



Reform of the EU electricity market design

COM(2023) 148

Executive Summary

With regards to the amendment of the Internal Electricity Market Regulation (EU) 2019/943 and the Internal Electricity Market Directive (EU) 2019/944, we wish to make the following points:

- **Energy supply must be legally defined as part of services of general interest.**
- **Security of supply, affordability and sustainability**
 - in the interest of the necessary decarbonisation
 - should be enshrined in law as overriding energy policy goals.
- **Market prices must reflect production costs.** That means that the wholesale price must correspond to the average cost of all types of electricity generation and not to the maximum price, as has been the case until now. The redesign of the electricity market must ensure that consumer prices for electricity are based on actual production costs.
- Adequate **incentives must be provided for the expansion of renewable energy and flexible capacity.** Technology-dependent subsidies are necessary to ensure appropriate remuneration for electricity producers, investment protection and the expansion of renewable energy.
- **The allocation of grid costs must be based on the polluter-pays principle and on solidarity.** Producers and traders must also contribute to grid costs.
- **Regulatory decisions must be made in a democratically legitimate manner.** Decisions are often made in a non-transparent manner by interest groups from the energy industry (such as ENTSO-E) and regulatory authorities. In particular, matters concerning distribution policy implications must be decided through transparent procedures by institutions with democratic legitimacy and not by authorities or interest groups.
- **The affordable basic supply of energy** can only be ensured if basic consumption is covered by energy supplies at regulated prices. Reimbursement of costs to energy suppliers must be based on evidence of the costs.
- **Consumer rights must be expanded.** In addition to a **fixed-price tariff** ensuring **continuous, affordable energy supply**, it is necessary, amongst other things, to enshrine in law a disconnection moratorium (“protection from disconnection”) in the winter months and a right to instalment payment agreements.

AK's position

Concerning the electricity market design in general

The key energy policy objectives – namely security of supply, sustainability and affordability – are not sufficiently supported by the current EU electricity market design. The high prices lead to excess profits for electricity producers, whilst the strong price fluctuations result in an uncertain environment for investments in renewable energy. The high prices burden consumers and damage the competitiveness of European industry. As a result, they lead to an overall loss of prosperity in Europe.

Energy is not a commodity like any other. Instead it is an essential foundation of our economic and social system and thus a central part of the provision of public services. It is therefore necessary to create a legal framework for the future of energy that will guarantee an environmentally-friendly, affordable and reliable energy supply and the right to energy. That also means that both the energy market design and the grid infrastructure must take into account the requirements associated with decarbonisation.

Prices for gas – and subsequently also for electricity – remain high. Wholesale gas and electricity still cost many times the long-term average price. Gas supply is not secured in the medium term; procurement of gas from non-Russian sources is difficult and it is uncertain how prices will develop. Yet volatile and high prices are not only a financial burden for consumers, but also harm the entire economy.

European countries responded to the high energy costs by subsidising households and businesses. That has recently placed a heavy burden on public budgets and led to an increase in public debt, as well as to subsidy competition between EU Member States. However, because government transfers often do not have a direct effect on energy costs, their ability to curb inflation is limited.

To reduce the negative economic effects and the associated massive losses in prosperity, a comprehensive

reform of the electricity market design is required. This must take place in accordance with the following requirements and criteria.

Reform of the EU electricity market design

The key energy policy objectives – namely security of supply, sustainability and affordability – are not sufficiently supported by the current EU electricity market design. Energy supply companies do not contribute sufficiently to security of supply. Volatile prices lead to a high degree of uncertainty and jeopardise investments in renewable energy sources. High electricity prices cause high economic costs and jeopardise the electrification necessary for decarbonisation in various sectors such as industry, transport and heat supply. In AK's view, redesign of the EU electricity market must take the following requirements into account:

- **Energy supply is part of services of general interest**
 - Profit maximisation must not be the sole objective of companies in the energy sector. The lack of a legal framework means that companies in the energy sector are focused purely on maximising shareholder value and indeed are often unable to deviate from that approach for legal reasons. To ensure that the key energy policy objectives of security of supply, affordability and sustainability can be pursued on an equal footing, an appropriate framework is needed. AK calls for the focus on public welfare of the energy sector to be enshrined in EU law and for security of supply, affordability and sustainability to be defined as central objectives.
 - With the focus on public welfare enshrined in law, Member States can issue supply mandates to their own and private companies and impose obligations in line with the overarching goals.

- **Consumer prices must reflect production costs**

- The consumer price must be based on the weighted average cost of production. Currently, wholesale prices are many times the actual production costs. To ensure the affordability of electric power, wholesale prices must reflect average production costs (plus a profit mark-up). Excessive prices, like those we are currently seeing, are unacceptable, especially for such a key commodity of general interest. To achieve affordable electricity prices and ensure sufficient investment in renewable energy, electricity producers must receive technology-specific remuneration.
- In the medium and long term, the rapid implementation of the Iberian model that AK called for in the short term is only the second-best solution. What is needed is fundamental revision of the price mechanism within the scope of the electricity market design. There are several options for that. For example, decoupling the price of electricity from the price of gas can be achieved by dividing the electricity market into commodity-dependent and commodity-independent plants. That would lead to different prices for commodity-dependent and commodity-independent plants. The market price for consumers would be composed of the weighted average. Alternatively, a reform of the “Euphemia” mechanism, i.e. the algorithm that technically implements pricing, is conceivable. In future, provision could be made for the price to be set not according to the most expensive power plant, but according to a cheaper technology or the weighted average price. Any more expensive power plants that are needed could be remunerated retrospectively by skimming off the excess revenues from less expensive power plants.
- Transparent pricing under government control is necessary. Since contracts with end consumers are usually indexed to wholesale prices, the average price across all electricity producers must be published transparently and under government control as a reference price. In order to prevent powerful market players from benefitting exclusively from favourable forms of generation, transactions on the futures markets and direct contracts (PPAs) must also be taken into account in this reference pricing.

- **Stock market regulation to eliminate price volatility**

- EU-wide regulation and government supervisory authorities are needed to eliminate collusion. In general, oversight by European and national supervisory authorities should be set out in law.
- Transparency and disclosure requirements are likewise pivotal here, i.e. “who traded what, at what price, in what quantity and when?” Traded financial products must be strictly controlled. Non-market players (banks, high-frequency trading etc.) should be excluded from trading.

- **Allocation of grid costs according to the polluter-pays principle**

- It is necessary to ensure that costs are borne fairly and in accordance with the polluter-pays principle.
- Producers and traders must also contribute to system costs. That applies to grid costs, grid loss costs, the provision of reserve capacity and the cost of grid stabilisation. In particular, international electricity trading generates high costs for investments in the transmission system and for operation, as well as for grid losses and system stabilisation. International traders, who currently do not have to contribute to system costs, benefit from this.

- **Consumer rights and regulated tariffs**

- Affordability of the basic supply of energy must be ensured. A basic amount of energy should therefore be guaranteed by regulated tariffs that remain stable over the medium term and are not linked to changes in wholesale and/or stock exchange prices. It should take the form of an obligation for producers and suppliers. Higher costs should only be reimbursed if they have been proven (reversal of the burden of proof).
- Most households want planning security and an affordable energy supply, rather than complex tariffs that are difficult to understand and lead to volatile end-user prices due to being linked to indices. Energy suppliers should be required to offer at least one fixed-price tariff at affordable prices.
- Protection from disconnection during the winter months: Electricity, gas and heat are

essential, especially in the winter months, to be able to participate in society. A continuous energy supply must be guaranteed. Protection from disconnection must also be accompanied by possible solutions, such as long-term instalment agreements, so that, in addition to maintaining the energy supply, there are also options for repaying any debts incurred. Support funds must be established for people who cannot pay their bills at all.

- **Ensuring democratic legitimacy of regulatory decisions**

- Decisions regarding the distribution of costs are often made in a non-transparent manner by transmission system operators and regulatory authorities. Matters with distribution policy implications should be decided solely by institutions with democratic legitimacy and not by authorities or interest groups. The social partners must be more involved in the design of the energy system and regulation

What AK is calling for in detail

The proposal for reform of the European electricity market presented by the Commission on 15 March 2023 essentially retains the existing system – including the merit order system. The most expensive power plant still needed to cover demand – often a gas-fired power plant – thus determines the price of electricity, even if the generation costs from hydropower, wind power, photovoltaics or nuclear power are much lower.

Overall, the Commission's proposal falls short of the bold and comprehensive reform that had been hoped for. Given the reform steps that are needed, the measures can be deemed inadequate. Essentially, only long-term trading of electricity is being pushed. This means that futures contracts, i.e. contracts traded in advance on the stock exchange for the purchase and sale of electricity, are set to gain in importance. In addition, there are to be more direct contracts between producers and buyers in the future. Price ceilings and price floors (contracts for differences) are to apply to the subsidisation of new generation plants, at least for a few years.

That does not solve the real problems. Prices for gas, and therefore also for electricity, remain high. Despite the recent drop in prices, wholesale gas and electricity are still significantly more expensive than the long-term average and are likely to remain so. Trading prices have thus become completely decoupled from actual pro-

duction costs. The massive redistribution from energy consumers to energy companies is continuing. As already mentioned above, the high prices are not only a massive burden on consumers, they are also damaging the entire economy.

Concerning the proposed amendments to Regulation (EU) 2019/943 on the internal market for electricity

Ad Art 1 Fundamental Principles: Energy as part of services of general interest

Energy supply should also be defined in EU law as part of services of general interest and the overriding energy policy goals should be enshrined in law.

Energy is not a commodity like any other, but an essential basis of our economic and social system. Therefore, energy supply is classified as a service of general interest. The main task of the energy sector is a secure, affordable, and sustainable supply of energy.

Furthermore, it is important to ensure reasonable prices for electricity producers and consumers. A basic provision is also necessary for this:

Consumer prices for electricity must reflect actual production costs (plus an appropriate profit mark-up). This means that the wholesale price must correspond to the average costs of all types of electricity production and not the maximum price, as is currently the case. In order to ensure appropriate remuneration for electricity producers, investment security and the expansion of renewable energy, technology-dependent prices are necessary.

Ad Article 19a Power Purchase Agreements: PPAs must not lead to higher prices

Article 19a provides for the promotion of Power Purchase Agreements through government loan guarantees. We would like to point out that widespread use may lead to higher and more volatile prices due to existing market mechanisms, since

1. there is a risk that PPAs will lead to a bifurcation of the market. Large consumers will be able to secure their electricity supply through long-term PPAs, whilst private end consumers will not benefit.
2. Renewable energy contracted through PPAs no longer participates in the spot market, resulting in a fall in liquidity on the spot market. However, the use of PPAs not only removes quantities from the spot market, but also the lowest-priced suppliers.

Indirectly, PPAs thus lead to a reduction in spot market liquidity and higher spot market prices.

3. In most cases, the electricity price in end-customer contracts is indexed to the spot price on the stock exchange. There is therefore a risk that the widespread use of PPAs will lead to higher retail prices.

The actual goal of stabilizing prices is thus thwarted.

Accordingly, the contract terms of PPAs should be fixed and a general reference market price should be published.

The contracting parties of each PPA shall report quantity, prices and duration of each contract to the national regulatory authority. The national regulatory authority shall publish a daily average electricity price, which shall be the weighted average price of all quantities of electricity traded in this bidding zone for that day.

Ad Art 19b Two-way Contracts for Differences: Need for a maximum price

Contracts for Differences (CfDs) are a means of providing investment certainty for new renewable generation plants. As these are to be applied exclusively to plants built with government support, only a very small proportion of total power generation capacity is covered by such Contracts for Differences. A significant effect on the actual electricity prices for end consumers is not to be expected if the current proposal is implemented.

Recent examples such as the Austrian Renewable Energy Expansion Act (EAG) show that determining the reference price for Contracts for Differences through competitive bidding often does not work. The reason is that demand for additional generation capacity significantly exceeds the supply of potential new plants. It is therefore necessary for a maximum price to be established on a regulatory basis.

3.(c) For the „two-way contracts for differences“, technology-specific maximum prices are to be set in each member state. The maximum prices shall be based on the costs required to operate a cost-efficient, state-of-the-art plant. The costs shall include depreciation and an appropriate return on equity and debt capital for the investment.

Revenue cap necessary for inframarginal generation plants

The current proposal does not address the key problem, namely the decoupling of electricity prices from actual production costs. Therefore, a revenue cap(s) is still needed for inframarginal generation plants so that the high costs of economically necessary price support measures can be borne. Accordingly, it is necessary for Articles 6-7 of the Council Regulation on an emergency intervention to address high energy prices (COM(2022) 473) to be incorporated into the Internal Energy Market Directive.

In order to ensure that excess profits are effectively skimmed off, the revenue cap should be in suitable relation to the actual production costs (plus a profit mark-up). With this in mind, the EU-wide (1) maximum revenue cap must be set lower, with mandatory (2) setting of technology-specific revenue caps based on actual production costs (plus a profit mark-up).

[Article 6 COM(2022) 473]

Mandatory cap on market revenues

- 1. Market revenues of producers obtained from the generation of electricity from the sources referred to in Article 7(1) shall be capped to a maximum of 100 EUR per MWh of electricity produced.*
- 2. Member States shall ensure that the cap targets all the market revenues of producers, regardless of the market timeframe in which the transaction takes place and of whether the electricity is traded bilaterally or in a centralised marketplace.*
- 3. Member States shall decide whether to apply the cap on revenues at the settlement of the exchange of energy or thereafter.*
- 4. Without prejudice to paragraph 1, Member States shall maintain or introduce measures that further limit the market revenues of producers with regard to their actual production costs, provided that these measures are proportionate and non-discriminatory, do not jeopardise investment signals, ensure that the investments costs are covered, do not distort the functioning of electricity wholesale markets, and are compatible with Union law.*

[Article 7 COM(2022) 473]

Application of the cap on market revenues to electricity producers

1. The obligation in Article 6 shall apply to the market revenues obtained from the sale of electricity produced from the following sources:

- (a) wind energy;
- (b) solar energy (solar thermal and solar photovoltaic);
- (c) geothermal energy;
- (d) hydropower without reservoir;
- (e) biomass fuel (solid or gaseous biomass fuels), excluding bio-methane;
- (f) waste;
- (g) nuclear energy;
- (h) lignite;
- (i) crude oil and other oil products.

2. The cap provided for in Article 6(1) shall not apply to demonstration projects or to producers whose revenues per MWh of electricity produced are already capped as a result of State measures.

3. Member States may, notably in cases where the application of the cap provided for in Article 6(1) leads to a significant administrative burden, decide that the cap does not apply to producers generating electricity with power-generating facilities with an installed capacity of maximum 20 kW.

Ad Art 18 Virtual hubs and grid costs: Fair distribution of grid costs based on the polluter-pays principle necessary

The establishment of virtual hubs only makes sense if cost allocation for the transmission system is reorganised. Producers and traders must also contribute to system costs. That applies to grid costs, grid loss costs, the provision of reserve capacity and the cost of grid stabilisation. In particular, international electricity trading generates high costs for investments in the transmission system and for operation, as well as for grid losses and system stabilisation. International traders, who currently do not have to contribute to system costs, benefit from this. In order to provide incentives for generation close to the place of consumption and to prevent the avoidance of system costs, the allocation of grid costs must be redesigned according to the polluter-pays principle. A switch to nodal pricing should therefore be examined at least, as this could sustainably improve overall system efficiency ([SynErgie: Discussion of misconceptions of nodal pricing systems](#) (German only)).

Concerning the proposed amendments to Directive (EU) 2019/944 on the internal market for electricity

Ad Art 4 –

(a) Reasonable Price:

A basic provision is needed here to ensure that end-user prices reflect actual production costs (plus a profit mark-up):

Member States shall ensure that Consumer prices for electricity reflect actual production costs (plus an appropriate profit mark-up).

(b) Fixed-term, Fixed-price Contract: Enshrine the principle of affordability in law and prevent prohibitive behaviour

In principle, the right to a fixed-price tariff that is valid for at least one year is to be welcomed. However, without specific regulations in terms of price, this is dead letter law. In accordance with the preliminary remarks, Article 4 should therefore also include more detail as follows:

*Member States shall ensure that the national regulatory framework enables suppliers to offer fixed-term, fixed-price contracts and dynamic electricity price contracts. Member States shall ensure that final customers who have a smart meter installed can request to conclude a dynamic electricity price contract and that all final customers can request to conclude **an affordable fixed price and fixed term electricity price contract** of a duration of at least one year, with at least one supplier and with every supplier that has more than 200 000 final customers.*

(c) Price Information: Specification required

It is often difficult for consumers to obtain information about their own contracts once the contract has been concluded. The government regulator E-Control does not have all the price sheets either, which leads to problems in the dispute resolution body (conciliation service) and in terms of market monitoring. Therefore, the following provision should be included:

The relevant information must be made available to customers on request at any time. The corresponding price sheets must also be submitted to the regulatory authority.

Ad Art 27a Supplier of last resort: Preventing prohibitive behaviour

To avoid discrimination and ensure fair competition, all

energy suppliers should be required to contribute to security of supply as a “supplier of last resort” in line with their market share.

1. Member States shall appoint suppliers of last resort at least for household customers. Suppliers of last resort shall be appointed in a fair, open, transparent and non-discriminatory procedure. All energy suppliers must be available as suppliers of last resort in accordance with their market share.

2. Final customers who are transferred to suppliers of last resort shall not lose their rights as customers, in particular those rights laid down in Articles 4, 10, 11, 12, 14, 18 and 26. The contractual conditions of a supplier of last resort must not be discriminatory or deterrent. The contract conditions must reflect the actual production costs (plus appropriate mark-up).

Ad Art 28a Protection from Disconnections: Ensure affordability

Protection from disconnection for vulnerable groups is welcome. However, arrangements must be made for members of the groups concerned to pay for the costs incurred for the (continued) purchase of electricity.

For vulnerable customers with payment difficulties, an individual concept must be developed that enables the settlement of outstanding payments. Vulnerable customers with payment difficulties must be given the right to pay by instalments over a period of at least one year.

Ad Art 66a Access to affordable energy during an electricity price crisis: Effective regulation necessary

Protection from disconnection for vulnerable groups is welcome. However, arrangements must be made for members of the groups concerned to pay for the costs incurred for the (continued) purchase of electricity.

We propose a simple but effective mechanism based on the Austrian “Electricity Cost Subsidy Act”. This can take effect automatically and should be funded by skimming off excess revenues.

- The electricity price for the purchase of a basic supply quantity should not exceed the price of 10c net per kWh.
- If the average electricity exchange price in two consecutive months exceeds 100 euros/MWh, suppliers who have to bid below their actual procurement

costs would have the right to compensation for their differential costs.

- The energy suppliers would have to prove the costs.
- This “price brake” would be financed by skimming off excess revenues in the field of inframarginal generation.

Replaces Article 66a (1-4)

*1. if the following condition is met:
very high prices in wholesale electricity markets:
an average price of at least euro 100 per megawatt hour for two consecutive months.*

2. Member States may for the duration that the condition in 1. is met exceptionally and temporarily set a price for the supply of electricity which is below cost provided that the following criteria are fulfilled:

- (a) the price set for households only applies to at most 80% of median household consumption and retains an incentive for demand reduction;*
- (b) the price must not exceed 10 cent per kilowatt hour.*
- (c) there is no discrimination between suppliers;*
- (d) if suppliers can prove that they are supplying below cost, suppliers are compensated for that.*
- (e) all suppliers are eligible to provide offers for the price for the supply of electricity which is below cost on the same basis.*

3. the compensation in 2. d) must be financed by the revenues of a cap on market revenues for the generation of electricity from inframarginal technologies.

Position paper of the Austrian Federal Chamber of Labour:

A detailed analysis of the problems of the electricity market design and how it needs to be reformed can be found in our position paper: [Reform of the electricity market of the EU](#) (German only).



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