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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design
- General approach

1. On 9 June, the Permanent Representatives Committee discussed the 4th revision of the Regulation to improve the Union's electricity market design (EMD) and the Regulation to improve the Union's protection against market manipulation in the wholesale energy market (REMIT), as set out in documents 10009/23 and 10010/23 with the aim to resolve outstanding issues, and in view of reaching a General approach on both files at the TTE (Energy) Council on 19 June.
2. During the meeting, Member States highlighted a few issues which needed further consultations and redrafting. Consequently, the Presidency decided to propose amendments in both files, as set out in document 10439/23, which were discussed at Coreper on 14 June.

3. As not all issues were solved at the Coreper meeting on 14 June, the Presidency decided to propose further amendments to address remaining concerns of Member States, as set out in the Annex to this note and to submit them to Coreper for its next meeting planned on 16 June.

4. The modifications are as follows:

Only for the Electricity Market Design:

- a) Recital 22 clarifies that the requirement for cost-reflectiveness should not restrict the opportunity to redistribute costs in case location- or time-variant network charges are introduced.
- b) Article 19b and corresponding recital 34, clarifies that revenues, or the equivalent in financial value of those revenues, are to be redistributed.
- c) Articles 2, 21 and 22 and corresponding recital 40a, remove the temporary nature of capacity mechanisms.
- d) Article 64 and corresponding recital 53f introduce a limited extension of derogations from the CO2 emission limit in capacity mechanisms.
- e) Article 66 and corresponding recital 53g introduce derogations for Cyprus from Articles 40(4) and 54(2), until the transmission system in Cyprus is connected to other Member States' transmission systems via interconnection.

5. In the Annex, in respect of REV 4 (10009/23, 10010/23) and of ST 10439/23, changes are highlighted in **yellow** and new text is **bold underline** and deletions are ~~striketrough~~.

6. In light of the above, the Permanent Representatives Committee is invited to examine the texts as set out in Annex to this note, solve any outstanding issues that may arise during the meeting and agree to submit the Presidency's compromise text as currently set out in documents 10009/23 and 10010/23, as complemented by changes set out in 10439/23, and in the Annex to this document, to the TTE (Energy) Council, with the view to reaching a general approach at its meeting on 19 June.

Electricity Market Design

(22) Network tariffs should incentivise transmission and distribution system operators to use flexibility services through further developing innovative solutions to optimise the existing grid and to procure flexibility services, in particular demand response or storage. For this purpose, network tariffs should be designed so as to take into account the operational and capital expenditures of system operators or an efficient combination of both so that they can operate the electricity system cost-efficiently. **The requirement for cost-reflectiveness should not restrict the opportunity to redistribute costs efficiently in cases where locational- or time-variant network charges are applied.** This would further contribute to integrating renewables at the least cost for the electricity system and enable final customers to value their flexibility solutions.

(34) Thanks to the upward limitation of the market revenues direct price support schemes in the form of two-way contracts for difference should provide an additional source of revenues for Member States in periods of high energy prices. To further mitigate the impact of high electricity prices on the energy bills of consumers, Member States should ensure that the revenues collected from producers subject to direct price support schemes in the form of two-way contracts for difference, **or the equivalent in financial value of those revenues,** are passed on to all final ~~electricity~~ customers, including households, SMEs and industrial ~~customers~~ ~~consumers, based on their consumption~~. **When distributing the revenues to households, Member States should in particular be able to favour vulnerable customers. In the light of the wider benefits for electricity customers resulting from investments in renewable energy, energy efficiency, and low carbon energy deployment, it should also be possible for Member States to use the revenues from two-way contract for difference, or the equivalent in financial value of those revenues, to finance investments to reduce electricity costs for final customers and to use such revenues, or the equivalent in financial value of those revenues, to finance the costs of the direct price support schemes. ~~Where Member States decide to distribute~~ In order to minimise distortions to competition and trade in the internal market, revenues ~~to~~ distributed to final customers which are undertakings, they should cover all undertakings in proportion to their share of consumption ~~do so proportionally to the consumption of such undertakings~~. To avoid overcompensation, ~~t~~The share ~~part~~ of the revenues ~~that could be~~ distributed to final customers that are undertakings should not exceed the**

combined share of electricity consumption of all those undertakings. This is without prejudice to Article 107 and 108 TFEU. The redistribution of revenues should be done in a way that ensures that ~~customers~~^{consumers} are still to some extent exposed to the price signal, so that they reduce their consumption when the prices are high, or shift it to periods of lower prices (which are typically periods with a higher share of RES production). **In particular, Member States should be able to consider the consumption in off-peak hours to preserve incentives to flexibility.** Member States should ensure that the level playing-field and competition between the different suppliers is not affected by the redistribution of revenues to the final electricity consumers. **These principles should not be compulsory for revenues generated by contracts under direct price support schemes concluded before the date of application of the obligation to use two-way contracts for difference.** It is possible for Member States to distribute revenues from two-way contracts for difference without that distribution constituting a retail price regulation pursuant to Article 5 of Directive (EU) 2019/944.

(40a) As uncoordinated capacity mechanisms can have a significant impact on the internal electricity market, the Clean Energy Package introduced a comprehensive framework to better assess the need and improve the design of capacity mechanisms. **Notwithstanding the necessity to limit distortions to competition and the internal market, together with an appropriate regulatory framework, capacity mechanisms can play an important role in ensuring resource adequacy, in particular during the transition towards a carbon-free system. Therefore, while capacity mechanisms should no longer be considered as measures of last resort, their necessity and design should be periodically assessed in light of the evolving regulatory framework and market circumstances.** **However, The** procedure for the adoption of capacity mechanisms has proved to be complex. To address potential possibilities of streamlining and simplifying the process of applying for a capacity mechanism, and to ensure that adequacy concerns can be addressed by Member States in a timely manner while providing the necessary controls to prevent harm for the internal market, the Commission should urgently submit a comprehensive report assessing such possibilities. In that context, the Commission should request that the Agency amends the methodology for the European resource adequacy assessment in line with the applicable process, as appropriate. After consultation with Member States, the Commission-should come forward with proposals with a view to streamlining and simplifying the process for assessing capacity mechanisms as appropriate at the latest by 3 months after entry into force of this Regulation-

(53f) To support environmental protection objectives, Article 22(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council sets out requirements regarding CO2 emission limits for capacity mechanisms . However, during their transition to a carbon-free system and in the aftermath to the energy crisis, Member States applying capacity mechanisms which were approved before the entry into force of this Regulation, can exceptionally derogate from this CO2 emission limit for a limited period of time. Such derogation should however be limited to existing generation capacity that started commercial production before 4 July 2019, i.e. before the entry into force of the Clean Energy Package. Member States should carry out a primary procurement process which is designed so as to maximise the participation of capacity that meets the CO2 emission limits, including by letting capacity prices rising high enough to incentivise investments in such capacity. In case that process has not brought about the necessary capacity to meet the identified adequacy concern, Member States should be allowed organise an additional procurement process which meets all the requirements in Chapter IV of Regulation (EU) 2019/943 of the European Parliament and of the Council, except for those regarding CO2 emission limits. Generation capacity that does not meet the CO2 emission limits should not be procured for a period longer than one year.

~~**(53d) Small isolated systems such as Cyprus and certain islands in the territory of Member States facing substantial problems for their operation can benefit from derogations from the relevant provisions of Articles 7 and 8 and of Chapters IV, V and VI of Directive (EU) 2019/944, including those linked to the ownership of energy storage facilities by transmission system operators, subject to the conditions set out in Article 66 of Directive (EU) 2019/944.**~~

(53g) Considering that the Cypriot transmission system is not connected to any Member State, Cyprus faces very specific challenges when organising balancing markets and the market-based procurement of ancillary services. Cyprus should be exempted from the requirements of certain provisions of Article 40 (4) and 54 (2) of Directive (EU) 944/2019 insofar as this is necessary to ensure system security for a transitional period, namely until the Cypriot transmission system is connected to other Member States via interconnectors.

Article 2

(22) ‘capacity mechanism’ means a **temporary** measure to ensure the achievement of the necessary level of resource adequacy by remunerating resources for their availability, excluding measures relating to ancillary services or congestion management;

Article 19b

Paragraph 3

3. The revenues, **or the equivalent in financial value of those revenues**, arising from ~~D~~direct price support schemes in the form of two-way contracts for difference shall ~~ensure that:~~

~~(a) — the revenues collected are~~ be distributed to final customers;

Notwithstanding the requirement in the first subparagraph, the revenues, **or the equivalent in financial value of those revenues, may also be used to finance the costs of the direct price support schemes or investments to reduce electricity costs for final customers** ~~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);~~

~~(b) — to the extent that part of the r~~Revenues ~~is~~ distributed to **final customers which are undertakings, this distribution shall** covers all undertakings in proportion to their share of consumption (same refund per MWh consumed). The ~~share~~~~part~~ of the revenues **distributed to final customers** that may be distributed to undertakings shall not exceed the combined share of electricity consumption of all undertakings. **This shall be without prejudice to Article 107 and 108 TFEU;**

(e) ~~ensure that~~ The distribution of the revenues to final ~~electricity~~ customers shall be designed ~~so as not to~~ **maintain** ~~remove the~~ incentives ~~of consumers~~ to reduce their consumption or shift it to periods when electricity prices are low and not to undermine competition between electricity suppliers.;

Article 21

Paragraph 1

1. ~~To eliminate residual resource adequacy concerns,~~ Member States may, ~~as a last resort~~ while implementing the measures referred to in Article 20(3) of this Regulation in accordance with Article 107, 108 and 109 of the TFEU, introduce capacity mechanisms.

Paragraph 7

~~7. When designing capacity mechanisms Member States shall include a provision allowing for an efficient administrative phase-out of the capacity mechanism where no new contracts are concluded under paragraph 6 during three consecutive years.~~

Paragraph 8

8. Capacity mechanisms ~~shall be temporary. They~~ shall be approved by the Commission for no longer than 10 years. ~~They shall be phased out or the~~ ~~The~~ amount of the committed capacities shall be reduced on the basis of the implementation plans referred to in Article 20. Member States shall continue to apply the implementation plan after the introduction of the capacity mechanism

Article 22

Paragraph 1

1. Any capacity mechanism shall:

(a) be temporary;

(b) not create undue market distortions and not limit cross-zonal trade;

(c) not go beyond what is necessary to address the adequacy concerns referred to in Article 20;

(d) select capacity providers by means of a transparent, non-discriminatory and competitive process;

(e) provide incentives for capacity providers to be available in times of expected system stress;

(f) ensure that the remuneration is determined through the competitive process;

(g) set out the technical conditions for the participation of capacity providers in advance of the selection process;

(h) be open to participation of all resources that are capable of providing the required technical performance, including

energy storage and demand side management;

(i) apply appropriate penalties to capacity providers that are not available in times of system stress.

(13ac) In Article 64, the following paragraph is inserted.

2c. By way of derogation from Article 22(4)(b), generation capacity that started commercial production before 4 July 2019 and that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity may, subject to compliance with Articles 107 and 108 TFEU, exceptionally be committed or receive payments or commitments for future payments under a capacity mechanism approved by the Commission before the entry into force of this regulation, provided that the following conditions are fulfilled:

(a) the Member State has carried out a competitive bidding process in line with the provisions of Article 22, which aims at maximising the participation of capacity providers which meet the requirements in Article 22(4);

(b) the amount of capacity offered in the competitive bidding process referred to in letter a) is not sufficient to address the adequacy concern as identified pursuant to Article 20 (1) for the contracting period covered by that bidding process;

(c) the generation capacity that emits more than 550 g of CO₂ of fossil fuel origin per kWh of electricity is committed or receives payments or commitments for future payments for a period not exceeding one year and is procured through an additional procurement process which complies with all requirements in Article 22 except for those set out in point (b) of paragraph 4.

The derogation pursuant to this paragraph may be applied until 31 December 2028 for a period of three years after the entry into force of this Regulation.

In Article 66, the following new paragraph is added

7. By way of derogation from Articles 40(4) and 54(2), Cyprus may allow its transmission system operator to own, develop manage and operate storage without following an open, transparent and non-discriminatory tendering procedure.

The derogations from Articles 40(4) and 54(2) shall apply until the transmission system in Cyprus is connected to other Member States' transmission systems via interconnection.
