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European Commission activities in the context of the ongoing energy crisis

1. Introduction and scope

1. Since the second half of 2021, when global energy demand started bouncing back to pre-pandemic levels, a combination of factors, including low gas storage levels and reduced piped gas supplies, increased electricity demand during the particularly hot summer 2022 and resulting unfavourable weather conditions for renewable energy production, have put strong pressure on energy prices. Following Russia's unprovoked invasion of Ukraine and the deliberate and concerted attempt by Russia to use energy as a political weapon, gas and electricity prices reached record levels in 2022.

2. The current energy crisis has revived the discussion about the role of competition law during crisis periods and its contribution to address the various challenges they raise. The intervention of the European Commission ("the Commission") in the current context has mainly relied on a comprehensive package of regulatory measures, which aim to reduce the severe pressure of energy prices on households and businesses and to increase the resilience of the EU's energy markets.

3. While competition law is not the appropriate tool to achieve a general decrease of the soaring gas or electricity prices, the Commission's directorate general for competition ("DG COMP") nevertheless considers that it has an important role to play to help overcome the crisis.¹ Competition law can help mitigate the effects of the crisis, support the way towards recovery and complement the EU policy measures addressing the crisis. In this context, DG COMP's role as a competition law enforcement agency is two-fold.

4. First, during a crisis, it is of utmost importance to continue to strictly enforce competition law with a view to identifying and sanctioning distortions by market players that contribute to the crisis or take advantage of it. Rigorous competition law enforcement aims at restoring competition where it has been distorted, thus leading to more secure and sustainable energy supply at affordable prices for businesses and households. Therefore, DG COMP has been closely monitoring all developments on the energy markets since the beginning of the crisis to be able to identify and swiftly address any conduct that is in breach of the EU competition rules. DG COMP is particularly vigilant to ensure that companies active in gas, electricity and related markets do not take advantage of the current crisis to engage in anti-competitive conduct that could directly or indirectly contribute to the high energy prices.

5. Second, crisis situations may trigger the need for companies to cooperate with each other in order to overcome or at least mitigate the effects of the crisis to the ultimate benefit of citizens. Where companies face novel or unresolved issues when assessing the compatibility of their cooperation initiatives with EU competition law, DG COMP stands

¹ In the European Union, the enforcement of competition rules at the European level is entrusted to the Commission, and in particular to its directorate general for competition ("DG COMP"). The competition authorities of the EU Member States have parallel competence to apply the EU competition rules in their respective territories.

ready to support the energy industry's efforts to address the challenges of this crisis through informal guidance.

6. These two aspects of DG COMP's role in the energy crisis are being developed in sections II and III, while sections IV and V provide an overview of the Commission's activities in the fields of State aid control and energy regulation in the current energy crisis.

2. Antitrust investigations and monitoring activities

7. DG COMP's investigations and monitoring activities in the last months focused on the markets, which experienced a sudden and substantial price increase in 2021. DG COMP's investigations and monitoring activities complement those of the national competition authorities in particular in the fuel markets, where several of them have already carried out or are in the process of conducting sector inquiries.²

2.1. Investigation into the natural gas markets in Europe

8. The steadily increasing prices observed in the European gas markets since autumn last year triggered a number of reports by supervisory bodies such as the European Union Agency for the Cooperation of Energy Regulators (ACER)³ and the International Energy Agency (IEA) analysing the underlying causes.⁴ These reports concurred that the high gas prices at the time had mainly been caused by market-related factors such as the quick recovery of the post-COVID economy and increased demand from Asia, as well as unfavourable weather conditions.

9. In parallel, in October 2021, DG COMP initiated an *ex officio* investigation into the natural gas markets in Europe with a view to verifying whether commercial conduct by market participants may have contributed to the soaring gas prices in Europe. In this context, it sent requests for information to the largest suppliers of natural gas to the EEA, including Gazprom (Russia).

10. In December 2022, Ukrainian gas producer Naftogaz submitted a formal antitrust complaint against Gazprom, alleging that the company has been abusing its dominant position on a number of gas markets in the EEA. In its complaint, Naftogaz *inter alia* alleges that Gazprom has engaged in a deliberate refusal to refill EU gas storage facilities, has stopped selling gas through its own Electronic Sales Platform without a justification,

² See for instance, the press release on the sector inquiry by the Austrian Federal Competition Authority: <https://www.bwb.gv.at/en/news/detail/afca-publishes-sector-inquiry-into-austrian-fuel-market>; and the press release by the Bundeskartellamt announcing the sector inquiry in Germany: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/12_04_2022_Jahresbericht_MTS_K_2021.html.

³ By fostering cooperation among National Regulatory Authorities ("NRAs"), ACER ensures that the integration of national energy markets and the implementation of legislation in the Member States are met according to the EU's energy policy objectives and regulatory frameworks.

⁴ See ACER paper titled "High Energy Prices", October 2021, available at: https://acer.europa.eu/en/The_agency/Organisation/Documents/Energy%20Prices_Final.pdf; and IEA Statement on recent developments in natural gas and electricity markets, September 2021, available at: <https://www.iea.org/news/statement-on-recent-developments-in-natural-gas-and-electricity-markets>.

and continues to block gas exports to Europe by independent Russian and Central Asian gas producers.⁵

11. As part of its investigation into the natural gas market in Europe, on 29 March 2022, DG COMP carried out unannounced inspections at the premises of several companies in Germany active in the supply, transmission and storage of natural gas.

12. The investigation into Gazprom's conduct is currently ongoing. In this context, DG COMP is *inter alia* looking into whether Gazprom's conduct may have contributed to increased gas prices on the European spot market and, as a result, benefitted Gazprom with regard to its hub-indexed long-term contracts with European customers. DG COMP is in close contact in this regard with the national competition authorities, as well as with the national regulatory authorities and ACER.

2.2. Monitoring of the EU carbon market

13. During the second half of 2021, soaring carbon prices and their spill-over effects on European electricity prices caused concerns amongst Member States about possible market manipulation in the EU carbon market, also known as the Emission Trading Scheme ("ETS") market.

14. In parallel to the regular monitoring activities of the European Securities and Markets Authority ("ESMA"),⁶ DG COMP carried out an informal investigation into the functioning of the EU carbon market with a view to verifying whether possible anti-competitive conduct could have been contributing to the high carbon prices in the second half of 2021. The investigation focused mainly on the secondary EU carbon market.

15. By way of background, the EU carbon markets are organised as follows:

16. In the primary market, the EU sells on behalf of the Member States EU emission allowances via daily auctions on the EEX exchange platform.⁷ Buyers in the primary market include two main categories of actors: (i) so-called compliance entities, i.e. companies obliged to cover their carbon emissions with a corresponding amount of emission allowances, such as in particular electricity generators and large industries (e.g. steel or glass industries); and (ii) financial institutions, of which there are three main sub-categories: investment firms, credit institutions (e.g. banks) and investment funds. Financial institutions trade either on behalf of compliance entities or for their own account. Similarly to the spot electricity market, the primary EU carbon market is based on a "pay-as-clear" auction, whereby a single price set by the last bid necessary for demand to meet supply clears the entire auction. A reserve price, which is unknown to market participants,

⁵ See Naftogaz press release of 22 December 2021, available at: <https://www.naftogaz.com/en/news/naftogaz-zvernuvsya-do-evropeyskoi-komisii-zi-skargoyu-na-antykonkurentni-dii-gazpromu-ta-nadav-propozytsii-schodo-normalizatsii-sytuatsii-na-gazovomu-rynku-evropy>.

⁶ ESMA is an independent EU Authority that contributes to safeguarding the stability of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets.

⁷ Germany and Poland have "opted-out" from joint selling and therefore sell directly EU emission allowances in the primary market via separate auctions, which are also organized on EEX. However, the separate auctions organized by Germany and Poland do not have any impact on the liquidity of the primary market, as all Member States sell the same product (EU emission allowances), irrespective of whether this is done jointly or separately.

ensures that the auction does not deliver a clearing price that is too low compared with the price on the secondary market.

17. In the secondary market, market participants essentially trade emission allowances derivatives, i.e. financial products with different maturity whose value is based on the price evolution of the emission allowances. The secondary market gathers the same categories of participants as the primary market. The purpose of the secondary market is to help compliance entities to meet their obligations and hedge their exposure to the price of the emission allowances. The secondary market, which mostly takes place on the ICE Endex exchange in the Netherlands and more marginally on the EEX exchange in Germany, is by far much larger than the primary market. In contrast to the primary market, the secondary EU carbon market functions on a continuous trading basis, i.e. trades are executed continuously throughout the trading day whenever a buy order meets a sell order.

18. In line with the results of ESMA's analysis released in March 2022,⁸ DG COMP's informal investigation did not reveal any indications of possible anticompetitive behaviour in the secondary EU carbon market during the second half of 2021. It showed that the secondary EU carbon market involves a high number of market participants,⁹ which makes anticompetitive collusion more difficult to implement and sustain over time. In fact, DG COMP's informal investigation confirmed ESMA's findings that the carbon price spikes observed in the second half of 2021 reflected market fundamentals,¹⁰ in particular:

- The regulatory changes which have resulted in a tightening of the supply of CO2 allowances during the previous years (in particular the creation of a Market Stability Reserve in 2019),¹¹
- The post COVID-19 economic recovery as from mid-2020 leading to an increased demand for CO2 allowances from the power sector and the industry,
- The switch in electricity generation from gas to coal caused by the sharp increase in gas prices. As coal generates much more CO2 emissions than gas, this gas-to-coal switch has further increased demand for CO2 allowances, thereby pushing the carbon price up.

3. Industry cooperation in relation to the energy crisis

19. The Commission recognises that during crisis situations there may be a need for increased industry cooperation to effectively address the resulting challenges. To clarify that genuine crisis cooperation is compatible with the EU competition rules the Commission issued a joint statement with the national competition authorities on the

⁸ <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-its-final-report-eu-carbon-market>.

⁹ During the 2nd half of 2021, between 500 and 700 entities held a position on ICE Endex and between 80 and 120 entities held a position on EEX. See ESMA's report, paras. 303 and 304.

¹⁰ See ESMA's report, para. 337.

¹¹ In order to address the surplus of emission allowances in circulation leading to low carbon prices, the Commission has introduced in January 2019 a Market Stability Reserve (MSR). Each year, based on the total number of allowances in circulation, a number of allowances are transferred to the reserve (or released from the reserve) in order to address any market imbalance. The MSR operates entirely according to pre-defined rules that leave no discretion to the Commission or Member States in its implementation.

application of competition law in the context of the war in Ukraine (“ECN statement”).¹² The possible need for such crisis cooperation is currently also being discussed with regard to gas purchasing to address the possible gas supply shortages and soaring gas prices in Europe.

3.1. Joint cooperation in the context of the war in Ukraine

20. In March 2022, the European Competition Network issued the ECN statement, which acknowledged that the ongoing extraordinary situation may trigger the need for companies to cooperate to address severe disruptions caused by the impact of the war and/or of sanctions in the internal market. This may include, for example, cooperation in order to (i) ensure the purchase, supply and fair distribution of scarce products and inputs; or (ii) mitigate severe economic consequences including those arising from compliance with sanctions imposed by the EU. This applies to all industries affected by the unprecedented military aggression against Ukraine, including the energy sector. As explained during the COVID crisis,¹³ genuine crisis cooperation aimed at mitigating the effect of severe supply disruptions would either be unlikely to amount to a restriction of competition under Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the EEA agreement or likely to generate efficiencies that would outweigh any such restriction. In any event, the ECN will not actively intervene against strictly necessary and temporary measures specifically targeted at avoiding severe supply disruptions caused by the impact of the war and/or of sanctions in the internal market. The ECN statement also reiterated the willingness of all relevant authorities to provide informal guidance if companies have doubts about the compatibility of any such crisis related cooperation initiative with competition law.

21. In this context, the Bundeskartellamt has recently decided not to initiate proceedings against the planned capacity cooperation between four German sugar producers whose plants are powered by natural gas. The Bundeskartellamt’s decision was motivated by the need to ensure the processing of sugar beets and to avoid the rotting of large parts of the sugar beet harvest in the event of gas supply shortages. The cooperation agreement envisages that the companies make production capacities available to one another in the event of gas supply cut-offs and ensuing production stoppages at the factories affected, on a temporary basis, until June 2023.¹⁴

¹² See also Joint statement by the European Competition Network (ECN) on the application of competition law in the context of the war in Ukraine, March 2022, available at https://competition-policy.ec.europa.eu/system/files/2022-03/202203_joint-statement_ecn_ukraine-war.pdf.

¹³ Communication from the Commission: Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak (2020/C 116 I/02)

¹⁴ For further detail, see Bundeskartellamt press release available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/06_09_2022_Zucker.html

3.2. Joint purchasing of gas

22. On 18 October 2022, the Commission proposed a new emergency regulation under Article 122 TFEU to mitigate the impact of high gas prices in the EU (“Draft Regulation”).¹⁵ The Draft Regulation foresees, among other things, a joint purchasing mechanism (“JPM”) for gas to help gas companies and gas consumers negotiate better prices, reduce the risk of Member States outbidding each other, and ensure security of supply across the entire European Union during the supply shortage.

23. The JPM is envisaged to take place in two steps:¹⁶

24. First, gas companies will pool their demand in a demand aggregation platform, which will match the demand with gas suppliers.¹⁷ The platform will be operated by a service provider selected by the Commission in a public procurement process.¹⁸ Member States with underground storage shall require natural gas undertakings under their jurisdiction to participate in the process of demand aggregation organised by the service provider with volumes at least equal to 15% of the total volume required to meet the storage filling targets set out in the *regulation on gas storage*¹⁹ (see paragraph 44 below).²⁰

25. Second, companies participating in the demand aggregation platform will be able to coordinate elements of their gas purchase contracts or enter into a gas purchasing consortium for the purposes of negotiating better conditions with their suppliers.²¹

26. Any joint purchasing agreements concluded in this context will have to be compliant with the EU competition rules.²² This is important to ensure that the benefits of joint purchasing are passed on to final consumers and to avoid that market participants take advantage of the crisis situation by engaging in anticompetitive behaviour. Pursuant to Regulation 1/2003,²³ it is for the participating companies to self-assess whether participation in any such joint purchasing agreement is compliant with the EU competition rules.²⁴ Whilst companies can form multiple gas purchasing arrangements, the Draft Regulation encourages the formation of a single large gas purchasing consortium encompassing as many companies as possible, active on a large variety of unrelated product and geographic markets to bring increased bargaining power of the companies into the

¹⁵ Proposal for a Council Regulation Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks, Strasbourg, 18.10.2022 COM(2022) 549 final, available at https://eur-lex.europa.eu/resource.html?uri=cellar:6104f668-4f01-11ed-92ed-01aa75ed71a1.0001.02/DOC_1&format=PDF.

¹⁶ Draft Regulation, Explanatory Memorandum, p. 3.

¹⁷ Draft Regulation, Explanatory Memorandum, p. 3 and Recital 8.

¹⁸ Draft Regulation, Article 5.

¹⁹ Regulation (EU) 2022/1032 of the European Parliament and the Council of 29 June 2022 amending Regulation (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173/17 of 30 June 2022, Article 6a.

²⁰ Draft Regulation, Article 10.

²¹ Draft Regulation, Article 11.

²² Draft Regulation, Article 11.

²³ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty OJ L 1, 4.1.2003, p. 1–25.

²⁴ Council Regulation (EC) No 1/2003, Article 1.

market. The Commission stands ready to assist gas companies in designing such a gas purchasing consortium in compliance with the EU competition rules.²⁵ In addition, the Commission stands ready to provide informal guidance on the application of the EU competition rules to joint purchasing agreements, where companies face uncertainty with regard to the compatibility of those agreements with the EU competition rules.²⁶

27. Guidance on how to assess the compatibility of joint purchasing agreements between competitors with the EU competition rules can be found in the Commission's Guidelines on the applicability of Article 101 TFEU to horizontal co-operation agreements ("Horizontal Guidelines").²⁷ According to the Horizontal Guidelines, combined market shares equal to or below 15% in the purchasing and selling market(s) concerned are indicative of a lack of market power. At the same time, combined market shares exceeding 15% on the purchasing and/or selling market(s) concerned do not necessarily indicate that joint purchasing arrangements would give rise to competition issues, but simply require an assessment of their effects on the market, involving factors such as the possible countervailing power of strong suppliers.²⁸

28. Moreover, crisis cooperation among natural gas providers operating at the wholesale level aimed at addressing severe supply disruptions or supply shortages is likely to be compatible with the EU competition rules when such crisis cooperation is (i) necessary for the purposes of addressing a severe supply disruption or shortage, (ii) temporary in nature and (iii) proportionate to the objective pursued.²⁹

29. In the European Council's meeting of 20-21 October 2022, during which the Commission's gas market related proposal for an emergency regulation was discussed, the European Council endorsed a possible JPM and asked the Council of the European Union to "*submit concrete decisions*" on the Commission's proposals.³⁰

30. In parallel, the Commission put in place an Energy Industry Advisory Board ("EIAB") to assist the Commission in dealing with the gas supply crises, including providing feedback and comments on a possible demand aggregation mechanism and options for the implementation of a possible JPM for gas and, in the future, hydrogen. The EIAB comprises 27 permanent members and 11 observers, including top EU energy

²⁵ Draft Regulation, Recitals 27 and 28; Explanatory Memorandum p. 12.

²⁶ Draft Regulation, Recital 28.

²⁷ Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements Text with EEA relevance, OJ C 11, 14.1.2011, p. 1. The Horizontal Guidelines are currently under review; for more details, see the dedicated webpage of DG COMP: https://competition-policy.ec.europa.eu/public-consultations/2019-hbers_en.

²⁸ Horizontal Guidelines, paras. 208-209.

²⁹ Draft Regulation, Explanatory Memorandum, p. 12. See in this context also the Joint statement by the European Competition Network (ECN) on the application of competition law in the context of the war in Ukraine, March 2022, available at https://competition-policy.ec.europa.eu/system/files/2022-03/202203_joint-statement_ecn_ukraine-war.pdf.

³⁰ See conclusions of the European Council meeting of 20 and 21 October 2022, available at: <https://www.consilium.europa.eu/media/59728/2022-10-2021-euco-conclusions-en.pdf>.

companies such as ENGIE, Total, BP, Shell, EDS, ENEL, E.ON, Shell, RWE, Repsol, VNG and Uniper. The EIAB's first meeting took place on 26 October 2022.³¹

4. State aid control

31. The Commission is well aware of the hardship caused by the current energy crisis and stands ready to swiftly assess the compatibility of Member States' emergency measures in this context with State aid rules.

32. To facilitate support for undertakings during the crisis, the Commission adopted on 23 March 2022 a Temporary Crisis Framework (TCF)³² to enable Member States to use the flexibility foreseen under State aid rules to support the economy in the context of Russia's unprovoked invasion of Ukraine. On 28 October 2022, the Commission adapted and prolonged the State Aid Temporary Crisis Framework until 31 December 2023.³³

33. More specifically in relation to the energy sector, the adapted TCF increases the ceilings set out for limited amounts of aid up to EUR 250 000 for companies active in the agriculture, up to EUR 300 000 for companies active in the fisheries and aquaculture sectors and up to EUR 2 million for companies active in all other sectors affected by the current crisis or by the subsequent sanctions and countersanctions. The adapted TCF also introduces increased flexibility for liquidity support to energy utilities in their trading activities in the forms of guarantees provided as financial collateral to central counterparties or clearing members, and for larger amounts of aid to companies adversely affected by the extraordinary increase in energy costs. Furthermore, the adapted TCF provides Member States with the relevant tools to incentivise electricity demand reduction during peak times, in line with the Council Regulation 2022/1854 on an emergency intervention to address high energy prices³⁴ (see paragraph 46 below). Finally, to support Member States' longer response to the crisis and a faster green transition, the TCF also includes more flexible rules for investments to accelerate the rollout of renewable energy

³¹ See <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=3865>.

³² Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia 2022/C 131 I/01, *OJ C 131I*, 24.3.2022, p. 1–17, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2022.131.01.0001.01.ENG>. See the latest news and amendments on the Temporary Framework here: https://competition-policy.ec.europa.eu/state-aid/ukraine_en.

³³ Commission Press Release, State aid: Commission prolongs and amends Temporary Crisis Framework, IP/22/6468, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6468.

³⁴ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, *OJ L 261I*, 7.10.2022, p. 1–21, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2022.261.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A261I%3ATOC>.

and facilitate the decarbonisation of industrial processes in line with the REPowerEU objectives (see paragraphs 39 and 40 below).³⁵

34. Between 24 March and 8 November 2022, the Commission has taken 126 decisions, approving 145 national measures notified by 26 Member States. On this basis, the amount of around EUR 482 billion of total State aid approved so far is a best estimate. This data concerns only the maximum budgets approved, actual spending is expected to be lower. Most cases involved relatively small amounts of aid for all sectors of the economy, including agriculture and fisheries. There were fewer cases involving liquidity support and support for energy costs, but these measures represented about 85% of the total amount of aid authorised during that period.

35. Furthermore, on 8 June 2022 the Commission adopted a decision under Article 107(3)(b) TFEU authorising a Spanish and Portuguese measure to the tune of EUR 8.4 billion aimed at reducing the wholesale electricity prices in the Iberian market by lowering the input costs of fossil fuel-fired power stations (“MIBEL”).³⁶

36. In addition, in July and September 2022, the Commission approved State aid to be granted by 16 Member States for two Important Projects of Common European Interest (“IPCEI”) in the hydrogen value chain. The IPCEI ‘Hy2Tech’ focuses on the development of key enabling hydrogen technologies and the IPCEI ‘Hy2Use’ focuses on hydrogen infrastructure projects and innovative projects for industrial applications of hydrogen. These two IPCEIs will have a key role in kick-starting the hydrogen value chain in the Union, in line with the objectives of the REPowerEU plan (see paragraph 40 below).

37. Overall, the Commission’s activity in the field of State aid control aims at striking a balance between ensuring that the European economy can cope with the stresses of the latest crisis while protecting the Single European Market, the level playing field and fair competition, which are key drivers for the EU competitiveness in the longer term.

5. Regulatory measures

38. The Commission has been tackling the issue of increasing energy prices for the past year by combining emergency measures with its long-term objectives towards decarbonisation and green transition, less energy dependence and energy efficiency. Initially, in October 2021, the Commission adopted a “Toolbox” to address the immediate impact of prices increases, and further strengthen resilience against future shocks.³⁷ The Toolbox introduced immediate measures to protect consumers and businesses. These include price caps, temporary tax breaks for vulnerable energy consumers, vouchers and subsidies for consumers and businesses. In addition, the Commission highlighted the need to step up investments in renewables for a decarbonised and resilient energy system.

³⁵ Commission Press Release, REPowerEU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition, *IP/22/3131*, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3131.

³⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3550.

³⁷ Tackling rising energy prices: a toolbox for action and support, 13.10.2021 COM/2021/660 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101>.

39. Following the unprovoked invasion of Ukraine by Russia in February 2022, the case for fast and targeted measures to relieve the pressure from consumers and businesses has never been stronger. As an immediate response to the hardships and global energy disruption caused by Russia's invasion of Ukraine, the Commission published on 8 March 2022 the REPowerEU Communication.³⁸ The Communication encapsulates the EU's intention to end its dependency on Russian energy imports as soon as possible, mitigate the impact of high prices for consumers and ensure the EU's security of supply.

40. On 18 May 2022, the Commission presented its REPowerEU plan³⁹, outlining a comprehensive set of actions and resources to achieve its goals. The REPowerEU plan aims to support the diversification of energy supplies, accelerate the transition to renewable energy sources and improve energy efficiency. This is expected to further accelerate the phasing out of the EU's dependence on Russian fossil fuels and provide insurance against energy price shocks by fast-forwarding the EU's green transition.

41. The Commission's Communication "*Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action*", also published on 18 May 2022,⁴⁰ sketches out additional emergency measures, to be implemented at a national level, to improve the preparedness in gas and electricity markets for the upcoming winter season. It includes reflections on possible long-term improvements to optimise the electricity market design. Any such emergency interventions must comply with the EU rules, particularly with the State aid rules, the prohibition of the restrictions to cross-border exports and sectoral legislation.

42. As regards gas markets, the Communication proposes:

1. the extension of retail price regulation for natural gas supplies to reduce the pressure on consumers using gas in heating and industrial users;
2. emergency liquidity support measures to alleviate the impact of the current market volatility for commodity traders and energy companies; and
3. complementary measures to address sudden large-scale or complete disruptions of the supplies of Russian gas, including gas demand reduction measures and a maximum regulated price for gas in case of an EU-wide emergency.

43. As regards electricity markets, the Communication proposes:

1. the taxation or regulatory measures aiming at removing infra-marginal rents of certain baseload electricity generators created by the current crisis to help finance measures in support of vulnerable households and businesses;
2. the temporary extension of regulated retail prices to cover also small and medium-sized enterprises; and

³⁸ REPowerEU: Joint European Action for more affordable, secure and sustainable energy, 8.3.2022 COM/2022/108 final, available at: https://energy.ec.europa.eu/repowereu-joint-european-action-more-affordable-secure-and-sustainable-energy_en.

³⁹ REPowerEU Plan, 18.5.2022 COM(2022) 230 final, available at: https://eur-lex.europa.eu/resource.html?uri=cellar:fc930f14-d7ae-11ec-a95f-01aa75ed71a1.0001.02/DOC_1&format=PDF.

⁴⁰ Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action, 18.5.2022 COM(2022) 236 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A236%3AFIN&qid=1653032581730>.

3. temporary measures to subsidise the cost of gas used for power generation in order to lower prices on the electricity market.
44. To improve preparedness for the winter, on 23 March 2022, the Commission also proposed a *regulation on gas storage* to ensure adequate capacity across the EU.⁴¹ Regulation (EU) 2022/1032⁴², adopted in record time on 29 June 2022, requires Member States to fill storage facilities to 80% of capacity by November this year and to 90% in the years thereafter. The new rules aim at strengthening the EU's security of gas supply and protect the EU households and businesses from longer-lasting or sudden supply disruptions.
45. On 20 July 2022, the Commission released its “*Save Gas for a Safe Winter*” plan to address potential gas disruptions from Russia in a coordinated manner.⁴³ As part of this plan, the Commission proposed a new Regulation to reduce gas use in Europe by 15% until spring 2023.⁴⁴ On 5 August 2022, Council Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas was adopted and introduced a voluntary and a mandatory reduction on gas consumption. Member States shall use their best efforts to reduce their gas consumption in the period from 1 August 2022 to 31 March 2023 at least by 15 % compared to their average gas consumption in the same period of the past five years. Further, the Regulation enables the Council, acting by qualified majority, to declare a “Union alert” on a proposal by the Commission. If a Union alert is declared, the 15% reduction target of overall gas consumption is, in principle, mandatory. Regulation 2022/1369 relies on Article 122(1) TFEU, which allows the Council to take, on a proposal from the Commission and in a spirit of solidarity between Member States, appropriate measures to address the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. The risk of a complete halt of Russian gas supplies by the end of 2022 constitutes such a situation.⁴⁵
46. In September 2022, the Commission proposed a Regulation with emergency measures to address high prices, urging for demand reduction in electricity, cap on market

⁴¹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1938 of the European Parliament and of the Council concerning measures to safeguard the security of gas supply and Regulation (EC) n°715/2009 of the European Parliament and of the Council on conditions for access to natural gas transmission networks, 23.3.2022 COM/2022/135 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A0135%3AFIN>.

⁴² Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, *OJ L* 173, 30.6.2022, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32022R1032>.

⁴³ Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions “*Save gas for a safe winter*”, 20.7.2022 COM/2022/360 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0360&qid=1658479881117>.

⁴⁴ Proposal for a Council Regulation on coordinated demand reduction measures for gas 20.7.2022 COM/2022/361 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:0361:FIN>

⁴⁵ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas,

OJ L 206, 8.8.2022, p. 1–10, recital (8), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1369>.

revenues for the generation of electricity from ‘inframarginal’ technologies, solidarity contributions from certain segments of the energy sector and redistribution of the revenues collected to the consumers.⁴⁶ On 6 October 2022, Council Regulation 2022/1854 on an emergency *intervention to address high energy prices* was adopted and entered into force immediately.⁴⁷

47. Regulation 2022/1854 sets out exceptional measures to help lower overall electricity consumption, support households and businesses to mitigate the effects of high energy prices and promote investments in renewables, energy efficiency or other decarbonisation technologies. It requires Member States to reduce total electricity consumption by at least 10% compared to the average of gross electricity consumption in the corresponding months of the reference period.⁴⁸ In parallel, it introduces an obligation to reduce gross electricity consumption by at least 5% during selected peak and expensive price hours covering at least 10% of all hours of the period between 1 December 2022 and 31 March 2023. Member States maintain a margin of discretion in identifying these hours and the most appropriate measures to achieve this demand reduction.

48. Regulation 2022/1854 additionally introduces a temporary ex-post cap (set at €180 EUR/MWh) on revenues of ‘inframarginal’ producers, such as renewables, nuclear, crude oil, lignite and other oil products. ‘Inframarginal’ producers have been making exceptional revenues, relying on their low and relatively stable operational costs, compared to the variable costs of expensive marginal technology. The market revenue cap across the EU is necessary to preserve price-based competition between electricity producers based on different technologies. Revenues above the cap shall be collected by Member State to support final electricity consumers reduce their bills.

49. Finally, Regulation 2022/1854 introduces a temporary solidarity contribution on surplus profits from activities in fossil fuel (e.g. oil, gas, coal and refineries), which are exempted from the revenue cap, to address the increasing pressure of the current energy crisis.

50. In parallel with emergency measures, the Commission is assessing long-term options to optimise the electricity market design to guarantee low-cost energy and to facilitate the rollout of low-carbon generation, particularly based on renewables. According to the final report of the European Union Agency for the Cooperation of Energy Regulators (ACER) on the Assessment of the EU Wholesale Electricity Market Design, the current electricity market design delivers major benefits, including security of supply and resilience to price shocks, as well as significant revenues from cross-border trade (approx. EUR 34 billion annually).⁴⁹ Going forward, the enhanced integration of electricity market

⁴⁶ Proposal for Council Regulation on an emergency intervention to address energy prices, 14.9.2022 COM(2022) 473 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A0473%3AFIN>.

⁴⁷ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, *OJ L 261I*, 7.10.2022, p. 1–21, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2022.261.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A261I%3ATOC>.

⁴⁸ November to 31 March in the five consecutive years preceding the date of entry into force, starting with the period from 1 November 2017 to 31 March 2018.

⁴⁹ ACER’s Final Assessment of the EU Wholesale Electricity Market Design, April 2022, pages 3 and 21, available

integration across EU Member States is key to pursue the EU's ambitious green transition across sectors and to achieve its decarbonisation targets, also ensuring security of supply.⁵⁰

51. The Commission relies on the conclusions of the final report of the ACER⁵¹ and other contributions and it will follow up as appropriate to keep electricity affordable without weakening competition or disrupting supply and further investment in the green transition. The Commission has identified a set of issues for which adjustment seem warranted, either via legislative action or by providing guidance to Member States to strengthen the function of the electricity market design. The Commission's long-term reforms will prioritise consumers and their protection against high prices and excessive volatility. Further, the Commission underlines the need to accelerate investments in renewable generation, to ensure low carbon supply and demand response when variable renewable production is not available, to tackle rising price volatility and to enhance the flexibility of the power system.⁵²

6. Conclusion

52. In complement to the Commission's regulatory activities and State aid control aiming at mitigating the impact of the energy crisis in the European Union, ensuring a level-playing field and encouraging the transition towards a decarbonised economy, DG COMP will continue to enforce rigorously competition law in the energy sector to ensure that the effect of the current crisis on household and business customers are not exacerbated by possible anticompetitive behaviour by market participants. Competition law enforcement has therefore an important role to play in the current crisis context to protect consumers and ensure the efficient functioning of the energy markets.

at:[https://www.acer.europa.eu/sites/default/files/documents/Publications/ACER%26%23039%3BsFinal Assessment of the EU Wholesale Electricity Market Design.pdf](https://www.acer.europa.eu/sites/default/files/documents/Publications/ACER%26%23039%3BsFinal%20Assessment%20of%20the%20EU%20Wholesale%20Electricity%20Market%20Design.pdf).

⁵⁰ ACER's Final Assessment of the EU Wholesale Electricity Market Design, April 2022, pages 3-5, available at: [https://www.acer.europa.eu/sites/default/files/documents/Publications/ACER%26%23039%3BsFinal Assessment of the EU Wholesale Electricity Market Design.pdf](https://www.acer.europa.eu/sites/default/files/documents/Publications/ACER%26%23039%3BsFinal%20Assessment%20of%20the%20EU%20Wholesale%20Electricity%20Market%20Design.pdf).

⁵¹ Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action, 18.5.2022 COM(2022) 236 final, page 8, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A236%3AFIN&qid=1653032581730>.

⁵² Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action, 18.5.2022 COM(2022) 236 final, pages 8-11, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A236%3AFIN&qid=1653032581730>.