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NOTE

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Subject:	Proposal for a COUNCIL REGULATION on an emergency intervention to address high energy prices

I. INTRODUCTION

1. On 9 September 2022, the Presidency convened an extraordinary meeting of the TTE Council (Energy) to agree on the appropriate measures on the EU level to address soaring energy prices and high volatility in the electricity market and to give a clear guidance to the Commission on the next steps.
2. On 14 September the Commission, based on the guidance from the Council, presented a "*Proposal for a Council Regulation on an emergency intervention to address high energy prices*" comprising of measures on decreasing consumption in the electricity sector, capping surplus revenues of the inframarginal electricity producers and presenting a solidarity contribution of surplus profits from the companies operating fossil fuel sector.

II. STATE OF PLAY

1. The proposal was presented to the Coreper I and II on 14 September and to the Working Party on Energy on 15 September.
2. Based on the exchanges of those meetings, the Presidency proposed the REV1 document for the first exchange of views at the Coreper meeting on 21 September.
3. A REV2 document was presented to the Working Party on Energy on 26 September. The full day discussion allowed to clarify most of the outstanding technical points.
4. This was followed by REV3 document which reflected comments raised by the Member States and was submitted for discussion at the Coreper meeting on 28 September.
5. REV 3 was broadly welcomed in Coreper. It was generally agreed that in order to send a strong political signal of unity, Member States should be able to support balanced ambition of the Regulation at the extraordinary TTE Energy Council on 30 September. Several Member States, however, asked for additional amendments to take into account specific national circumstances. In particular, Member States pointed out the need to take into account the existing or planned measures and their specific market and geographic conditions. The Presidency provided reassurance to accommodate such requests as reflected in the Annex to this note. Furthermore, it was decided to use the written procedure for the adoption of the text, subject to its revisions by lawyer-linguists, on condition that the Council approves the political agreement.
6. In view of achieving the political agreement, ahead of the extraordinary TTE Energy Council on 30 September, delegations find in the Annex to this note REV4 reflecting all changes discussed at the Coreper meeting on 28 September.

7. Via the negotiation, the following main changes have been introduced:
- a) Several recitals have been added, notably to: i) provide more clarity on the chosen legal basis; ii) reflect the new provisions introduced in the text; iii) justify the specific derogations for Cyprus and Malta.
 - b) In Article 2, several definitions have been amended, notably to reflect the changes of "peak hours" and "EU companies and permanent establishment" in the field of crude petroleum, natural gas, coal and refinery sectors. New definitions have also been introduced for "intermediaries", "surplus congestion income revenues"; and "enacted equivalent national measure".
 - c) In Article 3, the voluntary nature of the reduction of gross electricity consumption measure has been clarified. A new paragraph has been added to take into account general electrification efforts.
 - d) In Article 4, a number of flexibilities have been introduced, notably in order to allow Member States to target a different percentage of peak hours while maintaining the ambition, to reflect specific climatic conditions and to allow for the usage of historical data in calculation of the reduction target.
 - e) In Article 5, the conditions for setting the national measures to achieve the demand reduction obligation have been clarified. It is notably clarified that financial compensation in addition to market revenues shall be established via an open competitive process.
 - f) In Article 6, new provisions have been included, notably to prevent the circumvention of the market revenue cap. The article also includes an obligation for the Commission to give guidance to Member States in the implementation of the cap on market revenues.

- g) In Article 7, clarifications have been introduced to the list of sources to which the cap on market revenues should be applied. In the same article, the existing derogation for small power plants has been increased to up to 1 MW. Furthermore, Member States can now exclude from the application of the cap on market revenues producers whose revenues are capped also via public measures. Further derogations have also been introduced notably the possibility to exclude revenues generated in the balancing markets, for the producers to retain 10% of the surplus revenues above the cap and for hybrid plants. New provisions have also been introduced to facilitate the implementation of this article.
- h) A new Article 7a has been introduced to allow Member States to maintain or introduce national crisis measures, in particular to further limit the revenues of producers, to target other producers other than those subject to the Union-wide revenue cap or to address specific security of supply risks. Member States are now, under certain conditions, able to limit the market revenues of electricity traders.
- i) Article 8 on incentives for renewable power purchase agreements has been deleted as several Member States pointed out that this provision is not in line with Article 122 of the Treaty on the Functioning of the European Union.
- j) A new Article 8a regarding the possibility to use surplus congestion revenues has been added in order to clarify that these revenues can also be used to mitigate impacts of the current crisis.
- k) In Article 9, it has been clarified that Member States shall be allowed to use other appropriate means, such as budgetary resources, in case the surplus revenues generated by the cap are insufficient. Provisions on direct transfers to final electricity customers have also been clarified.

- l) The scope of Article 10 on the sharing of the surplus revenues among Member States has been modified. It now covers revenues from trading activities. Furthermore the role of the Commission in facilitating agreements to share surplus revenues between Member States has been introduced.
- m) In Article 11, public interventions on price setting for SMEs are no longer limited to 80 % of their consumption.
- n) In Article 12, the conditions for temporary setting electricity prices below cost have been clarified.
- o) In Article 13 on the temporary solidarity contribution, several changes have been introduced in particular to allow for the Member States to maintain their enacted equivalent national measures.
- p) In Article 14, changes have been made in particular to allow Member States to choose whether they want to apply the temporary solidarity contribution to the year 2022 and/or to 2023.
- q) In Article 16, amendments were introduced to provide flexibility on the use of proceeds from the temporary solidarity contribution.
- r) Articles 18 on monitoring and enforcement and 19 on the review clauses have been amended to decrease the administrative burden and to reflect the changes made in the text.
- s) A new Article 19a introduces specific derogations for outermost regions, small isolated systems and small connected systems as well as for Cyprus and Malta.
- t) Further changes have been made across the whole text notably to ensure consistency and clarity of the proposed provisions.

8. New text compared to REV 3 is in **bold underlined in grey**, new deleted text is in ~~strikethrough in grey~~. Additions on previous versions are in **bold underlined** and previous deletions are in ~~strikethrough~~.

III. CONCLUSION

In light of the above, the Council is invited to examine the Presidency compromise text as set out in the Annex to this Note and reach a political agreement on this Council Regulation.

Obtenu par CONTEXTE

Proposal for a

COUNCIL REGULATION

on an emergency intervention to address high energy prices

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Very high prices in electricity markets have been observed since September 2021. As set out by **the EU Agency for the Cooperation of Energy Regulators (ACER)** in its **final** assessment of EU wholesale electricity market design in April 2022¹, this is mainly a consequence of the high price of gas, which is used as an input to generate electricity. Natural gas-fired power plants are often needed to satisfy the demand for electricity when the demand is at its highest during the day or when the volumes of electricity generated from other technologies such as nuclear, hydro or variable renewable energy sources do not suffice to cover demand. The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, since February 2022 has led to gas supplies declining markedly. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil **petroleum**, used by power-generating installations. This has resulted in substantial additional increases in and volatility of the price of electricity.

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

- (2) The recent substantially lower levels of gas delivery and increased disruptions of gas supply from Russia point to a significant risk that a complete halt of Russian gas supplies may materialise in the near future. To increase the Union's security of energy supply, the Council adopted Regulation (EU) 2022/1369¹ that provides for a voluntary reduction of natural gas demand by 15 % this winter and grants the possibility for the Council to declare a Union alert on security of supply, in which case the gas demand reduction would become mandatory.
- (3) In parallel, the exceptionally high temperatures observed during the summer of 2022 have pushed up demand for electricity for cooling, adding pressure on electricity generation while, at the same time, electricity generation from certain technologies has been significantly below historical levels due to technical and weather-dependant circumstances. This is due mainly to an exceptional drought which led to (i) a shortfall in the production of electricity by nuclear power plants in different Member States caused by the lack of available cooling water, (ii) scarce hydropower generation and (iii) low water levels in major rivers which have adversely affected the transport of commodities used as input fuel for generation. This unprecedented situation means that the volumes of electricity generated from natural gas-fired power plants have stayed persistently high, contributing to exceptionally and abnormally high wholesale electricity prices. Despite the reduced availability of generation capacities in some Member States, electricity exchanges between Member States have helped to avoid security of supply incidents and contributed to mitigating price volatility on the EU markets, thereby enhancing each Member State's resilience to price shocks.

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

- (4) The price surge in wholesale electricity markets has led to sharp increases in electricity retail prices, which are expected to continue ahead of the next heating season gradually trickling down to most consumer contracts. The sharp increase in gas prices and the resulting demand for alternative fuels has also led to an increase of other commodity prices such as crude oil ~~oil~~ petroleum and coal prices.
- (5) All Member States have been negatively affected by the current energy crisis, albeit to a different extent. The stark increase of energy prices is substantially contributing to the general inflation in the euro area and slowing down economic growth in the Union.
- (6) A rapid and coordinated response is therefore needed. The deployment of an emergency tool would allow mitigation, on a temporary basis, of the risk that electricity prices and the cost of electricity for final customers reach even less sustainable levels and that Member States adopt uncoordinated national measures, which could endanger security of supply at Union level and put an additional burden on the Union's industry and consumers. In a spirit of solidarity between Member States, a coordinated effort by Member States during the next winter season 2022-23 is required to mitigate the impact of high energy prices and ensure that the current crisis does not lead to lasting harm for consumers and the economy, while preserving the sustainability of public finances.
- (7) The current disruptions ~~to~~ of gas supplies, reduced availability of certain power generating plants, and the resulting impacts on gas and electricity prices, constitute a severe difficulty in the supply of gas and electricity energy products within the meaning of Article 122(1) of the Treaty on the Functioning of the European Union (TFEU). There is a serious risk that the situation could deteriorate further in the coming winter season in case of further disruptions of gas supplies and a cold winter season driving up the demand for gas and electricity. Such further deterioration could lead to more upward pressure on the price of gas and other energy commodities' prices with a resulting impact on electricity prices.

- (7a) The disruption of the energy market, caused by one of the main market players which has artificially reduced the supply of gas in the context of the Russian military aggression against Ukraine, and the hybrid war which is thereby carried out have created a crisis situation which requires the adoption of a set of urgent, temporary, exceptional measures of economic nature to address the unbearable effects on consumers and companies. If not addressed rapidly, the crisis situation may have severe detrimental effects on inflation, the liquidity of market operators and on the economy as a whole.**
- (8) A united and well-coordinated Union-wide response is needed to tackle the stark increase of electricity prices and their impact on households and industry. Uncoordinated national measures could affect the functioning of the internal energy market, endangering security of supply and leading to further price increases in the Member States most affected by the crisis. Safeguarding the integrity of the internal electricity market is therefore crucial to preserve and enhance the necessary solidarity between Member States.
- (9) While some Member States might be more exposed to the effects of a disruption of Russian gas supplies and the resulting price increases, all Member States can contribute to limiting the economic harm caused by such disruption by appropriate demand reduction measures. Reducing electricity demand at national level can have a positive, Union-wide effect on electricity prices, as electricity markets are coupled and savings in one Member State thus benefit also other Member States.

- (10) Uncoordinated caps on **market** revenues from electricity produced from generators with lower marginal costs such as renewables, nuclear, and lignite (inframarginal generators) may lead to significant distortions between generators in the Union, as generators compete EU-wide on a coupled electricity market. A commitment to a joint Union-wide cap on surplus revenues will avoid such distortions. Furthermore, not all Member States can support consumers to the same extent due to limited financial resources, while at the same time, some electricity generators may continue enjoying significant surplus revenues. Solidarity between Member States, through a uniform cap on ~~the~~ **market** revenues of inframarginal generation technologies will generate revenues for Member States to finance measures in support of electricity final customers, such as households, SMEs and energy intensive industries, while at the same time preserving the price signals on the markets across Europe and preserving cross-border trade.
- (11) With a view to the extreme increase of retail gas and electricity prices, State interventions to protect retail consumers are of particular importance. However, the impact of the gas supply shortages on electricity prices, as well as the possibilities to finance support measures from State budget differ between Member States. If only some Member States with sufficient resources can protect these customers and suppliers, this would lead to severe distortions of the internal market. A uniform obligation to pass on the surplus revenues to final consumers allows all Member States to protect their consumers. The positive effect on energy prices will have a positive impact on the interconnected EU market and will also help dampening the inflation rate. Therefore, in a spirit of solidarity, national measures will, in the interconnected Union economy, also have a positive effect in other Member States.
- (12) The measure consisting of the solidarity contribution for fossil companies with activities in the **crude oil**, **petroleum**, **natural** gas, coal and refinery sector is an exceptional and strictly temporary measure. It appears appropriate in the current situation that action is taken at Union level ~~is taken~~ to mitigate the direct economic effects of the soaring energy prices for public authorities' budgets, consumers and companies across the Union.

- (13) The solidarity contribution is an appropriate means to tackle surplus profits, due to unforeseen circumstances. Those profits do not correspond to any regular profit that these entities would or could have expected to obtain in normal circumstances would the unpredictable events in the energy markets not have taken place. Therefore, the introduction of a solidarity contribution constitutes a joint and coordinated measure which affords, in a spirit of solidarity, generating additional proceeds for national authorities to provide financial support to households and companies heavily affected by the soaring energy prices while ensuring a level playing field across the Union and the internal market. It should be applied in parallel to the regular corporate taxes levied by each Member State on the companies concerned.
- (14) To ensure coherence across energy policy areas, the measures **provided for in this Regulation** should work as an interdependent package reinforcing each other. All Member States should be able to support consumers, in a targeted manner, through surplus revenues resulting from the cap on market revenues for inframarginal electricity generation, through the reduction of electricity demand, which contributes to lowering energy prices, and through proceeds from a solidarity contribution imposed on fossil companies with activities in the **crude oil, petroleum, natural** gas, coal and refinery sector. At the same time, lower demand should have positive effects in terms of reducing the risks to security of supply, in line with the objectives of Directive (EU) 2019/944 **of the European Parliament and of the Council**¹.
- (15) Member States should therefore endeavour to reduce their total gross electricity consumption from all consumers including those who are not yet equipped with smart metering systems or devices enabling them to monitor their consumption during specific hours of the day.

¹ **Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).**

- (16) To preserve fuel stocks for electricity generation and to specifically target the ~~most expensive~~ hours **with highest price or consumption** of electricity ~~consumption~~, when gas-fired power generation has a particularly significant impact on the marginal price, each Member State should reduce its gross electricity consumption during identified peak ~~price~~ hours.
- (17) Based on the typical electricity consumption profile within peak hours, a binding **demand reduction** target of 5 % during peak ~~price~~-hours would ensure that Member States address more specifically consumers who can deliver flexibility through demand reduction offers on an hourly basis, including via aggregators. Therefore, an active electricity demand reduction of at least 5 % during selected hours should ~~lead~~ **contribute** to a reduced ~~gas~~-**fuel** consumption and to a smoother repartition of demand across hours, impacting hourly market prices.
- (18) Member States should have the discretion to choose the appropriate measures to achieve the demand reduction targets so that they can reflect national specificities. When designing electricity demand reduction measures, Member States should ensure that such measures are designed so as not to undermine the Union electrification objectives as set out in the Communication **of the Commission of 8 July 2020** on Powering a climate-neutral economy: An EU Strategy for Energy System Integration. Electrification is key to reduce ~~EU~~ **Union** dependence on fossil fuels and ensure long-term strategic autonomy of the European Union as this leads to limiting the magnitude of this energy crisis and preventing future energy crisis. Measures to reduce ~~the~~ gross electricity consumption might include national awareness-raising campaigns, publishing targeted information on the forecasted situation in the electricity system, regulatory measures limiting non-essential energy consumption, and targeted incentives to reduce ~~the~~ electricity consumption.

- (19) When identifying appropriate demand reduction measures in the peak ~~price~~-hours, Member States should in particular consider market-based measures such as auctions or tender schemes, by which they could incentivise a reduction of consumption in an economically efficient manner. To ensure efficiency and fast implementation, Member States could use existing initiatives and expand existing schemes to develop demand response. The measures taken at national level could also include financial incentives or compensation to market participants affected, if a tangible demand reduction is achieved in addition to expected normal consumption.
- (20) To assist and provide guidance to Member States delivering the necessary demand reductions set out in this Regulation, the Commission should facilitate the sharing of best practices between Member States.
- (21) Given the extraordinary and sudden surge in electricity prices and the imminent risk of further increases, it is necessary for Member States to immediately establish the measures needed to achieve reductions of the gross electricity consumption in order to facilitate rapid price reductions and to minimise the use of fossil fuels.
- (22) In the day-ahead wholesale market, the least expensive power plants are dispatched first but the price received by all market participants is set by the last plant needed to cover the demand, i.e., that with the highest marginal costs, when the market clears. The recent surge in the price of gas and hard coal has translated into an exceptional and lasting increase of the prices at which the gas and coal-fired power generation facilities bid in the day-ahead wholesale market. That in turn has led to exceptionally high prices in the day-ahead market across the Union, as those are often the plants with the highest marginal costs needed to meet the demand for electricity.

- (23) Given the role of the price in the day-ahead market as a reference for the price in other wholesale electricity markets, and the fact that all market participants receive the clearing price, the technologies with significantly lower marginal costs have consistently recorded high revenues since the invasion of Ukraine by Russia in February 2022, well above their expectations when deciding to invest.
- (24) In a situation where consumers are exposed to extremely high prices which also harm the Union's economy, it is necessary to limit, on a temporary basis, the extraordinary market revenues of producers with lower marginal costs by way of application of a cap for such market revenues achieved through the sale of electricity within the Union. ~~**In ensuring the application of the cap on market revenues from transactions within the same vertically integrated company, Member States should, in particular, prevent any circumvention of the existing obligations on producers.**~~
- (24a) To avoid the circumvention of the application of the cap on market revenues, Member States should put effective measures in place to ensure that the cap is effectively applied in situations where producers are part of a group of companies.**
- (25) The level at which the cap on market the revenues is set should not jeopardise the ability of the producers to which it is applied, including renewable energy producers, to recover their investment and operating costs and should preserve and incentivise future investments in the capacity needed for a decarbonised and reliable electricity system. A uniform cap on market revenues across the Union is necessary to ~~is~~ **best suited to** preserve the functioning of the internal electricity market, as it ~~would~~ maintains price-based competition between electricity producers based on different technologies, in particular for renewables.

- (26) While occasional and short-term peaks on prices can be considered a normal feature in an electricity market and may be useful for some investors to recover their generation investment, the extreme and lasting price increase observed since February 2022 is markedly different from a normal market situation of occasional peak prices. Therefore, the cap **on market revenues** should not be set below the reasonable expectations of market participants as to the average level of electricity prices in the hours during which the demand for electricity was at its highest, before the invasion of Ukraine by Russia. Before February 2022, the average peak prices in the electricity wholesale market were significantly and consistently expected below 180 **EUR** Euros per MWh across the Union in the last decades, despite the differences in electricity prices between regions in the Union. Since the initial investment decision of market participants was taken based on an expectation that, on average, the prices would be lower than that level during peak hours, setting a cap **on market revenues** at a 180 EUR per MWh constitutes a level well above those initial market expectations. By leaving a margin on the price that investors could reasonably have expected, it is necessary to ensure that the revenue cap **on market revenues** does not counteract the initial assessment of investment profitability.
- (27) Moreover, the cap **on market revenues** of 180 EUR per MWh is consistently higher, including a reasonable margin, than the current levelised cost of energy (LCOE) for all the relevant generation technologies, allowing producers to which it applies to cover their investments and operating costs. Considering that the **cap on market revenues** calculation chosen in this proposal leaves a considerable margin between the reasonable LCOE and the revenue cap **on market revenues**, the cap **it** can therefore not be expected to impair the investment in new inframarginal capacities. **In case Member States decide to include power producers with current levelised cost of energy above the cap of 180 EUR per MWh, they should introduce a specific cap to ensure that the higher costs of those producers are fully taken into account.**

- (28) The cap **on market revenues** should be set on market revenues rather than on total generation revenues (including other potential sources of revenues such as feed-in premium), to avoid significantly impacting the initial expected profitability of a project. Regardless of the contractual form in which the trade of electricity may take place, the cap **on market revenues** should apply to realised market revenues only. This is necessary to avoid harming producers who do not actually benefit from the current high electricity prices due to having hedged their revenues against fluctuations in the wholesale electricity market. Hence, to the extent that existing or future contractual obligations, such as renewable power purchase agreements and other types of power purchase agreements or forward hedges, lead to market revenues from the production of electricity up to the level of the cap **on market revenues**, they would ~~such revenues should remain unaffected by this Regulation~~ not be caught by its application. **The measure introducing the cap on market revenues should therefore not deter market participants from entering into such contractual obligations.**
- ~~(29) The measure introducing the cap on revenues should therefore not deter market participants from entering into renewables power purchase agreements. Given the direct benefits that they provide to end-consumers, Member States should continue to promote them, making use of the Commission Recommendation of 18 May 2022 on speeding up permit granting procedures for renewable energy projects and facilitating Power Purchase Agreements as well as practices described in Chapter II of the guidance in the Annex to this Recommendation.~~
- ~~(30) Having a uniform cap on revenues across the Union is necessary to preserve the functioning of the internal electricity market as it would maintain price-based competition across the Union between electricity producers based on different technologies, in particular for renewables.~~

- (31) While applying the revenue cap on market revenues at the time when transactions are settled may be more efficient, it might not always be possible, for instance due to differences in the way wholesale electricity markets are organised in the Member States and across different timeframes. To account for national specificities and to facilitate the application of the cap on market revenues at national level, Member States should have the discretion to decide whether to apply it either when the settlement of the exchange of electricity takes place or thereafter. **Member States should also maintain the discretion to pre-finance support measures to final electricity customers and collect the market revenues at a later stage. The Commission should provide guidance to Member States in the implementation of this Article measure.**
- (32) ~~Given that the generation mix and the cost structure of power generating facilities differ greatly among Member States, they should retain the possibility to further limit the revenues of producers, provided that such measures are compatible with Union law.~~
- (33) The cap on market revenues should apply to technologies with marginal costs lower than the cap on market revenues, such as for instance wind, solar or nuclear energy or lignite.
- (34) The cap on market revenues should not apply to technologies with high marginal costs relating to the price of the input fuel necessary to produce electricity, such as gas and hard coal-fired power plants, as their operating costs would be significantly above the level of the cap on market revenues and its application would jeopardise their economic viability. To maintain the incentives to an overall decrease of the consumption of gas, the cap on market revenues should not apply either to technologies which directly compete with gas-fired power plants to offer flexibility to the electricity system and bid in the electricity market based on their opportunity costs, such as demand-response and storage. **Member States may introduce national measures which limit the revenues from electricity production from hard coal provided that such measures are designed so as not to affect the merit order and the price formation on the wholesale market.**

- (35) The revenue cap **on market revenues** should not apply to technologies using as input fuels that are substitutes for natural gas, such as bio-methane, so as not to jeopardise the conversion of existing gas-fired power plants in line with the REPowerEU objectives.
- (36) To preserve the incentives for the development of innovative technologies, the cap on **market revenues** revenues should not apply to demonstration projects.
- (37) In some Member States, the revenues obtained by some generators are already capped by way of State measures such as feed-in-tariffs and two-way contracts for difference. These generators do not benefit from increased revenues resulting from the recent spike of electricity prices. Therefore, existing producers subject to that type of State measures, **which were not adopted as a response to the current energy crisis, should be excluded from the application of the cap on market revenues.** Any new measure should be in line with the principles of the internal market, shall not limit cross-border trade and shall not lead to an increase of gas consumption. **In a similar manner, the cap on market revenues should not apply to producers whose market revenues are subject to other regulatory measures taken by public authorities under which revenues are transferred directly to consumers.**
- (37aa) In order to ensure effective enforcement of the cap on market revenues, the producers, intermediaries and relevant market participants should provide the necessary data to competent authorities of Member States and, where appropriate, system operators and nominated electricity market operators. In view of the large number of individual transactions for which competent authorities of Member States have to ensure the enforcement of the cap on market revenues, those authorities should have the possibility to -the competent authorities may use reasonable estimates for the calculation of the cap. in case producers fail to provide the information necessary to allow the competent authorities to calculate the cap on market revenues in a timely manner. These estimates should, where appropriate, be corrected ex post.**

- (37ab) To address situations where the application of the cap on market revenues may affect the incentives of market participants to provide balancing energy or redispatching and countertrading, Member States should be able to decide not to apply the cap on the market revenues obtained from the sale of electricity in the balancing energy market and from the financial compensation for redispatching and countertrading.**
- (37ac) To account for security of supply concerns, Member States should have the possibility to set the cap on market revenues in a way that allows the electricity producers to retain 10 % of the surplus revenues above the market cap.**
- (37a) Given that the generation mix and the cost-structure of power-generating facilities differ greatly among Member States, they should be allowed to maintain or introduce national crisis measures under specific conditions.**
- (37b) In particular, Member States should retain the possibility to further limit the revenues of the producers to which the Union-wide revenue cap on market revenues applies and to set a specific cap on the market revenues obtained from the sale of electricity produced from hard coal, the price of which can be significantly lower than the price of the marginal technologies in some Member States. In order to preserve legal certainty, Member States should also be allowed to maintain or introduce existing national crisis measures, which limit the market revenues of producers other than those subject to the Union-wide revenue cap.**
- (37c) To prevent security of supply risks, Member States should be able to set a higher revenue cap on market revenues for producers that would otherwise be subject to the Union-wide cap, when their investment and operating costs are higher than the Union-wide cap.**

(37ad) The increased trade flows across bidding zones due to crisis-related high price differences between such zones have led to a considerable increase of congestion rents in some Member States. Congestion income revenues should continue to be allocated to fulfil the priority objectives set out in Article 19(2) of Regulation (EU) 2019/943 of the European Parliament and of the Council¹. However, Member States should exceptionally, in duly justified cases and under the control of regulatory authorities, be given the possibility to distribute the remaining surplus revenues directly to final electricity customers instead of using them exclusively for the purposes referred to in Article 19(3) of that Regulation.

(38) Given that by application of the cap on **market** revenues not all Member States can support their final customers to the same extent due to circumstances relating to their dependence on imports of electricity from other countries, it is necessary for Member States with net imports of electricity equal or higher than 100 % to have access to agreements to share the surplus revenues with the main exporting country in a spirit of solidarity. Such solidarity agreements are also encouraged, in particular, to reflect unbalanced trading relationships.

(39) Commercial and trading practices as well as the regulatory framework in the electricity sector are markedly different from the fossil fuels sector. Given that the cap **on market revenues** aims to mimic the market outcome that producers could have expected if global supply chains would function normally in absence of the gas supply disruptions since February 2022, it is necessary for the measure concerning electricity producers to apply to the revenues resulting from the generation of electricity. Conversely, as the temporary solidarity contribution targets the profitability of undertakings active in the **crude oil**, **petroleum**, **natural gas**, coal and refinery sectors which has significantly increased compared to prior years, it is necessary for it to apply to their profits.

¹ **Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54)**

- (40) Member States should ensure that the surplus revenues resulting from the application of the cap **on market revenues** in the field of electricity are passed on to final electricity customers to mitigate the impact of ~~the~~ exceptionally high electricity prices. The surplus revenues should be targeted to customers, including both households and companies, who are particularly strongly affected by high electricity prices. Without the proposed measures, there is a risk that only wealthier Member States will have the resources to protect their consumers, leading to severe distortions in the internal market.
- (41) The revenues from the cap will help Member States to finance measures such as income transfers, rebates on bills, compensating suppliers for supplying below cost, as well as investments that would lead to a structural reduction of consumption, in particular from electricity produced from fossil fuel sources. When support is granted to non-household customers, **those** ~~these~~ should work towards undertaking investments in decarbonisation technologies, including renewable energies, for example through power purchasing agreements or direct investments in renewables generation, or to undertake investments in energy efficiency.
- (42) Public interventions in price setting for the supply of electricity constitute, in principle, a market-distortive measure. Such interventions may therefore only be carried out as public service obligations and ~~are~~ **should be** subject to specific conditions. Currently under Directive (EU) ~~944/2019~~/**944** regulated prices are possible **for** households and micro-enterprises and, they are also possible including below cost for energy poor and vulnerable customers. However, in the presence of the current exceptional rise of electricity prices, the toolbox of available measures that the Member States have at their disposal to support consumers should be temporarily extended, by providing the possibility to extend regulated prices to SMEs and permitting regulated prices below cost. Such an extension could be financed by the ~~revenue~~-cap **on market revenues**.

- (43) It is important that, where below cost, regulated retail prices do not discriminate between suppliers or impose unfair costs on them. Suppliers should therefore be fairly compensated for costs they incur supplying at regulated prices, without prejudice to the application of State aid rules. The cost of below cost regulated prices should be financed by the revenues stemming from the application of the ~~revenue cap~~ **on market revenues**. In order to avoid that these measures increase demand for electricity, while still meeting the energy needs of consumers, below cost regulated prices should cover only a limited amount of consumption. **Supplier of last resort regimes, and the choice by Member States of the supplier of last resort, should remain unaffected by this Regulation.**
- (44) Without substantially changing their cost structure and increasing their investments, ~~EU~~ **Union** companies and permanent establishments generating at least 75 % of turnover in the **crude oil petroleum, natural** gas, coal and refinery sector, have seen their profits spike due to the sudden and unpredictable circumstances of the war, reduced supply of energy and increasing demand due to record high temperatures.
- (45) The temporary solidarity contribution should act as a redistributing measure to ensure that the companies concerned which have earned surplus profits as a result of the unexpected circumstances, contribute in proportion to the improvement of the energy crisis in the internal market.
- (46) The basis for calculating the temporary solidarity contribution is taxable profits of the companies and permanent establishments tax resident in the EU in **crude oil petroleum, natural** gas, coal and refinery sectors as determined in bilateral treaties or Member States national tax laws for the fiscal year starting on or after 1 January 2022 **and/or 1 January 2023 and for their respective full duration**. Member States which tax only distributed corporate profits should apply the temporary solidarity contribution to the calculated profits irrespective of their distribution. The fiscal year is determined by reference to the rules in place under Member States' national laws.

- (47) Only profits in 2022 **and/or 2023** above a 20 % increase of the average taxable profits generated in the **four** ~~three~~-fiscal years starting on or after 1 January **2018** ~~2019~~ should be subject to the solidarity contribution.
- (48) This approach **would ensure** that part of the profit margin, which is not due to the unpredictable developments in the energy markets following the ongoing illegal war in Ukraine could be used by the companies and permanent establishments concerned for future investment or for ensuring their financial stability during the ongoing energy crisis including for the energy intense industry. This approach to determining the calculation base **would** ensure that the solidarity contribution in different Member States is proportionate. At the same time, ~~this approach of~~ **the** setting a minimum rate **should** ensure that the solidarity contribution is both fair and proportionate. Member States **should** remain free to apply a higher rate **higher than 33 % for their solidarity contribution** ~~in case they already introduced a solidarity contribution, levy or tax on surplus taxable profits of the energy undertakings within the scope of this Regulation that would exceed this rate of 33% before this Regulation entered into force.~~ This **should** enable such Member States to **set** ~~maintain~~ their preferred rate they deemed acceptable and appropriate under their national legal systems.
- (48a) Member States should take the necessary measures to ensure the full application of the solidarity contribution set by this Regulation and could arrange for the necessary adjustments in national law, in particular in order to ensure the timely collection of the solidarity contribution, including on the basis of net revenues against which the solidarity contribution can be offset, to cater for the deductibility or non-deductibility of the solidarity contribution, or to cater for the treatment of losses in previous fiscal years, for the consistent treatment of shortened fiscal years for companies created in 2022 and/or 2023, or for business restructuring or mergers, for the purpose of calculating the solidarity contribution.**

- (49) The solidarity contribution should be used for i) financial support measures to final energy customers, and notably **in particular** vulnerable households, to mitigate the effects of high energy prices; ii) financial support measures to help reducing the energy consumption; iii) financial support measures to support companies in energy intensive industries; **and** iv) financial support measures to develop the energy autonomy of the Union. Member States should also be enabled to assign a share of the proceeds of the temporary solidarity contribution to common financing. **Those measures require substantial flexibility to take account of Member States' budgetary processes.**
- (50) The use of the proceeds for those purposes reflects the solidarity contribution's exceptional nature as a measure that intends to reduce and mitigate the harmful effects of the energy crisis for households and companies across the Union with the objective of protecting the **internal market** ~~Single Market~~ and preventing the risk of further fragmentation. Soaring energy prices affect all Member States. However, given the differences in energy mix, Member States are not all impacted in the same way and do not all have the same fiscal space to take the necessary measures to protect vulnerable households and businesses. In the absence of a European measure such as a solidarity contribution, there is a high risk of disruption of the **internal market** ~~Single Market~~ and further fragmentation, which would be detrimental to all Member States, given the integration of energy markets and of value chains. Tackling energy poverty and addressing the social consequences of the **energy** crisis, in particular to protect workers in exposed industries, are also a matter of solidarity between Member States in the **Union**. To maximise its impact, the use of the proceeds of the solidarity contribution should be done in a coordinated way and/or via EU financing instruments in a spirit of solidarity.

- (51) In particular, Member States should target financial support measures to the most vulnerable households and companies, which are most affected from the soaring energy prices. This would preserve the price incentive to reduce energy demand and save energy. In addition, targeting most vulnerable and liquidity-constrained households would have a positive effect on overall consumption (by averting excessive crowding out of spending on non-energy goods) given the high-income propensity to consume for this group of households. Moreover, proceeds should be used for fostering the reduction of energy consumption. In this respect, proceeds should be used, for instance, for the purpose of demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, or promoting investments by final energy customers, both vulnerable households and companies, into renewables, energy efficiency investments or other decarbonisation technologies. Proceeds **from** ~~of~~ the solidarity contribution should also be used for supporting financially companies in energy intensive industries, and in regions relying on these industries. Costs in energy intensive industries due to soaring energy price developments are skyrocketing, such as in the fertiliser industry. Financial support measures are to be made conditional upon investments into renewable energies, energy efficiency, or other decarbonisation technologies. Furthermore, measures which help making the Union more autonomous in the energy field should be supported with investments in accordance with the objectives set forth in the REPowerEU Communication, **in particular** ~~notably~~ for projects with a cross-border dimension.
- (52) Member States could also decide to assign part of the proceeds **from** ~~of~~ the solidarity contribution to the common financing of measures that are intended to reduce the harmful effects of the energy crisis, including support for protecting employment and the re- and upskilling of the workforce, or to promote investments in energy efficiency and renewable energy, including in cross-border projects. The common financing aspect covers both project-based cost-sharing between Member States and channelling via an EU **Union** instrument on the basis of Member States voluntarily assigning revenues to the EU **Union** budget in a spirit of solidarity.

- (53) Regular and effective monitoring and reporting to the Commission are essential for the assessment of progress made by the Member States in the achievement of the demand reduction targets, the implementation of the cap on **market** revenues, the use of the surplus revenues, and the application of regulated prices.
- (54) Member States should report to the Commission on the application of the solidarity contribution in their respective territories, as well as on any amendments they make to **their national legal frameworks for this purpose-, including additional legislation that may be needed to ensure a consistent domestic implementation of this the solidarity contribution.** ~~such contribution.~~
- (55) Member States should also report on the use of the proceeds arising from the solidarity contribution. In particular, this is to ensure that Member States use the proceeds in line with the usage provided for in this Regulation.
- (55a) **Member States should apply the solidarity contribution set by this Regulation in their respective territories unless they have enacted equivalent national measures. The objective of the national measure should will-be deemed similar to the overall objective of the solidarity contribution set by the this Regulation when it consists of contributing to the affordability of energy. A national measure should will-be deemed subject to similar rules as the solidarity contribution where in-case it covers activities in the field of crude oil petroleum, natural gas, coal or and-refinery sectors, targets surplus profits,determines a base, provides for a rate, and ensures that the proceeds of the national measure are used for comparable purposes as the solidarity contribution.**

- (56) The solidarity contribution and the ~~EU~~ **Union** legal framework governing it should be of a temporary nature to address the exceptional and urgent situation that has emerged in the Union with respect to the soaring energy prices. The solidarity contribution should be applicable to cover surplus profits generated in 2022 **and/or 2023** to address and mitigate the harmful effects of the current ongoing energy crisis for households and companies. The application of the solidarity contribution to the full **fiscal** tax year ~~will~~ **should** allow to use excess profits for the relevant period, in the public interest of mitigating the consequences of the energy crises, while leaving an appropriate measure of profits to the companies concerned.
- (57) The solidarity contribution should apply only to the fiscal year 2022 **and/or 2023**. By 15 October 2023 **and 15 October 2024**, when national authorities have a view on the collection of **the** solidarity contribution, the Commission ~~will~~ **should** review the situation and **submit** ~~present~~ a report to the Council.
- (58) Should a Member State experience difficulties in the application of the Regulation and, in particular, of the temporary solidarity contribution, it should consult, where appropriate, the European Commission in line with ~~A~~ article 4 of the Treaty on European Union (**TEU**).
- (58a) ~~Cyprus and Malta, due to their distinct characteristics, do not are currently not under the obligation to apply the Union energy market acquis in full. Cyprus and Malta should therefore be able to apply on a voluntary basis some of the provisions of this Regulation. Cyprus is completely isolated from trans-European energy networks, while Malta has only limited interconnection. Since a differentiated approach for these Member States has only limited effect on the internal energy market, Cyprus and Malta should be able to apply on a voluntary basis the provisions related to the reduction of their gross electricity consumption during peak hours and the cap on market revenues. In addition, should Cyprus decide to apply the provisions on the cap on market revenues, it should not have to apply that cap to electricity produced from crude petroleum products, in order to ensure the stability of its electricity system.~~**

- (59) The volatility in underlying gas prices is creating difficulties for energy firms active on electricity futures markets, in particular in accessing suitable collateral. The ~~European~~ Commission, in cooperation with the European Securities Markets Authority and the European Banking Authority, is assessing issues related to the eligibility of collateral and margins, and possible ways to limit excessive intra-day volatility.
- (60) Moreover, the measures **provided for** in this Regulation are consistent with the complementary and ongoing work of the ~~European~~ Commission concerning the long-term market design as announced in its ~~the~~ Communication **of 18 of May 2022** on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design that was issued alongside the Repower EU Plan of 18 May 2022.
- (61) Considering the scale of the energy crisis, the level of its social, economic and financial impact and the need to act as soon as possible, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.
- (62) Given the exceptional nature of the measures set out in this Regulation, and the need to apply them in particular during the winter season 2022-23, ~~the~~ **this** Regulation should apply for a period of one year after its entry into force.
- (63) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes an emergency intervention to mitigate the effects of high energy prices via exceptional, targeted and time-limited measures. These measures aim to reduce electricity consumption, to **introduce a cap on** the market revenues that certain producers receive from the generation of electricity and redistribute them to final customers in a targeted manner, to enable Member States to apply **measures of** public intervention in the price setting for the supply of electricity for households and small and medium-sized enterprises, and to establish rules for a temporary solidarity contribution ~~for~~ **from** EU **Union** companies and permanent establishments with activities predominantly in the **crude oil**, **petroleum**, **natural** gas, coal and refinery sectors to contribute to the affordability of energy for households and companies.

Article 2

Definitions

For the purposes of this Regulation, the definitions **set out** in Article 2 of Directive (EU) 2019/944 and Article 2 of Regulation (EU) 2019/943 apply. In addition, the following definitions also apply:

- (1) ‘small and medium-sized enterprise’ **or ‘SME’** means an enterprise as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC¹;
- (2) ‘gross electricity consumption’ means overall supply of electricity for activities in the territory of a Member State;
- (3) ‘reference period’ means the period from 1 November to 31 March in the five consecutive years preceding the date of entry into force of this Regulation, starting with the period from 1 November 2017 to 31 March 2018;
- (4) ‘peak price-hours’ means **individual** hours of the day where, **based on the forecasts of transmission system operators and, where applicable, nominated electricity market operators**, day-ahead wholesale electricity prices are expected to be the highest, **the gross electricity consumption is expected to be the highest or the gross consumption of electricity generated from sources other than renewable sources as referred to in Article 2(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council² is expected to be the highest**; ~~based on forecasts by transmission system operators and nominated electricity market operators;~~

¹ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.05.2003, p. 36).

² **Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).**

- (5) ‘market revenue’ means realised income a producer receives in exchange for the sale and delivery of electricity in the Union, regardless of the contractual form in which such exchange takes place, including power purchase agreements and other hedging operations against fluctuations in the wholesale electricity market and excluding any support granted by the Member States;
- (6) ‘settlement’ means a payment that is made and received between counterparties, against delivery and receipt of electricity where applicable, in fulfilment of the counterparties’ respective obligations pursuant to one or more clearing transactions;
- (7) ‘competent authority’ means an authority as defined in Article 2(11) of Regulation (EU) 2019/941 of the European Parliament and of the Council¹;
- (7a) ‘intermediaries’ means entities in wholesale electricity markets of Member States constituting an island systems not connected to other Member States with unit-based bidding where the regulatory authority has authorised this entity to participate in the market on behalf of the producer, excluding entities that transfer the surplus revenues directly to final customers.**
- (8) ‘surplus revenues’ means a positive difference between the market revenues of producers per MWh of electricity and the cap on market revenues of 180 EUR Euros per MWh of electricity;
- (9) ‘waste’ means any substance or object which the holder discards or intends or is required to discard as defined in Article 3 (1) of Directive 2008/98/EC of the European Parliament and of the Council²;

¹ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC (OJ L 158, 14.6.2019, p. 1).

² Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (10) ‘net imports dependence of electricity’ means, for the period between 1 January 2021 and 31 December 2021, the difference between the total electricity imports and total electricity exports as a percentage of ~~divided by~~ the total gross production of electricity in a Member State;
- (11) ‘fiscal year’ means a tax year, calendar year or any other appropriate period for tax purposes as defined in national law;
- (12) ‘customer’ means a wholesale or final customer;
- (13) ‘final energy customer’ means a customer who purchases energy for own use;
- (14) ‘final electricity customer’ means a customer who purchases electricity for own use;
- (15) ~~‘support scheme’ means, any instrument, scheme or mechanism applied by a Member State, or a group of Member States, that promotes the use of energy from renewable sources;~~
- (16) ~~‘guarantee of origin’ means an electronic document providing evidence to a final customer that a given share or quantity of energy was produced from renewable sources;~~

- (17) ‘**EU Union companies and permanent establishments with crude oil, petroleum, natural gas, coal and refinery sectors**’ **as defined by Regulation (EC) No 1893/2006 of the European Parliament and of the Council¹** means any economic activity performed by an EU **Union** companies or permanent establishments generating at least 75 % of **their** turnover **from economic activities** in the field of the extraction, mining, refining of petroleum **and/or** manufacture of coke oven products, **as referred to in Regulation (EC) No 1893/2006 of the European Parliament and of the Council²**;
- (18) ‘**EU Union** company’ means a company of a Member State which according to the tax laws of that Member State is considered to be resident in that Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Union;
- (19) ‘permanent establishment’ means a fixed place of business situated in a Member State through which the business of a company of another State is wholly or partly carried on in so far as the profits of that place of business are subject to tax in the Member State in which it is situated; ~~by virtue of the relevant bilateral tax treaty or, in the absence of such a treaty, by virtue of national law;~~

² **Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).**

- (20) 'surplus profits' means taxable profits, **as determined under national tax rules in the fiscal year starting on the first day of the fiscal year 2022 and/or on the first day of the fiscal year 2023 and for their full duration or after 1 January 2022**, accrued from activities carried out at the level of **Union** companies ~~or and~~ permanent establishments **with activities** in the field of **crude oil petroleum, natural** gas, coal and refinery sectors **which are** above a 20 % increase of the average of **the taxable** profits ~~of in~~ the previous three **four fiscal** tax years **starting on or after 1 January 2019 2018**;
- (21) 'solidarity contribution' means a temporary measure intended to address surplus profits of ~~EU~~ **Union** companies and permanent establishments with activities in the field of **crude oil petroleum, natural** gas, coal and refinery sectors to mitigate exceptional price developments in the energy markets for Member States, consumers and companies;-
- (22) 'surplus congestion income revenues' means the residual revenues that remain unused following the allocation of the congestion income revenues in accordance with the priority objectives set out in Article 19(2) of Regulation (EU) 2019/943;**
- (23) 'enacted equivalent national measure' means a legislative, regulatory or administrative measure adopted and published by a Member State by 31 December 2022 which contributes to the affordability of energy;-**
- ~~(23a) 'small isolated system' means small isolated system as defined in point (42) of Article 2 of Directive (EU) 2019/944;~~
- ~~(23b) 'small connected system' means small connected system as defined in point (43) of Article 2 of Directive (EU) 2019/944.~~

CHAPTER II
MEASURES CONCERNING THE ELECTRICITY MARKET

Section 1

Demand Reduction

Article 3

Reduction of gross electricity consumption

1. Member States **shall endeavour** ~~should seek~~ to implement measures to reduce their total monthly gross electricity consumption by 10 % compared to the average of gross electricity consumption in the corresponding months of the reference period.
2. **When calculating reductions in gross electricity consumption, Member States may take into account the increased gross electricity consumption that follows from reaching the gas demand reduction targets and general electrification efforts to phase out fossil fuels.**

Article 4

Reduction of gross electricity consumption during peak ~~price~~-hours

1. ~~For every month, each~~ **Each** Member State shall identify peak ~~price~~-hours corresponding **in total** to a minimum of 10 % of all hours of **the period between 1 December 2022 and 31 March 2023** ~~month~~.

2. Each Member State shall reduce its gross electricity consumption during the identified peak ~~price~~-hours. For every month, ~~The~~ the reduction achieved over the identified peak ~~price~~-hours shall reach at least 5 % on average per hour. The reduction target shall be calculated as the difference between the actual gross electricity consumption for the identified peak ~~price~~-hours and the gross electricity consumption forecasted by the transmission system operators **in cooperation with the regulatory authority where applicable**, without taking into account the effect of the measures put in place to reach the target set out in this Article. **Transmission system operators' forecasts may include historical data of the reference period.**
3. **Member State may decide to target a different percentage of peak hours than the one set out in paragraph 1, as long as at least 73 % of peak hours are covered, and as long as the energy saved during peak hours is at least equal to the one that would have been saved with the parameters set out in 4(1) and 4(2).**

Article 5

Measures to achieve the demand reduction

4. Member States may choose the appropriate measures to reduce gross electricity consumption to meet the targets set in Articles 3 and 4, **including extending national measures already in place**. The measures shall be clearly defined, transparent, proportionate, **targeted**, non-discriminatory and verifiable and shall, in particular **fulfill the following conditions**:
- (a) **where financial compensation is paid in addition to market revenues, the amount of that compensation shall be established through an open competitive process** be market based, with compensation, where applicable **relevant** established through an open competitive process, including tenders in which successful bidders receive compensation;

- (b) only involve financial compensation when such compensation is paid for additional electricity not consumed compared to the expected consumption in the hour concerned without the tender;
- (c) not unduly distort competition or the proper functioning of the internal market in electricity;
- (d) not be unduly limited to specific customers or customer groups, including aggregators, in accordance with Article 17 of Directive (EU) 2019/944; **and**
- (e) not unduly prevent the process of replacing fossil fuel technologies with technologies using electricity.

Section 2

Cap on market revenues and distribution of surplus revenues **and surplus congestion income** **revenues to final customers**

Article 6

Mandatory cap on market revenues

1. Market revenues of producers obtained from the generation of electricity from the sources referred to in Article 7(1) shall be capped to a maximum of 180 EUR per MWh of electricity produced.
2. Member States shall ensure that the cap **on market revenues** targets all the market revenues of producers **and, where relevant, intermediaries participating in electricity wholesale markets on behalf of producers**, regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally or in a centralised marketplace. **The cap shall also apply to market revenues from transactions concluded within the same vertically integrated company.**

- 2a** **Member States shall put effective measures in place to prevent a circumvention of the obligations on producers pursuant to paragraph 2. They shall notably make sure that the cap on market revenues is effectively applied in cases where producers are controlled, or partially owned, by other undertakings, in particular where they are part of a vertically integrated undertaking.**
3. Member States shall decide whether to apply the cap on **market** revenues at the settlement of the exchange of energy or thereafter.
4. ~~Without prejudice to paragraph 1, Member States may maintain or introduce measures that further limit the market revenues of producers, provided that these measures are proportionate and non-discriminatory, do not jeopardise investment signals, ensure that the investments costs are covered, do not distort the functioning of electricity wholesale markets, and are compatible with Union law.~~
- 5.** **Subject to the requirements under Article 6(4), Member States may allow the regulatory authority to maintain or set a specific cap on the market revenues obtained from the sale of electricity produced from hard coal for producers who demonstrate to the regulatory authority their current levelised costs of energy exceed the maximum set in Article 6(1). The specific revenue cap shall allow for those costs and a reasonable profit margin to be covered. Such measures shall be designed so as not to affect the merit order and the price formation on the wholesale market.**
- 6.** **The Commission shall provide guidance to Member States in the implementation of this Article.**

Article 7

Application of the cap on market revenues to electricity producers

1. The obligation **cap on market revenues provided for** in Article 6 shall apply to the market revenues obtained from the sale of electricity produced from the following sources:
 - (a) wind energy;
 - (b) solar energy (solar thermal and solar photovoltaic);
 - (c) geothermal energy;
 - (d) hydropower **without reservoir excluding pumped hydropower** without reservoir;
 - (e) biomass fuel (solid or gaseous biomass fuels), excluding bio-methane;
 - (f) waste;
 - (g) nuclear energy;
 - (h) lignite;
 - (i) crude oil and other oil **petroleum** products;-
 - (j) peat.**
2. The cap **on market revenues** provided for in Article 6(1) shall not apply to **sources where they set the generation system marginal cost**, demonstration projects or to producers whose revenues per MWh of electricity produced are already capped as a result of State **or public** measures **not adopted under Article 7(a)**.

3. Member States may, notably **in particular** in cases where the application of the cap **on market revenues** provided for in Article 6(1) leads to a significant administrative burden, decide that the cap **on market revenues** does not apply to producers generating electricity with power-generating facilities with an installed capacity of ~~maximum~~ **up to 20 kW 1 MW**. **Member States may, notably in particular in cases where the application of the cap on market revenues provided for in Article 6(1) leads to a risk of increasing CO2 emissions and decreasing renewable energy generation, decide that the cap on market revenues does not apply to electricity produced in hybrid plants which also use conventional energy sources.**

4a Member States may decide that the cap on market revenues does not apply to the revenues obtained from the sales of electricity in the balancing energy market and from compensation for redispatching and countertrading.

4b Member States may decide that the cap on market revenues should only apply to 90% of the market revenues exceeding the cap provided for in Article 6(1).

~~5. **Member States may allow the regulatory authority to set a specific revenue cap for producers producing from the sources listed in Article 7(1) who demonstrate to the regulatory authority that their current levelised costs of energy produced exceed the maximum set in Article 6(1). The specific revenue cap shall allow for those costs and a reasonable profit margin to be covered. Such measures shall be designed so as not to affect the merit order and the price formation on the wholesale market. The specific revenue cap shall also comply with the requirements set out in Article 6(4).**~~

6. Producers, intermediaries and relevant market participants, as well as system operators where relevant, shall provide to competent authorities of Member States, and where relevant, to the system operators and nominated electricity market operators, all necessary data for the application of Article 6, including on the electricity produced and the related market revenues, regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally, within the same undertaking or in a centralised marketplace.

Article 7a

National crisis measures

1. Member States may:
- (a) maintain or introduce measures that further limit the market revenues of producers listed in Article 7(1), including the possibility to differentiate between technologies, as well as the market revenues of other market participants including those active in electricity trading;
 - (b) set a higher revenue cap on market revenues for producers producing from the sources listed in Article 7(1), provided that their investments and operating costs exceed the maximum set in Article 6(1);
 - (c) maintain or introduce national measures to limit the market revenues of producers generating electricity from sources not referred to in Article 7(1);
 - (d) set a specific cap on the market revenues obtained from the sale of electricity produced from hard coal.

(e) subject the hydropower units not referred to in Article 7(1)(d) to a cap on market revenues, or maintain or introduce such measures that further limit their market revenues, including the possibility to differentiate between technologies. referred to in Article 6(1).

2. Measures referred to in paragraph 1, in line with the provisions of this Regulation shall:

(a) be proportionate and non-discriminatory;

(b) not jeopardise investment signals;

(c) ensure that the investments and operating costs are covered;

(d) not distort the functioning of electricity wholesale markets, and in particular, not affect the merit order and the price formation on the wholesale market;

(e) be compatible with Union law.

Article 8

Incentives for renewables power purchase agreements

~~1. Within the framework of this Regulation, Member States shall swiftly remove any unjustified administrative or market barriers to renewables power purchase agreements. They shall take measures to accelerate the uptake of renewables power purchase agreements, in particular by small and medium sized enterprises.~~

~~2. Member States shall design, schedule and implement support schemes and guarantees of origin in such a way that they are compatible with, complement and enable renewables power purchase agreements.~~

Article 8a

Surplus congestion income revenues resulting from allocation of cross-zonal capacity

1. By way of derogation from Union rules on congestion income, Member States may use the surplus congestion income revenues resulting from the allocation of cross-zonal capacity to finance measures in support of final electricity customers in accordance with Article 9(2).
2. The use of the surplus congestion income revenues in accordance with paragraph 1 shall be subject to the approval by the regulatory authority.
3. Member States shall notify the use of surplus congestion income revenues in accordance with paragraph 1 to the Commission within one month of the date of adoption of the relevant national measure.

Article 9

Distribution of the surplus revenues

1. Member States shall ensure that all surplus revenues resulting from the application of the cap on market revenues are employed to finance measures in support of final electricity customers that mitigate the impact of high electricity prices on those customers, in a targeted manner.
2. The measures referred to in paragraph 1 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable and shall not counteract the reduction obligation of gross electricity consumption **provided for** in Articles 3 and 4.

2.a **Where revenues obtained directly from the implementation of the cap on market revenues in their territory and revenues obtained indirectly from cross-border agreements are insufficient to adequately support final customers, Member States shall be allowed to use other appropriate means such as budgetary resources for the same purpose and under the same conditions.**

3. The measures referred to in paragraph 1 may for example include:

- (a) granting a financial compensation to final electricity customers for reducing their electricity consumption, including through demand reduction auctions or tender schemes;
- (b) direct transfers to final electricity customers; **including through proportional reductions in the network tariffs of households and small and medium-sized enterprises;**
- (c) compensation to suppliers who have to deliver electricity to customers below costs following a State intervention in price setting pursuant to Article 12;
- (d) lowering the electricity purchase costs of final electricity customers, **included** for a limited volume of the electricity consumed;
- (e) promoting investments by final electricity customers into decarbonisation technologies, renewables and energy efficiency investments.

Article 10

Agreements between Member States

1. In situations where a Member State's net imports dependence of electricity are is equal or higher than 100%, an agreement to share the surplus revenues adequately shall be concluded by 1 December 2022 between the importing Member State and the main exporting country. All Member States may, in a spirit of solidarity, conclude such agreements which may also cover revenues coming from national measures under Article 7a, including electricity trading activities.

2. The Commission shall assist Member States throughout the negotiation process, encourage and facilitate the exchange of best practices.

Section 3

Retail measures

Article 11

Temporary extension to small and medium-sized enterprises of public interventions in electricity price setting

By way **of** derogation from the EU **Union** rules on public interventions in price setting, Member States may apply public interventions in price setting for the supply of electricity to small and medium-sized enterprises. Such public interventions shall:

- (a) ~~be limited to 80% of~~ **take into account** the beneficiary's highest annual consumption over the last **five** 5 years and retain an incentive for demand reduction;
- (b) comply with the conditions ~~of~~ **set out in** Article 5(4) and (7) of Directive (EU) 2019/944;
- (c) where relevant, comply with the conditions ~~of~~ **set out in** Article 12 of this Regulation.

Article 12

Temporary possibility to set electricity prices below cost

By way of derogation from the EU **Union** rules on public interventions in price setting, when applying public interventions in the price setting for the supply of electricity pursuant to Article 5(6) of Directive (EU) 2019/944 or **to** Article 11 of this Regulation, Member States may exceptionally and temporarily set a price for the supply of electricity which is below cost provided that all of the following conditions are fulfilled:

- (a) ~~T~~he measure covers a limited amount of consumption and retains an incentive for demand reduction;
- (b) ~~T~~here is no discrimination between suppliers;
- (c) ~~S~~uppliers are compensated for supplying below cost; **and**
- (d) ~~A~~ll suppliers are eligible to provide offers at the **price for the supply of electricity which is below cost** regulated price on the same basis ~~on the same basis~~.

CHAPTER III

MEASURE CONCERNING THE CRUDE OIL, PETROLEUM, COAL, NATURAL GAS AND REFINERY SECTORS

Article 13

*Support to final **energy** customers through a mandatory temporary solidarity contribution*

1. Surplus profits generated from activities in the crude oil, petroleum, natural gas, coal and refinery sector shall be subject to a temporary solidarity contribution ~~as defined in this Article~~ **unless Member States have enacted equivalent national measures.**
2. Member States shall ensure that **enacted equivalent** existing or planned national measures ~~share~~ **share** similar objectives **and are subject to similar equivalent rules** as the temporary solidarity contribution under this Regulation ~~comply with or complement the rules governing the temporary solidarity contribution set by this Regulation~~ **and generate comparable or higher proceeds at least equal to the estimated proceeds from the solidarity contribution.**
3. ~~The~~ **Member States shall adopt and publish measures implementing the** mandatory temporary solidarity contribution referred to in paragraph 1 ~~by~~ **shall apply from** 31 December 2022 ~~at the latest.~~

Article 14

Base for calculating the temporary solidarity contribution

The temporary solidarity contribution for ~~EU~~ **Union** companies and permanent establishments, **including those that are part of a consolidated group merely for tax purposes, performing with** activities in the field of ~~crude oil~~ **petroleum, natural** gas, coal and refinery sectors shall be calculated on the taxable profits, as determined under national tax rules, in the fiscal year ~~starting~~ **on the first day of the fiscal year 2022 and/or on the first day of the fiscal year 2023 and for** **their full duration** ~~or after 1 January 2022~~, which are above a 20 % increase of the average **of the** taxable profits, as determined under national tax rules, ~~of~~ **in** the ~~four~~ **three** fiscal years starting on or after 1 January ~~2018~~ **2019**. If the average **of the taxable profits** ~~annual result from the period~~ covering the ~~in those four~~ **three** fiscal years starting on or after 1 January 2019 is negative, the average taxable profits shall be zero for the purpose of calculating the temporary solidarity contribution.

Article 15

Rate for calculating the temporary solidarity contribution

1. The rate applicable for calculating the temporary solidarity contribution shall be at least 33 % of the base referred to in Article 14.
2. The temporary solidarity contribution shall apply in addition to the regular taxes and levies applicable according to the national legislation of a Member State.

Article 16

Use of proceeds from the temporary solidarity contribution

1. Member States shall use the proceeds from the temporary solidarity contribution with sufficiently timely impact for **any of** the following purposes:
 - (a) financial support measures to final energy customers, and notably vulnerable households, to mitigate the effects of high energy prices, in a targeted manner;
 - (b) financial support measures to help reducing the energy consumption such as through demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, promoting investments by final energy customers into renewables, structural energy efficiency investments or other decarbonisation technologies;
 - (c) financial support measures to support companies in energy intensive industries provided that they are made conditional upon investments into renewable energies, energy efficiency or other decarbonisation technologies;
 - (d) financial support measures to develop the energy autonomy in particular investments in line with **the** REPowerEU objectives notably projects with a cross-border dimension;

- (e) in a spirit of solidarity between Member States, ~~assignment by Member States~~ **may assign** of a share of the proceeds of the temporary solidarity contribution to the common financing of measures to reduce the harmful effects of the energy crisis including support for protecting employment and the re- and upskilling of the workforce or to promote investments in energy efficiency and renewable energy including in cross-border projects **and the Union renewable energy financing mechanism provided for Article 33 of Regulation (EU) 2018/1999 of the European Parliament and of the Council**¹.
2. The measures referred to in paragraph 1 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable.

Article 17

Temporary nature of the solidarity contribution

The temporary solidarity contribution applied by Member States in accordance with this Regulation shall be of a temporary nature. It shall only apply to surplus profits generated in the fiscal years **referred to in Article 14** ~~that started on or after 1 January 2022~~.

¹ **Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).**

CHAPTER IV

FINAL PROVISIONS

Article 18

Monitoring and enforcement

1. The competent authority of each Member State shall monitor the implementation of the measures referred to in Articles 3, 4, 5, 6, 7, 9, 11 and 12 on its territory.
 2. As soon as possible after the entry into force of this Regulation and at the latest by 1 December 2022, Member States shall report to the Commission the planned measures required pursuant to Article 5 and the agreements concluded pursuant to Article 10.
 3. ~~By 15 January 2023 and every month thereafter until~~ **31 15 of January 2023 and by 30 15** April 2023, Member States shall report to the Commission on:
 - (a) the demand reduction achieved pursuant to Articles 3 and 4 and the measures put in place to achieve the reduction pursuant to Article 5;
 - (b) the surplus revenues generated pursuant to Article 6;
- 3a. ~~By 15 of January 2023 and every month thereafter until April 2023, Member States shall report to the Commission on:~~**
- (~~ca~~**e**) the measures concerning the distribution of the surplus revenues applied to mitigate the impact of high electricity prices on final customers pursuant to Article 9;
 - (~~db~~**d**) any public interventions in price setting for electricity referred to in Articles 11 and 12;

4. Member States shall report to the Commission on:
- (a) the introduction of the temporary solidarity contribution pursuant to Article 13 by **31 December**~~15 October~~ 2022, **including on the application of the fiscal year**;
 - (b) any subsequent amendments to **the national legal framework** ~~said measure~~ within one month of the publication in the national official journal;
 - (c) on the use of the proceeds pursuant to Article 16 within one month ~~from~~ **of** the moment the proceeds have been collected by Member States in accordance with national law;
 - (d) enacted equivalent national measures referred to in Article 13 by 31 December 2022. Member States shall also provide an assessment of the amount of proceeds generated by those national measures and on the use of those proceeds within one month of the moment the proceeds have been collected by Member States in accordance with national law.**

Article 19

Review

1. By **30 April** ~~28 February~~ 2023, the Commission shall carry out a review of Chapter II in view of the general situation of electricity supply and electricity prices in the Union and **submit** ~~present~~ a report on the main findings of that review to the Council. Based on that report, the Commission may in particular propose, in case this is justified by the economic circumstances or the functioning of the electricity market in the Union and individual Member States, to prolong the period of application of this Regulation, to amend the level of the revenue cap **on market revenues** in Article 6-(1) and ~~its application to~~ **the sources of electricity generation referred to in Article 7(1) to which it applies** ~~producers in Article 7,~~ or **to** otherwise amend Chapter II.

2. By 15 October 2023, **and by 15 October 2024** the Commission shall carry out a review of Chapter III in view of the general situation of the fossil fuel sector and surplus profits generated and **submit** ~~present~~ a report on the main findings of that review to the Council.

Article 19a

Derogations

1. **Articles 4, 5, 6 and 7 shall not apply to outermost regions within the meaning of Article 349 TFEU, that cannot be interconnected with the Union electricity market.**
2. **Member States may decide not to apply Articles 4, 5, 6 and 7 to electricity generated in small isolated systems or small connected systems.**
3. **Articles 4, 5, 6 and 7 shall not be mandatory ~~on~~ for Cyprus and Malta. ~~When If~~ Cyprus decides to apply Articles 4, 5, 6 and 7, Article 6(1) shall not apply to electricity generated from crude ~~oil~~ petroleum products.**

Article 20

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. Without prejudice to the ~~need~~ **obligation** to ensure the distribution of surplus revenues in accordance with Article 9, ~~and~~ **and** to use **the** proceeds from the temporary solidarity contribution in accordance with Article 16, **and to the reporting obligation referred to in Article 19 (2).** this Regulation shall apply **until 31 December 2023** ~~for a period of one year from its entry into force.~~

Articles ~~3, 4, 5, 6, 7, 9, 10~~ shall apply as of **from** 1 December 2022 **to 31 March 2023**.

~~This shall be without prejudice to an earlier voluntary application by Member States.~~

Articles 5 and 9 shall apply from 1 December 2022.

Articles ~~3, 4,~~ 6, 7, **and 7a** shall apply **from 1 December 2022 to 30 June** ~~until 31 March~~ 2023.

Article 19(2) shall apply until 15 October 2024.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Council
The President