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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	ES comments on Regulation on an emergency intervention to address high energy prices (ST 12249/22) / EWP 15/09

Following the Energy working party on 15 September, delegations will find in the annex the ES comments on Regulation on an emergency intervention to address high energy prices (ST 12249/22).

Proposal for an emergency intervention to address high energy prices

Important: In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells and rows. This would hinder the consolidation of your comments.

Commission proposal	Drafting Suggestions	Comments
2022/0289 (NLE) Proposal for a COUNCIL REGULATION on an emergency intervention to address high energy prices		
THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,		
Having regard to the proposal from the European Commission,		
Whereas:		

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(1) Very high prices in electricity markets have been observed since September 2021. As set out by ACER in its assessment of EU wholesale electricity market design in April 2022[1], this is mainly a consequence of the high price of gas, which is used as an input to generate electricity. Natural gas-fired power plants are often needed to satisfy the demand for electricity when the demand is at its highest during the day or when the volumes of electricity generated from other technologies such as nuclear, hydro or variable renewable energy sources do not suffice to cover demand. The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, since February 2022		

1 https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER's%2520Final%2520Assessment%2520of%2520the%2520EU%2520Wholesale%2520Electricity%2520Market%2520Design.pdf

Commission proposal	Drafting Suggestions	Comments
has led to gas supplies declining markedly. 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 and volatility of the price of electricity.		
(2) The recent substantially lower levels of gas delivery and increased disruptions of gas supply from Russia point to a significant risk that a complete halt of Russian gas supplies may materialise in the near future. To increase the Union's security of energy supply, the Council adopted Regulation (EU) 2022/1369[2] that provides for a voluntary reduction of natural gas demand by 15% this winter and grants the		

[2] Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

Commission proposal	Drafting Suggestions	Comments
possibility for the Council to declare a Union alert on security of supply, in which case the gas demand reduction would become mandatory.		
(3) In parallel, the exceptionally high temperatures observed during the summer of 2022 have pushed up demand for electricity for cooling, adding pressure on electricity generation while, at the same time, electricity generation from certain technologies has been significantly below historical levels due to technical and weather-dependant circumstances. This is due mainly to an exceptional drought which led to (i) a shortfall in the production of electricity by nuclear power plants in different Member States caused by the lack of available cooling water, (ii) scarce hydropower generation and (iii) low water levels in major rivers which		

Commission proposal	Drafting Suggestions	Comments
have adversely affected the transport of commodities used as input fuel for generation. This unprecedented situation means that the volumes of electricity generated from natural gas-fired power plants have stayed persistently high, contributing to exceptionally and abnormally high wholesale electricity prices. Despite the reduced availability of generation capacities in some Member States, electricity exchanges between Member States have helped to avoid security of supply incidents and contributed to mitigating price volatility on the EU markets, thereby enhancing each Member State's resilience to price shocks.		
(4) The price surge in wholesale electricity markets has led to sharp increases in electricity retail prices, which are expected to continue		

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ahead of the next heating season gradually trickling down to most consumer contracts. The sharp increase in gas prices and the resulting demand for alternative fuels has also led to an increase of other commodity prices such as oil and coal prices.		
(5) All Member States have been negatively affected by the current energy crisis, albeit to a different extent. The stark increase of energy prices is substantially contributing to the general inflation in the euro area and slowing down economic growth in the Union.		
(6) A rapid and coordinated response is therefore needed. The deployment of an emergency tool would allow mitigation, on a temporary basis, of the risk that electricity		

Commission proposal	Drafting Suggestions	Comments
prices and the cost of electricity for final customers reach even less sustainable levels and that Member States adopt uncoordinated national measures, which could endanger security of supply at Union level and put an additional burden on the Union's industry and consumers. In a spirit of solidarity between Member States, a coordinated effort by Member States during the next winter season 2022-23 is required to mitigate the impact of high energy prices and ensure that the current crisis does not lead to lasting harm for consumers and the economy, while preserving the sustainability of public finances.		
(7) The current disruptions to gas supplies, reduced availability of certain power generating plants, and the resulting impacts on gas and		

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electricity prices, constitute a severe difficulty in the supply of gas and electricity energy products within the meaning of Article 122(1) of the Treaty on the Functioning of the European Union. There is a serious risk that the situation could deteriorate further in the coming winter season in case of further disruptions of gas supplies and a cold winter season driving up the demand for gas and electricity. Such further deterioration could lead to more upward pressure on the price of gas and other energy commodities' prices with a resulting impact on electricity prices.		
(8) A united and well-coordinated Union-wide response is needed to tackle the stark increase of electricity prices and their impact on households and industry. Uncoordinated		

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national measures could affect the functioning of the internal energy market, endangering security of supply and leading to further price increases in the Member States most affected by the crisis. Safeguarding the integrity of the internal electricity market is therefore crucial to preserve and enhance the necessary solidarity between Member States.		
(9) While some Member States might be more exposed to the effects of a disruption of Russian gas supplies and the resulting price increases, all Member States can contribute to limiting the economic harm caused by such disruption by appropriate demand reduction measures. Reducing electricity demand at national level can have a positive, Union-wide effect on electricity prices, as electricity markets		

Commission proposal	Drafting Suggestions	Comments
are coupled and savings in one Member State thus benefit also other Member States.		
(10) Uncoordinated caps on revenues from electricity produced from generators with lower marginal costs such as renewables, nuclear, and lignite (inframarginal generators) may lead to significant distortions between generators in the Union, as generators compete EU-wide on a coupled electricity market. A commitment to a joint Union-wide cap on surplus revenues will avoid such distortions. Furthermore, not all Member States can support consumers to the same extent due to limited financial resources, while at the same time, some electricity generators may continue enjoying significant surplus revenues. Solidarity between Member States, through a uniform cap on the revenues of		

Commission proposal	Drafting Suggestions	Comments
inframarginal generation technologies will generate revenues for Member States to finance measures in support of electricity final customers, such as households, SMEs and energy intensive industries, while at the same time preserving the price signals on the markets across Europe and preserving cross-border trade.		
(11) With a view to the extreme increase of retail gas and electricity prices, State interventions to protect retail consumers are of particular importance. However, the impact of the gas supply shortages on electricity prices, as well as the possibilities to finance support measures from State budget differ between Member States. If only some Member States with sufficient resources can protect these		

Commission proposal	Drafting Suggestions	Comments
customers and suppliers, this would lead to severe distortions of the internal market. A uniform obligation to pass on the surplus revenues to final consumers allows all Member States to protect their consumers. The positive effect on energy prices will have a positive impact on the interconnected EU market and will also help dampening the inflation rate. Therefore, in a spirit of solidarity, national measures will, in the interconnected Union economy, also have a positive effect in other Member States.		
(12) The measure consisting of the solidarity contribution for fossil companies with activities in the oil, gas, coal and refinery sector is an exceptional and strictly temporary measure. It appears appropriate in the current situation that		

Commission proposal	Drafting Suggestions	Comments
action is taken at Union level is taken to mitigate the direct economic effects of the soaring energy prices for public authorities' budgets, consumers and companies across the Union.		
(13) The solidarity contribution is an appropriate means to tackle surplus profits, due to unforeseen circumstances. Those profits do not correspond to any regular profit that these entities would or could have expected to obtain in normal circumstances would the unpredictable events in the energy markets not have taken place. Therefore, the introduction of a solidarity contribution constitutes a joint and coordinated measure which affords, in a spirit of solidarity, generating additional proceeds for national authorities to provide financial support		

Commission proposal	Drafting Suggestions	Comments
to households and companies heavily affected by the soaring energy prices while ensuring a level playing field across the Union and the internal market. It should be applied in parallel to the regular corporate taxes levied by each Member State on the companies concerned.		
(14) To ensure coherence across energy policy areas, the measures should work as an interdependent package reinforcing each other. All Member States should be able to support consumers, in a targeted manner, through surplus revenues resulting from the cap on market revenues for inframarginal electricity generation, through the reduction of electricity demand, which contributes to lowering energy prices, and through proceeds from a solidarity contribution imposed on fossil companies with		

Commission proposal	Drafting Suggestions	Comments
activities in the oil, gas, coal and refinery sector. At the same time, lower demand should have positive effects in terms of reducing the risks to security of supply, in line with the objectives of Directive (EU) 2019/944.		
(15) Member States should therefore endeavour to reduce their total gross electricity consumption from all consumers including those who are not yet equipped with smart metering systems or devices enabling them to monitor their consumption during specific hours of the day.		
(16) To preserve fuel stocks for electricity generation and to specifically target the most expensive hours of electricity consumption, when gas-fired power generation has a	(16) To preserve fuel stocks for electricity generation and to specifically target the most expensive or demanding hours of electricity consumption, when gas-fired power generation	

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particularly significant impact on the marginal price, each Member State should reduce its gross electricity consumption during identified peak price hours.	has a particularly significant impact on the marginal price, each Member State should reduce its gross electricity consumption during identified peak price or demand hours.	
(17) Based on the typical electricity consumption profile within peak hours, a binding target of 5% during peak price hours would ensure that Member States address more specifically consumers who can deliver flexibility through demand reduction offers on an hourly basis, including via aggregators. Therefore, an active electricity demand reduction of at least 5% during selected hours should lead to a reduced gas consumption and to a smoother repartition of demand across hours, impacting hourly market prices.	(17) Based on the typical electricity consumption profile within peak hours, a binding target of 5% during peak price **or** demand hours would ensure that Member States address more specifically consumers who can deliver flexibility through demand reduction offers on an hourly basis, including via aggregators. Therefore, an active electricity demand reduction of at least 5% during selected hours should lead to a reduced gas consumption and to a smoother repartition of demand across hours, impacting hourly market prices.	

Proposal for an emergency intervention to address high energy prices

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(18) Member States should have the discretion to choose the appropriate measures to achieve the demand reduction targets so that they can reflect national specificities. When designing electricity demand reduction measures, Member States should ensure that such measures are designed so as not to undermine the Union electrification objectives as set out in the Communication on Powering a climate-neutral economy: An EU Strategy for Energy System Integration. Electrification is key to reduce EU dependence on fossil fuels and ensure long-term strategic autonomy of the European Union as this leads to limiting the magnitude of this energy crisis and preventing future energy crisis. Measures to reduce the gross electricity consumption might include national awareness-raising campaigns,		

Commission proposal	Drafting Suggestions	Comments
publishing targeted information on the forecasted situation in the electricity system, regulatory measures limiting non-essential energy consumption, and targeted incentives to reduce the electricity consumption.		
(19) When identifying appropriate demand reduction measures in the peak price hours, Member States should in particular consider market-based measures such as auctions or tender schemes, by which they could incentivise a reduction of consumption in an economically efficient manner. To ensure efficiency and fast implementation, Member States could use existing initiatives and expand existing schemes to develop demand response. The measures taken at national level could also include financial incentives or compensation to market		

Commission proposal	Drafting Suggestions	Comments
participants affected, if a tangible demand reduction is achieved in addition to expected normal consumption.		
(20) To assist and provide guidance to Member States delivering the necessary demand reductions set out in this Regulation, the Commission should facilitate the sharing of best practices between Member States.		
(21) Given the extraordinary and sudden surge in electricity prices and the imminent risk of further increases, it is necessary for Member States to immediately establish the measures needed to achieve reductions of the gross electricity consumption in order to facilitate rapid price reductions and to minimise the use of fossil fuels.		

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(22) In the day-ahead wholesale market, the least expensive power plants are dispatched first but the price received by all market participants is set by the last plant needed to cover the demand, i.e., that with the highest marginal costs, when the market clears. The recent surge in the price of gas and hard coal has translated into an exceptional and lasting increase of the prices at which the gas and coal-fired power 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 those are often the plants with the highest marginal costs needed to meet the demand for electricity.		

Commission proposal	Drafting Suggestions	Comments
(23) 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 since the invasion of Ukraine by Russia in February 2022, well above their expectations when deciding to invest.		
(24) In a situation where consumers are exposed to extremely high prices which also harm the Union's economy, it is necessary to limit, on a temporary basis, the extraordinary market revenues of producers with lower marginal costs by way of application of a cap for such market revenues achieved through the sale of electricity within the Union.		

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(25) The level at which the cap on the revenues is set should not jeopardise the ability of the producers to which it is applied, including renewable energy producers, to recover their investment and operating costs and should preserve and incentivise future investments in the capacity needed for a decarbonised and reliable electricity system. A uniform cap on revenues across the Union is necessary to preserve the functioning of the internal electricity market, as it would maintain price-based competition between electricity producers based on different technologies, in particular for renewables.		
(26) While occasional and short-term peaks on prices can be considered a normal feature in		

Commission proposal	Drafting Suggestions	Comments
an electricity market and may be useful for some investors to recover their generation investment, the extreme and lasting price increase observed since February 2022 is markedly different from a normal market situation of occasional peak prices. Therefore, the cap should not be set below the reasonable expectations of market participants as to the average level of electricity prices in the hours during which the demand for electricity was at its highest, before the invasion of Ukraine by Russia. Before February 2022, the average peak prices in the electricity wholesale market were significantly and consistently expected below 180 Euros per MWh across the Union in the last decades, despite the differences in electricity prices between regions in the Union. Since the initial investment decision of market		

Commission proposal	Drafting Suggestions	Comments
participants was taken based on an expectation that, on average, the prices would be lower than that level during peak hours, setting a cap at a 180 EUR per MWh constitutes a level well above those initial market expectations. By leaving a margin on the price that investors could reasonably have expected, it is necessary to ensure that the revenue cap does not counteract the initial assessment of investment profitability.		
(27) Moreover, the cap of 180 EUR per MWh is consistently higher, including a reasonable margin, than the current levelised cost of energy (LCOE) for all the relevant generation technologies, allowing producers to which it applies to cover their investments and operating costs. Considering that the calculation chosen in		

Commission proposal	Drafting Suggestions	Comments
this proposal leaves a considerable margin between the reasonable LCOE and the revenue cap, the cap can therefore not be expected to impair the investment in new inframarginal capacities.		
(28) The cap should be set on market revenues rather than on total generation revenues (including other potential sources of revenues such as feed-in premium), to avoid significantly impacting the initial expected profitability of a project. Regardless of the contractual form in which the trade of electricity may take place, the cap should apply to realised market revenues only. This is necessary to avoid harming producers who do not actually benefit from the current high electricity prices due to having hedged their revenues against		

Commission proposal	Drafting Suggestions	Comments
fluctuations in the wholesale electricity market. Hence, to the extent that existing or future contractual obligations, such as renewable power purchase agreements and other types of power purchase agreements or forward hedges, lead to market revenues from the production of electricity up to the level of the cap, they would not be caught by its application.		
(29) The measure introducing the cap on revenues should therefore not deter market participants from entering into renewables power purchase agreements. Given the direct benefits that they provide to end-consumers, Member States should continue to promote them, making use of the Commission Recommendation of 18 May 2022 on speeding up permit granting procedures for renewable		

Commission proposal	Drafting Suggestions	Comments
energy projects and facilitating Power Purchase Agreements as well as practices described in Chapter II of the guidance in the Annex to this Recommendation.		
(30) Having a uniform cap on revenues across the Union is necessary to preserve the functioning of the internal electricity market as it would maintain price-based competition across the Union between electricity producers based on different technologies, in particular for renewables.		
(31) While applying the revenue cap at the time when transactions are settled may be more efficient, it might not always be possible, for instance due to differences in the way wholesale electricity markets are organised in the Member		

Commission proposal	Drafting Suggestions	Comments
States and across different timeframes. To account for national specificities and to facilitate the application of the cap on revenues at national level, Member States should have the discretion to decide whether to apply it either when the settlement of the exchange of electricity takes place or thereafter.		
(32) Given that the generation mix and the cost-structure of power-generating facilities differ greatly among Member States, they should retain the possibility to further limit the revenues of producers, provided that such measures are compatible with Union law.		
(33) The cap on revenues should apply to technologies with marginal costs lower than the		

Commission proposal	Drafting Suggestions	Comments
cap, such as for instance wind, solar or nuclear energy.		
(34) The cap should not apply to technologies with high marginal costs relating to the price of the input fuel necessary to produce electricity, such as gas and coal-fired power plants, as their operating costs would be significantly above the level of the cap and its application would jeopardise their economic viability. To maintain the incentives to overall decrease of the consumption of gas, the cap on revenues should not apply either to technologies which directly compete with gas-fired power plants to offer flexibility to the electricity system and bid in the electricity market based on their opportunity costs, such as demand-response and storage.		

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(35) The revenue cap should not apply to technologies using as input fuels that are substitutes for natural gas, such as bio-methane, so as not to jeopardise the conversion of existing gas-fired power plants in line with the REPowerEU objectives.		
(36) To preserve the incentives for the development of innovative technologies, the cap on revenues should not apply to demonstration projects.		
(37) In some Member States, the revenues obtained by some generators are already capped by way of State measures such as feed-in-tariffs and two-way contracts for difference. These generators do not benefit from increased revenues resulting from the recent spike of		

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electricity prices. Therefore, existing producers subject to that type of State measures should be excluded from the application of the cap on revenues. Any new measure should be in line with the principles of the internal market, shall not limit cross-border trade and shall not lead to an increase of gas consumption.		
(38) Given that by application of the cap on revenues not all Member States can support their final customers to the same extent due to circumstances relating to their dependence on imports of electricity from other countries, it is necessary for Member States with net imports of electricity equal or higher than 100% to have access to agreements to share the surplus revenues with the main exporting country in a spirit of solidarity. Such solidarity agreements		

Commission proposal	Drafting Suggestions	Comments
are also encouraged, in particular, to reflect unbalanced trading relationships.		
(39) Commercial and trading practices as well as the regulatory framework in the electricity sector are markedly different from the fossil fuels sector. Given that the cap aims to mimic the market outcome that producers could have expected if global supply chains would function normally in absence of the gas supply disruptions since February 2022, it is necessary for the measure concerning electricity producers to apply to the revenues resulting from the generation of electricity. Conversely, as the temporary solidarity contribution targets the profitability of undertakings active in the oil, gas, coal and refinery sectors which has		

Commission proposal	Drafting Suggestions	Comments
significantly increased compared to prior years, it is necessary for it to apply to their profits.		
(40) Member States should ensure that the surplus revenues resulting from the application of the cap in the field of electricity are passed on to final electricity customers to mitigate the impact of the exceptionally high electricity prices. The surplus revenues should targeted to customers, including both households and companies, who are particularly strongly affected by high electricity prices. Without the proposed measures, there is a risk that only wealthier Member States will have the resources to protect their consumers, leading to severe distortions in the internal market.		

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(41) The revenues from the cap will help Member States to finance measures such as income transfers, rebates on bills, compensating suppliers for supplying below cost, as well investments that would lead to a structural reduction of consumption, in particular from electricity produced from fossil fuel sources. When support is granted to non-household customers, these should work towards undertaking investments in decarbonisation technologies, including renewable energies, for example through power purchasing agreement or direct investments in renewables generation, or to undertake investments in energy efficiency.		
(42) Public interventions in price setting for the supply of electricity constitute, in principle,		

Commission proposal	Drafting Suggestions	Comments
a market-distortive measure. Such interventions may therefore only be carried out as public service obligations and are subject to specific conditions. Currently under Directive (EU) 944/2019 regulated prices are possible households and micro-enterprises and, they are also possible including below cost for energy poor and vulnerable customers. However, in the presence of the current exceptional rise of electricity prices, the toolbox of available measures that the Member States have at their disposal to support consumers should be temporarily extended, by providing the possibility to extend regulated prices to SMEs and permitting regulated prices below cost. Such an extension could be financed by the revenue cap.		

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(43) It is important that, where below cost, regulated retail prices do not discriminate between suppliers or impose unfair costs on them. Suppliers should therefore be fairly compensated for costs they incur supplying at regulated prices, without prejudice to the application of State aid rules. The cost of below cost regulated prices should be financed by the revenues stemming from the application of the revenue cap. In order to avoid that these measures increase demand for electricity, while still meeting the energy needs of consumers, below cost regulated prices should cover only a limited amount of consumption.		
(44) Without substantially changing their cost structure and increasing their investments, EU companies and permanent establishments		

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generating at least 75% of turnover in the oil, gas, coal and refinery sector, have seen their profits spike due to the sudden and unpredictable circumstances of the war, reduced supply of energy and increasing demand due to record high temperatures.		
(45) The temporary solidarity contribution should act as a redistributing measure to ensure that the companies concerned which have earned surplus profits as a result of the unexpected circumstances, contribute in proportion to the improvement of the energy crisis in the internal market.		
(46) The basis for calculating the temporary solidarity contribution is taxable profits of the companies and permanent establishments tax		

Commission proposal	Drafting Suggestions	Comments
resident in the EU in oil, gas, coal and refinery sectors as determined in bilateral treaties or Member States national tax laws for the fiscal year starting on or after 1 January 2022. Member States which tax only distributed corporate profits should apply the temporary solidarity contribution to the calculated profits irrespective of their distribution. The fiscal year is determined by reference to the rules in place under Member States' national laws.		
(47) Only profits in 2022 above a 20% increase of the average taxable profits generated in the three fiscal years starting on or after 1 January 2019 should be subject to the solidarity contribution.		

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(48) This approach ensures that part of the profit margin, which is not due to the unpredictable developments in the energy markets following the ongoing illegal war in Ukraine could be used by the companies and permanent establishments concerned for future investment or for ensuring their financial stability during the ongoing energy crisis including for the energy intense industry. This approach to determining the calculation base ensures that the solidarity contribution in different Member States is proportionate. At the same time this approach of setting a minimum rate ensures that the solidarity contribution is both fair and proportionate. Member States remain free to apply a higher rate in case they already introduced a solidarity contribution, levy or tax on surplus taxable profits of the		

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energy undertakings within the scope of this Regulation that would exceed this rate of 33% before this Regulation entered into force. This enables such Member States to maintain their preferred rate they deemed acceptable and appropriate under their national legal systems.		
(49) The solidarity contribution should be used for i) financial support measures to final energy customer, and notably vulnerable households, to mitigate the effects of high energy prices; ii) financial support measures to help reducing the energy consumption; iii) financial support measures to support companies in energy intensive industries; iv) financial support measures to develop the energy autonomy of the Union. Member States should also be enabled to assign a share of the		

Commission proposal	Drafting Suggestions	Comments
proceeds of the temporary solidarity contribution to common financing.		
(50) The use of the proceeds for those purposes reflects the solidarity contribution's exceptional nature as a measure that intends to reduce and mitigate the harmful effects of the energy crisis for households and companies across the Union with the objective of protecting the Single Market and preventing the risk of further fragmentation. Soaring energy prices affect all Member States. However, given the differences in energy mix, Member States are not all impacted in the same way and do not all have the same fiscal space to take the necessary measures to protect vulnerable households and businesses. In the absence of a European measure such as a solidarity		

Commission proposal	**Drafting Suggestions**	**Comments**
contribution, there is a high risk of disruption of the Single Market and further fragmentation, which would be detrimental to all Member States, given the integration of energy markets and of value chains. Tackling energy poverty and addressing the social consequences of the crisis, in particular to protect workers in exposed industries, are also a matter of solidarity between Member States in the Union. To maximise its impact, the use of the proceeds of the solidarity contribution should be done in a coordinated way and/or via EU financing instruments in a spirit of solidarity.		
(51) In particular, Member States should target financial support measures to the most vulnerable households and companies, which are most affected from the soaring energy		

Commission proposal	Drafting Suggestions	Comments
prices. This would preserve the price incentive to reduce energy demand and save energy. In addition, targeting most vulnerable and liquidity-constrained households would have a positive effect on overall consumption (by averting excessive crowding out of spending on non-energy goods) given the high-income propensity to consume for this group of households. Moreover, proceeds should be used for fostering the reduction of energy consumption. In this respect, proceeds should be used, for instance, for the purpose of demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, or promoting investments by final energy customers, both vulnerable households and companies, into renewables, energy efficiency		

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investments or other decarbonisation technologies. Proceeds of the solidarity contribution should also be used for supporting financially companies in energy intensive industries, and in regions relying on these industries.Costs in energy intensive industries due to soaring energy price developments are skyrocketing, such as in the fertiliser industry. Financial support measures are to be made conditional upon investments into renewable energies, energy efficiency, or other decarbonisation technologies. Furthermore, measures which help making the Union more autonomous in the energy field should be supported with investments in accordance with the objectives set forth in the REPowerEU Communication, notably for projects with a cross-border dimension.		

Commission proposal	Drafting Suggestions	Comments
(52) Member States could also decide to assign part of the proceeds of the solidarity contribution to the common financing of measures that are intended to reduce the harmful effects of the energy crisis, including support for protecting employment and the re- and upskilling of the workforce, or to promote investments in energy efficiency and renewable energy, including in cross-border projects. The common financing aspect covers both project-based cost-sharing between Member States and channelling via an EU instrument on the basis of Member States voluntarily assigning revenues to the EU budget in a spirit of solidarity.		
(53) Regular and effective monitoring and reporting to the Commission are essential for		

Commission proposal	Drafting Suggestions	Comments
the assessment of progress made by the Member States in the achievement of the demand reduction targets, the implementation of the cap on revenues, the use of the surplus revenues, and the application of regulated prices.		
(54) Member States should report to the Commission on the application of the solidarity contribution in their respective territories, as well as on any amendments they make to such contribution.		
(55) Member States should also report on the use of the proceeds arising from the solidarity contribution. In particular, this is to ensure that Member States use the proceeds in line with the usage provided for in this Regulation.		

Commission proposal	Drafting Suggestions	Comments
(56) The solidarity contribution and the EU legal framework governing it should be of a temporary nature to address the exceptional and urgent situation that has emerged in the Union with respect to the soaring energy prices. The solidarity contribution should be applicable to cover surplus profits generated in 2022 to address and mitigate the harmful effects of the current ongoing energy crisis for households and companies The application of the solidarity contribution to the full tax year will allow to use excess profits for the relevant period, in the public interest of mitigating the consequences of the energy crises, while leaving an appropriate measure of profits to the companies concerned.		
(57) The solidarity contribution should apply only to the fiscal year 2022. By 15 October		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
2023, when national authorities have a view on the collection of solidarity contribution, the Commission will review the situation and present a report to the Council.		
(58) Should a Member State experience difficulties in the application of the Regulation and, in particular, of the temporary solidarity contribution, it should consult, where appropriate, the European Commission in line with article 4 of the Treaty on European Union.		
(59) The volatility in underlying gas prices is creating difficulties for energy firms active on electricity futures markets, in particular in accessing suitable collateral. The European Commission, in cooperation with the European Securities Markets Authority and the European		

Commission proposal	Drafting Suggestions	Comments
Banking Authority, is assessing issues related to the eligibility of collateral and margins, and possible ways to limit excessive intra-day volatility.		
(60) Moreover, the measures in this Regulation are consistent with the complementary and ongoing work of the European Commission concerning the long-term market design as announced in the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design that was issued alongside the Repower EU Plan of 18 May 2022.		
(61) Considering the scale of the energy crisis, the level of its social, economic and		

Commission proposal	Drafting Suggestions	Comments
financial impact and the need to act as soon as possible, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.		
(62) Given the exceptional nature of the measures set out in this Regulation, and the need to apply them in particular during the winter season 2022-23, the Regulation should apply for a period of one year after its entry into force.		
(63) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as		

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Commission proposal	Drafting Suggestions	Comments
set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.		
HAS ADOPTED THIS REGULATION:		
CHAPTER I		
SUBJECT MATTER AND DEFINITIONS		
Article 1 Subject matter		
This Regulation establishes an emergency intervention to mitigate the effects of high energy prices via exceptional, targeted and time-		

Commission proposal	Drafting Suggestions	Comments
limited measures. These measures aim to reduce electricity consumption, to cap the market revenues that certain producers receive from the generation of electricity and redistribute them to final customers in a targeted manner, to enable Member States to apply public interventions in the price setting for the supply of electricity for households and small and medium-sized enterprises, and to establish rules for a temporary solidarity contribution for EU companies and permanent establishments with activities predominantly in the oil, gas, coal and refinery sectors to contribute to the affordability of energy for households and companies.		
Article 2 Definitions		

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Commission proposal	Drafting Suggestions	Comments
For the purposes of this Regulation, the definitions in Article 2 of Directive (EU) 2019/944 and Article 2 of Regulation (EU) 2019/943 apply. In addition, the following definitions also apply:		
(1) ‘small and medium-sized enterprise’ means an enterprise as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC[3];		
(2) ‘gross electricity consumption’ means overall supply of electricity for activities in the territory of a Member State;		
(3) ‘reference period’ means the period from 1 November to 31 March in the five consecutive		

[3] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.05.2003, p. 36).

Commission proposal	Drafting Suggestions	Comments
years preceding the date of entry into force of this Regulation, starting with the period from 1 November 2017 to 31 March 2018;		
(4) ‘peak price hours’ means hours of the day where day-ahead wholesale electricity prices are expected to be the highest, based on forecasts by transmission system operators and nominated electricity market operators;	(4) ‘peak price **or** demand hours’ means hours of the day where day-ahead wholesale electricity prices or demand are expected to be the highest, based on forecasts by transmission system operators and nominated electricity market operators;	
(5) ‘market revenue’ means realised income a 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, including power purchase agreements and other hedging operations against fluctuations in the wholesale electricity		

Commission proposal	Drafting Suggestions	Comments
market and excluding any support granted by the State;		
(6) ‘settlement’ means a payment that is made and received between counterparties, against delivery and receipt of electricity where applicable, in fulfilment of the counterparties’ respective obligations pursuant to one or more clearing transactions;		
(7) ‘competent authority’ means an authority as defined in Article 2(11) of Regulation (EU) 2019/941;		
(8) ‘surplus revenues’ means a positive difference between the market revenues of producers per MWh of electricity and the cap of 180 Euros per MWh of electricity;		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
(9) 'waste' means any substance or object which the holder discards or intends or is required to discard as defined in Article 3 (1) of Directive 2008/98/EC;		
(10) 'net imports of electricity' means, for the period between 1 January 2021 and 31 December 2021, the difference between the total electricity imports and total electricity exports divided by the total gross production of electricity in a Member State;		
(11) 'fiscal year' means a tax year, calendar year or any other appropriate period for tax purposes as defined in national law;		

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Commission proposal	Drafting Suggestions	Comments
(12) 'customer' means a wholesale or final customer;		
(13) 'final energy customer' means a customer who purchases energy for own use;		
(14) 'final electricity customer' means a customer who purchases electricity for own use;		
(15) 'support scheme' means, any instrument, scheme or mechanism applied by a Member State, or a group of Member States, that promotes the use of energy from renewable sources;		
(16) 'guarantee of origin' means an electronic document providing evidence to a final		

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Commission proposal	Drafting Suggestions	Comments
customer that a given share or quantity of energy was produced from renewable sources;		
(17) ‘activities in the field of oil, gas, coal and refinery sectors’ means any economic activity performed by an EU company or permanent establishment generating at least 75% of turnover in the field of the extraction, mining, refining of petroleum or manufacture of coke oven products;		
(18) ‘EU company” means a company of a Member State which according to the tax laws of that Member State is considered to be resident in that Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not		

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Commission proposal	Drafting Suggestions	Comments
considered to be resident for tax purposes outside the Union;		
(19) ‘permanent establishment’ means a fixed place of business situated in a Member State through which the business of a company of another State is wholly or partly carried on in so far as the profits of that place of business are subject to tax in the Member State in which it is situated by virtue of the relevant bilateral tax treaty or, in the absence of such a treaty, by virtue of national law;		
(20) ‘surplus profits’ means taxable profits accrued from activities carried out at the level of companies or permanent establishments in the field of oil, gas, coal and refinery sector above a		

Commission proposal	Drafting Suggestions	Comments
20% increase of the average of profits of the previous three tax years;		
(21) 'solidarity contribution' means a temporary measure intended to address surplus profits of EU companies and permanent establishments with activities in the field of oil, gas, coal and refinery sectors to mitigate exceptional price developments in the energy markets for Member States, consumers and companies.		
CHAPTER II		
MEASURES CONCERNING THE ELECTRICITY MARKET		
Section 1		

Commission proposal (ST 12249/22 – COM(2022) 473 final) Deadline: ***15 September 2022***

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
Demand Reduction		
Article 3 Reduction of gross electricity consumption		
Member States should seek to implement measures to reduce their total monthly gross electricity consumption by 10% compared to the average of gross electricity consumption in the corresponding months of the reference period.		We agree on the importance of implementing measures to save energy and increase energy efficiency which could lead to a 10% consumption reduction. Such measures can be of a regulatory nature (limiting non-essential consumption) or they can be linked to awareness campaigns. However, they need to be compatible with preserving the wellbeing of families and economic activiy. Some MS, such as Spain, have already made great efforts to reduce energy consumption. A clear example is the Royal Decree-Law adopted

Commission proposal	Drafting Suggestions	Comments
		in august, which contained, among others, a list of very specific measures to reduce heating and cooling consumption. *(https://www.boe.es/buscar/act.php?id=BOE-A-2022-12925)* Therefore, demand reduction targets need to consider the trajectory to account for the results of the measures implemented by early adopters. *(See comments on article 4.2)*
Article 4 Reduction of gross electricity consumption during peak price hours		
1. For every month, each Member State shall identify peak price hours corresponding to a minimum of 10% of all hours of the month.	1. For every month, each Member State shall identify peak price or demand hours corresponding to a minimum of 10% of all hours of the month.	Some electricity markets have seen a detachment of the peak price hours and the peak demand hours. In systems with high RES penetration peak price hours do not follow a

Commission proposal	Drafting Suggestions	Comments
		stable pattern, thus difficulting its assessment and predictability. This situation would have to be factored-in in the proposal.
2. Each Member State shall reduce its gross electricity consumption during the identified peak price hours. For every month, the reduction achieved over the identified peak price hours shall reach at least 5% on average per hour. The reduction target shall be calculated as the difference between the actual gross electricity consumption for the identified peak price hours and the gross electricity consumption forecasted by the transmission system operators, without taking into account the effect of the measures put in place to reach the target set out in this Article.	2. Each Member State shall reduce its gross electricity consumption during the identified peak price or **demand** hours. For every month, the reduction achieved over the identified peak ~~price~~ hours shall reach at least **[5]%** on average per hour **and should be expressed in MWh**. The reduction target shall be calculated as the difference between the actual gross electricity consumption for the identified peak ~~price~~ hours and **its corresponding benchmarked consumption**. **The benchmarked consumption for a given hour shall be calculated by averaging the past consumption over the reference periods for the same hour,**	We believe that any possible mandatory electricity demand reduction target **needs to be based on the average past consumption**. We understand that additionallity (as envisaged in the proposal) is conceptually positive, however it has a high associated cost as the measures to be applied are the ones with more marginal cost. Thus, the draft has to consider: • the elasticity of the demand. • the effect of price signals, and • the efforts already made by MS to raise awareness and reduce peak consumption.

Commission proposal	Drafting Suggestions	Comments
	the same weekday within the same month, taking into account the effect of temperature.~~the gross electricity consumption forecasted by the transmission system operators, without taking into account the effect of the measures put in place to reach the target set out in this Article~~.	Preliminary figures provided by our TSO show that the hours of 2022 with more electricity consumption already present a significant demand reduction. This means that the current wording of the proposal would imply: • Penalizing the industry which has already made an effort to reduce their demand during peak hours and is unable to further do so without limiting their production. • Penalizing those MS who have already made efforts on reducing peak demand. • Causing an unbearable economic burden, in particular in the current context. The value of the target would need to be futher discuss once more detailed assessments are available.

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
Article 5 Measures to achieve the demand reduction		
1. Member States may choose the appropriate measures to reduce gross electricity consumption to meet the targets set in Articles 3 and 4. The measures shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable and shall, in particular:	1. Member States may choose the appropriate measures to reduce gross electricity consumption to meet the targets set in Articles 3 and 4. The measures shall be clearly defined, transparent, proportionate~~,~~ **and** non-discriminatory ~~and verifiable~~ and shall, ~~in particular~~ **such as**:	It needs to be clear that **ALL** *transparent, proportionate and non-discriminatory* **measures to save energy need to be encouraged**. The experience of the EED shows that setting up measures whose energy savings can be verified is extremely time-consuming. Emergency measures need to be as simple as possible in order to be applied inmediately. There is no time to loose.
(a) be market-based, with compensation, where applicable established through an open competitive process, including tenders in which successful bidders receive compensation;		

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Commission proposal	Drafting Suggestions	Comments
(b) only involve financial compensation when such compensation is paid for additional electricity not consumed compared to the expected consumption in the hour concerned without the tender;		
(c) not unduly distort competition or the proper functioning of the internal market in electricity;		
(d) not be unduly limited to specific customers or customer groups, including aggregators, in accordance with Article 17 of Directive (EU) 2019/944;		

Commission proposal	Drafting Suggestions	Comments
(e) not unduly prevent the process of replacing fossil fuel technologies with technologies using electricity.		
Section 2		
Cap on market revenues and distribution of surplus revenues to final customers		We would like to underline that we fully agree with the concept of capping market revenues to benefit consumers. However, we see the need for adjustments regarding the value and the scope of the cap. Furthermore, we believe that the text lacks clarity in regard to the treatment of hedging/long-term contracts. The cap applies to all contractual options (including bilaterals) and all markets. However, it does not solve how to deal with intra-group bilaterals. These could leave the mechanism

Commission proposal	Drafting Suggestions	Comments
		without effect if they are signed below market value to ensure the margin of the retailer, thus avoiding the revenue limitation. In addition, in Spain the current measures are applied to the electricity market in the mainland, but not to in the non-peninsular territories in the Balearic and Canary islands, Ceuta and Melilla. We would like this situation to be reflected in the text.
Article 6 Mandatory cap on market revenues		
1. Market revenues of producers obtained from the generation of electricity from the sources referred to in Article 7(1) shall be capped to a maximum of 180 EUR per MWh of electricity produced.		The price cap value of 180 €/MWh does not reflect actual costs and could have perverse effects. It is far from: • the 67 Euros/MWh reference for the clawback mechanism already applied in

Commission proposal	Drafting Suggestions	Comments
		Spain (https://www.boe.es/buscar/act.php?id=BOE-A-2021-14974), • the results of energy auctions or feed-in tariffs applied by Member States, and • historical price/revenues obtained on the market prior to the energy crisis in the second half of 2021. Such a high price cap could work against electrification and become an instrument to consolidate excessive profits.
2. Member States shall ensure that the cap targets all the market revenues of producers, regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally or in a centralised marketplace.		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
3. Member States shall decide whether to apply the cap on revenues at the settlement of the exchange of energy or thereafter.		
4. Without prejudice to paragraph 1, Member States may maintain or introduce measures that further limit the market revenues of producers, provided that these measures are proportionate and non-discriminatory, do not jeopardise investment signals, ensure that the investments costs are covered, do not distort the functioning of electricity wholesale markets, and are compatible with Union law.	4. Without prejudice to paragraph 1, Member States may maintain or introduce measures that further limit the market revenues of producers, provided that these measures are proportionate and non-discriminatory, do not jeopardise investment signals, ensure that the investments costs are covered, do not distort the functioning of electricity wholesale markets, and are compatible with Union law. All existing measures limiting market revenues of any type of electricity production source that were adopted by Member States before the entry	We would like to underline that we fully agree with the concept that lies behind this section. However, the main problem is the application of the same value of the price cap for all Member States. We should not dilute measures that have already proven to work. In Spain we are applying two mechanisms: • The Iberian mechanism together with PT • A claw-back mechanism on non-emitting producers (see comment to art. 6.1) It is key for Spain to continue applying these mechanisms are already in place, which help to

Commission proposal	Drafting Suggestions	Comments
	into force of this Regulation shall be deemed fulfilling the conditions mentioned in the previous sentence.	achieve the same goal that Section 2 of the proposal aims to.
Article 7 Application of the cap on market revenues to electricity producers		
1. The obligation in Article 6 shall apply to the market revenues obtained from the sale of electricity produced from the following sources:		
(a) wind energy;		
(b) solar energy (solar thermal and solar photovoltaic);		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
(c) geothermal energy;		
(d) hydropower without reservoir;	(d) hydropower **with or** without reservoir;	Spain considers that the mandatory cap has to apply to hydropower with reservoir as well. This technology is the one that benefits most from high gas prices, so it should not be excluded. Storage and electricity generation cannot be treated in the same way. A separate economic regime must be established for the "availability" of pumped storage, but under no circumstances should it be treated in the same way as natural gas plants. While this separate economic regime, hydro with reservoir/pump storage should be included with an incentive that provides appropriate signals on its "marginal role" in the electricity system through partial exposure to hourly prices

Commission proposal	Drafting Suggestions	Comments
		registered in the wholesale market. There is a need to find a compromise.
(e) biomass fuel (solid or gaseous biomass fuels), excluding bio-methane;		
(f) waste;		
(g) nuclear energy;		
(h) lignite;		
(i) crude oil and other oil products.		
2. The cap provided for in Article 6(1) shall not apply to demonstration projects or to producers whose revenues per MWh of		

Commission proposal	Drafting Suggestions	Comments
electricity produced are already capped as a result of State measures.		
3. Member States may, notably in cases where the application of the cap provided for in Article 6(1) leads to a significant administrative burden, decide that the cap does not apply to producers generating electricity with power-generating facilities with an installed capacity of maximum 20 kW.		
Article 8 Incentives for renewables power purchase agreements		
1. Within the framework of this Regulation, Member States shall swiftly remove any unjustified administrative or market barriers		

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Commission proposal	Drafting Suggestions	Comments
to renewables power purchase agreements. They shall take measures to accelerate the uptake of renewables power purchase agreements, in particular by small and medium-sized enterprises.		
2. Member States shall design, schedule and implement support schemes – and guarantees of origin – in such a way that they are compatible with, complement and enable renewables power purchase agreements.		
Article 9 Distribution of the surplus revenues		
1. Member States shall ensure that all surplus revenues resulting from the application of the cap on market revenues are employed to		

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Commission proposal	Drafting Suggestions	Comments
finance measures in support of final electricity customers that mitigate the impact of high electricity prices on those customers, in a targeted manner.		
2. The measures referred to in paragraph 1 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable and shall not counteract the reduction obligation of gross electricity consumption in Articles 3 and 4.		
3. The measures referred to in paragraph 1 may for example include:		
(a) granting a financial compensation to final electricity customers for reducing their		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
electricity consumption, including through demand reduction auctions or tender schemes;		
(b) direct transfers to final electricity customers;		
(c) compensation to suppliers who have to deliver electricity to customers below costs following a State intervention in price setting pursuant to Article 12;		
(d) lowering the electricity purchase costs of final electricity customers for a limited volume of the electricity consumed;		
(e) promoting investments by final electricity customers into decarbonisation		

Commission proposal	Drafting Suggestions	Comments
technologies, renewables and energy efficiency investments.		
Article 10 Agreements between Member States		Positive scrutiny reservation. It is key to establish a high threshold of net imports. We support to maintain 100%
In situations where a Member State's net imports of electricity are equal or higher than 100%, an agreement to share the surplus revenues shall be concluded by 1 December 2022 between the importing Member State and the main exporting country. All Member States may, in a spirit of solidarity, conclude such agreements.		
Section 3		

Commission proposal (ST 12249/22 – COM(2022) 473 final) Deadline: ***15 September 2022***

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
Retail measures		As a general comment, measures to mitigate electricity bills for final consumers depend on the budgetary and financial capacity of each Member State, resulting in potential asymmetries and not guaranteeing the basic principle of the internal market: "level playing field". The revenues used to cover measures under art. 12 arise from the 'inframarginal renevue cap', which depends on the mix of MS and, thus, can lead to different levels of income.
Article 11 Temporary extension to small and medium-sized enterprises of public interventions in electricity price setting		
By way derogation from the EU rules on public interventions in price setting, Member States		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
may apply public interventions in price setting for the supply of electricity to small and medium-sized enterprises. Such public interventions shall:		
(a) be limited to 80% of the beneficiary's highest annual consumption over the last 5 years and retain an incentive for demand reduction;		
(b) comply with the conditions of Article 5(4) and (7) of Directive (EU) 2019/944;		
(c) where relevant, comply with the conditions of Article 12 of this Regulation.		
Article 12 Temporary possibility to set electricity prices below cost		

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
By way of derogation from the EU rules on public interventions in price setting, when applying public interventions in the price setting for the supply of electricity pursuant to Article 5(6) of Directive (EU) 2019/944 or Article 11 of this Regulation, Member States may exceptionally and temporarily set a price for the supply of electricity which is below cost provided that all of the following conditions are fulfilled:		
(a) The measure covers a limited amount of consumption and retains an incentive for demand reduction;		
(b) There is no discrimination between suppliers;		

Commission proposal	Drafting Suggestions	Comments
(c) Suppliers are compensated for supplying below cost;		
(d) All suppliers are eligible to provide offers at the regulated price on the same basis.		
CHAPTER III		
MEASURE CONCERNING THE OIL, COAL, GAS AND REFINERY SECTORS		Spain conceptually shares the need to intervene at the present time, when extremely high energy prices for the consumers generate exceeding financial gains for energy companies in a short amount of time, due to favourable market factors instead of due to their own investment. In Spain, the high energy prices create hardship for households and businesses, drive up inflation and raise public expenditure.

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
		Spain has already initiated the adoption of measures in order to provide an effective, efficient and forceful response to deal with the harmful effects that the escalation of prices is generating in all citizens, endangering, even, in certain especially vulnerable citizens, a minimum quality of life in an advanced society like ours. Thus, Spain has initiated the procedures to introduce a levy on the main operators in the energy sector, in order to redistribute some of these revenues of the energy companies to alleviate difficulties for the energy consumers and society in general. While analyzing the possible levies to be imposed, the technical studies we have done show some conclusions that are applicable to

Commission proposal	Drafting Suggestions	Comments
		the proposal for a mandatory temporary solidarity contribution proposed by the European Commission, concerning the oil, coal, gas and refinery sector. On one hand, it is indisputable that, using the same tax base and rules as those of corporation tax, a situation of double taxation or overlap of figures would occur. On the other hand, the regulation of corporate tax is very different in each Member State. Corporate tax is not a harmonised tax. In Spain, for example, there is a group taxation regime that is different from the one in the rest of Europe.

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Commission proposal	Drafting Suggestions	Comments
		The contribution, therefore, would not be homogeneous, so the supposedly pursued aim would not be fulfilled. In addition, the use of corporate tax rules would introduce into the calculation of the contribution factors which are totally unrelated to extraordinary profits we want to adress, such as provisions, profit and loss, restructuring effects, tax credits... for 2022 but also for previous years. It is also necessary to take into account that the rules on corporate tax lead to the taxation of global income, and not all company will be able to segment their activity to determine the revenues from the energy segment of activity.

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
		Spain is in favor of harmonization and coordinated action, but tax measures, due to its technical component and the direct and indirect and side effects that could provoque, have to be very well technically delineated. That is the reason why they are always discuss in technical groups with the tax experts. It is quite surprising that in this case, it is intented to be approved with so little information. We can understand the urgency of the moment, but before we give our consent to these mesarue we would like to get clearance of some concerns the proposal raises. In particular:

Commission proposal	Drafting Suggestions	Comments
		— Are the profits calculated at the company level or at the group level in each Member State? — Which profits are considered: the accounting profit, the operating profits, the profits before taxes, or the tax base of the corporation tax? The way to calculate the corporate income tax is different across all MS: diferent rules on the computation of provisions, amortizations, or the consideration of tax credits. How are we going to take into account all those differences? If a company has a branch/permanent establisment in another EU country, which country is taxing theirs : the country of the branch or the country of the parent? What if the

Commission proposal	Drafting Suggestions	Comments
		branch is in a third country? Are those profits to be considered? Where will be taxed? — Are the profits of the subsidiaries been taxed in the country of that subs? Or in the country of the parent? — In the case of a business restructuring when the scope of the group has changed, or the size of the company has changed: is there any consequence? — If there were multimillion-dollar operations in the past, for example, large disinvestments, with large gains or losses, is that profit or loss taken into account? And if it is disinvested in 2022?

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
		— What if the company is new and there is no comparable in the past? What if it is the result of a merger or takeover? What if there is a change of residence within the EU or from outside to inside? — What to do with tax credits from previous years, pending application? — Is it guaranteed that two companies in an equivalent situation in two different Member States will receive equivalent treatment (in results)? The doubt arises even within the same country, depending on how the previous questions are answered. — How has the collection impact been calculated?

Proposal for an emergency intervention to address high energy prices

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Commission proposal	Drafting Suggestions	Comments
		In the absence of a technical study that responds to all of the above, Spain **considers that the Member States that have viable alternatives in progress should be allowed to apply them, as long as the effect of its measures is equivalent to what is intended to be achieved by the council regulation, via a validation clause.**
Article 13 Support to final customers through a mandatory temporary solidarity contribution		
1. Surplus profits generated from activities in the oil, gas, coal and refinery sector shall be subject to a temporary solidarity contribution.		

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2. Member States shall ensure that existing or planned national measures sharing similar objectives as the temporary solidarity contribution under this Regulation comply with or complement the rules governing the temporary solidarity contribution set by this Regulation.		
3. The mandatory temporary solidarity contribution referred to in paragraph 1 shall apply from 31 December 2022 at the latest.		
Article 14 Base for calculating the temporary solidarity contribution		
The temporary solidarity contribution for EU companies and permanent establishments		

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performing activities in the field of oil, gas, coal and refinery sectors shall be calculated on the taxable profits, as determined under national tax rules in the fiscal year starting on or after 1 January 2022, which are above a 20% increase of the average taxable profits, as determined under national tax rules, of the three fiscal years starting on or after 1 January 2019. If the average annual result from the period covering the three fiscal years starting on or after 1 January 2019 is negative, the average taxable profits shall be zero for the purpose of calculating the temporary solidarity contribution.		
Article 15 Rate for calculating the temporary solidarity contribution		

Commission proposal (ST 12249/22 – COM(2022) 473 final) Deadline: ***15 September 2022***

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1. The rate applicable for calculating the temporary solidarity contribution shall be at least 33% of the base referred to in Article 14.		
2. The temporary solidarity contribution shall apply in addition to the regular taxes and levies applicable according to the national legislation of a Member State.		
Article 16 Use of proceeds from the temporary solidarity contribution		
1. Member States shall use the proceeds from the temporary solidarity contribution with sufficiently timely impact for the following purposes:		

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(a) financial support measures to final energy customers, and notably vulnerable households, to mitigate the effects of high energy prices, in a targeted manner;		
(b) financial support measures to help reducing the energy consumption such as through demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, promoting investments by final energy customers into renewables, structural energy efficiency investments or other decarbonisation technologies;		
(c) financial support measures to support companies in energy intensive industries		

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provided that they are made conditional upon investments into renewable energies, energy efficiency or other decarbonisation technologies.		
(d) financial support measures to develop the energy autonomy in particular investments in line with REPowerEU objectives notably projects with a cross-border dimension.		
(e) in a spirit of solidarity, between Member States, assignment by Member States of a share of the proceeds of the temporary solidarity contribution to the common financing of measures to reduce the harmful effects of the energy crisis including support for protecting employment and the re- and upskilling of the workforce or to promote investments in energy		

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efficiency and renewable energy including in cross-border projects.		
2. The measures referred to in paragraph 1 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable.		
Article 17 Temporary nature of the solidarity contribution		
The temporary solidarity contribution applied by Member States in accordance with this Regulation shall be of a temporary nature. It shall only apply to surplus profits generated in the fiscal year that started on or after 1 January 2022.		

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Commission proposal	Drafting Suggestions	Comments
CHAPTER IV		
FINAL PROVISIONS		
Article 18 Monitoring and enforcement		
1. The competent authority of each Member State shall monitor the implementation of the measures referred to in Articles 3, 4, 5, 6, 7, 9, 11 and 12 on its territory.		
2. As soon as possible after the entry into force of this Regulation and at the latest by 1 December 2022, Member States shall report to the Commission the planned measures required pursuant to Article 5 and the agreements concluded pursuant to Article 10.		

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Commission proposal	Drafting Suggestions	Comments
3. By 15 January 2023 and every month thereafter until 15 April 2023, Member States shall report to the Commission on:		
(a) the demand reduction achieved pursuant to Articles 3 and 4 and the measures put in place to achieve the reduction pursuant to Article 5;		
(b) the surplus revenues generated pursuant to Article 6;		
(c) the measures concerning the distribution of the surplus revenues applied to mitigate the impact of high electricity prices on final customers pursuant to Article 9;		

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(d) any public interventions in price setting for electricity referred to in Articles 11 and 12;		
4. Member States shall report to the Commission on:		
(a) the introduction of the temporary solidarity contribution pursuant to Article 13 by 15 October 2022;		
(b) any subsequent amendments to said measure within one month of the publication in the national official journal;		
(c) on the use of the proceeds pursuant to Article 16 within one month from the moment the proceeds have been collected by Member States in accordance with national law.		

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Article 19 Review		
1. By 28 February 2023, the Commission shall carry out a review of Chapter II in view of the general situation of electricity supply and electricity prices in the Union and present a report on the main findings of that review to the Council. Based on that report, the Commission may in particular propose, in case this is justified by the economic circumstances or the functioning of the electricity market in the Union and individual Member States, to prolong the period of application of this Regulation, to amend the level of the revenue cap in Article 6 (1) and its application to producers in Article 7 or otherwise amend Chapter II.		

Commission proposal	Drafting Suggestions	Comments
2. By 15 October 2023, the Commission shall carry out a review of Chapter III in view of the general situation of the fossil fuel sector and surplus profits generated and present a report on the main findings of that review to the Council.		
Article 20 Entry into force and application		
1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.		
2. Without prejudice to the need to ensure the distribution of surplus revenues in accordance with Article 9, and to use proceeds from the temporary solidarity contribution in		

Commission proposal	Drafting Suggestions	Comments
accordance with Article 16, this Regulation shall apply for a period of one year from its entry into force.		
Articles 3, 4, 5, 6, 7, 9, 10 shall apply as of 1 December 2022. This shall be without prejudice to an earlier voluntary application by Member States.		
Articles 3, 4, 6, 7, shall apply until 31 March 2023.		
This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.		
Done at Brussels,		

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Commission proposal	Drafting Suggestions	Comments
For the Council		
The President		
	End	**End**