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# EUROPEAN UNION – NEW PROPOSAL IN THE CONTEXT OF THE ENERGY CRISIS

## 1. Background

There is a new legislative project to be adopted at European Union level, namely the Proposal for a Council Regulation on an emergency intervention to address high energy prices (the "**Proposal**").

The Proposal comes in the context of the energy crisis caused by the conflict between Russia and Ukraine and aims to tackle the rising energy prices by a series of temporary measures adopted at the European Union level.

In the sections below, we will analyse the main actions to be implemented according to the Proposal.

## 2. Reduction of energy consumption

The Proposal institutes two directions for demand reduction:

(i) reduction of gross electricity consumption – the member states are to decrease their total monthly gross consumption by 10%;

(ii) reduction of gross electricity consumption during peak price hours– the member states are to reduce their gross electricity consumption during the identified peak price hours by at least 5% per hour; the peak price hours shall be identified by each member state and shall constitute at least 10% of all hours of the month.

The Proposal sets some general guidelines, but leaves at the discretion of the member states to adopt appropriate reduction measures, which have to be clearly defined, transparent, proportionate, non-discriminatory and verifiable.

**3. Cap on revenues**

One of the main measures instituted by the Proposal is the cap of maximum 180 EUR per MWh on market revenues obtained from the generation of electricity from the following sources:

(i) wind energy;

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

(iii) geothermal energy;

(iv) hydropower without reservoir;

(v) biomass fuel, excluding bio-methane;

(vi) waste;

(vii) nuclear energy;

(viii) lignite;

(ix) crude oil and other oil products.

However, the cap on revenues does not apply to demonstration projects or to already capped producers. Member states may also choose not to apply the cap to producers with an installed capacity of maximum 20 kW.

The proposed cap on revenues aims to tackle the exceptional profits of the energy producers, which are caused by the rising energy prices in a crisis context and do not correspond to the normal commercial activity.

**4. Distribution of the surplus revenues**

The above-mentioned cap will result in surplus revenues for the member states, which shall constitute financial support for vulnerable final electricity customers who are struggling in the current high-price climate.

Again, the Proposal leaves a margin of appreciation to the member states in finding the appropriate distribution measures, setting just that the measures shall be clearly defined, transparent, proportionate, non-discriminatory, verifiable and shall not counteract the consumption reduction obligation. The Proposal also gives the following suggestions for what the measures may include:

(i) financial compensation for final customers for reducing their electricity consumption,

(ii) direct transfers to final customers;

(iii) compensation for suppliers delivering electricity below costs;

(iv) lower prices for final customers, for a limited volume of consumed energy.

**5. The solidarity contribution**

The Proposal institutes a mandatory temporary solidarity contribution, consisting of the surplus profits generated from activities in the oil, gas, coal and refinery sectors. This contribution shall be calculated on the taxable profits, shall only apply to surplus profits generated in the fiscal year that started on or after January 1, 2022 and shall apply in addition to the regular national taxes and levies.

The solidarity contribution shall be used for the following purposes:

(i) financial support measures to final energy customers;

(ii) financial support measures to help reduce the energy consumption;

(iii) financial support measures to support companies in energy intensive industries;

(iv) financial support measures to develop the energy autonomy;

(v) assignment by the member states of a share of the proceeds to the common financing of measures to reduce the harmful effects of the energy crisis.

**6. Support of renewable energy**

The Proposal provides that Member States should remove any unjustified administrative or market barriers to renewables power purchase agreements, and at the same they should take measures to accelerate the uptake of renewables power purchase agreements, in particular by small and medium-sized enterprises.

**7. Public interventions in price setting**

Given the current exceptional rise of electricity prices, under the Proposal, Member States may apply public interventions in price setting for the supply of electricity to small and medium-sized enterprises, under certain conditions, such as the public intervention:

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

(ii) being limited in time and proportionate as regards their beneficiaries;

(iii) not resulting in additional costs for market participants in a discriminatory way.

Member State may also exceptionally and temporarily set a price for the supply of electricity which is below cost, under the following conditions:

(i) the measure covers a limited amount of consumption and retains an incentive for demand reduction;

(ii) there is no discrimination between suppliers;

(iii) suppliers are compensated for supplying below cost;

(iv) all suppliers are eligible to provide offers at the regulated price on the same basis.

## 8. Application

Under the current form of the Proposal, the provisions mentioned at points 2, 3 and 4 above, related to reduction of energy consumption, cap on revenues and respectively distribution of the surplus revenues will apply as of December 1, 2022. The Member States can decide to apply these measures even earlier. Moreover, the provisions mentioned at points 2 and 3 above will apply until March 31, 2023.

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This article contains general information and cannot be considered qualified legal advice.



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