EUROPEAN
COMMISSION

Brussels, XXX
[…](2023) XXX draft

SENSITIVE*
UNTIL ADOPTION

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2019/943, Directive (EU) 2019/944, Directive (EU) 2018/2001 and Regulation (EU) 2019/942 to improve the EU's electricity market design

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

1.1. Policy context

Energy prices significantly increased throughout 2021 and 2022. This resulted from reductions in gas supply, particularly after the start of Russia's war against Ukraine and the weaponisation of energy as well as from domestic shortfalls in hydropower and nuclear power. The price rises also resulted from increased energy demand, as the global economy picked up after the COVID-19 pandemic. These price rises were rapidly felt by households, industry and businesses across the EU, and governments immediately took steps to mitigate them. At the European level, the EU swiftly provided an energy prices toolbox[1] with measures to address high prices (including income support, tax breaks, gas saving and storage measures), as well as the REPowerEU plan[2] with further measures and funding to boost energy efficiency and renewable energy in order to reduce dependence on Russian energy. This was followed by the creation of a temporary State Aid regime[3] to allow certain subsidies to soften the impact of high prices, a strong gas storage regime[4], effective demand reduction measures for gas[5] and electricity[6], faster renewable energy and grid permitting processes[7], and price limiting regimes to avoid windfall profits in both the gas and electricity markets[8].

These short-term measures helped Member States to deal with the immediate fall-out of the crisis. However, the crisis also showed how exposed consumers and industries are and our lack of resilience to energy price spikes. The impact of fossil fuel-based generation on setting electricity prices was seen as excessive by businesses and citizens, while Member States' ability to cushion short term prices with longer term contracts appeared inadequate. For this reason, the European Commission President announced in the 2022 State of the Union Address[9] the need for a fundamental reform of the electricity market design.

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1 COM(2021) 660 final

2 COM(2022)230

3 (2020/C 91 I/01)

4 (EU) 2022/1032

5 (EU) 2022/1369

6 (EU) 2022/1854)

7 Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335

8 (EU) 2022/1854)

9 https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_22_5493

Whilst the EU's single market delivers huge gains and growth across Europe, the recent energy crisis has highlighted that the energy market's short-term focus can distract from broader, longer-term goals. The reflection of short-term prices in consumers bills led to price shocks where energy bills of many consumers tripled or quadrupled, even as the costs of wind and solar power were declining; the sudden exposure to volatile and high prices triggered some supplier bankruptcies. Therefore, the proposal includes a set of measures aimed to create a buffer between short-term markets and electricity bills paid by consumers, in particular by way of incentivizing longer term contracting, to improve the functioning of short-term markets to better integrate renewables and enhance the role of flexibility and to empower and protect consumers.

The recent price volatility has also highlighted the lack of flexibility in the electricity grid, with prices set too often by gas and with a general lack of low carbon flexible supply, demand response and energy storage. As more wind and solar power enter the system, storage in particular will be needed to balance the variable supply with variable demand. In parallel with this proposal, the Commission is making recommendations for the advancement of storage innovation, technologies, and capacities.

More broadly, the sensitivity of the electricity price to fossil fuel prices highlighted the need to speed up the deployment of renewables together with the flexibility of the power system to displace fossil fuels. REPowerEU provides such a boost to renewable energy and with it, a boost to economic growth and jobs. It builds on the European Green Deal's drive to improve European competitiveness through innovation and the transition to a net zero economy, and is closely aligned with the Commission's Net Zero Industrial Plan. To facilitate the investments needed in the face of recent price volatility, uncoordinated regulatory interventions and grid and regulatory barriers to entry, fundamental reform is needed.

1.2. Objectives of the proposal

The proposal is addressing consumer, industry and investors' concerns over exposure to volatile short-term prices, driven by high prices of fossil fuels. It will optimize the electricity market design by complementing the short term markets with a greater role of longer term instruments, allowing consumers to benefit from more fixed priced contracts, and facilitating investments in clean technologies. Ultimately, it will mean that less fossil fuel generation is needed, and will lead to lower prices for consumers due to the low operational costs of renewable and low carbon energy.

The proposal is putting forward measures to protect consumers from such volatility, empower them with greater contract choice and more direct access to renewable energy. To improve investment conditions for businesses, it proposes measures to counter exposure to short term price spikes through power purchase agreements and more prudential obligations for energy suppliers. It proposes measures to improve the way wind and solar power are integrated into the short term market. This includes measures boosting the use of storage and other forms of flexibility. The proposal also improves and clarifies access to longer term contracts for developers (both State supported such as contracts for difference, and private, such as power purchase agreements) in order to provide secure, stable revenues for renewable and low carbon energy developers and bring down risk and capital costs while avoiding windfall profits in periods of high prices.

Whilst the current market design has over many decades delivered an efficient, well integrated market, the energy crisis has highlighted a number of shortcomings relating to: (i) insufficient tools to protect consumers, including businesses, against high short term prices; (ii) the excessive influence of fossil fuel prices on electricity prices and the failure for low cost renewables and low carbon energy to be better reflected in electricity bills ; (iii) the impact of extreme price volatility and regulatory interventions on investment; (iv) the lack of sufficient flexibility (such as storage or demand response) that could reduce dependence on gas-fired generation; (v) the limited choice of supplier contract types; (vi) the difficulties to directly access renewable energy though energy sharing; and (vii) the need for robust monitoring of the energy market to better protect against market abuse.

To protect consumers from volatile prices, the proposal will provide for the right to fixed price contacts as well as dynamic price contracts, the right to multiple contracts and to better and clearer contract information. In this way, risk averse consumers can lock in secure, long term prices to avoid surprises, and/or they may choose to have dynamic pricing contracts with suppliers if they wish to take advantage of price variability to use electricity when it is cheaper (e.g. to charge electric cars or use heat pumps). The proposal will also provide access to regulated retail prices for households and SME consumers in the event of a crisis and stabilise the supply industry by requiring that suppliers make more effort to guard against high price spikes by making greater use of forward contracts with generators (locking in future prices) and by requiring Member States to establish a supplier of last resort regime. The proposal will empower consumers by creating the right to share renewable energy directly, without the need to create energy communities. Greater energy sharing (e.g. sharing surplus roof top solar power

with a neighbour) can improve the use made of low cost renewable energy and provide greater access to direct use of renewable energy for consumers who might not otherwise have such access.

To enhance the competitiveness of EU industry facing excessive volatile prices, the proposal intends to enhance market access to more stable longer term contracts and markets. Power purchase agreements - long-term private contracts between a (renewable energy or low carbon) generator and a consumer – can protect against price volatility, but they are currently mostly available only to large energy consumers in very few Member States. A barrier to the growth of this market is the credit risk that a consumer will not always be able to buy the electricity over the whole period. To address this, Member States should ensure that instruments to reduce the financial risks associated to off-taker payment default in the framework of PPAs, including State guarantees, are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. To further encourage the growth of the market for such agreements, allowing renewable energy project developers participating in a public support tender to reserve a share of the generation for sale through a PPA would contribute to nurture and grow PPA markets. In addition, Member States should apply in these tenders evaluation criteria linked to the development of PPA markets, giving preference to bidders presenting a commitment from a potential buyer to sign a PPA for part of the project's generation. Finally, the obligation on suppliers to use more forward contracts, as mentioned above, may also boost demand for power purchase agreements (which are a way of locking in future prices).

Some forms of public support guarantee the energy producer a minimum price by the government but allow for the producer to nevertheless earn the full market price even when this market price is very high. With the recent high prices much (cheap) publicly supported energy has been receiving these high market prices. To curb this and so stabilise prices, investment support should be structured as "two way" (two-way contract for difference), which set a minimum price but also a maximum price, so any revenues above the ceiling are paid back. Moreover, the proposal will require that such money is then channelled to support all electricity consumers proportionate to their consumption based on their share of overall consumption to mitigate the effect of high prices.

A further means of guarding against volatile prices is to use long term contracts that lock in future prices ("forward contracts"). This market shows low liquidity in many Member States but could be boosted across the EU, so that more suppliers or consumers can guard against excessively volatile prices over longer periods of time. The proposal will create regional

reference prices via a hub to increase price transparency and oblige system operators to allow transmission rights longer than a year, so that if a forward contract is between parties across regions or borders, they can ensure transmission of the electricity.

Finally, to ensure markets that behave competitively and prices are set transparently, regulators' ability to monitor energy market integrity and transparency will be enhanced.

The third objective is to **boost renewable energy investment,** in order to ensure that deployment triples, in line with European Green Deal goals. This will be achieved partly by improving the markets for long term contracts. Power purchase agreements and contracts for difference not only provide consumers with stable prices, they also give renewable energy suppliers reliable revenues. This lowers their financial risk and greatly reduces their cost of capital. This creates a virtuous circle where stable revenues lower costs and boost demand for renewable energy.

Renewable energy is also a better investment when its ability to produce power is not curtailed by the system. The more flexible the system is (generation that can rapidly turn on or off, storage that can absorb or put power onto the system, or responsive consumers who can increase or decrease their demand for power) the more stable prices can be and the more renewable energy the system can integrate. For this reason, the proposal requires Member States to assess their needs for power system flexibility, establish objectives to deliver on these needs, and introduces new support scheme options for flexibility.

System operators can also play an enhanced role integrating renewables into the grid, partly by increasing transparency surrounding availability of grid connection capacity. This clearer information would enhance renewable energy developers' ability to develop renewables in areas where the grid is less congested. Second, renewable energy can be more efficiently traded and balanced in the system if trades occur closer to "real time". If offers to supply electricity are made minutes before consumption rather than hours before consumption, the offers from wind and solar power producers are more accurate, more wind and solar power can be consumed and the "imbalance costs" of the system are reduced. Thus, trading deadlines will be brought closer to real time.

Consistency with existing policy provisions in the policy area

The proposed initiative is strongly linked and complementary to the legislative proposals brought forward in the context of the European Green Deal Package and speed up the decarbonisation objectives laid down in REPowerEU Plan, in particular as regards the proposal

to revise the Renewable Energy Directive ("RED II"), which is the main EU instrument dealing with the promotion of renewable energy. The proposed initiative is complementary in that it aims to enable the acceleration in the uptake of renewable energy. The proposal seeks to ensure more stable long-term sources of revenue to unleash further renewable energy investments, while improving the functioning of short-term markets, which are key for the integration of renewables in the electricity system. In addition, the proposal seeks to enable energy sharing to allow consumers to engage in the market and help to speed up the energy transition.

Reducing energy consumption through price signals, energy efficiency measures or voluntary efforts can often be the cheapest, safest and cleanest way to reduce our reliance on fossil fuels, to support security of supply and to reduce our energy bills. The proposal will facilitate the active participation of the consumers in the market and the development of their demand response. It will also enable demand side flexibility and storage to compete on a level playing field so that the role of natural gas in the short-term market in providing flexibility is progressively reduced. Therefore, the proposal is in line with the proposed increase of the 2030 target for energy efficiency to 13%, as set out in the proposed amendments to Renewable Energy, Energy Performance of Buildings and Energy Efficiency Directives[10] accompanying the REPowerEU Plan[11].

There is also an important link between the proposal and the Energy Performance of Buildings Directive which is the main EU instrument to help reach the building and renovation goals set out in the European Green Deal. The proposal is strongly linked in particular to provisions on sub-metering and demand response in addition to the Commission's proposal, as part of the European Green Deal Package and expressed under the EU Solar Strategy Communication, on the gradual mandatory integration of solar photovoltaic in order to make public, commercial and residential buildings climate neutral.

- **Consistency with other Union policies**

The proposal's objectives to protect and empower consumers, improve competitiveness of EU industry and boost renewables and low carbon investment are wholly consistent with the framework of the European Green Deal and coherent and complementary to current initiatives, including the legislative proposal for a "Net-zero Industry Act" which is being adopted in parallel. It responds to the issues that were identified in the Commission's Communication

[10] COM(2022) 222 final; 2022/0160(COD)

[11] COM(2022) 230 final

laying out a "Green Industrial Plan for the net-zero age" issued on 1 February 2023[12], namely that the competitiveness of many companies has been severely weakened by high energy prices and that long-term price contracts could play an important role to enable electricity users from more predictable and lower costs of renewable power. Last but not least, the legislative proposal is complementary to the ongoing revision of relevant financial market regulations such as the Market Abuse Regulation[13].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 194(2) of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for proposing measures aiming inter alia to ensure the functioning of the energy market, promote energy efficiency and energy saving and the development of new and renewable forms of energy.[14] In the field of energy, the EU has a shared competence pursuant to Article 4(2)(i) TFEU.

• Subsidiarity (for non-exclusive competence)

The need for EU action

The unprecedented nature of the energy price crisis has shone a spotlight on EU electricity markets. Despite the growing shares of low-cost renewables electricity across the EU, there is a continuing influence of fossil-fuel generated electricity on overall energy bills. Households and businesses across the EU have experienced skyrocketing energy prices during the crisis.

This is an issue of EU-wide relevance which can only be addressed with action at EU level. The increased integration of EU electricity markets requires closer coordination between national actors, also in the context of market monitoring and surveillance. National policy interventions in the electricity sector have a direct impact on neighbouring Member States due to energy interdependence, grid interconnections and ongoing electricity market integration. To preserve the functioning of the electricity system and cross-border trade and investments and to accelerate, in a coordinated way, the energy transition towards a more integrated and more energy-efficient energy system based on renewable generation, a common approach is needed.

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12 COM(2023)_62 final.
13 [Add references]
14 Article 194(1) TFEU.

The amendments proposed set out a balance between obligations and flexibility left to the Member States on how to achieve the main objectives pursued of ensuring that the lower cost of renewable electricity will be reflected in consumer bills and of boosting the deployment of renewable energy.

Furthermore, the objective of the proposed measures can only be achieved by action at EU level, not at individual Member States' level, since the proposed action requires changes to the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation (EU) 2019/943 and the Electricity Directive (EU) 2019/944 as well as to existing REMIT framework.

EU added value

EU action to address the shortcomings of the current electricity market design brings added value because it is more efficient and effective than individual Member States' actions, thus avoiding a fragmented approach. The measures proposed to address the shortcomings identified will be more ambitious and cost-effective if driven by a common legal and policy framework. In addition, action at Member State level would only be possible within the constraints of the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation and Electricity Directive as well as REMIT Regulation and not be able to achieve the necessary changes to that framework. Consequently, the objectives of this initiative cannot be achieved only by Member States themselves and this is where action at EU-level provides an added value.

- **Proportionality**

The proposed amendments to the Electricity Regulation, the Electricity Directive, the REMIT Regulation and the ACER Regulation are considered proportionate.

The proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for undertakings and national administrations. However, the envisaged economic impacts are necessary and proportionate to achieve the objective of incentivising the use of such long-term contracts and ensuring that the energy bills of European households and companies as well as the revenues of non-fossil fuel technologies with low variable costs become more independent from the fluctuation of prices in short-term markets and thus more stable over longer periods of time.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered necessary in order to achieve the envisaged objectives of ensuring better integration of renewable energy and flexibility resources (storage, demand response) in the market and ultimately leading to lower prices for consumers. They are also proportionate to these objectives, since the impact on businesses appears minimal compared to the current framework and the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

The measures envisaged to strengthen consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators. However, the additional burdens are necessary and proportionate to achieve the objective of ensuring consumers have access to better information and variety of offers, decoupling their electricity bills from short term movements on energy markets and rebalancing the risk between suppliers and consumers.

The measures envisaged to improve the REMIT framework may increase reporting obligations for market participants due to a broader scope of REMIT. These measures are necessary to achieve the objective of increasing transparency and monitoring capacities and ensuring more effective investigation and enforcement of cross-border cases in the EU so that consumers and market participants have confidence in the integrity of energy markets, prices reflect a fair and competitive interplay between supply and demand and no profits can be drawn from market abuse. They are also proportionate to that objective, since the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

Finally, the overall package of measures proposed is considered appropriate given the overarching imperative of achieving climate neutrality at the least cost for consumers while ensuring security of supplies.

- **Choice of the instrument**

The proposal will amend the Electricity Regulation, the Electricity Directive, the REMIT Regulation, the ACER Regulation and the Renewables Energy Directive. Given that the proposal aims to add a limited set of new provisions and amend a limited set of existing provisions in these instruments, the recourse to an amending act is adequate. For the same reason, it also appears appropriate to use the instrument of an amending regulation to introduce amendments both to existing regulations and existing directives.

3. STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

In preparation for the present initiative, the Commission has conducted a public consultation from 23 January 2023 to 13 February 2023. The consultation was open to everybody.

The Commission received 1369 replies to this consultation. More than 700 of those have come from citizens, around 450 from businesses and business associations, around 40 from national or local administrations or from national regulators and around 70 from network operators. Also, around 20 energy communities, 15 trade unions and 20 consumers organisations participated. A significant number of NGOs, think tanks and research or other academic organisations submitted responses as well. An overview of stakeholders' opinions is available in the Staff Working Document accompanying this legislative initiative.

In addition, the Commission organised an online targeted stakeholder consultation meeting on 15 February 2023 which counted with the participation of around 70 market actors, non-governmental organisations, network operators, ACER and national regulators, think tanks and academics. The consultation overall highlighted that the stakeholders considered that:

– Short-term markets and the pricing mechanism based on marginal pricing should be preserved, as they function well and provide the right price signals. Short-term (day-ahead and intraday) markets are well-developed, and they result from years of implementation of EU energy legislation.

– Short-term markets need to be complemented by instruments incentivizing longer term price signals, such as the ones indicated in consultation by the Commission, in particular power purchase agreements ('PPA'), contracts for difference, and enhanced forward markets. However, the PPA market is non transparent, and it would benefit from standardisation and more transparency. The right balance between the different tools should be established. Nonetheless, there should not be mandatory schemes, and the freedom of choosing the relevant contracts should be preserved.

– The benefits of flexibility solutions such as demand response and storage were acknowledged, especially in the context of an increasing share of renewables. Their market participation should be facilitated and incentivised.

– The future electricity markets will have to be adapted to a high share of renewables. Furthermore, there should be more emphasis on the local dimension. These challenges could be addressed by the solutions presented in the public consultation.

– Consumer protection is essential, as is affordability of energy, but preserving the signals for demand response is equally important. Emerging solutions such as energy communities, self-consumption, energy sharing should be enabled and incentivized.

• **Collection and use of expertise**

The preparation of the present legislative proposal and the Staff Working Document is based on a large body of material, which is referenced in the footnotes in the Staff Working Document. These include [X] studies and modelling tools, conducted by [external / internal] parties, aimed at assessing the initiatives set out in the current proposal.

• **Fundamental rights**

The present proposal may have an impact on a number of fundamental rights established by the Charter on Fundamental Rights of the EU, in particular: the freedom to conduct a business (Article 16) and the right to property (Article 17). As explained above, however, to the extent that the proposed measures limit the exercise of these rights, these impacts are considered necessary and proportionate to achieve the objectives of the proposal and therefore constitute legitimate limitations of such rights as allowed under the Charter.

On the other hand, the proposal enhances the protection of fundamental rights, such as the respect for private and family life (Article 7), the right to protection of personal data (Article 8), the prohibition of discrimination (Article 21), access to services of general economic interest (Article 36), the integration of a high level of environmental protection (Article 37) and the right to an effective remedy (Article 47), in particular through a number of provisions concerning consumer empowerment, rights and protection.

• **Regulatory fitness and simplification**

The proposed amendments to the Electricity Directive, the Electricity Regulation, the REMIT Regulation and the ACER Regulation focus on what is considered necessary to address the shortcomings of the current electricity market design in the context of the energy crisis and to contribute in a cost-effective manner to the Union's climate ambition. They do not constitute a full revision of these instruments.

The proposal may increase administrative requirements for national administrations and undertakings, albeit in a proportionate way as explained above. For example, the proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for

undertakings and national administrations. However, the envisaged economic impacts will positively benefit businesses and consumers.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered minimal compared to the current framework, as the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

The measures envisaged to strengthened consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators with the objective to improve choice, increase protection and facilitate active market participation by consumers, notably households. However, the additional burdens are minimal because these frameworks are being rolled out across Europe and therefore streamlining of rules is needed.

The measures envisaged to improve the REMIT framework may increase reporting obligations on certain market participants, albeit in a proportionate way. These are however considered minimal compared to the current framework as the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

4. BUDGETARY IMPLICATIONS

The budgetary impact associated to the proposal concerns the resources of ACER for the Cooperation of Energy Regulators (ACER) which are described in the Legislative Financial Statement accompanying the proposal. Essentially, the new tasks to be carried out by ACER, especially regarding the enhanced investigatory powers require a phasing in of up to [X] additional full time equivalent (FTE) in ACER in 202[X], as well as corresponding financial resources.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

The Commission will monitor the transposition and compliance of Member States and other actors with the measures that shall be ultimately adopted and take enforcement measures if and when required. For monitoring and implementation purposes, the Commission will notably be supported by ACER, in particular in relation to the REMIT Regulation. The Commission will also liaise with ACER and the regulatory authorities in relation to the Electricity Regulation and the Electricity Directive.

Moreover, to facilitate the implementation, the Commission will be available for bilateral meetings and calls with Member States in case of specific questions.

- **Explanation of the specific provisions of the proposals [*To be completed*]**

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amending Regulation (EU) 2019/943, Directive (EU) 2019/944, Directive (EU) 2018/2001 and Regulation (EU) 2019/942 to improve the EU's electricity market design

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Very high prices and volatility in electricity markets have been observed since September 2021. As set out by the European Agency for the Cooperation of Energy Regulators ('ACER') in its April assessment of EU wholesale electricity market design[15], this is mainly a consequence of the high price of gas, which is used as an input to generate electricity. Natural gas-fired power plants are often needed to satisfy the demand for electricity when the demand is at its highest during the day or when the volumes of electricity generated from other technologies such as nuclear, hydro or variable renewable energy sources do not suffice to cover demand.

(2) The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, and related international sanctions since February 2022 have disrupted global energy markets, exacerbated the problem of high gas prices, and have had significant knock-on impacts on electricity prices. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and

[15] [Add reference]

crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity.

(3) In response to this situation, the Communication on Energy Prices[16] presented by the Commission in October 2021 contained a toolbox of measures that the EU and its Member States may use to address the immediate impact of high energy prices on households and businesses and to strengthen resilience against future price shocks. In its Communication of 8 March 2022 entitled 'REPowerEU: Joint European Action for more affordable, secure and sustainable energy'[17] the Commission outlined a series of additional measures to strengthen the toolbox and to respond to rising energy prices. On 23 March 2022, the Commission also established a temporary State Aid regime[18] to allow certain subsidies to soften the impact of high energy prices.

(4) Furthermore, on 18 May 2022 the Commission presented the REPowerEU plan that introduced additional measures focusing on energy savings, diversification of energy supplies and accelerated roll-out of renewable energy aiming at ending EU's dependency on Russian fossil fuels. As part of the REPowerEU Plan, the Commission proposed an increase of the EU's 2030 target for renewables to 45%. The EU adopted emergency measures to accelerate permitting of renewables.

(5) Alongside the REPowerEU Plan the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design[19] sets out a series of additional short-term measures to tackle high energy prices and address possible supply disruptions from Russia. The Communication also identified potential areas for improving the electricity market design and announced the intention to assess these areas in more detail with a view to change the legislative framework where necessary.

(6) To address urgently the price crisis and security concerns, and based on a series of Commission proposals, the Union adopted a strong gas storage regime[20], effective

16 COM(2021) 660 final.
17 COM(2022) 108 final.
18 Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia 2022/C 426/01
19 COM(2022) 236 final.
20 Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (Text with EEA relevance), OJ L 173

demand reduction measures for gas and electricity[21], price limiting regimes to avoid windfall profits in both gas and electricity markets[22] and measures to accelerate the permit-granting procedures for renewable energy installations[23].

(7) The current electricity market design, as last revised in 2019 by the Clean Energy for all Europeans package, has delivered a well-integrated market, allowing Europe to reap the economic benefits of a single energy market in normal market circumstances, ensuring security of supply and sustaining the decarbonisation process. Cross-border interconnectivity also ensures safer, more reliable and efficient operation of the power system.

(8) The current market design has also helped the emergence of new and innovative products and measures on retail electricity markets, supporting energy efficiency and renewable uptake and helping consumers reduce their energy bills also through small-scale generation installations and emerging services for providing demand response. Building on and seizing the potential of the digitalisation of the energy system, such as active participation by consumers, will be a key element of our future electricity markets and systems. At the same time, there is a need to respect consumer choices and allow consumers to benefit from a variety of contract offers.

(9) In the context of the energy crisis, the current electricity market design has however also revealed a number of important shortcomings linked to the impact of high and volatile fossil fuel prices on short-term electricity markets, which expose households and companies to significant price spikes with effects on their electricity bills.

(10) A faster deployment of renewable energy and clean flexible technologies constitutes the most sustainable and cost-effective way of structurally reducing the demand for fossil fuels for electricity generation and for direct consumption through electrification and energy system integration. Thanks to their low operational costs, renewable sources can positively impact electricity prices across the EU and reduce direct consumption of fossil fuels.

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21 Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206 and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261

22 Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261.

23 Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022.

(11) The changes to the electricity market design should ensure that the benefits from rising renewable power deployment, and the energy transition as a whole, are brought to consumers, and ultimately, shield them from energy crises. These should mitigate the impact of high fossil fuel prices, notably that of gas, on electricity prices, aiming to allow households and companies to reap the benefits of affordable and secure energy from sustainable renewable sources in the longer term.

(12) The reform of the electricity market design will benefit not just household consumers but also the competitiveness of Europe's clean energy industries. The energy transition in Europe needs to be supported by a strong clean technology manufacturing basis. These reforms will support the affordable electrification of industry and Europe's position as a global leader in terms of research and innovation in clean energy technologies.

(13) Well-functioning and efficient short-term markets are a key tool for the integration of renewable energy and flexibility sources in the market and facilitate energy system integration in a cost-effective manner.

(14) Intraday markets are particularly key for the integration in the electricity system of variable renewable energy sources at the least cost as they give the possibility to market participants to trade shortages or surplus of electricity closer to the time of delivery. Since variable renewable energy generators are only able to accurately estimate their production close to the delivery time, it is crucial for them to have a maximum of trading opportunities via access to a liquid market as close as possible to the time of delivery of the electricity.

(15) It is therefore important for the intraday market to adapt to the participation of these technologies. The liquidity of the intraday market should be improved with the sharing of the order books between market operators within a bidding zone also when the cross-zonal capacities are set to zero or after the gate closure time of the intraday market. Furthermore, the gate closure time of the intraday market should be set closer to the time of delivery to maximize the opportunities for market participants to trade shortages and surplus of electricity and contribute to better integrating variable renewables in the electricity system.

(16) In addition, the short-term markets should ensure that small-scale flexibility can participate by lowering the minimum bid size.

(17) To ensure the efficient integration of electricity generated from variable renewable energy sources and to reduce the need for fossil-fuel based electricity generation, it should be possible for transmission system operators to design a peak shaving product that enables demand response to contribute to decreasing peaks of consumption in the electricity system at specific hours of the day and maximize the integration of electricity produced from renewable sources into the system.

(18) In order to be able to fully participate in the market and value their flexibility, consumers are progressively equipped with smart metering services. However, in those instances where these systems are not yet installed or do not provide for the sufficient level of data granularity, system operators should be able to use data from dedicated metering devices for the observability and settlement of flexibility services such as demand response and energy storage. This should facilitate the active participation of the consumers in the market and the development of their demand response. The use of data from these devices should be accompanied by quality requirements relating to the data.

(19) Consumers and suppliers need effective and efficient forward markets to cover their long-term price exposure and decrease the dependence on short-term prices. To ensure that energy customers can fully benefit from the advantages of integrated electricity markets and competition across the Union, the functioning of the European electricity forward market should be improved via the establishment of regional virtual hubs with a view to overcome the existing market fragmentation and the low liquidity experienced in many bidding zones. To enhance the possibilities of market participants for hedging, the single allocation platform established in accordance with Regulation (EU) 2016/1719 should auction the long-term transmission rights between the different bidding zones and the regional virtual trading hubs. The issuing of long-term transmission rights should be performed on a regular basis, to ensure enough liquidity and, hence, efficient hedging possibilities to market participants. The long-term transmission rights should be issued with frequent maturities (ranging from month ahead to three years ahead), in order to be aligned with the typical hedging horizon of market participants.

(20) Network tariffs should incentivise system operators to use flexibility services through further developing innovative solutions to optimise the existing grid and in procuring flexibility services, in particular demand response or storage. For this purpose, network tariffs should be designed so as to take into account the operational and capital

expenditures of system operators or an efficient combination of both so that they can operate the electricity system efficiently. This would further contribute to integrating renewables at the least cost for the electricity system and enable final customers to value their flexibility solutions.

(21) Offshore renewables will play an instrumental role in building a power system largely based on renewables and in ensuring climate neutrality by 2050. There are, however, substantial obstacles to its wider and efficient deployment preventing the massive scale up needed to achieve this objective. These obstacles include investment risks associated with the unique topographical situation of offshore hybrid projects. In order to reduce investment risk for offshore renewables developers and ensure that the projects in an offshore bidding zone have full market access to the surrounding markets, transmission system operators should guarantee the offshore renewable project's access to the capacity of the respective hybrid interconnector for all market time units. If the available transmission capacities are reduced to the extent that the full amount of renewable electricity that the offshore renewable project would have otherwise been able to export cannot be offered to the market, the transmission system operator or operators responsible for the need to limit the capacity should compensate the offshore renewable plant operator commensurately from congestion income. The details should be defined in Regulation (EU) 2015/1222, which should be revised following the entry into force of this Regulation.

(22) In the day-ahead wholesale market, the least expensive power plants are dispatched first, but the price received by all market participants is set by the last plant needed to cover the demand, which is the plant with the highest marginal costs, when the markets clear. In this context, the energy crisis has shown that a surge in the price of gas and hard coal can translate into exceptional and lasting increases of the prices at which the gas and coal-fired generation facilities bid in the day-ahead wholesale market. That in turn has led to exceptionally high prices in the day-ahead market across the Union, as those are often the plants with the highest marginal costs needed to meet the demand for electricity.

(23) Given the role of the price in the day-ahead market as a reference for the price in other wholesale electricity markets, and the fact that all market participants receive the clearing price, the technologies with significantly lower marginal costs have consistently recorded high revenues.

(24) To reach the Union's decarbonisation targets and the objectives set out in REPowerEU to become more energy independent, the Union needs to accelerate the deployment of renewables at a much faster pace. In view of the investment needs required to achieve these goals, the market should ensure that a long-term price signal is established.

(25) In this framework, Member States should strive to create the right market conditions for long-term market-based instruments, such as power purchase agreements ('PPAs'). PPAs are bilateral purchase agreements between energy producers, in particular of renewable energy, and corporate off-takers. They provide long-term price stability for the consumer and the necessary certainty for the producer to take the investment decision. Nevertheless, only a handful of Member States have active PPA markets, not least because PPAs face a set of barriers, in particular the difficulty to cover the risk of payment default from the buyer in these long-term agreements. Member States should take into consideration the need to create a dynamic PPA market when setting the policies to achieve the energy decarbonisation objectives set out in their National Energy and Climate Plans.

(26) According to Article X of [the Renewable Energy Directive [*currently under negotiation*], Member States shall assess the regulatory and administrative barriers to long-term renewables power purchase agreements, and shall remove unjustified barriers to, and promote the uptake of, such agreements. In addition, Member States shall report on their policies to reduce the financial risks associated with PPAs. Without prejudice to this obligation to report on the regulatory context affecting the PPA market, Member States should ensure that instruments to reduce the financial risks associated to off-taker payment default in the framework of PPAs are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. Member States may decide to target these instruments to specific categories of consumers, applying objective and non-discriminatory criteria. In this framework, Member States should take into account the potential role of instruments provided at Union level, for instance by the European Investment Bank ('EIB'). Member States can decide to set up a State guarantee scheme using State aid, but also in such a way that it does not constitute State aid, in line with Articles 107 and 108 of the Treaty on the Functioning of the European Union ('TFEU').

(27) Member States have at their disposal several instruments to support PPA markets when designing and allocating public support. Allowing renewable energy project developers participating in a public support tender to reserve a share of the generation for sale

through a PPA would contribute to nurture and grow PPA markets. In addition, Member States should apply in these tenders evaluation criteria linked to the development of PPA markets, giving preference to bidders presenting a commitment from a potential buyer to sign a PPA for part of the project's generation. Going further, specific criteria can be applied to the characteristics of the buyer, targeting small actors, such as SMEs, that have specific difficulties to access the PPA market.

(28) Where Member States decide to set out direct price support schemes for new investments in low carbon, non-fossil fuel electricity generation to achieve the Union's decarbonisation objectives, they should be structured to include, in addition to a revenue guarantee, an upward limitation of the market revenues of the generation assets by way of two-way contracts for difference or other equivalent contractual formulations.

(29) This would ensure that revenues of producers stemming from new investments in electricity generation which benefit from public support become more independent from the volatile prices of fossil fuels-based generation which typically sets the price in the day-ahead market. However, to the extent that this approach narrows down the types of direct price support schemes that Member States can adopt as regards renewable energy sources, it should be limited to low carbon, non-fossil fuel technologies, with low and stable operational costs and to technologies which cannot provide flexibility to the electricity system, while excluding technologies that are at early stages of their market deployment. This is necessary to ensure that the economic viability of generation technologies with high marginal costs is not jeopardised and to maintain the incentives of the technologies which can offer flexibility to the electricity system to bid in the electricity market based on their opportunity costs. In addition, the limitation to set out direct price support schemes in the form of two-way contracts for difference or other equivalent contractual formulations should not apply to emerging technologies for which other types of direct price support schemes may be better placed to incentivise their uptake. Member States should ensure that the support schemes do not undermine the efficient functioning of the electricity markets, preserving the incentives of producers to react to market signals, including stop generating when electricity prices are below their operational costs, and of final customers to reduce consumption when electricity prices are high. Member States should ensure that support schemes do not constitute a barrier for the development of commercial contracts such as PPAs. In

addition, Member States should ensure that investments in new capacity take place in optimal locations and that they do not create or worsen congestion in the grid.

(30) Direct price support schemes in the form of two-way contracts for difference or equivalent contractual formulations will provide an additional source of revenues for Member States in periods of high energy prices. To further mitigate the impact of high electricity prices on the energy bills of consumers, Member States should ensure that the revenues collected are passed on to all final electricity customers, including households, SMEs and industrial consumers, based on their consumption.

(31) The accelerated deployment of renewables necessitates a growing availability of flexibility solutions to ensure their integration to the grid and to enable the electricity system and grid to adjust to the variability of electricity generation and consumption across different time horizons. Regulatory authorities should periodically assess the need for flexibility in the system based on the input of transmission and distribution system operators. The assessment of the flexibility needs of the electricity system should take into account all existing and planned investments on sources of flexibility such as flexible electricity generation, interconnectors, demand side response, energy storage or the production of renewable fuels, in view of the need to decarbonise the energy system. On this basis, Member States should define a national objective for demand side response and storage which should also be reflected in their integrated National Energy and Climate Plans.

(32) To achieve the national objective for demand side response and storage investment needs, Member States which apply a capacity mechanism in line with the existing rules should promote the participation of demand side response and storage by introducing additional criteria or features in the design. Member States may apply flexibility support schemes consisting of payments for the available capacity of demand side response and storage if such additional criteria or features in the design of their capacity mechanism are insufficient to achieve national objective for demand response and storage investment needs or if a Member State does not apply a capacity mechanism.

(33) Member States may design or redesign capacity mechanisms in order to create a green and flexible capacity mechanism. The emissions' limit in the Regulation should be seen as an upper limit and Member States may set technical performance standards and CO2 emissions' limits that restrict participation to flexible, fossil-free technologies in full alignment with the Guidelines on State aid for climate, environmental protection and

energy which encourage Member States to introduce green criteria in capacity mechanisms.

(34) The connection of new generation and demand installations, in particular renewable energy plants, often faces delays in grid connection procedures. One of the reasons for such delays is the lack of available grid capacity at the location chosen by the investor, which implies the need for grid extensions or reinforcements to connect the installations to the system in a safe manner. A new requirement for electricity system operators, both at transmission and distribution levels, to publish and update information on the grid capacity available in their areas of operation would contribute to decision-making by investors on the basis of information of grid capacity availability within the system and thus to the required acceleration in the deployment of renewable energy.

(35) Consumers have been exposed to extremely volatile wholesale energy prices and had limited opportunities to engage in the energy market. Consequently, many households, not only those who are most vulnerable but increasingly also middle-income families, have been facing difficulties when paying their bills. It is therefore important to update consumer rights and protections, allowing consumers to benefit from the energy transition, decouple their electricity bills from short term movements on energy markets and rebalance the risk between suppliers and consumers.

(36) Consumers should have access to a wide range of offers so that they can choose a contract according to their needs. However, suppliers have reduced their offers and fixed-price contracts become scarce and the choice of offers has become limited. Consumers should always have the possibility to opt for an affordable fixed price and fixed term contract and suppliers should not unilaterally modify the terms and conditions before such contract expires.

(37) It should be suppliers' responsibility to ensure that their electricity portfolio is sufficiently hedged in order to limit the risk of changes in wholesale electricity to the economic viability of their contracts with customers. Hence, Member States should ensure that suppliers are properly hedged when offering fixed price contracts.

(38) Consumers should be able to choose the supplier which offers them the price and service which best suits their needs. Advances in metering and sub-metering technology combined with information and communication technology mean that it is now technically possible to have multiple suppliers for a single premises. If they so wish,

customers should be able to use these possibilities to choose a separate supplier notably for electricity to power appliances such as heat pumps or electric vehicles which have a particularly high consumption or which also have the capability to shift their electricity consumption automatically in response to price signals. Moreover, with fast-responding dedicated metering devices which are attached to or embedded in appliances with flexible, controllable loads, final customers can participate in other incentive-based demand response schemes that provide flexibility services on the electricity market and to system operators. Overall, such arrangements will contribute to the increased uptake of demand response and to consumer empowerment allowing them to have more control over their energy use and bills, while providing to the electricity system additional flexibility in order to cope with demand and supply fluctuations.

(39) Due to increasing complexity of energy offers and different marketing practices, consumers have often difficulties to fully understand what they sign up to. In particular, there is a lack of clarity on how the price is set, the conditions for the renewal of the contract, the consequences of terminating a contract or the reasons for changing conditions by the supplier. Therefore, the key information on energy offers should be provided to consumers by suppliers or market participants engaged in aggregation in a short and easily understandable manner prior to signing the contract.

(40) To ensure continuity of supply for consumers in case of supplier failure, Member States should be obliged to appoint suppliers of last resort which may be treated as the provider of universal service. That supplier might be the sales division of a vertically integrated undertaking which also performs distribution functions, provided that it meets the unbundling requirements of this Directive. However, this does not imply an obligation of Member States to supply at a certain fixed minimum price.

(41) Energy sharing can create resilience against the effects of high and volatile wholesale market prices on consumers' energy bills, empowers a wider group of consumers that do not otherwise have the option of becoming an active customer due to financial or spatial constraints, and leads to increased uptake of renewable energy by mobilising additional private capital investments and diversifying remuneration pathways. With the integration of appropriate price signals and storage facilities, electricity sharing can help lay the foundation to help tap into flexibility potential of smaller consumers.

(42) Active customers that own, lease or rent a storage or generation facility shall have the right to share excess production and empower other consumers to become active, or to

share the renewable energy generated or stored by jointly leased, rented or owned facilities, either directly or through a third-party facilitator. Energy sharing arrangement are either based on private contractual agreement between active customers or organised through a legal entity. A legal entity that incorporates the criteria of a renewable energy community as defined in Renewable Energy Directive 2018/2001 or a citizen energy community as defined in this Directive can share with their members electricity generated from facilities they have in full ownership.

(43) Energy sharing operationalises the collective consumption of self-generated or stored electricity injected into the grid by more than one jointly acting active customers. Member States shall put in place the appropriate IT infrastructure to allow for the administrative matching within a certain timeframe of consumption with self-generated or stored renewable energy by active customers that own, lease or rent a storage or generation facility for the purpose of calculating the energy component of the energy bill. The output of these facilities is distributed among the aggregated consumer load profiles based on static, variable or dynamic calculation methods that can be pre-defined or agreed upon by the active customers.

(44) In times of crisis, Member States should be allowed to extend regulated prices also to small and medium-sized enterprises. For both households and small and medium-sized enterprises, Member States should be allowed to go below costs as long as this does not create distortion between suppliers. However, it needs to be ensured that such price regulation does not create incentives to consume more. Hence, such price regulation should be limited to the necessary amount of energy. The Commission shall set the moment form which this possibility becomes applicable.

(45) 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:

Article 1

Amendments to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity is amended as follows:

(1) Article 1 is amended as follows:

[a] point (b) is replaced by the following:

(b) set fundamental principles for well-functioning, integrated electricity markets, which allow all resource providers and electricity customers non-discriminatory market access, ***incentivise the development of forward markets to allow suppliers and consumers to hedge themselves against the risk of future volatility in electricity prices,*** empower consumers, ensure competitiveness on the global market, ***enhance flexibility through*** demand response, energy storage ***and other flexibility solutions***, ensure energy efficiency, ~~***and***~~ facilitate aggregation of distributed demand and supply, and enable market and sectoral integration and market-based remuneration of electricity generated from renewable sources;

[b] the following point is added:

(e) ***support long-term investments and render consumers' energy bills less dependent from fluctuations of short-term market prices, in particular fossil fuel prices in the medium to long-term.***

(2) In Article 2, the following points are added:

(X) 'peak hour' means an hour with high consumption combined with a low level of electricity generated from renewable or other inframarginal energy sources;

(X) 'peak shaving' means the ability of market participants to reduce electricity consumption or use stored energy at peak hours determined by the transmission system operator;

(x) 'peak shaving product' means a market product through which market participants can provide peak shaving services to the transmission system operators;

(x) 'virtual hub' means a non-physical trading point covering more than one bidding zone for which a reference price is defined and which is established to aggregate the forward market liquidity and enable proxy hedging in the relevant bidding zones;

(x) 'two-way contract for difference' means a contract signed between a power generating facility operator and a counterpart, usually a national authority, that links the price of the electricity generated by the power generating facility to one or more strike prices and sets a reference price for the settlement of the contract, such that the generation facility operator receives or pays for each period the difference between the reference price and the strike price(s);

(x) 'power purchase agreement' or 'PPA' means a contract under which a natural or legal person agrees to purchase electricity from an electricity producer;

(x) 'market revenue' means realised income a producer receives in exchange for the sale and delivery of electricity in the Union, regardless of the contractual form in which such exchange takes place, and excluding any support granted by Member States;

(x) 'dedicated metering device' means a metering device attached to or embedded in an asset that sells demand response and/or flexibility services on the electricity market or to system operators;

(x) 'flexibility' means the ability of an electricity system and grid to adjust to the variability of generation and consumption patterns due to external factors, across relevant timescales.

(3) Article 7 is amended as follows:

[a] paragraph 1 is replaced by the following:

1. Transmission system operators and NEMOs***, or an entity designated by them,*** shall jointly organise the management of the integrated day-ahead and intraday markets in accordance with Regulation (EU) 2015/1222. Transmission system operators and NEMOs shall cooperate at Union level or, where more appropriate, at a regional level in order to maximise the efficiency and effectiveness of Union electricity day-ahead and intraday trading. The obligation to cooperate shall be without prejudice to the application of Union competition law. In their functions relating to electricity trading, transmission system operators and NEMOs shall be subject to regulatory oversight by the regulatory authorities pursuant to Article 59 of Directive (EU) 2019/944 and ACER pursuant to Articles 4 and 8 of Regulation (EU) 2019/942.

[b] paragraph 2 is replaced by the following:

Day-ahead and intraday markets shall:

(a) be organised in such a way as to be non-discriminatory;

(b) maximise the ability of all market participants to manage imbalances;

(c) maximise the opportunities for all market participants to participate in cross-zonal and ***intra-zonal*** trade in ***a non-discriminatory way and*** as close as possible to real time across ***and within*** all bidding zones;

(c bis) be organised in such a way as to maximise the sharing of liquidity between all NEMOs, both for cross-zonal and for intra-zonal trade;

(d), provide prices that reflect market fundamentals, including the real time value of energy, on which market participants are able to rely when agreeing on longer-term hedging products;

(e), ensure operational security while allowing for maximum use of transmission capacity;

(f), be transparent while at the same time protecting the confidentiality of commercially sensitive information and ensuring trading occurs in an anonymous manner;

(g), make no distinction between trades made within a bidding zone and across bidding zones; and

(h), be organised in such a way as to ensure that all markets participants are able to access the market individually or through aggregation.

[4] the following Article is inserted:

Article 7a

Peak shaving product

1. ***Transmission system operators may procure peak shaving products in order to call for electricity demand reduction during peak hours. The peak shaving product shall contribute to an efficient integration of electricity generated from renewable energy sources in the system.***

2. ***Transmission system operators introducing a peak shaving product shall submit a proposal to the regulatory authority defining the dimensioning and conditions for***

the procurement. The proposal of the transmission system operators shall comply with the following requirements:

(a) The dimensioning of peak shaving product shall be based on analysis of the need for an additional service to ensure the achievement of security of supply (whether a reliability standard or objective and transparent grid stability criteria agreed by the regulatory authority), taking into account forecasted demand, the forecast of electricity generated from renewable energy sources, the forecast of other sources of flexibilities in the system including those contracted via ancillary services and capacity mechanisms. The dimensioning shall be limited to ensure that the value of the product can be expected to exceed its cost;

(b) The procurement of peak shaving capacity shall be based on objective, transparent and non-discriminatory criteria;

(c) The resources subject to procurement under the peak shaving product shall be selected from demand response using a competitive bidding process, with selection based on the lowest cost of meeting pre-defined technical and environmental criteria;

(d) The resources procured under the peak shaving product shall be financially compensated;

(e) Contracts for peak shaving shall not be concluded more than two days before the provision and the contracting period shall be no longer than one day;

(f) The execution of the peak shaving product must not reduce cross-zonal capacity;

(g) The execution of the peak shaving product shall take place after the closure of the day-ahead market and before the start of the balancing market;

(h) The peak shaving product must not imply starting generation located behind the metering point.

3. The actual reduction of consumption resulting from the activation of a peak shaving product shall be measured against a baseline. Transmission system operators shall develop a baseline methodology in consultation with market participants and submit it to the regulatory authority.

4. ***Regulatory authorities shall approve or amend the proposal introducing a peak shaving product and the baseline methodology submitted by transmission system operators in accordance with paragraphs 2 and 3 or request the transmission system operator to amend the proposal.***

[5] the following article is inserted:

Article 7b

Dedicated metering device

1. ***Member States shall allow transmission system operators and distribution system operators to use data from dedicated metering device for the observability and settlement of demand response and flexibility services, including from storage systems.***

2. ***Member States shall establish requirements for dedicated metering device data validation process to check and ensure the quality of the respective data.***

(6) In Article 8, paragraph 1 is replaced by the following:

NEMOs shall allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time. ***By 1 January 2028, the intraday cross-zonal gate closure time shall be at the earliest 30 minutes ahead of real time.***

(7) In Article 8, paragraph 3 is replaced by the following:

NEMOs shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of ***100*** ~~***500***~~ kW or less, to allow for the effective participation of demand-side response, energy storage and small-scale renewables including direct participation by customers.

[8] Article 9 is amended as follows:

[a] paragraph 1 is deleted and replaced by the following:

~~***1. In accordance with Regulation (EU) 2016/1719, transmission system operators shall issue long-term transmission rights or have equivalent measures in place to***~~

~~*allow for market participants, including owners of power-generating facilities using renewable energy sources, to hedge price risks across bidding zone borders, unless an assessment of the forward market on the bidding zone borders performed by the competent regulatory authorities shows that there are sufficient hedging opportunities in the concerned bidding zones.*~~

1. ***By [date] the ENTSO for electricity shall submit to ACER a proposal for the establishment of regional virtual hubs for the forward market. The proposal shall:***

(a) define the geographical scope of the virtual hubs for the forward market, including the bidding zones constituting these hubs;

(b) include a methodology for the calculation by the single allocation platform of the reference prices for the virtual hubs for the forward market, aiming to maximise the correlations between the reference price and the prices of the bidding zones constituting a virtual hub;

(c) include a definition of long-term transmission rights from bidding zones to the virtual hubs for the forward market;

(d) aim to maximise the trading opportunities for hedging products traded at the virtual hubs for the forward market as well as for long term transmission rights from bidding zones to virtual hubs.

[b] paragraph 2 is replaced by the following:

~~**2. Long-term transmission rights shall be allocated in a transparent, market based and non-discriminatory manner through a single allocation platform.**~~

1. ***Within six months of receipt of the proposal, ACER shall either approve the proposal on the establishment of the regional virtual hubs for the forward market or amend it. In the latter case, ACER shall consult the ENTSO for electricity before adopting the amendments. The adopted proposal shall be published on ACER's website.***

[c] paragraph 3 is replaced by the following:

~~*3. Subject to compliance with Union competition law, market operators shall be free to develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity be limited to trades within a Member State or bidding zone.*~~

2. ***The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council***[24]***.***

[d] the following paragraphs are inserted:

3. ***The single allocation platform shall:***

(a) issue long-term transmission rights between bidding zones and virtual hubs; In case a bidding zone is not part of a hub it may issue long term transmission rights to other bidding zones;

(b) allocate long-term cross-zonal capacity on a regular basis and in a transparent, market-based and non-discriminatory manner; the frequency of allocation of the long-term cross-zonal capacity shall support the efficient functioning of the electricity forward market;

(c) Allocate long-term cross-zonal capacity in the form of financial transmission rights allowing holders to protect themselves against positive or negative price spreads and with maturities of up to three years ahead.

4. ***Where a regulatory authority considers that there are insufficient hedging opportunities available for market participants, it may request power exchanges or transmission system operators to implement additional measures to improve the liquidity of the forward market.***

[24] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L 169

5. ***Subject to compliance with Union competition law, market operators shall be free to develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity may be limited to trades within a Member State or bidding zone.***

6. ***Regulatory authorities may, where market operators do not develop forward hedging products for the virtual hub for the forward market, require nominated electricity market operators to develop and offer such products on their platform.***

[9] Article 18 is amended as follows:

[a] paragraph 2 is replaced by the following:

2. Tariff methodologies shall reflect the fixed costs of transmission system operators and distribution system operators and shall ***consider both capital and operational expenditure to*** provide appropriate incentives to transmission system operators and distribution system operators over both the short and long run***, including anticipatory investments,*** in order to increase efficiencies, including energy efficiency, to foster market integration and security of supply, ***to support the use of flexibility services,*** to support efficient investments ***including innovative solutions to optimise the existing grid and facilitate demand response,*** to support related research activities, and to facilitate innovation in the interest of consumers in areas such as digitalisation, flexibility services and interconnection.

[b] paragraph 8 is replaced by the following:

8. ***Transmission and*** ~~***Dd***~~istribution tariff methodologies shall provide incentives to ***transmission and*** distribution system operators for the most cost-efficient operation and development of their networks including through the procurement of services. For that purpose regulatory authorities shall recognise relevant costs as eligible, shall include those costs in ***transmission and*** distribution tariffs, and ~~***may***~~***shall*** introduce performance targets in order to provide incentives to ***transmission and*** distribution system operators to increase efficiencies in their networks, including through energy efficiency, ***the use of*** flexibility ***services*** and the development of smart grids and intelligent metering systems.

[10] Article 19 is amended as follows:

[a] in paragraph 2, point (b) is replaced by the following:

(b) maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion; ***or***

[b] in paragraph 2, point (c) is added:

(c) compensating offshore renewable plant operators in an offshore bidding zone if access to interconnected markets has been reduced such that one or more transmission system operators have not made enough capacity available on the interconnector or the critical network elements affecting the capacity of the interconnector, resulting in the offshore renewable plant operator not being able to offer its electricity generation capability to the market.

[11] The following chapter is inserted:

Chapter IIIa

Specific investment incentives to achieve the Union's decarbonisation objectives

Article 19a

Power purchase agreements

1. ***Member States shall consider the potential role of PPAs, alongside other market arrangements and public support, in fulfilling the objectives set out in their National Energy and Climate Plan as per Section 2.1. of Annex I of Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, while preserving competitive and liquid electricity markets.***

2. ***Member States shall ensure that instruments, including guarantee schemes, to reduce the financial risks associated to off-taker payment default in the framework of PPAs are in place and accessible to consumers that face entry barriers to the PPA market and are not in financial difficulty. For this purpose, Member States shall take into account Union-level instruments. Member States shall determine what***

categories of consumers are targeted by these instruments, applying non-discriminatory criteria.

3. A guarantee scheme for PPAs backed by the State shall include provisions to avoid lowering the liquidity in electricity markets and shall not provide support to the purchase of generation from fossil fuels.

4. In the design of the support schemes for electricity from renewable sources, Member States shall endeavour, at least once every three years, to make use of evaluation criteria to incentivise the uptake of PPAs. In particular, such evaluation criteria may give preference to bidders presenting a signed PPA or a commitment from a potential buyer to sign a PPA for part of the project's generation. In addition, these criteria may incentivise specifically PPAs with consumers that face difficulties to access the PPA market.

5. Power purchase agreements shall specify the bidding zone of delivery and the responsibility for securing cross-zonal transmission rights in case of a change of bidding zone in accordance with Article 14 of this Regulation.

6. Power purchase agreements shall specify the conditions under which customers and producers may exit from PPAs, such as any applicable exit fees and notice periods, in accordance with Union competition law.

Article 19b

Support schemes for new investments in generation

1. Direct price support schemes for new investments for the production of electricity from the sources referred to in paragraph 2 of this Article shall take the form of two-way contract for differences or an equivalent contractual formulation.

2. The requirements in paragraph 1 shall apply to new investments in generation in the following sources:

(a) wind energy;

(b) solar energy;

(c) geothermal energy;

(d) hydropower without reservoir;

(e) nuclear energy

3. Support schemes referred to in paragraph 1 shall:

(a) be designed so that the revenues collected when the market price is above the strike price are distributed to all final electricity customers based on their share of overall consumption (same cost / refund per MWh consumed).

(b) ensure that the distribution of the revenues to final electricity customers is designed so as not to remove the incentives of consumers to shift their consumption to periods when electricity prices are low and not to undermine competition between electricity suppliers.

Article 19c

Principles applicable to support schemes for new investments in generation

1. Without prejudice of the application of Article 107 and 108 TFEU, direct support schemes for new investments in generation in energy from renewable sources as defined in Article 2(1) of Directive (EU) 2018/2001 and nuclear energy shall comply with the following principles:

(a) allow the participation of projects which reserve part of the electricity for sale through a power purchase agreement or other market-based arrangements;

(b) take into consideration locational criteria to ensure that new investments in generation take place in optimal locations that do not create or worsen congestion in the grid;

(c) include penalty clauses applicable in case of early termination of the support scheme by the producer.

(d) be designed so as to comply with the principles set out in Article 4(2) and 4(3), first and third subparagraphs, of Directive (EU) 2018/2001;

Article 19d
Assessment of flexibility needs

1. By [two years after entry into force of this Regulation] and every two years, the regulatory authority of each Member State shall assess and produce a report on the need for flexibility in the electricity system for a period of at least 5 years and in view of the need to decarbonise the power system. The report shall be based on the data and analyses provided by the transmission and distribution system operators of that

Member State pursuant to paragraph 2 and using the methodology pursuant to paragraph 3.

The report shall evaluate the need for flexibility to integrate electricity generated from renewable sources in the electricity system and consider, in particular, the potential of demand side response and storage to fulfil this need, both at transmission and distribution levels.

2. ***The transmission and distribution system operators of each Member State shall provide the data and analyses needed for the preparation of the national assessment referred to in paragraph 1 to the regulatory authority.***

3. ***The ENTSO for electricity and the EU DSO entity shall coordinate transmission and distribution system operators as regards the data and analyses to be provided in accordance with paragraph 2. In particular, they shall:***

(a) ***define the type of data and format that transmission and distribution system operators shall provide to the regulatory authorities;***

(b) ***develop a methodology for the analysis by transmission and distribution system operators of the flexibility needs, taking into account at least all existing sources of flexibility and planned investments at interconnection, transmission and distribution level as well as the need to decarbonise the electricity system.***

4. ***The ENTSO for Electricity and the EU DSO entity shall closely cooperate with each other regarding the coordination of transmission and distribution system operators.***

5. ***By [six months after the entry into force of the Regulation], the ENTSO for electricity and the EU DSO entity shall jointly submit to ACER a proposal for the methodology pursuant to paragraph 3. Within six months of receipt of the proposal, ACER shall either approve the proposal or amend it. In the latter case, ACER shall consult the ENTSO for electricity and the EU DSO entity before adopting the amendments. The adopted proposal shall be published on ACER's website.***

6. ***The regulatory authorities shall submit the national assessments to ACER and publish them. Within [12] months of receipt of the national assessments, ACER shall issue a report analysing the national assessments and providing recommendations on issues of cross-border relevance regarding the findings of the regulatory authorities.***

Article 19e
National objective for demand side response and storage

Based on the assessment of the regulatory authority pursuant to Article [X], each Member State shall define an indicative national objective for demand side response and storage. This indicative national objective shall also be reflected in Member States' integrated National Energy and Climate Plans as regards the dimension 'Internal Energy Market' together with the general overview of the investments needed to meet the corresponding objectives in accordance with Articles 3, 4 and 7 of Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action. Member States shall report on the progress accomplished towards reaching this objective in their integrated biennial progress reports pursuant to Article 17 of Regulation (EU) 2018/1999.

Article 19f
Flexibility support schemes

1. ***To achieve the national objective for demand side response and storage investment needs set out in accordance with Article [X+1](2), Member States which apply a capacity mechanism in accordance with Article 21 shall consider the promotion of the participation of demand side response and storage by introducing additional criteria or features in the design.***

2. ***Member States may apply flexibility support schemes consisting of payments for the available capacity of demand side response and storage in cases where:***

(a) ***the measures referred to in paragraph 1 are insufficient to achieve the national objective for demand response and storage investment needs; or***

(b) ***a Member State does not apply a capacity mechanism.***

Article 19g
Design principles for flexibility support schemes

1. ***Any flexibility support scheme for demand response and storage shall:***

(c) ***be limited to new investments in demand side response and storage;***

(d) ***select capacity providers by means of an open, transparent, competitive, non-discriminatory and cost-effective process;***

(e) ***prevent undue distortions to the efficient functioning of the electricity markets including preserving efficient operation incentives and price signals and the exposure to price variation and market risk;***

(f) ***take into consideration locational criteria to ensure that investments in new capacity take place in optimal locations and that they do not create or worsen congestion in the grid;***

(g) ***set out a minimum level of participation in the market in terms of activated energy, which takes into account the technical specificities of storage and demand response;***

(h) ***apply appropriate penalties to capacity providers which do not respect the minimum level of participation in the market as defined in subparagraph (e), or which do not follow efficient operation incentives and prices signals;***

(i) ***be open to cross-border participation.***

[12] In Article 37, paragraph 1, point (a) is replaced by the following:

(a), carrying out the coordinated capacity calculation in accordance with the methodologies developed pursuant to the ***forward capacity allocation guideline, the*** capacity allocation and congestion management guideline ***and the electricity balancing guideline*** adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;

[13] Article 50 is amended as follows:

[a] a new paragraph is inserted after paragraph 4:

4a. Transmission system operators shall publish and update regularly, at least quarterly, and in a clear and transparent manner, information on the capacity available for new connections in their respective areas of operation.

[14] Article 57 is amended as follows:

[a] a new paragraph is inserted:

3. Distribution system operators and transmission system operators shall cooperate with each other in publishing information on the capacity available for new connections in their respective areas of operation in a consistent manner and giving sufficient granular visibility to developers of new energy projects and other potential network users.

[15] In Article 59, paragraph 1, point (b) is replaced by the following:

(b), capacity-allocation and congestion-management rules pursuant to Article 6 of Directive (EU) 2019/944 and Article 7 to 10, Articles 13 to 17 and Articles ***19 and*** 35 to 37 of this Regulation, including rules on day-ahead, intraday and forward capacity calculation methodologies and processes, grid models, bidding zone configuration, redispatching and countertrading, trading algorithms, single day-ahead and intraday coupling ***including the possibility of being operated by a single entity***, the firmness of allocated cross-zonal capacity, congestion income distribution, ***the allocation of long-term transmission rights by the single allocation platform,*** cross-zonal transmission risk hedging, nomination procedures, and capacity allocation and congestion management cost recovery;

[16] Annex I is amended as follows:

[a] Point 1.2 is replaced by the following:

1.2. Coordinated capacity calculation shall be performed for ~~***the day-ahead and intraday***~~ ***all allocation*** timeframes.

Article 2

Amendments to 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

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 is amended as follows:

(1) Article 2 is amended:

[a] paragraph (49) is amended as follows:

'non-frequency ancillary service' means a service used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability, ~~***and***~~ island operation capability ***and peak shaving***;

[a] the following points are added:

(x) 'fixed electricity supply contract' means an electricity supply contract between a supplier and a final customer that guarantees the same contractual conditions, including the price, during the whole duration of the contract;

(x) 'supplier of last resort' means a supplier who is designated by Member State to take over the supply of electricity to customers of a supplier which has ceased to operate;

(x) 'energy sharing' means the sales or allocation free of charge or against a fee within a set time interval of self-generated or stored renewable energy between active customers;

(x) 'active customer' means a final customer, or a group of jointly acting final customers, who consumes or stores electricity generated within its premises located within confined boundaries or ~~***, where permitted by a Member State,***~~ ***self-generated or shared electricity within other premises located within the same bidding zone****, or who sells self-generated electricity or participates in flexibility or energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity.*

(5) Article 4 is amended as follows:

Member States shall ensure that all customers are free to purchase electricity from the supplier of their choice**.** ~~and~~ Member States shall ensure that all customers are free to have more than one electricity supply contract at the same time~~, provided that the required connection and metering points are established~~**, and that to this end customers are entitled to have more than one metering and billing point covered by the single connection point for their premises.**

(7) Article 11 is amended as follows:

Entitlement to a fixed-price and dynamic electricity price contract

1. Member States shall ensure that the national regulatory framework enables suppliers to offer **fixed-price and** dynamic electricity price contracts. Member States shall ensure that final customers who have a smart meter installed can request to conclude a dynamic electricity price contract **and that all final customers can request to conclude a fixed-price fixed-term electricity price contract [of a duration of at least one year],** with at least one supplier and with every supplier that has more than 200 000 final customers.

1a. Prior to the conclusion or extension of any contract, final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language. This summary shall include at least information on total price, promotions, additional services, discounts and include the rights referred to in points (a), (b), (d), (e) and (f) of Article 10(3). The Commission shall provide guidance in this regard.

2. Member States shall ensure that final customers are fully informed by the suppliers of the opportunities, costs and risks of ~~**such**~~ dynamic electricity price contracts, and shall ensure that suppliers are required to provide information to the final customers accordingly, including with regard to the need to have an adequate electricity meter installed. Regulatory authorities shall monitor the market developments and assess the risks that the new products and services may entail and deal with abusive practices.

3. Suppliers shall obtain each final customer's consent before that customer is switched to a dynamic electricity price contract.

4. For at least a ten-year period after dynamic electricity price contracts become available, Member States or their regulatory authorities shall monitor the main developments of such contracts, including market offers and the impact on consumers' bills, and specifically the level of price volatility, and publish an annual report on their findings.

(8) ***New Article xxx is inserted:***

Right to energy sharing

1. All households, small and medium sized enterprises and public bodies have the right to participate in energy sharing as active customers.

2. Active customers shall be entitled to share renewable energy between themselves based on private agreements or through a legal entity and up to 100 MW of total installed capacity.

3. Active customers may use a third party that owns or manages for installation, operation, including metering and maintenance a storage or renewable energy

generation facility for the purpose of facilitating energy sharing, without that third party being considered an active customer.

4. Member States shall ensure active customers participating in energy sharing:

(a) are entitled to have the shared electricity netted with their total metered consumption within a time interval no longer than the imbalance settlement period and without prejudice to applicable taxes and network charges;

(b) benefit from all consumer rights and obligations as final customers under this Directive except in case of supply of energy between households with an installed capacity up to 10.8 kW and up to 50 kW for multi-apartment blocks using peer-to-peer trading arrangements;

(c) have access to template contracts with fair and transparent terms and conditions for peer-to-peer trading between households, and for leasing, renting or investing in storage and renewable energy generation facilities for the purpose of energy sharing; in case of conflicts arising over such agreements, final customers should have access to out of court dispute settlement in accordance with Article 26;

(d) are not subject to unfair and discriminatory treatment by market participants or their balance responsible parties;

(e) are informed of the possibility for changes in bidding zones in accordance with Article 14 of Regulation (EU) 2019/943 and that the right to share energy is restricted to within one and the same bidding zone.

5. Member States shall ensure that relevant transmission or distribution system operators or other designated bodies:

(a) monitor, collect, validate and communicate metering data related to the shared electricity with relevant final customers and market participants at least every month, and in accordance with Article 23;

(b) provide a relevant contact point to register energy sharing arrangements, receive information on relevant metering points, changes in location and participation, and, where applicable, validate calculation methods in a clear, transparent and timely manner.

6. ***Member States shall take appropriate measures to ensure energy poor and vulnerable households can access energy sharing schemes. These measures may include financial investment incentives or exemptions, or capacity reservation or production output priority allocation.***

(9) Article xxx is inserted:

Supplier hedging

1. ***Member States shall ensure that suppliers have in place and implement appropriate hedging strategies to limit the risk of changes in wholesale electricity supply to the economic viability of their contracts with customers, while maintaining liquidity on and price signals from short-term markets.***

2. ***Supplier hedging strategies may include the use of power purchase agreements. Where sufficiently developed markets for power purchase agreements exist which allow effective competition, Member States may require that a share of suppliers' risk exposure to changes in wholesale electricity prices is covered using power purchase agreements for electricity generated from renewable energy sources matching the duration of their risk exposure on the consumer side, subject to compliance with Union competition law.***

3. ***Member States shall put in place enabling conditions to ensure the accessibility of hedging products, with clear exit clauses, for citizen energy communities and renewable energy communities acting as suppliers.***

(10) New Article XX is added:

Supplier of last resort

1. ***Member States shall appoint suppliers of last resort at least for household customers. Suppliers of last resort shall be appointed in a fair, open, transparent and non-discriminatory procedure.***

2. ***Final customers who are transferred to suppliers of last resort shall not lose their rights as customers, in particular their rights set out in Articles 4, 10, 11, 12, 14, 18 and 26.***

3. ***Member States shall ensure that suppliers of last resort promptly communicate the terms and conditions to transferred customers and ensure seamless continuity of***

service for customers for at least [6] months/ the period needed to find a new supplier.

4. Member States shall ensure that final customers are provided with information to switch to a market-based offer.

5. Member States may require the supplier of last resort to supply electricity to customers who do not receive market based offers. In such cases, the conditions set out in Article 5 shall apply.

(11). Article 27(1) is amended as follows:

1. Member States shall ensure that all household customers, and, where Member States consider it appropriate, small enterprises, enjoy universal service, namely the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, **~~Member States may appoint a supplier of last reso~~**rt. Member States shall impose on distribution system operators an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 59(7). This Directive does not prevent Member States from strengthening the market position of the household customers and small and medium-sized non-household customers by promoting the possibilities for the voluntary aggregation of representation for that class of customers.

(12) Article 31 (3) is replaced by the following:

3. The distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system. ***In particular, the distribution system operator shall publish and update regularly, at least quarterly, and in a clear and transparent manner, information on the capacity available for new connections in its area of operation.***

(13). Article 59 is amended as follows:

[x] In paragraph 1, subparagraph (c) is replaced by the following:

(c), in close coordination with the other regulatory authorities, ensuring the compliance of the ***single allocation platform, the*** ENTSO for Electricity and the EU DSO entity with their obligations under this Directive, Regulation (EU) 2019/943, the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943, and other relevant

Union law, including as regards cross-border issues, as well as with ACER's decisions, and jointly identifying non-compliance of the ***single allocation platform, the*** ENTSO for Electricity and the EU DSO entity with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942;

[x] In paragraph 1, subparagraph (z) is replaced by the following:

(z) The regulatory authority shall have the following duties: monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated electricity and citizen energy communities, **including related to the connection of flexible distributed energy generation within a reasonable time in accordance with Article 58 (d).**

[x] paragraph 4 is replaced by the following:

4. The regulatory authority located in the Member State in which the ***single allocation platform, the*** ENTSO for Electricity or the EU DSO entity has its seat shall have the power to impose effective, proportionate and dissuasive penalties on those entities where they do not comply with their obligations under this Directive, Regulation (EU) 2019/943 or any relevant legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties.

(14) Article 66a is inserted

Article 66a

Access to affordable energy during a price crisis

1. The Commission may by decision declare a regional or Union-wide [price crisis, etc., tbd]if the following conditions are met:

(a) very high prices in wholesale electricity markets which are substantially above the 5 year average;

(b) sharp increases in electricity retail prices which are expected to continue for at least 6 months; and

(c) (c) the wider economy is being negatively affected by the increases in electricity prices.

The Commission shall specify in its decision declaring a regional or Union-wide [emergency] the period of validity which may be for a period of up to one year.

2. ***Where the Commission has adopted a decision pursuant to paragraph 1, Member States may apply public interventions in price setting for the supply of electricity to small and medium sized entreprises. Such public interventions shall:***

   (a) ***be limited to 80% of the beneficiary's highest annual consumption over the previous 5 years and retain an incentive for demand reduction;***

   (b) ***comply with the conditions set out in Article 5(4) and (7);***

   (c) ***where relevant, comply with the conditions set out in Paragraph 3.***

3. ***Where the Commission has adopted a decision pursuant to paragraph 1, Member States may, by way of derogation from Article 5(7)(c), when applying public interventions in price setting for the supply of electricity pursuant to Article 5(6) or paragraph 2 of this Article, exceptionally and temporarily set a price for the supply of electricity which is below cost provided that all of the following conditions are fulfilled:***

   (a) ***the price set only applies to 80% of median household consumption and retains an incentive for demand reduction;***

   (b) ***there is no discrimination between suppliers;***

   (c) ***suppliers are compensated for supplying below cost; and***

   (d) ***all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.***

(15) Article is inserted:

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article [...], by [six months after the entry into force of this Directive] at the latest.

Member States shall forthwith communicate to the Commission the text of those provisions

Article 3

Amendment to Directive (EU) 2018/2001

Directive (EU) 2018/2001 is amended as follows:

(1) In Article 4(3), the second subparagraph is replaced by the following:

To that end, with regard to direct price support schemes, support shall be granted in the form of a market premium, which could be, inter alia, sliding or fixed. ***This provision shall not apply to support for electricity from the renewable sources listed in Article 19c(2) of the Regulation (EU) XX/XX on the internal market for electricity, for which Article 19c(1) of that Regulation applies.***

Article 4

Amendments to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators

Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators is amended as follows:

[1] In Article 2, point (a) at the end, the following words are added:

, and on the single allocation platform established in accordance with Regulation (EU) 2016/1719;

[2] In Article 2, point (d) at the end the following words are added:

on approving and amending proposal from the ENTSO for electricity related to the regional virtual hubs; and on approving and amending the joint proposal from the ENTSO for electricity and EU DSO entity related to the methodology concerning the data and analysis to be provided as regards the flexibility needs.

[3] In Article 3(2) the following fourth subparagraph is added:

This paragraph shall also apply to the single allocation platform established in accordance with Regulation (EU) 2016/1719.

[4] The following Article 4(9) is added:

(9) Paragraphs (6) to (8) shall also apply to the single allocation platform established in accordance with Regulation (EU) 2016/1719.

[5] In Article 5, paragraph 8, the following subparagraph is added:

ACER shall monitor the single allocation platform established in accordance with Regulation (EU) 2016/1719.

[6] The following Article 15(5) is added:

(5) ACER shall issue a report analysing the national assessments of the flexibility needs and providing recommendations on issues of cross-border relevance regarding the findings of the regulatory authorities.

Article 5

Transitional provisions

Article 6

Transposition

Article 7

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*