Contribution ID: edfd2bcb-221b-4f2e-a89e-8c60eb302a07
Date: 13/02/2023 17:39:10

# Public Consultation: Revision of the EU's electricity market design

Fields marked with * are mandatory.

## Electricity Market Design

The consultation document with the questions can also be downloaded here:

EMD_Consultation_document.pdf

## Introduction

**Background**

Over the last year, electricity prices have been significantly higher than before. Prices started rising rapidly in summer of 2021 when Russia reduced its gas supplies to Europe while global demand picked up as COVID-19 restrictions were eased. Subsequently, Russia's invasion of Ukraine and its weaponisation of energy sources have led to substantially lower levels of gas delivery to the EU and increased disruptions of gas supply, further driving up the price. This has had a severe impact on EU households and the economy. High gas prices influence the price of electricity from gas fired power plants, often needed to satisfy electricity demand.

In the immediate reaction to global dynamics, the EU provided an energy prices toolbox with measures to address high prices (including income support, tax breaks, gas saving and storage measures). The subsequent weaponisation of gas supply and Russia's manipulation of the markets through intentional disruptions of gas flows have led not only to skyrocketing energy prices, but also to endangering security of supply. To address it, the EU had to act to diversify gas supplies and to accelerate energy efficiency and the deployment of renewable energy.

Following the Russian invasion of Ukraine in February 2022, the EU responded with REPowerEU - a plan for the Union to rapidly end its dependence on Russian energy supplies by strengthening the European resilience and security, reducing energy consumption, accelerating the roll-out of renewables and energy efficiency, and securing alternative energy supplies. The EU also established a temporary State Aid regime to allow certain subsidies to soften the impact of high prices. Further, to address the price crisis and security concerns, the EU has agreed and implemented a strong gas storage regime, effective demand reduction measures for gas and electricity, and price limiting regimes to avoid windfall profits in both gas and electricity markets.

**The EU Electricity Market Design**

The current electricity market design has delivered a well-integrated market, allowing Europe to reap the economic benefits of a single energy market in the normal market circumstances, ensuring security of supply and sustaining the decarbonisation process. Cross-border interconnectivity also ensures safer, more reliable and efficient operation of the power system.

Market design has also helped the emergence of new and innovative products and measures on retail electricity markets – supporting energy efficiency and renewable uptake and helping consumers reduce their energy bills also through 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, will be a key element of our future electricity markets and systems.

In the context of the energy crisis, the current electricity market design has however also demonstrated a number of shortcomings. The reforms the Commission will undertake will address those shortcomings and ensure stable and well-integrated energy markets, which continue to attract private investments at a sufficient scale as an essential enabler of the European Green Deal objectives and the transition to a climate neutral economy by 2050.

In addition to these shortcomings, the European electricity sector is facing a number of more long-term challenges triggered by the rising shares of variable renewable energy and the progressive drive towards full decarbonisation by 2050. This includes ensuring investments, not just as regards renewables but also as regards weather independent low-carbon technologies until large scale storage and other flexibility tools become available. Stronger locational price signals in the system may be needed to ensure that the investments take place where they are needed, reflecting the physical reality of the electricity grid whilst at the same time ensuring incentives for cross-border long-term contracting. Some of these challenges will require ongoing policy reflections going beyond the scope of the current reform.

**Making Electricity Bills More Independent from the Short-Term Cost of Fossil Fuels**

The strong focus of the current market design on short-term markets, still very often determined by volatile fossil fuel prices, has exposed households and companies to significant price spikes with effects on their electricity bills. Many consumers found they had no option but to pay higher electricity prices driven by wholesale gas prices – either because they had no access to electricity cheaper electricity from renewable sources or could not install solar panels themselves.

The current regulatory framework regarding long-term instruments has proven insufficient to protect large industrial consumers, SMEs and households from excessive volatility and higher energy bills.

The gas price increase together with the strong role that short-term markets play in today's electricity market design have also boosted the revenues and profits well beyond the expectations of many generators with lower marginal costs such as renewables and nuclear ("inframarginal generators"), while receiving – in some cases - public support as well.

Short-term markets remain essential for the integration of renewable energy sources in the electricity system, to ensure that the cheapest form of electricity is used at all times, and to ensure that electricity flows smoothly between Member States. Whilst short-term price spikes can in general incentivize consumers to reduce or shift their demand, sustained high prices over a longer period translate into

unaffordable bills for many consumers and companies.

This is why there is a need to complement the regulatory framework governing these short-term markets with additional instruments and tools that incentivise the use of long-term contracts to ensure that the energy bills of European consumers and companies - and the revenues of inframarginal generators - become more independent from the fluctuation of prices in short-term markets (often driven by fossil fuel costs) and thus more stable over longer periods of time. The reforms should create a buffer between consumers and short-term markets, ensuring that they will be better protected from extreme prices and that electricity bills better reflect the overall electricity mix and the lower cost of generating electricity from renewables. Electricity bills across Europe should depend less on the short-term markets, with an increasing share of consumers shifting into more stable and affordable longer-term pricing arrangements.

There are two main types of long-terms contracts which allow to pass on the benefits of renewables to all consumers. One is power purchase agreements (PPAs) between private parties which ensure that electricity is sold on a long-term basis at an agreed price, therefore not determined by short-term markets. Power purchase agreements bring multiple benefits. For consumers, they provide cost competitive electricity and hedge against electricity price volatility. For renewable projects developers, they provide a source of stable long-term income. For governments, they provide an alternative avenue to the deployment of renewables without the need for public funding. Although power purchase agreements are becoming more widespread in the EU and the Renewable Energy Directive obliges the Member States to remove unjustified barriers to their development, the overall market share of power purchase agreements remains limited. The growth of power purchase agreements is concentrated in some Member States only and confined to large companies.

The Commission will suggest ways in which the share of PPAs in the overall electricity market can be increased and their roll-out incentivised through the market design. The uptake of power purchase agreements, in particular by small and medium companies, can, for example, be more widely promoted by public tendering for renewable energy in which a share of a project could be contracted through power purchase agreements. Credit guarantees to power purchase agreements backed by public actors could be considered as a form of support that could efficiently drive the emergence of a power purchase agreement market. Potentially, measures could be considered to ensure that industrial consumers use the full potential of power purchase agreements to lower their exposure to short-term markets and that energy suppliers more actively enter into the power purchase agreement market.

The other type of long-term contracts applies where public support is needed to trigger investments, so-called two-way contracts for difference (“two-way CfDs”). These contracts ensure that the income of the generators in question (and the corresponding cost for consumers) provides an adequate incentive to invest and is less dependent on short-term markets. These contracts for difference are typically established by a competitive tender process, allowing support to be channelled to the projects with the lowest expected production costs. In situations of very high prices two-way CfDs would provide Member States with additional funds for reducing the impact of high electricity prices on consumers.

The upcoming reform offers an opportunity to present ways in which two-way CfDs can be integrated into the electricity market design. A number of issues need to be considered in this context, notably as to the extent to which the use of CfDs becomes mandatory for investments involving public support and whether the use of such contracts should only cover new generation assets entering the market or also certain types of existing generation assets.

In any case, given the multiple benefits of the power purchase agreements, the actions of the reform concerning the CfDs should not affect the development of the power purchase agreement market across the EU. Both instruments are necessary complements to achieve the necessary deployment of renewables.

- The simplest way to introduce two-way CfDs would be to complement the existing principles for support schemes with the specific ones to govern such contracts in the regulatory framework, with Member States deciding whether or not to use these instruments to drive new investments in inframarginal generation.
- A more binding way to anchor these contracts in the regulatory framework would be to require that all investments involving the use of public support rely on such contract structures. This would need to be carefully calibrated to ensure that CfDs provide the necessary incentives at the least cost for consumers.
- Another option would be to not only envisage the use of CfDs for new generation but also to allow Member States to offer contracts on certain types of existing inframarginal generators (e.g., for specific types of technologies). These contracts could be awarded to existing generation, where possible, on the basis of competitive bidding.
- A more far-reaching approach would be to not only envisage the use of CfDs for new generation but also to allow Member States to impose these contracts on certain types of existing inframarginal generators (e.g., for specific types of technologies). Contrary to the situation for new generation, the contracts for these types of existing generators would typically not result from market-based tendering but would result from ex-post price regulation. Whilst this would accelerate the uptake of contracts for difference, it would also create significant uncertainty for investors in renewables. This could risk the necessary investments in this type of generation, increase the costs of those investments and as a result be counterproductive.

**Driving Renewable Investments – Europe's Way Out of the Crisis**

Increasing renewable energy deployment as well as electrification in general, is critical for Europe's security of supply, the affordability of energy and achieving climate neutrality by 2050. The accelerated deployment of renewables and energy efficiency measures will structurally reduce demand for fossil fuels in the power, heating and cooling, industry and transport sectors. Thanks to their low operational costs, renewables can lower energy prices across the EU. Furthermore, faster deployment of renewable energy will contribute to EU's security of energy supply.

Any regulatory intervention in the electricity market design therefore needs to preserve and enhance the incentives for investments and provide investors with certainty and predictability, while addressing the economic and social concerns related to high energy prices.

**Alternatives to Gas to Keep the Electricity System in Balance**

The consultation also covers ways to improve the conditions under which flexibility solutions such as demand response, energy storage and other weather independent renewable and low carbon sources, compete in the markets. These include measures aimed at incentivising the development of such flexibility solutions in the market (such as adapting the tariff design of system operators to ensure that they fully consider all flexibility solutions and use the existing network as efficiently as possible, allowing for access to more detailed data from electricity consumers through the installation of submeters or developing products

to reduce demand or shift energy consumption in periods of high demand or prices) and targeted measures to improve the efficiency of the short-term markets, with particular focus on the intraday market (such as allowing trading across Member States closer to the delivery of electricity and further increasing the liquidity in this market). In addition, the consultation seeks input on how to safeguard security of supply and adequacy also in situations of unforeseen crisis to ensure timely investments in capacity.

Combined with renewable generation and enhanced investments in grid capacity and inter-connectivity, this should contribute to reducing the role that natural gas-fired generation plays as a flexible source of generation and will, over time, replace, and thereby, phase out natural gas-fired power generation in line with the EU's decarbonisation targets.

**Lessons Learned from Short Term Market Interventions**

During the crisis, a number of emergency and temporary market interventions have been introduced to mitigate the impact of high energy prices on consumers and companies. In the electricity market, the measure introduced at EU level is the so-called inframarginal cap, which softened the impact of high prices whilst requiring mandatory demand reduction.

The consultation seeks stakeholders' views on whether certain aspects of these emergency interventions could be turned into more structural features of the electricity market design, for example activated in future crisis situations, and if so, under what conditions.

Any such potential element of the reform would depend on the success of these measures in terms of limiting the impact of high electricity prices and on whether they can be introduced without harming the investment incentives required to achieve the decarbonisation of the power sector.

**Better Consumer Empowerment and Protection**

The energy crisis has exposed consumers across the internal market to higher energy costs – resulting in a real lowering of their standard of living. In some cases, customers face a choice between paying for their energy and buying other essential goods[1][2]. The crisis has also hit industry and service sectors increasing energy costs, particularly for energy intensive industry. This has given rise to cuts in production capacity, temporarily or permanent closures and lay-offs.

The Electricity Directive has not yet been fully implemented. Better implementation, and enforcement of consumer rights, would have helped mitigate the impact of the crisis for consumers. However, targeted improvements are also needed. This consultation covers different options for creating a buffer between consumers and short-term energy markets.

By giving consumers who want to actively participate in energy markets more opportunities do so, including by sharing energy to control their costs[3]. We can also better use digitalisation tools to make it easier for consumers with renewable heating or electromobility to manage their costs through avoiding the most expensive times of the day to use grid electricity. Even without being active on the market consumers need to be able to access longer term contracts for electricity, notably based on renewable power purchase agreements between suppliers and renewable producers. This will allow them to manage their costs and support new investments in renewable energy.

The crisis has also shown that often consumers pick up the costs when suppliers fail. This could be mitigated by requiring suppliers to be adequately hedged, combined with an effective Supplier of Last Resort Regime to ensure continuity of supply.

Finally, in cases of crisis it may be worthwhile enabling Member States to guarantee households and SMEs access to a minimum necessary amount of electricity at an affordable price, as was done in the Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.

**Stronger Protection against Market Manipulation**

Regulation 1227/2011 on wholesale market integrity and transparency (REMIT) ensures that consumers and other market participants can have confidence in the integrity of electricity and natural gas markets, that prices reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse. In times of very high price volatility, external actors' interference, reduced supplies, and new trading behaviours, there is a risk that entities engage in illegal wholesale trading practices. There is therefore a need to ensure that the REMIT framework is up to date and robust. Further improvements would increase transparency, monitoring capacities and ensure more effective investigation and enforcement of cross-border cases in the EU to support new electricity market design.

**Next Steps**

The aim of the present public consultation is to give the opportunity to all stakeholders and other interested parties to provide feedback on a series of policy objectives to be pursued by the reform proposal and possible concrete legislative and non-legislative measures resulting from them.

The Commission intends to present a proposal for amendments to the electricity market design in March 2023. The replies to the present consultation should be provided by 13 February 2023 at the latest.

[1] See European Pillar of Social Rights, principle 20, and also the upcoming first EU Report on Access to Essential Services.

[2] See notably the Eurobarometer on Fairness perceptions of the green transition , 10 October 2022

[3] Examples include allowing families to share energy among the different members located in different parts of the country; farmers installing renewable generation on one part of their farm and using the energy in their main buildings even if located a distance away; municipalities and housing associations including off-site energy as part of social housing, directly addressing energy poverty. Electricity production and consumption would need to take place at the same time which can be ensured by the use of smart metering.

## About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
-

- Dutch
- (•) English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- (•) Public authority
- Trade union
- Other

* First name

[redacted]

* Surname

[redacted]

* Email (this won't be published)

[redacted]

* Scope

- ○ International
- ○ Local
- ◉ National
- ○ Regional

* Level of governance

- ○ Parliament
- ◉ Authority
- ○ Agency

* Organisation name

*255 character(s) maximum*

Ministry of Economic Affairs and Climate Policy

* Organisation size

- ○ Micro (1 to 9 employees)
- ○ Small (10 to 49 employees)
- ○ Medium (50 to 249 employees)
- ◉ Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan

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|---|---|---|---|
| Bermuda | Greece | Mozambique | Suriname |
| Bhutan | Greenland | Myanmar/Burma | Svalbard and Jan Mayen |
| Bolivia | Grenada | Namibia | Sweden |
| Bonaire Saint Eustatius and Saba | Guadeloupe | Nauru | Switzerland |
| Bosnia and Herzegovina | Guam | Nepal | Syria |
| Botswana | Guatemala | Netherlands | Taiwan |
| Bouvet Island | Guernsey | New Caledonia | Tajikistan |
| Brazil | Guinea | New Zealand | Tanzania |
| British Indian Ocean Territory | Guinea-Bissau | Nicaragua | Thailand |
| British Virgin Islands | Guyana | Niger | The Gambia |
| Brunei | Haiti | Nigeria | Timor-Leste |
| Bulgaria | Heard Island and McDonald Islands | Niue | Togo |
| Burkina Faso | Honduras | Norfolk Island | Tokelau |
| Burundi | Hong Kong | Northern Mariana Islands | Tonga |
| Cambodia | Hungary | North Korea | Trinidad and Tobago |
| Cameroon | Iceland | North Macedonia | Tunisia |
| Canada | India | Norway | Türkiye |
| Cape Verde | Indonesia | Oman | Turkmenistan |
| Cayman Islands | Iran | Pakistan | Turks and Caicos Islands |
| Central African Republic | Iraq | Palau | Tuvalu |
| Chad | Ireland | Palestine | Uganda |
| Chile | Isle of Man | Panama | Ukraine |
| China | Israel | Papua New Guinea | United Arab Emirates |
| | | | |

- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

To which category of stakeholder do you belong?

- [x] a) National or local administration
- [ ] b) National regulator
- [ ] c) Transmission System Operator
- [ ] d) Distribution System Operator
- [ ] e) Market operator
- [ ] f) Energy company with generation assets
- [ ] g) Independent energy supplier with no generation assets
- [ ] h) Company conducting business in the energy sector no included in f) or g)
- [ ] i) Industrial consumer and associations
- [ ] j) Energy community
- [ ]

k) Academia or think tank

- [ ] l) Citizen or association of citizens
- [ ] m) Non-governmental organisations
- [ ] n) Other

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* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- (•) **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ( ) **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

- [x] I agree with the personal data protection provisions

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**Please provide feedback only on the questions that are relevant for you. Questions can be left blank.**

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## Making Electricity Bills Independent of Short-Term Markets

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## Subtopic: Power Purchase Agreements (PPAs)

The conclusion of PPAs between electricity generators and final customers (including large industrial customers, SMEs and suppliers), is a way of supporting long-term investment by providing both parties with certainty regarding the price level over a longer time horizon (typically, 5 to 20 years) compared to other alternatives. In particular, PPAs contribute to reduce the uncertainty of final customers concerning electricity prices and their exposure to price variations, allowing to make consumers' bills independent from the fluctuation of fossil fuels prices. However, as PPAs are contracts signed over a long period of time, they bear considerable risks and costs for smaller market participants. Hence, their accessibility is currently limited to a few large final customers (e.g. energy intensive undertakings), creating a risk that access to decarbonised generation is limited to a subset of consumers.

Whilst the uptake of renewable PPAs is growing year-on-year, the market share of projects marketed under renewable power purchase contracts covers still only 15-20% of the annual deployment. Furthermore, renewable PPAs are limited to certain Member States and large undertakings, such as energy intensive undertakings.

To address these barriers, Member States can consider ways of supporting the conclusion of PPAs in line with State Aid rules. The Commission has described in detail the additional measures that could help the development of renewable PPAs in the Commission Staff Working document accompanying the REPowerEU Communication[1]. This could be achieved, inter alia, by pooling demand in order to give access to smaller final customers, by providing State guarantees in line with the State Aid Guarantee Notice [2] and by supporting the harmonization of contracts in order to aggregate a larger volume of demand and enable cross-border contracts.

[1] Commission Staff Working Document Guidance to Member States on good practices to speed up permit-granting procedures for renewable energy projects and on facilitating Power Purchase Agreements Accompanying the document Commission Recommendation on speeding up permit-granting procedures for renewable energy projects and facilitating Power Purchase Agreements SWD/2022/0149 final

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008XC0620%2802%29

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## Do you consider the use of PPAs as an efficient way to mitigate the impact of short-term markets on the price of electricity paid by the consumer, including industrial consumers?

- (●) Yes
- ( ) No

## Please describe the barriers that currently prevent the conclusion of PPAs.

*2000 character(s) maximum*

An important reason for smaller (independent) producers not to offer PPAs is that their risks are often still covered by subsidy schemes. In the Netherlands producers who do not receive a subsidy (currently wind at sea in particular) are more likely to cover their risks with long-term PPAs. Renewable energy projects that do receive subsidies - usually aimed at the unprofitable top - usually sell their electricity on the day-ahead market.

Another important reason is that PPAs are often concluded for a longer period of time. In that case, it is important for the selling producer to have the certainty that the final customer with whom he concludes this agreement will still exist in 10 years' time and will be able to purchase the agreed electricity at the agreed

price. For very large final customers, the credit rating can be considered. This instrument is missing for other companies and customers and a different way of covering this risk is required, for example with a bank guarantee.

Final customers who purchase electricity via a PPA, usually need a supplier who is prepared to supply the remaining electricity required or, where appropriate, buy the surplus electricity from the PPA, which cannot be used by the final customer. Suppliers have so far only been willing to do so to a limited extent. In practice, the PPA concluded by the final customer must be included in the electricity program of the BRP of the supplier of this final customer (sleeved PPAs). This is custom work, which is offered only to very large (industrial) customers (who often carry their own risk), but is less common for smaller final customers.

Do you consider that the following measures would be effective in strengthening the roll-out of PPAs?

*at most 6 choice(s)*

- [ ] a) Pooling demand in order to give access to smaller final customers
- [ ] b) Providing insurance against risk(s) either market driven or through publicly supported guarantees schemes (please identify such risks)
- [ ] c) Promoting State-supported schemes that can be combined with PPAs
- [x] d) Supporting the standardisation of contracts
- [x] e) Requiring suppliers to procure a predefined share of their consumers' energy through PPAs
- [ ] f) Facilitating cross-border PPAs

Do you have additional comments?

*2000 character(s) maximum*

c. In our opinion the use of PPA's should be based on the demand in the market for PPA's, based on their need to limit their exposure to short-term market volatility. Thus, we do not see the need for state-supported schemes to be mandatorily combined with PPA's.

d. If the standardization of contracts contributes to the market-based uptake of PPA's than this option could be further explored.

e. Requiring suppliers to procure a predefined share of their consumers' energy through PPAs could be effective in strengthening the roll-out of PPAs. However, we would like to reserve the name PPA for contracts between producers and final customers. For traders and suppliers, this would be an electricity purchase agreement. In practice, there is little or no relationship between the purchase cost from a purchase contract and the price that a supplier charges to its final customers. Roll out of PPAs or other long-term contracts should not be a goal in itself. Such a measure may be justified insofar as it leads to better hedged suppliers or supports another public good, but any obligation should be proportional to the extra costs incurred such as the costs associated with these contracts and increased administrative burden.

In addition to the measures proposed in the question above, do you see other ways in which the use of PPA for new private investments can be strengthened via a revision of the current electricity market framework?

- ○ Yes
- ◉ No

Please explain

*2000 character(s) maximum*

At this moment we do not see other options than the options mentioned above.

Do you see a possibility to provide stronger incentives to existing generators to enter into PPAs for a share of their capacity?

- ○ Yes
- ◉ No

Please explain

*2000 character(s) maximum*

It is important that generators, be it existing or future are free to choose whether to engage in a PPA or other forward contracts or not. Incentives to enter in PPAs should be based on the removal of barriers that may exist to market parties engaging in PPAs and ensuring a liquid market.

Do you consider that stronger obligations on suppliers and/or large final customers, including the industrial ones, to hedge their portfolio using long term contracts can contribute to a better uptake of PPAs?

- ◉ Yes
- ○ No

Do you consider that increasing the uptake of PPAs would entail risks as regards

| | Yes | No |
|---|---|---|
| (a) Liquidity in short-term markets | ◉ | ○ |
| (b) Level playing field between undertakings of different sizes | ◉ | ○ |
| (c) Level playing field between undertakings located in different Member States | ◉ | ○ |
| (d) Increased electricity generation based on fossil fuels | ○ | ○ |
| (e) Increased costs for consumers | ◉ | ○ |

If yes, how can these risks be mitigated?

*2000 character(s) maximum*

Risk a. If the amount of electricity contracted through PPAs or other forward contracts increases by significant levels, liquidity on the short-term markets can decrease, which may lead to increased price volatility. When the PPAs or forward contracts allow for reselling of the contracted electricity on the short-term markets, this risk decreases. Furthermore, ensuring that electricity consumers remain responsive to short term price signals may decrease price volatility through demand side response. Finally, PPAs should be mainly promoted by removal barriers to parties concluding PPAs, and any requirement to hedge certain parts of portfolio should be balanced, and only imposed where it directly serves public interests. This serves to prevent overlarge shifts to the forward markets.

Risks b. and c. can occur when asymmetric requirements are imposed between companies of different sizes and/or across borders. In general, rules should be harmonized to a minimum level and be aimed at ensuring a public good (for example; ensuring electricity suppliers are hedged to a sufficient degree) and not at a specific instrument (for example: requiring electricity suppliers to procure X% of their portfolio through PPAs). Rules should in principal be nondiscriminatory. Finally, care should be taken that public support schemes (for example guaranteeing PPAs) does not lead to distortions of level playing field. Therefore support schemes should continue to be considered in the context of the EU state aid framework.

e. Increasing the uptake of PPAs, especially where this is done through imposing requirements for the uptake of PPAs or creating incentives (as opposed to removing barriers for market parties that wish to engage in trading PPAs) can lead to higher average costs for consumers, because of market parties asking a premium in order to cover risks related to a trade on such a long timescale.

## Subtopic: Forward Markets

Organised forward markets are a useful tool for suppliers and large consumers such as energy intensive undertakings to protect themselves against the risk of future increases in electricity prices and to decouple their energy bills from fluctuations of fossil fuel prices in the medium to long-term. However, it has been argued that liquidity in many organised forward markets across the EU is insufficient and that the time horizon for such hedging seems too short (usually up to one year). One possibility to increase the liquidity in forward markets would be to establish virtual trading hubs for forward contracts, as already exist in certain regions.

Such hubs would need to be complemented with liquid and accessible transmission rights to hedge the remaining risk between the hub and each zone.

While hedging up to approximately three years could be improved with better organization of the market, additional measures might be needed to incentivise forward hedging beyond this timeframe (see for example the section above on PPAs).

### Do you consider forward hedging as an efficient way to mitigate exposure to short-term volatility for consumers and to support investment in new capacity?

- Yes
- No

Do you consider that the liquidity in forward markets is currently sufficient to meet this objective?

- ○ Yes
- ◉ No

Do you have additional comments?

*2000 character(s) maximum*

Forward hedging is an efficient way to mitigate exposure to short-term volatility, but given the shorter duration, a less suitable instrument to promote investments in new capacity.

At the moment we see that energy companies are very reluctant to conclude long term contracts. This leads to a situation where consumers only have limited options to conclude contracts for a fixed price for a fixed term. It is vital that financial markets need to function well for all participants and that there is sufficient liquidity for non-financial firms, like energy companies, to manage margin requirements.

In your view, what prevents participants from entering into forward contracts?

*2000 character(s) maximum*

In the recent volatile market episode, the high margin requirements were a reason for market parties to not conclude long-term contracts or for shifting to over-the-counter derivative transactions. These types of transactions are less transparent and involve more counterparty risk. In the current European Market Infrastructure Regulation (EMIR) review, the Commission intends to implement different measures to improve liquidity for non-financial market participants. Based on the advice of ESMA, the Commission is proposing two measures to alleviate the pressure on energy companies. Second, it is for instance proposed to broaden collateral requirements for centrally cleared contracts. Bank guarantees without underlying collateral and public guarantees are added to the list of assets that may be used as collateral by a clearing counterparty (CCP). The former applies specifically to energy companies that are independently affiliated with a CCP as clearing members. Both measures are expected to provide some relief to certain energy companies. This ensures that possible liquidity stress in the energy sector does not spillover to the financial system. But in volatile markets, the system of mandatory margining remains a serious threat to the liquidity of, in particular, centrally cleared long-term energy markets.

In your view, would requiring electricity suppliers to hedge for a share of their supply be beneficial for consumers and for retail competition?

- ◉ Yes
- ○ No

Do you have additional comments?

*2000 character(s) maximum*

In the Netherlands the NRA already examines the hedging strategy of energy suppliers with a permit for supply to consumers and small retail customers.
Requiring electricity suppliers to hedge for a share of their supply through the conclusion of PPA's is not necessarily beneficial for consumers of retail competition. A PPA is normally included in the portfolio of the trading house of the supplier and this trading house will generally pass on a price in line with the market to

the supplier.

Whether a supplier opts for a PPA or other forms of hedging of its sales obligations should be up to the supplier. As mentioned, this usually runs through a trading house, which means that there is no longer a direct relationship between the purchase agreements and the sales obligations.

Do you consider that the creation of virtual hubs for forward contracts complemented with liquid transmission rights would improve liquidity in forward markets?

- ○ Yes
- ○ No

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Do you have experience with the existing virtual hubs in the Nordic countries?

- ○ Yes
- ◉ No

Do you have additional comments related to the existing virtual hubs in the Nordic countries?

*2000 character(s) maximum*

Since the Netherlands has no experience with virtual hubs in the electricity market, we cannot answer this question.

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In your view, what would be the possible ways of supporting the development of forward markets that could be implemented through changes of the electricity market framework?

*3000 character(s) maximum*

It is important to note that market parties can already engage in forward trading. Strengthening the forward markets should primarily be based on a thorough analysis of barriers that market parties, wishing to trade on forward markets, face. These identified barriers should be addressed where possible. Since trading on forward markets does not necessarily lead to lower prices, the electricity market framework should not impose requirements to trade on forward markets, excepting possible requirements for electricity suppliers to hedge part of their portfolio. In any case, the market framework should not discriminate between different types of forward contracts and ensure that market parties retain an incentive to react to short term supply and demand factors.

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## Subtopic: Contracts for Difference (CfDs)

Two-way CfDs and similar arrangements have been used in some Member States to support publicly financed investments in new inframarginal generation (in particular, renewables) to cater for situations

where the necessary investments are not made on a market basis. Similarly to PPAs, they ensure a greater certainty to investors and consumers, and they cater for situations where the necessary investments require public support.

Public support for new inframarginal generation granted in the form of two-way CfDs could ensure that the beneficiaries receive a certain minimum level of remuneration for the electricity produced, while preventing disproportionate revenues. Typically, the beneficiary receives a guaranteed payment equal to the difference between a fixed 'strike' price and a reference price and the revenues above the strike price need to be returned to the CfD counterpart (i.e. Member State).

At the same time, two-way CfDs require the generation supported by the CfDs to pay back the difference between the market reference price and a maximum strike price whenever the reference price exceeds the strike price. If these paybacks are then channelled back to the consumers, suppliers or taxpayers, two-way CfDs also provide them with some protection against excessive prices and volatility, if they are passed on proportionally and objectively.

As it may be difficult for regulators to estimate the actual investment costs, the possibility to determine the remuneration of supported generators through a competitive bidding process is an important instrument to avoid long-lasting excessive costs.

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## Do you consider the use of two-way contracts for difference or similar arrangements as an efficient way to mitigate the impact of short-term markets on the price of electricity and to support investments in new capacity (where investments are not forthcoming on a market basis)?

- ○ Yes
- ◉ No

## Do you have additional comments?

*2000 character(s) maximum*

Neither completely yes, nor no.

Two-way contracts for difference can, depending on national circumstances, help generate revenues in cases of unusually high short-term electricity prices. These revenues could then be used to mitigate the impact of short-term markets on the price of electricity. However, these revenues do not necessarily have to be generated through 2-way CfD's to mitigate the impact of short-term electricity markets. Furthermore, it is important to note that the downside is that two-way CfD's will in all likelihood lead to higher average costs for electricity, because of electricity producers bidding at a higher strike price. Eventually, the electricity consumer will thus be faced with higher average costs. Concludingly, CfD's should be voluntary, not imposed upon existing capacity and be designed in such a way that all market parties retain an incentive to react to short term price signals that indicate fluctuations in supply and demand.

Two-way CfD's can support investment in new capacity that is otherwise not forthcoming. Because of the above drawbacks however, it is important that member states have flexibility in how to design support instruments that are best suited to local circumstances. Therefore, support schemes based on CfD's should continue to be considered in the context of the EU state aid framework.

Should new publicly financed investments in inframarginal electricity generation be supported by way of two-way contracts for differences or similar arrangements, as a means to mitigate electricity price spikes of consumers while ensuring a minimum revenue?

- ○ Yes
- ◉ No

Do you have additional comments?

*2000 character(s) maximum*

Member states should be free to choose whether to apply two-way contracts for differences (including similar arrangements) or choose alternative instruments as long as these are in accordance with EU state aid legislation.

What power generation technologies should be subject to two-way contracts for difference or similar arrangements?

*2000 character(s) maximum*

In principle we feel that no technology should be mandatorily subject to two-way CfD's. That being said, we feel that two-way CfDs as an instrument are better suited to non-dispatchable sources of generation than to dispatchable sources. This is because applying two-way CfDs to dispatchable sources may lead to incentives for producers to optimize CfD income rather than react to system needs.

Why should those technologies be subject to two-way contracts for differences or similar arrangements?

*2000 character(s) maximum*

What technologies should be excluded and why?

*2000 character(s) maximum*

Two-way CfDs as an instrument are better suited to non-dispatchable sources of generation than to dispatchable sources. This is because applying two-way CfDs to dispatchable sources may lead to incentives for producers to optimize CFDs income rather than react to system needs.

What are the main risks of requiring new publicly supported inframarginal capacity to be procured on the basis of two-way contracts for difference or similar arrangements, for example as regards of the impact in the short-term markets, competition between different technologies, or the development of market based PPAs?

*2000 character(s) maximum*

Requiring new publicly supported inframarginal capacity to be procured on the basis of two-way contracts for difference entails multiple risks:

1. Depending on the specifics of the two-way CfDs the incentives for producers of electricity to react to short term supply and demand fluctuations may disappear. This is especially the case when the CFDs contains a fixed strike price opposed to a wider tunnel within which the electricity price may fluctuate without the CfDs coming into effect. If this occurs, optimization of production and development of flexibility may be jeopardized, which can lead to higher societal costs.

2. Applying two-sided CfD's may decrease the uptake of market based PPAs, because producers do not have an incentive to engage in such a structure. This may harm the liquidity on the forward markets.

3. If two-sided CfD's are not applied in a technology neutral manner, there is a risk that governments 'pick winners', possibly leading to higher systemic costs, and delaying innovation.

4. Two-sided CfD's can lead to producers demanding a higher strike price, because they factor in their expected lower gains during periods of high prices. This can lead to higher societal costs.

5. There is a risk for level playing field distortions for energy intensive industry, especially when two-sided CfD's are treated differently under the EU state aid regime compared to other forms of public support.

What design principles could help mitigate the risks identified in your reply to the question above, in particular, in terms of procurement principles and pay out design? Should these principles depend on the technology procured?

*2000 character(s) maximum*

Most importantly, member states should be free to choose whether to apply two-sided CfD's or other instruments, assuming these are in accordance with EU state aid rules.

If two-sided CfD's are applied, these should be designed in such a way as to retain incentives to react to short term supply and demand conditions as signaled by the short-term markets. For example, through allowing the electricity price to fluctuate within a broader tunnel without the two-sided CFDs applying.

How can it be ensured that any costs or pay-out generated by two-way CfDs in high-price periods are channelled back to electricity consumers? Should a default approach apply, for example, should these revenues or costs be allocated to consumers proportionally to their electricity consumption?

*2000 character(s) maximum*

Member states should have flexibility to design these instruments as they consider best applicable to their national circumstances. We are therefore not in favor of a default approach.

What should be the duration of a two-way CfD for new generation and why? Should this differ depending on the technology type?

*2000 character(s) maximum*

Member states should have flexibility to design these instruments as they consider best applicable to their national circumstances.

## Should generation be free to earn full market revenues after the CfD expires, or should new generation be subject to a lifetime pay-out obligation?

*2000 character(s) maximum*

Generation should not be subjected to a lifetime pay-out obligation. Generators should be free in their decision whether they wish to enter into a CfD. Furthermore, generators should be free to determine how they wish to sell their production to the market once a CfD they may have entered into expires.

## Without prejudice to Article 6 of Directive (EU)2018/2001[1], should it be possible for Member States to impose two-way CfDs by regulatory means on existing generation capacity?

[1]

Article 6 (1): Without prejudice to adaptations necessary to comply with Articles 107 and 108 TFEU, Member States shall ensure that the level of, and the conditions attached to, the support granted to renewable energy projects are not revised in a way that negatively affects the rights conferred thereunder and undermines the economic viability of projects that already benefit from support.

Article 6(2): Member States may adjust the level of support in accordance with objective criteria, provided that such criteria are established in the original design of the support scheme.

- ○ Yes
- ◉ No

## Do you have additional comments?

*2000 character(s) maximum*

Imposing two-way CfD's by regulatory means on existing generation capacity would be detrimental for investor's confidence and therefore seriously hamper the much-needed investments in renewables and flexibility.

## How would you rate the following potential risks as regards the imposition of regulated CfDs on existing generation capacity?

| | Negligible risks | Low risks | Medium risks | High risks | Very high risks |
|---|---|---|---|---|---|
| Legitimate expectations/legal risks | ○ | ○ | ○ | ◉ | ○ |
| Ability of national regulators/governments to accurately define the level of the price levels envisaged in these contracts | ○ | ○ | ○ | ◉ | ○ |
| | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Locking in existing capacity at excessively high price levels determined by the current crisis situation | ○ | ○ | ○ | ◉ | ○ |
| Impact on the efficient short-term dispatch | ○ | ○ | ○ | ◉ | ○ |

How would you address those potential risks as regards the imposition of contracts for difference on existing generation capacity?

*2000 character(s) maximum*

We share the above-mentioned risks, and do not see feasible ways to manage these risks. This holds especially for risk A, but applies to the others as well. We therefore do not support imposition of regulated CfDs on existing generation capacity.

A. Significant legal risk since the imposition of CfDs by governments on existing generation highly affect the business operations of generation capacity. This would be detrimental for the investor confidence in the EU. This risk should be addressed by not imposing any form of regulated CfD on existing generation capacity.
B. If the price level is to be defined by governments or regulators the actual price of electricity becomes a political decision. This is undesirable. The price of electricity should reflect the fundamentals of supply and demand, since this ensures that the system is operated in the most optimal way. In the long run this will also be most beneficial for society. This risk should be addressed by not imposing any form of regulated CfD on existing generation capacity.
C. This risk of locking in existing capacity at excessively high price levels is significant. This primarily because the incentive stemming from competition and efficient market behavior is hampered by imposing regulated CfDs on existing generation. Current electricity prices are still higher than before the energy crisis, but significantly lower than the day-ahead electricity prices of Augustus 2022. However, if locked in via the imposition of regulated CfD's on existing generation there is no incentive for existing capacity to pass on the lower electricity price to consumers.
D.The imposition of regulated CfD on existing generation capacity negatively affect the short-term dispatch. For an efficient short-term dispatch especially accurate supply and demand signals are beneficial. Regulated CfD distort these signals and hamper short-term dispatch. This risk be addressed by not imposing any form of regulated CfD on existing generation.

Would it be enough for existing generation to be subject only to a simple revenue ceiling instead of a revenue guarantee?

- ○ Yes
- ◉ No

Do you have additional comments?

*2000 character(s) maximum*

Under regular market conditions, existing generation should not be subjected to a revenue ceiling.

The commodity electricity cannot (yet) be stored on a large scale. Demand does fluctuate significantly on an hourly basis. Prices that are able to vary on an hourly basis are therefore desirable, because they indicate an investment signal and allow existing generators to earn back their investments. A maximum price per MWh aligns poorly with this fundamental cornerstone of the market.

Moreover, individual market circumstances within individual member states warrant their own specific details of implementing a revenue limiting scheme, for example in deciding on the level of the revenue cap or on the details of the balancing markets. However, the European electricity market operates across borders. That could result in market distortions that lead to suboptimal results on the European electricity market.

The electricity market has also undergone a significant transition in moving towards more renewable energy sources and it will continue to undergo further changes. It is likely that the scope of a maintained inframarginal cap would keep changing in the future. For example, current inframarginal generators could become the marginal generators in the future, or other considerations to include or exclude specific technologies (such as coal) could also change with time.

From the point of view of implementation, a revenue limiting scheme is very difficult / impossible to implement. There is limited national correlation between market revenues and electricity generation for cross-border vertical integrated companies.

What are the relative merits of PPAs, CfDs and forward hedging to mitigate exposure to short-term volatility for consumers, to support investment in new capacity and to allow customers to access electricity from renewable energy at a price reflecting long run cost?

*2000 character(s) maximum*

We consider PPAs and forward hedging to be useful instruments to mitigate exposure to short-term market volatility for consumers, if these are either directly accessible to consumers, or if electricity suppliers are incentivized to pass on the benefits of their hedged portfolio to consumers in case of price peaks, for example through ensuring a healthy competition climate. CfDs do not directly mitigate exposure of consumers to short term volatility, but may generate revenues that governments can employ to limit this exposure. However, in theory, these revenues do not necessarily have to be linked to CfDs. Note that all these instruments are already available on the market in many member states. Therefore, any policy should be mainly focused on removing the barriers that prevent the uptake of these instruments.

## Subtopic: Accelerating the deployment of renewables

The shortage in gas and electricity supply as well as the relatively inelastic energy demand have led to significant increases in prices and volatility of gas and electricity prices in the EU. As stated above, a faster deployment of renewables constitutes the most sustainable way of addressing the current energy crisis and 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, renewables can positively impact electricity prices across the EU and reduce direct consumption of fossil fuels.

Through the REPowerEU plan, the European Commission has put forward a range of initiatives to support the accelerated deployment of renewable energy and to advance energy system integration. These include the proposal to increase the renewable energy target by 2030 to 45% in the Renewable Energy Directive, legislative changes to accelerate and simplify permitting for renewable energy projects or the obligation to install solar energy in buildings.

These efforts should be accompanied by appropriate regulatory and administrative action at national level and by the implementation and enforcement of the current EU legislation.

Within the framework of the Electricity Market legislation, accelerating the deployment and facilitating the uptake of renewables is one of the guiding principles of the Clean Energy Package and of this consultation paper. For example, a transmission access guarantee could be envisaged to secure market access for offshore renewable energy assets interconnected via hybrid projects, where the relevant TSO(s) would compensate the renewable operator for any hours in which the actions of the TSO led to not enough transmission capacity being accessible to the offshore wind farm to offer their export capabilities to the electricity markets[1].

Also, removing the barriers for the uptake of renewable PPAs or generalising two-way CfDs, enhancing consumer empowerment and protection, and increasing demand response, flexibility and storage should contribute to the accelerated deployment of renewables.

[1] See the recommendations of the Study Support on the use of congestion revenues for Offshore Renewable Energy Projects connected to more than one market https://energy.ec.europa.eu/system/files/2022-09/Congestion%20offshore%20BZ.ENGIE%20Impact.FinalReport_topublish.pdf

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## Do you consider that a transmission access guarantee could be appropriate to support offshore renewables?

- (●) Yes
- ( ) No

## Do you have additional comments?

*2000 character(s) maximum*

The Netherlands is looking at various cross-border project. Moreover, the Netherlands has ambitious targets for the roll-out of offshore wind (21 GW around 2030). Therefore, we highly value clarity on the market-setup for hybrid projects. It would be a shame if projects in the near future could not be realized because of uncertainty about the market-setup.

The market-setup is relevant for the distribution on incomes among operators of hybrid projects and the developers of offshore wind farms and thus the need for any re-allocation of congestion incomes. Moreover, if and how any congestion incomes are re-allocated should be clear before the tendering of the offshore windfarm involved. If one wishes to re-allocate congestion incomes, the transmission access guarantee is an interesting option, but others also exist (see Engie Impact study). Up to this point it remains unclear what the process following up the recent Engie Impact study will be. This needs to be clarified. Moreover, the Netherlands highly values if NRA's are involved in the decision-making process on the question of re-allocation of congestion income.

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## Do you see any other short-term measures to accelerate the deployment of renewables?

| | Yes | No |
|---|---|---|

| | | |
|---|---|---|
| At national regulatory or administrative level | ◉ | ○ |
| In the implementation of the current EU legislation, including by developing network codes and guidelines | ◉ | ○ |
| Via changes to the current electricity market design | ◉ | ○ |
| Other | ◉ | ○ |

### If yes, please specify

*2000 character(s) maximum*

In order to further accelerate the deployment of renewables the focus should be on ensuring the sufficient development of supply of flexibility (for example, but not limited to, energy storage, demand side response, CO2-free dispatchable electricity production), since these two combined can provide a stable and reliable electricity supply. On a national level, it could be explored which barriers (regulatory, administrative or market-based) exist that hamper the full development of such flexibility. This could also be explored within the context of the EU market design.
Additionally, the continuation of the implementation of existing EU-legislation is considered beneficial. For instance, the implementation of the network code for demand side response.

In order for renewables and flexibility to sufficiently develop is it is of importance to safeguard the incentives for investment and an adequate price signal. This will trigger investments in capacity, and ensure that the capacity is dispatched in het most efficient manner.

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### How should the necessary investments in network infrastructure be ensured? Are changes to the current network tariffs or other regulatory instruments necessary to further ensure that the grid expansion required will take place?

*4000 character(s) maximum*

Grid operators in the Netherlands have full focus on the necessary grid investments in order to overcome the current grid congestion in large parts of the Netherlands. Grid operators, in close cooperation with the NRA, are taking the first steps to adjust the tariff methodology, which is exclusive NRA domain, in order to promote flexibility. As policy makers we encourage a tariff methodology which enables more flexibility whiteout undermining the cost reflectiveness of tariffs. Focus of this adjustment is not grid investments but more efficient use of the existing (and future) grid

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## Subtopic: Limiting revenues of inframarginal generators

During the current energy crisis, temporary emergency measures have been put in place under Council Regulation 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices. One of these measures is the so-called inframarginal revenue cap which limits the realised revenues of inframarginal generators to a maximum of 180 Euros per MWh. The aim of introducing this inframarginal cap was to limit the impact of the natural gas prices on the revenues of all inframarginal generators (new and existing) and to generate revenues allowing Member States to mitigate the impact of high electricity

prices on consumers.

The question to be addressed in the context of the reform of the electricity market rules is whether, in addition to relying on long-term pricing mechanisms such as forward markets, CfDs and PPAs, such revenue limitations for inframarginal generators should be maintained.

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Do you consider that some form of revenue limitation of inframarginal generators should be maintained?

- ○ Yes
- ◉ No

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How do you rate a possible prolongation of the inframarginal revenue cap according to the following criteria:

(a) the effectiveness of the measure in terms of mitigating electricity price impacts for consumers

(b) its impact on decarbonisation

0

(c) security of supply

0

(d) investment signals

0

(e) legitimate expectations/legal risks

(f) fossil fuel consumption

0

(g) cross border trade intra and extra EU

0

(h) distortion of competition in the markets

0

(i) implementation challenges

Do you have additional comments?

*3000 character(s) maximum*

See detailed position: a) This measure makes available funds for mitigating electricity price impacts for consumers, but the measure in itself has no effect in terms of mitigating price impacts.
b)If there is an impact, it is likely to negatively influence decarbonization. Ideally no impact, but an inframarginal cap would necessarily apply to renewable energy sources, reducing their investment signals and investment capacity. Moreover, the precedent of the inframarginal cap has effect. The mere possibility of an inframarginal cap in the market mechanism increase the risk for investors in renewable generation capacity.
c) If, because of unforeseen circumstances, the inframarginal cap leads to less available capacity or electricity generation, the effect on security of supply is negative.
Such an unforeseen circumstance could be, for example, increases in variable costs, which is not reflected in the level of the revenue cap. That could lead to a situation where it is economically rational to shut down specific technologies.
d) The commodity electricity cannot (yet) be stored on a large scale. Demand does fluctuate significantly on an hourly basis. Prices that are able to vary on an hourly basis are therefore desirable because they indicate an investment signal. A maximum price per MWh aligns poorly with this fundamental cornerstone of the market.
e) No effect of prolongation, other than those that are already present; prolongation can be legally expected based on the current Regulation. However, the precedent of inframarginal cap has an effect. The possibility of an inframarginal cap has a very large impact on legal uncertainty investors in (renewable) investors take into account when making future investment decisions.
f) Ideally no effect, the measure should not impact the merit order and as a consequence fossil fuel consumption. However, if renewable generators reduce production during time periods or are pushed out of the market entirely as a consequence of the inframarginal cap , this will increase fossil fuel consumption. If due to the inframarginal cap coal is partly pushed out of the merit order, gas consumption would increase.
g) Because member states have made different choices in implementing the inframarginal cap, it is highly likely that there are distortions, which will be prolonged by prolongation of the cap. It is possible that the inframarginal revenue cap leads to increased cross border trade when countries that have interconnection capacity make different national choices in the implementation of the cap.
h) There is international distortion, for example with different heights of the cap for specific technologies between countries. Examples of national distortions could be a level of a cap that incorrectly takes the cost base of electricity generation into account, or when certain markets are not part of the inframarginal cap
i) Prolongation does not change existing implementation challenges, which are ample.

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Should the modalities of such revenue limitation be open to Member States or be introduced in a uniform manner across the EU?

- ○ Member States
- ◉ EU

## Do you have additional comments?

*2000 character(s) maximum*

Ideally, to prevent the effects outlined in earlier questions, such a measure should be implemented in a uniform manner across the EU. However, the national circumstances can widely differ between member states, making a uniform application undesirable from that point of view, which would in turn lead to negative side-effects of the measure.
We do not see a scheme that addresses both the necessity of uniformity while at the same time provide sufficient flexibility to cope with specific market circumstances.

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## How can it be ensured that any revenues from such limitations on inframarginal revenues are channelled back to electricity consumers? Should a default approach apply, for example, should these revenues be allocated to consumers proportionally to their electricity consumption?

*3000 character(s) maximum*

Member states have implemented different national schemes to support electricity consumers, based on the national circumstances. We believe that flexibility is necessary, as the best method to support consumers depends heavily on the details of the market and other policies in place.
In any case, a measure that allocates revenues proportionally with electricity consumption is undesirable. Big consumers in such a scheme would be compensated more, while those with lower consumption often need the most support. Such a methodology would also undermine any incentive to reduce electricity consumption.

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# Alternatives to Gas to Keep the Electricity System in Balance

Short-term markets enable trading electricity close to the time of delivery, covering day-ahead, intraday and balancing timeframes. Well-functioning short-term electricity markets guarantee that the different assets are used in the most efficient manner – this is key to deliver the lowest possible electricity prices to consumers. Short-term markets should therefore deliver relevant price signals reflecting locational, time-related and scarcity aspects: this will ensure the adequate reaction of generation and demand. Even if an increasing share of generation were covered by long term contracts such as PPAs or CfDs (cf. the sections above), the short-term markets would remain key to ensure efficient dispatch. The short-term markets also ensure efficient exchanges of electricity across borders.

Well-functioning short-term markets require healthy competition between market participants so that they are incentivised to bid at their true cost and regulators have the necessary tools to detect any kind of abusive or manipulative behaviour. Demand response, storage and other sources of flexibility must be put in a situation where they can compete effectively so that the role of natural gas in the short-term market to provide flexibility is progressively reduced, which will bring multiple benefits including lower electricity prices for consumers. To ensure this, targeted changes to the functioning of short-term markets could be envisaged, which could include:

*Incentivising the development of flexibility assets*

The Commission together with ACER has started the work on new rules to further support the development of demand response, including rules on aggregation, energy storage and demand curtailment, and address remaining regulatory barriers.

*Adapt incentives in the System operators tariff design:* The Electricity Regulation and Directive already give the possibility for system operators to procure flexibility services including demand response. However, in most Member States, the current regulatory framework treats capital expenditures (CAPEX) of system operators different from operational expenditures (OPEX), resulting in a bias in detriment of investments by system operators concerning the operation of their network. An alternative to this approach is a regulatory framework based on overall total expenditure (TOTEX), including capital expenditures and operational expenditures, which would allow the system operators to choose between operational expenditures and capital expenditures, or an efficient mix of both, to operate their system efficiently without bias for a certain type of expenditure. This would incentivise system operators to procure further flexibility services, and in particular demand response, which should be a key enabler for greater renewable integration.

*Using sub-meter data for settlement and observability:* The deployment of smart meters as envisaged in the Electricity Directive is delayed in several Member States. In addition, smart meters do not always provide the level of granularity required for demand response and energy storage. In these situations, it should thus be possible for system operators to use sub-meter data (incl. from private sub-meters) for settlement and observability processes of demand response and energy storage, to facilitate active participation in electricity markets (see also section *"Adapting metering to facilitate demand response from flexible appliances"* in the section on **"Better consumer empowerment and protection"**). The use of sub-meter data should be accompanied by requirements for the sub-meter data validation process to check and ensure the quality of the sub-meter data. Access to dynamic data of electricity consumed (and injected back to the grid) notably from renewable energy sources helps increasing awareness amongst the consumers and allows shifting demand towards renewable electricity.

*Developing new products to foster demand reduction and shift energy at peak times:* To foster demand reduction and energy shifting (through demand response, storage and other flexibility solutions) at peak times, a peak shaving product could be defined and considered as an ancillary service that could be bought by system operators. Such a product could be auctioned a few weeks/months ahead (with a capacity payment) and activated at peak load (with an energy payment), considering renewables generation, therefore contributing to phasing out gas plants from the merit order, and contributing to lowering the price. Demand reduced could also be shifted to another point in time, outside of peak times. This would incentivize flexibility when fossil fuel capacity is needed the most in the system. It would be important to ensure such a product is cost effective if implemented over the long term.

*Coordinating demand response in periods of crisis:* In periods of crisis, it would also be possible to combine the limitations of inframarginal revenues described in the section above with market-based coordinated demand response (reduction and/or shifting) in times of peak prices or peak load. The aim would be to reduce the market clearing price and fossil fuel consumption.

*Improving the efficiency of intraday markets*

*Shifting the cross-border intraday gate closure time closer to real time:* Intraday trade is a key tool to integrate renewable energy sources and balance their variability with flexibility sources up to real time. Wind and solar producers see their forecasts strongly improving close to delivery, and it should be possible to trade shortages and surpluses as close as possible to real time. Setting the cross-border intraday gate

closure time closer to real time therefore appears as a meaningful improvement, in combination with maximising the cross-border trade capacity.

*Mandating the sharing of the liquidity at all timeframes until the time of delivery:* EU day-ahead and intraday electricity markets are geographically coupled, meaning that trades can take place anywhere across Europe if the grid cross-border capabilities are sufficient. This considerably increases the liquidity and therefore the efficiency of the markets. The Commission considers extending these benefits also to intra-border trade between different market operators. This would support competition development and facilitate market participants to balance their positions - a key aspect for integrating further variable renewables.

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## Do you consider the short-term markets are functioning well in terms of:

| | Yes | No |
|---|---|---|
| (a) accurately reflecting underlying supply/demand fundamentals | ◉ | ○ |
| (b) encompassing sufficiently liquidity | ◉ | ○ |
| (c) ensuring a level playing field | ◉ | ○ |
| (d) efficient dispatch of generation assets | ◉ | ○ |
| (e) minimising costs for consumers | ◉ | ○ |
| (f) efficiently allocating electricity cross-border | ◉ | ○ |

## Do you see alternatives to marginal pricing as regards the functioning of short-term markets in terms of ensuring efficient dispatch and as regards the determination of cross border flows?

- ○ Yes
- ◉ No

## Do you have additional comments?

*2000 character(s) maximum*

Marginal pricing is essential for indicating the actual supply and demand within the system. Therefore, marginal pricing is instrumental for the deployment of flexibility and ensuring security of supply.

## How can the EU emission trading system and carbon pricing incentivize the development of low carbon flexibility and storage?

*3000 character(s) maximum*

It already does because gas- and coal fired power plants will take the ETS into account. To further improve it might be useful to look at small scale CHP's outside of the ETS1 scope (<20 MW) and ETS2 scope (only CHPs in the industry and buildings sectors are included), e.g. CHPs offering flexibility services in the greenhouse horticultural sector, which remain exempted and don't feel the incentive from ETS.

Do you consider that the cross-border intraday gate closure time should be moved closer to real time (e.g. 15 minutes before real time)?

- (●) Yes
- ( ) No

Do you have additional comments?

*2000 character(s) maximum*

Moving the cross-border intraday gate closure time is preferred from a market efficiency perspective. A real-time or closer to real time gate closure is beneficial for market efficiency and allows for more meaningful trading in the intraday market. Estimates for production and demand increase in certainty the closer delivery is approached; position tweaking in the final hour before delivery will further optimize fulfillment. However, it is important to ensure that TSOs are able to implement the shorter gate closure time.

Do you consider that market operators should share their liquidity also for local markets that close after the cross-border intraday market?

- ( ) Yes
- ( ) No

What would be the advantages and drawbacks of sharing liquidity in local markets after the closure of the cross-border intraday market?

*2000 character(s) maximum*

Would a mandatory participation in the day-ahead market (notably for generation under CfDs and/or PPA's) be an improvement compared to the current situation?

- ( ) Yes
- (●) No

What would be the advantages and drawbacks of such an approach?

*2000 character(s) maximum*

What would be the advantages and drawbacks of having further locational and technology-based information in the bidding in the market (for example through information on the composition of portfolio, technology-portfolio bidding or unit-based bidding)?

*2000 character(s) maximum*

We currently see no need to incorporate further locational and technology-based information into the bidding in the market. In the Netherlands, the system of transport prognosis that is in place is currently sufficient.

What further aspects of the market design could enhance the development of flexibility assets such as demand response and energy storage?

*2000 character(s) maximum*

Removing boundaries for market entry for participating in ancillary services with demand response assets. Having and maintaining a balancing/short term market which is easily accessible for demand response providers. Maintaining sufficient volatility in this market to incentivize the application of demand response. In this sense, it is a powerful signal to market parties if there is no further intervention in short term markets.

In particular, do you think that a stronger role of OPEX in the system operator's remuneration will incentivize the use of demand response, energy storage and other flexibility assets?

- ○ Yes
- ◉ No

Do you have additional comments?

*2000 character(s) maximum*

The remuneration methodology of the NRA allows grid operators to recoup efficient OPEX and CAPEX expenditures. Grid operators must carefully balance grid expansions against flexibility options in the long and short run on reliability cost, timely grid access. An additional incentive solely on OPEX/flexibility providers could tip this balance.

Do you consider that enabling the use of sub-meter data, including private sub-meter data, for settlement/billing and observability of demand response and energy storage can support the development of demand response and energy storage?

- ◉ Yes
- ○ No

Do you have additional comments?

*2000 character(s) maximum*

The Netherlands is of the opinion that the use of sub-meter data, including private sub-meter data, for settlement and billing of demand response and energy storage can support the development of demand response and energy storage. Sub-meter data contributes to the reliability of the system and a correct allocation to market parties and is therefore necessary for the roll-out of demand response.

Do you consider appropriate to enable a product to foster demand reduction and shift energy at peak times as an ancillary service, aiming at lowering fuel consumption and reducing the prices?

- ◉ Yes
- ○

No

Do you have additional comments?

*2000 character(s) maximum*

The desirability of such a product highly depends on the actual design. Considering the fact that such a product will be available as an ancillary service the involvement of TSOs in the development of such a product is desirable.

Do you consider that some form of demand response requirements that would apply in periods of crisis should be introduced into the Electricity Regulation?

- Yes
- (•) No

Do you have additional comments?

*2000 character(s) maximum*

Demand response is prescribed in the Electricity Directive and is a means of better matching supply and demand. Demand response should be used as a stable and permanent instrument and not as a resource in periods of crisis. This would impede the development of demand response and thus the functioning of the system.

Do you see any further measure that could be implemented in the shorter term to incentivize the use of demand response, energy storage and other flexibility assets?

- (•) Yes
- No

If so, what would that be?

*2000 character(s) maximum*

Imbalance settlement prices are published with a delay. Shortening this delay as far as possible increases reliability of the price-forecasts that demand response or energy storage players rely on for their decision making. This in turn lowers risks and improves business cases for demand response and storage.

Do you have additional comments?

*2000 character(s) maximum*

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Do you consider the current setup for capacity mechanisms adequate to respond to the investment needs as regards firm capacity, in particular to better support the uptake of storage and demand side response?

- (•)

Yes

No

Do you have additional comments?

*4000 character(s) maximum*

We don’t see any restrictions in the current set up for capacity mechanisms that hamper the uptake of storage and demand side response. It should however be noted that the Netherlands does not have a CRM in place, nor are we foreseeing implementing one on short notice. We therefore have not performed extensive research on the matter and it might be possible that certain restrictions have been overlooked.

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Do you see a benefit in a long-term shift of the European electricity market to more granular locational pricing?

Yes

No

Do you have additional comments?

*3000 character(s) maximum*

To a certain extend a long-term shift of the European electricity market to more locational pricing could be seen as beneficial. The extent to which this is beneficial is highly depended on the granularity. Under the current market design, wholesale electricity prices only represent supply and demand for the whole bidding zone. However, these prices currently do not take into account the actual geographical location of that supply and demand within the bidding zone and the actual physical limits of the transmission system that may exist. Including this information into the price of electricity, provides a market-based incentive for parties to take these factors in account when locating their supply (e.g., generation) of demand (e.g. factory). This could for instance incentivize the co-location of renewable electricity production with elektrolyzers for the production of green hydrogen. Thereby reducing the strain on the transmission network and potentially reduce the level of structural congestion within the system.

On the other hand, moving towards more locational pricing could pose distributional challenges to societies as prices might differ within countries. Especially, when one considers the fact that some consumers might be unable to react to the locational information withing electricity prices. For instance, because their livelihood is based in a specific location. Another negative effect of moving towards more granular locational pricing is the fact that transparency on how the prices is build up is significantly reduced, since price outcomes in system with locational pricing are generated by highly complex market-clearing-algorithms.

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## Better Consumer Empowerment and Protection

Union legislation recognizes that adequate heating, cooling and lighting, and energy to power appliances are essential services. The European Pillar of Social Rights includes energy among the essential services which everyone is entitled to access.

Union legislation also aims to deliver competitive and fair retail markets, as well as possibilities to reduce energy costs by investing in energy efficiency or in renewable generation thereby putting consumers at the heart of the energy system. The energy crisis has shown the importance of delivering on this ambition but also weaknesses in the existing system. For that reason, there is scope to further reinforce the Electricity Directive to deliver the needed consumer empowerment and protection, and avoid that consumers are powerless in the face of short-term energy market movements.

*Increasing possibilities for collective self-consumption and electricity sharing*

Digitalisation – particularly when applied to metering and billing – facilitates energy sharing and collective self-consumption. Collective self-consumption means customers are able to invest in offsite generation and become "prosumers" reducing their bills just as if the renewable energy production installation were installed on their own roof. Consumers can then avoid buying gas produced electricity which leads to real decoupling.

The practical uses are potentially very significant – for example, families can share energy among the different members located in different parts of the country and farmers can install renewable generation on one part of their farm and use the energy in their main buildings even if located a distance away. Another clear use case is municipalities and housing associations can include off-site energy as part of social housing, directly addressing energy poverty.

Member States such as Belgium[1], Austria, Lithuania[2] Luxembourg, Portugal and others[3] have shown that it is possible to implement this model in practice quickly and at reasonable cost for consumers to develop energy sharing and collective self-consumption.

Customers should be in a position to deduct the production of offsite renewable generation facilities they own, rent, share or lease from their metered consumption and billed energy. Specific provisions could allow energy poor and vulnerable customers to be given access to this shared energy, for example produced within municipalities, or by investments of local governments.

Energy sharing should be treated in a non-discriminatory way compared to normal suppliers and producers. This means costs for other consumers are not unduly increased. Production and consumption has to happen at the same market time unit. Energy sharing be possible where there are no transmission constraints for wholesale trade – that is within price zones.

*Adapting metering to facilitate demand response from flexible appliances*

The roll out and uptake of demand response has been slower than desired. One of the reasons for this has been the very complex relationships between suppliers and aggregators. The greatest demand response possibilities often come from individual appliances – in particular behind-the-meter storage, heat pumps and electric vehicles. Enabling dedicated suppliers and aggregators to offer contracts covering just these appliances could help both speed the roll out of these appliances and increase the amount of demand response in the system. The Electricity Directive already provides that customers are entitled to more than one supplier, but this has been seen to require a separate connection point increasing costs for customers significantly.

Therefore, there is a case for adapting the current provisions of the Electricity Directive to clarify that customers who wish to have the right to have more than one meter (i.e. a sub-meter) installed in their

premises and for such sub-metered consumption to be separately billed and deducted from the main metering and billing.

*Better choice of contracts for consumers*

In many Member States as the crisis unfolded, the availability and diversity of contracts became more limited, making it increasingly difficult for customers to obtain fixed price contracts in many Member States. This was also often insufficiently clear to customers who believed that they had entered into fixed price contracts, alongside a wider lack of understanding of consumer rights.

There are also few “hybrid” or “block” contracts available. Such contracts combine elements of fixed price and dynamic/variable prices giving consumers certainty for a minimum volume of consumption but allowing prices to vary above that amount.

Customers with variable price contracts can find budgeting more difficult, particularly consumers on low incomes or vulnerable consumers. The effect of such contracts is that the cost of managing the risk of wholesale price increases is faced exclusively by customers and not by suppliers. On the other hand, variable prices – at least for the energy where the customer is effectively able to control consumption - can incentivise a more efficient use of energy.

While suppliers above a certain size are obliged to offer dynamic price contracts, which were less in demand during the crisis, the legislation is silent on fixed price contracts. This should be rebalanced to allow consumers a choice between flexible or fixed price contracts. Fixed price contracts could still be based on time of use to maintain incentives to reduce demand at peak hours. Suppliers would remain free to determine the price themselves.

Suppliers often argue that it is difficult to offer attractive fixed price offers for two reasons - firstly if they do not have access to longer term markets which allow them to hedge their risks. These issues are addressed in the sections on forward markets above. Secondly, suppliers argue that it is difficult to offer fixed price fixed term contracts because consumers are allowed to switch supplier (i.e. leave the fixed price fixed term contract) - leaving the supplier with additional costs. Currently, termination fees for fixed price fixed term contracts are allowed – but only if they are proportionate and if they reflect the direct economic loss to the supplier. Without abandoning these principles, it could be considered allowing regulators or another body to set indicative fees which would be presumed to comply with these obligations.

*Strengthening consumer protection*

*A) Protecting customers from supplier failure*

Increased supplier failure during the crisis, generally because of a lack of hedging, has been observed in several Member States. This has often resulted in all consumers facing higher bills because of socialisation of some of the failed suppliers’ costs.[4] Customers of the failed suppliers are also faced with unexpected costs. Obliging suppliers to trade in a prudential way may involve some additional costs, but would reduce the risks that individual consumers face and also avoid socialisation of the costs of suppliers with poor business models. This is separate from, but complementary to, prudential rules applicable to energy companies on financial markets where the Commission has also taken action. At the same time, we recognise such obligations need to take account of the difficulties smaller suppliers face in hedging,

particularly in smaller Member States (see also section on "*Forward Markets*" above).

All Member States have implemented a system of supplier of last resort, either de jure or de facto. However, the effectiveness of these systems varies and EU framework is very vague without clarifying the roles and responsibilities of the appointed supplier and the rights of consumers transferred to the supplier of last resort[5].

*B) Access to necessary electricity at an affordable price during crises*

The Electricity Directive includes specific provisions for energy poor and vulnerable customers, which are part of a broader policy framework to protect such consumers and help them overcome energy poverty.[6] However, the crisis has shown that affordability of energy can be a major issue not only for these groups, but also for wider sections of population. Member States can apply price regulation for energy poor and vulnerable households. Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices allows for below cost regulated prices for all households and for SMEs on a temporary basis and subject to clear condition. In particular, such measures can only cover a limited amount of consumption and must retain an incentive for demand reduction. One of the lessons of the crisis is that the objective of reducing energy costs for consumer should not come at the expense of encouraging excess demand and fossil fuel lock-in, or fiscal sustainability. However, some form of safeguard to allow Member States to intervene in retail price setting might be needed for the future during a severe crisis, such as the current one. This could ensure that citizens have access to the energy they need, including ensuring that certain consumers have access to a minimum level of electricity at a reasonable price, regardless of the situation in the electricity markets, while avoiding subsidies for unnecessary consumption, such as heating of swimming pools[7]. This would also help ensure that when making large purchases, customers would take into account the full cost of energy. As the objective is to mitigate the impact of high prices during crisis periods, it would seem sensible to develop specific criteria to define a crisis in these terms. One alternative would be to link the Electricity Risk Preparedness Regulation, however this is focused on system adequacy, system security and fuel security, rather than mitigating the impacts of a crisis on users. Fossil fuel lock-in, however, needs to be avoided.

[1] Energiedelen en persoon-aan-persoonverkoop | VREG

[2] Lithuanian consumers to access solar parks under CLEAR-X project

[3] Spain, Croatia, Italy ,France.

[4] For example, network charges owed to TSOs and DSOs and potentially imbalance costs.

[5] In particular, we would consider confirming that customers transferred to Supplier of Last Resort retain the right to change supplier within normal switching times (i.e. customers cannot be required to stay with the supplier of last resort for a fixed period); clarifying that the supplier of last resort must be appointed based on an open and transparent procedure; right of consumers to remain with supplier of last resort for reasonable periods of time.

[6] The Energy and Climate Governance Regulation together with the 2020 recommendation on Energy poverty provide a more structural framework to address and prevent energy poverty. The Fit for 55 legislative package further reinforces this framework through other sectoral legislation, through the revision of the Energy Efficiency Directive and the Energy Performance of Buildings Directive and through setting up of the Social Climate Fund to address the impact of the ETS extension to buildings and transport.

[7] This is also in line with the Recommendation on the economic policy of the euro area which called for a two-tier energy pricing model, whereby consumers benefit from regulated prices up to a certain amount

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*Energy sharing and demand response*

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Would you support a provision giving customers the right to deduct offsite generation from their metered consumption?

- (●) Yes
- ( ) No

Do you have additional comments?

*2000 character(s) maximum*

Neither yes, nor no. The sharing of electricity within an energy community and among self-consumers located in the same building is prescribed in the Electricity Directive and the Directive to promote the use of energy from renewable sources (2018/2001). In the Netherlands several suppliers support this. The mandatory facilitation of sharing of energy and collective self-consumption via central settlement requires the necessary adjustments to processes within the system. The Netherlands is not opposed to this in advance, but it does require consultation and the elaboration of the necessary market processes. The question is whether a model in which market parties voluntarily offer this service is not sufficient.

If such a right were introduced:

(a) Would it affect the location of new renewable generation facilities?

- (●) Yes
- ( ) No

Do you have additional comments?

*2000 character(s) maximum*

Sharing electricity within a building can promote the generation of sustainable energy (mainly solar PV) on apartment buildings and the simultaneous use of this energy within that building. This also applies to sustainable energy communities where the members or shareholders are located in the vicinity of the renewable energy projects.

(b) Should it be restricted to local areas?

- ( ) Yes
- (●) No

Do you have additional comments?

*2000 character(s) maximum*

For apartment buildings and renewable energy communities, this is a requirement. If market parties offer this service on a voluntarily basis, a restriction tot local areas is not necessary or desirable.

(c) Should it apply across the Member State/control/zone?

- (●) Yes
- ( ) No

If yes, why and what should happen if bidding zones are changed?

*2000 character(s) maximum*

As indicated under (B), collective self-consumption and renewable energy communities involve locally generated electricity. When market parties offer this service voluntarily, it is obvious that this will be facilitated within a bidding zone.

Do you have additional comments?

*2000 character(s) maximum*

Would you support establishing a right for customers to a second meter/sub-meter on their premises to distinguish the electricity consumed or produced by different devices?

- (●) Yes
- ( ) No

If yes, what particular issues should be taken into account?

*2000 character(s) maximum*

It should be noted that the MID (Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments) does not legislate for sub-metering yet. It would be advisable to remedy this. Sub-metering is also not (yet) incorporated in personal energy-management systems like apps.

Do you have additional comments?

*2000 character(s) maximum*

It is important that there is one smart-meter-system that can register what amount of energy individual consumers have put on the electricity system and what amount of energy they have taken off the energy system. Having said this, the consumer may install a second meter, on the condition that the necessary technical standards are met. These standards are set by the member states. The costs of this second meter are entirely for the consumer.

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*Offers and contracts*

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Would you support provisions requiring suppliers to offer fixed price fixed term contracts (ie. which they cannot amend) for households?

- (●) Yes
- ( ) No

Do you have additional comments?

*2000 character(s) maximum*

This is going to be mandatory in Dutch law for energy suppliers to offer fixed price energy contracts for a certain time (at least one year). By also making this mandatory at EU level, this creates a level playing field between suppliers active in different Member States.

If such an obligation were implemented what should the minimum fixed term be?

*at most 1 choice(s)*

- [ ] (a) less than one year
- [x] (b) one year
- [ ] (c) longer than one year
- [ ] (d) other

Do you have additional comments?

*2000 character(s) maximum*

Cost reflective early termination fees are currently allowed for fixed price, fixed term contracts:

| | Yes | No |
|---|---|---|
| (a) Should these provisions be clarified? | ◉ | ○ |
| (b) If these provisions are clarified should national regulatory authorities establish ex ante approved termination fees? | ○ | ◉ |

Do you have additional comments?

*2000 character(s) maximum*

Yes, these provisions should be clarified. In NL there was discussion about what constitutes a cost-reflective fee.

In NL the regulator determines the method of calculation for termination fees in advance, so it is not necessary to approve every specific termination fee ex ante. The termination fee in NL depends on the resting duration of the contract and the price difference between the current contract and a new contract offered by the same supplier. If a contract is terminated soon after conclusion and prices suddenly decrease, it will lead to a high termination fee in order to end a fixed price contract.

Do you see scope for a clarification and possible stronger enforcement of consumer rights in relation to electricity?

- (◉) Yes
- (○) No

What should be done to clarify consumer rights and ensure stronger enforcement?

*2000 character(s) maximum*

Suppliers must offer dynamic contracts from 200,000 customers. we believe dynamic contracts are not for everyone due to the risk involved. consumers must be protected from - and informed about --the risks of dynamic contracts. We do not see this (yet) reflected in the regulations at EU level

In addition, there is a particular demand for clarification of existing provisions, such as ‘economic loss’ (see for example provision about termination fees).

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*Prudential supplier obligations*

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Would you support the establishment of prudential obligations on suppliers to ensure they are adequately hedged?

- ○ Yes
- ◉ No

Do you have additional comments?

*2000 character(s) maximum*

In the Netherland suppliers with a permit for supplying to consumers and small retail customers to submit their purchasing strategy to the regulator and to (almost completely) hedge their purchasing/selling risk.

Would such supplier obligations need to be differentiated for small suppliers and energy communities?

- ○ Yes
- ◉ No

If not, why not?

*2000 character(s) maximum*

In NL we do not know this distinction, but we have a system of permits. Small suppliers (mostly) have to meet the same permit requirements as the bigger suppliers. Smaller ‘Energy communities’ do not need a supply permit.

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*Supplier of last resort*

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Should the responsibilities of a supplier of last resort be specified at EU level including to ensure that there are clear rules for consumers returning back to the market?

- ○ Yes
- ◉ No

Do you have additional comments?

*2000 character(s) maximum*

On this, our preferred route is not to design further regulation on EU level, but to facilitate Member States to choose the most appropriate interpretation at national level. The supplier of last resort already has been interpretated differently, in various Member States. Partly due to the market setup and different roles of energy suppliers locally.

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Would you support including an emergency framework for below cost regulated prices along the lines of the Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices, i.e. for households and SMEs?

- ○ Yes
- ◉ No

(a) If such a provision were established, should price regulation be limited in time and to essential energy needs only?

- ◉ Yes
- ○ No

(b)

| | Yes | No |
|---|---|---|
| Would such provisions substitute on long term basis for direct access to renewable energy or for energy efficiency? | ○ | ◉ |
| Can this be mitigated? | ◉ | ○ |

(c)

| | Yes | No |
|---|---|---|
| Would such contracts reduce incentives to reduce consumption at peak times? | ◉ | ○ |
| Can this be mitigated? | ○ | ◉ |

Do you have additional comments?

*2000 character(s) maximum*

A. The current regulation already allows Member States to intervene in retail price setting in case of severe crisis, such as the current one. We do not support including a (structural or longer term) provision for an emergency framework for below cost regulated prices. If it is included, it should as a precondition be focused on keeping the price incentive, to limit distortions to the incentives for demand reduction/sustainable

behavior and market competition. Therefore, if such a provision is established, a time limitation and focus on essential needs vulnerable households (e.g. both low income and energy poor) based on objective criteria are necessary. In all situations, measures should be specifically targeting vulnerable households. We are strongly against price measures on the wholesale market, as this could negatively impact the security of energy supply.

B. No. For every possible measure to reduce the energy prices for households, it is important to maintain a sufficient the price incentive for sustainable behavior through demand reduction. This risk could be mitigated by reducing the energy price for a base consumption of energy, or by specifically targeting the most vulnerable groups only, or by simultaneously providing other incentives to stimulate renewable energy and energy efficiency (such as subsidizing insulation).

C. Reducing excessive energy prices could lead to a reduction of the incentive to reduce consumption, also during peak times when reduction of consumption is the most important. Therefore, it is important to keep the price incentive for sustainable behavior through demand reduction.

## Enhancing the Integrity and Transparency of the Energy Market

Never has there been as much of a need as today to enhance the public's trust in energy market functioning and to protect EU effectively against attempts of market manipulation.

Regulation (EU) 1227/2011 on wholesale market integrity and transparency (REMIT) was designed more than a decade ago to ensure that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.

In times of extra volatility, external actors' interference, reduced supplies, and many new trading behaviours, there is a need to have a closer look as to whether our REMIT framework is robust enough. In addition, recent developments on the market and REMIT implementation over last decade have shown that REMIT and its implementing rules require an update to keep abreast. The wholesale energy market design has evolved over the past years: new commodities, new products, new actors, new configurations and not all data is effectively reported. The existing REMIT framework is not fully updated to tackle all new challenges, including enforcement and investigation in the new market realities.

Current experience, including a decade of REMIT framework implementation (REMIT Regulation from 2011 and REMIT Implementing Regulation from 2014) and functioning show that REMIT framework may require improvements to further increase transparency, monitoring capacities and ensure more effective investigation and enforcement of potential market abuse cases in the EU to support new electricity market design. The following areas could be considered in this context:

- The alignment of the ACER powers under REMIT with relevant powers under the EU financial market legislation including relevant definitions, in particular the definitions of market abuse (insider trading and market manipulation);

- The adaptation of the scope of REMIT to current and evolving market circumstances (new products, commodities, market players);
- The harmonisation of the fines that are imposed under REMIT at national level and the strengthening of the enforcement regime of certain cases with cross-border elements under REMIT;
- Increasing the transparency of market surveillance actions by improved communication of the market-related data by ACER, regulators and market operators.

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What improvements into the REMIT framework do you consider as most important to be addressed immediately?

*4000 character(s) maximum*

We would consider it worthwhile to assess whether improvements to the market supervision and market participants' positions could be made. It is important to clarify whether the energy regulator or the financial regulator is competent. The developments of last year have shown that it is key that regulators have sight and data on (i) the (key) market participants that are active on bilateral OTC markets or OTFs for wholesale energy products; (ii) their positions; and (iii) the transactions (prices and volume) that occur in these markets. A minimum transaction and position reporting could be required to ensure more transparency, also improving the attractiveness of these markets.

With regards to the harmonization and strengthening of the enforcement regime under REMIT: what shortcomings do you see in the existing REMIT framework and what elements could be improved and how?

*4000 character(s) maximum*

See previous answer

With regards to better REMIT data quality, reporting, transparency and monitoring, what shortcomings do you see in the existing REMIT framework and what elements could be improved and how?

*4000 character(s) maximum*

See previous answer

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