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Polski Komitet Energii Elektrycznej
Polish Electricity Association

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Polish Electricity Association position on
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

The root of current energy crisis first and foremost is the energy fuel markets crisis not the wrong architecture of the energy market. The current model of the energy market, based on the merit order mechanism and the price formation by marginal costs rewards the most cost-effective solutions, provides a reliable indicator of the situation on the energy market as well as, in many cases, enables financing of new investments. Accordingly, it ensures that the operating costs of the energy system are balanced and guarantee benefits for consumers. Therefore, the fact that legislative projects regarding electricity market published by the European Commission present more evolutionary than a revolutionary approach is a step in a right direction.

To make achieving climate goals possible , the legislative changes have to take into account not only the need to preserve the internal energy market of the European Union but also the issues of cost efficiency, competition between market participants, and cross-border trade.

Temporary measures and interventions in the electricity market established to address the current energy crisis should not be extended beyond the already specified period.

The fact that the extraordinary measures, such as revenue cap and regulated prices, imposed in response to the current crisis have not been extended is a positive development. A permanent introduction of price caps or the mechanism of permanent redistribution of windfall profits would be particularly disadvantageous and distorting the functioning of the EU single energy market. This would significantly limit the investment capacity of firms in the energy sector.

One of the goals of the reform is to ensure that lower costs of energy generation from renewable and nuclear energy sources translate more into energy prices for consumers.

In our view, the factor that will contribute to the global reduction of energy prices for consumers is more effective support for the increase in the use of renewable energy sources, provided, among others, by ensuring stable conditions for their development and removing legislative barriers, including but not limited to in the area of long-

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term contracts, permit issuance, and the pace of expansion of the grid infrastructure.

Underinvestment in renewables is caused not because of lack of efficient markets but because of grid constraints or specific spatial planning or environmental rules, that may increase the length and risk of investment process. Incoming changes to the electricity market architecture should solve this kind of problems.

Better solution is to provide mechanisms that provide stable investment and operations framework, decrease risk premiums and cost of capital, remove barriers of entry and result in improved liquidity on the markets, as the new regulation proposes.

We also support the promotion of the use of public long-term contracts, settled, for example, in the formula of contracts for difference, dedicated to new generation capacities. They can contribute to guaranteeing the long-term sustainability of project revenues, regardless of prices on short-term markets. The implementation of long-term contracting by the public party is supported primarily by the lower cost of obtaining financing by the state compared to commercial companies, even those featuring high ratings.

The review of the functioning of the current energy market model should also address the issue of capacity mechanisms, including capacity markets,, which in many countries have become an integral part of the market and the way to better identify the needs of the power system and its balancing, as well as a necessary tool to ensure security of energy supply.

Member States should be able to freely choose whether to implement capacity mechanisms, and the process of approval should be smoother than today. However, current legislation defines them as temporary additions to the energy-only market model and as a last-resort measure to address security of supply concerns. It is necessary to introduce a simplified procedure for extending the operation of capacity mechanisms by countries in which it has been introduced and effectively fulfills its role.

The framework for the functioning of energy markets should ensure a balance between stable revenues of market participants, adequate incentives to participate in the market, and price levels attractive to customers.

New solutions to ensure a better balance between short-term and long-term signals in price structures should take into account long-term contracting opportunities. The foregoing, accompanied by the removal of regulatory barriers, will allow consumers to benefit directly from competitive energy prices.

On the other hand, funds obtained from CfDs should be redirected as far as possible to investments in new generation capacity and grid infrastructure. Customer protection should be selective, addressed only to those in need, and dependent on the structure of energy carriers.

Assessment of specific proposals

I. Regulation on the internal market for electricity

1. Article 7a Peak shaving product

The mechanism can reduce the scale of rapid price hikes in short-term markets (a benefit for customers). However, the same effect could be ensured through broader participation of DSR in solutions already in place, such as the capacity mechanisms. The way of agreeing the mechanism, which is to rely on a proposal from transmission system operators approved by the national regulatory authority, disregards other market participants and stakeholders from the discussion on its specific parameters. Therefore, we propose to delete proposal on this mechanism or move it to the Risk Preparedness Regulation so that it is confined exclusively to emergency situations

2. Article 7b Dedicated metering device

There are doubts about the definition (like e.g. dedicated metering device versus sub meters; equipment used only in cases of lack of smart metering or as a specific individual device no matter if there is a smart meter or not) and as to who is to be the owner of the device. In addition, in providing for the "sufficient level of data granularity", it is not clear what precisely this means – 15 minutes, 60 minutes, or perhaps in near-real time. Therefore, the implementation of this provision will require supplementing it by technical specificities to be defined at the national level. Furthermore, in order to fulfill its tasks (i.e. to allow use of data by system operators) by a dedicated metering device it should meet at least standard operability level criteria.

3. Article 9 Forward markets (virtual hubs)

The introduction of such a solution may distort the functioning of long-term markets while failing to resolve liquidity issues. It increases the risks involved in long-term security and its costs. The procedure for developing a proposal for the establishment of virtual hubs (ENTSO-E proposal to be submitted to ACER) disregards other market participants, whereas the proposal development process should involve, as early as practicable, trading companies and as wide a group of participants as possible.

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It should be mentioned that the introduction of virtual hubs may generate non-obvious signals in the market - not only in the domestic market, but also in the markets of countries in the zone - due to the different RES support schemes in these countries.

It is not clear what values added virtual hubs are to provide relative to the possible division of bidding zones where the zones fail to provide relevant price signals.

The provision proposed regarding establishment of regional virtual hubs in the forward market should be deleted. Non-tested technical tool should not be embedded in primary regulation. The proposal is not addressing the issues behind the current lack of liquidity caused by high cash collateral requirements, regulatory interventions, barriers in the cross-border trade or power generation scarcity.

4. Article 18 Tariff methodologies

We welcome the direction of the proposal (anticipatory investments) - investments provided for in the network expansion plan are already included in the tariff proposal – nevertheless, noticing the distribution issues responds to calls from the energy sector. However, traditional remuneration schemes have encouraged DSOs to invest mainly in network reinforcement. EU rules need to improve them to provide incentives for DSOs to use the most cost-effective solutions. This should include the procurement of flexibility services.

It should be noted that the way tariffs are set should ensure network and market development, but it is equally important to ensure that network assets can be resorted.

5. Article 19a Power purchase agreements (PPAs)

We support the introduction of public guarantees to reduce the risk of insolvency of an entity with which a generator concludes a long-term PPA. We have defined the lack of such guarantees as a major obstacle to the use of PPAs as way of securing stable price levels and implementation of investment projects. We also welcome the fact that the Commission has noticed the relationship between the development of PPAs and ensuring liquidity in the short-term market.

We welcome the imposition of the requirement that PPAs should also define the rules for early termination of the agreement. These rules should include exit fees (on both supplier and consumer side) that would reflect the real costs incurred due to early termination of the contract.

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The development of PPAs will ensure greater certainty of prices for generators and customers. It is necessary to clarify the relationships between new Article 19a and the RED provisions, both those already in effect and planned (REDIII). In particular, this applies also to aid guidelines with regard to the design of RES support systems, as the planned changes aim to additionally incentivise projects with PPAs concluded. Member states, along with promoting the use of PPAs and creating a framework for PPAs, should take into account the need to preserve liquidity in the market and the stability of the whole system.

6. Article 19b Contracts for difference (CfDs)

What is found to be a good direction is that contracts for difference are dedicated to new generation sources . and are not obligatory for existing capacities, as they were commissioned under different market conditions. Smaller operators - especially those of the installations of capacity below 1 MW - should be exempted from the obligation to use CfDs.

The applicability of CfDs will be extended to include investments aimed at repowering existing power-generating facilities, which means that the oldest RES generation units will also be subject to mandatory CfDs in the event State aid is used. This will lead to indirect covering of existing capacities with CfDs. We suggest making it clear that CfDs would be mandatory only for an entirely new capacities, not the repowered or retrofitted one. It is also necessary to specify the applicability of CfDs in the case of aid instruments.

If a power exchange price is higher than an auction price, a positive balance results, which is ultimately transferred, within respective settlement periods, to what is effectively the central government budget (Settlement Body). .Funds held in the SB account are, in general, used to balance the account (RES support costs). The revenues from CfDs should be used to reduce the energy prices both in short- and long-term. Therefore, the member states should have an option to redistribute some of the revenues to support the investments in renewables, energy efficiency, storage etc. in SME and low-income households, as well as in the development of distribution grid.

With no reference price calculation method precisely specified, CfDs in the proposed model can have a similar effect to the price caps currently applied (contract price and redistribution of funds to final customers).

In order to avoid a scenario of a lock-in of too high or too low strike price which have negative consequences for the investors or the consumers, there is a flexibility mechanism needed in a form of a simplified procedure of the strike price adjustment.

Both the contracts for difference counterparties should be allowed to ask the price settled in that contract adjustment according to the changing macroeconomic and sector specific variables. Such adjustment shall not require the European Commission approval unless the level of adjustment is above [25%] of the current price level.

The European Commission is proposing a mandatory CfDs for new investments in nuclear power. It should not be limited only to CfDs for this type of unit. CfDs could be a first-choice mechanism in countries where other advanced mechanisms like capacity market are not in place. In countries with a highly developed dual-commodity market, it must be the Member State that has the right to choose the optimal nuclear financing tool from the point of view of the general interest of the economy. An alternative way of financing nuclear power, such as capacity market, should therefore be allowed for.

7. Article 19c Assessment of flexibility needs

With a growing share of RES in the energy mix, the issue of system flexibility will be gaining in significance. It's not certain whether organisations (ENTSO-E, EU DSO Entity) and ACER are correctly reflecting the national specificities regarding the format of data collected and the methodology of analysing flexibility needs. It is also necessary to emphasise the equal role of ENTSO-E and the EU DSO Entity in the process.

What can give rise to additional risk is the emphasising of the role of flexibility mechanisms (in selected areas and technologies – DSR, storage) without looking at the entire operation of the electricity system and solutions alternative to flexibility (e.g. upgrade/ development of the distribution network).

It is too soon to expect first national assessment of flexibility needs (on DSR and storage) report to be ready by January 2025 – it is proposed to move that date to 1 January 2026, as it e.g. requires gathering complex data and many interim approvals from different European and national institutions and organizations.

8. Article 19e Flexibility support schemes

The objective to be achieved by introducing the new instruments (capacity adequacy in the system in the event of growth in demand) is implemented in principle in the form of capacity mechanisms. We are not against the introduction of the new instrument, but the capacity mechanisms already in place should not be subject to additional assessment in terms of promoting flexibility services (storage, DSR).

The assessment of the readiness of capacity mechanisms to promote those solutions was carried out as early as their notification stage – the correct identification of the potential of DSR and storage is required by the currently effective provisions of the Electricity Market Regulation and the Guidelines on State aid for climate, environmental protection and energy (CEEAG), and therefore it should be taken for granted that the existing capacity mechanisms (including capacity markets) correctly identify the potential of those technologies.

In any case, it should be made clear that the change to the parameters of the existing mechanisms suggested by the Commission for broader promotion of flexibility is not a major change and does not require re-notification and includes investments in pumped hydro storage and gas storage facilities providing energy storage for renewable hydrogen.

9. Articles 50 and 57 Information on the capacity for new connections, Article 31 of EMD

Although it is a good proposal to allow RES development in the most suitable locations, however it might require costly new network management systems for DSOs; and the problem of sensitivity of data and their commercial value should be considered. It is suggested that this new connections information should be considered as a firm obligation also from the perspective of potential investors starting the connection permitting process and not finishing it in reasonable time.

II. Directive on common rules for the internal market for electricity

1. Article 4 Free choice of supplier

The use of several metering and billing points by customers may lead to unnecessary complication of the process and potentially lead to distortion of transmitted data, and therefore it is necessary to clearly define priority to take into account the main meter for billing purposes for the connection point concerned.

2. Article 11 Fixed electricity supply contract

Long-term contracts should guarantee stability and certainty for both parties involved. The imbalance due to the customer having the option of early termination of a long-term commitment may give rise to risks for the electricity supplier, in the form of problems with properly securing other agreements, liquidity or long-term investment planning.

3. Article 15a Right to energy sharing

This solution may give rise to risks associated with network management, balancing, settlement and monitoring. In is necessary to ensure a neutral impact of the mechanism on settlements concerning the actual, physical flow of electricity in relation to DSO services.

Many uncertainties remain at the present stage, e.g. who would be responsible for the management of settlement operations between entities and the provision of template agreements, etc.

Owing to the local extent of the proposed solution, it should be possible to limit its application to the operation area of a single DSO or to a limited geographical area which are specified as much as it's possible. Distribution system operators and possibly trading companies should be duly remunerated for the provision of services necessary to exercise the right to energy sharing.

4. Article 18a Supplier risk management (hedging)

The introduction of mandatory hedging, in particular with the obligation to use one specific instrument, may have a negative impact on the competitiveness of electricity suppliers and their ability of efficient resource management and investment planning.

We propose to introduce the alternatives to mandatory hedging: regular stress tests to verify the ability of suppliers to face major changes in the market dynamics and reporting requirements towards regulators on how suppliers ensure their resilience.

We have doubts if the proposed solution will provide adequate hedging against market volatility and it may in fact drive up costs for consumers where competition is reduced as part of suppliers' hedging strategies are normalised by tying some requirements to a particular financial instrument. Given the inherent variability of most renewable generation contracted through PPAs, it is not an efficient instrument to hedge against "risk exposure to changes in wholesale electricity prices."

The way of choosing the method of electricity supply hedging should at the discretion of each supplier.

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5. Article 27a Supplier of last resort

The solution where there is a supplier who ensures the continuity electricity supply (or in fact sale) in the seller chosen by the customer ceases to supply electricity works in many countries and is a good protection for final customers. However, there is risk that suppliers of last resort may be obliged to supply electricity at non-market prices (tariff-based), which may have adversely affect their financial situation.

6. Article 66a Access to affordable energy during a price crisis

The fact that the extraordinary measures imposed in response to the current crisis have not been extended is a positive development. A permanent introduction of price caps (either as mandatory or voluntary option for member states) or the mechanism of permanent redistribution of windfall profits would be particularly disadvantageous and distorting the functioning of the market. This would present the risk of limiting the investment capacity of firms in the energy sector.

However, the provisions on the conditions that have to be satisfied for an “electricity price crisis” to be declared should be more precise – e.g. what wholesale markets will the increase in electricity prices and high price continuation forecast be referred to.

The maximum time for which an electricity crisis could be declared must not be more than six months, as the prices of resources and fuels undergo dynamic fluctuations over periods of less than one year. It should be made clear that electricity suppliers will receive full compensation for selling electricity below purchase cost, reflecting the actual loss.

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