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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Joint European Action for more affordable, secure and sustainable energy

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1. Introduction

Energy prices continue to be of high concern across the EU. High and volatile gas prices, strongly influenced by high global demand and mounting geopolitical tensions, drive high electricity prices. With the EU **gas storages at historically low levels and security of supply concerns** linked to low debit in the gas pipelines from the East, we witness a growing **gas crisis** compared to the situation at the time of Commission's communication from last October

According to recent long-term forecasts[1], gas and electricity prices will remain high and volatile until at least 2023. Compared to the outlook of last fall, the situation has deteriorated, and is likely to last longer. The rise of energy prices is **increasingly affecting European households and vulnerable consumers**, who spend a higher share of their total income on energy bills and therefore also deepening disparities and inequalities in the EU. Businesses and in particular **energy-intensive industries as well as the agri-food sector face higher production costs**, which put them at a competitive disadvantage compared to competitors from third countries. Energy prices are also one of the main catalysts of the rising consumer price levels across Europe.

The toolbox[2] the Commission presented in October 2021 proved useful, and has been extensively applied. Twenty-four Member States have adopted measures in line with the toolbox by January 2022/pls update. The measures ease energy bills for around 71 million household customers and several million small and medium-sized enterprises and micro enterprises. Overall, these measures amount to more than EUR 23 billion and provide necessary temporary relief. Today, the situation calls for additional action set out in this Communication.

The best solution for more energy resilience, less dependence from gas imports and lower prices is the acceleration of the implementation of the European Green Deal. Rapid implementation of the Fit for 55 measures and in particular investments in renewables and energy efficiency is the best answer for the future. Renewable energy has close-to-zero variable cost and is widely available, reducing dependence on fossil-fuels and driving down prices. Now more than ever decisive steps are necessary to speed up the implementation of the European Green Deal and scale up renewable energy production. **Each wind turbine and each photovoltaic panel will immediately reduce the dependence on gas imports and produce energy at low prices.** The positive impact of accelerating the green transition would materialise not only in the long-term, but have a tangible effect already in the short to medium term.

The investments into renewables are not yet at the level needed to produce enough energy for our needs[3]. While increasing investments into renewables, we need to design a transition that covers our energy needs and addresses the currently high gas prices. Therefore, this Communication offers **additional measures to secure affordable energy**

1 Add source

2 COM(2021) 660 final of 13 October 2021; Tackling rising energy prices: a toolbox for action and support

3 In 2020, for the first time, renewables overtook fossil fuels as the EU's main power source (38 % of EU electricity, fossil fuels 37 % and nuclear 25 %). The share of renewable energy sources in the overall EU energy mix is expected to have reached at least 22 % although some Member States are at risk of failing to meet their national binding target (State of the Energy Union Report, 2021)

and sufficient level of storage. This, together with a crisis plan and storage for next winter will prepare the EU against shocks. This Communication also proposes measures to increase transparency.

Joint European action is required for more sustainable, affordable and secure energy requires coordinated action by the EU and Member. **This Communication therefore presents a number of actions that will** make us more resilient by accelerating the deployment of renewables, while also ensuring the affordability and security of energy supply**.**

2. Situation update and market outlook

As winter progresses, energy prices continue at record highs and remain volatile. Wholesale gas prices are around 400% higher compared to a year ago. With an increase of around 260%, wholesale electricity prices have followed a similar pattern. The high wholesale prices continue to drive up retail gas and electricity prices, which increased by 51% and 30%, respectively, compared to the previous year. It is likely that retail prices will continue to catch up to wholesale prices over the course of 2022. Wholesale electricity costs represent currently around half of final retail prices in Europe, above the long-term average of around one third. There is a timelag in the translation of wholesale prices increase to retail prices depending on the retail contract terms. While the link between wholesale and retail prices varies in each Member State, the eventual pass-through may result in even higher prices of retail gas and electricity in the course of the year. **The outlook for the medium term indicates that energy prices remain higher than past average and volatile at least until 2023**.

Figure 1: Natural Gas prices (€/MWh) - Weekly average (source: Platts)

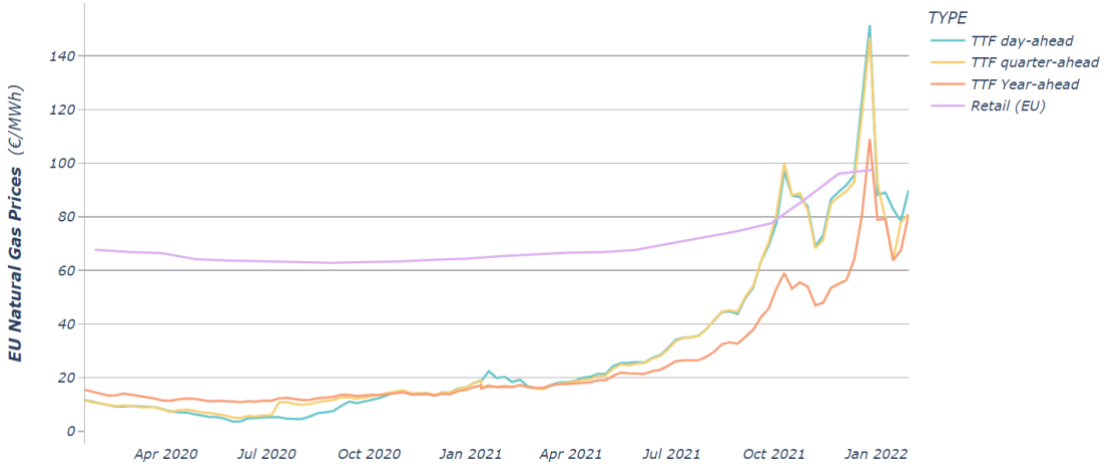
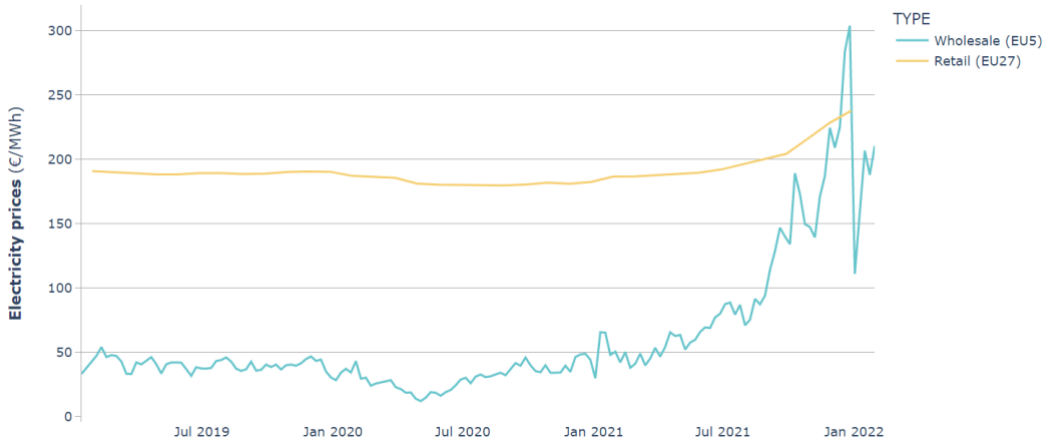


Figure 2: Electricity wholesale & retail prices overview (€/MWh) - Weekly average (Sources: Platts, VaasaETT)

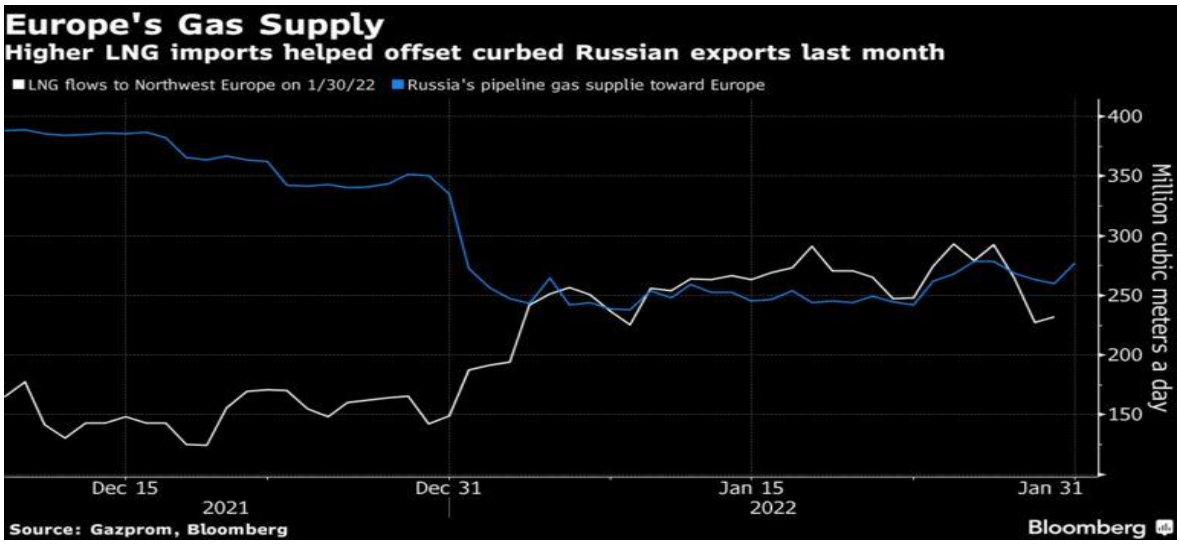


The causes for these high energy prices are linked to the high global demand for gas and amplified by geopolitical factors. The increased demand thanks to economic recovery is not matched by supply. According to the International Energy Agency, half of the incremental demand for gas until 2025 will come from Asia, mostly China.

In addition, **uncertainties about Europe's main supplier** increase market uncertainty, drive up volatility and prices even further. Wholesale electricity prices peaked at 304 €/MWh on 26 December 2021 and then decreased to 110 €/MWh before rising again to 210 €/MWh on 1 February. This volatility reflects the price uncertainty in markets.

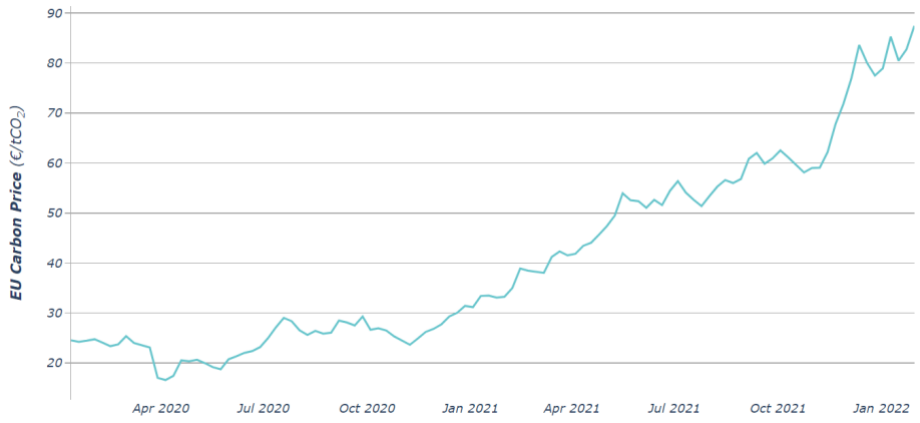
Gas storage cushions the increase of energy prices, but only to a limited extent. Early February/update to latest gas storage levels were at 37%, around 10% lower than in previous years, and continue to deplete. Depending on weather conditions, gas storage may attain low levels of around 10-20% in spring 2022. These low levels increase the volatility of the prices, and raise the prospect of continued high prices over the summer when gas stocks are refilled.

LNG imports increase. Also thanks to the EU's extensive energy diplomatic outreach, LNG has partly compensated the lower deliveries of gas through pipelines and ensured a more diverse supply.



The carbon price, which supports the decarbonisation of our energy system and industry, is displaying an upward trend as well over the past months. Looking at consumer bills, 2021 data demonstrate the carbon price constituted 15%[4] of the retail electricity price in the EU. The effect of rising gas prices on the electricity prices is around eight times bigger than the effect of the carbon price. In January 2022, the carbon price has been fluctuating between EUR 80 and EUR 90, with the symbolic 100 within reach in February [to be updated closer to publication date]. The carbon price increase partly stems from an increased use of coal instead of gas in power generation, which increases demand for emission allowances. On the allowance supply side, more than 607 million new allowances will be placed on the market in 2022 through daily auctions. In addition, around 520 million[5] allowances will be available to eligible industrial companies through 2022 free allocation, on top of any outstanding free allocation from last year.

Figure 3: EU Carbon Price (€/tCO_2) - Weekly average (source: Platts)



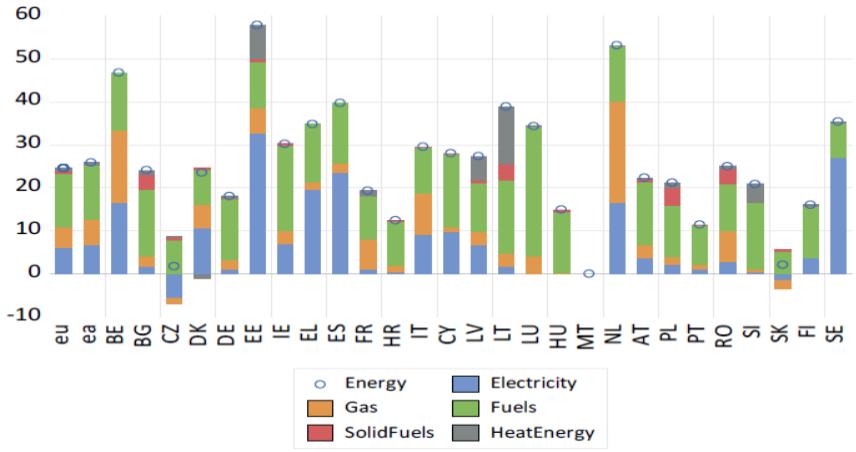
4 This calculation is based on a comparison between the carbon cost of marginal power generators in EU electricity markets (using a marginal EU-wide emission factor of 0.67 tCO2/MWh) and the average EU retail price in 2021 of EUR 234,40/MWh as calculated by VaasaETT based on collecting retail electricity prices in selected European capital cities.

5 The final number might vary as allocation level changes will take place if production has changed in 2020 and 2021 compared with the production in the period 2014 -2018.

High energy prices drive inflation and severely affect households, agriculture and industry

Sustained high energy prices are hurting throughout the economy. The European Central Bank estimates that energy price shocks reduce GDP growth by around 0.5 percentage points in 2022. Energy prices are currently the largest driver of inflation in the euro area, accounting for 2.5 percentage points of the annual inflation. **Energy prices are expected to remain a key driver of inflation in 2022** and will continue to weigh on growth. Such inflation could disproportionally impact low-income households who spend a higher share of their total income on energy bills. A continued high level energy prices is likely to lead to an increase of energy poverty, which already affected more than 35 million people in the EU in 2020. Moreover, there may be further temporary layoffs and job losses as the corporate sector is impacted by the spike in energy prices and suffers financial difficulties.

Figure 4: Energy inflation and contributions across countries, December 2021 (yoy % and percentage points)



Source: HICP energy items: Electricity (04.5.1), Gas (04.5.2), Fuels: Liquid fuels (04.5.3) and Fuels and lubricants for personal transport equipment (07.2.2), Solid fuels (04.5.4), Heat energy (04.5.5), Source: Eurostat (LIME note, 2 February 2022)

Driven by surging energy costs, in particular energy-intensive industries have been faced with higher manufacturing costs. This puts them globally at a competitive disadvantage and has in some sectors reduced output. Over half of the EU's aluminum and zinc smelters are today operating at reduced capacity or have temporarily closed, together with a significant reduction in silicon output. The EU has temporarily lost 650,000 tons of primary aluminum capacity: about 30% of its total. Through scaling back production and the passing on of higher energy prices, this affected other sectors of the economy.

This is likely to increase prices for other commodities, notably food. Fertiliser prices increased by 142% over the last year[6]. The share of energy and fertilisers in farmers' production costs is of 20%. The situation could deteriorate if higher energy prices put

[6] Eurostat price index for agricultural means of production (Q3-2020 to Q3-2021)

continued pressure on fertiliser prices with a risk of lower plantings, lower yields and thus even greater pressures on farmers' incomes and food prices. A combination of higher energy and higher food prices would exacerbate the pressure on low income households. Combined with the disruptions in the food supply chain due to Covid-19, food prices have risen on average by 4.3% in the EU between December 2020 and December 2021, affecting Member States in different ways given their different respective inflationary contexts.

At least 23 energy suppliers' across the EU defaulted due to the energy price spike across EU Member States, leaving consumers in the hands of suppliers of last resort and less competitive retail markets.

3. Joint European Action for more affordable, secure and sustainable energy

With the outlook indicating that the high and volatile energy price situation will continue into next winter, it is time to present additional measures to strengthen the resilience of the energy system through the acceleration of renewable energy sources and energy efficiency measures, to mitigate the price impact and ready ourselves better for the next heating season.

The Commission's Fit for 55 package adopted in July and December 2021 include an ambitious set of proposals on energy, climate, land use, transport and taxation policies that would allow reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels. It particularly includes ambitious measures to reduce overall energy use, cut emissions and tackle energy poverty[7], to accelerate the deployment of renewables in the energy, transport, heating and cooling, buildings and industrial sectors, and to replace the natural gas in our energy system with renewable and low carbon gases. For these proposals to become reality, the Commission urges colegislators to accelerate the legislative process.

3.1 Accelerating the deployment of renewables

In the absence of a massive acceleration of the green transition, EU electricity prices will depend significantly on gas prices at least up to 2030. With gas prices high, the economic potential for cleaner energy alternatives will expand, leading to increased investment interest.

The EU must therefore put in place the enabling conditions for this change to take place more rapidly.

<u>Action 1:</u> rollout of renewable and low carbon gas production: hydrogen and biogas

Accelerating the rollout of renewable and low carbon gas production is crucial to replace natural gas and strengthen the resilience of the EU energy supply system. Currently, about 10% of EU gas consumption is used to produce hydrogen. By producing this hydrogen from clean electricity via electrolysis, natural gas consumption in the EU can be reduced,

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To boost renewable hydrogen production, **carbon contracts for difference** under which a government or institution agrees with a market actor on a fixed carbon price over a given time period, constitute one way to help market actors minimize carbon price uncertainty. The [Innovation Fund] will support the initiative by covering the cost for the carbon contracts for difference. The Commission is providing EU financing to support the initial market ramp-up of hydrogen projects that it expects to amount to approximately EUR 800m per year as of 2022 and launched a hydrogen public funding compass to orient stakeholders to appropriate funding instruments[8].

Member States earmarked approximately EUR 10bn for hydrogen projects under the EU Recovery and Resilience Facility and have pre-selected around 400 hydrogen projects for state aid under the EU IPCEI framework[9].

A series of hydrogen IPCEIs is currently under preparation and pending their formal notification by Member States. The Commission expects to approve the first hydrogen IPCEIs before the end of the first semester 2022. In addition, the Commission has set up the European Clean Hydrogen Alliance[10] that brings together the EU hydrogen community and prepared a pipeline of hydrogen investment projects that its members are undertaking. **[The Commission proposes to establish a European Hydrogen Exchange** to boost the use of hydrogen in the EU. What /how/when?]

The Commission will accelerate the work to provide the necessary regulatory framework for a hydrogen market. It will continue its work on the delegated act on Renewable Fuels of Non-Biological Origin (RFNBO)[11], with the purpose to clarify the conditions under which RFNBOs can be fully counted as made from renewable electricity [SoP to be confirmed by ENER]. It will further speed up the work on certification, in order to ensure the adoption of the delegated acts on low carbon and renewable hydrogen as soon as co-legislators have finalised the legislative process for the Renewable Energy Directive and the Hydrogen and gas package.

Biogas can provide a clean, renewable, and reliable source of energy and a new income for farmers. Using stored biogas reduces methane emissions, can be used as a source of peak power and reduces the dependence on fossil fuels. It can also support the green transition in the agricultural sector. With squeezed incomes for farmers, the use of biogas can provide an opportunity for additional and diversified revenue streams for farmers, in line with the European Green Deal.

The Commission proposes to set an EU level ambition to produce 35 bcm of biogas by 2030. Member States should adopt renewable gas strategies, fully aligned with this

8 European Commission Hydrogen Public Funding Compass: Funding guide (europa.eu)
Important Projects of Common European Interest are projects involving more than one Member State contributing to the Union's strategic objectives and producing positive spillovers on the European economy and society as a whole. In case of research, development and innovation projects, such projects must be of a major innovative nature, going beyond the state of the art in the sectors concerned – see Commission Communication 2014/C 188/02 of May 2014.

10 Project pipeline (europa.eu)

11 Article 27(3) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources

target. The Commission encourages Member States to avail of the opportunities of the reformed CAP to incentivise the development of bio-gas through the measures proposed in their national strategic plans. The Commission invites the Council of European Energy Regulators (CEED) and the Agency for the Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators for Gas (ENTSOG) to work together on guidance to facilitate the connection of bio-methane plants to the gas network.

Action 2: accelerating permitting

Long permitting procedures constitutes one of the main barriers to rapid and large-scale renewable energy generation development.

The Renewable Energy Directive addresses the most important barriers to fast permitting procedures and limits the duration of permitting procedures to two years. **The Commission calls on Member States to accelerate the transposition and implementation of the Renewable energy directive Directive** and follow up on the duration of permitting procedures as a matter of urgency.

With regard to obligations stemming from environmental obligations, Member States should use all possibilities in the existing legal framework for the simplification and acceleration of the Environmental Impact Assessment (EIA) procedures. Member States should **cap the length of various steps of the EIA procedure**[12] by introducing **deadlines**, in particular for **issuing an EIA decision** or **development consent**[13] and the **maximum time-frame for public consultations** of the EIA report[14].

In order to discuss concerns which Member States face in practice**, the Commission will when? organise a joint meeting between Member States experts** working on environmental assessments and experts working on renewable energy within the Concerted Action on the Renewable Energy Directive (CA-RES) to identify the main obstacles and best practices to address them. Indeed, today, the differences range from to

Projects of common interest have contributed to a more integrated and resilient EU internal energy market through support for cross-border energy infrastructure projects. As projects of common interest can benefit from streamlined permitting and regulatory procedures, the Commission recommends to Member States to **use the framework of projects of common interest already in place also for accelerating and scaling up the**

[12] The EIA Directive introduces two fixed time-frames concerning EIA – maximum 90 days for taking a screening decision for Annex II projects and minimum 30 days for public consultations of the EIA report for projects subject to EIA; other timeframes are for the Member States to establish.

[13] Several Member States have already established specific timelines for issuing EIA decisions or development consent (varying from 20 to 90 days in most cases). However in several Member States, authorisation of projects can take up from 180 to 450 days.

[14] For example up to 60 days in view of reducing unnecessarily lengthy public consultations.

deployment of cross-border renewable energy supply. Projects of common interest could also accelerate the development of hydrogen infrastructure[15].

Given the central role of renewables in the achievement of the European Green Deal objectives, Member State authorities should, as a rule, consider that the decarbonisation and security of supply benefits provided by renewables may be considered an **imperative reason of overriding public interest** within the meaning of Article 6(4) and Article 16(1)(c) of Directive 92/43/EEC and of overriding public interest within the meaning of Article 4(7) of Directive 2000/60. Therefore, the planning, construction and operation of plants for the production of energy from renewable sources and assets necessary for their connection to the grid may be considered of overriding public interest, provided that the remaining other conditions set out in these provisions are fulfilled. All national authorities concerned shall ensure that the most rapid treatment legally possible is given to these applications.

The Commission will in June **adopt a recommendation on permitting for renewables projects** to address remaining barriers in overly complex administrative procedures [and will set up milestones for following up its implementation]. The recommendation will also explore opportunities to accelerate permit-granting procedures in the implementation of EU environmental law[16]. Building on best practices, the recommendation will address issues such as clarifying responsibilities between permitting authorities, setting clear milestones for the permitting process, effective one-stop shopping, digitalisation of permitting process and capacity of permitting authorities. A public consultation[17] is ongoing to inform the recommendation.

Using regulatory sandboxes accelerate permitting for innovation. The Commission will assess how regulatory sandboxes waiving certain obligations under EU law could support the deployment of wind energy projects. The North Sea Wind initiative will serve as a testing ground to allow innovators to test new technologies and business models that are only partially compatible with the existing legal and regulatory framework. The Commission will also provide guidance on the conditions for operating such sandboxes.

Coordinated infrastructure planning at regional and Union level helps identifying projects necessary to increase interconnection capacity. The lack of interconnectors and the underutilisation of some existing ones has been identified to be one main driver of high electricity prices[7].

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15 This possibility exists under on the revised TEN-E Regulation, on which co-legislators reached a political agreement in December 2021.

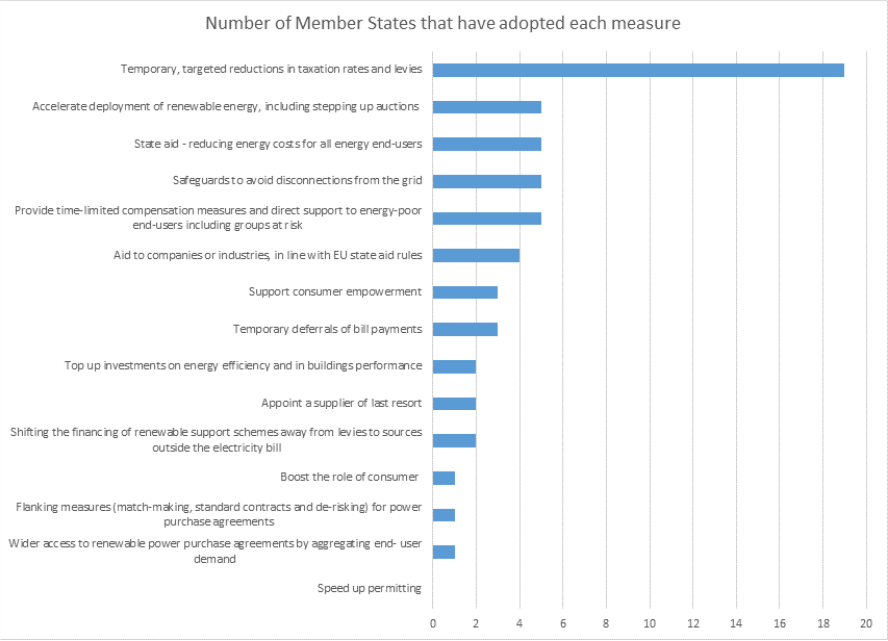
16 For instance, the following Member States already use joint procedures integrating assessments under EIA Directive and the Habitats Directive (in certain cases also assessments under the Water Framework Directive and/or Industrial Emissions Directive) – AT, BG, CZ, DE, EE, FR, HR, HU, IT, NL, PT, SI. In addition, several Member States have already established specific timelines for issuing EIA decisions or development consent (BG – 45 days, EE – 30/90 days, FR – 2 months, HR – 4 months, IT – 60 days, MT – 30 days, NL – 6 months, PT – 70/90/100 days, SI – 3 months, GR – 20/25 days, LU – 90 days, CY – 3 months, LV – 60 days, RO – 30 days.

17 Renewable energy projects – permit-granting processes & power-purchase agreements (europa.eu)

The Commission will provide guidance on restructuring outdated renewables support schemes. These schemes may increase investors' revenues beyond what is needed to cover investment costs, especially when the subsidy is paid independently of the market price. These schemes are often financed by consumers and drive up the electricity price. They should be re-designed to avoid over-compensation, for instance as two-way-contracts for difference. Under this approach, the investor receives a subsidy when the market price is low but has to reimburse the subsidy when the market price is higher. The Commission's guidance will ensure that investment signals are preserved while avoiding a further increase in already high electricity prices. The EU budget has several instruments that offer possibilities to finance investments to accelerate the green transition[18]. The Commission calls on Member States to submit their programmes for the budget period 2021-2027 and start using this funding as soon as possible. A swift mobilisation could provide the financial leverage that is needed to turn the ambitious plans for the energy transition into reality.

3.2. Ensuring affordability

Following the October toolbox many Member States have put in place measures to address the immediate impact on vulnerable consumers, SMEs and microenterprises. Member States mainly put in place regulated prices or social tariffs, energy subsidies and vouchers and measures to avoid disconnection from the grid. Different forms of energy tax or levy reductions, including on value added tax (VAT) made possible through the flexibility provided by the Energy Taxation Directive also proved to be effective. Regarding longer-term measures, some Member States have strengthened the supplier of last resort mechanisms, supported energy efficiency measures, frontloaded Recover and Resilience Facility (RRF) investments to renovate buildings, and increased support for renewable energy sources.



[18] See annex II for funding possibilities under the EU budget.

All these measures remain valid and should continue as long as necessary. They should also, to the extent possible, be funded from growing receipts of energy taxes and the ETS. All of the measures proposed for the short-term are fully in line with the medium-term goals of Fit for 55.

The European energy system – especially the Emission Trading System – and the European Green Deal provide significant revenues to the Member States that they should use to address the high energy prices. In 2021 alone, Member States have gained more than EUR 30 billion through auctions of emission allowances, which is double of the amount in 2020. As proposed in the toolbox of October[19], Member States can use these additional revenues to compensate energy-poor end-users, for instance by covering part of the energy bill. An increasing number of Member States is doing so for instance by temporarily lowering the taxes and levies segment of the electricity bill. The Commission will continue to monitor and report on the use of auction revenues[20].

It is imperative to continue to act on affordability and on energy savings. Many households across the EU face retail price increases in early 2022, in spite of national measures and the energy market will contract leaving customers less choice. Acting both on mitigating price increases and reducing energy consumption by energy efficiency measures will ensure continued energy affordability for all consumers.

Action 3: Attenuating retail prices

More measures are possible to protect from excessive price hikes. The legal framework of the electricity market[21]allows for public interventions in the price setting for the supply of electricity to energy poor or vulnerable household customers, and in some circumstances also for microenterprises. To help Member States navigate the flexibilities **for regulated prices under the electricity market legal framework,** a **more detailed guidance is included in the annex to this Communication** and the Commission is ready to support Member States in the design of such measures.

So far, about half of the Member States make use of this possibility and apply some form of regulation. Such intervention in the market needs to be carefully designed in order to avoid limited offers on the market resulting potentially in even higher prices.

Action 4: energy savings

Existing energy-related regulations have delivered 60 billion EUR of savings per year in 2020 for consumers, and translating these figures into January 2022 energy prices would even quadruple these benefits, exceeding an amount corresponding to the EU's annual budget. With current almost doubling of energy prices, today's payback period for energy efficiency, building renovation and energy efficient product investments have practically halved.

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19 COM(2021) 660 final of 10 October 2021; Tackling rising energy prices: a toolbox for action and support.

20 Yearly Carbon Market report (due October each year) add ref

21 Particularly Article 5 of the Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

In view of this, the Commission will soon propose a new working plan for the ecodesign of energy–related products and [a sustainable products initiative]. Such new framework will relate not only to making sure that existing products legislation would be fully implemented, bringing estimated savings of 7% (2020) and 10% (2030), but also regulating new products, which could add significant further savings (estimated to range between 80 to 218 Twh/y in 2030), depending on the products to be selected.

Action 5: supporting heavily exposed companies

EU State aid rules offer Member States a wide range of possibilities for providing short-term relief to companies affected by the high energy prices, and to help reduce their exposure to energy price volatility in the medium to long-term. At the same time, they help preserve a level playing field, ensuring that State aid is used to support and accelerate the energy transition, without unduly distorting competition by favouring particular companies or sectors, achieving the energy transition at least cost to society. **The Commission continues to help Member States designing measures in line with State aid rules, with due regard to the urgency.**

The Commission adopted in January 2022 a new state aid framework[22] that creates a flexible, fit-for-purpose enabling framework to help Member States provide the necessary support to reach the European Green Deal objectives in a targeted and cost-effective manner. The new guidelines provide Member States with flexibility to ease the burden of high electricity prices for a wide range of energy-intensive industries through **reductions in a variety of electricity levies** as well as of **environmental and energy taxes or parafiscal levies**. In addition to providing short-term relief to high electricity prices, the conditions attached to the reductions incentivise energy efficiency and decarbonisation measures and motivate beneficiaries to consume carbon-free electricity, including through long-term power purchase agreements (PPAs), which can be rewarded with higher levies reductions. The rules for levies reductions also take into account the specific situation and needs of SMEs, allowing aid to be granted quickly. Through investments in equipment to increase the flexibility of production processes and smart meters, the new rules also allow for public support to energy consumers to enable them to react to energy price fluctuations and reduce or shift away demand in hours when prices are high. Further flexibility is ensure to support energy efficiency investments, either through direct aid to energy consumers or in the form of liquidity support for Energy Service Companies (ESCOs).

The EU Emission Trading System State aid Guidelines[23] enable Member States to support sectors that, because of indirect emission costs, are most at risk of carbon leakage. The Commission intends to make a targeted and limited amendment to the Guidelines in view of the unexpected price developments [date].

22 Guidelines on State aid for climate, environmental protection and energy

23 Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 2020/C 317/04, *OJ C 317, 25.9.2020, p. 5–19*

Member States can also continue to use the **Temporary Framework for State Aid measures to support the economy in the current COVID-19 outbreak**[24] to provide liquidity and access to finance for undertakings, including SMEs that are facing shortages caused directly or indirectly – e.g. via effects on the supply chains in the energy sectors - by the COVID-19 crisis.

Member States can offer **temporary relief for companies facing liquidity needs due to the current high energy prices**, regardless of their size, based on the Guidelines on Rescue and Restructuring[25]. The aid can be granted in the form of liquidity support (loans or guarantees) for a maximum duration of six months for large undertakings in difficulty, or for SMEs, up to 18 months. Undertakings that are not in difficulty can also benefit if they face "acute liquidity needs due to exceptional and unforeseen circumstances".

In the agricultural sector, State aid rules[26] **allow for investment aid in sustainable energy.** In the on-going review of the rules, the Commission's proposal[27] put to public consultation increases support possibilities for farmers, for example through the possibility to **grant aid for the use of less conventional fertilisers** that are currently highly affected by increased gas prices.

Action 6: Measures to re-use high rents

On wholesale electricity markets, gas-fired power plants set the market price whenever they are the most expensive units needed to ensure that the supply meets the demand. In such cases, the high costs of gas as an input for gas-fired power plants have translated into high wholesale electricity prices translating into high (windfall) profits for all market participants, irrespective of their generating costs. Given that low carbon and renewable generators have low operating costs, the profits they realise on the spot market have increased following the gas price increase.

To finance support measures in this current crisis, Member States may want to capture a part of this additional infra-marginal rent by specific fiscal measures. However, such a measure would need to be carefully designed to avoid unnecessary market distortions as set out in annex 3.

<u>Action 7:</u> agricultural market measures

The short-term measures as identified in the October toolbox aiming at reducing energy prices or the factors that drive energy prices higher will help the food sector by reducing

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[24] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 final (OJ C 473, 24.11.2021, p.1).

[25] Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1

[26] Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union. OJ L 193 du 1.7.2014, p. 1–75. Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020. OJ C 204 du 1.7.2014, p. 1–97

[27] Public consultation on revised State aid rules for the agricultural and forestry sectors and in rural areas.

input prices, relieving the squeeze in farm margins and contribute to affordable food prices. In addition, the CAP direct payments continue to be an important safety net for farmers' incomes. More recently, the Commission communication on the contingency plan for ensuring food supply and food security in times of crisis established the **European Food Security Crisis preparedness and response Mechanism** (EFSCM)[28].

The Commission will map the risks and vulnerabilities, including structural issues, of the EU food supply chain and its critical infrastructures and assess within the Food Contingency expert group with the Member States and stakeholders the different ways to address or mitigate such risks and vulnerabilities and reinforce our degree of open strategic autonomy when it comes to food supply and food security. A dedicated communication on agriculture and food and feed prices will be presented in March 2022.

3.3. Security of supply and preparedness for next winter

Energy storage can stabilise fluctuations in energy demand and supply and provides security. **In order to ensure continuous supplies and be better prepared for the next heating season**, measures have to be put in place now. **A 'Gas for winter plan' is presented to support security of supply with incentives and obligations for strategic storage.** With energy prices expected to remain high at least until 2023, there is insufficient market incentives to replenish storage. The currently high prices for gas are partially influenced by the depletion of gas storage, to levels that are much lower than in previous years in spite of the mild winter. This low level is due to the fact that the high global gas prices over summer 2021 impeded the filling up of gas storage by private actors.

Particularly for electricity, at any moment in time, electricity consumption and generation have to be perfectly matched in order to maintain a stable and safe supply and ensure a smooth functioning of the energy system. The Commission will publish a Staff Working Document [in July 2022] providing a comprehensive overview of energy storage in the EU, describing the current storage situation and likely future needs.

Ultimately, ramping up renewable energy and putting in place the large scale storage capacity will enhance energy security in the most effective way. During the transition, the EU will continue to depend on gas to ensure security of supply. A set of actions is necessary to ensure sufficient gas supply and storage capacity and smoothen the transition period.

Action 8: deploying strategic gas storage

In January 2022, the Commission carried out, in close cooperation with Member States, an **EU wide reinforced risk analysis of the preparedness of the gas system**[29]. Results of the analysis **confirm the resilience of the EU gas system to cope with challenging scenarios**, and point to a number of recommendations to enhance the EU's preparedness –

[28] COM(2021) 689 final

[29] The Commission will update its preparedness analysis integrating ENTSOG outlooks, by June 2022.

such as optimizing potential of LNG and paying attention to the refilling of storage by the next winter.

In the current crisis, the role of gas storage has become particularly important. However storage can only fulfil its security role when it is filled at the appropriate level ahead of the heating season even in adverse market conditions and irrespective of ownership. The Commission proposed in December 2021 a revision of the Gas Security of Supply regulation to pursue a more strategic approach to gas security of supply. It proposed, inter alia, that Member States carry out assessments at regional level and analyse the introduction and financing of measures to increase filling levels. In around half of the Member States such measures are already used to various degrees but on a national basis without coordination. The Commission calls on co-legislators to accelerate the examination of the Commission proposal. **The Commission proposes a legal requirement for Member States to ensure a minimum level of storage by 30 September every year. More detail needed**

In addition, the **Commission urges Member States to set inventory levels for entities owning storage facilities in the EU**, and to ensure that national or regional gas storages capacities are sufficient at the start of each heating season. The current legislative framework offers flexibilities to promote storage, such as the possibility to grant a rebate of up to 100% of the transmission tariffs to storage. **Regional coordination** is particularly relevant in this respect, considering that not all Member States have storage capacities available on their territory. To this end, the Commission will issue detailed guidance by summer 2022 on targeted regional storage levels, the financing of storage schemes and a fair and efficient allocation of costs.

To complement the regulatory measures mentioned in action 8, Member States can **provide aid to incentivise suppliers to ensure sufficient stocks of gas** Under Article 107(3)(c) TFEU, in time for next winter, thus helping to stabilise the wholesale gas market and counteract price volatility. Aid could for example be granted in the form of a two-way contract for difference to those beneficiaries active in the booking and filing of gas storage. Due to the urgent need to provide the appropriate market signals as soon as possible, Member States may award such aid without a competitive bidding process provided that safeguards are put in place to avoid overcompensation and strengthening the incumbents and other dominant market players. These may include ensuring non-discriminatory access to storages and prevent excessive pricing of storage capacity by providing for additional requirements under national law. Aid beneficiaries could also be obliged to gradually release gas over the winter. Member States could cooperate within a region, enabling Member States without physical storage capacity to contribute to ensuring secure supplies for the winter.

<u>Action 9:</u> piloting joint procurement of gas

The December 2021 gas package proposed joint procurement for strategic gas stocks by Member States in times of emergency.

The Commission will start a pilot project to support Member States and operators to carry out such a joint procurement operation to fill storage in 2022 up to the minimum required strategic storage. Under such instrument, EU [input from ENER needed]

Action 10: Diversify suppliers and ramp up the role of LNG storage

Since the last gas supply crisis in 2009 the market design together with the **increased gas interconnection capacity** have resulted in major improvements in the volumes of gas traded on the European hubs and have given the ability to traders and consumers to use gas from different sources and routes. **Each region of the EU has now a direct or indirect connection with an LNG terminal**[30]. This interconnectivity through LNG has proven valuable in the past months as it brought liquidity to the market and reliable gas supply to EU customers.

Over the past months, the Commission has intensified its outreach to major suppliers in the LNG market[31], and engaged with a number of major LNG purchasers with a view to a possible redirection of LNG cargoes to the EU in case of emergency. The Commission will continue these energy diplomacy efforts. LNG send-out reached in January nearly 10 bcm per month - **the highest ever level of LNG imports by the EU**. The Commission's preparedness analysis indicates that the capacity in terminals and the corresponding connections to the grids could allow more LNG to be imported. For this purpose, the Commission will setup a **platform for direct coordination** between Member States and LNG operators.

In order to ensure more transparency and better use of free capacities at LNG terminals, the Commission has proposed several measures (e.g. European transparency platform, booking platforms) in the December 2021 decarbonisation package. While the legislative process is ongoing, the Commission will explore, in cooperation with relevant market players, the possibilities to anticipate the implementation of some of these measures.

Given the global nature of the current price surge, **international cooperation** on the supply, transport and consumption of natural gas can help keeping natural gas prices in check. The Commission is in dialogue with the main natural gas producing, consuming and transit countries (US, Qatar, Japan, Egypt, Azerbaijan, Turkey) to facilitate natural gas trade. This dialogue with our international partners aims at enhancing the liquidity and the flexibility of the international gas market in order to ensure sufficient an competitive natural gas supplies.

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30 A number of further Projects of Common Interest are in advanced stage of development nearing completion, namely the gas interconnector between Poland and Lithuania (the GIPL pipeline), the Poland-Slovakia interconnector, the Denmark – Poland interconnector (Baltic Pipe) linking Poland to the North Sea, the Greece-Bulgaria pipeline (IGB). The LNG terminals in Cyprus and in Alexandroupolis Greece are due to be commissioned in 2023. Once these projects, many of which have also benefitted from EU financial support, are implemented, all EU countries will have access, directly or indirectly, to LNG and – in the overwhelming majority of cases – to at least two gas supply sources.

31 The 9th US-EU Energy Council took place on 7 February 2022 (The ninth U.S.-EU Energy Council | European Commission (europa.eu)

The Commission is also co-chairing the Energy Community Security of Supply Coordination Groups to monitor the situation and exchanges on the measures taken with the Contracting Parties (Western Balkans, Ukraine, Moldova and Georgia). With Ukraine and Moldova, contingency measures have been taken, such as increase reverse flows from Slovakia, Hungary and Poland for this winter.

The Commission will also use **its position in multilateral gas fora** to advocate for converting natural gas projects to hydrogen projects and develop green **hydrogen partnership agreements** with countries ready for large-scale production of clean hydrogen for the EU market (e.g. Australia, Chile, Morocco, Namibia, Saudi Arabia, UAE, Ukraine). In addition, the Commission will also provide assistance in using EU funds to build required infrastructures (ports; ships).

4. Transparency and well-functioning markets

Transparency is important for the functioning of the market as it helps reduce uncertainty and price fluctuations because all market participants can base decisions on the same data. **Full and easy availability of all data facilitates the continuous scrutiny** on the market evolution and **builds trust**. The Commission will ensure publication of regular outlooks for gas and electricity markets[32]. In its winter economic forecast, the Commission has presented its analysis of the energy price impact for the economy[33].

To fulfil its central role in promoting and facilitating low carbon transition, it is crucial that the **EU Emissions Trading System is and must remain a rules-based mechanism that functions in a predictable and transparent manner**. Fair price formation and integrity of the European carbon market is guaranteed by a robust oversight regime. As from January 2018, emission allowances are classified as financial instruments by the Directive on Markets in Financial Instruments (MiFID2)[34]. The classification means that robust EU financial legislation, which applies to other financial markets such as shares and bonds, also applies to the carbon market. This includes for example the rules of the Market Abuse Regulation[35] and Anti-Money Laundering Directive[36].

Carbon pricing is not the driver of high-energy prices. The effect of rising gas prices on the electricity prices is around eight times bigger than the effect of the carbon price. The carbon price increase partly stems from an increased use of coal instead of gas in power generation, which increases demand for emission allowances. Price volatility in

32 https://ec.europa.eu/info/sites/default/files/economy-finance/ecfin_forecast_autumn_2021_ch4_special_issues_2_en.pdf

33 https://ec.europa.eu/info/sites/default/files/economy-finance/ecfin_forecast_winter_2022_box-1-2_en.pdf

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

35 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014

36 https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-countering-financing-terrorism_en

the EU carbon market is comparable to that evident in certain energy markets, such as oil and coal, and lower than the price volatility evident in gas markets[37].

In practice, **market participants have to report their transactions in allowances and derivatives** thereof to the 27 national financial supervisors[38] in the EU, which are responsible for the oversight of the carbon market. This ensures the ability of supervisors to act swiftly and decidedly on cases of misconduct, unfair treatment of clients and threats to orderly functioning of the market. Financial intermediaries that are active on the carbon market need a licence from their national supervisors in order to participate in the market. In order to obtain and maintain this licence, they must comply with a number of requirements governing their organisation and activities in the market. In case of issues, the national supervisors can suspend or withdraw their licence and impose sanctions.

In response to allegations of market abuse on the carbon market, the European Commission has asked the European Securities and Markets Authority (ESMA) to analyse the trading in the market. The preliminary findings[39] confirmed that the EU carbon market functions in an orderly manner, comparable to other financial markets, and that no specific cases of market manipulation have been detected by the relevant market authorities. The Commission will also consider how the LNG market transparency could be improved.

Action 11: Ensuring the highest level of transparency in the carbon market

While there is also no evidence in recent market information that manipulation would be a major driver of the price in the carbon market, the Commission sees merits in enhancing transparency of the carbon market. Based on the final ESMA report the Commission will assess in 2022 whether certain trading behaviours would require further regulatory actions. Raising transparency will give market participants and stakeholders a better overview of the market structure and trends as well as enhance the supervision of these markets by regulators. At the moment, all carbon market participants have to report daily the number of positions they are holding in emission allowances and derivatives thereof. These *position reports* are submitted to national financial authorities and published, on a weekly basis, as aggregated reports by ESMA.

While the position reporting obligations give supervisors sufficient data to react in cases of suspicious trading patterns, the Commission sees room to improve the transparency of the market and the quality of the weekly aggregated data available to the public. The vast majority of transactions in the carbon market are trades in derivative contracts. Therefore,

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37 ESMA (18 November 2021) Preliminary report Emission Allowances and derivatives: https://www.esma.europa.eu/press-news/esma-news/esma-publishes-its-preliminary-report-eu-carbon-market

38 The list of national competent authorities responsible under the Market Abuse Regulation can be found on ESMA's webpages. The list of European Financial Intelligence Units, which deal with issues related to money laundering and terrorist financing, can be found on the webpages of Europol.

39 ESMA (18 November 2021) Preliminary report Emission Allowances and derivatives thereof: https://www.esma.europa.eu/press-news/esma-news/esma-publishes-its-preliminary-report-eu-carbon-market

the Commission will look into ways to ensure a **more granular public reporting on different types of derivatives**. In particular, better visibility and **improved scrutiny of the market in options contracts**[40] could yield further insight into the overall market dynamics.

Given that the ETS is, first and foremost, an environmental policy of particular interest for ETS compliance entities, data available to the public should be comprehensible also to readers who do not have previous experience in financial markets. **The Commission will ask ESMA to analyse every [6] months the existing technical information on the carbon market and present it in a format easily accessible to the general public**. In its analysis, ESMA should, as a minimum, analyse the weekly position reports, but potentially also use other public data or data received from market supervisors[41]. This exercise would build on ESMA's experience with the upcoming report on carbon markets due in March 2022. Furthermore, this analysis could complement the information from Commission's annual report on the functioning of the carbon market (Carbon Market Report), but with more emphasis on its financial aspects.

The Commission will organize a high-level expert **event on carbon market oversight** to bring together experts from different segments of the carbon market, including Member States' competent authorities, EU ETS compliance entities, financial firms, trade organizations, non-governmental bodies and academic institutions. The event will serve as a forum to provide opinions and comments on the final ESMA report due for March 2022. The experts will also provide advice and information, which can be included in the Commission's upcoming Carbon Market Report to the Council and Parliament for 2022. A dedicated expert event on carbon market oversight should become a regular exercise with timing adapted to the publication of the Carbon Market Report and future ESMA reporting.

Action 12 : **investigating the functioning of the gas market**

The Commission **is also pursuing the investigation into the gas market** in response to concerns regarding possible distortions of competition by companies active in European gas markets and notably by Russian gas supplier Gazprom. The company displays unusual business behaviour, and average filling level of EU Gazprom-operated storage is around 16% whereas non-Gazprom storage is at 44%. At the end of December 2021, the Commission received a complaint by the Ukraine's largest oil and gas producer Naftogaz alleging that Gazprom would have abused a dominant position on different gas related markets, in breach of Article 102 of the Treaty on the Functioning of the European Union. The Commission is currently investigating all allegations of possible anti-competitive commercial conduct by Gazprom as a matter of priority. In this context, it is also gathering additional information from relevant market players.

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40 An options contract is an agreement between two parties that gives the right, but not the obligation, to purchase or sell the underlying asset, at a certain predetermined price.

41 In addition to daily position reporting established by MiFID, market supervisors receive information from transaction reporting established by Market in Financial Instruments Regulation (MiFIR) and reporting of derivative contracts under Regulation on OTC derivatives, central counterparties and trade repositories (EMIR).

For the next years and beyond the current crisis, global climate policy, electrification and demand stemming from the economic recovery will profoundly change the energy system. In the EU, the Green Deal will drive a **structural transformation** towards more renewables, which will eventually bring prices down in a lasting way. Yet gas will continue to play a role as a bridge fuel in the energy mix into the 2030ies. With increasing share of renewables in the energy system investments in large scale electricity storage is needed to ensure power grid stability.

The last months have shown that increases in households' energy prices, and in particular electricity[42], have been more pronounced in some Member States, both under a short and long-term horizon. In order to better understand how the European society and economy cope with the impacts of energy prices, beyond the short term disorder, the Commission will conduct a "social and economic analysis", enabling the Commission and the Member States to design policy action to accompany this change with investment, and adapted tax, subsidies and benefit systems.

As regards the electricity pricing, the rising share of renewables is expected to change the incentives provided by the current model. In this context, the Agency for the Coordination of Energy Regulators (ACER) is finalising its assessment on the functioning of the energy of Europe's high energy prices and the wholesale electricity market[43]. The final report will address the benefits and drawbacks of **alternative electricity pricing mechanisms**; the impact that capacity mechanisms and long-term power purchasing agreements have on market functioning, as well as the role they play in a future electricity market dominated by renewables; how the functioning of retail markets in terms of competitiveness, flexibility, demand response and consumer empowerment can help keep prices in check; the possible advantages and disadvantages of low-risk contracts for end consumers, also in light of maintaining incentives for consumers to save energy and adjust their consumption, and of cushioning or shielding end-consumers from perceived excessive levels of price volatility. If justified, legislative changes could, in the longer term, allow adjustments to the wholesale pricing method so as to reduce the influence of gas on the market price while maintaining incentives to invest in renewable energy generation. This will require careful assessment and preparation.

Last but not least, the ETS plays a central role in driving the transition and the carbon price will be the subject of more and more attention. The carbon pricing and trading system, its importance and its complexity are set to increase. Yet carbon allowances cannot directly be assimilated to other commodities or financial products because of their public policy relevance. While the ETS has inbuilt automatic stabilisers, these have not yet been triggered. Going forward, the Commission wants to provide the necessary

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42 In the first half of 2021, household gas prices increased in only three EU Member States in comparison with the first half of 2020. This is valid in three out of the 23 Member states that provided a reporting: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Natural_gas_price_statistics

43 ACER submits to the European Commission its Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design | www.acer.europa.eu

assurance and trust into the oversight, trading, compliance management and capacity to act when needed.

5. Conclusion

The developments in the energy markets coupled with the current geopolitical tensions call for rapid action to ensure security of supply, storage and diversification of energy supplies.

Frontloading the affordability and security of supply benefits of renewable energy is the best insurance against price shocks. The measures provide for ramping up investments in renewable energy and energy efficiency. New guidance for reducing the administrative barriers to renewable energy will speed up their deployment and benefits will materialise already in the short-term. The ambitious combination of funding and regulatory measures will accelerate the green transition.

The proposed measures mitigate the impact of high prices for households, businesses and industry and increase our preparedness for the next winter season. While protecting vulnerable consumers and industry, they also ensure the proper functioning of the single market and protect the objectives of the European Green Deal.

Security of supply is a matter of strategic interest. In addition to ramping up production, diversified supplies and a new policy on storage will ensure a better preparedness against unreliable sources and volatile markets.

The EU and its Member States should take resolute steps together. Joint and coordinated action is the best response to the challenges we face. New measures that go beyond the short-term and acceleration of pending proposals are needed. This will send a strong signal about the determination of the EU to address the situation with a **European joint action for more affordable, secure and sustainable energy.**

Annex 1:

Guidance on Application of Article 5 of the Electricity Directive during current situation

1. *Introduction*

The objective of the Electricity Directive and in particular its Article 5 is to ensure effective competition to the benefit of consumers and facilitate the energy transition. As well as including rules relating to the organisation and functioning of the Union electricity sector, it contains the framework for exceptional, time-limited implementation of regulated prices, that may be introduced in defined circumstances situations - including periods of significantly higher energy prices.

2. *Article 5 of the Electricity Directive*

Article 5 sets out that suppliers are free to determine the price at which they sell to their customers rather than being set by the government or a regulator. This is because in a well functioning market based on the interaction of supply and demand:

- empowers consumers,
- sends investment signals in the market, which supports medium term security of supply and the move to a decarbonised system,
- supports the move towards a flexible electricity system, in particular with demand side participation,
- encourages energy efficiency and energy savings – as the price of energy is an important signal of the real value of energy.
- give consumers more choice as suppliers compete to make better offers based on price and service.

However, Article 5 also recognises that under certain circumstances it might be necessary to derogate from this general principle. Member States may intervene in retail price setting by suppliers (regulated prices) in accordance with:

- Article 5 (3) which allows Member States to regulate retail prices for supply to energy poor or vulnerable household customers, subject to specific conditions set out in Article 5(4), to ensure they can afford to meet their basic energy needs
- Article 5(6) which allows interventions in retail price setting for a certain period of time in order to facilitate the transition establish effective competition between suppliers. This derogation is subject to the more specific conditions set out in Article 5(7), which are different from those applicable to regulated retail prices for energy poor and vulnerable consumers. Recital 23 of the Electricity Directive which spells out the objective of Article 5, shows that this may be used to address the impact of situations of particularly high prices[44].

[44] This reads: "Such circumstances might occur for example where supply is severely constrained, causing significantly higher electricity prices than normal, or in the event of a market failure where interventions by regulatory authorities and competition authorities have proven to be ineffective".

3. *reasons to intervene in price setting in response to current energy market situation*

While the exact impact will differ between Member States, there are several ways in which the current energy market situation with high and volatile wholesale gas and electricity prices situation may restrict competition and harm customers in several way, including:

- Cementing the position of dominant incumbents,
- Locking in high carbon emitting energy sources,
- Preventing suppliers from accessing hedging products or longer term markets which enable them to make offers to consumers,
- Causing significant harm to consumers in a way likely to harm longer term market developments, thereby undermining competition and the energy transition,
- Passing price increases and volatility on the wholesale market directly onto the retail markets - this would mean that the retail market is failing to protect consumers against peaking prices,
- reducing the number of suppliers on the market below that required to ensure effective retail market competition as a result of the current (wholesale) market situation,
- Supplier of last resort regimes are overwhelmed

4. *Regulated retail prices during the current period of high and volatile energy prices*

Firstly, where a Member State has already used the possibility to take measures as set out in Article 5(3) or Article 5(6), they may continue to do so during the current period. They may also take account of the impact of current high and volatile wholesale energy prices on any roadmaps which they had prepared for phasing out these retail market interventions. Following Recital (23) time limited retail price interventions during the current exceptional period of instability might be justified even if Member State has already moved to a situation of full competition, either for all or for a class of customers, to meet the following objectives:

- To ensure protection of vulnerable and household customers against during periods of exceptionally high prices
- To ensure continued transition to full competition,
- To prevent that the level of competition already achieved is seriously impaired (for the reasons set out above).

5. *Ensuring measures meet objectives of EU energy policy and Electricity Directive*

Where a Member State sees the need to regulate retail prices because of the current period of high and volatile prices, it is important that this is in line with the wider objectives of EU energy policy and the Electricity Directive. These include competitive markets, consumer empowerment, increase of renewables, a flexible electricity system and increased energy efficiency.

This can be ensured through the application of the tests set out in Article 5(7) which ensure that the measures are designed in such a way that they can achieve their objective, are proportionate to that objective and interfere not more than necessary with the normal functioning of the market.

In practical terms these must necessarily take account of the particular circumstances prevailing right now with high and volatile wholesale energy prices, and the overall purpose of ensuring the longer term transition to a fully competitive retail market and facilitating the energy transition.

6. *Key considerations when developing regulated retail prices*

Regulated retail prices in the current situation should provide space to ensure that markets can work well for consumer in the longer term. This means their introduction should be accompanied by measures to achieve effective competition and a methodology for assessing progress with regard to those measures. The most appropriate measures will depend on the specific situation in each Member State and the particular challenges it faces. However, these could include:

- Measures to ensure consumer empowerment
  - Measures to enable self-consumption and active consumers
  - Ensuring full and effective implementation of Chapter III of the Electricity Directive.
  - Energy efficiency measures to reduce energy demand, increase energy efficiency and make consumers less exposed to the impact of price volatility
  - Tapping into the potential of demand-side flexibility to respond to fluctuations in demand and supply notably ensuring customers can participate in demand response through aggregation

- Measures to ensure that all suppliers are able to access long term contracts on an equal basis – for example
  - measures to support the establishment of effective access for new suppliers to wholesale markets
  - measures on dominant producers to make forward contracts available on a fair basis (e.g. on same terms as to their supply arm)
  - Removal of barriers to entry of new participants
- Measures to ensure that suppliers operate in a prudential way

The methodology for assessing progress towards achieving again a situation of full competition. A roadmap with milestones for the removal of regulated prices would be one way of achieving this:

- In particular, milestones should be associated with mitigation of the impact of the exceptional supply and demand conditions not their return to pre-crisis levels. This would mean that we would expect full competition to take place on the basis of new wholesale price level.
- The Roadmap should be sufficiently clear as to allow market participants to plan ahead on the basis of it.

Minimising potential adverse impacts of regulated prices also means ensuring non-discriminatory treatment of suppliers. Ways in which this can be achieved include;

- Suppliers should be free to develop other offers, not based on the regulated prices.
- Dynamic price contracts should not be affected, and consumers should continue to allowed to chose dynamic tariffs.
- The methodology should ensure it does not reinforce the position of dominant incumbents.
- The regulated price should not be based on a single particular operator's generation fleet. However, where the generation fleet of a particular operator was in the past made available to all suppliers on non-discriminatory terms, this could be taken into account.
- There should be transparency in the selection of the supplier subject to the regulated price and the selection process should be based on non-discriminatory selection criteria.
- If there is compensation provided to the supplier providing the offers at regulated cost, then
    - all suppliers should be able eligible to provide offers at the regulated price on the same basis. The timing of compensation should take into account the different financial impact on small suppliers in order to protect them against disproportionate burdens that might arise from the obligation to offer electricity at regulated prices, OR,
    - the supplier should be chosen through an open process such as a tender

Regulated prices should be cost-reflective, at a level where effective price competition can occur. In this regard Member States should take into account that;

- The regulated price setting methodology should be fully auditable.
- The authority implementing the regulated prices should have access to the necessary information concerning the cost structure of the industry required for the calculation process
- The regulated price needs to able to cover reasonably incurred costs of suppliers and assessed on the basis of objective economic criteria, including regulated or administrative costs
- Identifying the appropriate reference price for suppliers costs procuring electricity is particularly difficult during a period of high and volatile prices. It is however important that even if regulated prices might be below what is needed to cover wholesale market costs during one specific short term period, they must be cost-reflective taking into account a duly justified longer period. This could for example be based on the normal forward procurement of energy by suppliers in the relevant Member State

Other requirements in the Article 5(7) of the Electricity Directive include

- minimising any negative impact of regulated retail prices on the wholesale electricity market
- ensuring beneficiaries of regulated retail prices continue to be able to choose competitive market offers, and are provided with support and information in this regard

- Customers should also be directly informed of the possibility of installing smart meters and are provided with necessary assistance
- Regulated retail prices should not lead to direct cross-subsidisation between customers supplied at free market prices and those supplied at regulated supply prices.

Annex 2:

EU funding available for the green transition

The EU budget offers ample resources to support transition to the green economy. Through short-term support under REACT-EU and 2014-2020 programmes and the new long-term budget for 2021-2027, significant resources are available to promote renewable energy, energy efficiency and other areas related to the green energy transition. Member States should use EU budget resources rapidly.

In the short term, Member States are encouraged to make timely use of **REACT-EU.** More than EUR 47 billion are available to Member States to finance investments contributing to the transition to the green, digital and resilient recovery of the economy. The **European Regional Development Fund (ERDF)** strand can support investments in energy efficiency measures, also to households, infrastructure providing basic services to citizens, including green energy. **The European Social Fund (ESF)** strand complements this by providing support to education, training and skills development in the context of the green transition. Member States could re-calibrate the activities covered under their current programmes and focus them on measures supporting households in the context of high energy prices, e.g. energy efficiency measures or smart energy management.

In addition, around EUR 65 billion are still available from 20214-2020 programmes financed by the **ERDF, Cohesion Fund and the European Agricultural Fund for Rural Development (EAFRD)**. They include substantial support to the thematic objectives of Low Carbon Economy, Environment Protection and Resource Efficiency, and Network Infrastructure, Transport and Energy, with the focus being energy efficiency and increased production and use of clean energy..

For the 2021-2027 long-term budget, Member States will have to devote at least 30% of their ERDF allocation (at least EUR 65 billion) and 37% of their Cohesion Funding allocation (at least EUR 13.5 billion) to the policy objective of **Greener and Low Carbon Europe**, with an overarching objective to support transition to a climate neutral economy. In this context, the ERDF will focus on supporting a low-carbon Europe by promoting the clean and fair energy transition. This includes support to renewable energy, energy efficiency, support to regions dependent on energy intensive industries and providing incentives for delivering a transition that is fair for all.

In addition, the **Just Transition Fund** (JTF) will support investments which contribute to reducing energy poverty through energy efficiency improvements of housing stock. The JTF will also support the development of innovative energy storage technologies and support workers in the transition towards a climate-neutral Union by 2050. Over the period 2021-2027, EUR 8.5 billion are provided under the new long-term budget. In addition to these resources, EUR 10.9 billion are available from the NextGenerationEU top-up for the years 2021 to 2023. The **Connecting Europe Facility** and the **Renewable Energy Financing Mechanism** will continue mobilising the funding for the installation of electricity interconnectors.

Through the **Recovery and Resilience Facility (RRF)**, large funds are already committed to the green transition. In addition to ambitious reforms addressing bottlenecks to investments and private funding, Member States invest EUR 64 billion in improving energy efficiency and EUR 27 billion in renewable energy and networks. Where possible, Member States should strive to accelerate the execution of the relevant measures in their plans and take advantage of unused loan capacity or of higher RRF grant allocation.

Additional support is provided from the **Emission Trading System (ETS) funds** for the modernisation of the energy systems and support the transition of Member States economies to climate neutrality. In particular, the **Modernisation Fund** is a dedicated funding programme to support lower-income EU Member States[45] in their transition to climate neutrality by helping to modernise their energy systems and improve energy efficiency. The total revenues of the Modernisation Fund may amount to around EUR 20 billion in 2021-2030, depending on the carbon price.

[45] The beneficiary Member States are Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia.

Annex 3:

Guidance on the application of intra-marginal profit fiscal measures

Redistributing the revenues from the fiscal measure to final electricity consumers would partly prevent that current high gas prices are transferred to the retail electricity bills paid by final customers, while preserving efficient marginal wholesale electricity prices needed for efficient dispatching and market coupling in the European single electricity market. However, such a measure would nonetheless need to be carefully designed to avoid unnecessary market distortions. This includes notably the following elements:

- The duration of the measure should be limited and tied to the ongoing crisis situation;
- The measure should not affect the formation of wholesale electricity prices based on marginal costs expressed by the merit curve, hence preserving the efficiency of price signals for short-term operational decisions. In doubt, less excess gains should be clawed back to avoid impacts on price formation;
- Long-term price trends resulting from structural market developments should not be affected, in order not to interfere with long-term price signals which contribute to the coverage of fixed and investment costs, incentivizing for instance the rollout of renewable energies;
- In order to maintain the effectiveness of the ETS-system, which is a key element of the green transition, it would appear appropriate to tax only the part of additional infra-marginal rents caused directly by higher gas prices;
- The additional infra-marginal rents should be clawed back only in the time periods when gas plants were marginal and to the extent that such additional infra-marginal rents were effectively earned by infra-marginal units;
- The measure should not distinguish different generation technologies, and include any infra-marginal units operating in the hours of application of the tax, e.g. infra-marginal rents from hard coal and lignite-fired generation, renewables (including hydropower) and nuclear;
- The measure should equally concern generators covered by support schemes and those outside of support schemes, however taking into account that some support schemes by their nature already avoid (feed-in tariffs), capture (two-way contracts for difference contracted before the gas price crisis) or reduce (floating premiums) infra-marginal rents in periods of high prices;
- The measure should only claw back a share of profits which were actually realised. Thus, it needs to take into account that generators may have sold part of their production forward at a lower price before the crisis began.
- The revenues from the measure should be used to address the energy crisis situation, e.g. by passing them on to households or in non-selective and transparent measures supporting all final consumers (e.g. an explicit separate discount on electricity bills of final customers proportional to their average daily or weekly consumption).

While it is not excluded that such a measure could be construed in a way that it does not contain any State aid both on the revenue side as well as on the expenditure side, many implementations are likely to entail State aid and thus would require Commission approval.