees and Charges.



<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’						
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EUR million (to three decimal places)

		Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: ENER									
○ Human Resources			0,342	0,342	0,342				<b>1,026</b>
○ Other administrative expenditure									
<b>TOTAL DG ENER</b>	Appropriations		<b>0,342</b>	<b>0,342</b>	<b>0,342</b>				<b>1,026</b>

<b>TOTAL appropriations under HEADING 7<sup>26</sup> of the multiannual financial framework</b>	(Total commitments = Total payments)		<b>0,342</b>	<b>0,342</b>	<b>0,342</b>				<b>1,026</b>
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EUR million (to three decimal places)

		Year 2024 <sup>27</sup>	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments		1,026	1,288	1,630				<b>3,944</b>
	Payments		1,026	1,288	1,630				<b>3,944</b>

<sup>26</sup> The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>27</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.2.2. *Estimated impact on ACER's appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Amounts in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type 28	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>29</sup> ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
<b>TOTAL COST</b>																		

Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

<sup>28</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>29</sup> As described in point 1.4.2. 'Specific objective(s)...'

### 3.2.3. Estimated impact on ACER's human resources

#### 3.2.3.1. Summary

The proposal/initiative does not require the use of appropriations of an administrative nature

The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)		0,855	1,710	2,565	<b>5,130</b>
Temporary agents (AST grades)		0,513	0,513	0,513	<b>1,539</b>
Temporary agents (AST/SC grades)		0,513	0,513	0,513	<b>1,539</b>
Contract staff		0,091	0,273	0,364	<b>0,728</b>
Seconded National Experts					

<b>TOTAL</b>		<b>1,972</b>	<b>3,009</b>	<b>3,955</b>	<b>8,936</b>
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Staff requirements (FTE):

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)	0	5	10	15	<b>15</b>
Temporary agents (AST grades)	0	3	3	3	<b>3</b>
Temporary agents (AST/SC grades)		3	3	3	<b>3</b>
Contract staff	0	1	3	4	<b>4</b>
Seconded National Experts					

<b>TOTAL</b>		<b>12</b>	<b>19</b>	<b>25</b>	<b>25</b>
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Planned recruitment date for the FTEs is the 1 January of the respective year.

Of which are funded by the EU contribution (FTE)<sup>30</sup>:

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)	0	2	3	5	5
Temporary agents (AST grades)		1	1	1	1
Temporary agents (AST/SC grades)		1	1	1	1
Contract staff			1	1	1
Seconded National Experts					

<b>TOTAL</b>	<b>0</b>	<b>4</b>	<b>6</b>	<b>8</b>	<b>8</b>
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<sup>30</sup> Each year, in accordance with Article 3(1) of Commission Decision (EU) 2020/2152, ACER will identify those costs, including staff costs, which are eligible for funding by fees and present the result in its draft programming document. In accordance with Article 20 of Regulation (EU) 2019/942, the Commission provides an opinion on ACER's draft programming document, including the Agency's proposals as regards which costs are considered as eligible for funding by fees and the scope for thereby reducing the burden on the EU budget.

### 3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)		2	2	2			
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>○ External staff (in Full Time Equivalent unit: FTE)<sup>31</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) <sup>32</sup>	- at Headquarters <sup>33</sup>						
	- in Delegations						
<b>01 01 01 02</b> (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>		<b>2</b>	<b>2</b>	<b>2</b>			

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together, if necessary,

<sup>31</sup> AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

<sup>32</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>33</sup> Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The initiative has been triggered by the current energy crisis and hence was not factored in when the MFF headings were calculated. This specific initiative being new, it will require reprogramming both for the line of the contribution to ACER and the line that will support additional work within DG ENER. To the extent that they cannot be covered by fees, the budgetary impacts on ACER as described in this legislative financial statement will be offset by a compensatory reduction on programmed spending in ITER budget line.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>34</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
<b>TOTAL</b> appropriations co-financed								

<sup>34</sup> See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

### 3.3. Estimated impact on revenue

The proposal/initiative has no financial impact on revenue.

The proposal/initiative has the following financial impact:

on own resources

on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>35</sup>								
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)				
Article .....										

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>35</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.



**COMMISSION IMPLEMENTING REGULATION (EU) 2023/736****of 31 March 2023****on the definition of the technical details of the application of the market correction mechanism to derivatives linked to virtual trading points in the Union other than the TTF**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) 2022/2578 <sup>(1)</sup>, and in particular Article 9(1) thereof,

Whereas:

- (1) Council Regulation (EU) 2022/2578 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (the 'MCM Regulation') sets up a temporary market correction mechanism ('MCM') for orders placed for trading Title Transfer Facility (TTF) derivatives and derivatives linked to other virtual trading points ('VTPs') with maturities between month-ahead and year-ahead. This means that the MCM applies to any commodity derivative, traded on a regulated market, the underlying of which is a transaction in gas in any VTP in the Union.
- (2) Pursuant to Article 1 of the MCM Regulation, the MCM applies to orders placed for trading TTF and derivatives linked to other virtual trading points located in the Union.
- (3) The MCM regulation sets out the technical details of the application of the MCM solely with respect to orders placed for TTF derivatives, and not for orders placed for derivatives linked to other VTPs. This was due to the urgent need to apply the MCM to the TTF derivatives, commonly seen as the standard pricing proxy on European gas markets, and because the application of the MCM to orders for derivatives linked to other VTPs required additional preparation. Therefore, the MCM Regulation empowers the Commission to adopt an implementing act to define the technical details of the application of the MCM to derivatives linked to such other VTPs, namely regarding the occurrence of a market correction event and the application of a dynamic bidding limit with respect to such derivatives. The MCM Regulation also empowers the Commission to exceptionally exclude certain derivatives amongst those linked to other VTPs.
- (4) The definition of the technical details of the application of the MCM to derivatives linked to such other VTPs, as well as the possible exclusion from the scope of application of the MCM of certain derivatives amongst those linked to other VTPs, should be informed by the criteria enshrined in Article 9, paragraph 2 of the MCM Regulation, namely the liquidity and the availability of information on the prices of derivatives linked to other VTPs, and the impact of the extension of the MCM to derivatives linked to other VTPs would have on intra-Union flows of gas and security of supply and on the stability of financial markets. Such definition and possible exclusion should also be informed by the effects assessment reports by ACER and ESMA submitted by 1 March 2023 pursuant to Article 8, paragraph 2, of the MCM Regulation.
- (5) The MCM for TTF derivatives activates when a market correction event occurs, that is, when the front-month TTF derivative settlement price, as published by ICE Endex B.V., exceeds EUR 180/MWh and is EUR 35 higher than the reference price for three working days. The MCM for derivatives linked to other VTPs in the Union should be activated at the same moment, when the same market correction event occurs. This is because of two main reasons. First, if compared to the TTF derivative, many of the derivatives linked to VTPs other than TTF are less liquid. If the MCM activation were to be based on illiquid futures, the mechanism may be vulnerable to manipulation and result in unnecessary activations or delayed activations. Second, if the market correction mechanism was to be activated for some VTPs' derivatives only, trading may shift to derivatives linked to other VTPs which could lead to distortions on Union energy or financial markets, for instance through arbitrage by market participants between

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<sup>(1)</sup> Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices (OJ L 335, 29.12.2022, p. 45).

corrected and non-corrected derivatives, to the detriment of consumers. This assessment is shared by ACER's assessment report, which states that also the MCM for derivatives linked to other VTPs in the Union should be activated based on the front-month TTF derivative settlement price, pursuant to Article 4(1) of the MCM regulation.

- (6) Upon the occurrence of a market correction event, the MCM regulation sets a dynamic bidding limit, according to which market operators should not accept and TTF derivatives market participants should not submit orders for TTF derivatives that are due to expire in the period from the expiry date of the front-month TTF derivative to the expiry date of the front-year TTF derivative with prices of EUR 35/MWh above the reference price published by ACER on the previous day. This dynamic bidding limit is also appropriate for the orders for derivatives linked to other VTPs and does not require modifications. As with the TTF derivatives, a security of supply premium of EUR 35/MWh proxies the average difference between the reference price and the month-ahead futures price for a number of derivatives linked to other VTPs in summer 2022 and this reflects the costs of possible infrastructure congestions in moving gas from LNG terminal to continental Europe in other regions of the Union. Moreover, the application of the same safety ceiling across all VTPs derivatives should limit the risk of trading unduly shifting between VTPs and the risk of distorting the level playing field between different regions within the Union in attracting LNG, which could lead to fragmentation of markets inside the Union. In its assessment report, ACER agrees that the dynamic bidding limit applying to orders for TTF derivatives is also appropriate for the orders for derivatives linked to other VTPs.
- (7) The Commission is of the view that the MCM should apply to all derivatives linked to other VTPs, and that this should be subject to no exception. In their effects assessment reports, ACER and ESMA confirmed the Commission's position, namely that the inclusion of the other VTPs does not lead to significant negative effects on financial or gas markets. Both ACER and ESMA noted that the extension of the MCM to derivatives linked to other VTPs may carry limited additional benefits, that most of those derivatives lack sufficient liquidity, and that some central clearing counterparties ('CCPs') may incur additional costs to change their default management process. However, in view of the implementation of the MCM regulation, both ACER and ESMA concurred with the Commission's conclusion that the application of the MCM to all derivatives linked to other VTPs does not lead to significant negative effects on financial or gas markets. In its assessment and in line with Article 9(2) of the MCM Regulation the Commission has notably analysed the following criteria.
- (8) First, information on the prices of derivatives linked to other VTPs covered by this implementing act is readily available as these derivatives are traded on regulated markets which regularly provide information on prices.
- (9) Second, the lack of liquidity of some derivatives linked to other VTPs does not lead to significant implementation problems in practice, as the Commission has deliberately chosen the highly liquid TTF month-ahead futures as a trigger for the activation of the MCM for other VTPs.
- (10) Third, the extension to the derivatives linked to other hubs is unlikely to have any significantly negative impact on security of supply. This is because the main instrument to prevent security of supply problems, the 'premium' included in the bidding limit (top up vis-à-vis LNG market prices, or 'safety ceiling', as referred to in recital 19 of the MCM Regulation) will apply to *all* derivatives and ensure that the MCM does not impair the Union's ability to attract LNG. The extension is also unlikely to have any significantly negative impact on intra-EU gas flows because of the temporary application of the MCM and the fact that the gas flows within the Union are the outcome of a complex set of positions that result not only from derivative contracts, but also from many other impacts, which are not influenced by the MCM, such as long-term supply commitments, short-term and spot trades, and transactions concluded over-the-counter.

- (11) Finally, no significant impact on the stability of financial markets is expected from the MCM extension, because more than 90 % of natural gas derivatives traded on regulated markets in the Union are TTF derivatives. Regarding the potential additional costs that some CCPs may face to change their default management process, ESMA noted that at the time of the publication of its effects assessment report, no CCP has provided information that significant changes may be required because of the MCM regulation.
- (12) In light of the above, the Commission concludes that no derivative linked to other VTPs should be exceptionally excluded from the scope of the MCM application.
- (13) In order to preserve the sound functioning of derivatives markets and to allow market participants to adequately manage their risk exposures, it is of paramount importance that this Regulation does not interfere with contracts concluded before the entry into application of this Regulation. For the same reason, market participants should be able to effectively offset positions in derivatives linked to other VTPs opened before the application of this Regulation. Therefore, the dynamic bidding limit should not apply to contracts entered into before the entry into force of this Regulation, nor to trades that allow market participants to offset or reduce positions resulting from contracts in derivatives linked to other VTPs concluded before the entry into force of this Regulation. Moreover, CCPs play a key role in assuring the orderly functioning of markets for TTF derivatives by mitigating counterparty risk. It is equally important to ensure that the extension of the mechanism to other VTPs does not put CCPs clearing the relevant instruments at risk in case of default of a clearing member. Those CCPs should therefore be able to implement default management processes without being subject to the bidding limit. To that end, the dynamic bidding limit should not apply to trades executed as part of a default management process organised by a CCP.
- (14) There is no conceivable reason not to apply other design features of the MCM to derivatives linked to other VTPs. This includes the rules disciplining the suspension of the MCM. It should be noted that, pursuant to Article 4(8), in case of concrete indications that a market correction event is imminent, the activation of the MCM should be suspended if this would cause unintended market disturbances. Equally, pursuant to Article 6, the MCM should be suspended at any time if the dynamic safety ceiling were to lead to serious market disturbances, affecting the security of supply, the mandatory demand reduction targets, or the stability and orderly functioning of energy derivative markets, the intra-Union flows of gas, the differences between gas market prices within the Union or versus other areas in the world substantially, or the validity of existing gas supply contracts. The assessment of unintended market disturbances should consider the impact on the European market as a whole and also specifically on each VTP to which the MCM applies; in case of such unintended market disturbance, the suspension decision would apply according to Article 6 of the MCM Regulation.
- (15) The volatile and unpredictable situation of the natural gas market makes it important to ensure that the MCM can be applied to derivatives linked to other VTPs as soon as possible, if the conditions justifying its activation are met. Therefore, the technical details of the application of the MCM to derivatives linked to other VTPs should be defined by 31 March 2023. However, in order to provide the companies operating the VTPs in the Union other than the TTF with the time to make the necessary adjustments, this implementing act should apply only from 1 May 2023.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the MCM Committee,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Scope**

This Regulation defines the technical details of the application of the market correction mechanism to derivatives linked to virtual trading points ('VTPs') in the Union other than the Title Transfer Facility (TTF) Virtual Trading Point in accordance with Article 9(1) of Regulation (EU) 2022/2578.

*Article 2***Definitions**

For the purpose of this Regulation, the definitions in Article 2 of Regulation (EU) 2022/2578 apply.

The following definitions also apply:

- (1) 'front-month derivative linked to other VTPs' means a derivative linked to other VTPs whose expiration date is the nearest among the derivatives with a one-month maturity traded on a given regulated market;
- (2) 'front-year derivative linked to other VTPs' means a derivative linked to other VTPs whose expiration date is the nearest among the derivatives with 12 months' maturity traded on a given regulated market.

*Article 3***Application of the MCM to other VTPs**

This Regulation applies to orders placed for trading derivatives linked to VTPs located in the Union, other than TTF.

*Article 4***Market correction event in relation to other VTPs in the Union**

1. A market correction event related to derivatives linked to other VTPs shall occur when the conditions defined in Article 4(1) of Regulation (EU) 2022/2578 are met.
2. The dynamic bidding limit pursuant to Article 4 paragraphs (5) and (7) of the MCM Regulation shall apply to derivatives linked to other VTPs that are due to expire in the period from the expiry date of the front-month derivatives to the expiry date of the front-year derivatives.
3. Market operators on the market for derivatives linked to other VTPs and market participants in such derivatives shall monitor the website of ACER on a daily basis.

*Article 5***Suspension and deactivation of the MCM in relation to derivatives linked to other VTP**

This suspension and deactivation of the MCM with respect to derivatives linked to other VTPs shall take place in accordance with Article 5 and 6 of the MCM Regulation.

*Article 6***Grandfathering**

This Regulation shall not apply to the following:

- (a) contracts for derivatives linked to other VTPs concluded before the date of entry into force of this Regulation;
- (b) buying and selling of derivatives linked to other VTPs in order to offset or reduce contracts for derivatives linked to other VTPs concluded before the date of entry into force of this Regulation;
- (c) buying and selling of contracts for derivatives linked to other VTP as part of a CCP default management procedure, including OTC trades registered in the regulated market for clearing purposes.

*Article 7***Entry into force**

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

It shall apply from 1 May 2023.

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

Done at Brussels, 31 March 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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