

Restoring confidence in electricity markets

Amendment suggestions to the EMD proposal, based on the 4th revision of the Council's Swedish Presidency (REV4)

Brussels, 14 June 2023 - EFET welcomes the progress made on the reform of electricity market design, from the comprehensive proposal by the European Commission to the attentive revisions proposed by the Swedish Presidency of the Council.

As the legislative process unfolds, and based on early June versions of the of the revised text (REV4) we draw the attention of Member States and the Council Presidency on two very important points:

- **The declaration of energy crisis, as a trigger for possible future emergency measures, needs to be the exception to rebuild trust:**
 - o it needs to be strictly time-bound
 - o it needs to remain in the hands of the European Commission to ensure a harmonised approach in difficult times
- **The existing forward market's ability to provide price stabilisation for consumers and revenue predictability for investors must be improved:**
 - o enhancements to the existing model are possible, including three-year ahead transmission rights and widening collateral options
 - o regional virtual hubs should only be introduced if a thorough impact assessment turns out positive – a true alternative should remain otherwise

1. Emergency measures need to be the exception to rebuild trust

Strengthening Art. 66a of the Electricity Directive

The review of the Electricity Regulation and Directive is the opportunity to strengthen the European model and regain the regulatory stability needed to deploy the investments required for decarbonisation. This means moving away from haphazard interventions and ensuring that an energy crisis is only declared in times of true emergency.

- ➔ **Like the Swedish Council Presidency, we support the 3 strict cumulative conditions proposed by the Commission for the declaration of an energy crisis** – this is essential to ensure that a declared “energy crisis” truly is a crisis, and we propose to further detail criterion #1 to that effect
- ➔ **We argue against placing the decision to declare an energy crisis in the hands of the Council and in favour of leaving this power with the European Commission** – this will ensure a balanced decision and avoid a fragmented approach in case of crisis

- **We support the Swedish Presidency's position not to (re-)introduce the inframarginal revenue cap from Regulation 2022/1854 in the Electricity Regulation**
- **We call for the phase-out of national interventions adopted since September 2021 and impacting energy markets**– following the recommendation of the [European Commission report of 5 June](#) not to prolong such measures in its

2. The existing forward market can be improved irrespective of tentative try-outs around regional virtual hubs

Completing Art.9 of the Electricity Regulation

We appreciate the attention of the European legislators to forward markets: they provide a hedge against price volatility for consumers and contribute to underpinning new investments. Existing forward markets can continue to be improved, and they should remain a priority.

- **We contest the Swedish Council Presidency's view that regional virtual hubs be labelled as the future of the Union's forward markets** – we fear this untested concept will make hedging less efficient and more costly
- **Regional virtual hubs should only be introduced if a thorough impact assessment turns out positive** – the Council text so far foresees the implementation of this model even if it is assessed as negative
- **We call for maintaining the original spirit of maximising forward transmission capacity from zone to zone** – as an alternative to regional virtual hubs, and to keep improving forward markets until any decision on virtual hubs is made
- **We support the original Commission proposal of longer-term transmission rights (3 to 5 years before delivery)** – to ensure that instruments proposed by TSOs to cover transmission risk match hedging practices of market participants

See our detailed amendment suggestions and justifications in attachment and at:

https://efet.org//files/documents/20230614_EFET_PP_EMD%20amendments%20CouncilRev4_details.pdf

EFET amendments to the Council's 4th revision (REV4) of the European Commission proposal on Electricity Market Design reform

FOCUS on art. 66a of the Electricity Directive and art. 9 of the Electricity Regulation

Brussels, 14 June 2023 - [deletions in ~~barred-red~~; additions in **bold green**]

Article	Council REV4 proposal	Proposed EFET Amendments	Reasoning
Amendments to the newly proposed art. 66a Directive 2019/944)	<p>Article 66a - Access to affordable energy during an electricity price crisis</p> <p>1. The Council, on a proposal from the Commission, by means of an implementing decision, may declare a regional or Union-wide electricity price crisis, if the following conditions are met:</p> <p>(a) very high average prices in wholesale electricity markets of 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. The calculation of the average price during the previous 5 years shall not take into account the year of 2022 and those periods where a regional or Union-wide electricity price crisis was declared ;</p> <p>(b) sharp increases in electricity retail prices in the range of 70% occur which are expected to continue for at least 3 months; and</p>	<p>“Article 66a - Access to affordable energy during an electricity price crisis</p> <p>1. The Council, on a proposal from the Commission, by means of an implementing decision, may Commission may by decision declare a regional or Union-wide electricity price crisis, if the following conditions are met:</p> <p>(a) very high average prices over the past 6 months in wholesale electricity markets of at least two and a half times the average price during the previous 5 years, which forward prices show it is expected to continue for at least 6 months. The calculation of the average price during the previous 5 years shall not take into account the years of 2020 and 2022 and those periods where a regional or Union- wide electricity price crisis was declared;</p> <p>(b) sharp increases in electricity retail prices in the range of of at least 70% occur which are expected to continue for at least 3 6 months; and</p>	<p>We welcome this new provision in European legislation proposal, aiming to secure the internal energy market from national intervention in normal times, and provide visibility in exceptional times.</p> <p>We believe it necessary to revert back to the Commission proposal to centralise the decision to declare a regional or Union-wide electricity price crisis in their hands. This is essential to avoid that the criteria set in the Directive are applied in a neutral manner, and the application of this future article is fully harmonised.</p> <p>We welcome the clear criteria for declaring an energy crisis in paragraphs 1, 5 and 6, though again, we believe that the final legislation should stick to the</p>

	<p>(c) the wider economy is being negatively affected by the increases in electricity prices.</p> <p>2. The decision declaring a regional or Union-wide electricity price crisis shall specify the period of validity of that decision which may be for a period of up to one year. That period may be prolonged in accordance with the procedure set out in paragraph 7 for consecutive periods of up to one year.</p> <p>3. The Commission shall present a proposal for declaring a regional or Union-wide electricity price crisis, including the proposed period of validity of the decision, where it considers that the conditions in paragraph 1 are fulfilled.</p> <p>4. The Council, acting by a qualified majority, may amend the Commission proposal submitted pursuant to paragraphs 3 and 7.</p> <p>5. Where the Council 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>(a) be limited to at most 70% of the beneficiary's consumption during the same period of the previous year and retain an incentive for demand reduction;</p> <p>(b) comply with the conditions set out in Article 5(4) and (7);</p> <p>(c) where relevant, comply with the conditions set out in Paragraph 4.</p>	<p>(c) the wider economy is being negatively affected by the increases in electricity prices.</p> <p>2. The decision declaring a regional or Union-wide electricity price crisis shall specify the period of validity of that decision which may be for a period of up to one year. That period may be prolonged in accordance with the procedure set out in paragraph 7 for consecutive periods of up to one year.</p> <p>3. The Commission shall present a proposal for declaring a regional or Union-wide electricity price crisis, including the proposed period of validity of the decision, where it considers that the conditions in paragraph 1 are fulfilled.</p> <p>4. The Council, acting by a qualified majority, may amend the Commission proposal submitted pursuant to paragraphs 3 and 7.</p> <p>5. Where the Council 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>(a) be limited to at most 70% of the beneficiary's consumption during the same period of the previous year and retain an incentive for demand reduction;</p> <p>(b) comply with the conditions set out in Article 5(4) and (7);</p> <p>(c) where relevant, comply with the conditions set out in Paragraph 4.</p>	<p>Commission proposal on the trigger criterion in relation to retail markets (art.66a,1,b).</p> <p>Criterion #1 needs to be further specified:</p> <ul style="list-style-type: none"> - The period for which prices are looked at: we propose to look at the past 6 months, complemented by the forward-looking analysis of the expectations for the next 6 months already in the text. This is to prevent that a single price spike of a specific day or hour triggers a potential declaration of energy crisis. It is important to have clarity not only on how long we expect prices to stay at a certain level in the future, but also how long they have been at that level in the past. - The timeframe which should be looked at when analysing expectations of wholesale energy prices for the next 6 months: we propose to specify that this be the forward timeframe. For avoidance of doubt, we refer to our suggestion in the review of REMIT that ACER develops a forward price index based on the transaction data collected from market participants. - The years to consider for the calculation should be as objective as possible. Considering the latest amendment of the Swedish Council
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<p>6. Where the Council has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision, by way of derogation from Article 5(7), point (c), when applying targeted public interventions in price setting for the supply of electricity pursuant to Article 5(6) or paragraph 3 of this Article, exceptionally and temporarily set a price for the supply of electricity which is below cost provided that the following conditions are fulfilled:</p> <p>(a) the price set for households only applies to at most 80% of median household consumption and retains an incentive for demand reduction;</p> <p>(b) there is no discrimination between suppliers;</p> <p>(c) suppliers are compensated for supplying below cost; and</p> <p>(d) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.</p> <p>7. In due time before the expiry of the period specified pursuant to paragraph 2, the Commission shall assess whether the conditions in paragraph 1 continue to be fulfilled. If the Commission considers that the conditions in paragraph 1 continue to be fulfilled, it shall present to the Council a proposal for prolonging the period of validity of a decision adopted pursuant to paragraph 1. Where the Council decides to prolong the period of</p>	<p>6. Where the Commission has adopted a decision pursuant to paragraph 1, Member States may for the duration of the validity of that decision, by way of derogation from Article 5(7), point (c), when applying targeted public interventions in price setting for the supply of electricity pursuant to Article 5(6) or paragraph 3 of this Article, exceptionally and temporarily set a price for the supply of electricity to vulnerable consumers only which is below cost provided that the following conditions are fulfilled:</p> <p>(a) the price set for households only applies to at most 80% of median household consumption and retains an incentive for demand reduction;</p> <p>(b) there is no discrimination between suppliers;</p> <p>(c) suppliers are compensated for supplying below cost; and</p> <p>(d) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis; and</p> <p>(e) measures proposed do not distort the internal electricity market.</p> <p>7. — In due time before the expiry of the period specified pursuant to paragraph 2, the Commission shall assess whether the conditions in paragraph 1 continue to be fulfilled. If the Commission considers that the conditions in paragraph 1 continue to be fulfilled, it shall present to the Council a proposal for prolonging the period of validity of a decision adopted pursuant to paragraph 1. Where the Council decides to prolong the</p>	<p>Presidency to exclude 2022 and any other future period declared as “energy crisis” from the calculation, we propose to also exclude the year 2020 from the calculation: the Covid crisis with exceptionally low demand leading to low prices, was a price shock of its own.</p> <p>We warn against the possibility for Member States to set a price of electricity below costs for all consumers, as it would deter demand response and could send counter-productive investment signals. Hence, we propose restricting this measure to vulnerable consumers only, so as to maintain demand response signals for those consumers who are not under threat of energy poverty.</p> <p>It is important that measures taken during a period of declared energy crisis do not affect the internal electricity market, notably because of an inconsistent application of crisis measures between Member States. We have experienced such inconsistency with the 439 national measures identified by ACER since September 2021 have fragmented the internal energy market, drastically reduced liquidity in some Member States (making hedging far more expensive, or impossible), and damage investments in new (especially renewable) capacity, as documented in the European Commission report of 5 June 2023. In this document, the</p>
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POSITION



European Federation
of Energy Traders

	validity, paragraphs 5 and 6 shall apply during such prolonged period.	period of validity, paragraphs 5 and 6 shall apply during such prolonged period.	Commission does not recommend prolonging measures such as inframarginal revenue caps. Finally, the declaration of energy crisis needs to be clearly time-bound and not go beyond one year. Should a situation of crisis prolong itself, a new declaration should be issued. But there should be no open door in legislation to drag measures for longer than they deserve.
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Article	Council REV4 proposal	Proposed EFET Amendments	Reasoning
Amendments to art. 9 Regulation 2019/943	Article 9 - Forward Markets 1. The design of the Union's forward market shall be based on regional virtual hubs supported by at least long-term transmission rights issued by transmission system operators, allowing price risk hedging across bidding zones.	Article 9 - Forward Markets 1. The design of the Union's forward market shall be based on regional virtual hubs supported by at least long-term transmission rights issued by transmission system operators, allowing price risk hedging across bidding zones. In accordance with Regulation (EU) 2016/1719, transmission system operators shall issue long-term transmission rights or have equivalent measures in place to allow for market participants, including owners of power-generating facilities using renewable energy sources, to hedge price risks across bidding zone borders.	As things stand, the benefits and drawbacks of the regional virtual hubs concept (and accompanying zone-to-hub long-term transmission rights) have not been evidenced. Hence, this concept deserves more discussion and a thorough impact assessment before being enacted as mandatory in a – directly applicable – European Regulation. We worry that regional virtual hubs will rather split the existing liquidity on forward markets, and hence make them less efficient and more expensive to trade on. This would have a detrimental effect on the capacity of market participants to hedge

<p>2. 24 months after [the entry into force of this Regulation] the Commission shall, after completing an impact assessment, adopt an implementing act in accordance with Article 59, that establishes the design referred to in paragraph 1. This implementing act shall in particular:</p> <p>(a) include a methodology to define the geographical scope of the regional virtual hubs, including the bidding zones constituting these hubs, aiming to maximise the price correlation between the reference prices and the prices of the bidding zones constituting virtual hubs;</p> <p>(b) include a methodology for the calculation of the reference prices for the regional virtual hubs, aiming to maximise the correlations between the reference price and the prices of the bidding zones constituting a regional virtual hub; such methodology shall be based on predefined objective criteria;</p> <p>(c) include a definition of financial long-term transmission rights between bidding zones and the regional virtual hubs as financial obligations to enable market participants to hedge their exposure to positive and negative price spreads, including as regards to volumes and maturities;</p>	<p>2. 24 months after [the entry into force of this Regulation] the Commission shall, after completing including an impact assessment of regional virtual hubs supported by at least long-term transmission rights issued by transmission system operators., adopt an implementing act in accordance with Article 59, that establishes the design referred to in paragraph 1. This implementing act This assessment shall in particular:</p> <p>(a) include a methodology to define analyse the geographical scope of the regional virtual hubs, including the bidding zones constituting these hubs, aiming to maximise the price correlation between the reference prices and the prices of the bidding zones constituting virtual hubs;</p> <p>(aa) analyse the impact of regional virtual hubs on the forward markets, the transmission system operators, the market participants and end-consumers and the potential benefits and drawbacks that regional virtual hubs would bring compared to the existing zonal model;</p> <p>(b) include a methodology analyse options for the calculation of the reference prices for the regional virtual hubs, aiming to maximise the correlations between the reference price and the prices of the bidding zones constituting a regional virtual hub; such methodology shall be based on predefined objective criteria;</p> <p>(c) include analyse options for a definition of financial long-term transmission rights between bidding zones and the regional virtual hubs as financial obligations to enable market participants to hedge their exposure to positive and negative price spreads, including as regards to volumes and maturities;</p>	<p>themselves, and hence reduce exposure to price volatility for end-consumers. The concept of regional virtual hubs, the boundaries of which be regulated based on price correlations, also entails a high risk of isolating regions from one another: there is so far no option for forward trading from hub to hub.</p> <p>We suggest that regional virtual hubs should not be designated as the future of the Union’s forward markets until a full and positive assessment of benefits and drawbacks is established – and properly consulted with power exchanges and market participants.</p> <p>We also contest that the impact assessment should focus on price correlation between bidding zones: this would look at the absolute value of price differences (“spreads”) between bidding zones, while the risk for market participants lies in the evolution of these prices differences over time (“spread volatility”).</p> <p>The details of regional virtual hubs functioning, if assessed as positive and ultimately applied, should in any case be detailed in the FCA Regulation (2016/1719). Until then, the fundamentals of the current article 9 of Regulation 2019/943 should remain, including the maximisation of cross-zonal capacity to be made available to the</p>
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	<p>(d) maximise the trading opportunities for hedging products referencing the regional virtual hubs for the forward market as well as for long term transmission rights from bidding zones to regional virtual hubs; and</p> <p>(e) specify how the single allocation platform referred to in paragraph 3 shall offer allocation and facilitate trading of long-term transmission rights.</p> <p>3. The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall act as an entity offering allocation and facilitating trading of long-term transmission rights on behalf of transmission system operators. It shall have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council.</p> <p>4. [void]</p> <p>5. Where a regulatory authority considers that there are insufficient hedging opportunities available for market participants, and after consultation of relevant financial market competent authorities in case the forward markets concern financial instruments as defined under point (15) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council, it may require power exchanges or transmission system operators to implement additional measures, such as market-making activities, to improve the liquidity of the forward market.</p>	<p>(d) analyse how to maximise the trading opportunities for hedging products referencing the regional virtual hubs for the forward market as well as for long term transmission rights from bidding zones to regional virtual hubs; and</p> <p>(e) specify how the single allocation platform referred to in paragraph 3 shall could offer allocation and facilitate trading of long-term transmission rights.</p> <p>3. The single allocation platform established in accordance with Regulation (EU) 2016/1719 shall act as an entity offering allocation and facilitating trading of long-term transmission rights on behalf of transmission system operators. It shall have a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council.</p> <p>4. Long-term transmission rights shall be allocated in a transparent, market based and non-discriminatory manner through a single allocation platform, with frequent maturities of up to at least three years ahead.</p> <p>5. Where a the regulatory authority authorities of a capacity calculation region considers that there are insufficient hedging opportunities available for market participants, and after consultation of market participants and relevant financial market competent authorities in case the forward markets concern financial instruments as defined under Article 4(1)(15), it they may require power exchanges or transmission system operators of the capacity calculation region to implement additional measures, such as voluntary market-making activities, to improve the liquidity of the forward market.</p>	<p>market as per the TSOs calculations at the moment of allocation.</p> <p>Until then, a true alternative needs to remain in the legislation, i.e. an improved version of the existing forward markets. This includes the issuance the allocation of long-term transmission rights at least three years ahead of real time, which we suggest to insert in the wording of the original art.9.</p>
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POSITION

	<p>6. Subject to compliance with Union competition law and with Directive (EU) 2014/65 and Regulations (EU) 648/2012 of the European Parliament and of the Council³¹ and 600/2014 of the European Parliament and of the Council, market operators may to develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity may be limited to trades within a Member State or bidding zone.</p>	<p>Such measures shall be implemented in a transparent, voluntary, and non-discriminatory manner.</p> <p>6. Subject to compliance with Union competition law and with Directive (EU) 2014/65 and Regulations (EU) 648/2012 of the European Parliament and of the Council³¹ and 600/2014 of the European Parliament and of the Council, market operators shall be free to develop forward hedging products, including long-term forward hedging products, to provide market participants, including owners of power-generating facilities using renewable energy sources, with appropriate possibilities for hedging financial risks against price fluctuations. Member States shall not require that such hedging activity may be limited to trades within a Member State or bidding zone.</p>	
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