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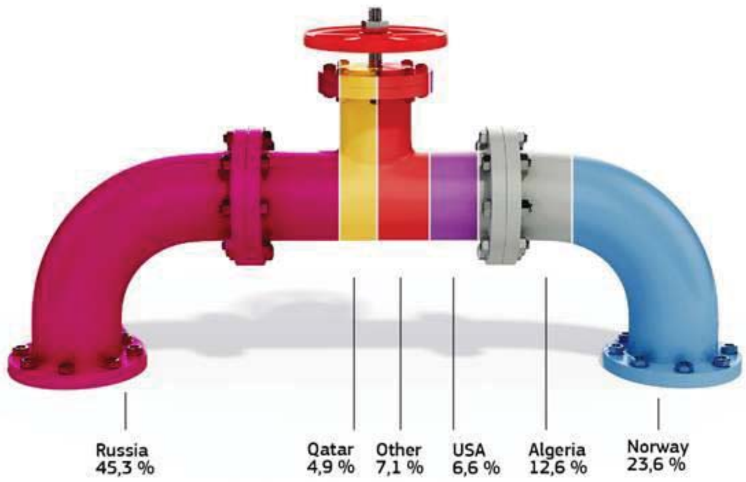
# COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

## REPowerEU: Joint European Action for more affordable, secure and sustainable energy

## INTRODUCTION

**Following the invasion of Ukraine by Russia, the case for a rapid clean energy transition has never been stronger and clearer.** The EU imports 90% of its gas consumption, with Russia providing more than 40% of the EU's total gas consumption. Russia also accounts for 27% of oil imports and 46% of coal imports.

*Share in EU natural gas imports, 2021*




*Source: European Commission*

**The EU needs to be ready for any scenario. It can reach independence from Russian gas well before the end of the decade. The sooner and more decisively we** diversify our supply, accelerate the roll out of green energy technologies and reduce our demand of energy, the earlier we can substitute Russian gas. **This communication sets out new actions to ramp up the production of green energy, diversify supplies and reduce demand, focusing primarily on gas, which significantly influences the electricity market and where the global market is less liquid. The focus can be extended to phasing out dependence on Russian oil and coal, for which the EU has a broader diversity of potential suppliers.**

Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. Rising fossil fuel prices hit energy-poor or vulnerable household consumers particularly hard, who spend a high share of their total income on energy bills[1], exacerbating the disparities and inequalities in the EU. Businesses, in particular energy-intensive industries, as well as the agri-food sector face higher production costs.

Providing companies and households with affordable, secure and clean energy requires decisive action, starting immediately with price mitigation and storing gas for next winter.

[1] See the report of the workshop on 'Energy Poverty', organised on 9 November 2016 for the EP Committee on Industry, Research and Energy (ITRE), Gender perspective on access to energy in the EU, Gender and energy | European Institute for Gender Equality (europa.eu) and GFE-Gender-Issues-Note-Session-6.2.pdf (oecd.org)

## I. ADDRESSING THE EMERGENCY

**Very high energy prices are hurting the economy.** The European Central Bank estimated before the invasion that the energy price shocks will reduce GDP growth by around 0.5 percentage points in 2022. Continued high energy prices are likely to increase poverty and affect business competitiveness. Energy-intensive industries in particular have faced higher manufacturing costs[2]. High energy prices also mean higher prices for other commodities, notably food. A combination of higher energy, transport and higher food prices would exacerbate the pressure on low income households, with increased risks of poverty.

**The Commission's toolbox[3]** of October 2021 has helped mitigate the impact of high energy prices. The measures should be continued as long as necessary.

To address the current emergency, the Commission will look into all possible options for emergency measures to limit the contagion effect of gas prices in electricity prices, such as temporary price limits. It will consult as a matter of urgency all concerned actors and propose options in the coming weeks.

**The Commission will also assess options to optimise the electricity market design** to reap the benefits from low cost energy. It will take into account the final report of the European Union Agency for the Cooperation of Energy Regulators (ACER) and other contributions on the functioning of the electricity market on benefits and drawbacks of alternative electricity pricing mechanisms. It will follow up as appropriate to keep electricity affordable without disrupting supply and further investment in the green transition.

### 1.1. Mitigating retail prices and supporting heavily exposed companies

**The Commission confirms that price regulation and transfer mechanisms to help protect consumers and our economy are possible.** The legal framework of the electricity market, and in particular Article (5) of the electricity Directive[4], allows Member States, in the current exceptional circumstances, to set retail prices for households and micro-enterprises.

The Commission provides detailed guidance in Annex 1 to this Communication to help Member States devise schemes for regulated prices. This could be accompanied by incentives for energy efficiency and savings, to reduce energy bills.

**EU State aid rules** offer Member States options to provide short-term relief to companies and farmers affected by high energy prices, and help reduce their exposure to energy price volatility in the medium to long term. For example, Member States can offer temporary relief for companies facing liquidity needs due to current high energy prices, regardless of their size, based on the guidelines on rescue and restructuring[5]. The Commission will treat those cases

[2] Over half of the EU's aluminium and zinc smelters are today operating at reduced capacity or have temporarily closed. The EU has temporarily lost 650 000 tonnes of primary aluminium capacity, about 30% of its total.

[3] COM(2021) 660 final of 13 October 2021: Tackling rising energy prices: a toolbox for action and support.

[4] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L158, 14.6.2019, p. 125–199).

[5] Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1). The aid can be granted in the form of liquidity support (loans or guarantees) for a maximum duration of 6 months for large undertakings in difficulty, or up to 18 months for SMEs. Undertakings that are not in difficulty can also benefit if they face 'acute liquidity needs due to exceptional and unforeseen circumstances'

with priority with special attention to gas utilities and intermediaries faced with increased supply costs due to contracts disruptions.

**The EU Emissions Trading System State aid Guidelines**[6] enable Member States to specifically support sectors that, are most at risk of carbon leakage because of indirect emission costs. **In the agricultural sector, State aid rules**[7] **allow investment aid in sustainable energy.** In the on-going review of those rules, the Commission's proposal[8] under public consultation increases the options to provide support for farmers.

The Commission is ready to use the full flexibility of its State aid toolbox in order to enable Member States to support companies and sectors severely impacted by the current geopolitical developments. To enable Member States to remedy the serious disturbances to the economy resulting from Russia's military aggression against Ukraine, **the Commission will shortly be consulting Member States on the needs for and scope of a new, self-standing Temporary Crisis Framework**[9]. Such a Framework could for example allow liquidity support for all undertakings directly or indirectly affected by the crisis and aid **to undertakings**[10], in particular energy-intensive consumers, to compensate for part of their increase in energy costs due to the price shock since the Russian invasion. The Commission has also consulted Member States on targeted amendments to the ETS State aid guidelines, in particular to expand the list of eligible sectors, while ensuring that they are subject to reinforced incentives to improve energy efficiency and/or decarbonise their production and limiting competition distortions among Member States.

**To finance such emergency measures, Member States can consider temporary tax measures on windfall profits.** According to the International Energy Agency **such fiscal measures on high rents** could make available up to EUR 200 billion in 2022 to partially offset higher energy bills[11]. Such measures should not be retroactive, but should be technologically neutral and allow electricity producers to cover their costs and protect long-term market and carbon price signals. Annex 2 sets out the conditions those instruments should meet. **Member States can also use higher than expected ETS revenues**. From 1 January 2021 to 28 February 2022, the revenues generated from the auctioning from EU ETS allowances amounted to around EUR 30 billion[12].

The Commission recalled in its Communication on fiscal guidance for 2023 that the so-called **"general escape clause" of the Stability and Growth Pact (SGP) continues to apply in**

6 Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 , OJ C 317, 25.9.2020, p. 5.

7 Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union. OJ L 193 du 1.7.2014, p. 1–75. Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020. OJ C 204 du 1.7.2014, p. 1–97.

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

9 Under Article 107(3)(b) TFEU

10 With the exception of undertakings linked to or controlled by natural persons included in the list of sanctions adopted by the EU and/or beneficiaries controlled by Russian or Belarussian legal entities.

11 A 10-point plan to reduce European Union's reliance on Russian natural gas, 3 March 2022, International Energy Agency

12 While ETS funds should primarily support further emission reductions through in particular investments into energy efficiency measures, the energy transition and innovation in clean technologies, Article 10(3) of the ETS Directive (Directive 2009/29/EC) determines that Member States can use the ETS revenues to provide financial support in order to address social aspects in lower- and middle-income households.

**2022,** allowing Member States to take exceptional measures in the current exceptional circumstances.

### 1.2. Preparing for next winter by ensuring sufficient gas storage

**Gas supplies are sufficient until the end of this winter even in case of full disruption of supplies from Russia.**

**In order to be well-prepared for next winter, filling of gas storage across the EU should start now.** During the heating season, storage reduces the need to import additional volume. Storage contributes to absorbing supply shocks. Gas storage supplies 25-30% of gas consumed in winter. Gas storage levels have proven to be particularly low at sites owned by third country entities (i.e. Gazprom). In parallel, transmission system operators should also coordinate measures to update and optimise capacities available in the network in case of reduced or no flows and pressure from the East**.**

The Commission will make a legislative proposal by April so as to ensure an annual adequate level of storage[13]. This proposal will require that existing storage infrastructures in the EU territory are filled up to **at least 90%** of their capacity by 1 October each year. In order to make storage more attractive to market participants, the Commission will propose to increase the rebate level to 100% as an incentive to refill storage.

An **EU gas storage policy** will ensure fairness and allow making smart use of existing infrastructure, limiting the need for new infrastructure as not all Member States have underground storage facilities in their territories. The legal proposal will set out a mechanism to ensure a fair allocation of security of supply costs. Indeed, the benefits of having a guaranteed high filling level, in terms of the insurance value against security of supply risks and price dampening effects in winter are not limited to the country where the storage is located. Interconnectors are essential to ensure the uninterrupted energy flow within the whole EU. If new infrastructure is needed, it should be hydrogen compatible.

In the light of the current geopolitical environment, the Commission envisages that this legal proposal will identify gas storage as a **critical infrastructure** and introduce provisions to tackle **ownership risks for gas infrastructure**. Member States will have to require the regulatory authority or another competent authority designated by the Member State to certify that ownership by a person or persons from a third country does not put at risk the security of supply. Such assessment will have to be done for all existing and future storage operators. In the **short term** and pending the legislative process, Member States should act as if the legislation was already in place and take measures to ensure refilling of storage in time for next winter. Moreover, as foreseen by the existing Gas Security Supply Regulation[14], they need to conclude **solidarity arrangements.** Given the current context this should be done **without delay**.

To incentivise the refilling, Member States can provide aid to suppliers under Article 107(3)(c) TFEU for example in the form of guarantees (**'two-way contract for difference'**).

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[13] 13 Member States - BE, BG, DK, ES, FI, FR, HU, IT, LT, LV, PL, PT, SE have storage obligations in place. Others, e.g. DE announced plans to introduce them.

[14] Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1–56).

For its part, the Commission can **coordinate refilling operations,** for example through joint procurement, collecting orders and matching supplies. A joint European platform for contractualisation of gas supply based on bilateral negotiations with major gas producers would help diversification and smart risk management, hence ensuring security of supplies on favourable conditions for all buyers across the EU.

The Commission is also pursuing its investigation into the gas market in response to concerns regarding potential distortions of competition by companies active on the European gas markets, notably by Russian gas supplier Gazprom. The company displays unusual business behaviour, and the average filling level of EU Gazprom-operated storage is around 16%, whereas non-Gazprom storage is at 44%. The Commission is currently investigating as a matter of priority all allegations of potential anti-competitive commercial conduct by Gazprom and gathering additional information from market players.

The Commission continues to work with neighbours and partners in the Western Balkans, and in the Energy Community, which share the EU's fossil fuel dependencies and exposure to price hikes, while also having committed to the same long term climate goals. For Ukraine, Moldova and Georgia, the EU stands ready to support to ensure reliable and sustainable energy as necessary. The ongoing effort to provide for an emergency synchronisation of the Ukrainian and Moldovan electricity grids with the continental European grid is a clear token of this commitment.

## II. REPOWER EU: ELIMINATING OUR DEPENDENCE ON RUSSIAN FOSSIL FUELS

**Phasing out our dependence on fossil fuels from Russia can be done well before 2030. To do so, the Commission proposes a REPowerEU plan that will increase the resilience of the EU-wide energy system** based on two pillars:

- **Diversifying gas supplies**, via higher LNG imports and pipeline imports from non-Russian suppliers, and higher levels of biomethane and hydrogen.
- **Reducing faster our dependence on fossil fuels** at the level of homes, buildings and the industry, and at the level of the power system by boosting energy efficiency gains, increasing the share of renewable and addressing infrastructure bottlenecks.

  Full implementation of our Fit for 55 proposals would lower our gas consumption by 30%, equivalent to 100 bcm, by 2030. Together with additional gas diversification and more renewable gases, frontloaded energy savings and electrification have the potential to jointly deliver at least the equivalent of the 155 bcm imports of Russian gas.

The energy efficiency first principle is more relevant than ever and should be applied across all sectors and policies, with demand response measures complementing those on the supply-side.

Given the circumstances, the co-legislators might also want to consider to boost the Fit for 55 proposals with higher or earlier targets for renewable energy and energy efficiency.

| REPOWER EU TRACK | FOCUS | FF55 AMBITION BY 2030 | REPOWEREU MEASURE | REPLACED BY THE END OF 2022 (BCM equivalent) estimate | ADDITIONAL TO FF55 BY 2030 (BCM equivalent) estimate |
|---|---|---|---|---|---|
| GAS DIVERSIFICATION | NON-RU NATURAL GAS | - | LNG diversification | 50* | 50 |
| | | - | Pipeline import diversification | 10 | 10 |
| | MORE RENEWABLE GAS | 17 bcm of biomethane production, saving **17 bcm** | Boost biomethane production to 35bcm by 2030 | 3.5 | 18 |
| | | 5.6 million tonnes of renewable hydrogen, saving **9-18.5 bcm** | Boost hydrogen production and imports to 20mt by 2030 | - | 25-50 |
| ELECTRIFY EUROPE | HOMES | Energy efficiency measures, saving **38 bcm** | EU-wide energy saving, e.g. by turning down the thermostat for buildings' heating by 1°C, saving 10bcm | 14 | 10 |
| | | *Counted under overall RES figures below* | Solar rooftops front loading – up to 15 TWh within a year | 2.5 | frontloaded |
| | | 30 million newly installed heat pumps installed in 2030, saving **35 bcm** in 2030 | Heat pump roll out front loading by doubling deployment resulting in a cumulative 10 million units over the next 5 years | 1.5 | frontloaded |
| | POWER SECTOR | Deploy 480 GW of wind capacities and 420 GW of solar capacities, saving **170bcm** (and producing 5.6 Mt of Green Hydrogen) | Wind and solar front loading, increasing average deployment rate by 20%, saving 3bcm of gas, and additional capacities of 80GW by 2030 to accommodate for higher production of renewable hydrogen. | 20 | Gas savings from higher ambition counted under green hydrogen, the rest is frontloaded |
| TRANSFORM INDUSTRY | ENERGY-INTENSIVE INDUSTRIES | Front load electrification and renewable hydrogen uptake | Front load Innovation Fund and extend the scope to carbon contracts for difference | *Gas savings counted under the renewable hydrogen and renewables targets* | |

**all figures are estimates*

**The Commission stands ready to propose a REPowerEU plan based on an identification, in dialogue with Member States, of the most suitable projects and reforms,** at national, regional and EU levels. This will build on national energy and climate plans and their updates, existing Recovery and Resilience Plans (RRPs), cohesion policy operational programmes and any other relevant plans and climate resilience needs. Projects completing internal market in energy and those **with a strong cross-border dimension should be privileged**, for instance the critical connection between Portugal, Spain and France and , between Bulgaria and Greece. Such projects will improve the interconnection of the European gas and electricity networks and other infrastructure and fully synchronise our power grids, such as between the Baltic States and the Continental European Network. A regional analysis should underpin Member States plans. The Commission would provide support as done for RRP and technical assistance via the Technical Support Instrument. **Financing needs** will be assessed based on a comprehensive mapping of the needs of Member States as well as of cross-border investment needs. To meet these, all resources and tools available at national and EU level should be mobilised, with public funding designed to crowd-in private investment.

### 2.1. Diversify gas supplies

#### 2.1.1. LNG and pipe imports

An unprecedented LNG supply to the EU in January 2022 has ensured security of gas supply for this winter. The EU could import 50 bcm more of LNG (e.g. from Qatar, USA, Egypt, West Africa) on a yearly basis. Diversification of pipe sources (e.g. Azerbaijan, Algeria, Norway) could deliver another 10 bcm of yearly savings on Russian gas imports.

The Commission will assess as a matter of priority whether measures and investments are needed in hydrogen-ready gas infrastructure and interconnections to overcome bottlenecks to the full use of the EU's LNG capacity.

While diversifying supply, the EU fosters its international partnerships. The Commission will continue discussing within G7 and with major global purchasers of gas (Japan, South Korea, China, India) medium-term market developments.

#### 2.1.2. Increase the EU production of biomethane

**Doubling the objective of Fit for 55 for biomethane would lead to the production of 35 billion cubic metres (bcm) per year by 2030.** To do so, Member States' CAP strategic plans should channel funding to biomethane produced from sustainable biomass sources, including in particular agricultural wastes and residues.

#### 2.1.3. Hydrogen Accelerator

**An additional 15 million tonnes (mt) of renewable hydrogen on top of the 5,6 mt foreseen under the Fit for 55 can replace 25-50 bcm per year of imported Russian gas by 2030.** This would be made of additional 10 mt of imported hydrogen from diverse sources and an additional 5 mt of hydrogen produced in Europe, going beyond the targets of the EU's hydrogen strategy and maximising the domestic production of hydrogen[15]. Other forms of fossil-free hydrogen, notably nuclear-based, also play a role in substituting natural gas.

The Commission will further develop the regulatory framework to promote a European market for hydrogen and support the **development of an integrated gas and hydrogen infrastructure**, **hydrogen storage facilities** and **port infrastructure. New cross border**

[15] COM(2020) 301 final: A hydrogen strategy for a climate-neutral Europe.

**infrastructure should be hydrogen compatible.** The Commission will assess State aid notification for hydrogen projects as a matter of priority. It commits to complete the assessment of the first Important Projects of Common European Interest on hydrogen within 6 weeks from the submission by the participating Member States of a complete notification. The shared aim should be to enable the assessment to be completed by summer.

Additionally, the Commission will support pilot projects on renewable hydrogen production and transport in the EU neighbourhood, starting with a Mediterranean Green Hydrogen Partnership. It will also work with partners to conclude **Green Hydrogen Partnerships** and with the industry to establish **a Global European Hydrogen Facility**, boosting Member States' access to affordable renewable hydrogen.

### 2.2. Reducing faster our dependence on fossil fuels

#### 2.2.1. Rolling out solar, wind and heat pumps

**Fit for 55 foresees the doubling of the EU's photovoltaic and wind capacities by 2025 and tripling by 2030, saving 170bcm of yearly gas consumption by 2030.**

**By accelerating the roll out of rooftop solar PV systems by up to 15TWh this year the EU could save an additional 2,5 bcm of gas.** The Commission will present in June a communication on solar energy with the aim of helping unlock solar energy's potential as a major renewable energy source in the EU. Based on an analysis of the state of play of solar energy across the EU, the solar strategy will propose a European Solar Rooftops Initiative, which will identify barriers, propose measures to accelerate the roll-out and ensure that the public can fully reap the benefits of rooftop solar energy.

The Commission will help further develop the **value chain for solar and wind energy and for heat pumps,** also boosting the EU's competitiveness and tackle strategic dependencies. If necessary to crowd-in sufficient private investment, measures will include channelling EU financing to next-generation technologies, mobilising InvestEU or Member States' support. Particular attention would be paid to the acceleration of investments in reskilling and upskilling of the workforce, which are essential to support the transformation.

The Commission, Member States and industry should continue to closely monitor the supply of critical and other raw materials, promote strategic partnerships for securing supplies and consider taking other action, such as strategic stockpiling, if necessary.

**By doubling its planned yearly pace of deployment of heat pumps in** in the first half of this period, the EU would reach 10 million heat pumps installed in the next five years. This would save 12 bcm for every 10 million heat pumps installed by households. The accelerated market deployment of heat pumps will require rapid upscaling of the entire supply chain and be accompanied by measures to boost building renovation and district heating system modernisation.

Beyond home and building projects, energy supplies based on wind, solar and other low emission sources for power generation would also reduce our dependence on gas.

### 2.2.2. Decarbonising industry

**The REPower EU plan could accelerate the deployment of innovative hydrogen-based solutions and cost-competitive renewable electricity in industrial sectors**. The Commission would bring forward the implementation of the Innovation Fund in order to support the switch to electrification and hydrogen, including through an EU-wide scheme for carbon contracts for difference, and to **enhance the EU's manufacturing capabilities** for innovative zero and low carbon equipment, such as electrolysers, next generation solar/wind, and other technologies.

### 2.2.3. Enabling faster permitting

**A precondition for the acceleration of renewable energy projects to materialise is to simplify and shorten permitting.** Lengthy administrative procedures have been identified as one of the key obstacles for investments in renewables and related infrastructure. These should be addressed by full and rapid transposition of the Renewable Energy Directive[16] currently in force, implementation of the corresponding reforms and measures in Member States' recovery and resilience plans as well as the provisions relating to permitting of infrastructure in the revised TEN-E framework[17].

The Commission calls on Member States to ensure that the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself are considered as being in the overriding **public interest and** in the interest of public safety and **qualify for the most favourable procedure available in their planning and permitting procedures.**

Member States should **swiftly map, assess and ensure suitable land and sea areas that are available for renewable energy projects,** commensurate with their national energy and climate plans, the contributions towards the revised 2030 renewable energy target and other factors such as the availability of resources, grid infrastructure and the targets of the EU Biodiversity Strategy. The Commission will propose in the **upcoming nature restoration law** proposal that Member States should, when preparing their national plans to meet restoration targets, take into account limited and clearly defined areas as particularly suitable **('go-to' areas)**, while avoiding as much as possible environmentally valuable areas. Member States can use the review of their plans under the Maritime Spatial Planning Directive to further the deployment of renewable energy projects.

**In May, the Commission will publish a recommendation on fast permitting for renewable energy projects** and will work to support the use of all flexibilities already granted by EU legislation and the removal of remaining obstacles, whatever their origin.

The Commission will also provide guidance on when and how **regulatory sandboxes** are needed to enable the testing of innovative technologies, products or services that aim to advance the coexistence of renewable deployment and environmental protection. The guidance will focus on setting up the boundaries of regulatory sandboxes such as defining the timeframe, territory and continued regulatory supervision to minimise any risks.

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16 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).

17 Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

The Commission and the EIB Group will conclude in 2022 on the financing mechanisms that would be best suited to promote the development of **power purchase agreements (PPAs)** in Europe, which is already possible under InvestEU. This will include facilitating better access to PPAs for new off-takers such as SMEs.

## CONCLUSION

Developments in energy markets in recent months, and especially the dramatic change in our security situation in recent weeks, require to drastically accelerate the clean energy transition and thereby increase Europe's energy independence.

Immediate actions are warranted to mitigate the impact of high prices for households, farmers, businesses and industry.

Breaking the dependency on Russian fossil fuels will accelerate the change of the energy mix in Member States, which should be reflected in the functioning of the electricity market.

**A European policy on gas storage will improve preparedness** for the next winter season and beyond. Joint and coordinated action is the best contingency response to the challenges we face.

**The Commission is ready to develop a REPowerEU plan,** in cooperation with Member States**,** by the summer**,** to support the diversification of energy supplies, accelerate the transition to renewable energy and improve energy efficiency. This would accelerate the phasing out of Russian gas imports and reliance on fossil fuels and provide the best insurance against price shocks in the medium term by fast-forwarding the EU's green transition, with a special focus on cross-border and regional needs. The need for greater security of supply is adding a new impetus to the objectives of the European Green Deal.

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ANNEX 1

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**REPowerEU: Joint European Action for more affordable, secure and sustainable energy**

## ANNEX 1

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

1. *Introduction*

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

The current situation on energy markets is such that intervention in retail price setting may be necessary for Member States to meet their policy objectives and ensure affordable transparent energy prices and costs for consumers.

This Guidance aims to support Member States in the design of such measures, ensuring they benefit consumers during this current crisis and enhance competition to the benefit of consumers over the longer term. It sets out reasons why high and volatile wholesale gas and electricity prices may currently be restricting competition and harming customers. These could serve as the basis for Member States to identify the conditions under which they wish to use the flexibility in Article 5 in relation to price interventions at retail level

Article 5 sets out that suppliers are free to determine the price at which they sell to their customers rather than it being set by government or a regulator. This is because in a well-functioning market based on the interaction of supply and demand, this will:

- empowers consumers,
- sends investment signals in the market, which supports medium term security of supply and the move to a decarbonised system,
- support the move towards a flexible electricity system, in particular with demand side participation,
- encourages energy efficiency and energy savings – as the price of energy is an important signal of the real value of energy, and
- give consumers more choice as suppliers compete to make better offers based on price and service.

However, Article 5 also recognises that under certain circumstances it might be necessary to derogate from this general principle. Member States may intervene in retail price setting by suppliers (regulated prices) in accordance with the following[34]:

- Article 5 (3) which allows Member States to regulate retail prices for supply to energy poor or vulnerable household customers, subject to specific conditions set out in Article 5(4), to ensure they can afford to meet their basic energy needs
- Article 5(6) which allows action on retail price setting for households and micro-enterprises for a certain period of time to facilitate the transition to effective competition between suppliers. This derogation is subject to the more specific conditions set out in

Article 5(7), which are different from those applicable to regulated retail prices for energy poor and vulnerable consumers. Recital 23 of the Electricity Directive which spells out the objective of Article 5, shows that this may be used to address the impact of situations of particularly high prices.

2. *Reasons to intervene in price setting in response to the current energy market situation*

While the exact impact will differ across Member States, there are several ways in which the current energy market situation with high and volatile wholesale gas and electricity prices may restrict competition and harm customers, including:

- cementing the position of dominant players,
- locking in energy sources with high carbon emissions,
- preventing suppliers from accessing hedging products or longer term markets that enable them to make offers to consumers;
- causing significant harm to consumers in a way likely to harm longer term market developments, thereby undermining competition and the energy transition,
- passing price increases and volatility on the wholesale market directly onto retail markets; - this would mean that the retail market is failing to protect consumers against volatile prices to the extent that those consumers are not able to adjust their demand,
- reducing the number of suppliers on the market below that required to ensure effective retail market competition as a result of the current (wholesale) market situation; and
- supplier-of-last-resort regimes being overwhelmed.

3. *Regulated retail prices during the current period of high and volatile energy prices*

Firstly, where a Member State has already taken measures as set out in Article 5(3) or Article 5(6), they may continue to do so during the current period. They may also take account of the impact of current high and volatile wholesale energy prices on any roadmaps that they had prepared for phasing out these retail market interventions.

In line with Recital 23 time limited retail price interventions during the current exceptional period of instability are allowed even if a Member State has already moved to a situation of full competition, either for all or for a class of customers, to meet the following objectives:

- to ensure protection of vulnerable and household customers against during periods of exceptionally high prices;
- to ensure continued transition to full competition;
- to prevent that the level of competition already achieved is seriously impaired (for the reasons set out above).

4. *Ensuring measures meet objectives of EU energy policy and Electricity Directive*

Where a Member State regulates retail prices because of the current period of high and volatile prices, it is important that this does not undermine wider objectives of EU energy policy and the Electricity Directive. These objectives include competitive markets, consumer empowerment, an increase in renewables, a flexible electricity system and greater energy efficiency.

This can be ensured by applying the tests set out in Article 5(7). This will ensure that measures are designed in such a way that they can achieve their objective, are proportionate to that objective and interfere not more than necessary with the normal functioning of the market.
In practical terms, they measures must necessarily take account of the specific circumstances prevailing right now with high and volatile wholesale energy prices, and the overall purpose of ensuring the longer term transition to a fully competitive retail market and facilitating the energy transition.

## 5. *Key considerations when developing regulated retail prices*

Regulated retail prices in the current situation should provide space to ensure that markets can work well for consumer in the longer term. This means they should be accompanied by measures to achieve effective competition and a methodology for assessing progress on the measures. The most appropriate measures will depend on the specific situation in each Member State and the specific challenges they face, and could include the following:

- Measures to empower consumers
  - measures to enable self-consumption and production;
  - energy efficiency measures to reduce energy demand, increase energy efficiency and make consumers less exposed to the impact of price volatility; and
  - tapping into the potential of demand-side flexibility to respond to fluctuations in demand and supply notably to ensure customers can participate in demand response measures through aggregation.

- Measures to ensure that all suppliers operate in a prudential way, protecting consumer interests.
- Measures to ensure suppliers are able to make offers on the market that meet consumer needs:
  - suppliers are able to access long term contracts on an equal basis;
  - measures to support effective access for new suppliers to wholesale markets ;
  - measures on dominant producers to make forward contracts available on a fair basis (e.g. on same terms as to their supply arm). If generators have already sold forward energy through long-term power purchase agreements or bilateral contracts, this energy should be excluded; and
  - removal of barriers to entry of new participants.

In any case, Member States should ensure full and effective implementation of Chapter III of the Electricity Directive to ensure consumer empowerment.
The method is needed for assessing progress in returning to fully competitive markets. A roadmap with milestones for removing of regulated prices would be one way of achieving this:

- in particular, milestones should be associated with mitigation of the impact of exceptional supply and demand conditions; without expecting their return to pre-crisis levels. This would mean that we would expect full competition to resume on the basis of new wholesale price level;
- the Roadmap should be sufficiently clear as to enable market participants to plan ahead.

Minimising potential adverse impacts of regulated prices also means ensuring non-discriminatory treatment of suppliers. This needs to include the following:

- Suppliers should be free to develop other offers, not based on regulated prices.

- Dynamic price contracts should not be affected, and consumers should continue to be able to choose dynamic tariffs.
- The methodology should ensure it does not cement the position of dominant players.
- The regulated price should not be based on a single particular operator's generation fleet. However, where the generation fleet of a particular operator was in the past made available to all suppliers on non-discriminatory terms, this could be taken into account.
- There should be transparency in the selection of the supplier subject to the regulated price and the selection process should be based on non-discriminatory selection criteria.
- If compensation is provided to the supplier for providing the offers at regulated cost, two options are available: n
    - All suppliers should be ~~a~~eligible to provide offers at the regulated price on the same basis. The timing of compensation should take into account the different financial impact on small suppliers to protect them against disproportionate burdens that might arise from the obligation to offer electricity at regulated prices,
    - the supplier should be chosen through an open process such as a tender

Regulated prices should be cost-reflective, at a level where effective price competition can occur. In this regard Member States should take into account the following:

- The regulated price setting methodology should be fully auditable.
- For the calculation process, the authority implementing the regulated prices should have access to the necessary information the cost structure of the industry;
- The regulated price needs to be able to cover reasonably incurred costs of suppliers and to be assessed on the basis of objective economic criteria, including regulated or administrative costs;
- Identifying the appropriate reference price for suppliers' costs when procuring electricity is particularly difficult during a period of high and volatile prices. It is however important that even if regulated prices might be below what is needed to cover wholesale market costs during specific short term period, they must be cost-reflective taking into account a duly justified longer period. This could for example be based on the normal forward procurement of energy by suppliers in the relevant Member State.

Other requirements under Article 5(7) of the Electricity Directive include

- minimising any negative impact of regulated retail prices on the wholesale electricity market;
- ensuring beneficiaries of regulated retail prices continue to be able to choose competitive market offers, and are provided with support and information in this regard;
- directly informing customers of the possibility of installing smart meters and providing them with the necessary assistance, and
- Ensuring that regulated retail prices should not lead to direct cross-subsidisation between customers supplied at free market prices and those supplied at regulated supply prices.

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ANNEX 2

**ANNEX**

***to the***

**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**

**REPowerEU: Joint European Action for more affordable, secure and sustainable energy**

## ANNEX 2

**Guidance on the application of infra-marginal profit fiscal measures**

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

Redistributing revenues from fiscal measures on infra-marginal rents to final electricity consumers would partly prevent that current high gas prices increase the costs incurred by final customers. It would also while preserve efficient marginal wholesale electricity prices needed for efficient dispatching and market coupling in the European single electricity market. However, such a measure would nonetheless need to be carefully designed to avoid unnecessary market distortions, while incentivising additional investment in renewable energy. This includes notably the following:

- The duration of the measure should be limited and tied to a specific crisis situation;
- The measure should not affect the formation of wholesale electricity prices based on marginal costs expressed by the merit curve, hence preserving the efficiency of price signals for short-term operational decisions. In case of any doubt, lower levels of excess gains should be clawed back to avoid impacts on price formation;
- Long-term price trends resulting from structural market developments and the carbon price signal from the EU ETS should not be affected. This is so as not to interfere with long-term price signals that contribute to the coverage of fixed and investment costs, incentivizing investments in capacity needed for a decarbonised and reliable power system;
- It has to be noted that some of the increase in global gas prices has a structural component (which could be defined on the basis of average prices over time). The tax should not deal with the effects of this structural component.
- The method for the calculation of rents that are to be considered 'excessive'– linked to the specific crisis environment - and the trigger/deactivation mechanisms would have to be clearly specified and justified. To avoid any arbitrary use that would result in heavy distortions, the 'windfall profits' and the "trigger/deactivation" mechanism would have to be defined on the basis of objective and verifiable criteria and events. These could for example the deviation from an average of global gas prices over a sustained period of time and the number of hours that gas sets the price in the electricity system. The duration of the tax should be also clearly limited in time, not going beyond 30 June 2022, on the basis of these well-defined criteria.
- The additional infra-marginal rents should be clawed back only in the time periods when gas plants were marginal and to the extent that such additional infra-marginal rents were effectively earned by infra-marginal units;
- The measure should not distinguish different generation technologies. It should include any infra-marginal units operating in the hours of application of the tax, e.g. infra-marginal rents from hard coal and lignite-fired generation, renewables (including hydropower) and nuclear;
- The measure should equally apply to all generators regardless of whether they are covered by support schemes or capacity remuneration mechanisms. However, it should be taken into account that some support schemes by their nature already avoid (feed-in tariffs), capture (two-way contracts for difference contracted before

the gas price crisis) or reduce (floating premiums) infra-marginal rents in periods of high prices. The specific situation of fixed premium could be addressed, which can increase infra-marginal rents.

- The measure should not be retroactive and should only claw back a share of profits that were actually made. Thus, it needs to take into account that generators may have sold part of their production forward at a lower price before the crisis began. Energy which has not profited from higher electricity market prices because it was already sold forward should be exempted from claw back measures.
- Revenue from the measure should be passed on to households or in non-selective and transparent measures supporting all final consumers (e.g. an explicit separate discount on electricity bills of final customers proportional to their average daily or weekly consumption).

It is to be noted that, insofar as exemptions from such profit taxes lead to selective advantages to specific undertakings, State aid rules may apply.

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ANNEX 3

# ANNEX

***to the***

# 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

**REPowerEU: Joint European Action for more affordable, secure and sustainable energy**

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**ANNEX 3**

**<u>Use of the toolbox in the Communication of 13 October 2021</u>**

By 16 February 2022, 24 Member States have adopted measures in line with the toolbox. These measures are easing energy bills for around 71 million household customers and several million micro, small and medium-sized enterprises and micro enterprises.