

Guidance document for the implementation of the cap on electricity market revenues (pan-European clawback mechanism)

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Council Regulation 2022/1854 on an emergency intervention to address high energy prices, adopted on 6 October 2022, leaves vast room for implementation to Member States.

This document provides guidance for the application of the pan-European clawback mechanism, in manner that improves affordability of electricity supply to consumers while limiting the negative effects of the measure on security of electricity (and gas) supply or decarbonisation in Europe.

Ensure long-term contracting survives for the benefit of consumers

How? The calculation of market revenues impacted by the clawback mechanism must properly take account of long-term transactions (forwards, futures and PPAs). Both gains and losses (i.e. net revenues) from transactions shall be considered.

Recommendation: apply the market revenue cap on net revenues linked to the production of electricity and guarantee minimal revenues that incentivise hedging.

This means:

- ⇒ **Applying the definition of market revenues (art. 2(5)) in a manner consistent with recital (28)** – the cap should apply on net market revenues, taking account of all transactions relating to the electricity produced, including power purchase agreements, forward and futures, financial or physical, on a portfolio basis. The calculation should take account of transactions wherever they have been concluded, including proxy hedging in a different country than the Member State where the electricity is produced. Possible losses from transactions, including from the imbalance settlement process, shall be included in the calculation of the net market revenues.
- ⇒ **Applying the market revenue cap in a manner consistent with art. 22.2** – only transactions relating to electricity produced over the period from 1 December 2022 until 30 June 2023 should be considered. Transactions relating to electricity produced before or after this period should not be affected.
- ⇒ **Applying art. 7.5 everywhere** – the clawback measure should only apply to 90% of the net market revenues above the cap for all electricity producers.

Why? Buyers and sellers of electricity use long-term markets (forward and futures contracts, power purchase agreements) to hedge against price fluctuations and the risk of scarcity. This enables them collectively to protect consumers against price volatility. In addition, making sure the cap targets only transactions linked to electricity produced over the period from December to June, and allowing electricity producers to retain 10% of market revenues above the cap, will incentivise them to continue trading throughout all markets for hedging purposes, and to maintain sufficient liquidity.

Ensure optimal allocation of resources with equal treatment of all

How? Member States should align as much as possible in their implementation of the Council Regulation and avoid pancaking measures. One policy tool coordinated at EU level is better for European consumers than a patchwork of different instruments.

Recommendation: apply a market revenue cap of no less than 180 EUR/MWh, to a fixed list of power generation technologies, unless their LCOE is above this cap.

This means:

- ⇒ **Applying the Regulation in a manner consistent with recital (11)** – *uncoordinated caps on market revenues below what the Commission and Council assessed as reasonable would lead to significant distortions.*
- ⇒ **Not making use of art. 8.1(a)** – *the market revenue cap should not be lower than 180 EUR/MWh and other wholesale electricity price control measures enacted since September 2021 should be removed.*
- ⇒ **Not making use of art. 8.1(c), (d) and (e)** – *the market revenue cap should only apply to technologies listed in art. 7.1.*

Why? Equal treatment of all electricity producers, intermediaries and consumers throughout Europe will ensure energy resources are still allocated efficiently. This should limit distortions to bidding and cross-border flows. Energy market actors still buy and sell electricity in one single European market, but they risk facing different versions of the clawback (plus additional price control mechanisms) to address the same problem.

Ensure ex-post reporting by producers to streamline the system

How? Mandate the clawback to apply only after the settlement of transactions related to the production of electricity, at the end of the application period of the Regulation. Reporting should be done to the regulators and organised over sufficiently long periods to simplify the administrative process.

Recommendation: electricity producers should report net market revenues to their national regulatory authority (NRA) on 10 January, 10 April and 10 July 2023.

This means:

- ⇒ **Placing the responsibility of reporting onto electricity producers** – *only they have access to transaction data across all market timeframes and locations. Other entities, such as TSOs or power exchanges, will only have partial data in terms of trading timeframe, venue and location.*
- ⇒ **Putting the national regulatory authorities in charge** – *NRAs' independence is the guarantor of energy market functioning. As such, all EU NRAs should take charge of receiving reported data from electricity producers and monitor compliance.*

- ⇒ **Mandating the reporting by market participants at three points in time matching the milestones of the Regulation** – *the longer the calculation period for the market revenue cap, the more accurate it will represent realised market revenues linked to the production of electricity, across the whole production portfolio (including minority shareholding interests) that is in scope of the Regulation. Reporting by market participants should be organised as follows, in order to respect Member States' own reporting requirements to the European Commission:*

Compliance period	Reporting date for market participants to NRAs	Reporting date for Member States to the EC
1 December 2022 to 31 December 2022	10 January 2023	31 January 2023
1 January 2023 to 31 March 2023	10 April 2023	30 April
1 April 2023 to 30 June 2023	10 July 2023	n/a

Why? Taking account of the various transactions relating to the production of electricity requires electricity producers to make this reporting themselves. This can only be performed after the settlement of these transactions, and the longer the reporting period, the more accurate the calculation of actual market revenues will be. As neutral organisations in the energy market, NRAs are best place to receive data from market participants and monitor compliance.