



Council of the
European Union

Brussels, 16 October 2023
(OR. en)

14084/23

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

**ENER 541
ENV 1112
CLIMA 467
COMPET 983
CONSOM 360
FISC 225
CODEC 1839**

NOTE

From: General Secretariat of the Council
To: Council

No. Cion doc.: 7440/23 + ADD1

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
- General approach

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), and the Regulation to improve the Union's protection against market manipulation in the wholesale energy market (REMIT Regulation).

2. These proposals follow the very high prices and volatility in the electricity markets observed in 2021 and 2022, and are 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 2023 invited the co-legislators to take work forward without delay on the proposed revision of the EU’s internal electricity market design with a view to ensuring its adoption by the end of 2023.

II. STATE OF PLAY

1. On 19 June, the TTE (Energy) Council discussed the 5th revision (REV5) of the Regulation to improve the Union’s electricity market design (EMD) and the Regulation to improve the Union’s protection against market manipulation in the wholesale energy market (REMIT), as set out in documents 10605/23 and 10606/23 with the aim to reach a General Approach on both files ahead of the negotiations with the European Parliament.
2. During the meeting, a General Approach was agreed on REMIT. However, regarding EMD Regulation, Member States highlighted a few issues which needed further consultations and redrafting, specifically on contracts for difference (CfDs) and the possible derogation from CO2 emission limits when applying capacity mechanisms (CRMs). On 30 June, Coreper examined a new compromise proposal. While some progress was made, Member States underlined the need for further work.
3. As already stated in document ST 10607/23, 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, will be split from that Regulation and become a self-standing Directive. This is a legal and technical adjustment which does not affect the substantial provisions of the proposals.

4. The Spanish Presidency has continued the work of the previous Presidency, starting with a first discussion in the Energy Working Party on 6 July. The Presidency has been working on the two remaining issues in the EMD Regulation, namely CfDs and the possible derogation from CO2 emission limits when CRMs, and has been listening to all Member States' perspectives on how best to proceed in order to reach an agreement.
5. On 26 July, the Presidency asked Member States to focus on two-way CfDs in Article 19b, in particular in the case of those CfDs for new investments for the generation of electricity aimed at lifetime extensions, where there was a clear and urgent need to find the right balance regarding the distribution of revenues and the design principle of these CfDs. The Presidency requested delegations to share their written proposals in relation to Article 19b in the EMD Regulation by 1 September and discussed their contributions in the Energy Working Party meeting on 5 September.
6. Based on the comments and contributions received from the Member States, the Presidency circulated a new wording proposal on Article 19b (CfDs), in order to strike a balance between the different positions. This text was discussed in the Energy Working Party meetings on 14 and 19 September.
7. The agenda of the TTE (Energy) Council taking place on 17 October 2023 includes the Regulation to improve the Union's electricity market design (EMD Regulation), with the aim to reach a General Approach.
8. As a first step to prepare the discussion for the TTE (Energy) Council, the Presidency asked the Permanent Representatives Committee for further political guidance to resolve essential issues on Article 19b on its meeting on 4 October, as set out in document ST 12674/23.

9. Consequently, the Presidency decided to issue a new revision of the text (REV6), as set out in document ST 13771/23, that was discussed in the Permanent Representatives Committee meeting on 13 October, with a particular focus on Article 19b of the Electricity Regulation 2019/943 as amended by the EMD Regulation. After the orientation provided by the Committee, the Presidency has prepared a new revision of the text (REV7).

III. WORK WITHIN THE EUROPEAN PARLIAMENT AND OTHER UNION BODIES

1. In the European Parliament, the Committee on Industry, Research and Energy (ITRE) is the leader for the file. The Parliament adopted its report in Plenary on the EMD on 14 September.
2. The European Economic and Social Committee adopted its opinion on EMD on 14 June, while the European Committee of the Regions adopted its opinion on EMD on 6 July 2023.

IV. MAIN ELEMENTS OF THE PRESIDENCY COMPROMISE PROPOSAL FOR THE DISCUSSION IN COUNCIL

1. The main elements in REV7 compared to document ST 13771/23 (REV6) and ST 10606/23 (REV5) are the following:
 - a) Article 19b of Regulation 2019/943, on contracts for differences (CfDs):
 - Paragraph 1 keeps the focus of its scope on direct price support schemes for investments in new power-generating facilities.
 - Paragraph 1a contains provisions on design criteria for CfDs related to: 1) the effect of the support scheme on the operation of generating facilities and participation in the electricity market; 2) the level of remuneration; and 3) the interplay with competition in the internal market.

- The aspects related to the distribution of revenues from CfDs are regulated in paragraph 3, which has been simplified. References to distribution of revenues to undertakings were removed from the text.
- b) In article 64 of the Electricity Regulation 2019/943, the new paragraph 2c and a corresponding recital 53f are added in relation to a possibility for an exceptional derogation from Article 22(4)(b) of the Electricity Regulation with regard to capacity mechanisms approved by the Commission before the entry into force of this regulation. This derogation is subject to an authorization from the Commission and to the compliance with Articles 107 and 108 TFEU, provided that some conditions are fulfilled. In particular, a derogation has to be restricted to the amount of capacity that is needed to solve the adequacy concern and the Commission will assess the impact of the derogation request in terms of greenhouse gas emissions. The derogation may be applied until 31 December 2028.
- c) In Article 66a of Directive 2019/944, the paragraph whereby Member States may apply, without prejudice to Articles 107 and 108 TFEU, a cap on market revenues from inframarginal generators subject to the same conditions as those set out in Articles 6 to 8 and Article 10 of Council Regulation (EU) 2022/1854 remains. Such a revenue cap may be applied until 30 June 2024.
- d) Recitals:
- A new recital 29a on Power Purchase Agreements (PPAs) was added, highlighting that 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.
 - In recital 40a, it has been added that capacity mechanisms can play an important role in ensuring resource adequacy for insufficiently interconnected energy systems.

- In recital 53g, the new text adds that capacity mechanisms should be open to the participation of all resources that are capable of providing the required technical performance, including gas-fired power plants, provided that they satisfy the emission limit in 22(4).
- A recital 53a in relation to the inframarginal revenue cap regulated in article 66a of Directive 2019/944 was added.

V. CONCLUSIONS

1. In light of the above, the Council is invited to agree on a General approach in the TTE (Energy) Council meeting on 17 October, on the basis of the text set out in document ST 14085/23.
2. This general approach will serve as the Council's mandate for negotiations with the European Parliament in the context of the ordinary legislative procedure.
