



May 2023

COMMENTS AND PROPOSALS FOR AMENDMENTS TO EU ELECTRICITY MARKET REGULATION

The energy crisis has shown that access to abundant, affordable and clean energy is not a given, but is absolutely key in maintaining and attracting a high-performance, low-carbon industry in Europe. EU companies are facing the prospect of long-term energy price rises well above major competitors. Wholesale gas prices in Europe are not expected to come down to pre-covid levels until 2026/2027. If the cost differential is not addressed, aside from the industrial curtailments and shut-downs already observed, it will have serious consequences for the long-standing competitiveness of European companies and EU's global strength.

Europe needs a future-proof electricity market with clear long-term signals for the investments that will be needed to reach the ambitious European climate targets and at the same time guaranteeing security of supply. We therefore welcome the European Commission's legislative proposal to reform the EU electricity market rules and consider it a step in the right direction. Still, the proposal does not fully address the challenges faced by many industrial consumers.

We appreciate the Commission's focus on supporting long-term contracting, and stress its voluntary basis. This would allow for more hedging opportunities for companies and help reduce the influence of gas price swings on consumer prices. Mitigating the impact of the current high gas prices - or any similar price spikes in the future - on European companies is a prerequisite for competitiveness. However, it is necessary to ensure a balance in liquidity between the short- and long-term markets when increasing the uptake for long-term contracts.

Power Purchase Agreements (PPAs) can contribute to both decreasing the price volatility for consumers and ensuring that consumers purchase energy with profiles suitable to their needs. They can also play a key role in financing new renewable energy investments.

It is crucial that any existing barriers to voluntary PPAs are swiftly addressed¹, including the firming and shaping costs of renewable PPAs which many energy-intensive consumers need to cover to ensure stable electricity supply. Contracts-for-Difference (CfDs) could also serve an important role in ensuring sufficient investments for decarbonised generation, however they should remain voluntary in nature and provide industrial consumers with access to the benefits of these instruments such as through the redistribution of revenues.

While the proposal on declaring electricity price crisis needs to be amended with a higher threshold to ensure investors' confidence in the market and incentivize flexibility, any

¹ For further details on existing barriers to PPAs development in Europe, please consult the [BusinessEurope position paper from April 2022](#).



public interventions to shield consumers from the impact of high prices should also cover large companies, which are equally affected by the high electricity prices.

In addition, we see the need to assess the existing approach to capacity mechanisms. At the time of increased electrification and therefore massive investments needed in power generation, we should evaluate whether Europe's "energy only" market is capable of stimulating the necessary investments. There is also a lack of focus on fundamental factors that create a robust electricity system - such as increased expansion of fossil-free power sources and the grid updates to accommodate it, removal of bottlenecks in the transmission network and increased liquidity on the financial market.

In this light, please find in the annex suggested amendments to the proposed Regulation.



ANNEX: Proposals for amendments to the electricity market Regulation

AM 1 – recital 16.

<p>(16) To ensure the efficient integration of electricity generated from variable renewable energy sources 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, it should be possible for transmission system operators to design a peak shaving product enabling demand response to contribute to decreasing peaks of consumption in the electricity system at specific hours of the day. The peak shaving product should contribute to maximize 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. As the peak shaving product aims to reduce and shift the electricity consumption, the scope of this product should be limited to demand side response. The procurement of the peak shaving product should take place in such a way that it does not overlap with the activation of balancing products which aim at maintaining the frequency of the electricity system stable. In order to verify volumes of activated demand reduction, the transmission system operator should use a baseline reflecting the expected electricity consumption without the activation of the peak shaving product.</p>	<p>(16) To ensure the efficient integration of electricity generated from variable renewable energy sources 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, it should be possible for transmission and distribution system operators to design a peak shaving product enabling demand response or other technologies to contribute to decreasing peaks of consumption in the electricity system at specific hours of the day. The peak shaving product should contribute to maximize 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. The procurement of the peak shaving product should take place in such a way that it does not overlap with the activation of balancing products which aim at maintaining the frequency of the electricity system stable. In order to verify volumes of activated demand reduction, the transmission and distribution system operator should use a baseline reflecting the expected electricity consumption without the activation of the peak shaving product.</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>Newly defined “peak shaving product” is strictly limited for the demand side response. More technologically neutral approach in the grid operation should be granted, we should apply holistic view on the network operation and use of respective products. In addition, utilisation of the product should be possible not only for TSOs, but for DSOs as well. At the same time, it is important to further analyse the interaction of this new instrument with the current market signal.</i></p>	



AM 1a – Art. 1(2) adding point 74

<p>(74) ‘peak shaving product’ means a market-based product through which market participants can provide peak shaving to the transmission system operators;</p>	<p>(74) ‘peak shaving product’ means a market-based product through which market participants can provide peak shaving to the distribution and transmission system operators;</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The peak shaving product definition should be amended. Newly defined “peak shaving product” is strictly limited for the demand side response. More technologically neutral approach in the grid operation should be granted, we should apply holistic view on the network operation and use of respective products. In addition, utilisation of the product should be possible not only for TSOs, but for DSOs as well. At the same time, it is important to further analyse the interaction of this new instrument with the current market signal.</i></p>	

AM 1b – Art. 1(4) inserting Article 7a

<p>1. Without prejudice to Article 40(5) and 40(6) of the Electricity Directive, transmission system operators may procure peak shaving products in order to achieve a reduction of electricity demand during peak hours.</p> <p>2. Transmission system operators seeking to procure a peak shaving product shall submit a proposal setting out the dimensioning and conditions for the procurement of the peak shaving product to the regulatory authority of the Member State concerned. The proposal of the transmission system operator shall comply with the following requirements: (...)</p> <p>(b) the procurement of a peak shaving product shall be based on objective, transparent, non-discriminatory criteria and be limited to demand response; (...)</p> <p>4. Regulatory authorities shall approve the proposal of the transmission system operators seeking to procure a peak shaving product and the baseline methodology submitted in accordance with paragraphs 2 and 3 or shall request the transmission system operators to</p>	<p>1. Without prejudice to Article 40(5) and 40(6) of the Electricity Directive, distribution or transmission system operators may procure peak shaving products in order to achieve a reduction of electricity demand during peak hours.</p> <p>2. Distribution or transmission system operators seeking to procure a peak shaving product shall submit a proposal setting out the dimensioning and conditions for the procurement of the peak shaving product to the regulatory authority of the Member State concerned. The proposal of the distribution or transmission system operator shall comply with the following requirements: (...)</p> <p>(b) the procurement of a peak shaving product shall be based on objective, transparent, non-discriminatory criteria; (...)</p> <p>4. Regulatory authorities shall approve the proposal of the distribution or transmission system operators seeking to procure a peak shaving product and the baseline methodology submitted in accordance with paragraphs 2 and 3 or</p>
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amend the proposal where it does not meet the requirements set out in these paragraphs.	shall request the distribution or transmission system operators to amend the proposal where it does not meet the requirements set out in these paragraphs.
<i>Justification</i>	
<i>Utilisation of the product should be possible not only for TSOs, but for DSOs as well. We should also strive for technologically neutral and economically most efficient operation of the grid. At the same time, it is important to further analyse the interaction of this new instrument with the current market signal.</i>	

AM 2 – Art. 1(9) inserting Article 19a

	7(new). Member States may facilitate the development of marketplaces for PPAs, while making them voluntary and avoiding that they negatively affect the liquidity on the forward market.
<i>Justification</i>	
<i>Marketplaces for PPAs can further promote equal access to PPAs by directly connecting electricity producers and consumers. It is important that Member States facilitate through national legislation development of these kind of marketplaces, taking into account the specificities of each market.</i>	

AM 3 – Art. 1(9) inserting Article 19a

3. Guarantee schemes for PPAs backed by the Member States shall include provisions to avoid lowering the liquidity in electricity markets and shall not provide support to the purchase of generation from fossil fuels.	3. Guarantee schemes for PPAs backed by the Member States shall include provisions to avoid lowering the liquidity in electricity markets and shall not provide support to PPAs signed with fossil fuel generation assets.
<i>Justification</i>	
<i>The wording here should be clarified and improved in order to ensure that the possibility to sign financial RES PPAs is not compromised.</i>	

AM 4 – Art. 1(9) inserting Article 19b

1. Direct price support schemes for new investments for the generation of electricity from the sources listed in paragraph 2 shall take the form of a two-way contract for differences. New investments for the generation of electricity shall include investments in	1. Direct price support schemes for new investments for the generation of electricity from the sources listed in paragraph 2 may take the form of a two-way contract for differences. New investments for the generation of electricity may include investments in
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<p>new power generating facilities, investments aimed at repowering existing power-generating facilities, investments aimed at extending existing power-generating facilities or at prolonging their lifetime.</p> <p>2. Paragraph 1 shall apply to new investments in generation of electricity from the following sources: (...)</p>	<p>new power generating facilities, investments aimed at repowering existing power-generating facilities, investments aimed at extending existing power-generating facilities or at prolonging their lifetime.</p> <p>2. Paragraph 1 may apply to new investments in generation of electricity from the following sources: (...)</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>Two-way contracts for difference could serve an important role in supporting investment for renewable and low-carbon electricity production but should remain voluntary at member state level. Member states should have the flexibility to implement public support measures most suitable for a specific project or most suitable for the specific national context. In principle, the use of two-way contracts for difference should be in line with Guidelines on State aid for climate, environmental protection and energy ('CEEAG').</i></p>	

AM 5 – Art. 1(9) inserting Article 19b

<p>3. Direct price support schemes in the form of two-way contracts for difference shall:</p> <p>(a) be designed so that the revenues collected when the market price is above the strike price are distributed to all final electricity customers based on their share of consumption (same cost / refund per MWh consumed);</p>	<p>3. Direct price support schemes in the form of two-way contracts for difference shall:</p> <p>(a) be designed so that the revenues collected when the market price is above the strike price are proportionately and non-discriminatorily distributed to all final electricity customers, including industrial consumers, based on their share of consumption (same cost / refund per MWh consumed);</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>All revenues collected through two-way CfDs must benefit all final electricity customers, including industrial consumers who were often disqualified from receiving public support during the energy crisis.</i></p>	

AM 6 – Art. 1(9) inserting Article 19b

	<p>(c) not negatively impact the functioning of the short-term market;</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>A more widespread use of Contracts-for-Difference in different member states can have potential unintended consequences on the functioning of the short-term market. When CfDs are being implemented, it is important they do not negatively impact the functioning of the short-term market.</i></p>	



AM 6a – Art. 1(9) inserting Article 19b

	(d) ensure that the distribution of the revenues to final electricity customers is harmonised among Member States to maintain a level playing field;
<i>Justification</i>	
<i>As Contracts-for-Difference will be established in Member States, there might be disparities in the way revenues are distributed. This amendment is key to maintain a level playing field and ensure as much as possible a harmonised redistribution among member states and avoid undue advantages for companies in certain countries.</i>	

AM 6b – Art. 1(9) inserting Article 19b

	(e) not reduce the liquidity of the power purchase agreement market;
<i>Justification</i>	
<i>There is a need to ensure that part of the newly available liquidity will be available for electricity consumers under market conditions. Contract-for-Differences should not crowd out the PPA market for RES electricity.</i>	

AM 6c – Art. 1(9) inserting Article 19b

	(g) include penalty clauses applicable in case of early termination of the support scheme by the producer.
<i>Justification</i>	
<i>This amendment impedes unfair behaviours from producers, who could unduly benefit from the support schemes by being supported when deploying infrastructures and then abandoning their obligations to profit from potentially higher market prices, forfeiting consumers from the benefits that they can obtain through CfDs (namely redistribution of revenues).</i>	

AM 7 – Art. 2(4) inserting Article 15a

1. All households, small and medium sized enterprises and public bodies have the right to participate in energy sharing as active customers .	1. All active customers have the right to participate in energy sharing.
<i>Justification</i>	
<i>Extending the energy sharing provisions to all-sized companies would further support the development of renewable energy sources by pooling resources and sharing risks and burdens. However, it is important to thoroughly assess the challenges that the development of distributed and small-scale electricity production brings on the</i>	



financing of the grid and on the overall costs. Large-scale production will still be needed in order to produce in times of low output from small-scale production. Large and small-scale production should compete on a level playing field so that costs are minimized for consumers.

AM 8 – Art. 2(10) inserting Art. 66a

<p>1. The Commission may by decision declare a regional or Union-wide electricity price crisis, if the following conditions are met:</p> <p>(a) very high prices in wholesale electricity markets at least two and a half times the average price during the previous 5 years which is expected to continue for at least 6 months;</p>	<p>1. The Commission may by decision declare a regional or Union-wide electricity price crisis, if the following conditions are met:</p> <p>(a) very high prices in wholesale electricity markets at least two and a half times the average price during the previous 5 years and at least 180 €/MWh which is expected to continue for at least 6 months;</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>Introducing a minimum threshold, high enough, is necessary to maintain market participants and investors' confidence in the market. It should be clear that this does not apply to regular (daily/weekly) price peaks on the market, which incentivise flexibility and ensure efficient operation of the market.</i></p>	

AM 9 – Art. 2(10) inserting Art. 66a

<p>3. Where the Commission has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision apply targeted public interventions in price setting for the supply of electricity to small and medium sized enterprises. Such public interventions shall: (...)</p>	<p>3. Where the Commission has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision apply targeted public interventions in price setting for the supply of electricity to electricity consumers. Such public interventions shall: (...)</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>It is crucial to allow application of measures also for large enterprises, who are equally affected by the crisis as SMEs.</i></p>	