

To the attention of:  
**Commissioner Simson**

Brussels, 26 January 2023

Dear Commissioner Simson,

On behalf of Eurelectric, the European electricity association, **we are writing to you to express our concerns about the recent Spanish Non-Paper “Proposal to reform the EU’s wholesale power market.”** In particular, this letter aims to raise awareness of the **implied risks for the integrity of the internal electricity market and for investors’ confidence** if similar ideas were considered at EU level as part of the upcoming electricity market design review.

**We recognise some positive aspects of the proposal, specifically 1) the recognition of the need for well-designed capacity markets** which are still largely underdeveloped to ensure the needed investments in carbon-neutral firm and flexible capacities **and 2) the use of auctions for certain new renewable generation** which allows the benefit of low and stable prices to be passed to consumers. Nevertheless, the proposal contains some fundamental flaws and essentially implies a re-regulation of the energy sector.

**Firstly, the proposal risks increasing costs and prices by eliminating the market and competition.** Indeed, by proposing a centralised model where the regulator acts as the sole buyer of a large part of generation and where the energy mix is largely conditioned by planning decisions, the market will be weakened since this will undermine the forward market and competition in trading. This is because all customers would have the same supply, the basket of contracts for difference resulting from auctions and the regulated contracts with hydropower and nuclear. Moreover, the absence of a cost-revealing market means that the inefficiencies of the regulator in setting electricity prices are ultimately paid for by *all* consumers.

**Secondly, the fragmentation of the European internal market is a serious risk.** After building an internal energy market for over 20 years, the Spanish paper is suggesting to fundamentally disrupt them. What is proposed is that the prices that European consumers will pay will be determined by what happens within the Member State’s borders and will differ from one to another. Consumers will no longer benefit from an internal energy market that guarantees competitive electricity prices and promotes security of supply at least cost.

**Thirdly, the proposal increases the regulatory risk of new investments.** The implementation of the proposed measures creates a framework of uncertainty for investments based on a market price, putting their realisation at risk. As it is framed in the model, the market loses its role. Risks and uncertainties are created that investors cannot cover as they depend on the decisions taken by the regulator. Furthermore, the uncertainty associated with the new market design will delay investments in the short term, which are critical to reduce gas dependency and mitigate the current crisis.

**Fourthly, the Spanish document disregards the role of PPAs and removes the demand signal from marginal pricing.** The Spanish government correctly identifies some of the problems for the development of renewables based on PPA contracts. This notwithstanding, the solution they propose is not addressing these issues but rather entrusts the entire development of new renewables to a regulated scheme (CfDs with the regulator). The design features of CfDs are not specified in the paper, but we are skeptical of the assumption that the application would not distort bidding in short-term markets (intraday, day ahead). It’s entirely possible that plant optimization incentives for example are diluted or lost entirely.

As Eurelectric, we believe that long-term contracts, including PPAs, will play a critical role in large-scale investment in RES and low-carbon technologies which are capital intensive, while providing efficient hedging opportunities to suppliers and consumers. Taking the example of Spain itself, over the last five years we have observed a growth in renewables of 21 GW thanks to bilateral contracting and the development of PPAs. Meanwhile, the analysis of auctions in the last five years indicates a growth of 6 GW, of which it is estimated that only 1.5 GW will be built. The case of the last auction in November is particularly significant; only 1% of the 3.3 GW auctioned by the government were awarded – a total failure.

**Finally, the proposal aims to introduce regulated prices for hydropower and nuclear generation.** This idea is based on three incorrect assumptions on the reality of the European Market. We outline these assumptions in the Annex.

### The optimal market design for net zero

Looking ahead, to deliver '[A Market Design Fit For Net Zero](#)', Eurelectric firmly believes that the current market design, **based on the merit order and marginal pricing**, should be preserved as it ensures the short-term optimization and operation of the energy system, while delivering significant benefits for consumers.

It should, however, be complemented by the following critical add-ons:

- a. **An enhanced customer contracting framework, enabling sufficient tools for long-term hedging and contracts**, to bring the benefit of RES and low-carbon generation more directly to consumers, while fostering customer engagement.
- b. **A market-compatible investment framework for renewables and low-carbon technologies** (including firm and flexible resources such as demand-side response and storage), which are capital-intensive technologies, that still preserves competition.
- c. **A framework that maintains adequacy and security of supply and that meets evolving power system requirements**, in particular because of decentralisation and increasing flexibility and firmness needs.

Thank you for your attention to this matter. We look forward to discussing our concerns further and finding a solution that benefits all stakeholders.

Yours sincerely,



Leonhard Birnbaum  
Acting President



Kristian Ruby  
Secretary General  
Eurelectric

## Annex - Incorrect assumptions in the Spanish non-paper

1. The Spanish Non-paper on the Electricity Market Design aims to capture excess revenues due to the rise in the spot/day-ahead market price but, at EU level, the vast majority of energy is sold forward months or years before delivery. Therefore, the amount of excess revenues collected will be a small fraction of what is expected, as shown by the experience with the implementation in Spain of the Royal Decree-Law 17/2021 in place since September 2021, which was expected to collect €9bn but raised only €366mn between September 2021 and mid-2022.
2. Hydropower and nuclear technologies are not free of competition and the theory of "market non-contestability" does not hold true. The development of renewable energy such as wind and solar has eroded revenues from existing hydropower and nuclear plants and the increased ambition for renewables and efficiency gains in CAPEX of these technologies will maintain and even increase the competition.<sup>1</sup> Not to mention that the definition of regulated prices for all hydroelectric installations, with their enormous diversity, is extremely challenging.
3. The claim that the hydro and nuclear plants are amortised is not true. There are significant investments in these plants in the last years that have not yet been recovered and revenues obtained by these plants over the last twenty years have been below their total costs.

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<sup>1</sup> In the case of Spain, the maximum price at which nuclear, hydroelectric and renewable energy plants can sell is 67 €/MWh and the State collects everything that is above that price. If these plants had sold their production at the market price (as the diagnosis states) the State would have collected €12.3 billion in 2022, whereas in reality the State has only collected €430 million.