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**NOTE**

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee |
| No. Cion doc.: | 12249/22 INIT |
| Subject: | Proposal for a COUNCIL REGULATION on an emergency intervention to address high energy prices |

## 1. INTRODUCTION

1. On 9 September 2022, the Presidency convened an extraordinary meeting of the TTE Council (Energy) to agree on the appropriate measures on the EU level to address soaring energy prices and high volatility in the electricity market and to give a clear guidance to the Commission on the next steps.

2. On 14 September the Commission, based on the guidance from the Council, presented a "*Proposal for a Council Regulation on an emergency intervention to address high energy prices*" comprising of measures on decreasing consumption in the electricity sector, capping surplus revenues of the inframarginal electricity producers and presenting a solidarity contribution of surplus profits from the companies operating fossil fuel sector.

3. The proposal was presented to the Coreper I and II on 14 September and to the Working Party on Energy on 15 September.

4. During these meetings, the Presidency was able to note that the Member States supported the need to quickly adopt the proposed measures before the upcoming winter, but at the same time, that further work is needed to reflect the Member States' specificities, to clarify certain provisions and to take into account already adopted national measures.

5. The discussions focused on the mandatory demand reduction, where the Member States mainly asked for further clarifications and more flexibility towards more efficient demand reduction. The Member States also asked for more flexibility towards their specific circumstances, but also towards a better reflection of national measures already in place in the area of capping the revenue of inframarginal producers of electricity. In this respect, concerns were raised in relation to security of supply. Regarding the solidarity contribution, the Member States asked mainly for a recognition of equivalent measures adopted on the national level.

## 2. STATE OF PLAY

6. Delegations will find in annex the Presidency REV 1 of the Commission's proposal for a Council Regulation on an emergency intervention to address high energy prices.

7. In the current revision: new text is in **bold underlined**, deleted text is in ~~strikethrough~~.

8. Please note that unchanged parts of the text are **not** necessarily acceptable or accepted as they currently stand but it is the view of the Presidency that they should not be addressed at this stage.

9. The following main changes have been made:

   a) New Recital 7a has been added to better clarify the need for the proposed measures under Article 122 of the Treaty on the Functioning of the European Union.

b) Recital 43 has been clarified to reflect the specific situation of suppliers of last resort in some Member States.

c) The voluntary nature of Article 3 on reduction of gross electricity consumption has been clarified.

d) The flexibility in Article 4 has been significantly increased in order to reflect specific climatic conditions in the Member States and to allow for the usage of historical data in setting the reference period. At the same time, the overall ambition has been preserved.

e) In Article 6, paragraph 4, reference to paragraph 1 has been deleted in order to allow the Member States to keep national measures equivalent to the proposed cap on market revenues.

f) In the same Article, a new paragraph has been added in order to allow for electricity production from hard coal to fall under a specific cap as its costs will mostly be above the cap.

g) Peat has been added to the list of resources falling under the measure concerning the cap on market revenues in Article 7.

h) Still in Article 7, paragraph 3 has been expanded in order to ensure that CO2 emissions are not increased as a result of efforts to avoid the application of the cap.

i) At the same time a derogation has been introduced in the Article 7 to make sure that security of supply is not endangered in case the production costs of certain electricity producers are above the cap.

j) New paragraph 5 has been added in Article 7 in order to ensure the producers will provide all relevant information needed to apply this measure.

k) Article 8 on incentives for renewable power purchase agreements has been deleted as several Member States pointed out that this provision is not in line with Article 122 of the Treaty on the Functioning of the European Union.

l) A new Article 8a regarding the possibility to use surplus congestion revenues has been added in order to clarify that these revenues can also be used to mitigate impacts of the current crisis. It is accompanied by new Recital 37 and a new definition. The Commission already stated that these revenues can be used in its May Communication.

m) Article 10 on the sharing of the surplus revenues among Member States has been slightly clarified and a role of the Commission in facilitating the agreements has been introduced.

n) Changes in Article 13 on temporary solidarity contribution have been proposed to allow for the Member States to maintain their equivalent national measures.

o) In Article 14, the Presidency made changes towards better clarity.

p) Article 18 on monitoring and enforcement has been amended to decrease the administrative burden and to reflect the changes made in the text.

10. On the basis of the progress achieved to date, and in order to set a direction for further work, the Presidency would like to ask the delegations to comment on the revised text.

2022/0289 (NLE)

Proposal for a

# COUNCIL REGULATION

## on an emergency intervention to address high energy prices

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) Very high prices in electricity markets have been observed since September 2021. As set out by ACER in its assessment of EU wholesale electricity market design in April 2022[1], 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. The escalation of the Russian military aggression against Ukraine, a Contracting Party of the Energy Community, since February 2022 has led to gas supplies declining markedly. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in and volatility of the price of electricity.

[1] https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER's%2520Final%2520Assessment%2520of%2520the%2520EU%2520Wholesale%2520Electricity%2520Market%2520Design.pdf

(2) The recent substantially lower levels of gas delivery and increased disruptions of gas supply from Russia point to a significant risk that a complete halt of Russian gas supplies may materialise in the near future. To increase the Union's security of energy supply, the Council adopted Regulation (EU) 2022/1369[1] that provides for a voluntary reduction of natural gas demand by 15% this winter and grants the possibility for the Council to declare a Union alert on security of supply, in which case the gas demand reduction would become mandatory.

(3) In parallel, the exceptionally high temperatures observed during the summer of 2022 have pushed up demand for electricity for cooling, adding pressure on electricity generation while, at the same time, electricity generation from certain technologies has been significantly below historical levels due to technical and weather-dependant circumstances. This is due mainly to an exceptional drought which led to (i) a shortfall in the production of electricity by nuclear power plants in different Member States caused by the lack of available cooling water, (ii) scarce hydropower generation and (iii) low water levels in major rivers which have adversely affected the transport of commodities used as input fuel for generation. This unprecedented situation means that the volumes of electricity generated from natural gas-fired power plants have stayed persistently high, contributing to exceptionally and abnormally high wholesale electricity prices. Despite the reduced availability of generation capacities in some Member States, electricity exchanges between Member States have helped to avoid security of supply incidents and contributed to mitigating price volatility on the EU markets, thereby enhancing each Member State's resilience to price shocks.

[1] Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

(4) The price surge in wholesale electricity markets has led to sharp increases in electricity retail prices, which are expected to continue ahead of the next heating season gradually trickling down to most consumer contracts. The sharp increase in gas prices and the resulting demand for alternative fuels has also led to an increase of other commodity prices such as **crude** oil and coal prices.

(5) All Member States have been negatively affected by the current energy crisis, albeit to a different extent. The stark increase of energy prices is substantially contributing to the general inflation in the euro area and slowing down economic growth in the Union.

(6) A rapid and coordinated response is therefore needed. The deployment of an emergency tool would allow mitigation, on a temporary basis, of the risk that electricity prices and the cost of electricity for final customers reach even less sustainable levels and that Member States adopt uncoordinated national measures, which could endanger security of supply at Union level and put an additional burden on the Union's industry and consumers. In a spirit of solidarity between Member States, a coordinated effort by Member States during the next winter season 2022-23 is required to mitigate the impact of high energy prices and ensure that the current crisis does not lead to lasting harm for consumers and the economy, while preserving the sustainability of public finances.

(7) The current disruptions to gas supplies, reduced availability of certain power generating plants, and the resulting impacts on gas and electricity prices, constitute a severe difficulty in the supply of gas and electricity energy products within the meaning of Article 122(1) of the Treaty on the Functioning of the European Union. There is a serious risk that the situation could deteriorate further in the coming winter season in case of further disruptions of gas supplies and a cold winter season driving up the demand for gas and electricity. Such further deterioration could lead to more upward pressure on the price of gas and other energy commodities' prices with a resulting impact on electricity prices.

**(7a)** **The disruption of the energy market, caused by one of the main market players which has artificially reduced the supply of gas in the context of the Russian military aggression against Ukraine, and the hybrid war which is thereby carried out have created a crisis situation which requires the adoption of a set of urgent, temporary, exceptional measures of economic nature to address the unbearable effects on consumers and companies. If not addressed rapidly, the crisis situation may have severe detrimental effects on inflation, the liquidity of market operators and on the economy as a whole.**

(8) A united and well-coordinated Union-wide response is needed to tackle the stark increase of electricity prices and their impact on households and industry. Uncoordinated national measures could affect the functioning of the internal energy market, endangering security of supply and leading to further price increases in the Member States most affected by the crisis. Safeguarding the integrity of the internal electricity market is therefore crucial to preserve and enhance the necessary solidarity between Member States.

(9) While some Member States might be more exposed to the effects of a disruption of Russian gas supplies and the resulting price increases, all Member States can contribute to limiting the economic harm caused by such disruption by appropriate demand reduction measures. Reducing electricity demand at national level can have a positive, Union-wide effect on electricity prices, as electricity markets are coupled and savings in one Member State thus benefit also other Member States.

(10) Uncoordinated caps on revenues from electricity produced from generators with lower marginal costs such as renewables, nuclear, and lignite (inframarginal generators) may lead to significant distortions between generators in the Union, as generators compete EU-wide on a coupled electricity market. A commitment to a joint Union-wide cap on surplus revenues will avoid such distortions. Furthermore, not all Member States can support consumers to the same extent due to limited financial resources, while at the same time, some electricity generators may continue enjoying significant surplus revenues. Solidarity between Member States, through a uniform cap on the revenues of inframarginal generation technologies will generate revenues for Member States to finance measures in support of electricity final customers, such as households, SMEs and energy intensive industries, while at the same time preserving the price signals on the markets across Europe and preserving cross-border trade.

(11) With a view to the extreme increase of retail gas and electricity prices, State interventions to protect retail consumers are of particular importance. However, the impact of the gas supply shortages on electricity prices, as well as the possibilities to finance support measures from State budget differ between Member States. If only some Member States with sufficient resources can protect these customers and suppliers, this would lead to severe distortions of the internal market. A uniform obligation to pass on the surplus revenues to final consumers allows all Member States to protect their consumers. The positive effect on energy prices will have a positive impact on the interconnected EU market and will also help dampening the inflation rate. Therefore, in a spirit of solidarity, national measures will, in the interconnected Union economy, also have a positive effect in other Member States.

(12) The measure consisting of the solidarity contribution for fossil companies with activities in the **crude** oil, gas, coal and refinery sector is an exceptional and strictly temporary measure. It appears appropriate in the current situation that action is taken at Union level is taken to mitigate the direct economic effects of the soaring energy prices for public authorities' budgets, consumers and companies across the Union.

(13) The solidarity contribution is an appropriate means to tackle surplus profits, due to unforeseen circumstances. Those profits do not correspond to any regular profit that these entities would or could have expected to obtain in normal circumstances would the unpredictable events in the energy markets not have taken place. Therefore, the introduction of a solidarity contribution constitutes a joint and coordinated measure which affords, in a spirit of solidarity, generating additional proceeds for national authorities to provide financial support to households and companies heavily affected by the soaring energy prices while ensuring a level playing field across the Union and the internal market. It should be applied in parallel to the regular corporate taxes levied by each Member State on the companies concerned.

(14) To ensure coherence across energy policy areas, the measures should work as an interdependent package reinforcing each other. All Member States should be able to support consumers, in a targeted manner, through surplus revenues resulting from the cap on market revenues for inframarginal electricity generation, through the reduction of electricity demand, which contributes to lowering energy prices, and through proceeds from a solidarity contribution imposed on fossil companies with activities in the **crude** oil, gas, coal and refinery sector. At the same time, lower demand should have positive effects in terms of reducing the risks to security of supply, in line with the objectives of Directive (EU) 2019/944.

(15) Member States should therefore endeavour to reduce their total gross electricity consumption from all consumers including those who are not yet equipped with smart metering systems or devices enabling them to monitor their consumption during specific hours of the day.

(16) To preserve fuel stocks for electricity generation and to specifically target the most expensive hours of electricity consumption, when gas-fired power generation has a particularly significant impact on the marginal price, each Member State should reduce its gross electricity consumption during identified peak ~~price~~ hours.

(17) Based on the typical electricity consumption profile within peak hours, a binding target of 5% during peak ~~price~~ hours would ensure that Member States address more specifically consumers who can deliver flexibility through demand reduction offers on an hourly basis, including via aggregators. Therefore, an active electricity demand reduction of at least 5% during selected hours should lead to a reduced gas consumption and to a smoother repartition of demand across hours, impacting hourly market prices.

(18) Member States should have the discretion to choose the appropriate measures to achieve the demand reduction targets so that they can reflect national specificities. When designing electricity demand reduction measures, Member States should ensure that such measures are designed so as not to undermine the Union electrification objectives as set out in the Communication on Powering a climate-neutral economy: An EU Strategy for Energy System Integration. Electrification is key to reduce EU dependence on fossil fuels and ensure long-term strategic autonomy of the European Union as this leads to limiting the magnitude of this energy crisis and preventing future energy crisis. Measures to reduce the gross electricity consumption might include national awareness-raising campaigns, publishing targeted information on the forecasted situation in the electricity system, regulatory measures limiting non-essential energy consumption, and targeted incentives to reduce the electricity consumption.

(19) When identifying appropriate demand reduction measures in the peak ~~price~~ hours, Member States should in particular consider market-based measures such as auctions or tender schemes, by which they could incentivise a reduction of consumption in an economically efficient manner. To ensure efficiency and fast implementation, Member States could use existing initiatives and expand existing schemes to develop demand response. The measures taken at national level could also include financial incentives or compensation to market participants affected, if a tangible demand reduction is achieved in addition to expected normal consumption.

(20) To assist and provide guidance to Member States delivering the necessary demand reductions set out in this Regulation, the Commission should facilitate the sharing of best practices between Member States.

(21) Given the extraordinary and sudden surge in electricity prices and the imminent risk of further increases, it is necessary for Member States to immediately establish the measures needed to achieve reductions of the gross electricity consumption in order to facilitate rapid price reductions and to minimise the use of fossil fuels.

(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, i.e., that with the highest marginal costs, when the market clears. The recent surge in the price of gas and hard coal has translated into an exceptional and lasting increase of the prices at which the gas and coal-fired power 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 since the invasion of Ukraine by Russia in February 2022, well above their expectations when deciding to invest.

(24) In a situation where consumers are exposed to extremely high prices which also harm the Union's economy, it is necessary to limit, on a temporary basis, the extraordinary market revenues of producers with lower marginal costs by way of application of a cap for such market revenues achieved through the sale of electricity within the Union.

(25) The level at which the cap on the revenues is set should not jeopardise the ability of the producers to which it is applied, including renewable energy producers, to recover their investment and operating costs and should preserve and incentivise future investments in the capacity needed for a decarbonised and reliable electricity system. A uniform cap on revenues across the Union is necessary to preserve the functioning of the internal electricity market, as it would maintain price-based competition between electricity producers based on different technologies, in particular for renewables.

(26) While occasional and short-term peaks on prices can be considered a normal feature in an electricity market and may be useful for some investors to recover their generation investment, the extreme and lasting price increase observed since February 2022 is markedly different from a normal market situation of occasional peak prices. Therefore, the cap should not be set below the reasonable expectations of market participants as to the average level of electricity prices in the hours during which the demand for electricity was at its highest, before the invasion of Ukraine by Russia. Before February 2022, the average peak prices in the electricity wholesale market were significantly and consistently expected below 180 Euros per MWh across the Union in the last decades, despite the differences in electricity prices between regions in the Union. Since the initial investment decision of market participants was taken based on an expectation that, on average, the prices would be lower than that level during peak hours, setting a cap at a 180 EUR per MWh constitutes a level well above those initial market expectations. By leaving a margin on the price that investors could reasonably have expected, it is necessary to ensure that the revenue cap does not counteract the initial assessment of investment profitability.

(27) Moreover, the cap of 180 EUR per MWh is consistently higher, including a reasonable margin, than the current levelised cost of energy (LCOE) for all the relevant generation technologies, allowing producers to which it applies to cover their investments and operating costs. Considering that the **cap** ~~calculation chosen in this proposal~~ leaves a considerable margin between the reasonable LCOE and the revenue cap, ~~the cap~~ **it** can therefore not be expected to impair the investment in new inframarginal capacities. **In case Member States decide to include power producers with current levelised cost of energy above the cap of 180 EUR per MWh, they should introduce a specific cap to ensure that the higher costs of those producers are fully taken into account.**

(28) The cap should be set on market revenues rather than on total generation revenues (including other potential sources of revenues such as feed-in premium), to avoid significantly impacting the initial expected profitability of a project. Regardless of the contractual form in which the trade of electricity may take place, the cap should apply to realised market revenues only. This is necessary to avoid harming producers who do not actually benefit from the current high electricity prices due to having hedged their revenues against fluctuations in the wholesale electricity market. Hence, to the extent that existing or future contractual obligations, such as renewable power purchase agreements and other types of power purchase agreements or forward hedges, lead to market revenues from the production of electricity up to the level of the cap, ~~they would~~ **such revenues should remain unaffected by this Regulation** ~~not be caught by its application~~. **The measure introducing the cap on revenues should therefore not deter market participants from entering into such contractual obligations.**

~~(29) The measure introducing the cap on revenues should therefore not deter market participants from entering into renewables power purchase agreements. Given the direct benefits that they provide to end-consumers, Member States should continue to promote them, making use of the Commission Recommendation of 18 May 2022 on speeding up permit granting procedures for renewable energy projects and facilitating Power Purchase Agreements as well as practices described in Chapter II of the guidance in the Annex to this Recommendation.~~

(30) Having a uniform cap on revenues across the Union is necessary to preserve the functioning of the internal electricity market as it would maintain price-based competition across the Union between electricity producers based on different technologies, in particular for renewables.

(31) While applying the revenue cap at the time when transactions are settled may be more efficient, it might not always be possible, for instance due to differences in the way wholesale electricity markets are organised in the Member States and across different timeframes. To account for national specificities and to facilitate the application of the cap on revenues at national level, Member States should have the discretion to decide whether to apply it either when the settlement of the exchange of electricity takes place or thereafter.

(32) Given that the generation mix and the cost-structure of power-generating facilities differ greatly among Member States, they should retain the possibility to further limit the revenues of producers, provided that such measures are compatible with Union law.

(33) The cap on revenues should apply to technologies with marginal costs lower than the cap, such as for instance wind, solar ~~or~~**,** nuclear energy **or lignite**.

(34) The cap should not apply to technologies with high marginal costs relating to the price of the input fuel necessary to produce electricity, such as gas and **hard** coal-fired power plants, as their operating costs would be significantly above the level of the cap and its application would jeopardise their economic viability. To maintain the incentives to overall decrease of the consumption of gas, the cap on revenues should not apply either to technologies which directly compete with gas-fired power plants to offer flexibility to the electricity system and bid in the electricity market based on their opportunity costs, such as demand-response and storage. **Member States may introduce national measures which limit the revenues from electricity production from hard coal provided that such measures are designed so as not to affect the merit order and the price formation on the wholesale market.**

(35) The revenue cap should not apply to technologies using as input fuels that are substitutes for natural gas, such as bio-methane, so as not to jeopardise the conversion of existing gas-fired power plants in line with the REPowerEU objectives.

(36) To preserve the incentives for the development of innovative technologies, the cap on revenues should not apply to demonstration projects.

(37) In some Member States, the revenues obtained by some generators are already capped by way of State measures such as feed-in-tariffs and two-way contracts for difference. These generators do not benefit from increased revenues resulting from the recent spike of electricity prices. Therefore, existing producers subject to that type of State measures should be excluded from the application of the cap on revenues. Any new measure should be in line with the principles of the internal market, shall not limit cross-border trade and shall not lead to an increase of gas consumption.

**(37a)** **The increased trade flows across bidding zones due to crisis-related high price differences between such zones have led to a considerable increase of congestion rents in some Member States. Congestion income revenues should continue to be allocated to fulfil the priority objectives set out in Article 19(2) of Regulation (EU) 2019/943. However, Member States should exceptionally, in duly justified cases and under the control of regulatory authorities, be given the possibility to distribute the remaining surplus revenues directly to final electricity customers instead of using them exclusively for the purposes referred to in Article 19(3) of that Regulation.**

(38) Given that by application of the cap on revenues not all Member States can support their final customers to the same extent due to circumstances relating to their dependence on imports of electricity from other countries, it is necessary for Member States with net imports of electricity equal or higher than 100% to have access to agreements to share the surplus revenues with the main exporting country in a spirit of solidarity. Such solidarity agreements are also encouraged, in particular, to reflect unbalanced trading relationships.

(39) Commercial and trading practices as well as the regulatory framework in the electricity sector are markedly different from the fossil fuels sector. Given that the cap aims to mimic the market outcome that producers could have expected if global supply chains would function normally in absence of the gas supply disruptions since February 2022, it is necessary for the measure concerning electricity producers to apply to the revenues resulting from the generation of electricity. Conversely, as the temporary solidarity contribution targets the profitability of undertakings active in the **crude** oil, gas, coal and refinery sectors which has significantly increased compared to prior years, it is necessary for it to apply to their profits.

(40) Member States should ensure that the surplus revenues resulting from the application of the cap in the field of electricity are passed on to final electricity customers to mitigate the impact of the exceptionally high electricity prices. The surplus revenues should targeted to customers, including both households and companies, who are particularly strongly affected by high electricity prices. Without the proposed measures, there is a risk that only wealthier Member States will have the resources to protect their consumers, leading to severe distortions in the internal market.

(41) The revenues from the cap will help Member States to finance measures such as income transfers, rebates on bills, compensating suppliers for supplying below cost, as well investments that would lead to a structural reduction of consumption, in particular from electricity produced from fossil fuel sources. When support is granted to non-household customers, these should work towards undertaking investments in decarbonisation technologies, including renewable energies, for example through power purchasing agreement or direct investments in renewables generation, or to undertake investments in energy efficiency.

(42) Public interventions in price setting for the supply of electricity constitute, in principle, a market-distortive measure. Such interventions may therefore only be carried out as public service obligations and are subject to specific conditions. Currently under Directive (EU) 944/2019 regulated prices are possible households and micro-enterprises and, they are also possible including below cost for energy poor and vulnerable customers. However, in the presence of the current exceptional rise of electricity prices, the toolbox of available measures that the Member States have at their disposal to support consumers should be temporarily extended, by providing the possibility to extend regulated prices to SMEs and permitting regulated prices below cost. Such an extension could be financed by the revenue cap.

(43) It is important that, where below cost, regulated retail prices do not discriminate between suppliers or impose unfair costs on them. Suppliers should therefore be fairly compensated for costs they incur supplying at regulated prices, without prejudice to the application of State aid rules. The cost of below cost regulated prices should be financed by the revenues stemming from the application of the revenue cap. In order to avoid that these measures increase demand for electricity, while still meeting the energy needs of consumers, below cost regulated prices should cover only a limited amount of consumption. **Supplier of last resort regimes, and the choice by Member States of the supplier of last resort, should remain unaffected by this Regulation.**

(44) Without substantially changing their cost structure and increasing their investments, EU companies and permanent establishments generating at least 75% of turnover in the **crude** oil, gas, coal and refinery sector, have seen their profits spike due to the sudden and unpredictable circumstances of the war, reduced supply of energy and increasing demand due to record high temperatures.

(45) The temporary solidarity contribution should act as a redistributing measure to ensure that the companies concerned which have earned surplus profits as a result of the unexpected circumstances, contribute in proportion to the improvement of the energy crisis in the internal market.

(46) The basis for calculating the temporary solidarity contribution is taxable profits of the companies and permanent establishments tax resident in the EU in **crude** oil, gas, coal and refinery sectors as determined in bilateral treaties or Member States national tax laws for the fiscal year starting on or after 1 January 2022. Member States which tax only distributed corporate profits should apply the temporary solidarity contribution to the calculated profits irrespective of their distribution. The fiscal year is determined by reference to the rules in place under Member States' national laws.

(47) Only profits in 2022 above a 20% increase of the average taxable profits generated in the three fiscal years starting on or after 1 January 2019 should be subject to the solidarity contribution.

(48) This approach ensures that part of the profit margin, which is not due to the unpredictable developments in the energy markets following the ongoing illegal war in Ukraine could be used by the companies and permanent establishments concerned for future investment or for ensuring their financial stability during the ongoing energy crisis including for the energy intense industry. This approach to determining the calculation base ensures that the solidarity contribution in different Member States is proportionate. At the same time this approach of setting a minimum rate ensures that the solidarity contribution is both fair and proportionate. Member States remain free to apply a higher rate in case they already introduced a solidarity contribution, levy or tax on surplus taxable profits of the energy undertakings within the scope of this Regulation that would exceed this rate of 33% before this Regulation entered into force. This enables such Member States to maintain their preferred rate they deemed acceptable and appropriate under their national legal systems.

(49) The solidarity contribution should be used for i) financial support measures to final energy customer, and notably vulnerable households, to mitigate the effects of high energy prices; ii) financial support measures to help reducing the energy consumption; iii) financial support measures to support companies in energy intensive industries; iv) financial support measures to develop the energy autonomy of the Union. Member States should also be enabled to assign a share of the proceeds of the temporary solidarity contribution to common financing.

(50) The use of the proceeds for those purposes reflects the solidarity contribution's exceptional nature as a measure that intends to reduce and mitigate the harmful effects of the energy crisis for households and companies across the Union with the objective of protecting the Single Market and preventing the risk of further fragmentation. Soaring energy prices affect all Member States. However, given the differences in energy mix, Member States are not all impacted in the same way and do not all have the same fiscal space to take the necessary measures to protect vulnerable households and businesses. In the absence of a European measure such as a solidarity contribution, there is a high risk of disruption of the Single Market and further fragmentation, which would be detrimental to all Member States, given the integration of energy markets and of value chains. Tackling energy poverty and addressing the social consequences of the crisis, in particular to protect workers in exposed industries, are also a matter of solidarity between Member States in the Union. To maximise its impact, the use of the proceeds of the solidarity contribution should be done in a coordinated way and/or via EU financing instruments in a spirit of solidarity.

(51) In particular, Member States should target financial support measures to the most vulnerable households and companies, which are most affected from the soaring energy prices. This would preserve the price incentive to reduce energy demand and save energy. In addition, targeting most vulnerable and liquidity-constrained households would have a positive effect on overall consumption (by averting excessive crowding out of spending on non-energy goods) given the high-income propensity to consume for this group of households. Moreover, proceeds should be used for fostering the reduction of energy consumption. In this respect, proceeds should be used, for instance, for the purpose of demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, or promoting investments by final energy customers, both vulnerable households and companies, into renewables, energy efficiency investments or other decarbonisation technologies. Proceeds of the solidarity contribution should also be used for supporting financially companies in energy intensive industries, and in regions relying on these industries.Costs in energy intensive industries due to soaring energy price developments are skyrocketing, such as in the fertiliser industry. Financial support measures are to be made conditional upon investments into renewable energies, energy efficiency, or other decarbonisation technologies. Furthermore, measures which help making the Union more autonomous in the energy field should be supported with investments in accordance with the objectives set forth in the REPowerEU Communication, notably for projects with a cross-border dimension.

(52) Member States could also decide to assign part of the proceeds of the solidarity contribution to the common financing of measures that are intended to reduce the harmful effects of the energy crisis, including support for protecting employment and the re- and upskilling of the workforce, or to promote investments in energy efficiency and renewable energy, including in cross-border projects. The common financing aspect covers both project-based cost-sharing between Member States and channelling via an EU instrument on the basis of Member States voluntarily assigning revenues to the EU budget in a spirit of solidarity.

(53) Regular and effective monitoring and reporting to the Commission are essential for the assessment of progress made by the Member States in the achievement of the demand reduction targets, the implementation of the cap on revenues, the use of the surplus revenues, and the application of regulated prices.

(54) Member States should report to the Commission on the application of the solidarity contribution in their respective territories, as well as on any amendments they make to **their national legal frameworks for this purpose.** ~~such contribution.~~

(55) Member States should also report on the use of the proceeds arising from the solidarity contribution. In particular, this is to ensure that Member States use the proceeds in line with the usage provided for in this Regulation.

(56) The solidarity contribution and the EU legal framework governing it should be of a temporary nature to address the exceptional and urgent situation that has emerged in the Union with respect to the soaring energy prices. The solidarity contribution should be applicable to cover surplus profits generated in 2022 to address and mitigate the harmful effects of the current ongoing energy crisis for households and companies The application of the solidarity contribution to the full **fisca**l ~~tax~~ year will allow to use excess profits for the relevant period, in the public interest of mitigating the consequences of the energy crises, while leaving an appropriate measure of profits to the companies concerned.

(57) The solidarity contribution should apply only to the fiscal year 2022. By 15 October 2023, when national authorities have a view on the collection of solidarity contribution, the Commission will review the situation and present a report to the Council.

(58) Should a Member State experience difficulties in the application of the Regulation and, in particular, of the temporary solidarity contribution, it should consult, where appropriate, the European Commission in line with article 4 of the Treaty on European Union.

(59) The volatility in underlying gas prices is creating difficulties for energy firms active on electricity futures markets, in particular in accessing suitable collateral. The European Commission, in cooperation with the European Securities Markets Authority and the European Banking Authority, is assessing issues related to the eligibility of collateral and margins, and possible ways to limit excessive intra-day volatility.

(60) Moreover, the measures in this Regulation are consistent with the complementary and ongoing work of the European Commission concerning the long-term market design as announced in the Communication on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design that was issued alongside the Repower EU Plan of 18 May 2022.

(61) Considering the scale of the energy crisis, the level of its social, economic and financial impact and the need to act as soon as possible, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.

(62) Given the exceptional nature of the measures set out in this Regulation, and the need to apply them in particular during the winter season 2022-23, the Regulation should apply for a period of one year after its entry into force.

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

HAS ADOPTED THIS REGULATION:

## CHAPTER I

## SUBJECT MATTER AND DEFINITIONS

*Article 1*

*Subject matter*

This Regulation establishes an emergency intervention to mitigate the effects of high energy prices via exceptional, targeted and time-limited measures. These measures aim to reduce electricity consumption, to cap the market revenues that certain producers receive from the generation of electricity and redistribute them to final customers in a targeted manner, to enable Member States to apply public interventions in the price setting for the supply of electricity for households and small and medium-sized enterprises, and to establish rules for a temporary solidarity contribution ~~for~~ **from** EU companies and permanent establishments with activities predominantly in the **crude** oil, gas, coal and refinery sectors to contribute to the affordability of energy for households and companies.

*Article 2*

*Definitions*

For the purposes of this Regulation, the definitions in Article 2 of Directive (EU) 2019/944 and Article 2 of Regulation (EU) 2019/943 apply. In addition, the following definitions also apply:

(1) 'small and medium-sized enterprise' means an enterprise as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC[1];

[1] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.05.2003, p. 36).

(2) ‘gross electricity consumption’ means overall supply of electricity for activities in the territory of a Member State;

(3) ‘reference period’ means the period from 1 November to 31 March in the five consecutive years preceding the date of entry into force of this Regulation, starting with the period from 1 November 2017 to 31 March 2018;

(4) ‘peak ~~price~~ hours’ means hours of the day where**, based on the forecasts of transmission system operators and, where applicable, nominated electricity market operators,** day-ahead wholesale electricity prices are expected to be the highest, **the gross electricity consumption is expected to be the highest or the gross consumption of electricity generated from sources other than renewable sources as referred to in Article 2(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council[1] is expected to be the highest;** ~~based on forecasts by transmission system operators and nominated electricity market operators~~;

(5) ‘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, including power purchase agreements and other hedging operations against fluctuations in the wholesale electricity market and excluding any support granted by the State;

(6) ‘settlement’ means a payment that is made and received between counterparties, against delivery and receipt of electricity where applicable, in fulfilment of the counterparties’ respective obligations pursuant to one or more clearing transactions;

(7) ‘competent authority’ means an authority as defined in Article 2(11) of Regulation (EU) 2019/941;

[1] **Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast).**

(8) ‘surplus revenues’ means a positive difference between the market revenues of producers per MWh of electricity and the cap of 180 Euros per MWh of electricity;

(9) ‘waste’ means any substance or object which the holder discards or intends or is required to discard as defined in Article 3 (1) of Directive 2008/98/EC;

(10) ‘net import~~s~~ **dependence** of electricity’ means, for the period between 1 January 2021 and 31 December 2021, the difference between the total electricity imports and total electricity exports **as a percentage of** ~~divided by~~ the total gross production of electricity in a Member State;

(11) ‘fiscal year’ means a tax year, calendar year or any other appropriate period for tax purposes as defined in national law;

(12) ‘customer’ means a wholesale or final customer;

(13) ‘final energy customer’ means a customer who purchases energy for own use;

(14) ‘final electricity customer’ means a customer who purchases electricity for own use;

~~(15) ‘support scheme’ means, any instrument, scheme or mechanism applied by a Member State, or a group of Member States, that promotes the use of energy from renewable sources;~~

~~(16) ‘guarantee of origin’ means an electronic document providing evidence to a final customer that a given share or quantity of energy was produced from renewable sources;~~

(17) ‘activities in the field of **crude** oil, gas, coal and refinery sectors’ **as defined by Regulation (EC) No 1893/2006** means any economic activity performed by an EU company or permanent establishment generating at least 75 % of turnover in the field of the extraction, mining, refining of petroleum **and/**or manufacture of coke oven products;

(18) ‘EU company’ means a company of a Member State which according to the tax laws of that Member State is considered to be resident in that Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Union;

(19) ‘permanent establishment’ means a fixed place of business situated in a Member State through which the business of a company of another State is wholly or partly carried on in so far as the profits of that place of business are subject to tax in the Member State in which it is situated by virtue of the relevant bilateral tax treaty or, in the absence of such a treaty, by virtue of national law;

(20) ‘surplus profits’ means taxable profits**, as determined under national tax rules in the fiscal year starting on or after 1 January 2022,** accrued from activities carried out at the level of companies or permanent establishments in the field of **crude** oil, gas, coal and refinery sector **which are** above a 20% increase of the average of **the taxable** profits ~~of~~ **in** the ~~previous~~ three **fiscal** ~~tax~~ years **starting on or after 1 January 2019**;

(21) 'solidarity contribution’ means a temporary measure intended to address surplus profits of EU companies and permanent establishments with activities in the field of **crude** oil, gas, coal and refinery sectors to mitigate exceptional price developments in the energy markets for Member States, consumers and companies**;** ~~.~~

**(22) ‘surplus congestion income revenues’ means the residual revenues that remain unused following the allocation of the congestion income revenues in accordance with the priority objectives set out in Article 19(2) of Regulation (EU) 2019/943;**

**(23) ‘enacted equivalent national measure’ means a legislative, regulatory or administrative measure adopted and published by a Member State by 31 December 2022 which contributes to the affordability of energy.**

## CHAPTER II

## MEASURES CONCERNING THE ELECTRICITY MARKET

### Section 1

### Demand Reduction

*Article 3*

*Reduction of gross electricity consumption*

Member States **shall endeavour** ~~should seek~~ to implement measures to reduce their total monthly gross electricity consumption by 10 % compared to the average of gross electricity consumption in the corresponding months of the reference period.

*Article 4*

*Reduction of gross electricity consumption during peak ~~price~~ hours*

1. ~~For every month, each~~ **Each** Member State shall identify peak ~~price~~ hours corresponding **in total** to a minimum of 10 % of all hours of **the period between 1 December 2022 and 31 March 2023** ~~month~~.

2. Each Member State shall reduce its gross electricity consumption during the identified peak ~~price~~ hours. ~~For every month,~~ **The** ~~the~~ reduction achieved over the identified peak ~~price~~ hours shall reach at least 5 % on average per hour. The reduction target shall be calculated as the difference between the actual gross electricity consumption for the identified peak ~~price~~ hours and the gross electricity consumption forecasted by the transmission system operators, without taking into account the effect of the measures put in place to reach the target set out in this Article. **Transmission system operators' forecasts may include historical data of the reference period.**

*Article 5*

*Measures to achieve the demand reduction*

1. Member States may choose the appropriate measures to reduce gross electricity consumption to meet the targets set in Articles 3 and 4. The measures shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable and shall, in particular:

   (a) be market-based, with compensation, where ~~applicable~~ **relevant** established through an open competitive process, including tenders in which successful bidders receive compensation;

   (b) only involve financial compensation when such compensation is paid for additional electricity not consumed compared to the expected consumption in the hour concerned without the tender;

   (c) not unduly distort competition or the proper functioning of the internal market in electricity;

   (d) not be unduly limited to specific customers or customer groups, including aggregators, in accordance with Article 17 of Directive (EU) 2019/944;

   (e) not unduly prevent the process of replacing fossil fuel technologies with technologies using electricity.

**Section 2**

**Cap on market revenues and distribution of surplus revenues to final customers**

*Article 6*

*Mandatory cap on market revenues*

1. Market revenues of producers obtained from the generation of electricity from the sources referred to in Article 7(1) shall be capped to a maximum of 180 EUR per MWh of electricity produced.

2. Member States shall ensure that the cap targets all the market revenues of producers, regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally or in a centralised marketplace.

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

4. ~~Without prejudice to paragraph 1,~~ Member States may maintain or introduce measures that further limit the market revenues of producers, provided that these measures are proportionate and non-discriminatory, do not jeopardise investment signals, ensure that the investments costs are covered, do not distort the functioning of electricity wholesale markets, and are compatible with Union law.

**5. Subject to the requirements under Article 6(4), Member States may allow the regulatory authority to maintain or set a specific cap on the market revenues obtained from the sale of electricity produced from hard coal for producers who demonstrate to the regulatory authority their current levelised costs of energy exceed the maximum set in Article 6(1). The specific revenue cap shall allow for those costs and a reasonable profit margin to be covered. Such measures shall be designed so as not to affect the merit order and the price formation on the wholesale market.**

*Article 7*

*Application of the cap on market revenues to electricity producers*

1. The obligation in Article 6 shall apply to the market revenues obtained from the sale of electricity produced from the following sources:

(a) wind energy;

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

(c) geothermal energy;

(d) hydropower without reservoir;

(e) biomass fuel (solid or gaseous biomass fuels), excluding bio-methane;

(f) waste;

(g) nuclear energy;

(h) lignite;

(i) crude oil and other oil products**;**~~.~~

**(j) peat.**

2. The cap provided for in Article 6(1) shall not apply to **sources where they set the generation system marginal cost,** demonstration projects or to producers whose revenues per MWh of electricity produced are already capped as a result of State measures.

3. Member States may, notably in cases where the application of the cap provided for in Article 6(1) leads to a significant administrative burden, decide that the cap does not apply to producers generating electricity with power-generating facilities with an installed capacity of maximum 20 kW. **Member States may, notably in cases where the application of the cap provided for in Article 6(1) leads to a risk of increasing CO2 emissions and decreasing renewable energy generation, decide that the cap does not apply to electricity produced in hybrid plants which also use conventional energy sources.**

**4. Member States may allow the regulatory authority to set a specific revenue cap for producers producing from the sources listed in Article 7(1) who demonstrate to the regulatory authority that their current levelised costs of energy produced exceed the maximum set in Article 6(1). The specific revenue cap shall allow for those costs and a reasonable profit margin to be covered. Such measures shall be designed so as not to affect the merit order and the price formation on the wholesale market. The specific revenue cap shall also comply with the requirements set out in Article 6(4).**

**5. Producers and relevant market participants shall provide to Members States all necessary data for the application of Article 6, including on the electricity produced and the related market revenues, regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally, within the same undertaking or in a centralised marketplace.**

*Article 8*

~~*Incentives for renewables power purchase agreements*~~

~~*1. Within the framework of this Regulation, Member States shall swiftly remove any unjustified administrative or market barriers to renewables power purchase agreements. They shall take measures to accelerate the uptake of renewables power purchase agreements, in particular by small and medium-sized enterprises.*~~

~~*2. Member States shall design, schedule and implement support schemes and guarantees of origin in such a way that they are compatible with, complement and enable renewables power purchase agreements.*~~

***Article 8a***

**Surplus congestion income revenues resulting from allocation of cross-zonal capacity**

**1. Member States may use the surplus congestion income revenues resulting from the allocation of cross-zonal capacity to finance measures in support of final electricity customers in accordance with Article 9(2).**

**2. The use of the surplus congestion income revenues in accordance with paragraph 1 shall be subject to the approval by the regulatory authority.**

**3. Member States shall notify the use of surplus congestion income revenues in accordance with paragraph 1 to the Commission within one month of the adoption of the relevant national measure.**

*Article 9*

*Distribution of the surplus revenues*

1. Member States shall ensure that all surplus revenues resulting from the application of the cap on market revenues are employed to finance measures in support of final electricity customers that mitigate the impact of high electricity prices on those customers, in a targeted manner.

2. The measures referred to in paragraph 1 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable and shall not counteract the reduction obligation of gross electricity consumption in Articles 3 and 4.

3. The measures referred to in paragraph 1 may for example include:

   (a) granting a financial compensation to final electricity customers for reducing their electricity consumption, including through demand reduction auctions or tender schemes;

   (b) direct transfers to final electricity customers;

   (c) compensation to suppliers who have to deliver electricity to customers below costs following a State intervention in price setting pursuant to Article 12;

   (d) lowering the electricity purchase costs of final electricity customers for a limited volume of the electricity consumed;

   (e) promoting investments by final electricity customers into decarbonisation technologies, renewables and energy efficiency investments.

*Article 10*

*Agreements between Member States*

**1.** In situations where a Member State's net imports **dependence** of electricity are equal or higher than 100%, an agreement to share the surplus revenues **adequately** shall be concluded by 1 December 2022 between the importing Member State and the main exporting country. All Member States may, in a spirit of solidarity, conclude such agreements.

**2. The Commission shall assist Member States throughout the negotiation process, encourage and facilitate the exchange of best practices.**

**Section 3**

**Retail measures**

*Article 11*

*Temporary extension to small and medium-sized enterprises of public interventions in electricity price setting*

By way derogation from the EU rules on public interventions in price setting, Member States may apply public interventions in price setting for the supply of electricity to small and medium-sized enterprises. Such public interventions shall:

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

(b) comply with the conditions of Article 5(4) and (7) of Directive (EU) 2019/944;

(c) where relevant, comply with the conditions of Article 12 of this Regulation.

*Article 12*

*Temporary possibility to set electricity prices below cost*

By way of derogation from the EU rules on public interventions in price setting, when applying public interventions in the price setting for the supply of electricity pursuant to Article 5(6) of Directive (EU) 2019/944 or Article 11 of this Regulation, Member States may 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) ~~T~~t**_**he measure covers a limited amount of consumption and retains an incentive for demand reduction;

(b) ~~T~~t**_**here is no discrimination between suppliers;

(c) ~~S~~s**_**uppliers are compensated for supplying below cost;

(d) ~~A~~a**_**ll suppliers are eligible to provide offers at the regulated price on the same basis.

## CHAPTER III

## MEASURE CONCERNING THE CRUDE OIL, COAL, GAS AND REFINERY SECTORSS

*Article 13*

*Support to final customers through a mandatory temporary solidarity contribution*

1. Surplus profits generated from activities in the **crude** oil, gas, coal and refinery sector shall be subject to a temporary solidarity contribution **unless Member States have enacted equivalent national measures**.

2. Member States shall ensure that **enacted equivalent** ~~existing or planned~~ national measures **share** ~~sharing~~ similar objectives **and are subject to equivalent rules** as the temporary solidarity contribution under this Regulation ~~comply with or complement the rules governing the temporary solidarity contribution set by this Regulation~~ **and generate proceeds at least equal to the estimated proceeds from the solidarity contribution**.

3. ~~The~~ **Member States shall adopt and publish measures implementing the** mandatory temporary solidarity contribution referred to in paragraph 1 **by** ~~shall apply from~~ 31 December 2022 ~~at the latest~~.

*Article 14*

*Base for calculating the temporary solidarity contribution*

The temporary solidarity contribution for EU companies and permanent establishments**, including those that are part of a consolidated group merely for tax purposes,** performing activities in the field of **crude** oil, gas, coal and refinery sectors shall be calculated on the taxable profits, as determined under national tax rules in the fiscal year starting on or after 1 January 2022, which are above a 20% increase of the average **of the** taxable profits, as determined under national tax rules, ~~of~~ **in** the three fiscal years starting on or after 1 January 2019. If the average **of the taxable profits** ~~annual result from the period covering the~~ **in those** three fiscal years ~~starting on or after 1 January 2019~~ is negative, the average taxable profits shall be zero for the purpose of calculating the temporary solidarity contribution.

*Article 15*

*Rate for calculating the temporary solidarity contribution*

1. The rate applicable for calculating the temporary solidarity contribution shall be at least 33 % of the base referred to in Article 14.

2. The temporary solidarity contribution shall apply in addition to the regular taxes and levies applicable according to the national legislation of a Member State.

*Article 16*

*Use of proceeds from the temporary solidarity contribution*

1. Member States shall use the proceeds from the temporary solidarity contribution with sufficiently timely impact for the following purposes:

   (a) financial support measures to final energy customers, and notably vulnerable households, to mitigate the effects of high energy prices, in a targeted manner;

   (b) financial support measures to help reducing the energy consumption such as through demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, promoting investments by final energy customers into renewables, structural energy efficiency investments or other decarbonisation technologies;

   (c) financial support measures to support companies in energy intensive industries provided that they are made conditional upon investments into renewable energies, energy efficiency or other decarbonisation technologies.

   (d) financial support measures to develop the energy autonomy in particular investments in line with REPowerEU objectives notably projects with a cross-border dimension.

(e) in a spirit of solidarity, between Member States, assignment by Member States of a share of the proceeds of the temporary solidarity contribution to the common financing of measures to reduce the harmful effects of the energy crisis including support for protecting employment and the re- and upskilling of the workforce or to promote investments in energy efficiency and renewable energy including in cross-border projects **and the Union renewable energy financing mechanism provided for Article 33 of Regulation (EU) 2018/1999 of the European Parliament and of the Council** [1].

2. The measures referred to in paragraph 1 shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable.

*Article 17*

*Temporary nature of the solidarity contribution*

The temporary solidarity contribution applied by Member States in accordance with this Regulation shall be of a temporary nature. It shall only apply to surplus profits generated in the fiscal year that started on or after 1 January 2022.

[1] **Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.**

## CHAPTER IV

## FINAL PROVISIONS

*Article 18*

*Monitoring and enforcement*

1. The competent authority of each Member State shall monitor the implementation of the measures referred to in Articles 3, 4, 5, 6, 7, 9, 11 and 12 on its territory.

2. As soon as possible after the entry into force of this Regulation and at the latest by 1 December 2022, Member States shall report to the Commission the planned measures required pursuant to Article 5 and the agreements concluded pursuant to Article 10.

3. By ~~15 January 2023 and every month thereafter until~~ 15 April 2023, Member States shall report to the Commission on:

   (a) the demand reduction achieved pursuant to Articles 3 and 4 and the measures put in place to achieve the reduction pursuant to Article 5;

   (b) the surplus revenues generated pursuant to Article 6**.**~~;~~

**3a. By 15 of January 2023 and every month thereafter until April 2023, Member States shall report to the Commission on:**

   (**a**~~c~~) the measures concerning the distribution of the surplus revenues applied to mitigate the impact of high electricity prices on final customers pursuant to Article 9;

   (**b**~~d~~) any public interventions in price setting for electricity referred to in Articles 11 and 12**.**~~;~~

4. Member States shall report to the Commission on:

(a) the introduction of the temporary solidarity contribution pursuant to Article 13 by **31 December** ~~15 October~~ 2022;

(b) any subsequent amendments to **the national legal framework** ~~said measure~~ within one month of the publication in the national official journal;

(c) on the use of the proceeds pursuant to Article 16 within one month ~~from~~ **of** the moment the proceeds have been collected by Member States in accordance with national law**;**

**(d) enacted equivalent national measures referred to in Article 13 by 31 December 2022. Member States shall also provide an assessment of the amount of proceeds generated by those national measures and on the use of those proceeds within one month of the moment the proceeds have been collected by Member States in accordance with national law.**

*Article 19*

*Review*

1. By 28 February 2023, the Commission shall carry out a review of Chapter II in view of the general situation of electricity supply and electricity prices in the Union and present a report on the main findings of that review to the Council. Based on that report, the Commission may in particular propose, in case this is justified by the economic circumstances or the functioning of the electricity market in the Union and individual Member States, to prolong the period of application of this Regulation, to amend the level of the revenue cap in Article 6-(1) and ~~its application to~~ **the sources of electricity generation referred to in Article 7(1) to which it applies** ~~producers in Article 7~~**,** or otherwise amend Chapter II.

2. By 15 October 2023, the Commission shall carry out a review of Chapter III in view of the general situation of the fossil fuel sector and surplus profits generated and present a report on the main findings of that review to the Council.

*Article 20*

*Entry into force and application*

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

2. Without prejudice to the ~~need~~ **obligation** to ensure the distribution of surplus revenues in accordance with Article 9, and to use proceeds from the temporary solidarity contribution in accordance with Article 16, this Regulation shall apply for a period of one year from its entry into force.

   Articles 3, 4, 5, 6, 7, 9, 10 shall apply as of 1 December 2022. This shall be without prejudice to an earlier voluntary application by Member States.

   Articles 3, 4, 6, 7, shall apply until 31 March 2023.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council*
*The President*