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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design - Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 14 March 2023, the Commission presented a proposal for the Regulation to improve the Union's electricity market design (EMD Regulation), together with the Regulation to improve the Union's protection against market manipulation in the wholesale energy market (REMIT Regulation). The EMD Regulation amends the Electricity Directive 2019/944 and the Electricity Regulation 2019/943, together with targeted changes in the Renewables Directive 2018/2001 and the ACER Regulation 2019/942.

2. The EMD proposal follows the very high prices and volatility in the electricity markets observed in 2021 and 2022, and is based on three pillars – to protect consumers, to enhance stability and predictability of the costs of energy and thereby contribute to the competitiveness of the EU economy, and to boost new energy investment.

3. The European Council on 23 March and 26-27 October 2023 called on the co-legislators to reach a prompt agreement on the reform of the Electricity Market Design adoption by the end of 2023.

4. In the European Parliament, the Committee on Industry, Research and Energy (ITRE) is the leader for the file. The rapporteur is MEP Nicolas Gonzalez Casares (S&D, Spain). The Parliament adopted its report on the EMD Regulation in Plenary on 14 September 2023.

5. The European Economic and Social Committee adopted its opinion on the EMD Regulation on 14 June 2023, while the European Committee of the Regions adopted its opinion on 6 July 2023.

II. INTERINSTITUTIONAL NEGOTATIONS - STATE OF PLAY

1. The TTE (Energy) Council on 17 October 2023 agreed on a General Approach on the above-mentioned EMD Regulation proposal. The first interinstitutional trilogue took place on 19 October 2023 and subsequently, a second trilogue was held on 16 November. In addition to the trilogues, intense discussions have taken place at technical meetings.

2. The third (and last) trilogue was held on 13 December 2023 and a provisional agreement was reached between the co-legislators, resulting in the final compromise text as set out in the Annexes to this note. The discussion between the Council and the Parliament focused on the remaining political issues, mainly: Direct price support schemes in the form of two-way contracts for difference (CfDs) (Article 19b Electricity Regulation 2019/943); Protection from disconnection for vulnerable customers (Article 28a Electricity Directive 2019/944); Declaration of an electricity price crisis (Article 66a Electricity Directive 2019/944); Capacity renumeration mechanisms (CRMs) (Article 21, 22, 64 and 69 Electricity Regulation 2019/943); and Power Purchase Agreements (PPAs) (Article 19a Electricity Regulation 2019/943).

3. Since the third trilogue, work has continued at technical level between the Parliament and the Presidency to adapt the texts to the political agreement, resulting in the final compromise texts as set out in the Annexes to this note.

III. MAIN ELEMENTS OF THE COMPROMISE

1. For reasons of legal certainty and clarity, Articles 2 and 3 of the proposed Electricity Market Regulation, which amend Directives (EU) 2018/2001 and (EU) 2019/944, have been split from that Regulation and are now a self-standing Directive, in line with the General Approach. This is a legal and technical adjustment which does not affect the substantial provisions of the proposals.

2. On the **key political issues**, the provisional agreements are the following:

   (a) Direct price support schemes in the form of two-way Contracts for Difference (CfDs) (Article 19b Electricity Regulation 2019/943). The Presidency and the European Parliament maintained the core elements of the General Approach. The agreed compromise keeps CfDs as mandatory only for investments in new power-generating facilities. The scope of direct price support schemes has been broadened with the inclusion of a reference to "equivalent schemes with the same effects", while the design criteria have been maintained as in the General Approach.

(b) **Capacity renumeration mechanisms (CRMs) (Articles 21, 22, 64 and 69 Electricity Regulation 2019/943).** The Presidency managed to keep the essence from the General Approach making capacity mechanisms a structural element of the electricity market design and envisaging the streamlining of procedures based on the proposals to be presented by the Commission. Concerning the derogation from the CO2 emissions limit for existing capacity mechanisms, the compromise proposal maintains the text from the General Approach, with an assessment and autorhization by the Commission, adding that the request for the derogation shall be accompanied by a report containing and assessment of the impact of the derogation in terms of greenhouse gas emissions and a plan to procure the necessary replacement capacity in line with the indicative national trajectory for the overall share of renewable energy, among other aspects.

(c) **Power Purchase Agreements (PPAs) (Article 19a Electricity Regulation 2019/943).** The agreement forsees a balanced approach for the uptake of PPAs by preserving the technological neutrality while simultaneously underlining the role of renewables. References to the promotion of PPAs protecting competition and liquididy of electricity markets have been complemented with a cross-border dimension. In addition, guarantee schemes for PPAs backed by 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. Member States may decide to limit those guarantee schemes to the exclusive support of the purchase of new renewable generation.

(d) **Protection from disconnection for vulnerable customers (Article 28a Electricity Directive 2019/944).** Member States shall ensure that vulnerable and energy poor customers are fully protected from electricity disconnections by taking the appropriate measures, including the prohibition of disconnections or other equivalent actions. The agreement ensures enough flexibility for Member States and includes a catalogue of possible measures with the aim to avoid consumer's disconnections. The definition of energy poverty is incorporated in the electricity framework with a reference to the new Energy Efficiency Directive 2023/1791.

(e) **Declaration of an electricity price crisis (Article 66a Electricity Directive 2019/944).** The Article establishes that the Council, based on a proposal from the Commisison, may decide on the declaration of an electricity price crisis. The Commission will make this proposal when the conditions are met, namely a high average wholesale electricity prices with a minimum threshold of 180 Euros per Megawatt hour, or an increase in retail prices in the range of 70%. Once a crisis has been declared, Member States would be able to apply price interventions targeting households, including vulnerable and energy poor customers, and Small and Medium Enterprises.

(f) **Energy Sharing (Article 15a Electricity Directive 2019/944).** The right to participate in energy sharing shall apply to Small and Medium Enterprises (SMEs) and households, within the same bidding zone or a more limited geographical area as determined by the Member State. Member States may decide to apply this right also to large electricity customers. The conditions to apply the right to share energy, and the roles and responsibilities of the parties involved are set, including with regard to the energy sharing organizer that active customers may appoint as third party to facilitate their right to share energy. A general obligation to make the electricity shared by projects owned by public authorities accessible to vulnerable and poor customers is included, with a margin of manoeuvre for its application by Member States at national level to promote that the amount of this accessible energy is at least 10% on average of the energy shared.

(g) **Day ahead, intraday and forward markets (Articles 7, 8, 9 and 59 Electricity Regulation 2019/943).** According to Article 7, Transmission system operators (TSOs) and nominated market operators (NEMOs) shall jointly organise the management of the integrated day-ahead and intraday markets and shall cooperate at Union level or at a regional level in order to maximise the efficiency and effectiveness of Union electricity day-ahead and intraday trading. Different governance options are envisaged in the scope of the corresponding network codes in Article 59. According to Article 8, from 1 January 2026, the intraday cross-zonal gate closure time shall not be more than 30 minutes ahead of real time, with possible derogations subject to a justification by the TSOs and authorization by the national regulatory authorities (NRAs). Article 9 establishes that within 18 months from the entry into force of this amending Regulation, the Commission shall assess the impact of possible measures to achieve the objective of Union's forward market comprising the necessary tools to improve the ability of market participants to hedge price risks in the internal electricity market.

(h) **Flexibility provisions (Articles 19c-19f of Electricity Regulation 2019/943).** The regulatory authority, or another authority or entity designated by a Member State, shall adopt a report on the estimated needs for flexibility for a period of at least the next 5 to 10 years at national level. This exercise has to be carried out every two years based on the information provided by electricity transmission and distribution system operators. ACER shall issue a report analysing them and providing recommendations on issues of cross-border relevance. In addition, Member States will establish one single indicative target at national level for non-fossil flexibility allowing for different types or resources, with a focus on the contributions by demand response and energy storage. The Commission may draw up a Union strategy on demand response and energy storage that is consistent with the Union's 2030 targets for energy and climate. Finally, Member States may design support schemes for non-fossil flexibility resources to achieve their targets.

(i) **Derogations (Article 64 Electricity Regulation 2019/943)**. The final compromise reflects targeted derogations for the Baltic countries and Cyprus.

(j) Revision clause (Article 69 in Electricity Regulation 2019/943 and Article 60 Electricity Directive 2019/944): By 30 June 2026, the Commission shall review the Electricity Regulation and submit a comprehensive report on the basis of that review, accompanied by a legislative proposal where appropriate. Elements to be assessed include the effectiveness of the structure and functioning of short-term electricity markets, as well as their potential inefficiencies and possible remedies and tools to be applied in crisis or emergency situations. The Electricity Directive will be reviewed in December 2025.

IV. CONCLUSIONS

1. The Permanent Representatives Committee is invited to:

a) confirm the agreement on the final compromise texts as set out in the Annexes to this note, in view of reaching an agreement at first reading with the European Parliament;

b) authorise the Presidency to inform the European Parliament that, should the European Parliament adopt its positions at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the texts contained in the Annexes to this note (subject to revision by the lawyer linguists of both institutions), the Council will, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's positions at first reading and the acts shall be adopted in the wording which corresponds to the European Parliament's positions.

ANNEX I

2023/0077 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Very high prices and volatility in electricity markets have been observed since September 2021. As set out by the European Agency for the Cooperation of Energy Regulators ('ACER') in its April 2022 assessment of EU wholesale electricity market design[1], this is mainly a consequence of the high price of gas, which is used as an input to generate electricity.

(2) The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, and related international sanctions since February 2022 have ***led to a gas crisis,*** disrupted global energy markets, exacerbated the problem of high gas prices, and have had significant knock-on impacts on electricity prices. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity. ***The reduced availability of several nuclear reactors and the low hydropower output further amplified the increase in electricity prices.***

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

(3) In response to this situation, the ***Commission presented in October 2021 the*** Communication ***entitled "Tackling rising*** energy prices***: a toolbox for action and support" which*** contained a toolbox of measures that the ***Union*** and its Member States may use to address the immediate impact of high energy prices on households and businesses**,** including income support, tax breaks, ***energy*** savings and storage measures [redacted] and to strengthen resilience against future price shocks. In its Communication of 8 March 2022 entitled 'REPowerEU: Joint European Action for more affordable, secure and sustainable energy'[2]**,** the Commission outlined a series of additional measures to strengthen the toolbox and to respond to rising energy prices. On 23 March 2022, the Commission also established a temporary State Aid regime to allow certain subsidies to soften the impact of high energy prices.[3]

(4) On 18 May 2022 the Commission presented the REPowerEU plan[4] that introduced additional measures focusing on energy savings, diversification of energy supplies**,** ***increased energy efficiency target*** and accelerated roll-out of renewable energy aiming at ending the Union's dependency on Russian fossil fuels, including a proposal to increase the Union's 2030 target for renewables to 45%. Furthermore, the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design[5], in addition to setting out additional short-term measures to tackle high energy prices**,** identified potential areas for improving the electricity market design and announced the intention to assess these areas with a view to ***changing*** the legislative framework.

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

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

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

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

(5) ***In order*** to address urgently the price crisis and security concerns and to tackle the price hikes for citizens, ***the Union adopted several legal acts, such as Regulation (EU) 2022/1032 of the European Parliament and of the Council[6] establishing*** a strong gas storage regime[7]***, Council Regulation (EU) 2022/1369[8] providing*** effective demand reduction measures for gas and electricity[9]***, Council Regulation (EU) 2022/1854[10] establishing*** price limiting regimes to avoid windfall profits in both gas and electricity markets[11] ***and Council Regulation (EU) 2022/2577[12] establishing*** measures to accelerate the permit-granting procedures for renewable energy installations[13].

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6 ***Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (Text with EEA relevance), OJ L 173OJ L 173, 30.6.2022, p17.***

7 ***Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 2612022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (Text with EEA relevance), OJ L 173***

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

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

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

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

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

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

(6) A well-integrated ***energy*** market which builds on the Clean energy for all Europeans package[14] adopted in 2018 and 2019[15] ***("Clean Energy Package")*** should allow the Union to reap the economic benefits of a single energy market in ***all*** circumstances, ensuring security of supply and sustaining the decarbonisation process ***to achieve the climate neutrality objective***. Cross-border interconnectivity also ensures ***a*** safer, more reliable and efficient operation of the power system***, and better resilience to short-term price shocks***.

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[14] ***Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, (OJ L 328, 21.12.2018, p. 1 1); Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p. 82); Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, (OJ L 328, 21.12.2018, p. 210); Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast), OJ L 158, 14.6.2019, p. 22); Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 125).***

[15] ***Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ L 328, 21.12.2018, p. 1; Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p. 82; Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, OJ L 328, 21.12.2018, p. 210; Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast), OJ L 158, 14.6.2019, p. 22; Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54; Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 125.***

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

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

(9) In the context of the energy crisis, the current electricity market design has revealed a number of shortcomings ***and unexpected consequences*** linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.

(10) A faster deployment of renewable energy and clean flexible technologies constitutes the most sustainable and cost-effective way of structurally reducing the demand for fossil fuels for electricity generation and for direct consumption through electrification and energy system integration. Thanks to their low operational costs, renewable sources can positively impact electricity prices across the Union and reduce consumption of fossil fuels.

(11) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, including the most vulnerable ones, and ultimately, shield them from energy crises and avoid more households falling into ***an*** energy poverty trap. ***Those changes*** should mitigate the impact of high fossil fuel prices, notably that of gas, on electricity prices, aiming to allow households and companies to reap the benefits of affordable and secure energy from sustainable renewable and low carbon sources in the longer term***, as well as the role of energy efficient solutions in reducing overall energy costs, which may reduce the need for power grid and generation capacity expansion***.

(12) The reform of the electricity market design should ***aim to achieve affordable and competitive electricity prices for all consumers. As such, it should*** benefit not ***only*** household consumers but also the competitiveness of the Union's industries by facilitating their possibilities to make the clean tech investments they require to meet their net zero transition paths. The energy transition in the Union needs to be supported by a strong clean technology manufacturing basis. These reforms will support the affordable electrification of industry and the Union's position as a global leader in terms of research and innovation in clean energy technologies.

(13) Well-functioning and efficient short-term markets are a key tool for the integration of renewable energy and flexibility sources in the market and facilitate energy system integration in a cost-effective manner.

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

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

(16) In addition, the short-term electricity markets should ensure that small-scale flexibility service providers can participate by lowering the minimum bid size.

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

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

(18) In order to be able to actively participate in the electricity markets and to provide their flexibility, consumers are progressively equipped with smart metering systems. However, in a number of Member States the roll-out of smart metering systems is still slow ***so it is imperative that Member States improve the conditions for the installation of smart metering systems, with the objective of reaching a full coverage as soon as possible. However, transmission and distribution system operators, and relevant market participants including independent aggregators should be able to use, upon customer consent, the data from dedicated measurement devices, in accordance with article 23 and 24 of Directive (EU) 2019/944 and relevant Union legislation, including data protection and privacy law, in particular Regulation (EU) 2016/679. In addition, only*** in those instances where smart metering systems are not yet installed and in instances where smart metering systems do not provide for the sufficient level of data granularity, transmission and distribution system operators***, upon customer consent, should*** use data from dedicated ***measurement*** devices for the observability and settlement of flexibility services such as demand response and energy storage. Enabling the use of data from dedicated ***measurement*** devices for observability and settlement should facilitate the active participation of the consumers in the market and the development of their demand response. The use of data from these dedicated ***measurement*** devices should be accompanied by quality requirements relating to the data.

(19) This Regulation establishes a legal basis for ***the*** processing of personal data in ***accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council***[16]. Member States should ensure that all personal data protection principles and obligations laid down in ***Regulation (EU) 2016/679*** are met, including on data minimisation. Where the objective of this ***Regulation*** can be achieved without processing of personal data, ***data controllers*** should rely on anonymised and aggregated data.

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

(20) Consumers and suppliers need effective and efficient forward markets to cover their long-term price exposure and decrease the dependence on short-term prices. To ensure that energy customers all over the ***Union are able to*** fully benefit from the advantages of integrated electricity markets and competition across the Union, the ***Commission*** should ***assess the impact of measures to improve the functioning of the Union's electricity forward market such as the frequency of allocation, the maturity and the nature of long-term transmission rights, ways to strengthen the secondary market and the possible introduction of regional virtual hubs***.

(21) The part of the assessment related to the possible establishment of regional virtual hubs should, among other, cover the implications regarding pre-existing intergovernmental agreements related to cross-border joint ownership of power plants. If introduced, virtual hubs would reflect the aggregated price of multiple bidding zones and provide a reference price, which should be used by market operators to offer forward hedging products. To that extent, virtual hubs should not be understood as entities arranging or executing transactions. The regional virtual hubs, by providing a reference price index, would enable the pooling of liquidity and provide additional hedging opportunities to market participants.

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

▌

(22) To enhance the possibilities of market participants for hedging, the role of the single allocation platform established in accordance with Commission Regulation (EU) 2016/1719 should be expanded. The single allocation platform should ***act as an entity offering*** allocation ***and facilitating trading of financial*** long-term transmission rights ***on behalf of the transmission system operators between the different bidding zones and, where relevant, the regional virtual hubs***.

(23) Network tariffs should incentivise transmission and distribution system operators to use flexibility services through further developing innovative solutions to optimise the existing grid and to procure flexibility services, in particular demand response or storage. For this purpose, network tariffs should be designed so as to take into account the operational and capital expenditures of system operators or an efficient combination of both so that they can operate the electricity system cost-efficiently. ***The requirement for cost-reflectiveness should not restrict the opportunity to redistribute costs efficiently in cases where locational- or time-variant network charges are applied.*** This would further contribute to integrating renewables at the least cost for the electricity system and enable final customers to value their flexibility solutions. ***Regulatory authorities will play a central role in ensuring that sufficient investment is provided for the necessary grid development, expansion and reinforcement. Regulatory authorities should promote public acceptance and the use of anticipatory investments, encouraging the acceleration of grid development to meet the accelerated deployment of renewable generation, including where appropriate in designated renewables acceleration areas, and smart electrified demand.***

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

their critical network elements, pursuant to the capacity calculation rules in Article 16 (8) of Regulation (EU) 2019/943, the costs of compensation should ***be shared proportionately between these transmission system operators in line with the polluter-pays principle. In addition, any compensation not covered by this proportionate sharing may be divided between the relevant parties in the Member States involved in*** the offshore ***hybrid*** project ***as part of their cost sharing arrangements***. This compensation should ***not result in overcompensation and is intended to balance the reduced revenues of offshore renewable electricity generation plant operators due to reduced access to interconnected markets. It should*** only be related to the production capability available to the market, which may be weather dependent and excludes the outage and maintenance operations of the offshore project. The ***compensation in case of lack of access to the transmission network should not be interpreted as constituting priority dispatch and should be aligned with the principles of non-discrimination and maximisation of cross-border capacities for trade in Article 16 of Regulation (EU) 2019/943. Moreover, there should not be double-compensation for the same risk covered under this provision, for example if the risk is already covered under a contract for difference, or other relevant support scheme. Details of this compensation mechanism and the methodology for the implementation to be developed*** including the conditions under which the measure may expire, ***such as the existence of enough demand within the offshore bidding zone (e.g. a large electrolyser) or direct access to a sufficient number of markets for the risk to disappear,*** are intended to be ***further elaborated*** in an implementing ***act including where relevant through amendments to Commission*** Regulation ***(EU) 2015/1222***.

(25) In the day-ahead wholesale market, the power plants with lower marginal costs are dispatched first, but the price received by all market participants is set by the last plant needed to cover the demand, which is the plant with the highest marginal costs, when the markets clear. In this context, the energy crisis has shown that a surge in the price of gas and hard coal can translate into exceptional and lasting increases of the prices at which the gas and coal-fired generation facilities bid in the day-ahead wholesale market. That in turn has led to exceptionally high prices in the day-ahead market across the Union, as gas and coal-fired generation facilities are often the plants with the highest marginal costs needed to meet the demand for electricity.

(26) Given the role of the price in the day-ahead market as a reference for the price in other wholesale electricity markets, and the fact that all market participants receive the clearing price, the technologies with significantly lower marginal costs have consistently recorded high revenues.

(27) To reach the Union's decarbonisation targets and the objectives set out in REPowerEU to become more energy independent, the Union needs to accelerate the deployment of renewables at a much faster pace. In view of the investment needs required to achieve these goals, the market should ensure that a long-term price signal is established.

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

(29) ***In accordance with*** Directive (EU) 2018/2001 of the European Parliament and of the Council[1], Member States are to assess the regulatory and administrative barriers to long-term renewables PPAs, and ***to*** remove unjustified barriers ***and disproportionate and discriminatory procedures and charges***, and promote the uptake of, such agreements. In addition, Member States are to describe policies and measures facilitating the uptake of renewables PPAs in their integrated national energy and climate plans. Without prejudice to that obligation to report on the regulatory context affecting the PPA market, Member States should ensure that instruments to reduce the financial risks associated to the buyer defaulting on its long-term payment obligations in the framework of PPAs are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty***. Member States should be able to*** decide to set up a guarantee scheme at market prices ***if private guarantees are not accessible or insufficiently accessible. In that case,*** Member States should include provisions to avoid lowering the liquidity in the electricity markets, such as by using financial PPAs. Member States ***could decide to facilitate the aggregation of demand for PPAs from customers that individually face barriers to entry to the PPA market, but collectively should be able to provide an attractive offer for PPAs to producers. Member States*** should not provide support to PPAs that purchase generation from fossil fuels. ***Member States should be able to limit guarantee schemes they back to the exclusive support of new renewable generation, in line with their decarbonisation policies, in particular where the market for renewables PPAs is not sufficiently developed.*** While the default approach should be non-discrimination between consumers, Member States could decide to target these instruments to specific categories of consumers, applying objective and non-discriminatory criteria. In this framework, Member States should ***ensure appropriate coordination, including with facilities*** provided at Union level, for instance by the European Investment Bank ('EIB').

(30) Member States have at their disposal several instruments to support the development of PPA markets when designing and allocating public support. Allowing renewable energy project developers participating in a public support tender to reserve a share of the generation for sale through a PPA would contribute to nurture and grow PPA markets. In addition, as part of these tenders' evaluation Member States should endeavour to apply criteria to incentivise the access to the PPA market for actors that face entry barriers, such as small and medium-sized enterprises ('SMEs'), giving preference to bidders presenting a ***signed PPA or a*** commitment to sign a PPA for part of the project's generation from one or several potential buyers that face difficulties to access the PPA market.

(31) To contribute to the transparency and development of PPA markets in the EU, ACER should publish an annual assessment on those markets, assess the need to develop and issue standard contracts for PPAs for voluntary use and develop them if the assessment concludes there is such a need.

(32) Member States should pay particular attention to cross-border PPAs and remove unjustified barriers specifically related to them, allowing consumers in Member States with limited capacity to access power generated in other regions without discrimination.

(33) When, based on the related assessment, the Commission concludes that Member States require support in the removal of barriers in PPA markets, it should issue a guidance. The main focus of such guidance should be the removal of barriers preventing the expansion of PPA markets, including cross-border PPAs. Such barriers could take many forms, including regulatory barriers, and in particular disproportionate or discriminatory procedures or charges, the role of guarantees of origin or the treatment of PPAs in the access of offtakers or potential offtakers to financing solutions.

(34) Regulation (EU) 2018/1999 provides for the use of the Union renewable energy financing mechanism as a tool to facilitate the achievement of the Union's binding target of renewable energy in 2030. According to Directive (EU) 2023/2413, Member States should collectively endeavour to increase the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 to 45 % in addition to the binding EU level target of 42.5 %. Therefore, the Commission should assess whether measures at Union level could contribute to the achievement of the additional 2.5 % share, complementing national measures. In this context, the Commission should analyse the possibility to use the Union renewable energy financing mechanism to organise EU-level renewable energy auctions in line with the relevant regulatory framework.

(35) Where Member States decide to support publicly financed investments ***by*** "direct price support schemes" ▌ in ***new*** low carbon, non-fossil fuel electricity ***generation-facilities*** to achieve the Union's decarbonisation objectives, those schemes should be structured by way of two-way contracts for difference ***or equivalent schemes with the same effects*** such as to include, in addition to a revenue guarantee, an upward limitation of the market revenues of the generation assets concerned. ***Whereas the obligation pursuant to this Regulation*** should ***only apply to support for*** investments in new power generating facilities, ***Member States should be able to decide to grant support schemes in the form of two-way contracts for difference or equivalent schemes with the same effects also for new*** investments aimed at ***substantially repowering*** existing power ***generation*** facilities**,** or at ***substantially increasing their capacity or*** prolonging their lifetime.

(36) To ensure legal certainty and predictability, the obligation to structure direct support schemes by means of two-way contracts for difference or equivalent schemes with the same effects should only apply to contracts under direct price support schemes for investments in new power generating facilities concluded as of three years after the date of entry into force of this Regulation. That transitional period should be five years for offshore hybrid assets connected to two or more bidding zones due to the complexity of such projects.

(37) The participation of market participants in direct price support schemes in the form of two-way contracts for difference or equivalent schemes with the same effects should be voluntary.

(38) The obligation to use two-way contracts for difference or equivalent schemes with the same effects is without prejudice to Article 6(1) of Directive (EU) 2018/2001.

(39) While ***Directive [XXX EMD] amends Article 4(3) second subparagraph of the Directive (EU) 2018/2001, the remaining provisions of Article 4 of Directive (EU) 2018/2001, which sets out design principles for the support schemes for energy from renewable sources, remain fully applicable.***

(40) ▌Two-way contracts for difference ***or equivalent schemes with the same effects*** would ensure that revenues of producers stemming from new investments in electricity generation which benefit from public support become more independent from the volatile prices of fossil fuels-based generation which typically sets the price in the day-ahead market.

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

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

(43) In view of the need to provide regulatory certainty ***for the*** producers, the obligation for Member States to apply direct price support schemes for the production of electricity in the form of two-way contracts for difference ***or equivalent schemes with the same effects*** should apply only to investments ***in new*** electricity ***generation-facilities*** from the sources specified in the recital above.

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

(45) Furthermore, Member States should ensure that the direct price support schemes, or equivalent schemes with the same effects, irrespective of their form, do not undermine the efficient, competitive and liquid functioning of the electricity markets, preserving the incentives of producers to react to market signals, including stop generating when electricity prices are below their operational costs, and of final customers to reduce consumption when electricity prices are high. Member States should ensure that support schemes do not constitute a barrier for the development of commercial contracts such as PPAs.

(46) Thus, two-way contracts for difference ***or equivalent schemes with the same effects*** and power purchase agreements play complementary roles in advancing the energy transition and bringing the benefits of renewables and low carbon energy to consumers. Subject to the requirements set out in ***this*** Regulation, Member States should be free to decide which instruments they use to achieve their decarbonisation objectives. Through PPAs, private investors contribute to additional renewable and low carbon energy deployment while locking low and stable electricity prices over the long-term. Likewise, through two-way contracts for difference ***or equivalent schemes with the same effects***, the same objective is achieved by public entities on behalf of consumers. Both instruments are necessary to achieve the Union's decarbonisation targets through renewable and low carbon energy deployment, while bringing forward the benefits of low-cost electricity generation for consumers.

(47) The accelerated deployment of renewables necessitates a growing availability of flexibility solutions to ensure their integration to the grid and to enable the electricity system and grid to adjust to the variability of electricity generation and consumption across different time horizons. ***In order to foster non-fossil flexibility,*** regulatory authorities***, or other authorities or entities designated by a Member State,*** should periodically assess the need for flexibility ***at national level*** in the electricity system based on the input of transmission and distribution system operators ***and on a common European methodology subject to public consultation and approved by ACER***. The assessment of the flexibility needs of the electricity system should take into account all existing and planned investments (including existing assets that are not yet connected to the grid) on sources of flexibility such as flexible electricity generation, interconnectors, demand ▌ response, energy storage or the production of renewable fuels, in view of the need to decarbonise the energy system. ***ACER should periodically assess the national reports and draw up a report at Union level providing recommendations on issues of cross-border relevance. On the*** basis ***of the national flexibility assessment***, Member States should define ***an indicative*** national objective for non-fossil flexibility***, including the respective specific contributions of both*** demand side response and ***energy*** storage ***to that objective,*** which should also be reflected in their integrated national energy and climate plans ***in accordance with Regulation (EU) 2018/1999 of the European Parliament and of the Council[1]. In light of those plans, the Commission should be able to draw up a Union strategy on demand response and energy storage that is consistent with the Union's 2030 targets for energy and climate. It should be possible for the Commission to accompany the Union strategy, where appropriate, by a legislative proposal***.

(48) To achieve the ***indicative*** national objective for non-fossil flexibility***, including the respective specific contributions of demand*** response and ***energy*** storage***, and where flexibility*** needs ***are not being addressed by the removal of market barriers and existing investments***, Member States ***should be able to apply non-fossil flexibility support schemes consisting of payments for the available*** capacity ***of non-fossil flexibility. Furthermore, Member States that already apply a capacity mechanism should consider to promote the participation of non-fossil flexibility such as demand response and energy storage by redesigning criteria or features without prejudice to the application of Article 22 of Regulation (EU) 2019/943***. Member States that ***already*** apply a capacity mechanism ***should also be able to apply non-fossil flexibility support schemes if these are necessary to achieve the indicative national objective for non-fossil flexibility, in particular while adapting their capacity mechanisms to further*** promote the participation of non-fossil flexibility such as demand ▌ response and storage***. These schemes should cover new investments in non-fossil flexibility, including investments on existing assets, including those aimed at further developing demand response flexibility***.

(49) To support environmental protection objectives the ***CO_2*** 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_2*** 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[17] which encourage Member States to introduce green criteria in capacity mechanisms.

▌

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

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

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

(52) Furthermore, to tackle the problem of lengthy reply times on requests for connection to the grid, transmission system operators should provide clear and transparent information to system users about the status and treatment of their connection requests. Transmission system operators should ▌ provide such information within a period of three months from the submission of the request ***and update it on a regular basis and at least quarterly***.

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

(54) The transitional periods for Estonia, Latvia and Lithuania should phase out as soon as possible after the synchronisation, and be used to develop the appropriate markets instruments offering short-term balancing reserves and other indispensable ancillary services, and should be limited to the time necessary for this process.

(55) The Baltic States are foreseen to be synchronized with the continental Europe synchronous area by one double circuit line connecting Poland and Lithuania. Upon synchronization, the capacity of this line will have to be, in large part, kept for reliability margins in a case of unexpected outage in the Baltic System and resulting unintended deviations. Transmission system operators should continue offering maximum capacity for cross-border trading, compliant with operational security limits and considering possible contingencies in the Polish and Lithuanian systems, including those resulting from outages of HVDC lines or disconnection of the Baltic States from the continental Europe synchronous area. The specific situation of this interconnection should be taken into consideration for the calculation of the total capacity and contingencies pursuant to Article 16(8) of Regulation (EU) 2019/943.

(56) Capacity mechanisms should be open to the participation of all resources that are capable of providing the required technical performance, which may include gas-fired power plants, provided they satisfy the emission limit in Article 22(4) as well as any national emissions threshold or other objective environmental criteria which Member States may wish to apply to hasten the transition away from fossil fuels.

(57) To support environmental protection objectives, Article 22(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council sets out requirements regarding CO_2 emission limits for capacity mechanisms. However, during their transition to a carbon-free system and in the aftermath to the energy crisis, Member States applying capacity mechanisms which were approved before the entry into force of Regulation (EU) 2019/943, can exceptionally derogate, and as a last resort mechanism, from this CO_2 emission limit for a limited period of time. Such derogation should however be limited to existing generation capacity that started commercial production before 4 July 2019, i.e. before the entry into force of the Clean Energy Package. The request for derogation should be accompanied by a report from the Member State concerned, which should assess the impact of the derogation in terms of greenhouse gas emissions and on the energy transition. Such report should also contain a plan with milestones to transition away from the participation of generation capacity that does not meet the CO_2 emission limits in capacity mechanisms. Upon the granting of the derogation, Member States should be allowed to organise procurement processes which meet all the requirements in Chapter IV of Regulation (EU) 2019/943 of the European Parliament and of the Council, except for those regarding CO_2 emission limits. Generation capacity that does not meet the CO_2 emission limits should not be procured for a period longer than one year and for a delivery period which do not exceed the duration of the derogation. The additional procurement process open to participation of generation capacity that does not meet the CO_2 emission limits should be preceded by a procurement process aimed at maximizing the participation of capacity that meets the CO_2 emission limits, including by letting capacity prices rising high enough to incentivise investments in such capacity.

(58) The Commission should review this regulation in order to ensure the resilience of the electricity market design in times of crisis and its ability to support the Union's decarbonisation objectives, further enhance market integration and promote the necessary infrastructure investments as well as the development of a PPA market. On the basis of such review, the Commission should submit a comprehensive report to the European Parliament and to the Council and may adopt a legislative proposal, where appropriate. In the report, the Commission should assess, in particular, the effectiveness of the structure and functioning of short-term electricity markets, as well as their potential inefficiencies and possible remedies and tools to be applied in crisis or Emergency situations and the suitability of Union legal and financial framework on distribution grids. The report should also cover the ability to deliver on the Union's renewable and internal energy market objectives; and the potential and viability of the establishment of one or several Union market platforms for PPAs.

(59) The measures envisaged by ***this*** Regulation are also without prejudice to the application of Directive 2014/65/EU ***of the European Parliament and of the Council***[1], Regulation (EU) 2016/1011 ***of the European Parliament and of the Council*** [2]and Regulation (EU) 648/2012 ***of the European Parliament and of the Council***[3].

(60) ***To the extent that any of the measures envisaged by this Regulation constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU. The Commission is competent to assess the compatibility of State aid with the internal market.***

(61) Since the objectives of this Regulation, namely to improve the design of the integrated electricity market, in particular to prevent unduly high electricity prices, cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

ANNEX II

2023/0077(COD)

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Very high prices and volatility in electricity markets have been observed since September 2021. As set out by the European Agency for the Cooperation of Energy Regulators ('ACER') in its April 2022 assessment of EU wholesale electricity market design[18], this is mainly a consequence of the high price of gas, which is used as an input to generate electricity.

(2) The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, and related international sanctions since February 2022 have ***led to a gas crisis,*** disrupted global energy markets, exacerbated the problem of high gas prices, and have had significant knock-on impacts on electricity prices. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity. ***The reduced availability of several nuclear reactors and the low hydropower output further amplified the increase in electricity prices.***

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

(3) In response to this situation, the ***Commission presented in October 2021 the*** Communication ***entitled "Tackling rising*** energy prices***: a toolbox for action and support" which*** contained a toolbox of measures that the ***Union*** and its Member States should be able to use to address the immediate impact of high energy prices on households and businesses**,** including income support, tax breaks, ***energy*** savings and storage measures [redacted] and to strengthen resilience against future price shocks. In its Communication of 8 March 2022 entitled 'REPowerEU: Joint European Action for more affordable, secure and sustainable energy'[19]**,** the Commission outlined a series of additional measures to strengthen the toolbox and to respond to rising energy prices. On 23 March 2022, the Commission also established a temporary State Aid regime to allow certain subsidies to soften the impact of high energy prices.[20]

(4) On 18 May 2022 the Commission presented the REPowerEU plan[21] that introduced additional measures focusing on energy savings, diversification of energy supplies**,** ***increased energy efficiency target*** and accelerated roll-out of renewable energy aiming at ending the Union's dependency on Russian fossil fuels, including a proposal to increase the Union's 2030 target for renewables to 45%. Furthermore, the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design[22], in addition to setting out additional short-term measures to tackle high energy prices**,** identified potential areas for improving the electricity market design and announced the intention to assess these areas with a view to ***changing*** the legislative framework.

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

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

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

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

(5) ***In order*** to address urgently the price crisis and security concerns and to tackle the price hikes for citizens, ***the Union adopted several legal acts, such as Regulation (EU) 2022/1032 of the European Parliament and of the Council[23] establishing*** a strong gas storage regime[24]***, Council Regulation (EU) 2022/1369[25] providing*** effective demand reduction measures for gas and electricity[26]***, Council Regulation (EU) 2022/1854[27] establishing*** price limiting regimes to avoid windfall profits in both gas and electricity markets[28] ***and Council Regulation (EU) 2022/2577[29] establishing*** measures to accelerate the permit-granting procedures for renewable energy installations[30].

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23 ***Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (Text with EEA relevance), OJ L 173OJ L 173, 30.6.2022, p17.***

24 ***[redacted]***

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

26 ***[redacted]***

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

28 ***[redacted]***

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

30 ***[redacted]***

(6) A well-integrated ***energy*** market which builds on the Clean energy for all Europeans package[31] adopted in 2018 and 2019[32] ***("Clean Energy Package")*** should allow the Union to reap the economic benefits of a single energy market in ***all*** circumstances, ensuring security of supply and sustaining the decarbonisation process ***to achieve the climate neutrality objective***. Cross-border interconnectivity also ensures ***a*** safer, more reliable and efficient operation of the power system***, and better resilience to short-term price shocks***.

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

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31 ***Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, (OJ L 328, 21.12.2018, p. 1 1); Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p. 82); Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, (OJ L 328, 21.12.2018, p. 210); Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast), OJ L 158, 14.6.2019, p. 22); Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 54); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast), OJ L 158, 14.6.2019, p. 125).***

32 ***[redacted].***

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

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

(9) In the context of the energy crisis, the current electricity market design has ▌ revealed a number of ▌ shortcomings ***and unexpected consequences*** linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.

(10) A faster deployment of renewable energy and clean flexible technologies constitutes the most sustainable and cost-effective way of structurally reducing the demand for fossil fuels for electricity generation and for direct consumption through electrification and energy system integration. Thanks to their low operational costs, renewable sources can positively impact electricity prices across the Union and reduce ▌ consumption of fossil fuels.

(11) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, including the most vulnerable ones, and ultimately, shield them from energy crises and avoid more households falling into ***an*** energy poverty trap. ***Those changes*** should mitigate the impact of high fossil fuel prices, notably that of gas, on electricity prices, aiming to allow households and companies to reap the benefits of affordable and secure energy from sustainable renewable and low carbon sources in the longer term***, as well as the role of energy efficient solutions in reducing overall energy costs, which may reduce the need for power grid and generation capacity expansion***.

(12) The reform of the electricity market design should ***aim to achieve affordable and competitive electricity prices for all consumers. As such, it should*** benefit not ***only*** household consumers but also the competitiveness of the Union's industries by facilitating their possibilities to make the clean tech investments they require to meet their net zero transition paths. The energy transition in the Union needs to be supported by a strong clean technology manufacturing basis. These reforms will support the affordable electrification of industry and the Union's position as a global leader in terms of research and innovation in clean energy technologies.

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

(14) Furthermore, to tackle the problem of lengthy reply times on requests for connection to the grid, transmission and distribution system operators should provide clear and transparent information to system users about the status and treatment of their connection requests. Transmission and distribution system operators should ▌ provide such information within a period of three months from the submission of the request ***and update it on a regular basis and at least quarterly***.

(15) In areas where electricity grids have limited or no network capacity, network users requesting grid connection should be able to benefit from establishing a flexible, non-firm, connection agreement. A flexible connection agreement should be able to, for example, take into account energy storage or limit the times in which a generation power plant can inject electricity to the grid or the capacity that can be exported, enabling its partial connection. System operators should offer the possibility of establishing flexible connection agreements in such areas. Regulatory authorities should develop frameworks for system operators to establish such flexible connections, ensuring that network reinforcements that provide the structural solutions are prioritised, connection agreements are made firm as soon as the networks are ready, flexible connections are enabled as a permanent solution for areas where network reinforcement is not efficient and, to the extent possible, give visibility to the network users requesting grid connection on the expected curtailment levels under the flexible connection agreement.

(16) During the energy crisis, consumers have been exposed to extremely volatile wholesale energy prices and had limited opportunities to engage in the energy market. Consequently, many households, have been facing ***financial*** difficulties ***and have been unable to pay*** their bills. Vulnerable consumers and the energy poor are the hardest hit[33], but middle-income households have also been exposed to such difficulties. ***High energy prices could also have a negative impact on consumer health, well-being and overall quality of life.*** It is therefore important to update consumer rights and protections, allowing consumers to benefit from the energy transition, decouple their electricity bills from short term price movements on energy markets and rebalance the risk between suppliers and consumers.

(17) Consumers should have access to a wide range of offers so that they can choose a contract according to their needs. However, suppliers have reduced their offers, fixed-price contracts have become scarce, and the choice of offers has become limited. Consumers should always have the possibility to opt for an affordable fixed price and fixed term ***electricity supply*** contract and suppliers should not unilaterally modify the terms and conditions ***of a contract or terminate it*** before such contract expires. ***This does not change the fact that dynamic price contracts remain essential and that an increasing penetration of renewable energy sources can help consumers to reduce their energy bills. Member States should be able to exempt suppliers with more than 200 000 final customers who only offer dynamic price contracts from the obligation to offer fixed price and fixed term electricity supply contracts, provided that this does not have a negative impact on competition and retains sufficient choice of fixed price and fixed term contracts.***

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

(18) When suppliers' do not ensure that their electricity portfolio is sufficiently hedged changes in wholesale electricity prices can leave them financially at risk and, result in their failure, passing on costs to consumers and other network users. Hence, it should be ensured that suppliers are appropriately hedged when offering fixed price contracts. An appropriate hedging strategy should take into account the suppliers' access to its own generation and its capitalisation as well as its exposure to changes in wholesale market prices, ***the size of the supplier or the market structure. The existence of appropriate hedging strategies can be ensured by general rules overseen without undertaking a specific review of the positions or strategies of individual suppliers. Stress tests and reporting requirements on suppliers could be tools used to assess supplier hedging strategies***.

(19) Consumers should be able to choose the supplier which offers them the price and service which best suits their needs. Advances in metering and sub-metering technology combined with information and communication technology mean that it is now technically possible to have multiple suppliers for a single premises ▌ If they ***wish to do so***, customers should be able to use these possibilities to choose a separate supplier ***in particular*** for electricity to power appliances such as heat pumps or electric vehicles which have a particularly high consumption or which also have the capability to shift their electricity consumption automatically in response to price signals. ***For this purpose, customers should be allowed to have more than one metering and billing point covered by the single connection point for their premises allowing different appliances to be metered and supplied separately. Metering points should be clearly distinguished from each other and should comply with applicable technical rules. The rules for the allocation of the associated costs should be determined at national level. Some smart*** metering ***systems should be able to directly cover more than one metering point and therefore enable customers to have more than one electricity supply contract at the same time. Suppliers should have balancing responsibility only for metering and billing points to*** which ***they supply. Moreover, through the facilitation of dedicated measurement solutions,*** attached to or embedded in appliances with flexible, controllable loads, final customers can participate in other incentive-based demand response schemes that provide flexibility services on the electricity market and to transmission and distribution system operators. Overall, such arrangements should ***facilitate energy sharing,*** contribute to the increased uptake of demand response and to consumer empowerment allowing ***customers*** to have more control over their energy use

and bills, while providing to the electricity system additional flexibility in order to cope with demand and supply fluctuations.

(20) Due to the increasing complexity of energy offers and different marketing practices, consumers have often difficulties to fully understand what they sign up to. In particular, there is a lack of clarity on how the price is set, the conditions for the renewal of the contract, the consequences of terminating a contract or the reasons for changing conditions by the supplier. Therefore, the key information on energy offers should be provided to consumers by suppliers or market participants engaged in aggregation in a short and easily understandable manner prior to signing the contract.

(21) To ensure continuity of supply for consumers ***particularly in cases*** of supplier failure, Member States should ***implement a supplier-of-last-resort regime. It should be possible*** to appoint ***the supplier*** of last resort ***either before or at the moment of supplier failure. Such a supplier of last resort*** may be treated as ***a*** provider of universal service. ***A*** supplier ***of last resort*** might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of ▌ Directive (EU) 2019/944 of the European Parliament and of the Council[34]. However, this does not imply an obligation of Member States to supply at a certain fixed minimum price. ***Where a Member State obliges a supplier of last resort to supply electricity to a customer who does not receive market based offers, the conditions of Article 5 apply, and this obligation can only involve a regulated price to the extent that customer is entitled to benefit from regulated prices. When assessing whether offers received by non-household customers were market-based, Member States should take into account the individual commercial and technical circumstances. Where, before the entry into force of this Directive, a Member State has already appointed a supplier of last resort through a fair, transparent and non-discriminatory procedure, it is not necessary to run a new procedure for appointing the supplier of last resort.***

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

(22) Energy sharing can create resilience against the effects of high and volatile wholesale market prices on consumers' energy bills, empowers a wider group of consumers that do not otherwise have the option of becoming an active customer due to financial or spatial constraints, such as energy poor and vulnerable consumers, and leads to increased uptake of renewable energy by mobilising additional private capital investments and diversifying remuneration pathways. With the integration of appropriate price signals and storage facilities, electricity sharing can help lay the foundation to help tap into the flexibility potential of smaller consumers. ***The provisions on energy sharing complement the provisions concerning self-consumption in Article 21 of Directive (EU) 2018/2001 and Article 15 of this Directive, notably with respect to collective self-consumption.***

(23) Active customers that own, lease or rent a storage or generation facility should have the right to share excess production ***at a price or free of charge*** and empower other consumers to become active, or to share the renewable energy generated or stored by jointly leased, rented or owned facilities, ***of up to 6 MW capacity,*** either directly or through a third-party facilitator.

In the case of customers participating in energy sharing schemes larger that small and medium enterprises, the size of the installed capacity of the generation facility associated to the energy sharing scheme should be of a maximum of 6 MW and the energy sharing should take place within a local or limited geographic area, as defined by the Member States.

Any payment for sharing of excess production for a price can either be settled directly between active customers or automated through a peer-to-peer trading platform. Energy sharing arrangement are either based on private contractual agreement between active customers or organised through a legal entity. A legal entity that incorporates the criteria of a renewable energy community as defined in Directive (EU) 2018/2001 ▌ or a citizen energy community as defined in Directive (EU) 2019/944 ▌ could share with their members electricity generated from facilities they have in full ownership. The protection and empowerment framework for energy sharing should pay particular attention to energy poor and vulnerable consumers.

(24) Energy sharing operationalises the collective consumption of self-generated or stored electricity injected into the ***public*** grid by more than one jointly acting active customers. Member States should put in place the appropriate IT infrastructure to allow for the administrative matching within a certain timeframe of ***customer's total metered*** consumption with self-generated or stored renewable energy ***which is deducted from the total consumption*** for the purpose of calculating the energy component of the energy bill ***issued by the customer's supplier and thereby reducing the customer's bill***. The output of these facilities should be distributed among the aggregated consumer load profiles based on static, variable or dynamic calculation methods that can be pre-defined or agreed upon by the active customers. ***Active customers engaged in energy sharing are financially responsible for the imbalances they cause. This should be without prejudice to the possibility for active customers to delegate their balancing responsibilities to other market participants. All consumer rights and obligations set out in this Directive apply to final customers involved in energy sharing schemes. However, households with an installed capacity up to 10.8 kW for single households and up to 50 kW for multi-apartment blocks should not be required to comply with the obligations of suppliers. Member States should be able to adjust these thresholds to reflect national circumstances, up to 30kW for single households and to between 40kW and 100 kW for multi-apartment blocks.***

(25) Plug-in mini-solar systems could, together with other systems and technologies, contribute to the increased uptake of renewable energy and citizen engagement in the energy transition. Member States should be able to promote these systems easing administrative and technical burdens. Regulatory authorities should be able to set the network tariffs for the injection of electricity coming from plug-in mini-solar system or methodology for calculating those tariffs. Depending on the situation in a Member State, it would be possible for these to be very low or even zero, while being cost-reflective, transparent and non-discriminatory.

(26) Vulnerable customers ***and those affected by energy poverty*** should be adequately protected from electricity disconnections and should, as well, not be put in a position that forces them to disconnect. ***Member States should therefore ensure that vulnerable and energy poor customers are fully protected from electricity disconnections, by taking the appropriate measures, including the prohibition of disconnections or other equivalent actions.*** The role of suppliers and all relevant national authorities to identify appropriate measures, in both the short and the long-term, which should be made available to vulnerable customers ***and those affected by energy poverty*** to manage their energy use and costs remain essential, including by means of close cooperation with social security systems. ***There are multiple tools and good practices available to Member States which include, but are not limited to, year-round or seasonal disconnection prohibitions, debt prevention and sustainable solutions to support customers in hardship paying for their energy bills.***

(27) Consumers have the right to use through complaint procedures managed by their suppliers as well as out of court dispute resolution procedures, in order to see their rights enforced effectively and not be disadvantaged in case of disagreement with suppliers, notably regarding bills or the amount due. Where customers use these procedures, suppliers should not terminate contracts on the basis of the facts which are still in dispute. Both suppliers and customers should continue to meet their contractual rights and obligations, notably to supply electricity and to pay for that electricity and complaint procedures should not become the ground for abuses allowing customers not to honor their contractual obligations, including paying their bills. Member States should put in place appropriate measures to avoid that these complaint or dispute resolution procedures are used in a distorted way.

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

(29) Member States should be able to provide support , in compliance with Articles 107 and 108 TFEU, for additional electricity costs of industrial consumers in times of electricity crisis and exceptionally severe increases of prices.

(30) Since Estonia, Latvia and Lithuania are not yet synchronised with the European electricity system, they face very specific challenges when organising balancing markets and the market-based procurement of ancillary services. While synchronisation is well underway, one of the critical prerequisites for stable synchronous system operation is the availability of sufficient balancing capacity reserves for frequency regulation. However, being dependent on the Russian synchronous area for frequency management, the Baltic countries were not yet in the position to develop an own functioning balancing market. The Russian war of aggression against Ukraine has substantially increased the risk for security of supply resulting from the absence of own balancing markets. Estonia, Latvia and Lithuania should therefore be exempted from the requirements of certain provisions of Article 40(4) and 54(2) of Directive (EU) 944/2019 insofar as this is necessary to ensure system security for a transitional period.The transitional periods for Estonia, Latvia and Lithuania should phase out as soon as possible after the synchronisation, and be used to develop the appropriate markets instruments offering short-term balancing reserves and other indispensable ancillary services, and should be limited to the time necessary for this process.

(31) Considering that the Cypriot transmission system is not connected to any Member State, Cyprus faces very specific challenges when organising balancing markets and the market-based procurement of ancillary services. Cyprus should be exempted from the requirements of Article 40 (4) and 54 (2) of Directive (EU) 944/2019 insofar as this is necessary to ensure system security for a transitional period, namely until the Cypriot transmission system is connected to other Member States via interconnectors.

(32) This Directive establishes a legal basis for ***the*** processing of personal data in ***accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council***[35]. Member States should ensure that all personal data protection principles and obligations laid down in ***Regulation (EU) 2016/679*** are met, including on data minimisation. Where the objective of this Directive can be achieved without processing of personal data, ***data controllers*** should rely on anonymised and aggregated data.

(33) To the extent that any of the measures envisaged by this Directive constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU. The Commission is competent to assess the compatibility of State aid with the internal market.

(34) Directive (EU) 2019/944 of the European Parliament and of the Council and Directive (EU) 2018/2001 of the European Parliament and of the Council should be amended accordingly.

(35) Since the objectives of this Directive, namely to improve the design of the integrated electricity market, in particular to prevent unduly high electricity prices, cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

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