



Council of the
European Union

Brussels, 13 October 2023
(OR. en)

14085/23

LIMITE

ENER 542
ENV 1113
CLIMA 468
COMPET 984
CONSOM 361
FISC 226
CODEC 1840

Interinstitutional File:
2023/0077(COD)

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/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

Delegations will find in the annex the seventh revision of the above-mentioned proposal, as prepared by the Presidency (REV7).

New text is **bold underline**, and deletions are ~~strikethrough~~, both without grey shading.

Deletions that appeared in doc. 8106/23 ("REV 1"), in doc. 8918/23 ("REV 2"), in doc. 9021/23 ("REV 3"), in doc. 10009/23 ("REV 4"), in doc. 10606/23 ("REV 5") and in doc. 13771/23 ("REV 6") are marked in ~~strikethrough and strikethrough~~.

New text that appeared in doc. 8106/23 ("REV 1") in doc. 8918/23 ("REV 2"), in doc. 9021/23 ("REV 3"), in doc. 10009/23 ("REV 4"), in doc. 10606/23 ("REV 5") and in doc. 13771/23 ("REV 6") is marked with **bold**.

2023/0077 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design

(Text with EEA relevance)

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,

Whereas¹:

¹ Recitals not yet adapted to fact that Articles 2 and 3 will be split from this amending Regulation and become a self-standing Directive to amend Directives (EU) 2018/2001 and (EU) 2019/944.

- (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 design², this is mainly a consequence of the high price of gas, which is used as an input to generate electricity.
- (2) The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, and related international sanctions since February 2022 have disrupted global energy markets, exacerbated the problem of high gas prices, and have had significant knock-on impacts on electricity prices. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity.

² 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 ~~on Energy Prices presented by the Commission in October 2021~~ contained a toolbox of measures that the ~~EU~~**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, gas savings and storage measures) and to strengthen resilience against future price shocks. In its Communication of 8 March 2022 entitled ‘REPowerEU: Joint European Action for more affordable, secure and sustainable energy’³, 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.⁴

³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM/2022/108 final

⁴ 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) On 18 May 2022 the Commission presented the REPowerEU plan⁵ that introduced additional measures focusing on energy savings, diversification of energy supplies and accelerated roll-out of renewable energy aiming at ending the Union's dependency on Russian fossil fuels, including a proposal to increase the Union's 2030 target for renewables to 45%. Furthermore, the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design⁶, 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.

⁵ 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.

⁶ 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~~ to address urgently the price crisis and security concerns and to tackle the price hikes for citizens, ~~and based on a series of Commission proposals~~, the Union adopted **several legal acts, such as Regulation (EU) 2022/1032 of the European Parliament and of the Council⁷ establishing a strong gas storage regime⁸, Council Regulation (EU) 2022/1369⁹ providing effective demand reduction measures for gas and electricity¹⁰, Council Regulation (EU) 2022/1854¹¹ establishing price limiting regimes to avoid windfall profits in both gas and electricity markets¹² and Council Regulation (EU) 2022/2577¹³ establishing measures to accelerate the permit-granting procedures for renewable energy installations¹⁴.**

⁷ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173, 30.6.2022, p. 17)

⁸ ~~Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (Text with EEA relevance), OJ L 173~~

⁹ 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, p. 1)

¹⁰ ~~Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261~~

¹¹ 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)

¹² ~~Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261.~~

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, p.36).

¹⁴ ~~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 ~~P~~package¹⁵ adopted in 2018 and 2019¹⁶ ("**Clean Energy Package**") should allow the Union to reap the economic benefits of a single energy market in normal market circumstances, ensuring security of supply and sustaining the decarbonisation process. Cross-border interconnectivity also ensures a safer, more reliable and efficient operation of the power system.

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 (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 (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 (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 (OJ L 158, 14.6.2019, p. 125).

¹⁶ ~~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) The current electricity market design has also helped the emergence of new and innovative products, services and measures on retail electricity markets, supporting energy efficiency and renewable energy uptake and enhancing choice so as to help consumers reduce their energy bills also through small-scale generation installations and emerging services for providing demand response. Building on and seizing the potential of the digitalisation of the energy system, such as active participation by consumers, should be a key element of our future electricity markets and systems. At the same time, there is a need to respect consumer choices and allow consumers to benefit from a variety of contract offers.
- (8) **However,** ~~in~~ the context of the energy crisis, the current electricity market design has ~~however~~ also revealed a number of important shortcomings linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.
- (9) A faster deployment of renewable energy and clean flexible technologies constitutes the most sustainable and cost-effective way of structurally reducing the demand for fossil fuels for electricity generation and for direct consumption through electrification and energy system integration. Thanks to their low operational costs, renewable sources can positively impact electricity prices across the Union and reduce direct consumption of fossil fuels.

- (10) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, including the most vulnerable ones, and ultimately, shield them from energy crises and avoid more households falling into **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.
- (11) The reform of the electricity market design should benefit not just household consumers but also the competitiveness of the Union's industries by facilitating their possibilities to make the clean tech investments they require to meet their net zero transition paths. The energy transition in the Union needs to be supported by a strong clean technology manufacturing basis. These reforms will support the affordable electrification of industry and the Union's position as a global leader in terms of research and innovation in clean energy technologies.
- (12) Well-functioning and efficient short-term markets are a key tool for the integration of renewable energy and flexibility sources in the market and facilitate energy system integration in a cost-effective manner.

- (13) Intraday markets are particularly important for the integration of variable renewable energy sources in the electricity system at the least cost as they give the possibility to market participants to trade shortages or surplus of electricity closer to the time of delivery. Since variable renewable energy generators are only able to accurately estimate their production close 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 case this change creates security of supply risks, 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.**

- (14) 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 ~~side~~ 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 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 similar 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 or any right over a NEMO and to undertakings that are directly or indirectly controlled by a NEMO.** Furthermore, the gate closure time of the intraday market should be set closer to the time of delivery to maximize the opportunities for market participants to trade shortages and surplus of electricity and contribute to better integrating variable renewables in the electricity system.
- (15) In addition, the short-term electricity markets should ensure that small-scale flexibility service providers can participate by lowering the minimum bid size.

- (16) To ensure the efficient integration of electricity generated from variable renewable energy sources and to reduce the need for fossil-fuel based electricity generation in **situations of electricity price crisis** ~~times when there is high demand for electricity combined with low levels of electricity generation from variable renewable energy sources~~, it should be possible for transmission system operators to design a peak shaving product enabling **additional** -demand response **in order** to contribute to decreasing ~~peaks of~~ consumption in the electricity system ~~at specific hours of the day~~. **In addition**, As such the peak shaving product should, in addition to contributing to lowering wholesale electricity prices, contribute to ~~ensuring security of supply during an electricity price crisis~~. ~~The peak shaving product should contribute to maximize the integration of electricity produced from renewable sources into the system by shifting the electricity consumption to moments of the day with higher renewable electricity generation~~. As the peak shaving product aims to reduce and shift the electricity consumption, the scope of this product should be limited to demand-side response. **As the peak shaving product is intended to ~~only~~ be applied only in limited situations of electricity price crisis**, its ~~The procurement of the peak shaving product should~~ may take place up to one week ahead ~~on a short notice so as to avoid booking of~~ releasing additional demand response capacities. ~~that could otherwise participate in wholesale electricity markets in normal conditions. Its activation should be limited in time to limit distortive effects on the electricity market. The procurement of the peak shaving product should in particular avoid any impact on the day-ahead price, and its activation should in such a way that it does not overlap with the activation of balancing products which aim at maintaining the frequency of the electricity system stable.~~ Transmission system operators should be able to activate the peak shaving product based on the forecast of the demand. Alternatively, it should be possible for the peak shaving product ~~could~~ to be activated automatically within the day-ahead market, based on the energy price committed during the procurement of the demand reduction capacity. In order to verify volumes of activated demand reduction, the transmission system operator should use a baseline reflecting the expected electricity consumption without the activation of the peak shaving product.

- (17) In order to be able to actively participate in the electricity markets and to provide their flexibility, consumers are progressively equipped with smart metering systems. However, in a number of Member States the roll-out of smart metering systems is still slow. In those instances where smart metering systems are not yet installed and in instances where smart metering systems do not provide for the sufficient level of data granularity, transmission and distribution system operators should be able to use data from dedicated **measurementmetering** devices for the observability and settlement of flexibility services such as demand response and energy storage. Enabling the use of data from dedicated **measurementmetering** 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 **measurementmetering** devices should be accompanied by quality requirements relating to the data.
- (18) 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**¹⁷~~compliance with Article 6(1)(e) GDPR~~. Member States should ensure that all personal data protection principles and obligations laid down in **Regulation (EU) 2016/679** ~~the GDPR~~ are met, including on data minimisation. Where the objective of this Directive can be achieved without processing of personal data, ~~providers~~ **data controllers** should rely on anonymised and aggregated data.

¹⁷ **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).**

- (19) Consumers and suppliers need effective and efficient forward markets to cover their long-term price exposure and decrease the dependence on short-term prices. To ensure that energy customers all over the ~~EU~~**Union are able to**~~can~~ fully benefit from the advantages of integrated electricity markets and competition across the Union, the functioning of the Union's electricity forward market should be improved via the establishment of regional virtual hubs with a view to overcome the existing market fragmentation and the low liquidity experienced in many bidding zones. Regional virtual hubs should cover multiple bidding zones while ensuring an adequate price correlation. Some bidding zones may not be covered by a **regional** virtual hub in terms of contributing to the hub reference price. However, market participants from these bidding zones should still be able to hedge through a hub.

(19b) -In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission~~the Commission should make use of the implementing powers conferred in accordance with Article 291 TFEU in Regulation (EU) 2019/943~~ to set out detailed rules on the design of the Union's electricity forward market as regards the establishment of regional virtual hubs. To ensure synergies with the existing regulatory framework, the conferral of implementing powers in Article 59 of Regulation (EU) 2019/943 of the European Parliament and of the Council ¹⁸ should be extended to cover also the aspects necessary for the establishment of virtual hubs. Before exercising those implementing powers ~~adapting that implementing act~~, the Commission should carry out an impact assessment. Where relevant, the impact assessment should take into account the implications of the establishment of regional virtual hubs as regards pre-existing intergovernmental agreements related to cross-border joint ownership of power plants. The implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.”

¹⁸ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (*OJ L 158, 14.6.2019, p. 54*).

- (20) Virtual hubs should reflect the aggregated price of multiple bidding zones and provide a reference price, which should be used by market operators to offer forward hedging products. To that extent, virtual hubs should not be understood as entities arranging or executing transactions. The regional virtual hubs, by providing a reference price index, should enable the pooling of liquidity and provide better hedging opportunities to market participants.
- (21) To enhance the possibilities of market participants for hedging, the role of the single allocation platform established in accordance with Commission Regulation (EU) 2016/1719¹⁹ should be expanded. The single allocation platform should offer trading of financial long-term transmission rights between the different bidding zones and the regional virtual hubs. The orders submitted by market participants for financial transmission rights ~~should~~^{shall} be matched by a simultaneous allocation of long term cross zonal capacity. Such matching and allocation should be performed on a regular basis, to ensure enough liquidity and, hence, efficient hedging possibilities to market participants. The long-term transmission rights should be issued with frequent maturities, (ranging from month ahead to at least three years ahead), in order to be aligned with the typical hedging time horizon of market participants. The single allocation platform should be subject to monitoring and enforcement to ensure that it performs its tasks properly.

¹⁹ **Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (OJ L 259, 27.9.2016, p. 42).**

- (22) Network tariffs should incentivise transmission and distribution system operators to use flexibility services through further developing innovative solutions to optimise the existing grid and to procure flexibility services, in particular demand response or storage. For this purpose, network tariffs should be designed so as to take into account the operational and capital expenditures of system operators or an efficient combination of both so that they can operate the electricity system cost-efficiently. **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.

- (23) Offshore renewable energy sources, such as offshore wind, ocean energy and floating photovoltaic, will play an instrumental role in building a power system largely based on renewables and in ensuring climate neutrality by 2050. There are, however, substantial obstacles to their wider and efficient deployment preventing the massive scale up needed to achieve those objectives. Similar obstacles could arise for other offshore technologies in the future. These obstacles include investment risks associated with the unique topographical situation of offshore hybrid projects connected to more than one market **in an offshore bidding zone. It is important to address these obstacles in a timely and efficient manner.** In order to reduce investment risk for these offshore project developers and to ensure that the projects in an offshore bidding zone have full market access to the surrounding markets, transmission system operators should guarantee access of the offshore projects **in an offshore bidding zone** to the capacity of the respective hybrid interconnector for all market time units, **up to the capacity agreed in the connection agreement and thus excluding potentially overplanted capacity.** If the available transmission capacities are reduced to the extent that the full amount of electricity generation that the offshore project would have otherwise been able to export cannot be delivered to the market, the transmission system operator or operators responsible for the need to limit the capacity should, in future, be enabled to compensate the offshore project operator commensurately using congestion income. This compensation **should balance the reduced revenues of offshore renewable electricity generation plant operators due to such reduction of access to interconnected markets and** 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. Moreover, there should never 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 another relevant support scheme.** The details, including the conditions under which the measure may expire, **such as the existence of enough demand within the offshore bidding zone or direct access to a sufficient number of markets for the risk to disappear, as well as addressing obstacles,** are intended to be defined in an implementing act~~Regulation~~ including where relevant through amendments to Commission Regulation (EU) 2015/1222.

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

- (27) In this framework, Member States should strive to create the right market conditions for long-term market-based instruments, such as power purchase agreements ('PPAs'). PPAs are bilateral purchase agreements between producers and buyers of electricity. They provide long-term price stability for the customer and the necessary certainty for the producer to take the investment decision. Nevertheless, only a handful of Member States have active PPA markets and buyers are typically limited to large companies, not least because PPAs face a set of barriers, in particular the difficulty to cover the risk of payment default from the buyer in these long-term agreements. Member States should take into consideration the need to create a dynamic PPA market when setting the policies to achieve the energy decarbonisation objectives set out in their integrated national energy and climate plans.

(28) ~~In accordance with Article 15(8) of~~ Directive (EU) 2018/2001 of the European Parliament and of the Council²⁰, Member States are to assess the regulatory and administrative barriers to long-term renewables PPAs, and ~~to~~*shall* remove unjustified barriers to, and promote the uptake of, such agreements. In addition, Member States are to describe policies and measures facilitating the uptake of renewables PPAs in their integrated national energy and climate plans. Without prejudice to that obligation to report on the regulatory context affecting the PPA market, Member States should ensure that instruments to reduce the financial risks associated to the buyer defaulting on its long-term payment obligations in the framework of PPAs are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty ~~in line with Articles 107 and 108 TFEU~~. Member States could decide to set up a guarantee scheme at market prices **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 may provide an attractive offer for PPAs to producers.** Member States should not provide support to PPAs that purchase generation from fossil fuels. While the default approach should be non-discrimination between consumers, Member States could decide to target these instruments to specific categories of consumers, applying objective and non-discriminatory criteria. In this framework, Member States should take into account the potential role of ~~instruments~~ **facilities** provided at Union level, for instance by the European Investment Bank ('EIB').

²⁰ **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 (OJ L 328, 21.12.2018, p. 82).**

- (29) Member States have at their disposal several instruments to support the development of PPA markets when designing and allocating public support. Allowing renewable energy project developers participating in a public support tender to reserve a share of the generation for sale through a PPA would contribute to nurture and grow PPA markets. In addition, as part of these tender evaluation Member States should endeavour to apply criteria to incentivise the access to the PPA market for actors that face entry barriers, such as small and medium-sized enterprises ('SMEs'), giving preference to bidders presenting a commitment to sign a PPA for part of the project's generation from one or several potential buyers that face difficulties to access the PPA market.
- (29a) 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.**

- (30) Where Member States decide to support publicly financed new 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 such as to include, in addition to a revenue guarantee, an upward limitation of the market revenues of the generation assets concerned. ~~That obligation should apply to support for investments in new power generating facilities. For reasons of proportionality and to protect investment certainty, the obligation should only apply to support for investments in existing power generation facilities where such support relates to new investments, and where such new investments aim at substantially repowering existing power generation facilities or at substantially increasing their capacity or prolonging their lifetime. This should exclude at least any new investments in existing installations resulting in improvements which are not significant in comparison with the total value of the installation or, as the case may be, a small prolongation of lifetime or a small increase in capacity as compared to the total lifetime of the installation or as compared to the total capacity respectively. This should be assessed on a case-by-case basis, having regard to the need to ensure respect for the principle of proportionality when applying two-way CfDs in respect of existing power generation. To protect investment certainty, this obligation should apply to contracts under direct price support schemes for new investments in generation concluded as of one year after entry into force of this Regulation. New investments for the generation of electricity should include investments in new power generating facilities, investments aimed at repowering existing power generating facilities, and investments aimed at substantially repowering extending existing power generating facilities, increasing their capacity or at prolonging their lifetime.~~

- (30a) To ensure legal certainty and predictability, the obligation to structure direct support schemes by means of two-way contracts for difference should only apply to contracts under direct price support schemes for new investments in new generation 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.”
- (30b) ~~With a view to ensuring stability and predictability of investments, and without prejudice to Articles 107 and 108 TFEU, the application of two-way CfDs to new investments in existing generation should not lead to the revision of the level of support already granted or of the conditions attached thereto in a way that negatively affects the rights conferred and undermines the economic viability of projects already benefiting from support.~~ The obligation to use two-way contracts for difference is without prejudice to Article 6(1) of Directive (EU) 2018/2001.
- (30c) While this Regulation 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.

- (31) Such two-way contracts for difference would ensure that revenues of producers stemming from new investments in electricity generation which benefit from public support become more independent from the volatile prices of fossil fuels-based generation which typically sets the price in the day-ahead market. **The design of these two-way contract for differences should preserve the incentives for the generating facility to operate and participate efficiently in the electricity markets, in particular to ~~adjust its production to~~ reflect market circumstances. Two-way contracts for difference 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 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.**

- (32) However, to the extent that the limitation to set out direct price support schemes in the form of two-way contracts for difference narrows down the types of direct price support schemes that Member States **are able to**~~can~~ adopt as regards renewable energy sources, it should be limited to low carbon, non-fossil fuel technologies, with low and stable operational costs and to technologies which typically do not provide flexibility to the electricity system, while excluding technologies that are at early stages of their market deployment. This is necessary to ensure that the economic viability of generation technologies with high marginal costs is not jeopardised and to maintain the incentives of the technologies which can offer flexibility to the electricity system to bid in the electricity market based on their opportunity costs. In addition, the limitation to set out direct price support schemes in the form of two-way contracts for difference should not apply to emerging technologies for which other types of direct price support schemes may be better placed to incentivise their uptake. The limitation should be without prejudice to the possible exemption for small-scale installations and demonstration projects pursuant to **Directive**~~Article 4 (3) of~~ (EU) 2018/2001 ~~of the European Parliament and of the Council~~ and consider the specificities of renewable energy communities in accordance with ~~Article 22 (7) of~~ that Directive.
- (33) In view of the need to provide regulatory certainty **for the**~~of~~ producers, the obligation for Member States to apply direct price support schemes for the production of electricity in the form of two-way contracts for difference should apply only to ~~new~~ investments **in new electricity generation-facilities** ~~for the generation of electricity~~ from the sources specified in the recital above.

- (34) Thanks to the upward limitation of the market revenues direct price support schemes in the form of two-way contracts for difference should provide an additional source of revenues for Member States in periods of high energy prices. To further mitigate the impact of high electricity prices on the energy bills of consumers, Member States should ensure that the revenues collected from producers subject to direct price support schemes in the form of two-way contracts for difference, **or the equivalent in financial value of those revenues**, are passed on to all final ~~electricity~~ customers, ~~including households, SMEs and industrial customers~~ **consumers, based on their consumption**. **When distributing the revenues to households, Member States should in particular be able to favour vulnerable customers.** **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 the equivalent in financial value of those revenues, to finance investments to reduce electricity costs for final customers and to use such revenues, or the equivalent in financial value of those revenues, to finance the costs of the direct price support schemes.** ~~Where Member States decide to distribute In order to minimise distortions to competition and trade in the internal market, revenues to distributed to final customers which are undertakings, they should cover all undertakings in proportion to their share of consumption do so proportionally to the consumption of such undertakings. To avoid overcompensation, the share part of the revenues that could be distributed to final customers that are undertakings should not exceed the combined share of electricity consumption of all those undertakings. This is without prejudice to Article 107 and 108 TFEU.~~ The redistribution of revenues should be done in a way that ensures that ~~customers~~ **consumers** are still to some extent exposed to the price signal, so that they reduce their consumption when the prices are high, or shift it to periods of lower prices (which are typically periods with a higher share of RES production). **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. It is possible for**

Member States to distribute revenues from two-way contracts for difference without that distribution constituting a retail price regulation pursuant to Article 5 of Directive (EU) 2019/944.

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

- (37) The accelerated deployment of renewables necessitates a growing availability of flexibility solutions to ensure their integration to the grid and to enable the electricity system and grid to adjust to the variability of electricity generation and consumption across different time horizons. **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 in the electricity system based on the input of transmission and distribution system operators **and that** assessment should complement the reporting on the flexibility of the national energy systems in accordance with Regulation (EU) 2018/1999 of the European Parliament and of the Council²¹. The assessment of the flexibility needs of the electricity system should take into account all existing and planned investments, (including existing assets that are not yet connected to the grid) on sources of flexibility such as flexible electricity generation, interconnectors, demand ~~side~~ response, energy storage or the production of renewable fuels, in view of the need to decarbonise the energy system. On this basis, Member States should define a national objective for non-fossil flexibility such as demand-side response and **energy** storage which should also be reflected in their integrated national energy and climate plans.

²¹ **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, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).**

- (38) To achieve the **indicative** national objective for non-fossil flexibility such as demand-side response and **energy** storage investment needs, , and where flexibility needs are not being addressed by the removal of market barriers and existing investments, Member States can apply non-fossil flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility.~~design or redesign capacity mechanisms in order to create a green and flexible capacity mechanism. Capacity mechanisms are to be open to the participation of all resources that are capable of providing the required technical performance, including energy storage and demand side management. In addition, Member States that apply a capacity mechanism in line with the existing rules should consider promoting the participation of non-fossil flexibility such as demand side response and energy storage by introducing additional criteria or features in the design.~~
- ~~(39) To support environmental protection objectives the CO2 emissions' limit, set out in Article 22(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council, should be seen as an upper limit. Therefore, Member States could set technical performance standards and CO2 emissions' limits that restrict participation in capacity mechanisms to flexible, fossil-free technologies in full alignment with the Guidelines on State aid for climate, environmental protection and energy²² which encourage Member States to introduce green criteria in capacity mechanisms.~~
- ~~(40) In addition, if Member States do not apply a capacity mechanism or if the additional criteria or features in the design of their capacity mechanism are insufficient to achieve national objective for demand response and **energy** storage investment needs they could apply **non-fossil** flexibility support schemes consisting of payments for the available capacity of non fossil flexibility such as demand side response and **energy** storage.~~

²²—— Communication from the Commission — Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

(40a) 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, ~~procedures in the current legislative framework~~, 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 urgently ~~therefore~~ 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 at the latest 3 months after entry into force of this Regulation ~~by end of 2024~~.

- (41) The connection of new generation and demand installations, in particular renewable energy plants, often faces delays in grid connection procedures. One of the reasons for such delays is the lack of available grid capacity at the location chosen by the investor, which implies the need for grid extensions or reinforcements to connect the installations to the system in a safe manner. A new requirement for electricity system operators, both at transmission and distribution levels, to publish and update information on the grid capacity available in their areas of operation would contribute to decision-making by investors on the basis of information of grid capacity availability within the system and thus to the required acceleration in the deployment of renewable energy.
- (42) Furthermore, to tackle the problem of lengthy reply times on requests for connection to the grid, transmission and distribution system operators should provide clear and transparent information to system users about the status and treatment of their connection requests. Transmission and distribution system operators should ~~endeavour to~~ provide such information within a period of three months from the submission of the request.
- (43) During the energy crisis, consumers have been exposed to extremely volatile wholesale energy prices and had limited opportunities to engage in the energy market. Consequently, many households, have been facing difficulties when paying their bills. Vulnerable consumers and the energy poor are the hardest hit²³, but middle-income households have also been exposed to such difficulties. It is therefore important to update consumer rights and protections, allowing consumers to benefit from the energy transition, decouple their electricity bills from short term price movements on energy markets and rebalance the risk between suppliers and consumers.

²³ 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.

- (44) Consumers should have access to a wide range of offers so that they can choose a contract according to their needs. However, suppliers have reduced their offers, fixed-price contracts have become scarce, and the choice of offers has become limited. Consumers should always have the possibility to opt for an affordable fixed price and fixed term contract and suppliers should not unilaterally modify the terms and conditions before such contract expires. **This does not change the fact that dynamic price contracts remain essential and that with an increasing penetration of renewable energy sources can help consumers to reduce their energy bills. Member States should be able to -exempt suppliers who only offer dynamic price contracts from the obligation to offer fixed price and fixed term contracts, provided that this does not have a negative impact on competition and retains sufficient choice of fixed price and fixed term contracts.**
- (45) When suppliers' do not ensure that their electricity portfolio is sufficiently hedged changes in wholesale electricity prices can leave them financially at risk and, result in their failure, passing on costs to consumers and other network users. Hence, it should be ensured that suppliers are appropriately hedged when offering fixed price contracts. An appropriate hedging strategy should take into account the suppliers' access to its own generation and its capitalisation as well as its exposure to changes in wholesale market prices. **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.**

- (46) Consumers should be able to choose the supplier which offers them the price and service which best suits their needs. Advances in metering and sub-metering technology combined with information and communication technology mean that it is now technically possible to have multiple suppliers for a single premises. If they so wish, customers should be able to use these possibilities to choose a separate supplier notably for electricity to power appliances such as heat pumps or electric vehicles which have a particularly high consumption or which also have the capability to shift their electricity consumption automatically in response to price signals. **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. The rules for the allocation of the associated costs should be determined at national level. Some smart metering systems may 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, ~~with~~through the facilitation of ~~fast-responding~~ dedicated ~~measurement~~metering devices solutions, ~~which are~~ attached to or embedded in appliances with flexible, controllable loads, final customers can participate in other incentive-based demand response schemes that provide flexibility services on the electricity market and to transmission and distribution system operators. Overall, such arrangements should contribute to the increased uptake of demand response and to consumer empowerment allowing them to have more control over their energy use and bills, while providing to the electricity system additional flexibility in order to cope with demand and supply fluctuations.**

- (47) Due to the increasing complexity of energy offers and different marketing practices, consumers have often difficulties to fully understand what they sign up to. In particular, there is a lack of clarity on how the price is set, the conditions for the renewal of the contract, the consequences of terminating a contract or the reasons for changing conditions by the supplier. Therefore, the key information on energy offers should be provided to consumers by suppliers or market participants engaged in aggregation in a short and easily understandable manner prior to signing the contract.
- (48) To ensure continuity of supply for consumers ~~in~~ **particularly in** cases of supplier failure, Member States should ~~be obliged to~~ **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** ~~appoint suppliers of last resort which~~ may be treated as ~~at~~ the provider of universal service. ~~A~~ **That 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 ~~Article 35 of~~ Directive (EU) 2019/944 of the European Parliament and of the Council²⁴. However, this does not imply an obligation of Member States to supply at a certain fixed minimum price. **-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.**

²⁴ **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).**

- (49) Energy sharing can create resilience against the effects of high and volatile wholesale market prices on consumers' energy bills, empowers a wider group of consumers that do not otherwise have the option of becoming an active customer due to financial or spatial constraints, such as energy poor and vulnerable consumers, and leads to increased uptake of renewable energy by mobilising additional private capital investments and diversifying remuneration pathways. With the integration of appropriate price signals and storage facilities, electricity sharing can help lay the foundation to help tap into the flexibility potential of smaller consumers.
- (50) Active customers that own, lease or rent a storage or generation facility should have the right to share excess production 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, either directly or through a third-party facilitator. **Any payment for sharing of excess production for a price can either be settled directly between active customers or automated through a peer-to-peer trading platform.** Energy sharing arrangements are either based on private contractual agreement between active customers or organised through a legal entity. A legal entity that incorporates the criteria of a renewable energy community as defined in Directive (EU) 2018/2001 ~~of the European Parliament and of the Council~~ or a citizen energy community as defined in Directive (EU) 2019/944 ~~of the European Parliament and of the Council~~ can share with their members electricity generated from facilities they have in full ownership. The protection and empowerment framework for energy sharing should pay particular attention to energy poor and vulnerable consumers.

- (51) Energy sharing operationalises the collective consumption of self-generated or stored electricity injected into the grid by more than one jointly acting active customers. Member States should put in place the appropriate IT infrastructure to allow for the administrative matching within a certain timeframe of **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 imbalances they cause. This should be without prejudice to the possibility for active customers to delegate their balancing responsibilities to other market participants.** ~~—Shall be shall~~ **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.**
- (52) Vulnerable customers should be adequately protected from electricity disconnections and should, as well, not be put in a position that forces them to disconnect. The role of suppliers and all relevant national authorities to identify appropriate measures, in both the short and the long-term, which should be made available to vulnerable customers to manage their energy use and costs remain essential, including by means of close cooperation with social security systems.

(53) Public interventions in price setting for the supply of electricity constitute, in principle, a market-distortive measure. Such interventions may therefore only be carried out as public service obligations and are subject to specific conditions. Under this Directive regulated prices are possible for energy poor and vulnerable households, including below costs, and, as a transition measure, for households and micro-enterprises **whether or not there is an electricity price crisis**. In times of crisis, when wholesale and retail electricity prices increase significantly, and this is having a negative impact on the wider economy, Member States should be allowed to extend, temporarily, the application of regulated prices also to SMEs. For both households and SMEs, Member States should be temporarily allowed to set regulated prices below costs as long as this does not create distortion between suppliers and suppliers are compensated for the costs of supplying below cost **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, ~~such~~ **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 Commission should determine when such an electricity price crisis exists and consequently when this possibility becomes applicable. The Commission should also specify the validity of that determination, during which the temporary extension of regulated prices applies, which may be for up to one year. To the extent that any such of the measures envisaged by the present Regulation constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU.~~ **The Council, acting on a proposal from the Commission, should determine by means of an implementing decision when an 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. 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.

- (53a) The inframarginal revenue cap introduced in Articles 6 to 8 and Article 10 of Council Regulation (EU) 2022/1854 has in some cases provided a relevant source of income that Member States have used to soften the impact of the high electricity prices in the consumers bills. This Regulation provides tools that will also bring relief for consumers during times of high electricity prices; while Member States implement those tools, they should also be allowed to apply an inframarginal revenue cap until 30 June 2024. That revenue cap should be subject to conditions corresponding to those which were applicable under Council Regulation (EU) 2022/1854. In order to assess the application of any such revenue cap, the Commission should issue a report to the Parliament and the Council.
- (53aa) To the extent that any of the measures envisaged by this ~~present~~ 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.
- (53b) 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.

(53ba) Estonia, Latvia and Lithuania should also 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.

(53c) 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.

(53d) 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.

- (53e) 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 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, namely until the Cypriot transmission system is connected to other Member States via interconnectors.
- (53f) To support environmental protection objectives, Article 22(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council sets out requirements regarding CO2 emission limits for capacity mechanisms . However, during their transition to a carbon-free system and in the aftermath to the energy crisis, Member States applying capacity mechanisms which were approved before the entry into force of this Regulation, can exceptionally derogate, and as a last resort mechanism, from this CO2 emission limit for a limited period of time. Such derogation should however be limited to existing generation capacity that started commercial production before 4 July 2019, i.e. before the entry into force of the Clean Energy Package. In case previous procurement processes that met the CO2 emission limits have not brought about the necessary capacity to meet the identified adequacy concern, Member States should be allowed to organise an additional procurement process which meets all the requirements in Chapter IV of Regulation (EU) 2019/943 of the European Parliament and of the Council, except for those regarding CO2 emission limits, and only for the amount of capacity that is needed to solve the adequacy concerns that has been identified. Generation capacity that does not meet the CO2 emission limits should not be procured for a period longer than one year. This application shall not be detrimental to decarbonisation plans anticipated by Member States.**
- (53g) 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 they satisfy the emission limit in Article 22(4).

- (54) The measures envisaged by ~~thise present~~ Regulation are also without prejudice to the application of Directive 2014/65/EU **of the European Parliament and of the Council** ²⁵, Regulation (EU) 2016/1011 **of the European Parliament and of the Council** ²⁶ and Regulation (EU) 648/2012 **of the European Parliament and of the Council** ²⁷.
- (55) Regulation (EU) 2019/942 of the European Parliament and of the Council²⁸, Regulation (EU) 2019/943 ~~of the European Parliament and of the Council~~, Directive (EU) 2019/944 ~~of the European Parliament and of the Council~~ and Directive (EU) 2018/2001 ~~of the European Parliament and of the Council~~ should be amended accordingly.
- (56) Since the objectives of this Regulation, **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.

²⁵ **Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).**

²⁶ **Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).**

²⁷ **Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).**

²⁸ **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 (OJ L 158, 14.6.2019, p. 22).**

HAVE~~S~~ ADOPTED THIS REGULATION:

Article 1

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

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

(1) Article 1 is amended as follows:

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

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

[b] the following point is added:

‘(e) support long-term investments in renewable energy generation and enable consumers’ to make their energy bills less dependent ~~on~~~~from~~ fluctuations of short-term electricity market prices, in particular fossil fuel prices in the medium to long-term.’

(2) In Article 2, the following points are added: ‘(72) ‘peak hour’ means an hour **where, based on the forecasts of transmission system operators and, where applicable, nominated electricity market operators, the gross electricity consumption or the day-ahead wholesale electricity price is expected to be the highest,** ~~with the highest electricity consumption combined with a low level of electricity generated from renewable energy sources,~~ taking cross-zonal exchanges into account;

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

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

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

(76) ‘two-way contract for difference’ means a contract signed between a power generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration; ~~the contract is designed to preserve incentives for the generating facility to operate and participate efficiently in the electricity markets and complies with the principles set out in Article 4(2) and Article 4(3), first and third subparagraphs, of Directive (EU) 2018/2001;~~

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

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

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

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

(2a) In Article 2, the following point is amended as follows:

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

(3) Article 7 is amended as follows:

[a] paragraph 1 is replaced by the following:

‘1. Transmission system operators and NEMOs, or an entity designated by them, shall jointly organise the management of the integrated day-ahead and intraday markets in accordance with Regulation (EU) 2015/1222. Transmission system operators and NEMOs shall cooperate at Union level or, where more appropriate, at a regional level in order to maximise the efficiency and effectiveness of Union electricity day-ahead and intraday trading. The obligation to cooperate shall be without prejudice to the application of Union competition law. In their functions relating to electricity trading, transmission system operators and NEMOs-, **or an entity designated by them**, shall be subject to regulatory oversight by the regulatory authorities pursuant to Article 59 of Directive (EU) 2019/944 and ACER pursuant to Articles 4 and 8 of Regulation (EU) 2019/942.’

[b] paragraph 2 is amended as follows:

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

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

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

‘(ca) be organised in such a way as to ensure the sharing of liquidity between all NEMOs, both for cross-zonal and for intra-zonal trade **at all times between themselves, including after the intraday cross-zonal gate closure. In particular, NEMOs shall submit**~~share all the~~ orders for day-ahead and intraday products to the single day-ahead and intraday coupling until the latest point in time when day-ahead or intraday trading is allowed in a given bidding zone. NEMOs shall not organise the trading with day-ahead and intraday products outside the single day-ahead and intraday coupling. This obligation shall apply to NEMOs, and where appropriate to undertakings which directly or indirectly exercise control or any right over a NEMO and to undertakings which are directly or indirectly exercise control or are controlled by a NEMO. ~~at all times when trading with intraday products allowed by the responsible TSO within a bidding zone, including after the intraday cross-zonal gate closure;~~’

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

‘Article 7a

Peak shaving product

1. **Where a regional or Union-wide electricity price crisis is declared in accordance with Article 66a of Directive (EU) 2019/944, and ~~without~~ without prejudice to Article 40(5) and 40(6) of ~~that~~the Electricity Directive, Member States, may authorise system operators ~~transmission system operators may~~to procure peak shaving products in order to achieve a reduction of electricity demand ~~during~~ peak hours. Such procurement shall be limited to the duration set out in the decision adopted pursuant to Article 66a(12) of Directive (EU) 2019/944.**
2. ~~Transmission s~~System operators seeking to procure a peak shaving product shall submit a proposal setting out the dimensioning and conditions for the procurement **and activation** of the peak shaving product to the regulatory authority of the Member State concerned. The proposal of the transmission system operator shall comply with the following requirements:

- (a) the dimensioning of the peak shaving product shall be based on an analysis of the need for an additional service to ensure security of supply, **of its impact on the market and of its expected costs and benefits**. ~~The analysis shall take into account a cost and benefits reliability standard and or objective and transparent grid stability criteria approved by the regulatory authority.~~ The dimensioning shall take into account the forecast of demand, the forecast of electricity generated from renewable energy sources, ~~and~~ the forecast of other sources of flexibility in the system, **and the wholesale price impact of the avoided dispatch**. The dimensioning of the peak shaving product shall be limited to ensure that ~~the forecasted costs do not exceed~~ ~~pected~~ **the expected** benefits of the product ~~do not exceed the forecasted costs~~;
- (b) the procurement of a peak shaving product shall be based on objective, transparent, non-discriminatory criteria and be limited to demand response;
- (c) the procurement of the peak shaving product shall take place using ~~a~~ competitive bidding ~~process~~, **which can be continuous**, with selection based on the lowest cost of meeting pre-defined technical and environmental criteria;
- (d) contracts for a peak shaving product shall not be concluded more than ~~two days~~ **a week** before its activation ~~and the contracting period shall be no longer than one day~~;

- (e) the activation of the peak shaving product shall not reduce cross-zonal capacity;
 - (f) the activation of the peak shaving product shall take place **before or within** ~~after the closure of~~ the day-ahead market and **may be done based on a predefined electricity price**~~before the start of the balancing market~~;
 - (g) the peak shaving product shall not imply starting **fossil fuel-based** generation located behind the metering point.
3. The actual reduction of consumption resulting from the activation of a peak shaving product shall be measured against a baseline, reflecting the expected electricity consumption without the activation of the peak shaving product. **Where a transmission system operator decides to procure a peak shaving product in accordance with paragraph 1 it**~~Transmission system operators~~ shall develop a baseline methodology in consultation with market participants and submit it to the regulatory authority.
4. Regulatory authorities shall approve the proposal of the transmission system operators seeking to procure a peak shaving product and the baseline methodology submitted in accordance with paragraphs 2 and 3 or shall request the transmission system operators to amend the proposal where it does not meet the requirements set out in these paragraphs.

Dedicated ~~measurement~~*metering* device

1. ~~“Member States shall allow t~~**F Upon the consent of the final customer**, transmission system operators and distribution system operators ~~may~~**to** use data from dedicated ~~measurement~~*metering* devices for the observability and settlement of demand response and flexibility services, including from storage systems.
- ~~2.~~ **Where a final customer does not have a smart meter installed or where the smart meter of a final customer -does not deliver the necessary data to provide demand response or flexibility services, including through an independent aggregator, transmission system operators and distribution system operators shall accept the data from a dedicated measurement device, where available, for the settlement of demand response and flexibility services, including storage systems, and shall not discriminate against that final customer in their procurement of flexibility services. This obligation shall apply upon the establishment and subject to compliance with the rules and requirements established by the Member States pursuant to paragraph 3.,**~~market participants, including independent aggregators, may use data from their own dedicated measurement devices for the billing and settlement of demand response and flexibility services, upon the establishment of and subject to compliance with requirements established by Member States in line with paragraph 2.~~
- ~~23.~~ **Member States shall establish requirements for a dedicated ~~measurement~~*metering* device data validation process to check and ensure the quality of the respective data.’;**

(5) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. ‘NEMOs shall allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time. By 1 January 2026~~30~~²⁸, the intraday cross-zonal gate closure time shall be at the earliest 30 minutes ahead of real time. **The regulatory authority of a given Member State may, at the request of the relevant transmission system operator, grant a derogation from the requirement in the first subparagraph, until 1 January 2029. Such request shall be submitted to the regulatory authority concerned and shall include:**

- a) **an impact assessment that demonstrates the need for the derogation, based on a risk for security of supply and taking into account feedback from market participants and NEMOs, and**
- b) **an action plan to shorten the intraday cross-zonal gate closure time to 30 minutes by no later than 1 January 2029.**

The regulatory authority may, at the request of the relevant transmission system operator, grant a further derogation from the requirement in the first subparagraph by a maximum of three years counting from expiry of the period referred to in the second subparagraph. That request from the transmission system operator shall be submitted to the national regulatory authority of the requesting transmission system operator, the ENTSO for Electricity and ACER no later than 1 January 2028 and shall include:

- (a) a new impact assessment justifying the need for a further derogation, based on risks to security of supply, taking into account feedback from market participants and NEMOs,
- (b) a revised action plan to shorten the intraday cross-zonal gate closure time to 30 minutes by the date for which extension is requested and no later than the date requested for the derogation.

ACER shall issue an opinion regarding the cross-border impact of a further derogation as referred to in the third subparagraph within 6 months of receipt of a request for such further derogation. The concerned regulatory authority shall take these opinions into account before deciding upon a request for further derogation.’

(b) paragraph 3 is replaced by the following:

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

[6] Article 9 is replaced by the following:

Article 9

Forward markets

1. ~~By 1 December 2024 the ENTSO for Electricity shall submit to ACER, after having consulted ESMA, a proposal for the establishment of regional virtual hubs for the forward market. The proposal shall:~~ **The design of the Union's forward market shall be based on regional virtual hubs supported by at least long-term transmission rights issued by transmission system operators**~~TSOs~~, allowing price risk hedging across bidding zones.
2. **24 months after [the entry into force of this Regulation] the Commission shall, after completing an impact assessment, adopt an implementing act in accordance with Article 59, that establishes the design referred to in paragraph 1. This implementing act shall in particular:**
 - (a) **include a methodology to** define the geographical scope of the **regional** virtual hubs~~for the forward market~~, including the bidding zones constituting these hubs, aiming to maximise the price correlation between the reference prices and the prices of the bidding zones constituting virtual hubs;
 - (b) include a methodology for the calculation of the reference prices for the **regional** virtual hubs~~for the forward market~~, aiming to maximise the correlations between the reference price and the prices of the bidding zones constituting a **regional** virtual hub; such methodology shall be ~~applicable to all virtual hubs and~~ based on predefined objective criteria;

- (c) include a definition of financial long-term transmission rights **between** ~~from~~ bidding zones ~~and to the regional virtual hubs for the forward market as~~ **financial obligations to enable market participants to hedge their exposure to positive and negative price spreads, including as regards to volumes and maturities;**
- (d) maximise the trading opportunities for hedging products referencing the **regional** virtual hubs for the forward market as well as for long term transmission rights from bidding zones to **regional** virtual hubs; ~~and-~~
- (e) **specify how the single allocation platform referred to in paragraph 3 shall offer allocation and facilitate trading of long-term transmission rights.**

3. The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall act as an entity offering allocation and facilitating trading of long-term transmission rights on behalf of transmission system operators ~~TSOs~~. It shall have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council²⁹.

~~2. Within six months of receipt of the proposal on the establishment of the regional virtual hubs for the forward market, ACER shall evaluate it and either approve or amend it. In the latter case, ACER shall consult the ENTSO for Electricity before adopting the amendments. The adopted proposal shall be published on ACER's website.~~

~~3. The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council.~~

²⁹ **Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).**

~~4. The single allocation platform shall:~~

- ~~(a) offer trading of long term transmission rights between each bidding zone and virtual hub; where a bidding zone is not part of a virtual hub it may issue financial long term transmission rights to a virtual hub or to other bidding zones that are part of the same capacity calculation region;~~
- ~~(b) allocate long term cross-zonal capacity on a regular basis and in a transparent, market-based and non-discriminatory manner; the frequency of allocation of the long term cross-zonal capacity shall support the efficient functioning of the forward market;~~
- ~~(c) offer trading of financial transmission rights that shall allow holders of these financial transmission rights to remove exposure to positive and negative price spreads, and with frequent maturities of up to at least three years ahead.~~

5. Where a regulatory authority considers that there are insufficient hedging opportunities available for market participants, and after consultation of relevant financial market competent authorities in case the forward markets concern financial instruments as defined under **point (15) of Article 4(1)(15) of Directive 2014/65/EU of the European Parliament and of the Council**³⁰, it may require power exchanges or transmission system operators to implement additional measures, such as market-making activities, to improve the liquidity of the forward market.
6. -Subject to compliance with Union competition law and with Directive (EU) 2014/65 and Regulations (EU) 648/2012 **of the European Parliament and of the Council**³¹ and 600/2014 **of the European Parliament and of the Council**³², market operators ~~may~~*shall be free to* develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity may be limited to trades within a Member State or bidding zone.

³⁰ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

³¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

³² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)

(7) Article 18 is amended as follows:

[a] paragraph 2 is replaced by the following:

“2. Tariff methodologies shall reflect the fixed costs of transmission system operators and distribution system operators and shall consider both capital and operational expenditure to provide appropriate incentives to transmission system operators and distribution system operators over both the short and long run, including anticipatory investments, in order to increase efficiencies, including energy efficiency, to foster market integration, **the integration of renewable energy** and security of supply, to support the use of flexibility services, efficient **and timely** investments including solutions to optimise the existing grid and facilitate **non-fossil flexibility, including** demand response and **energy storage**, related research activities, and to facilitate innovation in the interest of consumers in areas such as digitalisation, flexibility services and interconnection”;

[b] paragraph 8 is replaced by the following:

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

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

‘(f) methods to ensure transparency in the setting and structure of tariffs, including anticipatory investments;’

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

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

[8] in Article 19, paragraph 2 is amended as follows:

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

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

[b] the following point ~~(e)~~ is added:

‘(c) compensating offshore **renewable electricity** generation plant operators in an offshore bidding zone **directly connected to two or more**~~an onshore~~ **bidding zones** if access to interconnected markets has been reduced in such a way that- **it results in the offshore renewable electricity plant operator not being able to export its electricity generation capability to the market and, where relevant, a corresponding price decrease in the offshore bidding zone, as compared to without capacity reductions. The compensation applies where** one or more transmission system operators have not made ~~available the enough~~ capacity **agreed in the connection agreement**~~available~~ 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) of Regulation (EU) 2019/943**~~affecting the capacity of the interconnector, resulting in the offshore plant operator not being able to export its electricity generation capability to the market as expected without capacity reductions.~~ **On an annual basis, this compensation shall not exceed the total congestion income generated on interconnectors between the concerned offshore bidding zones**~~and neighbouring bidding zones.~~’

[9] The following chapter ~~IIIa~~ is inserted:

Chapter IIIa

Specific investment incentives to achieve the Union's decarbonisation objectives

Article 19a

Power purchase agreements

1. **Without prejudice to Directive (EU) 2018/2001**, Member States shall ~~facilitate~~ **promote the uptake of** power purchase agreements ('PPAs'), **including by removing unjustified barriers and disproportionate or discriminatory procedures or charges**, with a view **to providing price predictability and** ~~to~~ reaching the objectives set out in their integrated national energy and climate plan with respect to the ~~dimension~~ decarbonisation **dimension** referred to in point (a) of Article 4 of Regulation (EU) 2018/1999, while preserving competitive and liquid electricity markets.
2. Member States shall ensure that instruments ~~such as guarantee schemes at market prices~~, to reduce the financial risks associated to off-taker payment default in the framework of PPAs are in place and accessible to customers that face entry barriers to the PPA market and are not in financial difficulty ~~in line with Articles 107 and 108 TFEU~~. **Such instruments may include, but are not limited to, state-backed guarantee schemes at market prices, private guarantees, or facilities pooling demand for PPAs, in compliance with relevant Union law.** For this purpose, Member States ~~may~~**shall** take into account **relevant** Union-level ~~facilities~~**instruments**. Member States ~~may~~**shall** determine what categories of customers are targeted by these instruments, applying non-discriminatory criteria.

3. **Without prejudice to Articles 107 and 108 TFEU, if a** Guarantee schemes for PPAs is backed by the Member States **it** shall include provisions to avoid lowering the liquidity in electricity markets and shall not provide support to the purchase of generation from fossil fuels.
4. ~~In the design of the S~~ Support schemes for electricity from renewable sources, ~~Member States~~ shall allow the participation of projects which reserve part of the electricity for sale through a PPA or other market-based arrangements.
5. **In the design of such support schemes Member States** ~~and~~ shall endeavour to make use of evaluation criteria to incentivise **bidders to facilitate** the access ~~to the PPA market~~ **off** for customers that face entry barriers **to the PPA market, provided this does not negatively affect competition in the market.** In particular, such evaluation criteria may give preference to bidders presenting a signed PPA or a commitment to sign a PPA for part of the project's generation from one or several potential buyers that face entry barriers to the PPA market.
65. PPAs shall specify the bidding zone of delivery and the responsibility for securing cross-zonal transmission rights in case of a change of bidding zone in accordance with Article 14.
76. PPAs shall specify the conditions under which customers and producers may exit from PPAs, such as any applicable exit fees and notice periods, in **compliance**~~accordance~~ with Union competition law.

Article 19b

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

~~1.~~ ~~1.~~ Direct price support schemes for ~~new~~ investments **in new power-generating facilities** for the generation of electricity from the sources listed in paragraph 2 shall take the form of a two-way contracts for differences. ~~New investments for the generation of electricity shall include investments in new power-generating facilities or, investments aimed at substantially:~~

~~a) repowering existing power-generating facilities;~~

~~b) increasing their capacity; or~~

~~c) investments aimed at extending existing power-generating facilities or at prolonging their lifetime.~~

~~Direct price support schemes in the form of two-way contracts for difference shall be designed to preserve incentives for the generating facility to operate and participate efficiently in the electricity markets, in particular to adjust its production to reflect market circumstances.~~

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

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

1a. Direct price support schemes in the form of two-way contracts for difference shall be designed to:

- a. preserve incentives for the generating facility to operate and participate efficiently in the electricity markets, in particular to ~~adjust its production to~~ reflect market circumstances.**
- b. Prevent any distortive effect of the support scheme on the operation, dispatch and maintenance decisions of the generating facility or on bidding behaviour in day-ahead, intraday, ancillary services and balancing markets;**
- c. ensure that the level of the minimum remuneration protection and of the upward limit to excess remuneration are aligned with the cost of the new investment, the market revenues, and guarantee the long-term economic viability of the power generating facility while avoiding overcompensation;**
- d. avoid undue distortions to competition and trade in the internal market, notably by determining remuneration amounts through a competitive bidding process that it is open, clear, transparent and non-discriminatory.**
- e. Avoid distortions to competition and trade in the internal market resulting from the distribution of revenues to undertakings.**

2. Paragraph 1 shall apply to ~~new~~ investments in **new generation of electricity from the following sources:**

- (a) wind energy;**
- (b) solar energy;**

- (c) geothermal energy;
- (d) hydropower without reservoir;
- (e) nuclear energy;

3. **The revenues, or the equivalent in financial value of those revenues, arising from direct price support schemes in the form of two-way contracts for difference referred to in paragraph 1 shall ~~ensure that~~:**

~~(a) — the revenues collected are~~ be distributed to final customers.;

Notwithstanding the requirement in the first subparagraph, the revenues, or the equivalent in financial value of those revenues, may also be used to finance the costs of the direct price support schemes or investments to reduce electricity costs for final customers ~~be designed so that the revenues collected when the market price is above the strike price are distributed to all final electricity customers based on their share of consumption (same cost / refund per MWh consumed);~~

~~(b) — to the extent that part of the r~~**Revenues is distributed to final customers which are undertakings, this distribution shall covers all undertakings in proportion to their share of consumption (same refund per MWh consumed). The share** ~~part of the revenues distributed to final customers that may be distributed to undertakings shall not exceed the combined share of electricity consumption of all undertakings. This shall be without prejudice to Article 107 and 108 TFEU;~~

~~(e) — ensure that~~ The distribution of ~~the~~ revenues to final ~~electricity~~ customers **shall be** designed ~~so as not to maintain~~ **remove the** incentives ~~of consumers~~ to reduce their consumption or shift it to periods when electricity prices are low and not to undermine competition between electricity suppliers.;

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

Article 19c

Assessment of flexibility needs

1. ~~By 1 January 2025~~ **No later than one year after the approval by ACER of the methodology pursuant to paragraph 6 of this Article, and every two years thereafter, the regulatory authority, ~~of each Member State~~ or another authority or entity designated by a Member State, shall ~~assess and draw up~~ adopt a report on the need for system flexibility ~~in the electricity system~~ for a period of at least 5 years, in view of the need to cost effectively achieve security of supply and decarbonise the ~~power~~ electricity system, taking into account the integration of different sectors, and the interconnected nature of the electricity market. The report shall ~~may~~ take into account the European Resource Adequacy Assessment and national adequacy assessments pursuant to Article 20 of this Regulation ~~2019/943~~. The report shall be based on the data and analyses provided by the transmission and distribution system operators of that Member State pursuant to paragraph 32 and using the methodology pursuant to paragraph 43, and, when duly justified, additional data and analysis. Where the Member State has designated a transmission system operator for this purpose, the regulatory authority shall approve or amend the report.**
2. The report shall **at least:**
 - (a) ~~include an evaluation of~~ **the need for flexibility-, at least on a seasonal, daily and hourly basis, to integrate electricity generated from renewable sources in the electricity system;**

- (b) ~~and consider, in particular,~~ the potential of non-fossil flexibility **resources** such as demand-side response and **energy storage, including aggregation and, interconnection,** to fulfil this need, both at transmission and distribution levels; ~~and.~~
 - (c) **evaluate the barriers for flexibility in the market and propose relevant mitigation measures** ~~The report shall include distinguish between seasonal, daily and hourly flexibility needs;~~ **and**
 - (d) **take into account flexibility that is expected to be available in other Member States.**
3. The transmission and distribution system operators of each Member State shall provide the data and analyses needed for the preparation of the report referred to in paragraph 1 to the regulatory authority **or, where relevant, the authority or entity designated in paragraph 1. If duly justified, the regulatory authority or, where relevant, the authority or entity designated in paragraph 1 may ask the transmission system operators and distribution system operators to provide additional input to the report, beyond the requirements referred to in paragraph 4.**
4. The ENTSO for Electricity and the EU DSO entity shall coordinate transmission and distribution system operators as regards the data and analyses to be provided in accordance with paragraph 2. In particular, they shall:
- (a) define the type **and format** of data ~~and format~~ that transmission and distribution system operators shall provide to the regulatory authorities;
 - (b) develop a methodology for the analysis by transmission and distribution system operators of the flexibility needs, taking into account at least all **available** ~~existing~~ sources ~~of flexibility~~ and planned investments ~~in at~~ **interconnection and flexibility at**, transmission and distribution level as well as the need to decarbonise the electricity system.

5. The ENTSO for Electricity and the EU DSO entity shall closely cooperate with each other regarding the coordination of transmission and distribution system operators.
6. ~~By 1 March 2024, No later than~~ **By nine months after the entry into force ~~adoption~~ of this Regulation**, the ENTSO for Electricity and the EU DSO entity shall jointly submit to ACER a proposal regarding the type of data and format to be submitted to regulatory authorities and the methodology referred to in paragraph 43. Within three months of receipt of the proposal, ACER shall either approve the proposal or amend it. In the latter case, ACER shall consult the ENTSO for Electricity and the EU DSO entity before adopting the amendments. The adopted proposal shall be published on ACER's website.
7. The regulatory authorities, **or, where relevant, the authority or entity designated in paragraph 1**, shall submit the reports referred to in paragraph 1 to ACER and publish them. Within 12 months of receipt of the reports, ACER shall issue a report analysing them and providing recommendations on issues of cross-border relevance regarding the findings of the regulatory authorities, **or, where relevant, the authority or entity designated in paragraph 1, including recommendations on removing barriers to the entry of non-fossil flexibility resources.**

Article 19d

Indicative national objective for **non-fossil flexibility**, ~~demand side response and energy~~
~~storage~~

~~Based on the report of the regulatory authority pursuant to Article 19c(1),~~ **No later than 6 months after the submission of the report pursuant to Article 19c(1) of this Regulation,** each Member State shall define, **based on this report,** an indicative national objective for **non-fossil flexibility, in particular,** ~~demand-side~~ response and **energy storage. Member states may achieve this target by removal of identified market barriers or realise the identified potential of non-fossil flexibility resources.** This indicative national objective shall also be reflected in Member States' integrated national energy and climate plans as regards the dimension 'Internal Energy Market' in accordance with Articles 3, 4 and 7 of Regulation (EU) 2018/1999 and in their integrated biennial progress reports in accordance with Article 17 of Regulation (EU) 2018/1999. **Member States may define provisional indicative objectives before the first submission of the report pursuant to Article 19c(1) of this Regulation.**

Article 19e

Non-fossil ~~f~~flexibility support schemes

1. **Where ~~the market-based~~ investments in non-fossil flexibility are~~s~~ insufficient to achieve the indicative national objective, or, where relevant, provisional indicative objectives, identified in accordance with Article 19d, Member States may~~, apply~~ non-fossil flexibility support schemes consisting of payments for the available capacity of non-fossil flexibility without prejudice to Articles 12 and 13, ~~apply measures pursuant to paragraphs 2 to 4.~~**

- ~~2. A Member States which applies a capacity mechanism in accordance with Article 21 shall consider the promotion of the participation of non fossil flexibility resources, such as demand side response and energy storage in accordance with the expected contribution of those assets to address adequacy concerns by introducing additional criteria or features in the design of the capacity mechanism.~~
- ~~32. Where the measures introduced in accordance with paragraph 21 to promote the participation of non fossil flexibility such as demand response and energy storage in capacity mechanisms are insufficient to achieve the flexibility needs indicative national objective, or where relevant provisional indicative objectives, identified in accordance with Article 19d, Member States may apply non-fossil flexibility support schemes consisting of payments for the available capacity of non fossil flexibility such as demand side response and energy storage.~~
- ~~43. Member States which do not apply a capacity mechanism may apply non-fossil flexibility support schemes consisting of payments for the available capacity of non fossil flexibility such as demand side response and energy storage.~~
2. The possibility for Member States to apply measures pursuant to paragraph 1 shall not preclude them from addressing their indicative targets identified in Article 19d by other means.

Article 19f

Design principles for non-fossil flexibility support schemes

Non-fossil flexibility support schemes ~~for non fossil flexibility such as demand response and storage~~ applied by Member States in accordance with Article 19e(12) ~~and (3)~~ shall:

- (a) not go beyond what is necessary to ~~address the identified flexibility needs~~ **achieve the indicative national objective, or where relevant the provisional indicative objective, identified in accordance with Article 19d** in a cost-effective manner;

- (b) be limited to new investments in non-fossil flexibility **resources** such as demand ~~side~~ response and **energy** storage;
- (c) ~~must~~ not imply starting fossil fuel-based generation located behind the metering point;
- (d) select capacity providers by means of an open, transparent, competitive, non-discriminatory and cost-effective process;
- (e) prevent undue distortions to the efficient functioning of the electricity markets including preserving efficient operation incentives and price signals and the exposure to price variation and market risk;
- (f) provide incentives for the integration in the electricity market in a market-based and market-responsive way, while avoiding unnecessary distortions of electricity markets as well as taking into account possible system integration costs and grid stability;
- (g) set out a minimum level of participation in the market in terms of activated energy, which takes into account the technical specificities of **the asset delivering the flexibility**~~storage and demand response~~;
- (h) apply appropriate penalties to capacity providers which do not respect the minimum level of participation in the market referred to in point (g), or which do not follow efficient operation incentives and prices signals **referred to in point (e)**;
- (i) ~~to the extent it is technically feasible, be open to cross-border participation, taking into account the maximum entry capacity available for the participation of foreign capacity set by the transmission system operators in accordance with Article 26(7) of Regulation (EU) 2019/943~~;

(9a) Article 21 is amended as follows:

[a] paragraph 1 is replaced by the following:

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

[b] paragraph 7 is deleted.

[c] paragraph 8 is replaced by the following:

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

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

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

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

(11) Article 50 is amended as follows:

(a) the following paragraph ~~4a~~ is added:

“4a. Transmission system operators shall publish in a clear and transparent manner, information on the capacity available for new connections in their respective areas of operation, including in congested areas if flexible energy storage connections can be accommodated, and update that information regularly, at least quarterly.

Transmission system operators shall also provide clear and transparent information to system users about the status and treatment of their connection requests. They shall provide such information within a period of three months from the submission of the request ”;

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

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

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

“(b), capacity-allocation and congestion- management rules pursuant to Article 6 of Directive (EU) 2019/944 and Articles 7 to 10, 13 to 17, 19 and 35 to 37 of this Regulation, including rules on day-ahead, intraday and forward capacity calculation methodologies and processes, grid models, bidding zone configuration, redispatching and countertrading, trading algorithms, single day-ahead and intraday coupling including the possibility of being operated by a single entity, the firmness of allocated cross-zonal capacity, congestion income distribution, **the regional virtual hubs for the forward market, the allocation and facilitation of trading** ~~the allocation~~ of financial long-term transmission rights by the single allocation platform, cross-zonal transmission risk hedging, nomination procedures, and capacity allocation and congestion management cost recovery;”

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

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

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

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

2c. By way of derogation from Article 22(4)(b), Member States may request that generation capacity that started commercial production before 4 July 2019 and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity may, subject to compliance with Articles 107 and 108 TFEU, exceptionally be committed or receive payments or commitments for future payments under a capacity mechanism approved by the Commission before the entry into force of this regulation. The Commission shall assess the impact of the request in terms of greenhouse gas emissions and may, subject to compliance with Articles 107 and 108 TFEU, grant the authorization, provided that the following conditions are fulfilled:

(a) the Member State has carried out, after the date of entry into force of Regulation (UE) 2019/943, a competitive bidding process in line with the provisions of Article 22, which aims at maximising the participation of capacity providers which meet the requirements in Article 22(4), where the contracting period covers at least until 31 December 2028;

(b) the amount of capacity offered in the competitive bidding process referred to in letter a) is not sufficient to address the adequacy concern as identified pursuant to Article 20 (1) for the contracting period covered by that bidding process;

(c) the generation capacity that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity is committed or receives payments or commitments for future payments for a period not exceeding one year and is procured through an additional procurement process which complies with all requirements in Article 22 except for those set out in point (b) of paragraph 4 and only for the amount of capacity that is needed to solve the adequacy concern identified in letter b).

The derogation pursuant to this paragraph may be applied until 31 December 2028.

(13ae) In Article 66, the following new paragraph is added:

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

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

(13b) In Article 69 the following paragraph 1a is added:

1a) ~~By 31 July 2024,~~ No later than one month after entry into force of this Regulation, the Commission shall submit to the European Parliament and the Council a detailed report assessing possibilities of streamlining and simplifying the process of applying a capacity mechanism under ~~procedures pursuant to~~ Chapter IV of this Regulation, so as to ensure that adequacy concerns can be addressed by Member States in a timely manner. In that context the Commission shall request that the Agency amends the methodology for the European resource adequacy assessment referred to in Article 23 in line with the process set out in Articles 23 and 27, as appropriate.

~~By 31 December 2024,~~ No later than three months after entry into force of this Regulation, the Commission shall, after consultation with Member States, come forward with proposals with a view to simplifying the process of ~~for~~ assessing capacity mechanisms as appropriate.

(14) The following Article ~~69a~~ is added:

Article 69a

Interaction with Union financial legislation

Nothing in this Regulation shall derogate from the provisions of Directive (EU) 2014/65, Regulation (EU) 648/2012 and Regulation (EU) 600/2014 when market participants or market operators engage in activities related to financial instruments in particular as defined under **point (15) of Article 4(1)(45)** of Directive (EU) 2014/65.

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

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

Article 2

[Article 2 will be split from this amending Regulation and become a self-standing Directive to amend Directives (EU) 2018/2001 and (EU) 2019/944 – text moved to after Article 5].

Article 3

[Article 3 will be split from this amending Regulation and become a self-standing Directive to amend Directives (EU) 2018/2001 and (EU) 2019/944 – text moved to after Article 5].

Article 4

Amendments to Regulation (EU) 2019/942 ~~of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators~~

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

(1) Article 2 is amended as follows:

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

‘(a) issue opinions and recommendations addressed to transmission system operators, the ENTSO for Electricity, the ENTSO for Gas, the EU DSO Entity, the single allocation platform established in accordance with **Commission** Regulation (EU) 2016/1719³³, **the entity designated for the management of the integrated day-ahead and intraday market where applicable**, regional coordination centres and nominated electricity market operators ~~, on approving the methodologies, terms and conditions in accordance with Article 4(4), Article 5(2), (3) and (4); on bidding zones reviews as referred to in Article 5(7); on technical issues as referred to in Article 6(1); on arbitration between regulators in accordance with Article 6(10); related to regional coordination centres as referred to in Article 7(2), point (a); on approving and amending methodologies and calculations and technical specifications as referred to in Article 9(1); on approving and amending methodologies as referred to in Article 9(3); on exemptions as referred to in Article 10; on infrastructure as referred to in Article 11 point (d); on matters related to wholesale market integrity and transparency pursuant to Article 12;~~’

³³ Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (OJ L 259, 27.9.2016, p. 42).

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

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

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

“This paragraph shall also apply to the single allocation platform established in accordance with Regulation (EU) 2016/1719 **and to the entity designated for the management of the integrated day-ahead and intraday market where applicable.**”;

(3) in Article 4, the following paragraph 9 is added:

“9. ~~Paragraphs~~ 6, 7 and 8 shall also apply to the single allocation platform established in accordance with Regulation (EU) 2016/1719 **and to the entity designated for the management of the integrated day-ahead and intraday market where applicable.**”;

(4) in Article 5(8), the following ~~second~~ subparagraph is added:”;

“ACER shall monitor the single allocation platform established in accordance with Regulation (EU) 2016/1719 **and to the entity designated for the management of the integrated day-ahead and intraday market where applicable.**”

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

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

(6) ~~in~~ Article 5, the following paragraph 10 is added:

“10. ACER shall approve and where necessary amend the joint proposal from the ENTSO for electricity and the EU DSO entity related to the methodology concerning the data and analysis to be provided as regards the flexibility needs pursuant to Article 19~~ce~~(45) of Regulation (EU) 2019/943.”

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

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

(7) in Article 15, the following paragraph 5 is added:

“5. ACER shall issue a report analysing the national assessments of the flexibility needs and providing recommendations on issues of cross-border relevance regarding the findings of the regulatory authorities pursuant to Article 19~~ce~~(76) of Regulation (EU) 2019/943.”;

Article 5
Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

Amendments to Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union’s electricity market design³⁴ ~~HAVE ADOPTED THIS DIRECTIVE:~~

[The following Articles 1 and 2 were previously Articles 2 and 3 of the Regulation]

Article 12

Amendments to Directive (EU) 2019/944 ~~of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity~~

Directive (EU) 2019/944 ~~of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity~~ is amended as follows:

(1) Article 2 is amended as follows:

(a) points (8) and (49) **are** ~~is~~-replaced by the following:

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

³⁴ Recitals to be added.

“(49) 'non-frequency ancillary service' means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability, island operation capability and peak shaving;”

(b) the following points are added:

(15a) ‘fixed term, fixed price electricity supply contract’ means an electricity supply contract between a supplier and a final customer that guarantees the same contractual conditions, including the price, **during the whole duration of the contract**, while it may, -within a fixed price, include a flexible element with for example peak and off peak price variations;

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

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

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

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

(2) Article 4 is replaced by the following:

“Article 4

Free choice of supplier

Member States shall ensure that all customers are free to purchase electricity from the supplier of their choice. Member States shall ensure that all customers are free to have more than one electricity supply contract at the same time, and that for this purpose customers are entitled to have more than one metering and billing point covered by the single connection point for their premises.”

(3) Article 11 is amended as follows:

(a) the title is replaced by the following:

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

(b) paragraph 1 is replaced by the following:

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

By way of derogation from the first subparagraph, Member States may exempt a supplier with more than 200 000 final customers from the obligation to offer fixed term fixed price contracts if that supplier only offers dynamic price contracts and the exemption does not have a negative impact on competition or sufficient choice of fixed term fixed price contract for customers.

(c) the following paragraph ~~1a~~ is inserted:

“1a. Prior to the conclusion or extension of any contract, final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language. This summary shall include at least information on total price **and its breakdown**, promotions, additional services **and**, discounts and ~~include~~ **shall set out** the rights referred to in points (a), (b), (d), (e) and (f) of Article 10(3). The Commission shall provide guidance in this regard.

(d) paragraph 2 is replaced by the following:

“2. Member States shall ensure that final customers are fully informed by the suppliers of the opportunities, costs and risks of **the respective types of** ~~dynamic~~ electricity ~~price~~ contracts, and shall ensure that suppliers are required to provide information to the final customers accordingly, including with regard to the need to have an adequate electricity meter installed. Regulatory authorities shall monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.”

(4) The following Articles are inserted:

“Article 15a”

Right to energy sharing

1. All households, small and medium sized enterprises and public bodies **shall** have the right to participate in energy sharing as active customers.
2. ~~(a)~~—Active customers shall be entitled to share renewable energy between themselves based on private agreements or through a legal entity.

3. ~~(b)~~—Active customers may use a third party that owns or manages for installation, operation, including metering and maintenance a storage or renewable energy generation facility for the purpose of facilitating energy sharing, without that third party being considered an active customer.
- 4.~~(e)~~ Member States shall ensure that active customers participating in energy sharing:
- (a~~d~~) are entitled to have the shared electricity netted with their total metered consumption within a time interval no longer than the imbalance settlement period and without prejudice to applicable taxes, levies and network charges;
 - (b~~e~~) benefit from all consumer rights and obligations as final customers under this Directive, except in case of energy sharing between households with an installed capacity up to 10.8 kW **for single households [as specified in the reviewed Renewable Energy Directive 2021/557]** and up to 50 kW for multi-apartment blocks **[as specified in the recast Energy Performance of Buildings Directive -2021/802]**~~using peer-to-peer trading agreements;~~
 - (c~~f~~) have access to template contracts with fair and transparent terms and conditions for ~~peer-to-peer trading~~**energy sharing** agreements between households, and for agreements on leasing, renting or investing in storage and renewable energy generation facilities for the purpose of energy sharing; in case of conflicts arising over such agreements, final customers shall have access to out of court dispute settlement in accordance with Article 26;

- (d~~g~~) are not subject to unfair and discriminatory treatment by market participants or their balance responsible parties;
- (e~~h~~) are informed of the possibility for changes in bidding zones in accordance with Article 14 of Regulation (EU) 2019/943 and of the fact that the right to share energy is restricted to within one and the same bidding zone.

5. ~~(i)~~—Member States shall ensure that relevant transmission or distribution system operators or other designated bodies:
- (a~~j~~) monitor, collect, validate and communicate metering data related to the shared electricity with relevant final customers and market participants at least every month, and in accordance with Article 23;
- (b~~k~~) provide a relevant contact point to register energy sharing arrangements, receive information on relevant metering points, changes in location and participation, and, where applicable, validate calculation methods in a clear, transparent and timely manner; -
- 6~~2~~. Member States shall take appropriate and non-discriminatory measures to ensure that energy poor and vulnerable households can access energy sharing schemes. Those measures may include financial support measures or production allocation quota.
7. **This Article shall be without prejudice to the right of customers to choose their supplier in accordance with Article 4 and to applicable national rules for the authorisation of suppliers.**

“Article 18a

Supplier risk management

1. ~~National~~ Regulatory Authorities, or where a Member State has designated an alternative independent competent authority for that purpose, such designated competent authorities,- shall ensure that suppliers have in place and implement appropriate hedging strategies to limit the risk of changes in wholesale electricity supply to the economic viability of their contracts with customers, while maintaining liquidity on and price signals from short-term markets.
2. Supplier hedging strategies may include the use of power purchase agreements. Where sufficiently developed markets for power purchase agreements exist which allow effective competition, Member States may require that a share of suppliers’ risk exposure to changes in wholesale electricity prices is covered using power purchase agreements for electricity generated from renewable energy sources matching the duration of their risk exposure on the consumer side, subject to compliance with Union competition law.
3. Member States shall endeavour to ensure the accessibility of hedging products for citizen energy communities and renewable energy communities.”

(5) The following Articles ~~are~~^{XX is} inserted:

“Article 27a

Supplier of last resort

1. Member States shall **implement a supplier of last resort regime to ensure continuity of supply** ~~appoint suppliers of last resort~~ at least for household customers. Suppliers of last resort shall be appointed in a fair, ~~open~~, transparent and non-discriminatory procedure.
2. Final customers who are transferred to suppliers of last resort shall not lose their rights as customers, in particular those rights laid down in Articles 4, 10, ~~11~~, 12, 14, 18 and 26.
3. Member States shall ensure that suppliers of last resort promptly communicate the terms and conditions to transferred customers and ensure seamless continuity of service for those customers for at least 6 months.
4. Member States shall ensure that final customers are provided with information and encouragement to switch to a market-based offer.
5. Member States may require ~~a~~^{the} supplier of last resort to supply electricity to household customers who do not receive market based offers. In such cases, the conditions set out in Article 5 shall apply.”

Article 28a

Protection from disconnections for vulnerable customers

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

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

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

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

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

Distribution system operators shall also provide clear and transparent information to system users about the status and treatment of their connection requests. They shall provide such information within a period of three months from the submission of the request.”

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

(8) In Article 40, ~~the is amended as~~ followings paragraph is inserted:

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

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

(9) Article 59 is amended as follows:

[a] In paragraph 1, ~~point~~*subparagraph* (c) is replaced by the following:

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

[b] In paragraph 1, ~~point~~*subparagraph* (z) is replaced by the following:

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

[c] paragraph 4 is replaced by the following:

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

(9a) In Article 66, the following paragraph 6 is added

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

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

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

(9aa) In Article 66, the following new paragraph is added:

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

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

(10) the following Article 66a is inserted

“Article 66a

Access to affordable energy during an electricity price crisis

1. The ~~Council~~*Commission*, on a proposal from the Commission, by means of an **implementing** ~~may by~~ decision, **may** declare a regional or Union-wide -electricity price crisis, if the following conditions are met:
 - (a) very high **average** prices in wholesale electricity markets **of** at least two and a half times the average price during the previous 5 years, -which is expected to continue for at least 6 months. **The calculation of the average price during the previous 5 years shall not take into account the year of 2022 and those periods where a regional or Union-wide electricity price crisis was declared;**
 - (b) sharp increases in electricity retail prices ~~of at least~~ **in the range of** 70% occur which are expected to continue for at least ~~63~~ months; and
 - (c) the wider economy is being negatively affected by the increases in electricity prices.

2. The ~~decision~~*Commission shall specify in its decision* declaring a regional or Union-wide electricity price crisis **shall specify** the period of validity of that decision which may be for a period of up to one year. **That period may be prolonged in accordance with the procedure set out in paragraph 7 for consecutive periods of up to one year.**
3. **The Commission shall present a proposal for declaring a regional or Union-wide electricity price crisis, including the proposed period of validity of the decision, where it considers that the conditions in paragraph 1 are fulfilled.**
4. **The Council, acting by a qualified majority, may amend ~~a~~*the* Commission proposal submitted pursuant to paragraphs 3 and 7.**
53. Where the ~~Commission~~**Council** has adopted a decision pursuant to paragraph 1, Member States may, for the duration of the validity of that decision apply targeted public interventions in price setting for the supply of electricity to small and medium sized enterprises. Such public interventions shall:
- (a) be limited to at most 70% of the beneficiary's consumption during the same period of the previous year and retain an incentive for demand reduction;
 - (b) comply with the conditions set out in Article 5(4) and (7);
 - (c) where relevant, comply with the conditions set out in Paragraph 4.

64. Where the ~~Council~~**Commission** has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision, by way of derogation from Article 5(7), point (c), when applying targeted public interventions in price setting for the supply of electricity pursuant to Article 5(6) or paragraph 3 of this Article, exceptionally and temporarily set a price for the supply of electricity which is below cost provided that the following conditions are fulfilled:
- (a) the price set for households only applies to at most 80% of median household consumption and retains an incentive for demand reduction;
 - (b) there is no discrimination between suppliers;
 - (c) suppliers are compensated for supplying below cost; and
 - (d) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.
7. **In due time before the expiry of the period specified pursuant to paragraph 2, the Commission shall assess whether the conditions in paragraph 1 continue to be fulfilled. If the Commission considers that the conditions in paragraph 1 continue to be fulfilled, it shall present to the Council a proposal for prolonging the period of validity of a decision adopted pursuant to paragraph 1. Where the Council decides to prolong the period of validity, paragraphs 5 and 6 shall apply during such prolonged period.**
8. **Without prejudice to Articles 107 and 108 TFEU, Member States may apply a cap on 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 until 30 June 2024. By 15 May 2024, the Commission shall carry out a review of the application of the relevant schemes under this paragraph and issue a report on the main findings of this review to Parliament and the Council.**

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

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

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

~~(a) point (5)(a) of Article 70 by 31 December 2019;~~

~~(b) point (4) of Article 70 by 25 October 2020.~~

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

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

Article 23

Amendment to Directive (EU) 2018/2001 ~~of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources~~

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

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

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

‘To that end, with regard to direct price support schemes, support shall be granted in the form of a market premium, which could be, inter alia, sliding or fixed. **The first** ~~is~~ sentence shall not apply to support for electricity from the renewable sources listed in Article 19b(2) of Regulation (EU) 2019/943 **of the European Parliament and of the Council**³⁵, to which Article 19b(1) of that Regulation applies.’

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

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

³⁵ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

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

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

Article 3

Transposition

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

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

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

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

Member States shall determine how such reference is to be made and how that statement is to be formulated.'

Article 4
Entry into force

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

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President
