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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.** The EU remains highly dependent on energy imports for power generation and heating. This is the case in particular as regards gas, where we rely on imports for 90% of our consumption, and Russia controls over 40% of deliveries into the EU. **This dependency has aggravated the current situation of high energy prices**, which continues to impact European households and businesses.

The toolbox[1] 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 16 February 2022. 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 short-term relief.

However, according to recent long-term forecasts[2], gas and electricity prices will remain high and volatile until at least 2023. Compared to the outlook of last autumn, the situation has deteriorated, and is likely to last longer[3]. Sustained high energy prices are impacting the entire economy, driving inflation and severely affecting households, agriculture and industry. Higher gas prices also make investment in renewable clean energy even more profitable. Yet, in the interim they also lead to higher coal use in some Member States, increasing pressure on the EU carbon price and making the coal phase out more expensive.

Today, the situation calls for additional action. We propose a set of joint actions to overcome our over dependence on external gas supplies by unlocking increased investments and reforms for more affordable and sustainable energy production and by further diversifying supplies. The implementation of the Fit for 55 proposals will already lead to a reduction in the EU's reliance on gas by 23% by 2030. At high gas prices, coordinated action could further reduce EU dependency. This communication proposes a pathway for a more resilient EU energy system with measures to reduce EU's consumption of gas and to reduce reliance on a single supplier. Achieving these objectives requires coordinated action by the EU and Member States.

This Communication presents targeted actions that will help the market deliver more cost effective energy services for Europeans. The Commission proposes to remove regulatory barriers and enable the acceleration of investments in renewable electricity, grids and energy efficiency alongside deepening energy system integration via renewable-based electrification and renewable gases. As a matter of priority, the Fit for 55 measures need to be implemented as soon as possible. This will bring more affordable energy services to the market and make Europe less vulnerable to fluctuations on the fossil fuel markets.

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

2 See annex 1 on market outlook

3 See annex 1 on the market outlook

This Communication also offers additional measures to secure affordable energy and sufficient level of storage, which will **prepare the EU for the next w**inter and make us more resilient to future shocks. Measures to increase **transparency** will ensure that markets provide the best possible support to the transition.

The need for a rapid clean energy transition has never been stronger and clearer than now. The rise of fossil fuel prices is one of the main factors of the rising consumer price levels across Europe, increasingly affecting European businesses and households. They hit above all energy-poor or vulnerable household consumers, who spend a high share of their total income on energy bills[4], thereby deepening disparities and inequalities in the EU. At the same time, higher gas prices shorten the payback time of investing in the transition away from volatile fossil fuels and towards more affordable renewable energy technologies. Wind and solar energy has close-to-zero variable cost and is widely available, reducing dependency on imports and driving down prices. Intensifying energy efficiency and building renovation will increase Europe's resilience and mitigate the impact of future price spikes and market volatility on energy bills.

The sooner and more joined up action we take across the EU, the earlier we will reap the benefits of a cleaner energy system.

2. Reducing our dependence on imported natural gas from a dominant supplier

Reducing our dependence on a single supplier of fossil gas requires diversification of gas supply and using the full potential of green and low carbon energy sources.

Liquefied natural gas (LNG), which can be transported by ship or by road, has proven to be an important element in reducing our dependence on imported Russian gas and strengthening security of supply. Each region of the EU has now a direct or indirect connection with an LNG terminal. This interconnectivity through LNG has proven valuable as it has brought increasingly reliable gas supply to EU customers. Over the past months, the Commission and HRVP have intensified their outreach to major gas suppliers, transit countries and LNG suppliers[5] with the primary aim to enhance the flexibility of the international gas market in order to ensure sufficient and competitive natural gas supplies. LNG imports reached nearly 10 bcm in January - the highest ever level of monthly LNG imports by the EU.

Renewable electricity generation can be ramped up quickly and is key for our energy transition to decarbonisation by 2050. In addition to decarbonising our power sector, it is

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[4] Households with above-average energy needs, which includes families with children, persons with disabilities, and older persons, are more susceptible to energy poverty and to its effects. Women, and in particular lone parents and older women, are also particularly affected by energy poverty. See the report of the workshop on 'Energy Poverty', organised on 9 November 2016 for the EP Committee on Industry, Research and Energy (ITRE), Gender perspective on access to energy in the EU, Gender and energy | European Institute for Gender Equality (europa.eu) and GFE-Gender-Issues-Note-Session-6.2.pdf (oecd.org)

[5] Efforts to increase supplies include discussions with the EU's immediate suppliers and transit countries such as Norway, Algeria, Azerbaijan and Turkey. The Commission and the HRVP have also reached out to suppliers on the LNG market, such as Qatar, Egypt, Nigeria and others. Presidents von der Leyen and Biden met at EU-US Energy Council on 7 February 2022 to maintain the existing close partnership between the US and the EU on security of supply. The Commission and HRVP also engaged with a number of major LNG purchasers, such as Japan and South Korea, with a view to a possible redirection of LNG cargoes to the EU.

also the vehicle for electrification of end-use sectors and the production of renewable hydrogen. However, long and complex **permitting processes hold projects back**. Simplified processes and smarter support schemes would immediately attract investments in renewables and grid infrastructure, and speed up the green transition.

Additional resources for investment can be made available. High energy prices, while being a burden for industry and households, have also translated into additional profits for some market participants and increased public revenues. For example, in 2021 alone, the auctioning of emission allowances under the EU ETS generated more than EUR 30 billion, almost double of the amount in 2020. These revenues can be invested in accelerating the deployment of renewable energy.

Solar photovoltaic technologies not only have a huge potential in the EU but also allow millions of Europeans to produce their own electricity. Rooftops – on residential, industrial, agricultural and commercial buildings – could cover almost a quarter of the EU's electricity consumption without affecting current land uses. However, solar cells and panels are an example where the EU displays a dependency on the supply side. 20-25 % of planned EU solar projects to be either postponed or cancelled entirely in 2021, mainly due to recent spikes in global energy and raw material prices as well as increased transport and logistical costs.

Energy efficiency and investments that lead to energy savings by using smarter technologies, better product design and by renovating our buildings should be prioritised. In addition, energy efficiency investments make our industries more competitive and support households in reducing their energy bills.

Biogas and renewable hydrogen are sustainable alternatives to importing natural gas. But the current ambition will not be sufficient. We need to scale up our ambition, put in place the necessary regulatory framework, and significantly expand the production, use, and infrastructure for such alternatives.

The following actions put in place the enabling conditions for this change to take place more rapidly.

Action 1: Diversify gas supplies

LNG supply to the EU has peaked in January. The Commission will continue to strengthen international dialogues with our international partners, building on the current EU share in global LNG supply of around 15%. Specifically on LNG supplies, the Commission and the HRVP will discuss with major global purchasers of gas (Japan, South Korea, China, India) expectations regarding medium-term market development with a view to avoiding conflictual market practices in the future, which raise the price of energy supplies for all.

Action 2: "New Energy Compact"

To frontload the security of supply benefits of the European Green Deal and reduce our dependence on a dominant supplier for natural gas imports, the New Energy Compact will scale up renewable energy in Europe by mobilising additional investments, removing roadblocks to renewables roll-out and empowering consumers to play an active role in the energy market.

Redirecting revenues in renewable energy deployment

Member States should use additional revenues from the ETS for the deployment of renewable energy. The Innovation Fund and the Modernisation Fund, established with revenues from ETS allowances, provide support for the generation and use of renewables as well as for the commercial demonstration of innovative low carbon technologies.

Some power generators not dependent on gas have seen their revenues increasing considerably in the current high energy price context. Market participants should reinvest extraordinary revenues in the deployment of renewable energy. Maintaining a climate of investment and competition is important to promote renewable investments. Member States should refrain from fiscal measures targeting high rents that would otherwise be reinvested in renewable energy. Fiscal measures to capture part of the additional price-related rent should be exceptional in case there is scope for ensuring that the revenue is redirected in accelerating the deployment of renewable energy. Such measures should not be retroactive, allow electricity producers to cover their costs and protect of long-term market and carbon price signals.

Member States should ensure that the design of renewable support schemes incentivises the deployment of renewable energy, while avoiding excessive rents.

Member States should also make use of the Renewable Energy Financing Mechanism that allows Member States to work closely together in the roll out of renewables across the EU, particularly in areas that have a greater access to natural resources or better potential for deploying renewable energy sources. By participating in the auctions carried out under the Mechanism, Member States help build up renewables capacity in areas across the EU in a cost-effective manner.

Removing roadblocks to renewables deployment and grid infrastructure

Overly complex administrative procedures have been identified as one of the key obstacles for investments in renewables. To address these barriers, the Commission calls upon all Member States to finalise transposition and fully implement the relevant provisions in the Renewable Energy Directive. It also underlines the importance of full and rapid implementation of the relevant reforms and measures in Member States' Resilience and Recovery Plans. To support Member States, **the Commission will adopt [in June] a recommendation on permitting for renewables projects** and will set up milestones for following up its implementation. The recommendation will be based on an analysis of opportunities to accelerate permit-granting procedures, also those possibly deriving from EU legislation. The Commission will also gather Member State experts working on renewable energy and on environmental assessments to identify best practices for faster permitting.

Given the central role of renewables in the achievement of the European Green Deal objectives, the Commission calls on Member States to ensure that **investments in renewable energy and related grid infrastructure are considered as being in the public interest and are treated according to the most favourable procedure available in their planning and permitting procedures.**

Member State should **swiftly map, assess and ensure suitable land and sea availability for renewable projects,** commensurate with their National Energy and Climate Plans, the contributions towards the revised 2030 RES target as well as other relevant considerations such

as the availability of resources, grid infrastructure and the targets of the EU Biodiversity Strategy.

As part of this exercise, Member States should designate **limited and clearly defined areas** as particularly suitable for the development of renewables **(RES "go-to" areas),** while avoiding as much as possible environmentally valuable areas. Within these RES "go-to" areas Member States should consider that the planning, construction and operation of plants for the production of energy from renewable sources, assets necessary for their connection to the grid and the grid itself are **of overriding public interest**[6], provided that the conditions set out in EU environmental legislation are fulfilled.

The above outlined notion of public interest and overriding public interest as regards renewables will inform the Commission's position during the ongoing negotiations with the European Parliament and Council on the **revision of the Renewable Energy Directive**.

The Commission will also provide guidance later this spring on when and how **regulatory sandboxes** would be needed to allow testing innovative technologies, products or services aimed at advancing the coexistence of renewable deployment and environmental protection. The guidance will focus on setting up the boundaries of regulatory sandboxes such as defining the timeframe, territory and continued regulatory supervision with a view to minimise any risks.

The Commission and the EIB Group will conclude in 2022 which financing mechanisms would be best suited to help the **Power Purchase Agreements (PPAs)** market to develop in Europe, including facilitating better access to PPAs to new the off-takers such as SMEs and taking into consideration also the market demand for such projects.

Active consumers and facilitating energy communities

The New Energy Compact can be facilitated by consumers who become active in the energy market, by producing renewables and by supporting them to take energy efficiency measures. However, consumer activation requires speeding up deployment of smart metres and ensuring full implementation of the Electricity Directive.

Member States shall thus take immediate measures to **facilitate self-consumption and setting up of energy communities** by putting in place single points of contacts or one-stop-shops to provide technical and financial support and by providing prosumers with additional opportunities to sell excess energy.

<u>Action 3:</u> Solar power for all Europeans

The European Commission will present in June a communication on solar energy with the aim to help unlock solar energy's potential as a major renewable energy source in the EU. Based on an analysis of the state of play of solar energy across the EU, the solar strategy will identify barriers, propose measures to accelerate deployment and ensure that the public can fully reap the benefits rooftop solar energy can offer. It will help develop a value chain for

[6] 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.

solar energy and strengthen the EU's competitiveness and tackle dependencies. To this end, measures will include the channelling of EU financing for next-generation technologies, the mobilisation of InvestEU or Member States' specific support instruments to crowd-in and de-risk private investments in innovative projects, cooperation with major private and public developers to support steady demand for most innovative projects, and setting high environmental standards for photovoltaic products, including with respect to their efficiency, durability, reparability, recyclability and carbon footprint.

Action 4: Stepping up energy efficiency and demand response

The cheapest energy is the one not used – energy efficiency should be prioritised across all sectors. It reduces both energy bills and imports, notably natural gas ones.

The biggest and most cost effective gains in energy savings can be reached in **heating and building renovation**. The Commission calls on co-legislators to agree swiftly on the Commission' proposal for the Energy Efficiency Directive[7] and the revision of the Energy Performance of Buildings Directive[8], which would deliver 17 bcm of gas savings by 2025[9]. Based on their long-term renovation strategies, Member States should accelerate the implementation of the national building renovation programmes especially for the measures targeting worst-performing buildings, which have the highest potential also in terms of natural gas savings and benefits to vulnerable consumers.

Other areas for large potential of energy savings include expanding the regulation of energy-related products through eco-design and energy labelling, as well as optimising industrial and operating processes especially in the ICT sector and untapping the potential of demand response[10].

[In order to support the mobilisation of financing for energy efficiency and making it available for citizens and enterprises, the Commission will launch the **Energy Efficiency European Financing Alliance** bringing together Member States, public and private financial institutions, investors and the industry.] The Commission also encourages Member States to set up national energy efficiency funds to implement energy efficiency measures in support of national contributions to the EU energy efficiency targets and support in particular measures for vulnerable customers and people affected by energy poverty.

Member States are strongly encouraged to support energy efficiency investments and energy saving behaviour by making use of the recently adopted **new State Aid Guidelines**[11] and the significant EU funding available in particular through the Recovery and Resilience Facility and Cohesion Policy[12].

In the area of energy efficiency of thermal systems, the Commission will **provide technical support to national and local authorities** to identify the best policies and technological solutions by [launching a dedicated call for technical support (either TSI or LIFE CET call) or topping up the ELENA facility (tbc)]. [It will also facilitate public-private building renovation

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7 Proposal on the energy efficiency directive
8 Proposal on the energy performance of buildings
9 Equivalent of [xx] of current consumption.
10 Estimations suggest that potential for demand response by 2030 could reach 160 GW. Up to 40% of this is already economically and technically viable, but until today only 20GW has been unleashed.
11 Guidelines on State aid for climate, environmental protection and energy
12 Link to funding factsheet – tbc

consortia of industries and local authorities to showcase integrated renovation packages of heating and cooling upgrades for homes and set up an industrial insulation programme to capture cost-effective investments with short pay-back times and support the training of the renovation workforce (tbc)].

Action 5: Strengthen the production of biogas

At the current gas prices, biogas is competitive compared to fossil gas and can replace natural gas in existing installations.

To boost the biogas sector, the Commission recommends EU level ambition to produce [35 bcm] of biogas by 2030[13] and requests Member States to channel Common Agricultural Policy funding towards biogas production from sustainable biomass sources through their national strategic plans and make use of other available funds[14]. The EU ambition could be translated by Member States into country-level specific targets, possibly as part of broader targets for renewable gas use, such as renewable hydrogen. The Commission will propose a pilot project to demonstrate how CAP funding can be used to support biogas production in rural areas and to promote opportunities in the biogas sector among EU farmers.

The Commission invites the Council of European Energy Regulators (CEER) 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**. The Commission will also work with partners in the EU neighbourhood to explore the biogas production potential.

Action 6: Hydrogen Accelerator

To accelerate the deployment of renewable hydrogen, the Commission will deploy the **Hydrogen Accelerator**:

- **To complete the regulatory framework**, the Commission calls on the European Parliament and Council to swiftly adopt the Hydrogen & Decarbonised Gas Market Package[15] and the revised Renewable Energy Directive. It will also finalise the delegated acts on Renewable Fuels of Non-Biological Origin (RFNBO)[16] and certification of renewable and low-carbon hydrogen to ensure swift adoption.
- State aid approval for hydrogen projects will be treated as a matter of priority. Upon receiving complete notification from Member States, the Commission commits to complete the assessment of the first **Important Projects of Common European Interest (IPCEIs) on hydrogen** before the end of the first semester 2022. **The Commission will continue to make EU state aid rules fit for accelerating the green transition.** In addition to the already adopted revision of the Guidelines on State aid for climate, environmental protection and energy (CEEAG) and Important Projects of Common European Interest (IPCEI) guidelines, we will further accelerate the GBER review.
- In addition to renewable hydrogen produced in the EU, **[10] million tonnes of green hydrogen will need to be imported by 2030**. To this end, the Commission will support

13 See Figure 12 in European Commission (2021). SWD(2021) 455.
14 Link to factsheet – tbc
15 To add reference
16 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

pilot projects on renewable hydrogen production and transport in the EU neighbourhood, starting with a Mediterranean Green Hydrogen Partnership,

- The Commission will work with industry to promote **the establishment of a Global European Hydrogen Facility** to boost Member States' access to affordable renewable hydrogen and will present this initiative in the International Energy Engagement Strategy in May 2022. Together with the further completion of the regulatory framework, the action will facilitate the global and European trading of renewable hydrogen.
- The Commission will also use **its position in multilateral gas fora** to advocate for converting natural gas projects to renewable hydrogen projects and develop **renewable hydrogen partnerships** with countries ready for large-scale production of clean hydrogen for the EU market.
- Matching hydrogen production and use requires the **creation of a hydrogen infrastructure**. The Commission will support the development of an integrated hydrogen infrastructure, **hydrogen storage facilities** and **port infrastructures** and help project promoters **identify a priority list of natural gas pipelines that can be refurbished and interconnected in the context of the revised TEN-E policy framework**.
- To **boost renewable hydrogen demand and recycled carbon fuels**, the Innovation Fund could accelerate the early deployment of innovative solutions **through an EU-wide scheme for carbon contracts for difference**[17] and help industry commercialise such technologies. To allow for the setting up of such schemes under the Innovation Fund, the proposal for a revision of the ETS Directive should be adopted as a matter of priority.

3. security of supply for next winter and affordability short term

At the end of the current heating season gas storage will reach a historically low level. In order to ensure continuous supplies and be better prepared for the next heating season, **gas storages must be properly replenished ahead of next winte**r. During the energy transition, the EU will continue to depend on gas to ensure security of supply. On top of actions to enhance diversification and speeding up the transition, a set of actions is necessary to ensure sufficient gas supply and the optimal use of existing storage capacity in this transition period.

Diversification of gas supply will reduce Europe's dependence on Russia and increase Europe's security of supply. For the past years, the Commission has diversified supply routes to Europe and strengthened interconnection within the EU[18]. Since the 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 to use gas from different sources and routes.

<u>Action 7:</u> Ensuring minimum gas storage

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[17] Under carbon contracts for difference a government or institution agrees with a market actor on a fixed carbon price over a given time period.

[18] Factsheet on interconnectivity actions – tbc (southern gas corridor, Mediterranean hub and LNG)

In order to be well-prepared for next winter, an EU average level of storage filling of at least 80% by 30 September this year is necessary. This will be backed up by storage levels per Member State to take into account relative size and security of supply value of storages across the EU. To this effect:

The Commission urges Member States to take measures to ensure refilling of storage ahead of the next heating season. These measures can be a) an obligation on gas storage users to store a minimum volume of gas in underground storage in line with the internal market rules, b) an obligation on owners of storage to tender the capacities with potential shortfalls in costs covered by the State c) a request to the transmission system operators or balancing operators to purchase and manage strategic stocks of gas.

The Commission will activate mechanisms under the Gas Security of Supply Regulation to reach this objective. The Gas Coordination Group will be requested to assist the Commission in the monitoring and coordination of the measures necessary to its attainment. The Commission will propose a mechanism to use transparency of storage filling rates to ensure that assessment and action are taken early if storage filling rates are not sufficient to achieve the 80% target by 30 September.

- The Hydrogen and Decarbonized Gas Markets Package, tabled in December 2021, proposed joint procurement for strategic gas stocks by Transmission System Operators for times of emergency. The Commission stands ready to facilitate the setup of pilot project of such a joint procurement operation.
- Member States' common and national risk assessments[19] should be continuously updated to integrate the Commission's reinforced preparedness analysis.
- The Commission will support regional coordination through the regional risk groups to define regional approaches on withdrawal and financing schemes for the allocation of costs to make sure that storages are properly replenished for the next winter season
- Member States must ensure that natural gas undertakings take measures to guarantee the supply to protected customers in difficult circumstances[20].
- Member States are urged to conclude outstanding solidarity arrangements without delay – this is essential to ensure the supply of protected customers, such as households, across borders and in all situations. To facilitate the conclusion of the necessary solidarity arrangements, Member States may use the template prepared by the Commission as part of the December 2021 revision of the Gas Security of Supply Regulation.
- The current legislative framework already ensures a rebate of at least 50% of the transmission tariffs to storage. [The Commission will propose to increase the rebate level to 100% as an incentive to refill storage]
- To complement the previous measures, Member States can provide aid to incentivise suppliers to ensure sufficient levels of gas storage under Article 107(3)(c) TFEU, in time for next winter, thus helping to stabilise the wholesale gas market and counteract price

[19] See annex IV and V of the Gas Security of Supply Regulation.

[20] The Commission recalls that Member States are due to enforce the Gas Security of Supply Regulation with effective, proportionate and dissuasive penalties. See article 14(10) of the Gas Security of Supply Regulation.

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.

In addition to the above short term actions, it is essential that the co-legislators accelerate the examination of the revision of the Gas Security of Supply Regulation to pursue a more strategic approach to gas security of supply. Furthermore, the Commission is considering proposing that **a legal requirement be set for Member States to ensure a minimum level of storage by 30 September every year.** The attainment of this minimum level would take into consideration regional and national risk assessments. The Commission will also examine the merits of broader changes to the regulatory set-up for gas storage, for instance, extending to storage infrastructure certification mechanisms already applicable to transmission system operators requiring to take into account the risks related to the control of strategic assets by third country party entities. **The Commission will frontload these and other relevant elements in the report to be submitted to the European Parliament and the Council on the application of the Gas Security of Supply Regulation (as per its article 17), including, where necessary, legislative proposals to amend the Regulation by [date].**

<u>Action 8:</u> Affordable retail prices

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 households in general and microenterprises. Given the possibly large indirect impact on public finances, regulated tariffs should be targeted and carefully calibrated. They should also maintain incentives for energy efficiency and an efficient market and include a well-defined roadmap for their phase-out. To help Member States navigate the flexibilities for regulated prices under the electricity market legal framework**,** a **more detailed guidance is included in annex 2 to this Communication.** The Commission is ready to support Member States in the design of such measures.

To support households Member States may also redistribute the revenues from the fiscal measures on high rents to final electricity consumers. Such measures should not be retroactive, allow electricity producers to cover their costs and protect long-term market and carbon price signals. Only the part of additional high rents caused directly by higher gas prices should be subject to fiscal measures. The relevant conditions to be met are set out in more detail in annex 3. Additional ETS revenues can also be used to finance the unforeseen needs for targeted social support.

<u>Action 9:</u> 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. **The Commission continues to help**

[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

Member States designing measures in line with State aid rules, with due regard to the urgency.

The EU Emissions Trading System State aid Guidelines[22] enable Member States to specifically support sectors that, because of indirect emission costs, are most at risk of carbon leakage. At the current juncture, the combined effect of the high energy prices and the rise in carbon prices has aggravated concerns regarding the exposure to the risk of carbon leakage of electricity-intensive industries, particularly those which operate in internationally competitive markets and are unable to pass these indirect costs through to consumers. Against this background, **the Commission is also today adopting targeted amendments to the Guidelines**, to (i) enlarge the list of eligible sectors to reflect their increased risk of carbon leakage, while ensuring that they are subject to reinforced incentives to improve energy efficiency and/or decarbonise their production and limiting competition distortions among Member States, and (ii) to enable a more gradual transition in Member States, where the decrease in the standard CO_2 emission factor is particularly large.

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[23]. 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[24] **allow for investment aid in sustainable energy.** In the on-going review of the rules, the Commission's proposal[25] 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.

4. Transparency and well-functioning markets

Full and easy availability of all data facilitates the continuous scrutiny on the market evolution and **builds trust**. 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. The Commission will ensure publication of regular outlooks for gas and electricity markets[26]. In its winter economic forecast, the Commission has presented its analysis of the energy price impact for the economy[27].

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22 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*

23 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

24 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

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

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

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

To fulfil its central role in promoting and facilitating the low carbon transition[28], it is crucial that the **EU Emissions Trading System is and must remain a rules-based mechanism that functions in a transparent manner**. Fair price formation and integrity of the European carbon market is guaranteed by a robust oversight regime.

Under the Directive on Markets in Financial Instruments (MiFID2), **market participants have to report extensive information about their transactions in allowances and derivatives** thereof to the national financial supervisors[29] 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.

Early analyses of market functioning yield no evidence that manipulation would be a driver of the rise in price of emission allowances. This notwithstanding, the Commission sees merits in further 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.

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%. The Commission is currently investigating as a matter of priority all allegations of possible anti-competitive commercial conduct by Gazprom and gathering additional information from relevant market players.

Regarding electricity, a well-connected and integrated market is a shield to major supply disruptions and allows for a well-functioning stable market. It is therefore very important to continue the ongoing work to **reach our electricity interconnection target of at least 15% by 2030.**

In addition, **demand response is able to increase the energy system's adequacy and reduce the need for investment in peaking generation by shifting consumption away from times of high demand, and thereby reduce fossil fuel dependency**.[30] The Commission therefore

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28 https://ec.europa.eu/info/research-and-innovation/strategy/support-policy-making/scientific-support-eu-policies/group-chief-scientific-advisors/systemic-approach-energy-transition-europe_en

29 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.

30 Estimations suggest that potential for demand response by 2030 could reach 160 GW. Up to 40% of this is already economically and technically viable, but until today only 20GW has been unleashed.

calls on Member States to implement as soon as possible the provisions of the Clean Energy Package to ensure the integration of **demand side flexibility** in electricity markets. The Commission will accelerate ongoing work with the Agency for the cooperation of energy regulators (ACER) on the network code on demand response. At the same time, Member States are strongly encouraged to support the investments necessary to exploit the demand response potential by making use of the recently adopted **new State Aid Guidelines**[31] .

Action 10: Ensuring the highest level of transparency in the carbon market and well-functioning electricity market

As the vast majority of transactions in the carbon market are trades in derivative contracts, the Commission will look into ways to ensure a **more granular public reporting on different types of derivatives**. This data will give market participants better insights into the structure of the market and its evolution over time.

ETS data available to the public should be comprehensible also to readers that are not financial markets professionals. Therefore **the Commission will ask ESMA to periodically analyse 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[32].

In addition, the Commission will organise 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 report of ESMA on the trading in the carbon market, due in March 2022. The experts will also provide advice and information, which can be included in the Commission's annual Carbon Market Report to the Council and Parliament. A dedicated expert event on carbon market oversight could become a regular exercise with timing adapted to the publication of the Carbon Market Report and future ESMA reporting.

The Commission will also organise a high-level expert **event on electricity market design** to bring together electricity producers, traders, regulators and academics. The event will serve as a forum to provide opinions and comments on the final report of ACER on the functioning of the electricity market, due in April 2022.

5. Conclusion

[31] Guidelines on State aid for climate, environmental protection and energy (link to factsheet tbc)

[32] 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).

The developments in the energy markets over the last months have underscored the necessity to accelerate the clean energy transition and reduce permanently our dependence on imports of natural gas.

Diversifying supplies, frontloading renewable energy and improving energy efficiency is the best insurance against price shocks. The actions proposed set the stage for the ramping up of investments. New guidance to address 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.

A new policy on storage will ensure a better preparedness against unreliable sources and volatile markets and increases our preparedness for the next winter season. The proposed actions on affordability mitigate the impact of high prices for households, businesses and industry. While protecting vulnerable consumers and industry, they also ensure the proper functioning of the single market and promote the objectives of the European Green Deal.

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

Situation update and market outlook

As winter progresses, energy prices continue at record highs and remain volatile. Wholesale gas prices are around 310% higher, compared to a year ago. **The outlook for the medium term indicates that energy prices remain higher than past average and volatile at least until 2023**. With an increase of around 210%, wholesale electricity prices have followed a similar pattern. The high wholesale prices continue to drive up retail gas and electricity prices, which increased by 83% and 38%, respectively in January, compared to the previous year. Wholesale electricity costs represent currently more than half of final retail prices in Europe, above the long-term average of around one third. As there is a time lag in the translation of wholesale prices increase to retail prices further increases in retail gas and electricity prices can be expected in the course of the year, although the timing and the extent will vary across Member States.

Figure 1: Natural Gas prices (€/MWh) - Weekly average (source: S&P Global Platts, VaasaETT)

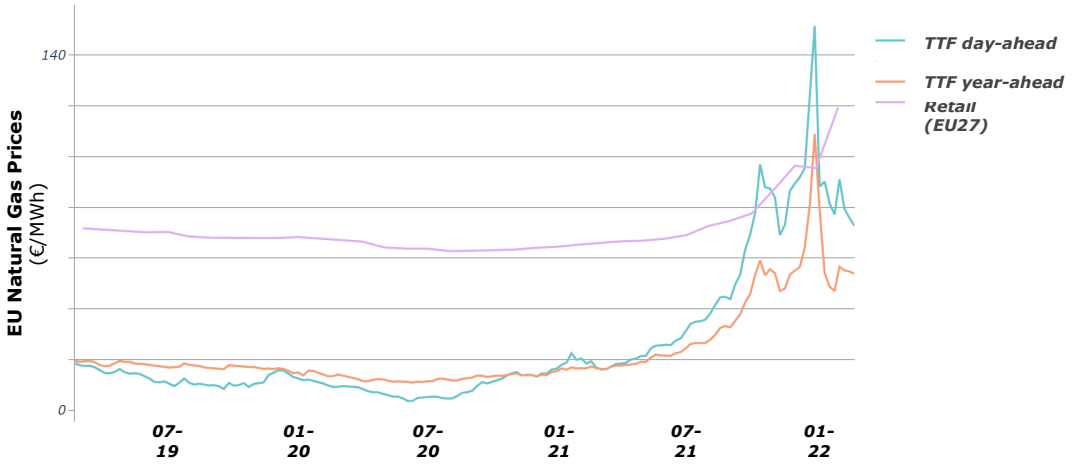
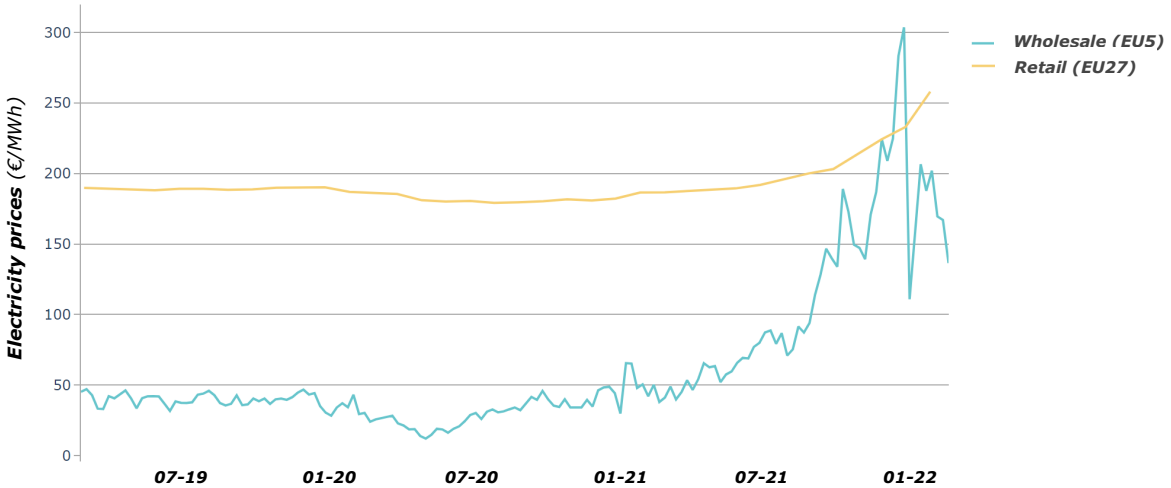


Figure 2: Electricity wholesale & retail prices overview (€/MWh) - Weekly average (Sources: S&P Global Platts, VaasaETT)



The causes for these high energy prices are linked to the high global demand for gas and amplified by geopolitical factors. The increased demand linked 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, driving up volatility and prices even further. Wholesale electricity prices peaked at 385 €/MWh on 21 December 2021 and then decreased to 66 €/MWh in early January before rising again to 239 €/MWh on 25 January, only to fall again to 87 €/MWh on 19 February thanks to increasing wind output due to storms such as 'Eunice'. This volatility reflects the price uncertainty in markets.

Gas storage cushions the increase of energy prices, but only to a limited extent. In mid-February gas storage levels were at 31%, around 9% 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.

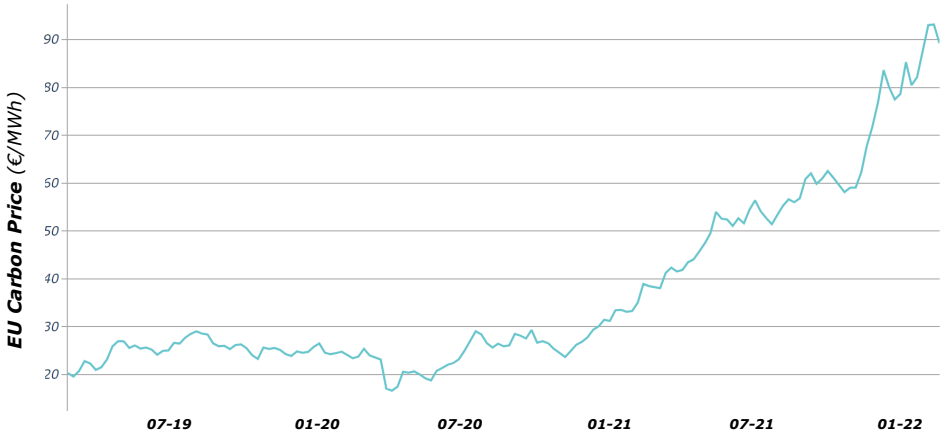
Supply is becoming more diversified thanks to increasing LNG imports Also thanks to the EU's extensive energy diplomatic outreach, LNG has partly compensated the lower deliveries of gas through pipelines.

The effect of rising gas prices on the electricity prices is around eight times bigger than the effect of the carbon price which has also been displaying an upward trend over the past months. High gas prices also led to an increased use of coal instead of gas in power generation, which in turn raised demand for emission allowances, with the carbon price fluctuating between EUR 80 and EUR 90 in January 2022. Looking at consumer bills, 2021 data demonstrate the carbon price constituted 15%[33] of the retail electricity price in the EU. On the allowance supply side, more than 607 million allowances will be auctioned in 2022. In addition, around 520 million[34] 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: S&P Global Platts)

[33] 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.

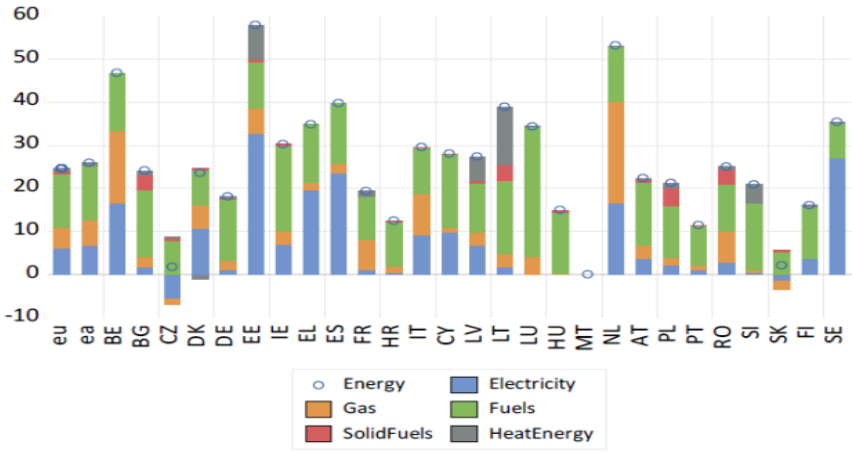
[34] The final number might vary as allocation level changes will take place if production has changed in 2020 and 2021 compared with the production in the period 2014 -2018.



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 price is likely to lead to an increase of poverty, and energy poverty in particular, which already affects more than 35 million people in the EU in 2020.

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 aluminium 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 aluminium 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 squeezes producers' profits and leads to increased prices for other commodities, notably food. Fertiliser prices increased by 142% over the last year[35]. The share of energy and fertilisers in farmers' production costs is of 20%. 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 the different inflationary contexts. The situation could deteriorate if higher energy prices put 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.

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, often offering higher prices than their original supplier, and less competitive retail markets.

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

Annex 2:

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

1. Introduction

The objective of the Electricity Directive is to ensure affordable, transparent energy prices and costs for consumers, a high degree of security of supply and a smooth transition towards a sustainable low-carbon energy system. Article 5 in particular aims to ensure effective competition to the benefit of consumers and while ensuring the protection of energy poor and vulnerable household customers It contains the framework for exceptional, time-limited implementation of regulated prices, which may be introduced in defined circumstances situations - including periods of significantly higher energy prices. In order to maintain incentives for energy efficiency and an efficient market, regulatory measures should remain temporary and include a well defined roadmap for their phase-out.

This Guidance aims to support Member States in the design of such interventions, ensuring they benefit consumers during this current crisis and enhance competition to the benefit of consumers in the longer term.

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[36]:

[36] The possibility for regulated prices envisaged in the electricity directive is restricted to households and microenterprises. The Commission understands that Member States may see the need to develop specific measures for SMEs in order to ensure they can access electricity at equivalent prices to those for microenterprises during the current exceptional circumstances. While the Commission, as guardian of the Treaty, is responsible for ensuring that all measures taken by Member States comply with EU law, it may use discretion to decide on the best way to do so. In this regard the Commission will exercise its monitoring and enforcement role in a manner that is proportional and adapted to the specific situation of peaking prices.

- 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 households and micro-enterprises 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[37].

2. 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 volatile prices to the extent that those consumers have no possibility to adjust their demand,
- 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

3. 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

[37] 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".

- 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).

4. 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, and 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.

5. 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
    - 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 operate in a prudential way, protecting consumer interests
- Measures to ensure suppliers are able to make offers on the market meeting consumer needs:
    - suppliers are able to access long term contracts on an equal basis
    - 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

In any case, Member States should ensure full and effective implementation of Chapter III of the Electricity Directive to ensure consumer empowerment.

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. This needs to 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 be 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 3:

Guidance on the application of infra-marginal profit fiscal measures

In the current crisis situation, Member States may exceptionally decide to introduce tax measures which seek to capture some of returns that certain electricity generators gain.

Redistributing the revenues from the fiscal measures on infra-marginal rents to final electricity consumers would partly prevent that current high gas prices increase the costs incurred 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, while incentivising additional investment in renewable energy. This includes notably the following elements:

- The duration of the measure should be limited and tied to a specific crisis situation. The initial duration should not exceed 30 June 2022;
- 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 as well as the carbon price signal from the EU ETS 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 investments in capacity needed for a decarbonised and reliable power system;
- It has to be noted that some of the increase in global gas prices has a structural component (that could be defined on the basis of the average prices over time). The tax should not deal with the effects of this structural component.
- The method for the calculation of the rents to be considered "excessive" – linked to the specific crisis environment - and the trigger/deactivation mechanisms would have to be clearly specified and justified. In order to avoid any arbitrary use that would result in heavy distortions, the "windfall profits" and the "trigger/deactivation" mechanism would have to be defined on the basis of objective and verifiable criteria and events (i.a. the deviation from an average of global gas prices over a sustained period of time, the number of hours that gas sets the price in the electricity system). The duration of the tax should be also clearly limited in time, not going beyond the 30 June, on the basis of these well-defined criteria.
- 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 apply to all generators regardless of whether they are covered by support schemesor capacity remuneration mechanisms , 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; they could address the specific situation of fixed premium, which can increase infra-marginal rents.

- The measure should not be retroactive and 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 passed 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).

Notably in as far as exemptions from such profit taxes lead to selective advantages to specific undertakings, State aid rules may apply.