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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the review of emergency interventions to address high energy prices in accordance with Council Regulation (EU) 2022/1854

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I. Introduction

This report reviews the provisions under Chapter II of Regulation 2022/1854 pursuant to Article 20(1) of that Regulation (the ***Council Regulation***).[1] It is based on the information provided by 25 Member States pursuant to Article 19 of the Council Regulation. The report also draws on the answers to some of the questions posed by the European Commission (the ***Commission***) in its public consultation for its proposal on the reform of electricity market design.

The Council Regulation was one of the measures through which the Union responded to an energy crisis which developed over the last two years when energy prices were significantly higher than in recent decades. Prices started rising rapidly in summer of 2021 when the world economy picked up after COVID-19 restrictions were eased. Subsequently, Russia's weaponisation of energy sources in spot markets and the invasion of Ukraine have led to substantially lower levels of gas delivery and increased disruptions of gas supply, further driving up the gas prices. High gas prices have a significant influence on the price of electricity as gas-fired power plants are often needed to satisfy electricity demand.

The Commission has been fully engaged since the beginning of the energy crisis to mitigate the effects of high-energy prices on European citizens and companies, and quickly developed, closely with Member States, a series of policy responses.

In October 2021, the EU provided an energy prices toolbox with measures to address high prices and their impact on consumers (including income support, tax breaks, gas saving and storage measures).[2] This, in the context of the weaponisation of gas supply and Russia's manipulation of energy markets through intentional disruptions of gas flows which led to increasing concerns of possible shortages that resulted in an unprecedented rise in energy prices.

Following the Russian invasion of Ukraine in February 2022, the EU responded with a Communication in March outlining the principles of the REPowerEU plan[3] that was subsequently developed in detail on 18 May 2022[4] – a plan for the EU to end its dependence on Russian fossil fuels at the latest by 2027 through three pillars: diversifying energy sources away from Russian fossil fuels, saving energy and accelerating the energy transition. With respect to this last pillar, the Commission proposed to increase the headline 2030 target for

[1] Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices.
[2] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - Tackling rising energy prices: a toolbox for action and support, COM(2021) 660 final.
[3] REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM(2022) 108 final.
[4] REPowerEU Plan, COM/2022/230 final.

renewables from 40% to 45% and that of energy efficiency from 9% to 13% under the "fit for 55" package. Faster deployment of renewables, greater energy efficiency and further electrification of demand are necessary to protect European citizens against fossil-related crises as they will immediately and structurally reduce demand for fossil fuels and contribute to the decarbonisation objectives in the power, heating and cooling industries and transport sectors. Due to their low operational costs, renewables should have positive impact on energy prices across the EU. Furthermore, the faster deployment of renewable energy coupled with greater energy efficiency will contribute to security of energy supply by phasing-out fossil fuels on which the EU has been highly dependent. Alongside the REPowerEU plan, the Communication on Short-Term Energy Market Interventions[5], in addition to setting out further short-term measures to tackle high energy prices, identified potential areas for improving the electricity market design and announced the intention to assess these areas with a view to change the relevant legislative framework.

On 6 October 2022, the Council adopted the Council Regulation which introduced exceptional, targeted and time-limited common measures to reduce electricity demand and to collect and redistribute the energy sector's exceptionally high revenues to final customers. More specifically, the measures intervening in the electricity market can be summarised as follows (Chapter II of the Council Regulation):

- Electricity demand reduction: The Council Regulation sets out two targets, one indicative (cutting overall electricity demand by 10 %) and one mandatory (reducing demand, during hours of high electricity demand, by at least 5 %). Member States were free to choose the appropriate measures, respecting some conditions set out in the Council Regulation.[6] The mandatory target applied from 1 December 2022 to 31 March 2023.[7]
- Introduction of a temporary revenue cap on 'inframarginal' power producers (e.g., renewables, nuclear and lignite): The Council Regulation mandates the introduction of a temporary revenue cap of maximum €180/MWh on electricity producers using technologies with lower marginal costs (the revenue cap). However, it also gives flexibility to Member States in deciding how to apply this measure at national level. Revenues above the revenue cap will be used to mitigate the impact of high electricity

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action, COM(2022) 236 final.
[6] In so far as State resources are involved, such measures may be subject to State Aid control.
[7] The measure which introduced the indicative target continues to apply until the end of December 2023.

prices on energy consumers. The measure applies from 1 December 2022 to 30 June 2023.

- Support for final customers: The Council Regulation expands the Toolbox available for Member States to shield electricity consumers, by allowing for below cost regulated prices for households and small and medium-sized enterprises (SMEs) under certain conditions. This measure applied from 8 October 2022 until 31 December 2023.

The Council Regulation also introduced a solidarity contribution for EU companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors (Chapter III).

While the Council Regulation aimed to address the exceptional circumstances of the energy crisis, on 14 March 2023, the Commission moved beyond a purely emergency response and proposed a reform to the EU's electricity market design to accelerate the deployment of renewables and the phase-out of gas, make consumer bills less dependent on volatile fossil fuel prices, better protect consumers from future price spikes and potential market manipulation, and make the EU's industry clean and more competitive (the ***electricity market design proposal***).[8] This proposal sets out measures that aim to enable the development of longer term contracts with non-fossil power production and to bring more clean flexible solutions into the system, such as demand response and storage, to push out gas from the electricity mix. More specifically, to improve the flexibility of the power system, the proposal sets a requirement on Member States to assess their needs and establish objectives to increase non-fossil flexibility and sets out the possibility to introduce new support schemes for non-fossil flexibility such as demand response and storage.

The electricity market design proposal also includes measures that enhance the protection of vulnerable consumers. Among other, the proposal allows Member States to introduce below-cost regulated retail prices to households and SMEs in case of a future electricity price crisis.

In preparation of the proposal, the Commission conducted a public consultation from 23 January 2023 to 13 February 2023 (the ***public consultation***). The public consultation included questions on the measures introduced in the Council Regulation.[9]

[8] Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design.

[9] The Commission received 1369 replies; 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

II. Requirement in Article 20 of Council Regulation

Article 19 of the Council Regulation introduced reporting obligations on Member States according to which, by 31 January 2023, Member States should have submitted to the Commission information on (i) the implemented demand reduction measures; (ii) the surplus revenues generated following the introduction of the temporary revenue cap on 'inframarginal' power producers as well as the distribution of such revenues to mitigate the impact of high electricity prices; and (iii) any retail price setting interventions. Not all Member States have submitted their reports as required. Less than half Member States submitted their reports by the deadline, others made submissions in February and March 2023 and two have not yet submitted their reports to the Commission.[10] This report relies on the information submitted by Member States at the time of writing. It should be noted though that the Commission has not carried out any assessment as regards the accuracy of the information submitted.

Pursuant to Article 20(1) of the Council Regulation, the Commission shall carry out a review of Chapter II in view of the general situation of electricity supply and prices in the EU and submit a report on the main findings of that review to the Council.

Article 20(1) of the Council Regulation also provides that, based on that report, the Commission may propose, if this is justified by the economic circumstances or the functioning of the electricity market in the EU and individual Member States, to extend the period of application of the Council Regulation, to amend the level of the revenue cap on 'inframarginal' power producers and the sources of electricity generation to which it is currently applicable, or to otherwise amend Chapter II.

As part of the review of the Council Regulation measures in Chapter II and in line with Article 20(1), the Commission submits this report to the Council (the ***Report***). The Report thus does not cover a review of the solidarity contribution provisions contained in Chapter III of the Council Regulation, a report on which will be submitted separately in line with Article 20(2) of that Regulation.

The Report is based on the Commission's review pursued at the time of writing based on current electricity market conditions, their expected evolution at the time of writing and other available information, including the responses from 25 Member States that fulfilled their reporting obligations according to Article 19 of the Council Regulation (the ***reporting Member States***).

organisations participated. A significant number of NGOs, think tanks and research or other academic organisations submitted responses as well.

[10] Hungary and Romania.

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The Report is therefore without prejudice to any unforeseen changes of the general situation of electricity supply and prices in the EU or possible future conclusions based on additional information from Member States.

III. Current electricity market conditions

The measures in the Council Regulation were introduced in a period where electricity prices had reached record high levels. For example, in August 2022, wholesale electricity prices of the main EU electricity markets were in excess of 350 EUR/MWh, while in December 2022 the benchmark was above 220 EUR/MWh. The electricity prices during the reported period were approximately four times higher than the average price between 2010-2020 (40-60 EUR/MWh). These excessive prices were mostly attributable to the fact that gas prices reached new highs during summer 2022[11] and continued to be at high levels during most of autumn, and that during this period gas and coal-fired generation facilities were often the plants with the highest marginal costs that were needed to meet the demand for electricity. Spot wholesale gas prices during the crisis rose around six times the average price between 2010-2020 (around 20 EUR/MWh). It was against this backdrop that the Council adopted, in October 2022, the Commission's proposal for an emergency intervention in the electricity market eventually leading to the adoption of the Council Regulation. The Commission's and the Council's expectation at the time was that electricity prices would continue to range at high levels as those observed in summer and autumn 2022.

However, since December 2022, when the measures in the Council Regulation became applicable, electricity prices have drastically decreased, with current average prices being at levels of less than 80 EUR/MWh (the EU benchmark average stands at 80 EUR/MWh up to end of May 2023).

This is mainly due to decreased wholesale gas prices, which were linked to various factors, such as mild weather conditions and the wide set of measures that the Member States and the Commission put in place to fight the energy crisis, including the electricity demand reduction

[11] In August 2022, TTF day-ahead and month-ahead prices were above 230 EUR/MWh.

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measures in the Council Regulation, the LNG benchmark and the gas demand reduction measures,[12] which all together improved the underlying supply-demand balance. [13]

The recent fall and stabilisation of gas prices, and consequently, electricity prices during the first months of 2023 have led to market expectations that the electricity price spikes observed throughout 2022 are less probable to occur in the upcoming winter. Such market expectations are underpinned by various factors, such as the higher gas storage levels, the Member States' demand reduction efforts and consequent results and the additional pipeline and liquified natural gas infrastructure that has been constructed with a view to combat the energy crisis. Other inherent factors of the electricity market supply, such as the expected improved availability of nuclear power and overall higher availability of hydro power compared to 2022 also point to less costly supply conditions for electricity in the upcoming winter, expected to result in lower upward pressure on electricity prices compared to those in 2022.

IV. Electricity Demand Reduction

Demand reduction measures

All reporting Members States have implemented energy saving and consumption awareness campaigns as well as general energy saving measures such as action on public building heating and public lighting. The Commission welcomes these campaigns as they make consumers aware of when electricity prices are high so that they can make their energy consumption more flexible. In order to encourage demand response, five Member States, namely Austria, Croatia, Czechia, Greece and Poland have reported that that they have introduced subsidies on retail energy prices that are only applicable to specific electricity consumption levels.

19 Member States, namely Austria, Bulgaria, Croatia, Czechia, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Lithuania, Luxemburg, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden have put in place specific measures aiming at achieving electricity demand reduction at peak hours, such as publication of peak hours, communication campaigns and individual messaging to consumers encouraging voluntary electricity reductions. More

[12] Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas and Council Regulation (EU) 2023/706 of 30 March 2023 amending Regulation (EU) 2022/1369 as regards prolonging the demand-reduction period for demand-reduction measures for gas and reinforcing the reporting and monitoring of their implementation.

[13] The EU has reduced its natural gas demand by 19.2% or 41.5 bcm from August 2022 to January 2023, compared to the average of the previous five years. It has thus so far exceeded its target of 15%, which would correspond to 32.5 bcm for the same period. Moreover, it has already achieved more than 90% of its overall target of just over 45 bcm reduction for the entire period of August 2022 to March 2023.

specifically, Italy, Slovenia, and Spain have implemented competitive bidding schemes to reduce electricity demand at peak hours during winter 2022-2023, [14] while Austria and Sweden notified a relevant scheme to the Commission for approval within the State aid framework. Finally, Portugal reported that it is in the process of considering the implementation of a competitive bidding scheme to reduce electricity demand at peak hours.

Three Member States have imposed demand reduction measures on specific consumer categories. For example, Latvia has imposed limits on the electricity consumption of large industrial consumers.

Reduction of electricity consumption

Based on the information submitted by the reporting Member States for the month of December 2022, the overall decrease of electricity consumption ranged between 0,5%[15] and 15% compared to the reference period[16].

With respect to the volumes by which electricity consumption was reduced at peak hours:

- Ten Members States, namely Austria, Bulgaria, Croatia, Estonia, Ireland, Italy, Luxembourg, the Netherlands, Poland and Portugal declared reduced volumes ranging between 4% and 7%.
- Eight Member States, namely Belgium, Czechia, Denmark, Finland, Germany, Latvia, Slovenia and Sweden have declared reduced volumes ranging between 7% and 10%.
- Five Member States, namely France, Greece, Lithuania, Slovakia and Spain declared reduced volumes of above 10%.

Assessment on prolongation of the measure

Reporting Member States indicate that they overall reached the binding target of reducing electricity consumption by 5% at peak hours. However, some Member States indicated that compliance with the *indicative* requirement for a 10% reduction of the overall monthly

[14] Some Member States, namely Italy, Portugal, Slovenia and Spain have introduced or consider introducing a competitive bidding process to achieve reduction in electricity demand.
[15] Cyprus, Croatia, Poland and Portugal declared the lowest levels of reduction of electricity consumption achieved.
[16] As defined in Article 2 point (3) of the Council Regulation. Germany, Finland, France, Greece and Spain reported the highest levels of reduction of electricity consumption achieved. When calculating the reduction of gross electricity consumptions, some reporting Member States appear to have applied Article 3(2) of the Council Regulation, while others have not. Article 3(2) gives Member States the possibility to take account of the increased gross electricity consumption that follows from reaching the gas demand reduction targets and general electrification efforts to phase out fossil fuels in their respective calculations of reductions of gross electricity consumption. As a result, any comparisons of such calculations across various Member States should be carried out with caution.

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consumption (compared to the last 5 years) was challenging because of weather dependency and the economic circumstances due to the energy crisis.

The public consultation included questions on a possible prolongation of the demand response measures. In response to those questions, most stakeholders expressed that there is no need to introduce in the Electricity Regulation (EU) 2019/943 on the internal market for electricity (the ***Electricity Regulation***) specific demand response requirements that would be applicable in case of a crisis. Instead, they were of the opinion that demand response is already sufficiently addressed in the electricity market legislation, as provided for in the provisions of Directive (EU) 2019/944 on common rules for the internal market for electricity (the ***Electricity Directive***) and further enhanced in the electricity market design proposal.

Importantly, the electricity market design proposal further integrates demand reduction measures as structural elements in the electricity market design. In particular, to ensure the efficient integration of electricity generated from variable renewable energy sources (taking cross-zonal exchanges into account) and to reduce the need for fossil-fuel based electricity generation in times when there is high demand for electricity combined with low levels of electricity generation from variable renewable energy sources, the electricity market design proposal enables transmission system operators to design a peak shaving product enabling demand response to further contribute to decreasing peaks of consumption in the electricity system at specific hours of the day (new Article 7a of the Electricity Regulation). The peak shaving product may contribute to maximising the integration of electricity produced from renewable sources into the system by shifting the electricity consumption to moments of the day with higher renewable electricity generation, provided that the forecasted costs do not exceed the expected benefits of the products. As the peak shaving product aims to reduce and shift the electricity consumption, the proposal limits the scope of this product to demand side response.

In addition, the electricity market design proposal calls on Member States to assess their needs for power system flexibility, including demand response, and establish objectives to deliver on these needs. The proposal also integrates the possibility for Member States to design or redesign capacity mechanisms to promote low carbon flexibility and to introduce new non-fossil flexibility support schemes in the electricity markets. Moreover, contrary to the rationale behind the demand reduction measures in the Council Regulation, which aimed at achieving demand reduction targets universally across Member States because of the crisis situation, the electricity market design proposal tackles demand response more structurally. It enables Member States

to design their respective non-fossil flexibility mechanisms and objectives for demand response and storage tailored to the specific needs of their respective electricity systems. For this reason, the proposal does not set out specific targets.

The Commission also notes that a new network code on demand response is currently in the process of being drafted. Once finalised, this network code is expected to include binding rules on aggregation, energy storage and demand curtailment, which will further facilitate the participation of demand response to all existing markets.[17]

Taking into consideration the information currently available to the Commission, including current market expectations as set out above, the Commission does not see a current need to prolong the demand reduction measures set out in the Council Regulation.

V. Inframarginal revenue cap

Implementation of the revenue cap

Based on the information submitted by the reporting Member States, the implementation of the inframarginal revenue cap has been very heterogeneous. Diverse implementation is observed not only with respect to the level at which the revenue cap was set (seventeen Member States have set the cap below the 180 EUR/MWh[18]), but also regarding the temporal scope of the measures (seven[19] Member States apply the cap retroactively, and eleven[20] Member States will apply it after the end date set out in the Council Regulation for this measure).

Several Member States have reported difficulties with the implementation of the measure in their national jurisdictions. Most of these difficulties related to the short timeframe within which Member States had to implement it, while others were linked to the data collection and calculation of the revenues of each electricity generator that would be subject to the measure.

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[17] https://www.acer.europa.eu/news-and-events/news/acer-submitted-framework-guideline-demand-response-european-commission-first-step-towards-binding-eu-rules

[18] The following Member States have reported a cap below 180 EUR/MWh at least for one technology: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Poland, Slovakia. Spain introduced a market revenue cap on certain technologies already in September 2021. The measure, which is projected to last until the end of 2023, currently applies a cap at around 67 EUR/MWh. In June 2022, Spain and Portugal implemented a mechanism aimed at reducing the wholesale electricity prices in the Iberian market which reduces the impact of the market revenue cap. The mechanism was approved by the Commission on 8 June 2022 under the case numbers SA. 102454 and SA. 102569 and recently prolonged until the end of 2023 under the case numbers SA. 106095 and SA. 106096.

[19] The following Member States started to apply the inframarginal revenue cap before 1 December 2022: Belgium (1/8/2022); Cyprus (24/6/2022); France (1/7/2022); Greece (8/7/2022); Italy (February 2022 for some renewable generators) and Portugal and Spain (June 2022).

[20] In Austria, Czech Republic, Finland, France, Luxembourg, Poland, Portugal, Slovenia and Spain the inframarginal revenue cap or similar measures will be applied until 31 December 2023. In Cyprus the end of the measure will be based on a decision issued by the regulator. In Slovakia the measure will be in place until 31 December 2024. Additionally, in Germany the period of application can be extended until 30 April 2024.

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Member States have also reported conflicts with the relevant national tax authorities and applicable regulations, when discussing ways to implement the revenue cap.

While Member States did not report major obstacles on cross-border trade or bidding behavior, some respondents to the public consultation were concerned that the patchwork of different implementation strategies across Member States created regulatory uncertainty for market participants and was perceived as a barrier to new investments.

Revenues generated from the implementation of the revenue cap

It is important to keep in mind that Member States submitted their report within a few months after the entering into force of the inframarginal revenue cap, and by that time most of them still did not have information about the revenues collected through the measure. Only two Member States were able to provide some preliminary figures: Bulgaria reported to have collected BGN 321 700 123 (approximately EUR 163 million) in December 2022, and Lithuania submitted that approximately EUR 10 million were collected by 9 March 2023. Whilst Greece, Spain and Italy were able to provide figures, those referred to revenues collected before the adoption of the Council Regulation, as these countries had implemented equivalent measures to the revenue cap before the adoption of the Council Regulation.

Most Member States were able to provide estimates of the revenues they expected to collect, in many cases with the caveat that those estimates were based on assumed very high electricity wholesale prices. Revenues were originally expected to exceed EUR 50 billion in total. However, those assumptions already seemed unlikely to materialise by the time of the reporting. The amount of revenues is distributed unevenly across Member States, with Germany reporting the higher estimates it initially expected to collect (EUR 23.4 billion, considering a possible extension of the measure until 30 April 2024), followed by France (EUR 11 billion). It should be noted that in both countries the revenue cap for most technologies has been set at a level much lower than the 180 EUR/MWh provided by the Council Regulation, and that these estimates were based on expected high wholesale electricity prices. Other Member States, especially those that did not set the level of the cap lower than 180 EUR/MWh expected to collect lower amounts.

Assessment on prolongation of the measure

As a preliminary point, it should be recalled that the rationale behind the inframarginal revenue cap was to enable Member States to collect and redistribute the excessive revenues

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exceptionally obtained by certain inframarginal generators while preserving price-based competition among electricity producers (in particular, renewables-based) across the EU.

In this regard, due to the lower wholesale electricity prices during the last months, the revenue cap, which was set at a maximum of 180 EUR/MWh[21] has so far had relevant effects principally in Member States that in accordance with Article 8(1)(a) opted for a cap that is lower than 180 EUR/MWh and, in particular, sufficiently low to capture inframarginal revenues from the relevant electricity prices in those Member States.

As set out above, the revenue cap has been implemented in a very heterogeneous manner across Member States. Diverse implementation is observed not only with respect to the level at which the revenue cap was set, but also regarding the temporal scope of its application and the cap level introduced per technology within a given Member State. In addition, the Commission has also been made aware in exchanges with stakeholders and via complaints that the way in which certain Member States have decided to implement the revenue cap may have affected existing power purchase agreements (**PPAs**) and other long-term contracts as well as disincentivised the conclusion of new ones. In particular, this is observed when the cap does not apply to the realised income a producer receives from the PPA, but to "assumed" (fictitious) income corresponding, for example, to the wholesale electricity prices, ultimately leading to paradoxical situations whereby the producer may be forced to sell electricity at a loss.

A potential prolongation of the measure would hinder one of the objectives set out in the electricity market design proposal, namely to incentivize the uptake of PPAs and ensure as liquid a PPA market as possible. PPAs are instruments that provide long-term price stability for the off-taker and the necessary certainty for the producer to take the investment decision. Nevertheless, only a handful of Member States have active PPA markets and buyers are typically limited to large companies, 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. Hence, according to the proposal, 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 integrated national energy and climate plans. To address the risks related to creditworthiness, the proposal sets out that Member States should ensure that

[21] To ensure the security of supply, Article 8(1)(b) of the Council Regulation allows Member States to set a higher cap on market revenues for producers that would otherwise be subject to the Union-wide cap on market revenues, when their investment and operating costs are higher than the Union-wide cap on market revenues. 13 Member States have incorporated this possibility in their national implementation of the inframarginal revenue cap, in particular for lignite, biomass and oil generation plants.

instruments to reduce the financial risk associated to off-taker payment default, including guarantee schemes at market prices, are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. The proposal includes additional requirements aiming to encourage the growth of the market for such agreements.

In addition, the different ways in which Member States have implemented the revenue cap have created significant regulatory uncertainty, which, in turn, pose risks to the development of new investments, particularly in renewable sources, necessary to achieve the EU's objectives. In particular, the reported difficulties in some Member States that relate to the conclusion of long-term contracts, including PPAs, as a result of the implementation of the revenue cap could create an additional layer of investor uncertainty and hinder the attractiveness and stakeholder confidence in forward markets. The above-mentioned risks may ultimately undermine the establishment of an attractive investment environment for renewable and low carbon generation targeted by the electricity market design proposal and, ultimately, the energy transition.

Finally, the public consultation included questions on a possible prolongation of the inframarginal revenue cap. Most of the respondents were against it because of the following risks and challenges such prolongation of the measure would entail:

- the heterogeneous implementation of the inframarginal revenue cap across Member States appears to have created uncertainty for investors and has been reported as a disincentive for new investments;
- the measure is difficult to implement, and its administrative costs are high when compared with its benefits;
- when the inframarginal revenue cap is set at a low level, as some Member States have opted for, generators may be inclined to reduce their production while the cap is in place;
- consumer protection can be secured without interfering with the electricity market design, for example, through the adoption of targeted social policies.

Only a minority of respondents supported the prolongation of the inframarginal revenue cap, either as set out in the Council Regulation or with slight modifications. Those respondents largely based their input on the benefits of the measure to final consumers.

Considering the information currently available to the Commission, as set out above, the Commission does not recommend the prolongation of the Council Regulation with respect to the inframarginal revenue cap.

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The Commission notes that to mitigate the impact of high energy prices on consumers' bills, it has proposed in its electricity market reform to promote the development of long-term markets so that the revenues of the inframarginal generators and the prices paid by final consumers are less determined by the volatile short-term wholesale electricity market price. Based on the Commission's proposal, these revenues and prices will be shaped mostly by reference to long-term contracts, such as PPAs and so-called two-way contracts for difference, depending on whether the installation was privately or publicly funded. In the case of contracts for difference, they will generate a pay-out when market prices become high. The proposal sets that this payout will have to be used by Member States to directly lower the electricity bills of all electricity customers (including companies and industry), having thus a similar effect as that of an inframarginal revenue cap, but without creating investor uncertainty.

VI. Support for final consumers

Section 3 of Chapter II of Council Regulation is addressed to the retail market and allows Member States to temporary extend public intervention in price setting for the supply of electricity to small and medium enterprises (SME) (Article 12) and for both households and SMEs exceptionally and temporarily set retail prices below costs (Article 13).

Public intervention in price setting for households existed before the crisis in eleven countries, namely Belgium, Bulgaria, France, Greece, Hungary, Italy, Lithuania, Poland, Portugal, Romania and Slovakia [22] in the form of regulated prices or social tariffs. During the crisis seven additional Member States introduced price regulation for households, namely Croatia, Czechia, Estonia, Finland, Luxembourg, the Netherlands and Slovenia.

Out of 25 assessments received, 12 Member States reported making use of the measures in the Council regulation. 4 Member States, namely Czechia, Estonia, Slovenia and Poland, reported having introduced regulated retail prices for SMEs under Article 12 of the Council Regulation. Additionally, France and Slovakia, who have regulated prices for households, reported compensation schemes for SMEs, in line with the Temporary Crisis and Transition framework (TCTF)[23] under State aid rules. The Netherlands intervened in price setting to ensure below cost electricity prices for households and businesses. This scheme was notified to the Commission and approved under the applicable State aid framework.[24]

[22] Based on information received from Member States, reports from National Regulatory Authorities and measures self-assessed by Member States.
[23] Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, 2023/C 101/03.
[24] SA.106377 TCTF - Netherlands - Scheme for the reduction of energy costs.

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Although Article 13 point (c) of the Council Regulation requires Member States to compensate suppliers for the cost of supplying electricity below cost, Member States did not include specific information on this point in their reports.

Additionally, some Member States mentioned other types of intervention towards SMEs. For example, Portugal mentioned the reduction of network tariffs as a price intervention tailored to SMEs. Denmark, Latvia and Sweden established different price setting interventions for different groups of consumers (actions on tax, levies, rebates, compensation schemes, etc.). Germany implemented an economy-wide scheme compensating increased electricity costs to undertakings, without however affecting the freedom of suppliers to act on the market.[25]

Articles 12 and 13 also require that any public intervention in the retail market should preserve an incentive to reduce electricity demand. In this regard, several Member States, such as Austria, Germany, Croatia, the Netherlands and Romania, reported schemes based on consumption ceilings, including interventions in price setting or direct or indirect compensation schemes to final consumers.

There are significant downsides to regulated prices. In particular, they can reduce energy efficiency incentives and undermine competition to the long-term detriment of consumers. These concerns underline the importance of the rules applicable in the Electricity Directive 2019/944, which the Council Regulation derogates from.

Assessment on prolongation of the measure

The crisis measure affording Member States the possibility to cap prices for households and SMEs has clearly proved of use as several Member States have taken the opportunity to extend existing schemes or to create new ones in very short timelines.

In the market design reform proposal, the Commission proposed new provisions similar to those in the Council Regulation, following an assessment of the advantages and disadvantages of the retail measures that had been reported by Member States, the results of the public consultation and in view of its fiscal policy guidance to Member States for 2024[26] More specifically, the Commission proposed that Member States may introduce, during an electricity price crisis,

[25] The scheme was approved by the Commission under State aid rules, in line with the TCTF. SA.104606 TCTF - Germany - Temporary cost containment of natural gas, heat and electricity price increases (JOCE C/061/2023).
[26] "*Member States should phase out energy support measures, starting with the least targeted ones. If an extension of support measures would be necessary because of renewed energy pressures, Member States should target their measures much better than in the past, refraining from generalised support and only protecting those who need it, namely vulnerable households and firms*", COM(2023) 141 Fiscal policy guidance for 2024.

targeted price intervention for households and SMEs, including at below cost levels, for a limited volume of electricity consumption, and for a limited period of time.

This possibility comes in addition to the existing protection framework for energy poor and vulnerable consumers provided for in the Electricity Directive, under which Member States may apply social tariffs to energy poor and vulnerable consumers and temporarily regulate retail prices for households and microenterprises until market competition is fully established.

As the measure, in substance, has been included in the Commission market design proposal, and taking into consideration the information currently available to the Commission, as set out above, the Commission does not see a current need to prolong the measure at this stage.

VII. Preliminary conclusions

This Report presented an overview of the responses received by Member States on (i) their demand reduction measures; (ii) the implementation of the inframarginal revenue cap; and (iii) retail price setting interventions set out in Chapter II of the Council Regulation. The Report also presented an overview of the input submitted by the respondents to the public consultation on the same topics. The information assessed in this Report and the conditions in the electricity supply and prices in the EU currently and as foreseeable under normal circumstances, do not provide evidence that a prolongation of each of the demand reduction measures, the inframarginal revenue cap and retail interventions would be necessary or advisable.

First, with respect to demand reduction measures, all reporting Member States appear to have implemented measures to reduce electricity demand, mainly through awareness raising campaigns and energy saving targeted measures. While Member States report that they are overall respecting the binding target of reducing electricity consumption by 5% at peak hours, it would seem that the reduction of the monthly gross electricity consumption by 10% presented challenges but this did not hinder the observed reduction in electricity prices.

Based on the information available, the Commission does not see a current need to prolong the demand reduction measures set out in the Council Regulation. Barring unforeseeable changes, the current electricity market conditions do not render such prolongation necessary. This is also in line with the feedback received from most respondents to the public consultation. While no longer necessary in the short term and through the tools established by the Council Regulation, demand response is important for well-functioning electricity markets. For this reason, the Commission has introduced it structurally in its electricity market design proposal.

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Second, the review found that implementation of the revenue cap varies greatly across Member States. Diverging implementation strategies across Member States have reportedly led to significant investor uncertainty. This is compounded by the fact that in certain Member States the implementation of the cap has reportedly impacted the conclusion of PPAs and other long-term contracts.

Based on the information available, and given the current and foreseeable market conditions, the Commission considers that the benefits of the current inframarginal revenue cap would not outweigh the impact on investor certainty and the risks to the market functioning and the transition. The challenges in the implementation process also discourage a prolongation of the inframarginal revenue cap set out in the Council Regulation. The Commission's conclusion is in line with the feedback received from most respondents to the public consultation, who opposed a prolongation of the measure due to the investor uncertainty concerns.

Third, the review found that several Member States took advantage of the possibility to widen the scope of retail price regulation in times of crisis to SMEs and apply price regulation below costs under certain conditions. In its electricity market design proposal the Commission included equivalent provisions which allow Member States to exceptionally and temporarily intervene in retail markets by setting a price below costs for both households and SMEs during possible future crisis situations. The adoption of the electricity market design proposal would ensure that such structural measures would be part of the EU regulatory framework, as soon as the adoption of the proposal takes place. In view of the above and against the background of current and expected electricity supply and price conditions, the Commission therefore considers that it is not necessary to prolong the provisions of Articles 12 and 13 of the Council Regulation.

Finally, given that this Report is based on information submitted by Member States only a few months following the entry into force of the Council Regulation measures, the Commission's conclusions are therefore without prejudice to any additional information the Commission may receive from Member States or any unforeseen changes of the general situation of electricity supply and prices in the EU. Should the information on which the Commission has based this Report significantly change, the Commission may need to adjust its conclusions accordingly or act swiftly in case the state of the market so requires.

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