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CONTRIBUTION

From: General Secretariat of the Council
To: Working Party on Energy

Subject: MT comments on EMD (ST 9201/23)

Delegations will find in the annex the MT comments on EMD (ST 9201/23).

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Presidency compromise text	Drafting Suggestions	Comments
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,		

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Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee,		
Having regard to the opinion of the Committee of the Regions,		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		
(1) Very high prices and volatility in electricity markets have been observed since September 2021. As set out by the European		

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<p>Agency for the Cooperation of Energy Regulators (‘ACER’) in its April 2022 assessment of EU wholesale electricity market design¹, this is mainly a consequence of the high price of gas, which is used as an input to generate electricity.</p>		
<p>(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</p>		

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

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installations. This has resulted in substantial additional increases in the volatility of price levels of electricity.		
<p>(3) In response to this situation, the Communication on Energy Prices presented by the Commission in October 2021 contained a toolbox of measures that the EU and its Member States may use to address the immediate impact of high energy prices on households and 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’² the Commission outlined a series of additional measures to strengthen the toolbox</p>		

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM/2022/108 final

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<p>and to respond to rising energy prices. On 23 March 2022, the Commission also established a temporary State Aid regime to allow certain subsidies to soften the impact of high energy prices.³</p>		
<p>(4) On 18 May 2022 the Commission presented the REPowerEU plan⁴ 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-</p>		

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

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

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<p>Term Improvements to the Electricity Market Design⁵, in addition to setting out additional short-term measures to tackle high energy prices identified potential areas for improving the electricity market design and announced the intention to assess these areas with a view to change the legislative framework.</p>		
<p>(5) To address urgently the price crisis and security concerns and to tackle the price hikes for citizens, and based on a series of Commission proposals, the Union adopted a strong gas storage regime⁶, effective demand reduction measures for gas and electricity⁷,</p>		

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

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

⁷ 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

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price limiting regimes to avoid windfall profits in both gas and electricity markets ⁸ and measures to accelerate the permit-granting procedures for renewable energy installations ⁹ .		
(6) A well-integrated market which builds on the Clean Energy for all Europeans Package adopted in 2018 and 2019 ¹⁰ 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		

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

⁹ 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.

¹⁰ 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.

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<p>interconnectivity also ensures safer, more reliable and efficient operation of the power system.</p>		
<p>(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.</p>		

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<p>(8) In the context of the energy crisis, the current electricity market design has however also revealed a number of important shortcomings linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.</p>		
<p>(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</p>		

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<p>across the Union and reduce direct consumption of fossil fuels.</p>		
<p>(10) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, including the most vulnerable ones, and ultimately, shield them from energy crises and avoid more households falling into energy poverty trap. These should mitigate the impact of high fossil fuel prices, notably that of gas, on electricity prices, aiming to allow households and companies to reap the benefits of affordable and secure energy from sustainable renewable and low carbon sources in the longer term.</p>		
<p>(11) The reform of the electricity market design should benefit not just household consumers but also the competitiveness of the</p>		

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<p>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.</p>		
<p>(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.</p>		
<p>(13) Intraday markets are particularly important for the integration of variable renewable energy sources in the electricity</p>		

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<p>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.</p>		
<p>(14) It is therefore important for the intraday markets to adapt to the participation of variable renewable energy technologies such as solar and wind as well as to the participation of demand <i>side</i> 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</p>		

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<p>gate closure time of the intraday market. Furthermore, the gate closure time of the intraday market should be set closer to the time of delivery to maximize the opportunities for market participants to trade shortages and surplus of electricity and contribute to better integrating variable renewables in the electricity system.</p>		
<p>(15) In addition, the short-term electricity markets should ensure that small-scale flexibility service providers can participate by lowering the minimum bid size.</p>		
<p>(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 <u>situations of electricity price crisis</u> times when there is high demand for electricity combined with low levels</p>		<p>Refer to Malta's comments on Article 7a</p>

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<p>of electricity generation from variable renewable energy sources, it should be possible for transmission system operators to design a peak shaving product enabling <u>additional</u> demand response to contribute to decreasing peaks of consumption in the electricity system at specific hours of the day. <u>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.</u> 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</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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<p>demand-side response. <u>As the peak shaving product is intended to only be applied in limited situations of electricity price crisis, its</u></p> <p>The procurement of the peak shaving product should <u>may</u> take place <u>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</u> <i>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.</i></p> <p><u>Transmission system operators should be able to activate the peak shaving product</u></p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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<p><u>based on the forecast of the demand.</u> <u>Alternatively, the peak shaving product could be activated automatically within the day-ahead market, based on the energy price committed during the procurement of the demand reduction capacity.</u> 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.</p>		
<p>(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</p>		

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<p>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 measurement<i>metering</i> devices for the observability and settlement of flexibility services such as demand response and energy storage. Enabling the use of data from dedicated measurement<i>metering</i> devices for observability and settlement should facilitate the active participation of the consumers in the market and the development of their demand response. The use of data from these dedicated measurement<i>metering</i> devices should be accompanied by quality requirements relating to the data.</p>		
<p>(18) This Regulation establishes a legal basis for processing of personal data in compliance with Article 6(1)(c) GDPR. Member States</p>		

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<p>should ensure that all personal data protection principles and obligations laid down in the GDPR are met, including on data minimisation. Where the objective of this Directive can be achieved without processing of personal data, providers should rely on anonymised and aggregated data.</p>		
<p>(19) Consumers and suppliers need effective and efficient forward markets to cover their long-term price exposure and decrease the dependence on short-term prices. To ensure that energy customers all over the EU can fully benefit from the advantages of integrated electricity markets and competition across the Union, the functioning of the Union’s electricity forward market should be improved via the establishment of regional virtual hubs with a view to overcome the existing market fragmentation and the low liquidity experienced</p>		

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<p>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.</p>		
<p>(19b) To ensure uniform conditions for the implementation of this Regulation, 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. Before adapting that implementing act, the Commisison should carry out an impact assessment.</p>		

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<p>(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.</p>		
<p>(21) To enhance the possibilities of market participants for hedging, the role of the single allocation platform established in accordance with Commission Regulation (EU) 2016/1719 should be expanded. The single allocation platform should offer trading of financial long-term transmission rights between the different bidding zones and the regional virtual hubs. The</p>		

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<p>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.</p>		
<p>(22) Network tariffs should incentivise transmission and distribution system operators to use flexibility services through further</p>		

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<p>developing innovative solutions to optimise the existing grid and to procure flexibility services, in particular demand response or storage. For this purpose, network tariffs should be designed so as to take into account the operational and capital expenditures of system operators or an efficient combination of both so that they can operate the electricity system cost-efficiently. This would further contribute to integrating renewables at the least cost for the electricity system and enable final customers to value their flexibility solutions.</p>		
<p>(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</p>		

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<p>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 <u>in an offshore bidding zone</u>. In order to reduce investment risk for these offshore project developers and to ensure that the projects in an offshore bidding zone have full market access to the surrounding markets, transmission system operators should guarantee access of the offshore project to the capacity of the respective hybrid interconnector for all market time units. If the available transmission capacities are reduced to the extent that the full amount of electricity generation that the offshore project would have otherwise been able to export cannot be delivered to the market, the transmission system operator or operators</p>		

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<p>responsible for the need to limit the capacity should, in future, be enabled to compensate the offshore project operator commensurately using congestion income. This compensation should only be related to the production capability available to the market, which may be weather dependent and excludes the outage and maintenance operations of the offshore project.</p> <p><u>The compensation in case of lack of access to the transmission network should not be interpreted as constituting priority dispatch.</u></p> <p>The details, including the conditions under which the measure may expire, are intended to be defined in an implementing Regulation.</p>		
<p>(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</p>		

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<p>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.</p>		
<p>(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.</p>		

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<p>(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.</p>		
<p>(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</p>		

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<p>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.</p>		
<p>(28) According to Article 15(8) of Directive (EU) 2018/2001 of the European Parliament and of the Council, Member States are to assess the regulatory and administrative barriers to long-term renewables PPAs, and shall remove unjustified barriers to, and promote the uptake of, such agreements. In addition, Member States are to describe policies and measures facilitating</p>		

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<p>the uptake of renewables PPAs in their integrated national energy and climate plans.</p> <p>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 <i>in line with Articles 107 and 108 TFEU</i>. 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.</p> <p>Member States could decide to facilitate the aggregation of demand for PPAs from customers that individually face barriers to</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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<p>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 <i>instruments</i> facilities provided at Union level, for instance by the European Investment Bank ('EIB').</p>		
<p>(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</p>		

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<p>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.</p>		
<p>(30) Where Member States decide to support publicly financed new investments by ("direct price support schemes") in low carbon, non-fossil fuel electricity generation to achieve the Union's decarbonisation objectives, those schemes should be structured by way of two-</p>		

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<p>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. 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 repoweringextending existing power generating facilities, increasing their capacity or at prolonging their lifetime.</p>		
<p>(31) Such two-way contracts for difference would ensure that revenues of producers stemming from new investments in electricity</p>		

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<p>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.</p>		
<p>(32) However, to the extent that the limitation to set out direct price support schemes in the form of two-way contracts for difference narrows down the types of direct price support schemes that Member States can adopt as regards renewable energy sources, it should be limited to low carbon, non-fossil fuel technologies, with low and stable operational costs and to technologies which typically do not provide flexibility to the electricity system, while excluding technologies that are at early stages of their market deployment. This is necessary to ensure that the economic viability of generation technologies with high marginal costs is not jeopardised and to maintain the</p>		

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<p>incentives of the technologies which can offer flexibility to the electricity system to bid in the electricity market based on their opportunity costs. In addition, the limitation to set out direct price support schemes in the form of two-way contracts for difference should not apply to emerging technologies for which other types of direct price support schemes may be better placed to incentivise their uptake. The limitation should be without prejudice to the possible exemption for small-scale installations and demonstration projects pursuant to Article 4 (3) of (EU) 2018/2001 of the European Parliament and of the Council and consider the specificities of renewable energy communities in accordance with Article 22 (7) of that Directive.</p>		
<p>(33) In view of the need to provide regulatory certainty of producers, the obligation for Member States to apply direct price support</p>		

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<p>schemes for the production of electricity in the form of two-way contracts for difference should apply only to new investments for the generation of electricity from the sources specified in the recital above.</p>		
<p>(34) Thanks to the upward limitation of the market revenues direct price support schemes in the form of two-way contracts for difference should provide an additional source of revenues for Member States in periods of high energy prices. To further mitigate the impact of high electricity prices on the energy bills of consumers, Member States should ensure that the revenues collected from producers subject to direct price support schemes in the form of two-way contracts for difference are passed on to all final electricity customers, including households, SMEs and industrial customerconsumers, based on their</p>		

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<p><i>consumption.</i> When distributing the revenues to households, Member States should in particular be able to favour vulnerable customers. Where Member States decide to distribute revenues to undertakings, they should do so proportionally to the consumption of such undertakings. The part of the revenues that could be distributed to undertakings should not exceed the combined share of electricity consumption of all undertakings. The redistribution of revenues should be done in a way that ensures that consumers are still to some extent exposed to the price signal, so that they reduce their consumption when the prices are high, or shift it to periods of lower prices (which are typically periods with a higher share of RES production). Member States should ensure that the level playing-field and competition between the different suppliers is not affected by the</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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redistribution of revenues to the final electricity consumers.		
(35) Furthermore, Member States should ensure that the direct price support schemes, irrespective of their form, do not undermine the efficient, competitive and liquid functioning of the electricity markets, preserving the incentives of producers to react to market signals, including stop generating when electricity prices are below their operational costs, and of final customers to reduce consumption when electricity prices are high. Member States should ensure that support schemes do not constitute a barrier for the development of commercial contracts such as PPAs.		
(36) Thus, two-way contracts for difference and power purchase agreements play complementary roles in advancing the energy		

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<p>transition and bringing the benefits of renewables and low carbon energy to consumers. Subject to the requirements set out in the present Regulation, Member States should be free to decide which instruments they use to achieve their decarbonisation objectives.</p> <p>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.</p>		

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<p>(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. <u>In order to foster non-fossil flexibility, R</u>egulatory authorities should periodically assess the need for flexibility in the electricity system based on the input of transmission and distribution system operators <u>and this assessment should complement the reporting on the flexibility of the national energy system in accordance with Regulation (EU) 2018/999</u>. 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,</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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<p>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.</p>		
<p>(38) To achieve the national objective for non-fossil flexibility such as demand-side response and energy storage investment needs, Member States can design or redesign capacity mechanisms in order to create a green and flexible capacity mechanism. <u>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</u></p>		

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<p><u>demand side management. In addition,</u> Member States that apply a capacity mechanism in line with the existing rules should <u>consider</u> promoting the participation of non-fossil flexibility such as demand-side response and energy storage by introducing additional criteria or features in the design.</p>		
<p>(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,</p>		

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environmental protection and energy ¹¹ 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.		
(41) The connection of new generation and demand installations, in particular renewable energy plants, often faces delays in grid		

¹¹ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

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<p>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.</p>		
<p>(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</p>		

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<p>information to system users about the status and treatment of their connection requests.</p> <p>Transmission and distribution system operators should endeavour to provide such information within a period of three months from the submission of the request.</p>		
<p>(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 hit¹², 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</p>		

¹² 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.

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<p>from the energy transition, decouple their electricity bills from short term price movements on energy markets and rebalance the risk between suppliers and consumers.</p>		
<p>(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 with an increasing penetration of renewable energy sources can help consumers to reduce their energy bills.</p>		

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<p>(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.</p>		
<p>(46) Consumers should be able to choose the supplier which offers them the price and service</p>		

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<p>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. The rules for the allocation of the associated costs should be determined at national level. Some smart metering systems may directly cover more</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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<p>than one metering point and therefore enable customers to have more than one electricity supply contract at the same time. Moreover, with fast-responding dedicated measurement<i>metering</i> devices which are attached to or embedded in appliances with flexible, controllable loads, final customers can participate in other incentive-based demand response schemes that provide flexibility services on the electricity market and to transmission and distribution system operators. Overall, such arrangements should contribute to the increased uptake of demand response and to consumer empowerment allowing them to have more control over their energy use and bills, while providing to the electricity system additional flexibility in order to cope with demand and supply fluctuations.</p>		

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<p>(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.</p>		
<p>(48) To ensure continuity of supply for consumers in particular in cases of supplier failure, Member States should be obliged to implement a supplier-of-last-resort regime. Such a supplier of last resort appoint suppliers of last resort which may be treated as the</p>		

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<p>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 Council. However, this does not imply an obligation of Member States to supply at a certain fixed minimum price.</p>		
<p>(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</p>		

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<p>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.</p>		
<p>(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 arrangement are either based on private contractual agreement between active customers</p>		

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<p>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.</p>		
<p>(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</p>		

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<p>administrative matching within a certain timeframe of consumption with self-generated or stored renewable energy for the purpose of calculating the energy component of the energy bill. The output of these facilities should be distributed among the aggregated consumer load profiles based on static, variable or dynamic calculation methods that can be pre-defined or agreed upon by the active customers. 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 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</p>	<p><i>(This cell contains a large diagonal watermark reading "PUBLIC")</i></p>	

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<p>kW for multi-apartment blocks should not be required to comply with the obligations of suppliers.</p>		
<p>(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.</p>		
<p>(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</p>		

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<p>service obligations and are subject to specific conditions. Under this Directive regulated prices are possible for energy poor and vulnerable households, including below costs, and, as a transition measure, for households and micro-enterprises. In times of crisis, when wholesale and retail electricity prices increase significantly, and this is having a negative impact on the wider economy, Member States should be allowed to extend, temporarily, the application of regulated prices also to SMEs. For both households and SMEs, Member States should be temporarily allowed to set regulated prices below costs as long as this does not create distortion between suppliers and suppliers are compensated for the costs of supplying below cost. However, it needs to be ensured that such price regulation is targeted and does not create incentives to increase consumption. Hence, such price regulation should be limited to 80% of</p>		

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<p>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 Union-wide electricity price crisis exists. The decision should also specify the validity of that determination, during which the temporary extension of regulated</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	

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<p>prices applies, which may be for up to one year. 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.</p>		
<p>(53a) To the extent that any of the measures envisaged by the present Regulation constitute State aid, the provisions concerning such measures are without prejudice to the application of Articles 107 and 108 TFEU. The Commission is competent to assess the compatibility of State aid with the internal market.</p>		

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<p>(54) The measures envisaged by the present Regulation are also without prejudice to the application of Directive 2014/65/EU, Regulation (EU) 2016/1011 and Regulation (EU) 648/2012.</p>		
<p>(55) Regulation (EU) 2019/942 of the European Parliament and of the Council, Regulation (EU) 2019/943 of the European Parliament and of the Council, Directive (EU) 2019/944 of the European Parliament and of the Council and Directive (EU) 2018/2001 of the European Parliament and of the Council should be amended accordingly.</p>		
<p>(56) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as</p>		

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<p>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.</p>		
<p>HAS ADOPTED THIS REGULATION:</p>		
<p>Article 1</p>		
<p>Amendments to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity</p>		
<p>Regulation (EU) 2019/943 is amended as follows:</p>		
<p>(1) Article 1 is amended as follows:</p>		
<p>[a] point (b) is replaced by the following:</p>		

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<p>‘(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;’</p>		
<p>[b] the following point is added:</p>		

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<p>‘(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.’</p>		
<p>(2) In Article 2, the following points are added:</p>		
<p>‘(72) ‘peak hour’ means an hour with the highest electricity consumption combined with a low level of electricity generated from renewable energy sources, taking cross-zonal exchanges into account;</p>		
<p>(73) ‘peak shaving’ means the ability of market participants to reduce electricity consumption at peak hours <u>on the request of</u> determined by the transmission system operator;</p>	<p>(73) ‘peak shaving’ means the ability of market participants to reduce electricity consumption at peak hours <u>on the request of</u> determined by the</p>	<p>Currently the definition only refers to TSOs. In line with Malta’s comments and suggestions in Article 7a, we propose an extension to DSOs in</p>

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	transmission system operator, or in the case of Malta the distribution system operator ;;	the case of Malta in order to cover all Member States' specificities.
(74) 'peak shaving product' means a market-based product through which market participants can provide peak shaving to the transmission system operators;	(74) 'peak shaving product' means a market-based product through which market participants can provide peak shaving to the transmission system operators, or in the case of Malta the distribution system operator ;	Currently the definition only refers to TSOs. In line with Malta's comments and suggestions in Article 7a, we propose an extension to DSOs in the case of Malta in order to cover all Member States' specificities.
(75) 'virtual hub' means a non-physical region covering more than one bidding zone for which an index price is set in application of a methodology;		
(76) 'two-way contract for difference' means a contract signed between a power generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration; the contract is designed to		

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<p>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;</p>		
<p>(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;</p>		
<p>(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;</p>		

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<p>(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;</p>		
<p>(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.’</p>		
<p>(3) Article 7 is amended as follows:</p>		
<p>[a] paragraph 1 is replaced by the following:</p>		
<p>‘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</p>		

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<p>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, <u>or an entity designated by them,</u> 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.’</p>		
<p>[b] paragraph 2 is amended as follows:</p>		
<p>(i) point (c) is replaced by the following:</p>		

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(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:		
<p>‘(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.</p> <p><u>NEMOs shall share all the orders 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;</u>’</p>		
(4) the following Articles 7a and 7b are inserted:		

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Article 7a		
Peak shaving product		
<p>1. <u>Where a regional or Union-wide electricity price crisis is declared in accordance with Article 66a Directive (EU) 2019/944, and</u> W<u>without prejudice to Article 40(5) and 40(6) of the Electricity Directive, transmission system operators may procure peak shaving products in order to achieve a reduction of electricity demand in during peak hours. <u>Such procurement shall be limited to the duration set out in the decision adopted pursuant to Article 66a(2).</u></u></p>		<p>Malta believes that the peak shaving product should be a standard product which network operators could use in business-as-usual, as well as crisis situations. In this regard, Malta would prefer reverting back to REV2 wording.</p> <p>Malta takes note of the justification for limiting the activation of a peak shaving product only to situations where a regional or Union-wide electricity price crisis has been declared.</p> <p>However, to limit the risk of market distortion, the text should focus on planning and predictability of the peak shaving product's use rather than limiting to electricity crises.</p>

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<p>2. Transmission 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:</p>		
<p>(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</p>		<p>The process to establish a peak shaving product now seems rather complex, especially since it has been limited to crisis situations which would require fast response and fast implementation of measures.</p>

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<p>energy sources and the forecast of other sources of flexibility in the system. The dimensioning of the peak shaving product shall be limited to ensure that the forecasted costs do not exceed pected the expected benefits of the product do not exceed the forecasted costs;</p>		
<p>(b) the procurement of a peak shaving product shall be based on objective, transparent, non-discriminatory criteria and be limited to demand response;</p>		
<p>(c) the procurement of the peak shaving product shall take place using a competitive bidding process, <u>which can be continuous</u>, with selection based on the lowest cost of meeting pre-defined technical and environmental criteria;</p>		

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<p>(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;</p>		
<p>(e) the activation of the peak shaving product shall not reduce cross-zonal capacity;</p>		
<p>(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;</p>		
<p>(g) the peak shaving product shall not imply starting fossil fuel-based generation located behind the metering point.</p>		
<p>3. The actual reduction of consumption resulting from the activation of a peak shaving</p>		

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<p>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.</p>		
<p>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.</p>		

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	<p><u>“5. In the case of Malta, the provisions of this Article may be extended to the distribution system operator.”</u></p>	<p>During its technical workshops, the Commission explained that the logic behind its proposal is that TSOs generally have the best overview of national consumption as well as an overview of national electricity consumption forecasts, allowing them to make better use of peak shaving products when compared to DSOs.</p> <p>There is no transmission system and hence no Transmission System Operator in Malta give the small size of its electricity market. In fact, Malta does not have an electricity transmission system and its sole DSO is designated as the sole supplier of electricity in Malta.</p> <p>To take account of the specific nature of Malta’s electricity system and in order to ensure applicability of the peak shaving product at a national level, we are suggesting that, in the</p>

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		case of Malta, this Article may also be extended to the DSO.
Article 7b		
Dedicated measurement <i>metering</i> device		
<p>1. “Member States shall allow Transmission system operators and distribution system operators mayto use data from dedicated measurement<i>metering</i> devices for the observability and settlement of demand response and flexibility services, including from storage systems.</p>		
<p><u>1a. Where a final customer does not have a smart meter installed, 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,</u></p>		

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<p><u>upon the establishment of and subject to compliance with requirements established by Member States in line with paragraph 2.</u></p>		
<p>2. Member States shall establish requirements for a dedicated measurementmetering device data validation process to check and ensure the quality of the respective data.’;</p>		
<p>(5) Article 8 is amended as follows:</p>		
<p>(a) paragraph 1 is replaced by the following:</p>		
<p>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 203028, the intraday cross-zonal gate closure time shall be at the earliest 30 minutes ahead of real time.’</p>		

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(b) paragraph 3 is replaced by the following:		
<p>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.’</p>		
[6] Article 9 is replaced by the following:		
Article 9		
Forward markets		
<p>1. By 1 December 2024 the ENTSO for Electricity shall submit to ACER, after having consulted ESMA, a proposal for the</p>		

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<p><i>establishment of regional virtual hubs for the forward market. The proposal shall:</i> 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 TSOs, allowing price risk hedging across bidding zones.</p>		
<p>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:</p>		<p>Malta agrees with the requirement for the European Commission to carry out an impact assessment prior to the adoption of an implementing act.</p>
<p>(a) include a methodology to define the geographical scope of the regional virtual hubs <i>for the forward market</i>, including the bidding zones constituting these hubs, aiming to</p>		

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<p>maximise the price correlation between the reference prices and the prices of the bidding zones constituting virtual hubs;</p>		
<p>(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;</p>		
<p>(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</p>		

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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 TSOs. It shall have a legal form as referred to		

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<p>in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council.</p>		
<p><i>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.</i></p>		
<p><i>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.</i></p>		
<p><i>4. — The single allocation platform shall:</i></p>		

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<p>(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;</p>		
<p>(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;</p>		
<p>(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</p>		

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<i>frequent maturities of up to at least three years ahead.</i>		
<p>5. Where a regulatory authority considers that there are insufficient hedging opportunities available for market participants, and after consultation of relevant financial market competent authorities in case the forward markets concern financial instruments as defined under Article 4(1)(15), it may require power exchanges or transmission system operators to implement additional measures, such as market-making activities, to improve the liquidity of the forward market.</p>		
<p>6. -Subject to compliance with Union competition law and with Directive (EU) 2014/65 and Regulations (EU) 648/2012 and 600/2014, market operators may<i>shall be free to</i> develop forward hedging products, including</p>		

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<p>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.</p>		
(7) Article 18 is amended as follows:		
[a] paragraph 2 is replaced by the following:		
<p>“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,</p>		

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<p>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 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”;</p>		
<p>[b] paragraph 8 is replaced by the following:</p>		
<p>“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</p>		

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<p>through the procurement of services. For that purpose, regulatory authorities shall recognise relevant costs as eligible, shall include those costs in transmission and distribution tariffs, and shall introduce performance targets in order to provide incentives to transmission and distribution system operators to increase efficiencies in their networks, including through energy efficiency, the use of flexibility services and the development of smart grids and intelligent metering systems.”</p>		
<p>[c] in paragraph 9, point (f) is replaced by the following:</p>		
<p>‘(f) methods to ensure transparency in the setting and structure of tariffs, including anticipatory investments;’</p>		

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[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		

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[b] the following point (c) is added:		
<p>‘(c) compensating offshore generation plant operators in an offshore bidding zone <u>directly connected to an onshore bidding zone</u> if access to interconnected markets has been reduced in such a way that one or more transmission system operators have not made enough capacity available on the interconnector or the critical network elements affecting the capacity of the interconnector, resulting in the offshore plant operator not being able to export its electricity generation capability to the market <u>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 zone and neighbouring bidding zones.</u>’</p>		

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[9] The following chapter IIIa is inserted:		
Chapter IIIa		
Specific investment incentives to achieve the Union's decarbonisation objectives		
Article 19a		
Power purchase agreements		
<p>1. Without prejudice to Directive 2018/2001, Member States shall <i>facilitate</i> 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 andto reaching the objectives set out in their integrated national energy and climate plan with respect to</p>		<p>Malta can support the changes proposed in REV 3. Additionally, Malta supports the inclusion of provisions through which Member States could encourage that PPA contracts reflect the cost of production, in particular the low production cost of renewable electricity, and not the cost of fossil fuels reflected in the reference price.</p>

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<p>the dimension decarbonisation dimension referred to in point (a) of Article 4 of Regulation (EU) 2018/1999, while preserving competitive and liquid electricity markets.</p>		
<p>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<i>shall</i> take into account relevant Union-level facilities<i>instruments</i>.</p>		

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<p>Member States may<i>shall</i> determine what categories of customers are targeted by these instruments, applying non-discriminatory criteria.</p>		
<p>3. Without prejudice to Articles 107 and 108 TFEU, if a gGuarantee 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.</p>		
<p>4. In the design of the Ssupport 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.</p>		

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<p>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 offer 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.</p>		
<p>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.</p>		

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<p>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 complianceaccordance with Union competition law.</p>		
<p>Article 19b</p>		
<p>Direct price support schemes for new investments in generation</p>		
<p>1. 1.—Direct price support schemes for new investments for the generation of electricity from the sources listed in paragraph 2 shall take the form of a two-way contracts for differences. New investments for the generation of electricity shall include investments in new power-generating facilities or; investments aimed at substantially:</p>		

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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.		
The first subparagraph shall apply to contracts under direct price support schemes for new investments in generation concluded as of one year after the date of entry into force of this Regulation.		Malta can agree with the introduction of this paragraph that clarified that this obligation does not apply retroactively to existing installed capacity.
2. Paragraph 1 shall apply to new investments in generation of electricity from the following sources:		
(a) wind energy;		

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(b) solar energy;		
(c) geothermal energy;		
(d) hydropower without reservoir;		
(e) nuclear energy;		
3. Direct price support schemes in the form of two-way contracts for difference shall ensure that:		
(a) the revenues collected are distributed to final customers; <i>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);</i>		This provision does not seem to cater for the situation of all Member States, in particular Malta, which fully relies on the wholesale market of a neighbouring Member State to meet a share of its electricity demand. The proposed text does not provide a mechanism how consumers purchasing electricity from

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		<p>neighbouring Member States would also benefit from the lower RES prices.</p> <p>In general, the proposal fails, to decouple the price of electricity imports from the price of natural gas.</p>
<p>(b) to the extent that part of the revenues is distributed to undertakings, this distribution covers all undertakings in proportion to their share of consumption (same refund per MWh consumed). The part of the revenues that may be distributed to undertakings shall not exceed the combined share of electricity consumption of all undertakings;</p>		
<p>(c) <i>ensure that</i> the distribution of the revenues to final electricity customers is designed <i>so as not</i> to maintain remove the incentives of consumers to reduce their</p>		

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consumption or shift it to periods when electricity prices are low and not to undermine competition between electricity suppliers.÷		
Article 19c		
Assessment of flexibility needs		
<p>1. By 1 January 2025 <u>No later than one year after the approval by ACER of the methodology pursuant to paragraph 6,</u> and every two years thereafter, the regulatory authority of each Member State shall assess and draw up <u>adopt</u> a report on the need for <u>system</u> 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 <u>electricity</u> system, taking into account the integration of different sectors. The report shall may take into account the</p>		<p>As per Article 20 of Regulation 2019/943 national adequacy assessments are not mandatory and not all Member States have carried them out. This shall be reflected in the text.</p>

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<p>European Resource Adequacy Assessment and national adequacy assessments pursuant to Article 20 of 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.</p>	<p>The report shallmay take into account the European Resource Adequacy Assessment and, if applicable, national adequacy assessments pursuant to Article 20 of Regulation 2019/943.</p>	
<p>2. The report shall at least:</p>		
<p>(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;</p>		
<p>(b) and consider, in particular, the potential of non-fossil flexibility resources such as demand-side response and energy storage to</p>		

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fulfil this need, both at transmission and distribution levels; <u>and-</u>		
<p><u>(c) evaluate the barriers for flexibility in the market and propose relevant mitigation measures</u>The report shall include<i>distinguish between</i> seasonal, daily and hourly flexibility needs.</p>		
<p>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. <u>The regulatory authority may ask the transmission system operators and distribution system operators to provide additional input to the report.</u></p>		
<p>4. The ENTSO for Electricity and the EU DSO entity shall coordinate transmission and</p>		

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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 existing sources of flexibility and planned investments at interconnection, transmission and distribution level as well as the need to decarbonise the electricity system.		
5. The ENTSO for Electricity and the EU DSO entity shall closely cooperate with each		

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other regarding the coordination of transmission and distribution system operators.		
<p>6. By 1 March 2024, <u>No later than nine months after the adoption of this Regulation,</u> 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.</p> <p>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.</p>		
7. The regulatory authorities shall submit the reports referred to in paragraph 1 to ACER		

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<p>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, <u>including recommendations on removing barriers to the entry of non-fossil flexibility resources.</u></p>		
<p>Article 19d</p>		
<p>Indicative national objective for demand <i>side</i> response and energy storage</p>		
<p>Based on the report of the regulatory authority pursuant to Article 19e(1), <u>No later than 6 months after the submission of the report pursuant to Article 19c(1),</u> each Member State shall define, <u>based on this report,</u> an indicative national objective for <u>non-fossil flexibility, in</u></p>		

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<p><u>particular,</u> demand-side response and energy storage. This indicative national objective shall also be reflected in Member States’ integrated national energy and climate plans as regards the dimension ‘Internal Energy Market’ in accordance with Articles 3, 4 and 7 of Regulation (EU) 2018/1999 and in their integrated biennial progress reports in accordance with Article 17 of Regulation (EU) 2018/1999. <u>Member States may define provisional indicative objectives before the first submission of the report pursuant to Article 19c(1).</u></p>		
Article 19e		
Non-fossil #flexibility support schemes		
<p>1. <u>Where the market-based investment in non-fossil flexibility is insufficient to</u></p>		

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<p><u>achieve the indicative national objective, or where relevant provisional indicative objectives, identified in accordance with 19d, Member States may, without prejudice to Article 12 and 13, apply measures pursuant to paragraphs 2 to 4.</u></p>		
<p>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 <u>resources</u>, such as demand-side response and energy storage <u>in accordance with the expected contribution of those assets to address adequacy concerns</u> by introducing additional criteria or features in the design of the capacity mechanism.</p>		<p>The proposal fails to make substantive changes to relevant Articles concerning capacity mechanisms (Article 20, 21 of the Electricity Market Regulation). Malta considers capacity mechanisms as another important tool within the new market design. Member States should have flexibility to use any tool deemed fit to ensure security of supply, including capacity mechanisms. Member States which implement capacity mechanisms should not face additional requirements or burden.</p>

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<p>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 <u>indicative national objective, or where relevant provisional indicative objectives,</u> -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.</p>		
<p>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.</p>		

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Article 19f		
Design principles for non-fossil flexibility support schemes		
<p>Non-fossil flexibility support schemes <i>for non-fossil flexibility such as demand response and storage</i> applied by Member States in accordance with Article 19e(2) and (3) shall:</p>		
<p>(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;</p>		

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(b) be limited to new investments in non-fossil flexibility <u>resources</u> 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		

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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) be open to cross-border participation, <u>taking into account the maximum entry capacity available for the</u>		

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<p><u>participation of foreign capacity set by the transmission system operators in accordance with Article 26(7) of Regulation (EU) 2019/943</u>’;</p>		
<p>(10) in Article 37 (1), point (a) is replaced by the following:</p>		
<p>“(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;”;</p>		
<p>(11) Article 50 is amended as follows:</p>		
<p>(a) the following paragraph 4a is added:</p>		

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<p>“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.</p>		
<p>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 ”;</p>		
<p>(12) in Article 57, the following paragraph 3 is added:</p>		

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<p>“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.</p>		
<p>(13) in Article 59 (1), point (b) is replaced by the following:</p>		
<p>“(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,</p>		

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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;”;		
(14) The following Article 69a is added:		
Article 69a		
Interaction with Union financial legislation		

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Nothing in this Regulation shall derogate from the provisions of Directive (EU) 2014/65, Regulation (EU) 648/2012 and Regulation (EU) 600/2014 when market participants or market operators engage in activities related to financial instruments in particular as defined under Article 4(1)(15) of Directive (EU) 2014/65.		
(15) in Annex I point 1.2 is replaced by the following:		
“1.2. Coordinated capacity calculation shall be performed for all allocation timeframes”.		
Article 2		
Amendments to Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity		

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<p>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:</p>		
<p>(1) Article 2 is amended as follows:</p>		
<p>(a) points (8) and (49) is replaced by the following:</p>		
<p>“(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</p>		

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those activities do not constitute its primary commercial or professional activity.”;		
“(49) 'non-frequency ancillary service' means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability, island operation capability and peak shaving;”		
(b) the following points are added:		
(15a) ‘fixed term, fixed price electricity supply contract’ means an electricity supply contract between a supplier and a final customer that guarantees the same contractual conditions, including the price, while it may, within a fixed price, include a flexible element with for example peak and off peak price variations;		

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(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		

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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:		

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(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:		
<p>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.</p>		

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(c) the following paragraph 1a is inserted:		
<p>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, discounts and include 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.</p>		
(d) paragraph 2 is replaced by the following:		
<p>2. Member States shall ensure that final customers are fully informed by the suppliers of the opportunities, costs and risks of the</p>		

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<p>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.</p>		
(4) The following Articles are inserted:		
“Article 15a”		
Right to energy sharing		<p>As a general remark, whilst Malta agrees with the need to set out the general principles for energy sharing within the Directive itself, this should be complemented with the inclusion of an Implementing Act that supports national implementation. Malta believes this would be a</p>

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		<p>better platform to address the technical specificities for proper implementation.</p> <p>The Implementing Act could also focus on the technical implementation of point (d) of Article 15a, in particular how renewable electricity generated off-site and then self-consumed or shared between active customers could be attributed, in real-time, to those respective active customers. In particular because it is expected that this provision would impose rather complex and burdensome management of consumption/billing on electricity suppliers.</p>
<p>1. All households, small and medium sized enterprises and public bodies shall have the right to participate in energy sharing as active customers.</p>		

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	<p>“The first subparagraph shall apply as of [2] years after the date of entry into force of this Regulation.”</p>	<p>In order to allow sufficient time to network operators to adapt the hardware and software infrastructure at national level to be able to accommodate energy sharing in line with these provisions, Malta suggests that a longer implementation timeframe is provided for Member States.</p>
<p>2. (a) — Active customers shall be entitled to share renewable energy between themselves based on private agreements or through a legal entity.</p>		
<p>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</p>		

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considered an active customer.		
4. (e) Member States shall ensure that active customers participating in energy sharing:		
(a) 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) 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-		

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apartment blocks [as specified in the recast Energy Performance of Buildings Directive 2021/802] using peer-to-peer trading agreements;		
(cf) 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;		
(dg) are not subject to unfair and discriminatory treatment by market participants or their balance responsible parties;		

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<p>(e) 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.</p>		
<p>5. (i)—Member States shall ensure that relevant transmission or distribution system operators or other designated bodies:</p>		
<p>(a) 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;</p>		
<p>(b) provide a relevant contact point to register energy sharing arrangements, receive information on relevant metering points,</p>		

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changes in location and participation, and, where applicable, validate calculation methods in a clear, transparent and timely manner; -		
62. Member States shall take appropriate and non-discriminatory measures to ensure that energy poor and vulnerable households can access energy sharing schemes. Those measures may include financial support measures or production allocation quota.		
“Article 18a		
Supplier risk management		
1. National Regulatory Authorities, 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		

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<p>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.</p>		
<p>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.</p>		

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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 <i>XX is</i> 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.		

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<p>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.</p>		
<p>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.</p>		
<p>4. Member States shall ensure that final customers are provided with information and encouragement to switch to a market-based offer.</p>		
<p>5. Member States may require <i>at the</i> supplier of last resort to supply electricity to household customers who do not receive market</p>		

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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 Article10(11).		
(6) in Article 27, paragraph 1 is replaced by the following:		

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<p>“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.”</p>		

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(7) In Article 31, paragraph 3 is replaced by the following:		
<p>“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.</p>		
<p>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</p>		

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information within a period of three months from the submission of the request.”		
<p><u>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.”</u></p>		
(8) Article 40 is amended as follows:		
[a] a new paragraph is added after paragraph 6:		
The requirements in paragraphs 5 and 6 shall not apply with regard to the peak shaving product procured in accordance with Article 7a of Regulation (EU) 2019/943.		
(9) Article 59 is amended as follows:		

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<p>[a] In paragraph 1, subparagraph (c) is replaced by the following:</p>		
<p>(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, <u>of an entity designated for the management of the integrated day-ahead and intraday market where applicable, of</u> 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</p>		

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<p>respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942;</p>		
<p>[b] In paragraph 1, subparagraph (z) is replaced by the following:</p>		
<p>(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</p>		

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reasonable time in accordance with Article 58(d).		
[c] paragraph 4 is replaced by the following:		
<p>4. The regulatory authority located in the Member State in which the single allocation platform, <u>the entity designated for the management of the integrated day-ahead and intraday market where applicable,</u> 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.</p>		

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(10) the following Article 66a is inserted		
“Article 66a		
Access to affordable energy during an electricity price crisis		
1. The Council <i>Commission</i> , 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 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;	very high average prices in wholesale electricity markets at least two and a half times the average price during the previous 5 years, which have persisted for a period of two weeks; which is expected to continue for at least 6 months;	Activation needs to be based on factual observations. Future expectation is by nature subjective, vague and may jeopardise the effectiveness of this Article. The suggested timeframe of two weeks ensures that such decision will not be based on spikes.

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(b) sharp increases in electricity retail prices of at least 70% occur which are expected to continue for at least 6 months; and		The condition under point (b) would largely depend on the level of intervention by different Member States and therefore is not considered an ideal indicator of an electricity price crisis.
(c) the wider economy is being negatively affected by the increases in electricity prices.		
2. The decision <i>Commission shall specify in its decision</i> 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.		
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,		

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<p>where it considers that the conditions in paragraph 1 are fulfilled.</p>		
<p>4. The Council, acting by a qualified majority, may amend the Commission proposal.</p>		
	<p>4a. Member States who demonstrate that the conditions of paragraph 1 are met for their territory or specific bidding zone, may apply the provisions of paragraphs 5 and 6, while the conditions of paragraph 1 occur. Such Member States shall inform the Council and the Commission of their decision and measures taken.</p>	<p>Member States fulfilling the activation conditions should be allowed to apply the measures in paragraphs 5 and 6 on their territory even prior to the triggering of a crisis by the Council/Commission.</p>
<p>53. Where the CommissionCouncil 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</p>		

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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 <i>Commission</i> 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		

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Presidency compromise text	Drafting Suggestions	Comments
<p>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:</p>		
<p>(a) the price set for households only applies to at most 80% of median household consumption and retains an incentive for demand reduction;</p>		
<p>(b) there is no discrimination between suppliers;</p>		
<p>(c) suppliers are compensated for supplying below cost; and</p>		
<p>(d) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.</p>		

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Presidency compromise text	Drafting Suggestions	Comments
(11) in Article 71, paragraph 1 is replaced by the following:		
<p>‘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</p>		

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Presidency compromise text	Drafting Suggestions	Comments
communicate the text of those provisions to the Commission.		
However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with:		
(a) point (5)(a) of Article 70 by 31 December 2019;		
(b) point (4) of Article 70 by 25 October 2020.		
Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2 points 10a, 10b, 15a, 24a, Article 4, Article 11(1), (1a) and (2), Article 15a, Article 18a, Article 27(1), Article 27a, Article 28a, Article 31(3), Article 40(7), Article 59(1) points (c) and (z), Article	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2 points 10a, 10b, 15a, 24a, Article 4, Article 11(1), (1a) and (2), Article 15a, Article 18a, Article 27(1), Article 27a, Article 28a, Article 31(3), Article 40(7), Article 59(1) points (c) and (z), Article	Malta suggests extending the transposition deadline for new elements from 6 to 12 months after entry into force.

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Presidency compromise text	Drafting Suggestions	Comments
59(4) and Article 66a by six months after entry into force of [this Regulation].	59(4) and Article 66a by twelve six months after entry into force of [this Regulation].	
When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.’		
Article 3		
Amendment to Directive (EU) 2018/2001 of the European Parliament and of the Council of 11		

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Presidency compromise text	Drafting Suggestions	Comments
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, to which Article 19b(1) of that Regulation applies.’		

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Presidency compromise text	Drafting Suggestions	Comments
(2) in Article 36, paragraph 1 is replaced by the following:		
‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2 to 13, 15 to 31 and 37 and Annexes II, III and V to IX, by 30 June 2021. However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4(3), second subparagraph, by [six months after entry into force of this Regulation].		
They shall immediately communicate the text of those measures to the Commission.		
When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall		

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Presidency compromise text	Drafting Suggestions	Comments
<p>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.’</p>		
<p>Article 4</p>		
<p>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</p>		
<p>Regulation (EU) 2019/942 is amended as follows:</p>		
<p>(1) Article 2 is amended as follows:</p>		

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Presidency compromise text	Drafting Suggestions	Comments
(a) point (a) is replaced by the following:		
<p>‘(a) issue opinions and recommendations addressed to transmission system operators, the ENTSO for Electricity, the ENTSO for Gas, the EU DSO Entity, the single allocation platform established in accordance with Regulation (EU) 2016/1719, <u>the entity designated for the management of the integrated day-ahead and intraday market where applicable</u>, 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</p>		

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Presidency compromise text	Drafting Suggestions	Comments
<p>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;</p>		
(b) point (d) is replaced by the following:		
<p>“(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</p>		

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Presidency compromise text	Drafting Suggestions	Comments
<p>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</p>		

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Presidency compromise text	Drafting Suggestions	Comments
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 <u>and to the entity designated for the management of the integrated day-ahead and intraday market where applicable.</u> ”;		
(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 <u>and to the entity designated for the</u>		

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<u>management of the integrated day-ahead and intraday market where applicable.</u> ”;		
(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 <u>and to the entity designated for the management of the integrated day-ahead and intraday market where applicable.</u>		
(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		

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Presidency compromise text	Drafting Suggestions	Comments
<p>virtual hubs for the forward market pursuant to Article 9(2) of Regulation (EU) 2019/943.”</p>		
<p>(6) In Article 5. the following paragraph 10 is added:</p>		
<p>“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<u>ce</u>(45) of Regulation (EU) 2019/943.”</p>		
<p>(7) in Article 15, the following paragraph 5 is added:</p>		
<p>“5. ACER shall issue a report analysing the national assessments of the flexibility needs and providing recommendations on issues of cross-</p>		

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Presidency compromise text	Drafting Suggestions	Comments
border relevance regarding the findings of the regulatory authorities pursuant to Article 19 ce ^{ce} (7 6) of Regulation (EU) 2019/943.”;		
Article 5 Entry into force		
This Regulation shall enter into force on the [xxx] day following that of its publication in the Official Journal of the European Union.		
This Regulation shall be binding in its entirety and directly applicable in all Member States.		
Done at Strasbourg,		
For the European Parliament For the Council		
The President The President		

Electricity market design (ST 9201/23) // Presidency compromise text REV 3

Deadline: *24 May 2023*

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Presidency compromise text	Drafting Suggestions	Comments
	<u>End</u>	<u>End</u>