EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Gas and electricity prices have reached record levels in 2021 and hit all-time highs following the Russian invasion of Ukraine. Energy prices are expected to remain high due to uncertainty in the market following a series of gas supply disruptions that can only be explained by a deliberate attempt by Russia to use energy as a political weapon. Further disruptions of Russian gas supplies to the EU in the forthcoming weeks or months may result in even higher levels of gas prices with knock-on effects for the price of electricity, level of inflation, the overall EU financial and macroeconomic stability and on citizens.

The Commission is acutely aware of the impact that the uncertainty around gas supply is having on the electricity market. Member States across Europe have experienced a surge in electricity prices linked to rising gas prices, given that gas is currently the marginal price setting fuel. At the same time, electricity generation in the EU has been below usual levels in the last months due to maintenance of power stations, lower output from hydropower generation, and closures of some older power plants.

In parallel, record-breaking temperatures this summer have pushed up energy demand for cooling and have added pressure on electricity generation. The extreme weather conditions have thus contributed to energy scarcity and high energy prices, constituting a burden for consumers and industry and dampening the economic recovery. Additional supply pressures on energy and food commodity prices are feeding global inflationary pressures, eroding the purchasing power of households and the economy as a whole.

This economic context requires a rapid and coordinated EU-wide response to mitigate the difficulties that high prices are causing for consumers and, not only energy poor and vulnerable but also middle income households and SMEs. Electricity retail prices have increased by more than half year-on-year from July 2021[1] and the extraordinary increases are expected to continue ahead of the next heating season gradually trickling down to most consumer contracts. The EU response needs

[1] Source: VAASAETT

to coordinated in a careful and coordinated holistic way to ensure that the current crisis of high electricity prices does not become a security of supply crisis. Electricity must continue to flow efficiently around Europe so that Member States can export surprlus electricity particularly from variable renewables and rely on electricity imports when needed. The Commission is therefore also taking action to ensure that current energy prices crisis does not turn into a security of supply risk. (otherwise SOS / supply risk)

The Commission therefore proposes an integrated and interdependent package of urgent market interventions to be introduced immediately, while at the same time it is continuing to work on long-term market design as announced in the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design that formed part of the Repower EU Plan adopted on May 18, 2022. The proposed Regulation pursues the same objectives as the ongoing longer-term market design review but focuses on market design elements that can be changed and implemented quickly so as to deliver immediate benefits in the current crisis situation. It preserves the benefits of the internal electricity market in terms of dispatch efficiency and security of supply while lowering electricity demand and the impact of high gas prices on consumers' electricity bills.

The Commission notes that the measures contained in the proposed Regulation will contribute to mitigating the effect of high electricity prices, in particular as regards certain consumer categories. However, the measures might not result in immediately bringing energy prices back to pre-crisis levels nor removing the significant effects of the crisis on both inflation and the European economy.

Firstly, in reply to the heightened risk for the coming winter and the need to lower overall electricity demand, to preserve fuel stocks for electricity generation and take targeted action to reduce electricity prices in the most expensive hours, the proposed Regulation sets out two electricity demand reduction targets. The first requires Member States to put measures in place to lower overall electricity consumption from all consumers including those who are not yet equipped with smart metering systems or devices enabling them to adjust their consumption during the day. The measures should be sufficiently ambitious to reach the indicative target and could include, for example, consumer information and communication campaigns and tenders for demand-side response or energy not consumed. In addition, to specifically target most expensive hours of electricity consumption when gas generally sets the marginal price, the Commission proposes a mandatory target of at least a 5% reduction in net electricity consumption during peak price hours. The binding target addresses more specifically consumers who can deliver flexibility though demand reduction offers on an hourly basis. Member States should be free to choose the appropriate measures to reach achieve the demand reduction targets and should, in particular, consider economically efficient and market-based measures such as auctions or tender schemes. This may include existing schemes or national incentives to develop demand response and may also include financial incentives or compensation to participating market parties. Such measures must however be designed to achieve cost effective demand reductions, and with broad participation to avoid subsidies for particular consumer categories that unnecessarily distort other markets.

Secondly, the proposed Regulation sets out an ex-post approach to recover excess revenues from inframarginal technologies by setting a revenue limit specifically for the technologies listed. The revenue limit may be applied at the moment when transactions are settled or, if not possible, thereafter. This could be due to differences in the way wholesale electricity markets function in different timeframes and how they are organised in Member States. Through this ex-post approach, the electricity market would function and clear as today, thereby ensuring that the cheapest and most efficient power plants around the EU are dispatched first and that Member States can rely on imports when needed. This preserves the incentive for gas-fired power plants, storage facilities and demand response to be available to run when needed, ensuring the stable operation of the electricity system throughout the winter.The revenue limit should be set at a level that would encompass the majority of inframarginal generators in the EU, avoid jeopardising the availability and profitability of existing plants and future investment decisions for new inframarginal and flexible generation. The limit should not apply to fixed revenues obtained by installations subject to feed-in tariffs or two-way contracts for difference capturing all revenues above a certain price as they do not earn additional revenues through the recent spike of electricity prices. The Commission proposes a limit of 200 EUR/MWh which takes into account the levelised cost of energy of inframarginal technologies and the need to provide certainty of returns within the market for investments. [Add details/justification of the 200 cap]

This measure reduces the impact that the margin-setting technology in the electricity market (often gas-fired power plants) has on the revenues of other generators with lower marginal costs such as most renewables, nuclear, and lignite. It mimics the market outcomes that could be expected were global supply chains functioning normally and not subject to the weaponisation of energy through gas supply disruptions. The measure would apply to revenues from the sale of electricity for all inframarginal generators as defined in the Regulation and covers all market timeframes. Member States should put appropriate procedures in place to recover the excess revenues. The revenue limit will lead to extra financial resources for Member States to support consumers struggling with electricity bills and would be compatible with some other measures set out in the Energy Prices Toolbox[1] adopted on 13 October 2021 and in the Communication on Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design[2] set out in the Repower EU Plan of 18 May 2022. The amount of revenues collected by the Member States will be related to the amount of electricity generated from inframarginal technologies, which varies depending on the energy mix and the design of RES support schemes of each Member State. The Member States must use these additional resources to support consumers – for example by supporting all domestic consumers with direct grants based on their electricity consumption to help cover their electricity purchase costs, or to support investments in RES, storage, demand response, transmission and interconnection, while respecting competition rules. However, the revenues must not be used to directly support specific consumers other than households.

Energy and in particular electricity is an essential good, as recognised in the European Pillar of Social Rights, and this importance is reflected in the Electricity Directive. The protracted and escalated energy crisis risks is resulting and will further result in record high energy bills for consumers – as existing contracts come up for renewal.

Vulnerable customers and the energy poor are hardest hit as was already last winter, but increasingly middle income households and SMEs who, risk not being able to pay their energy bills – facing the choice between energy and other essential goods or, for SMEs, their financial viability.

This represents a challenge: ensure adequate support so that household consumers continue having access to necessary energy, while not undermining the incentive to save energy. The starting point for action is full recognition of the hardship that households risk facing, including middle income households and need for support measures at national level.

Already a wide range of support measures have been put in place by Member States including based on the Toolbox [explain]. These have included direct income support, reductions in taxes and levies and rebates on consumers energy bills. Member States have also intervened in price setting in the supply of electricity – that is establishing regulated prices for end-consumers.

Article 5 of Directive 2019/944 sets out rules on regulated prices, and in this regard the Commission provided Guidance on Application these rules in the Communication REPowerEU: Joint European Action for more affordable, secure and sustainable energy. However, under

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Directive 2019/944 such regulated prices may not cover small and medium enterprises and must not be below cost.

As set out in the Communication on short-term market interventions and Long Term Improvements to the Electricity Market Design, the Commission considers it could be acceptable to extend price regulation to SMEs – this reflects the fact that the current energy market situation with high and volatile wholesale gas and electricity prices may be restricting competition and harm customers in the SME segment. However, such a possibility should maintain the incentive to reduce consumption – and thus be limited to 80% of their consumption.

Add households – why legal clarity is needed

This Regulation should also give Member States access to revenues from generators' inframarginal rents to use to ease the burden of the crisis on end-consumers. Doing so by compensating suppliers for supplying at below cost regulated prices would be one way to do this.

Ensuring Member States have these flexibilities during the current crisis means that the internal market can continue to play its necessary role is supporting effective crisis responses. This is an important expansion of the toolbox and is a critical part of the practical solidarity needed. Member States implementing such measures should also report them on the same basis as they do for regulated prices established in Accordance with Article 5 of Directive 2019/944 However, whether to use these possibilities should remain the choice of Member States who are best placed to determine the efficacy of such measures, particularly compared to other tools and the match them to the need to target support to where it most needed.

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With a view to avoiding the significant distortions of the internal market, potentially accentuating the security of supply risk for this winter, it is crucial that all Member States act jointly and in a spirit of solidarity as soon as possible. All Member States have been negatively affected by the current crisis. but not all are equally financially able to support consumers. This may lead to a situation where some Member States provide support to consumers while others may not be able to afford or might hesitate to intervene with measures that may negatively affect the internal electricity market A coordinated effort to reduce demand and redistribute excess revenues to struggling consumers is the best way to navigate the challenges ahead this winter. Member States have varied financial means available to them to mitigate the financial impacts of price increases on consumers. Without intervention at the wholesale level, there will continue to be an uneven patchwork of interventions with some consumers more protected than others, potentially leading to distortions not only at the level of electricity markets, but in the entire internal market, since energy prices affect the competitiveness of the whole economy. This proposal therefore ensures that all Member States coordinate their efforts. It reflects the principle of energy solidarity, which has recently been confirmed by the Court of Justice as a fundamental principle of EU law[1]. By coordinating demand reduction, preserving the ability to import electricity when needed and using excess revenues to support consumers, Member States will benefit from the energy solidarity of their own citizens and neighbours.

- **Consistency with existing policy provisions in the policy area**

The proposed instrument sets out temporary, proportionate and extraordinary measures. It complements existing relevant EU initiatives and legislation and is fully complementary to the initiatives already taken by the Commission to respond to the current crisis in energy markets. It flows logically from existing initiatives, such as the Energy Prices Toolbox adopted on 13 October 2021 and the "REPowerEU" Plan of 18 May 2022, which contains a list of measures that Member States can use to support consumers, and is fully complementary to the "Save Gas for a Safe Winter" initiative.

The proposed Regulation is compatible with the "efficiency first" principle and, in line with EU legislation seeking to preserve investment signals in new flexible and renewable generation. It ensures that the pan-European electricity market can continue to function and support security of supply over the winter and provides extra resources to enable Member States to support consumers.

In addition, the demand reduction elements of the proposed Regulation will support the recently adopted Storage Regulation (EU) 2022/1032 by reducing the need for electricity production from gas, thereby helping Member States to preserve gas stocks obtained through the storage filling obligations and safeguard supply for the winter of 2022–2023.

This measure concerning revenue limitations would work in a complementary way to the rules set out in the Electricity Regulation (EU) 2019/943 for market functioning and cross-border trading. The EU-wide Internal Energy Market is based on the principle of free price formation and this measure does not intervene directly in how wholesale electricity prices are formed. However, Regulation (EU) 2019/943, Article 10 also prohibits any indirect measures that may restrict wholesale market price formation. Nevertheless, under exceptional circumstances, Directive (EU) 2019/944 recognises the possibility of interventions in price setting for the supply of electricity with the aim of protecting consumers. Such interventions, however, should not override the principle of open markets, should be reserved to clearly defined circumstances and beneficiaries, and should be limited in duration. It follows that Directive (EU) 2019/944 recognises that direct or indirect interventions in price formation might exceptionally be justified, for example, where supply is severely constrained due to factors outside the responsibility of the generators, causing significantly higher electricity prices than normal, or in the event of a market failure which cannot be remedied by other remedies of regulatory authorities and competition authorities.

Following the Russian invasion of Ukraine, the EU has set out the REPowerEU Plan with the aim to end the EU's dependence on Russian fossil fuels, as soon as possible and at the latest by 2027. To achieve this, the REPowerEU Plan sets out measures related to energy savings and energy efficiency, and proposes an accelerated roll-out of clean energy to replace fossil fuels in homes, industry and power generation. It also set out a toolbox of emergency measures that Member States can use to support consumers. In this context, the proposed Regulation builds on the existing direction of EU policy and is consistent with the goals set out in REPowerEU.

[For B1: The proposed Regulation … overrides some elements of the Directive on regulated tariffs, but is justified, reasonable and proportionate, etc?]

The proposed initiative responds to the increased retail price burden being felt by all electricity consumers and the need to reduce demand and save gas this winter as a result of Russia's war against Ukraine. It is fully complementary to the existing Electricity Risk Preparedness Regulation (EU) 2019/941 and security of supply coordination mechanisms.

- **Consistency with other Union policies**

The proposal is an extraordinary measure, to be applied for a limited time, that is consistent with a broader set of initiatives to enhance the Union's energy resilience and to mitigate the risk or impact of possible emergency situations. The proposal is also fully compatible with market rules and does not compromise the integrity of the internal market, as functioning cross-border energy markets are key to ensure security of supply in a situation of supply shortages. Providing for more coordinated electricity demand reductions, it is also in line with the Commission's Green Deal targets and fully supports the "Save Gas for a Safe Winter" initiative.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this instrument is Article 122(1) of the Treaty on the Functioning of the European Union ('TFEU').

The current disruption to gas supplies and resulting impacts on gas and electricity prices, and higher demand for energy resulting from record-breaking temperatures this summer combined with reduced availability of certain power plants constitute a severe difficulty in the supply of an energy product pursuant to Article 122. Unless managed in a careful way, there is a risk that gas supply disruptions could lead to knock-on difficulties in the electricity sector beyond the current prices crisis, which could have a significant impact on consumers and the broader economy. . EU leaders and Commission have identified the urgent need for additional measures to mitigate the impact on EU citizens and be better prepared for the coming winter. The measures under the instrument allow Member States to have a coordinated approach to protecting consumers without compromising the functioning of the internal electricity market and expressing the principle of energy solidarity. Absent this measure, there is a risk that only wealthier Member States could have the resources to protect consumers. Furthermore, this measure is compatible with the current way of trading electricity around Europe, thereby ensuring that energy sharing remains intact, that Member States can continue to rely on their neighbours for imports and that those Member States with less domestic generation and limited natural resources are more protected from the risks of supply disruptions.It is therefore justified to base the proposed instrument on Article 122(1) TFEU.

- **Subsidiarity (for non-exclusive competence)**

The planned measures of the present initiative are fully in line with the subsidiarity principle. Because of the significant uncertainty in the EU electricity market and the resulting extraordinary high prices caused by the weaponisation of gas supply by Russia, there is a need for EU level action. A coordinated approach through Union-wide electricity demand reduction, in the spirit of solidarity, is necessary to minimise the risk of potential major disruptions during the winter months when electricity consumption and electricity production from gas will be higher.

Given the unprecedented nature of the gas supply crisis, the role of gas as a key technology to meet electricity demand and the level of integration of the EU internal electricity market, action at Union level is warranted. Member States must be able to rely on imports if and when needed this winter, underlining the importance of the internal market. Power must continue to flow around Europe to avoid a high-price crisis becoming a security of supply crisis. However, this must be affordable and the disproportionate effects on consumers' electricity bills should be tackled. To preserve the functioning of the electricity system and cross-border trade and investments, a common approach to revenue limitations for inframarginal technologies is both reasonable, appropriate and proportionate. Only EU action motivated by a spirit of solidarity between Member States to reduce electricity demand, and coordinated mechanisms on cross-border trade to avoid unnecessary distortions while providing Member States with financial resources to support consumers in need, can ensure that the impact of high prices on consumers bills are minimised and that the current crisis does not lead to lasting harm for citizens and the economy.

By reason of its scale and effects, the measure can be better achieved at Union level, hence the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

The initiative complies with the proportionality principle. It falls within the scope of Article 122(1) TFEU. The policy intervention is proportional to the dimension and nature of the problems defined and the achievement of the set objectives.

In view of the unprecedented geopolitical situation and the significant threat for citizens and the EU economy, there is a clear need for coordinated action. Hence, the proposal does not go beyond what is necessary to achieve the objectives laid down in the current instrument. The proposed measures are considered proportionate and build to the extent possible on existing initiatives, which have been welcomed by Member States.

This proposal sets the final result to be achieved, in the form of setting out demand reduction measures and a legally binding energy reduction obligation for Member States, while giving Member States full autonomy in choosing the most effective means to meet these obligations according to their national specificities. Regarding the revenue limitation to fund support to consumers, the proposed Regulation sets the common limit but Member States have full autonomy regarding the collection of these revenues, which might vary depending on existing market settlement procedures in each Member State. In addition, Member States retain the right to introduce further limitations, as long as they are in line with Union Law and to use those revenues to support consumers in a way deemed most appropriate by the Member State.

- **Choice of the instrument**

Taking into account the dimension of the energy crisis, the scale of its social, economic and financial impact and the urgency to mitigate them, the Commission deems suitable to act by way of a regulation which is of general scope and directly and immediately applicable. This would result in a swift, uniform and Union-wide cooperation mechanism.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Due to the politically sensitive nature of the proposal and urgency to prepare the proposal so that it can be adopted on time by the Council, a stakeholder consultation could not be carried out.

- **Fundamental rights**

No negative impact has been identified on fundamental rights. The measures under this instrument will not affect the rights of customers who are categorised as protected under Regulation (EU) 2017/1938, including all household customers. Furthermore, the provision on revenue limits in the proposed Regulation fully takes into account the need to protect existing investments and therefore will not affect the right to own and use lawfully acquired possessions. The instrument will enable to reduce the risks associated with gas shortage that would otherwise have major implications on the economy and society. [For B1 - Anything on below cost regulation?]

4. BUDGETARY IMPLICATIONS

This proposal does not require additional resources from the EU budget.

5. OTHER ELEMENTS

Not relevant.

[1] Judgment in Case C-848/19 P (Germany v Poland).

[2] Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen COM/2021/803 final; proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final.

[3] Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen COM/2021/803 final; proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) COM/2021/804 final

[4] Regulation (EU) 2022/1032 of the European Parliament and the Council of 29 June 2022 amending Regulation (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173/17 of 30 June 2022.

Proposal for a

COUNCIL REGULATION

on [...]

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) [Motivation]Very high prices and volatility in electricity markets have been observed since September 2021. This dynamic is intrinsically linked to the high price of gas, which increases the price of electricity produced from gas fired power plants, which are often needed to satisfy demand. The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, since February 2022 has disrupted global energy markets and exacerbated the high energy prices crisis.

(2) Against this background, the Energy Prices [1] presented by the Commission in October 2021 was designed to allow a co-ordinated approach to protect those most at risk and set out medium-term measures for a decarbonised and resilient energy system. In its communication of 8 March 2022 entitled 'REPowerEU: Joint European Action for more affordable, secure and sustainable energy' the Commission outlined a series of measures to strengthen the Toolbox to respond to rising energy prices.

(3) Furthermore, on 18 May 2022 the Commission presented the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design[2] that set out a series of additional short-term measures to tackle high energy prices and address possible supply disruptions from Russia.

(4)

(5) The recent escalation of disruption of gas supply from Russia points to a significant risk that a complete halt of Russian gas supplies may materialise in the near future, in an abrupt and unilateral way. To increase the EU's security of energy supply, the Council, on the basis of the proposal made by the Commission, adopted the Regulation on coordinated demand-reduction measures for gas[3] that provides for a voluntary reduction of natural gas demand by 15% this winter and foresees the possibility for the Council to trigger a 'Union alert' on security of supply, in which case the gas demand reduction would become mandatory.

[1] COM(2021) 660 final
[2] COM(2022) 236 final
[3] OJ L 206, 8.8.2022, p. 1–10

(6)

(X) Gas prices have increasedfourfold in 2022 as compared to 2021. The rise has been particularly stark in the months following the start of the invasion of Ukraine and the recent disruption of gas supplies [ADD DATA for summer 2022] and has led to a significant increase in the costs of gas-fired power plants. Gas-fired power plants often set the price paid for the electricity, regardless of the sources from which they are generated. This is especially the case in the day-ahead electricity market.

(X) *[take care that the general part doesn't become too long]* The fifth package of sanctions adopted by the EU banned the purchase, import, or transfer of coal and other solid fossil fuels into the EU from Russia as from 10 August 2022. The sixth package introduced oil import restrictions. Coal and oil import restrictions deeply affected energy markets resulting in substantial increases in prices, volatility and uncertainty on energy supply of these commodities. The rise of gas prices continued to support the gas-to-coal switching leading to an increase in demand for thermal coal in power generation in Europe. [ADD DATA increase in coal and oil prices; marginal price of coal and oil-fired plants - A4]

(X) At the same time, record-breaking temperatures in the summer of 2022 have pushed up demand for electricity, while electricity generation from other technologies has been significantly below historical levels due to technical and weather-dependant circumstances in the same period. This is due mainly to a shortfall in the production of nuclear power plants in different Member States, and an exceptional drought, which has led to scarce hydropower generation and low levels of major rivers affecting the transport of commodities. Hence, due to exceptional energy scarcity gas-fired generation levels have stayed persistently high contributing to high energy prices, constituting a burden for consumers and dampening the economic recovery.

[Increase in consumer prices Need to add that increase in retail prices will trickle down to consumer contracts as these are being updated and will be updated before and during the winter.

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(8) [Legal Basis] Article 122(1) of the Treaty on the Functioning of the European Union enables the Council to decide, on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

(X) The current context of disruption to gas supplies and reduced availability of certain power generating facilities, and the resulting impacts on gas and electricity prices constitute a severe difficulty in the supply of an energy product within the meaning of Article 122(1) of the Treaty on the Functioning of the European Union. There is a risk that such difficulties could be further exacerbated in the coming winter in case of further disruption of gas supplies, which could affect the availability and costs of gas-fired power plants.

(X) The sustained uncertainty in the market due to the current geopolitical tensions and the war in Ukraine, in particular gas supply prospects and major occurred and expected cuts in supply has had impact on the European economy. High natural gas and electricity prices are feeding inflation in the euro area inflation at 8.9% in July 2022 where 4 percentage points thereof stemming directly from energy, increasing further pressure on consumers, notably the most vulnerable, and businesses. [we don't need to rewrite the background in the recitals – they should be more legal]

(X) All Member States have been negatively affected by the current energy crisis. In the meeting of 23 and 24 June, EU leaders and the Commission identified the urgent need for additional measures to mitigate the impact of high energy prices on citizens and be better prepared for the coming winter season.

(X) [too long and with some repetitions for recital part, we can still do some shortening]
G iven the unprecedented nature of the gas supply crisis, the role of gas as a key technology to meet electricity demand and the level of integration of the EU internal electricity market, a rapid and coordinated EU-wide response is hence necessary to mitigate the risk of electricity prices reaching unsustainable levels and the risk of heterogeneous national measures which may endanger security of supply at European level and undermine the functioning of the internal energy market. The Commission therefore proposes an integrated and interdependent package of market interventions.

(X) [Art 3 – 4 Demand Reduction]

A coordinated effort by Member States to reduce electricity demand and redistribute the revenues of certain technologies to support consumers, in particular vulnerable ones, will mitigate the impact of high energy prices and will ensure that the current crisis does not lead to lasting harm for citizens and the economy. Such a coordinated effort preserves the functioning of the internal energy market, ensuring that electricity in Europe continues to flow where it is most needed and enshrining the principle of energy solidarity between Member States and citizens of the Union.

(10) [Demand reduction] – please move up

[Recitals should explain the legal text ; background can go to memo] Reducing demand for electricity will help drive prices down, while ensuring adequate electricity supply to the benefit of Union consumers. Demand reduction can contribute to driving down the costs of electricity for consumers while potentially rewarding them for their flexibility. It can also drive down electricity wholesale prices in specific hours of the days, in particular when prices are highest, and help save gas.

(11) It is therefore important to incentivize tehe deployment of demand response solutions which are also key to achieve the energy transition in line with the general policy objective of the European Green Deal. Directive 2019/944 provides the framework to enable demand response in the electricity markets. The Communication on Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design urges Member States to accelerate the development of demand response.

(12) This Regulation sets two targets for a coordinated effort by Member States to reduce electricity demand. (recital speak: “MS should therefore be obliged to reduce their demand”) An indicative target to reduce total net electricity consumption and a binding target to reduce net electricity consumption when electricity wholesale prices are highest.

(X) First, in order to lower overall electricity consumption from all consumers including those who are not yet equipped with smart metering systems or devices enabling them to adjust their consumption during the day Member States shall undertake best endeavours to achieve the indicative target. The target should apply to all consumers including those who are not equipped with smart metering systems or devices enabling them to adjust their consumption during the day.

(X) Second, to preserve fuel stocks for electricity generation and to specifically target the most expensive hours of electricity consumption when gas generally sets the marginal price the binding target addresses more specifically consumers who can deliver flexibility through demand reduction offers on an hourly basis, including those enabled to do so by demand response aggregators. Reducing demand during hours when electricity prices are high should reduce the number of hours where gas is the technology setting the marginal price.

(add sentence why immediate action is needed (unlike in gas, where action only after alert))

\(13) Member States may choose the appropriate measures to achieve the demand reduction targets. When identifying appropriate demand- reduction measures to achieve the binding target, Member States should in particular consider market-based measures such as auctions or tender schemes, by which Member States can incentivise a reduction of consumption in an economically efficient manner not achieved by the market. This may be the case for example because of restrictions on re-selling electricity or because there may be situations in which the cost of paying for demand reductions can be more than offset by the reductions in costs for all other consumers during the period of reductions.

Existing schemes or market design development to develop demand response may be used to reach the targets set in this Regulation. The measures taken at national level may also include financial incentives or compensations to market participants affected, if a real demand reduction is achieved compared to the reference period (additionality). [EXPLAIN WHY MSs SHOULD BE FREE (WHY NOT UNIFORM MEASURES] + WHY MARKET-BASED PREFERABLE + JUSTIFY OTHER CRITERIA]

(X) When designing electricity demand reduction measures Member States should (recitals: "should") ensure that such measures are designed so as not to undermine the EU electrification objectives as set out in the Communication on Powering a climate-neutral economy: An EU Strategy for Energy System Integration[1]. Electrification is key to reduce EU dependence on fossil fuels and ensure long-term strategic autonomy of the European Union as this leads to limiting the magnitude of this energy crisis and preventing future energy crisis..

(14) In order to enhance efficiency and knowledge sharing, Member States may establish regular cooperation and sharing of best practices, possibly involving the Regulatory Authorities, national Transmission System Operator and the Distribution System Operator.

(X) [Price cap, Chapter III]

– we need to be more specific – on recital for Art 6, one for Art 7, one for 8 – and shorten the rest – the text can go to the memo]

In the current context of high energy prices, Member States should adopt measures which reduce the impact of certain technologies on the revenues of other generators with lower

[1] COM(2020) 299 final

marginal costs in the wholesale electricity market. (unclear to a layman – Maybe one sentence: in marginal pricing system, current crisis situation leads to extremely high and unexoected revenues... therefore...)

(X) This should be achieved by limiting the revenues of certain electricity generators obtained on power exchanges across all wholesale electricity market timeframes and through bilateral contracts (OTC – over the counter trading) . Member States should ensure that the clawed-back revenues are passed on to final customers to mitigate the increase in their electricity costs.

(X) [[Art X - iuncluded technologies – justify list in Art X]

(…)

(X) Having a uniform cap on the revenues aims at preserving the functioning of the internal market as it would maintain price-based competition between electricity generators from different technologies. Furthermore, such cap would minimize the risk that generators are remunerated for inefficient operations. The cap should also incentivize investments in new more cost-effective technologies. (X) The limitation of the revenues should be applied in a way that preserves the efficiency of price signals, in particular for short-term operational decisions and cross-border trade of electricity, and that does not discriminate between consumers in different Member States.

(X) While applying the revenue limitation at the time when transactions are settled may be more effective, it may not always be possible, for instance due to differences in the way wholesale electricity markets function and are organised in the Member States. Therefore, Member States may apply the revenue limitation either at the moment when electricity is exchanged or thereafter.

(X) The increase in global gas fossil fuel prices has a structural component. The level at which the revenues of electricity generators are limited should not deal with the effects of this structural component. In addition, it should enable Member States to generate the amount of revenues necessary to mitigate the impact of the electricity price surge on final consumers. At the same time, the level at which revenues should be limited should not interfere with the long-term price signals that contribute to the coverage of fixed and variable costs of the installations concerned and should preserve and incentivise the investments in capacity needed for a decarbonised and reliable electricity system.

It is therefore necessary to exclude from the application of the measure those technologies that would not be able to cover their investment and operating costs if they were subject to the revenue limitation, such as [list RES techs].

(X) The price of hard coal and crude oil has raised significantly since the invasion of Ukraine and has been extremely volatile [A4 – true?], with a consequent increase in the [variable / marginal?] costs of coal-fired and oil-fired installations above [200 EUR/MWh]. Therefore, such installations should not be subject to the revenue-limitation measure.

(X) Technologies that bid in the electricity markets based on particularly high opportunity costs, such as demand-response and storage, should also be excluded from the application of the measure in order to preserve the efficiency of price signal and security of electricity supplies, especially in times of high electricity demand, and reduce the use of gas-fired power-plants to the extent possible.

(X) In order to preserve the incentives for the development of innovative technologies , demonstration projects should be excluded.

In order to ensure the efficient application of the measure, and in particular to reduce excessive administrative burden, Member States may exclude from the application of the measure producers that generate electricity from installation facilities with an installed capacity lower than 20 kW.

(X) The revenues obtained by some installations by way of State measures are firmly capped. Installations whose revenues are firmly capped do not perceive additional revenues resulting from the recent spike of electricity prices. Therefore, they should be excluded from the application of the revenue-limitation measure.

1. [Chapter IV – regulated prices] (X)

   This part is far too long; one recital per Article. Please bring down text parts from above and shorten to trhee paras

[Consumers' right to choose the energy supplier who offers them the best price and service lies at the heart of the internal electricity market. The resulting competition has put downward pressure on prices and increased choice, as consumers no longer had to rely on incumbent monopolists. Too long!]

2. Competition and choice of suppliers and offers will also be a key part of realising the European Green Deal, as they allow consumers to benefit from the internal market for electricity and to contribute to attaining the Union's energy efficiency and renewable energy targets.
3. The freedom of suppliers to determine the price at which they sell electricity is important to achieving well-functioning markets and the benefits of competition. As recognised in Directive 2019/944, public interventions in price setting for the supply of electricity constitute a fundamentally distortive measure that may lead to the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, and the restriction of competition and discourage innovative products and services on the market.
4. Therefore, when Member States opt for such public interventions in price setting, these should be carried out only to pursue objectives of general economic interest ~~as public service obligations~~ and be subject to specific conditions set out in that Directive
5. The Commission provided Guidance in the Communication of 8 March 2022 on REPowerEU: Joint European Action for more affordable, secure and sustainable energy to support Member States in the design of public interventions in price setting for the supply of electricity, ensuring they benefit consumers during this current crisis and enhance competition to the benefit of consumers over the longer term.
6. The ongoing crisis is having a negative impact on the functioning of electricity markets and dramatic increase of electricity prices are putting pressure on households and small and medium enterprises and risk causing wider social and economic damage. Given that the EU energy legislation does not foresee any specific support framework for these consumers, allowing Member States to extend regulated prices to small and medium enterprises during this crisis would give them another tool to manage its impact. There is also a need to provide legal certainty that in the current circumstances regulated prices can also be applied for households where the current energy market situation with high and volatile wholesale gas and electricity prices is restricting competition and harming customers. This will temporarily

add to the toolbox of available measures that the Member States have at their disposal to support consumers in the crisis context.

7. Allowing below cost regulated prices during this crisis gives Member States a tool to reduce the financial impact of increasing wholesale energy prices on end consumers. It is important that where such measures are implemented it does not discriminate between suppliers or impose unfair costs on them. Suppliers should therefore be fairly compensated for costs they incur supplying at regulated prices. This may be by means of reference costs which cover reasonably incurred costs.
8. The cost of below cost regulated prices could be financed by [x-ref to price cap measures for inframarginal].
9. Interventions in price setting are just one of the tools available to Member States, other measures, such as direct financial support for consumers, targeted rebates or reductions in taxes or levies might be more effective depending on the national situation. Ensuring that the rules of the internal market in electricity are sufficiently flexible to give Member States all necessary tools to address this crisis, to protect competition, and to prevent harm to electricity consumers is a necessary part of the solidarity which is called for.
10.

1. [Art. X Retail measures]

(X) Consumers' right to choose the energy supplier who offers them the best price and service lies at the heart of the internal electricity market. The resulting competition has put downward pressure on prices and increased choice, as consumers no longer had to rely on incumbent monopolists.

(X) As recognised in Directive 2019/944, public interventions in price setting for the supply of electricity constitute a fundamentally distortive measure that may lead to the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, and the restriction of competition and discourage innovative products and services on the market. When Member States decide to opt for such public interventions in price setting, these should be carried out only to pursue objectives of general economic interest ~~as public service obligations~~ and be subject to specific conditions set out in that Directive.

(X) There is a need to provide legal certainty that in the current circumstances regulated prices can also be applied for households where the current energy market situation with high and volatile wholesale gas and electricity prices is restricting competition and harming customers. This will temporarily add to the toolbox of available measures that the Member States have at their disposal to support consumers in the crisis context.

(X) Allowing below cost regulated prices during this crisis gives Member States a tool to reduce the financial impact of increasing wholesale energy prices on end consumers. It is important that where such measures are implemented it does not discriminate between suppliers or impose unfair costs on them. Suppliers should therefore be fairly compensated for costs they incur supplying at regulated prices. This may be by means of reference costs which cover reasonably incurred costs. The cost of below cost regulated prices could be financed by [x-ref to price cap measures for inframarginal].

(19) [Chapter V – monitoring]

Regular and effective monitoring and reporting to the Commission are essential for the assessment of progress made by the Member States in the implementation of [XXX] measures, [and for measuring the social and economic impact of those measures] . The competent authority of each Member State should monitor the d[XXX] on its territory and regularly report the results to the Commission. The Electricity Coordination Group should assist the Commission in monitoring the fulfilment of t[XXX].

(20) TThe [application of XXX] across the Union is an expression of the principle of solidarity, enshrined in the Treaty. It is therefore warranted that the Commission supervise strictly that the [measures] are carried out by Member States.

(20a) As the solidarity principle gives every Member State the right to be supported by neighbouring Member States under certain circumstances, Member States who ask for such support should also act in a spirit of solidarity when it comes to r[XXX]. (21) The Commission should inform the European Parliament and the Council regularly about the implementation of this Regulation.

(22) Considering [XXX], this Regulation should enter into force as a matter of urgency.

(23) Given the exceptional nature of the measures set out in this Regulation, this Regulation should apply for a period of one year after its entry into force. By 1 May 2023, the Commission should report on its functioning to the Council and may, if appropriate, propose to prolong its period of application.

(24) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Regulation establishes rules to address a situation of high electricity prices, to mitigate their impact on consumers and the economy and to safeguard the functioning of the internal electricity market, in a spirit of solidarity. Those rules include exceptional and time-limited measures with targets to reduce electricity consumption, the obligation to limit the revenues that certain producers receive from the sale of electricity and the possibility to apply public interventions in price setting for the supply of electricity for households and small and medium enterprises.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'net electricity consumption' means the overall supply of electricity for activities on the territory of a Member State;

(6) 'reference periods' means the periods from 1 November to 31 March during the five consecutive years preceding the date of entry into force of this Regulation, starting with the period from 1 November 2017 to 31 March 2018;

(7)

(X) 'revenue'means (NC def for DA/IA (market coupling revenues)? Otherwise: means for the purpose of this regulation the revenues a generator receives in exchange for the delivery of electricity pursuant to the relevant trading rules (IA/DA/BAL?) or under the contract in case of over-the counter trades (can't we bring in the notion of the WS price ?); what about fees, taxes, etc, do we need clarifications? A4?

(X) 'producer' means a natural or legal person who generates electricity, as defined in Article 2(38) of Directive (EU) 2019/944;

(X) 'power-generating facility' means a facility that converts primary energy into electrical energy and which consists of one or more power-generating modules connected to a network, as defined in Article 2(28) of Regulation (EU) 2019/943;

(8) 'final customer' means a customer who purchases electricity for own use, as defined in Article 2(3) of Directive (EU) 2019/944;'demonstration project' means a project which demonstrates a technology as a first of its kind in the Union and represents a significant innovation that goes well beyond the state of the art, as defined in Article 2(24) of Regulation (EU) 943/2019;

Retail?

(

(1) 'peak price hours' means hours of the day where day-ahead wholesale electricity prices are expected to be the highest [based on the forecast of a relevant TSO?];[Alternative suggestion: where prices are expected to be more than 25 % above the average price for that day]

CHAPTER II

DEMAND REDUCTION

Article 3

Reduction of total net electricity consumption

1. Each Member State shall endeavour to reduce its total net electricity consumption, with a target of a reduction by at least 10 % of the monthly net electricity consumption compared to the average of net electricity consumption in the corresponding month of the reference periods.

Article 4

Reduction of net electricity consumption during peak price hours

1. For every month, each Member State shall identify upfront a number of peak price hours corresponding to a minimum of 10% and a maximum of 15% of all hours of the month. [add methodology for how the peak hours should be defined either here or in the definition]
2. Each Member State shall reduce its net electricity consumption during these identified peak price hours. The reduction achieved over the selected peak hours should on average reach at least 5% and should be expressed in MWh.
3. The reduction shall be the difference between the net electricity consumption for the identified peak hours and its corresponding benchmarked consumption. The benchmarked consumption for a given hour shall be calculated by averaging the past consumption over the reference periods for the same hour, the same weekday within the same month, taking into account the effect of temperature.
4. This article does not affect Cyprus and Member States or bidding zones in their territory in which the average monthly wholesale electricity price does not exceed 200 EUR/MWh. OR This article applies only to Member States or bidding zones in their territory in which the average monthly wholesale electricity price exceeds [200] EUR/MWh for [two] consecutive months.

Article 5

Measures to achieve the demand reduction

1. Member States shall be free to choose the appropriate measures to reduce net electricity consumption in line with Articles 3 and 4 above. The measures shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable. The measures shall, in particular:

(a) be market-based where possible, with compensation established through an open competitive process;

(b) not unduly distort competition or the proper functioning of the internal market in electricity.

(c) not be unduly limited to specific consumers or consumer groups, to reduce the chance of subsidies and distortions affecting specific industries. Measures should for example be open to all consumer types capable of delivering the demand reductions sought;

(d) ensure that demand reductions should not be triggered in periods when the net cost of triggering a demand reduction would be positive (ie. when the cost of paying the beneficiary for demand reduction would exceed savings to consumers from reduced electricity prices in the period of demand reduction);

(e) involve transparent publication of conditions for triggering any demand response;

(f) ensure that any compensated demand reductions are ‘additional’. Demand reductions that would anyway have taken place, for example to recent high electricity prices must not be compensated, so a robust method for identifying the baseline for measuring demand reductions is required.

2. In order to reduce the net electricity consumption in line with Article 3, the Member States may consider national awareness-raising campaigns, publishing targeted information on the forecasted situation in the electricity system, regulatory measures limiting non-essential energy consumption, and targeted incentives to reduce the electricity consumptions.

3. In order to reduce the consumption during peak price hours, Member States may consider tenders in which successful bidders receive compensation for additional electricity not consumed compared to the expected consumption in this hour without the tender. Such tenders shall be open to the participation of aggregators in line with article 17 of the Directive (EU) 2019/944.

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CHAPTER III

CAP ON INFRAMARGINAL REVENUES

Article x

Cap on revenues

1. Member States shall limit the revenues of producers in Article X from the sale of electricity to a maximum of 200 EUR per MWh of electricity.

2. Member States shall decide whether to apply the limit on revenues at the settlement of the exchange of energy or thereafter.

3. The obligation in paragraph 1 is without prejudice to the rights of Member States to maintain or introduce measures that further limit the revenues of producers, provided that these measures are compatible with Union law.

Article x

Application to electricity producers

1. The obligation in Article x applies to the revenues obtained from the sale of electricity produced from the following sources:

   a) wind energy;

   b) solar energy (solar thermal and solar photovoltaic);

   c) geothermal energy;

   d) hydropower without reservoir;

   e) biomass;

   f) landfill gas;

g) sewage treatment plant gas;

h) biogas;

i) nuclear energy;

j) lignite;

k) crude oilshale oil.

2. The obligation in Article X shall not apply to demonstration projects or to producers whose revenues per MWh produced were already capped as a result of State measures before 1 September 2022.

3. Member States may decide that the obligation in Article X does not apply to producers generating electricity with power-generating facilities with an installed capacity of maximum [20] kW.

4. Member States shall assess whether the production costs of hard coal facilities are below 200 €/MWh. Where this is the case, they shall be subject to the same requirement as the technologies under paragraph 1.

5. [Consider adding a provision explaining that individual projects should not be left in a situation where they are unable to make a reasonable rate of return over the project lifetime as a result of this measure and therefore may seek an individual review by the NRA (see comments above in the explanatory part)]

5. The Commission shall be empowered to amend the list under paragraph 1 by means of an implementing act.

Article x

Revenues

Member States shall use the revenues generated to finance non-discriminatory, transparent and temporary measures in support of final customers in need for example by supporting all domestic consumers with direct grants based on their electricity consumption to help cover their electricity purchase costs, or to support investments in RES, storage, demand response, transmission and interconnection, while respecting competition rules. However, the revenues must not be used to directly support specific consumers other than households.

CHAPTER IV

RETAIL MEASURES

Public interventions in the price setting during crisis

By way of derogation from paragraphs 1 and 2 of Article 5 of Directive 2019/944], With a view to the ongoing energy price crisis, Member States may apply public interventions in the price setting pursuant to Article 5 paragraph 6 of Directive 2019/944 not only for the supply of electricity to household customers but also [for up to [80]% of their consumption] to small and medium-sized enterprises. Such public interventions shall be subject to the conditions set out in paragraphs 4 and 7 of that Article and, where relevant, shall comply with the conditions of Article 2 of this Directive.

Article [x+1]

Possibility for below cost regulated prices during crisis

In view Notwithstanding point (c) of paragraph 7 of Article 5 of Directive 2019/944, Member States may set a price for the supply of electricity which is below cost provided that:

1. Suppliers are fairly [duly?] compensated for the additional costs incurred supplying below cost.
2. All suppliers are eligible to provide offers at the regulated price on the same basis and receive the same compensation

Article [X+1]

Notification of regulated prices during crisis

1. Member States shall notify the measures taken in accordance with paragraph 1 or paragraph 2 to the Commission within one month after their adoption. The notification shall be accompanied by an explanation of why other instruments were not sufficient to achieve the objective pursued, of how the requirements set out in paragraph 4 and points of paragraph (a-b) and 7 (d-g) 7 of Article 5 of Directive 2019/944 are fulfilled, and of the effects of the notified measures on competition. Where relevant, the notification shall describe how the requirements of points (1) and (2) Article 2 are fulfilled. The notification shall describe the scope of the beneficiaries, the duration of the measures and the number of household customers and small and medium enterprises affected by the measures and shall explain how the regulated prices have been determined.

CHAPTER V

FINAL PROVISIONS

Article X

Monitoring and enforcement

1. The competent authority of each Member State shall monitor the implementation of the measures in Articles x, y, z on its territory.

2. By 15 January 2023, Member States shall report to the Commission on:

(a) the demand reduction achieved in application of Article X and the measures put in place to achieve the reduction in application of Article X;

(b) the revenues collected by Member States in application of Article X and on the use of those revenues.

The ECG shall assist the Commission in the monitoring of the application of the measures in Articles X, Y and Z.

Article X

Review

By 28 of February 2023, The Commission shall carry out a review of this Regulation in view of the general situation of electricity supply and electricity prices in the Union and present a report on the main findings of that review to the Council. Based on that report, the Commission may in particular propose to prolong the period of application and amend this Regulation.

Article X

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply for a period of one year from its entry into force.

Notwithstanding the second subparagraph, the measures in Article X and Article X shall apply in the period between 1 November 2022 and 31 March 2023.This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at …,

For the Council

The President