

Implementation guidance for the price cap on market revenues

On 30th September, [the Council Regulation on an emergency intervention to address high energy prices](#) and foresee the implementation of a price cap on market revenues of inframarginal electricity producers.

The Power Sector's recommendations aim at feeding the guidance document to be issued by the European Commission following Art. 6.5 of the Regulation.

The power sector's recommendations aim at:

- Ensuring a right calculation of the market revenues and therefore a correct implementation of the cap on real/actual market revenues (e.g. avoid capping/taxing the same revenue twice, or taxing non realised revenues). Incorrectly assessing a generator's revenue could:
 - have significant financial implications and negatively impact investors' confidence rising financing cost for a capital-intensive energy transition.
 - Reduce incentives to protect customers through hedging & long-term contracting
- Avoiding a patchwork approach of implementation at national level endangering the coming back to normal market functioning, while allowing for sufficient flexibility to adapt to the different national and corporate realities.

The Power Sector would like to strongly caution Member States on using derogations foreseen by Art. 8 allowing to deviate from the adopted EU baseline. As highlighted in recital 11, unequal treatment of generation technologies would lead to significant distortions. Equal treatment of all electricity producers, intermediaries and consumers throughout Europe will ensure energy resources are still allocated efficiently and avoid distorting cross-border flows. These actors still buy and sell electricity in one single European market, but they risk facing different versions of the clawback (plus additional price control mechanisms) to address the same problem.

In particular, we urge Member States to consider the following points:

- **Avoid making use of art. 8.1(a).** – the market revenue cap should not be lower than 180 EUR/MWh and other wholesale electricity price control measures enacted since September 2021 should be removed.
- **Avoid making use of art. 8.1(c), (d) and (e)** – the market revenue cap should only apply to technologies listed in art. 7.1.

The European Commission's guidance document shall:

- **Take into account the complexity of estimating “market revenues” & consider all revenue/cost streams to ensure a correct implementation of the price cap:**
 - **across timeframes** (e.g. day ahead and intra-day markets, balancing markets settlement of physical and financial instruments with different maturities).
 - **across transactional instruments** (including but not limited to forward/future hedging, OTC contracts, long-term bilateral contracts, internal transactions, proxy and portfolio hedging i.e. gas, coal and carbon contracts used in the absence of liquid forward electricity markets, PPAs or any other transactions with suppliers/clients, etc.)
 - **taking into account the corporate structure** (the application of the cap has to take into account the different corporate organisations to ensure that only the actual revenues are taxed and no revenues are taxed twice, since, for instance, not all risk hedging is carried out by the entity owning the generation assets)
 - **taking into account different jurisdictions** (e.g. transactions can be carried out in different countries and subject to different supervisors and regulations).

- **Allow producers to calculate the actual net market revenue value for the delivery period of the measure** (minimum one month or ideally the foreseen delivery period of the measure) as a result of all electricity transactions for that given period & then apply the cap accordingly.
 - **An assessment of market revenues transaction by transaction is not feasible due to the practice of portfolio hedging followed by most utilities**, as there is not a direct link between the production of a given plant and a specific contract or hedge. Therefore, the assessment of the market revenues from producers should consider the whole portfolio of hedging instruments. If one would cap market revenues transaction by transaction (for those transactions where such cap could be applied), there is a risk to not capture the fact that production revenues in a certain hour/period is generally obtained from multiple transactions (across time frames, etc...) and therefore wrongly estimate actual market revenues leading to significant financial implications and negatively impact investors' confidence rising financing cost for a capital-intensive energy transition.
 - **Such assessment shall be performed at most on a monthly basis:** a more frequent settlement is extremely complex and burdensome as producers need to include not only transactions at different prices but also loss-making transaction (e.g. if to the actual production is lower than the energy sold forward there could be a loss when the energy is bought on the market - such loss should compensate the profit). Whilst we would consider monthly being the minimum timeframe, it would be preferable to do on over the full-time horizon of the measure i.e. 1 December 2022 to 30 June 2023.

To properly calculate net market revenues while allowing for sufficient flexibility to adapt to the different national and corporate realities, the Power Sector therefore recommends the European Commission and Member States to adopt a **system based on a self-assessment/declaration of the electricity producers and audit by NRAs**. Such system shall not discriminate between different corporate structures or nature of transactions.

This is the only feasible way to go to handle diversity of realities (as implemented in Spain since September 2021 following implementation of a similar measure via Royal Decree 17/2021):

- **Electricity producers submit a monthly detailed statement** to [their respective NRA or other competent authorities] with:
 - **The production of their inframarginal plants during the month** (per group of technology and per country)
 - **Produced volumes and average achieved price** (total volume sold/bought in the different markets, to end customers, to wholesale counterparties or via intragroup transactions, with corresponding weighted average price per group of technology, per country, per month).
 - Electricity producers shall have the right to correct the self-declared data within a period of [3] months in order to accommodate for booking or administrative errors.
- **Electricity producers' statements may be audited by a third party**
- **The national regulatory authority verifies the self-assessment** based on a sample of contracts/counterparty bills.

For more details, please see our [detailed position paper](#).

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