Brussels, 9 March 2023

Subject: Designing an electricity market design that delivers the necessary investments and benefits consumers

On behalf of Eurelectric, the European Power Sector Association, ahead of the European Commission's expected publication of the electricity market design review on 14th March, we are writing to you to share our thoughts on how your proposal can be improved. This input is a reaction to the leaked draft which has been widely circulated across media outlets.

Positive elements

We welcome many aspects of the Commission's draft text and ask that the following five elements shall remain in the final version of the text due for adoption.

Firstly, **short-term wholesale markets based on marginal pricing is essential for an efficient functioning power system.** It has ensured an efficient dispatch of generation and flexible assets, efficient cross-border trading and reduced volatility despite the exceptional circumstances of the energy crisis. We are pleased to see that this essential feature of European electricity market design is not being questioned in the proposal.

Secondly, **the reform focuses on further developing better long-term markets & contracts.** We believe that this should be the focus on the market design reform. An updated market design should more directly deliver the economic benefits of renewable and low-carbon generation to customers. The surest way of accomplishing this is through an increased and simplified offering of long-term contracts that allow customers of all kinds to hedge the future price of their power. Forward hedging, PPAs, and CfDs, all have a role to play to de-risk investments and mitigate exposure to short-term volatility for consumers. If well designed, these instruments present different but complementary hedging purposes that could be adapted to a wide range of customers' needs and preferences.

Thirdly, while we believe two-way contracts for difference and similar de-risking support mechanisms will have an important role to play, **we welcome that the Commission's proposal does not impact on existing assets nor mandates new generation to sign contracts for difference.** Such an approach, as proposed by a recent Spanish non paper, would have greatly undermined investor confidence in the power sector. Needless to say, Europe needs to continue to attract the investment needed for the renewable and low-carbon technologies that will power Europe's drive towards net-zero. However, the current treatment of CfD seems incomplete. For instance, the design principles should not only cover the pay-back situation, but also ensure a sound integration of all instruments (CfDs, PPAs, forward markets...).

Fourth, the proposal allows System Operators to to build grid on forecast based on forward looking objectives such those set in FF55 and RepowerEu. Allowing System Operators to make anticipatory investment will enable them to accelerate the grid by supporting its expansion, flexibilisation and further digitalisation which is a pre-requisite if policy accelerate renewables built out. **However, the proposal fails to address the massive grid investment challenge required to electrify further.** We think the proposal can be usefully complemented with a clear statement that any obstacle at national level to invest in digitalisation and automation of the grids in view of procuring flexibility services should be removed.

Last but not least, **the proposal does not foresee any institutionalisation of any form of revenue limitation of inframarginal generators.** Such measures erode signals for an efficient dispatch thus affecting producers' incentives and jeopardize crucially needed investors' confidence. The patchy implementation of national emergency/temporary price caps on market revenues for inframarginal technologies shows us a cautionary tale in terms of market fragmentation. The revised Electricity Regulation should explicitly prevent Member States to keep or extend such emergency measures.

Suggested modifications/improvements

However, there are a number of areas where we feel improvements are needed. In Annex, we provide details on areas where we believe the text can be improved. From our perspective, there are five priority areas where changes are most needed.

Firstly, **the proposed introduction of regional virtual trading hub should be removed**. The proposal could strongly disrupt forward markets while not addressing the issues behind the current lack of liquidity. The review of the Electricity Regulation should focus instead on targeted measures to remove regulatory disincentives, widen non-cash collateral options and improve access to cross-border capacity on forward markets. Such technical policy options should rather be addressed as part of the Forward Guidelines review and be subject to a thorough impact assessment.

Secondly, **while we welcome proposals to incentivise flexibility, it is essential to ensure a technologically-neutral approach and to set a market-based framework.** The proposed peak-shaving product and the proposed flexibility support schemes for new storage and demand response should be integrated via an enhanced participation of demand response and storage in all short-term energy markets or ancillary services and in capacity mechanisms, rather than establishing separate and non-harmonized mechanisms which discriminate among technologies providing flexibility and firmness or between existing and new assets.

Thirdly, **provisions around enhancing suppliers' resilience are welcome and needed but balance should be struck between consumer protection and supply offer regulation to avoid undermining retail competition**. Indeed, current draft provisions should be further clarified as they do currently leave a lot of manoeuvre for Member States to impose hedging obligations on suppliers that would be detrimental to retail competition and customer's interests. A more efficient system, as called for in our consultation response, is to introduce guidelines for a resilience framework to be used by NRAs to perform regular stress tests and introduce reporting requirements for suppliers.

Fourth, **the methodology for defining a price crisis should be further detailed and based on objective criteria** to avoid that regular volatility which signals a healthy, functioning market, may be misconstrued as a price crisis.

Last but indeed not least, **the power sector believes that the REMIT framework has worked well as a sector specific regime in the energy industry and does not see the need for a fundamental review.** The proposed extensive review of REMIT would require thorough impact assessment, in particular when it comes to the significant extension of ACER's powers and the implementation of a supervision framework for NRAs' activities, including harmonised sanctions, as well as the risk of overlap with existing provisions under financial regulation, such as the Market Abuse Regulation. Amended wording with a very broad and unclear scope also gives reason for uncertainty besides potentially enlarging the scope of breaching behaviour beyond what is appropriate. Further, we are worried about the proposed framework for guidelines and recommendations which in practice could lead to de facto binding rules introduced without being subject to necessary impact assessments, political considerations and stakeholder involvement.

Many thanks for taking these suggested modifications into consideration. With these modifications, sensible market design reform can deepen and reinforce the Internal Energy Market and make it even more fit for achieving net-zero.

Yours sincerely,

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Encl: Eurelectric paper on electricity market design – December 2022
Encl: Eurelectric Executive Summary to EC consultation on market design reform – February 2023

Annex I – Market Design Reform Leak - Positive elements (that should be maintained in the EC final legislative proposal)

Proposal	Art	Summary	Eurelectric's preliminary assessment	Eurelectric's preliminary proposals
Cross-border intra-day gate closure time	**8 (Reg)**	By 2028, closure time will be moved to 30 minutes before the real time instead of one hour currently.	Positive - we support that **a closer to real-time Gate Closure Time (GCT) would improve cross-border intraday (ID) market functioning.** It allows the market participants to better balance surpluses/shortages that are for example caused by changing weather conditions.	**We would have preferred 15min before real time** but we understand that a trade-off has to be found a trade-off needs to be found between the improvement of ID market functioning, the well-functioning of the current balancing platforms and TSOs operations needs.
Network tariff methodologies	**18 (Reg)**	Anticipatory investments shall be considered in the network tariff methodologies. It shall be considered both capital and operational expenditure to provide appropriate incentives to TSOs and DSOs.	Positive as **it will allow DSO and TSO to build grid on forecast based on forward looking objectives** such as set in FF55 and RepowerEu to make the transition happen. However, it is of major importance that both CAPEX and OPEX are treated equally in all dimensions I.e. There should not be major time delays in OPEX or CAPEX recognition with grid investment.	We suggest adding the following: *"any obstacle at national level to invest in digitalisation and automation of the grids in view of procuring flexibility services should be removed."*
Compensation allocated by TSOs for offshore hybrid projects	**19 (Reg)**	In case transmission capacities are reduced (curtailment), offshore generators will be offered by TSOs a compensation (based on their congestion income) equal to what they would have otherwise been able to offer the market. The details (formula) behind the compensation will be defined in Regulation (EU) 2015/1222 after the entry into force of this Regulation.	Positive as **the proposal intends to reduce offshore generators' investment risk** (more precisely price and volume risks).	The pre-requisite behind this compensation is that a decision of an Offshore Bidding Zone (OBZ) model has been taken. **The decision between the OBZ and Home Market model should be decided at Member states level.** In some cases, a better solution would be to stick to the Home Market solution.

PPA	**19.a (Reg)**	Member States mandated to consider PPAs & remove barriers, introduce guarantee schemes for credit risks. RES support schemes to give priority to generators presenting a PPA for part of the production.	Positive	It should be explicitly mentioned that **retroactive changes should not be allowed** (similarly to support schemes in RED III)
CfDs	**19.b (Reg)**	Support schemes for new generation based on 2-way CfD. Applies to wind, solar, geothermal, hydro without reservoir, nuclear.	Positive that **participation is voluntary and restricted to new capacities.** **Mitigating the impact of short-term markets on final electricity prices should not be considered CfD's primary objective** as their efficiency is highly dependent on the payback design. The current treatment of CfDs seems incomplete. Only the case where their price is below market prices and there are revenues to allocate is considered, while the likely situation in the future will be the opposite.	It should be explicitly mentioned that: - **allocation should be done through process in accordance with competition law jurisprudence** as the general rule - **their design must preserve well-functioning of the market** (e.g. avoiding market distortions & undermining forward market liquidity). The EC should provide **dynamic guidelines sharing best practices on optimum CfD design & settlement**, as there is a wide range of system needs and national specificities across the EU.
Overview of available connection capacity	**50 and 57 (Reg)**	TSOs shall publish and update regularly, at least quarterly, and in a clear and transparent manner, information on the capacity available for new connections in their respective areas of operation. DSOs and TSOs will cooperate to publish available	It is overall positive that such information is being shared with network users and developers of new project to provide sufficient visibility on the grid capacity.	

		connection capacity for new generation.		
Limit on market revenues for inframarginal technologies			**Positive that this emergency measure is not proposed as a structural measure of the market design** due to its impact on producers' incentives, investors' confidence and market fragmentation. Emergency measures should be developed on an ad-hoc basis to meet the specific needs of crisis situations and should always be targeted, temporary, and explicitly time-limited.	**The revised Electricity Regulation should explicitly prevent Member States to keep or extend such emergency measures.** An EC guideline restricting the flexibility of Member States to undertake unilateral actions distorting market functioning is highly needed.

Annex II – Market Design Reform Leak - Elements of concern (which should be changed in inter-service consultation)

Proposal	Art	Summary	Eurelectric's preliminary assessment	Eurelectric's preliminary proposals
Peak Shaving Product	**7a (Reg)**	Proposals (including baseline methodology) to be submitted by TSOs to NRAs. Voluntary (it is up to the TSO to decide whether they want to implement it). This is defined as a new ancillary service.	Negative - **we are deeply concerned by the Peak Shaving Product in hands of the TSOs, in monopoly**. Consumers will have to choose between markets (with associated risks) and regulated purchases (by the TSOs), as they cannot offer twice their flexibility, this new product may likely dry the flexibility markets. It goes against markets: less DR capacity for aggregation and less DR capacity for market based supply offers encouraging DR.	**Priority should be given to ensure the participation of demand response in all markets.** **The participation of peak shaving product should be integrated in existing short-term energy markets / ancillary services or in capacity mechanisms**, rather than establishing separate and non-harmonized mechanisms that discriminate among technologies providing flexibility and firmness. If maintained: - The proposed design (i.e. allocation two days in advance contracts of one day) should be revised as it is currently inadequate to attract consumers' participation. - No harmonization is foreseen at European scale: if not, this will be a step backwards in the integration of demand response in the European market. - The proposed support schemes to storage and demand response should be integrated

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				via an enhanced participation of demand response and storage in all short-term energy markets or ancillary services and in capacity mechanisms , rather than establishing separate and non-harmonized mechanisms that discriminate among technologies providing flexibility and firmness. - Should be defined clearly as a crisis mechanism and its use limited in time. To be correlated to the provision on Regulated prices below cost in Art 66a
Dedicated metering devices	**7b**	Broad definition of devices which can be used either to sell demand response and/or flexibility services (proposed Art. 2 definition) or for observability and settlement of demand response and flexibility services (proposed Art. 7b application)	Negative - We understand the rationale for this proposal from the Commission as a way to provide further access to households and businesses to demand response participation in Member States where the rollout of smart meters is lagging behind other countries. As said in the preamble, t**his inclusion of additional metering devices only makes sense where smart meters are not yet deployed or when they don't provide sufficient level of data granularity (it should rather be clearly reiterated in the article 7b)** The broadness of the definition leaves the door open to a variety of sub-standard instruments (there is no requirement for	**The roles and requirements of submeter use in demand response are foreseen and should be tackled in the network code on demand response (and not at Member State level)**, which is currently being developed, rather than in the Regulation. **If general provisions are maintained in the Regulation,** the proposal should: - **Better reflect that inclusion of additional metering devices**

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			devices to conform to the requirements of the Measuring Instruments Directive) to be implemented which may not be readable by System operators and may not give accurate measurements (system security threat). It also sets a precedent for multiple measurement devices where a single device at the metering point can suffice and would prove more efficient.	**only makes sense where smart meters are not yet deployed**. - **Clearly mandate that the flexibility must materialize at the main metering point** (otherwise if potential savings in one device are offset by increased consumption in others, the system effect is null) - clearly state that **any dedicated metering devices or submeters should meet the requirements set out in the Measuring Instruments Directive and that they are interoperable** with the main meter so that they can be readable & provide accurate measures to system operators and be paid by the consumers. - **Allow for flexibility for implementation at national level** as these devices may not be appropriate in certain markets.
Regional Virtual Hubs	**9 (Reg)**	Proposal calls for ENTSO-e to submit ACER a proposal for regional virtual hubs for forward markets (e.g. LTTR between bidding zones and virtual hubs)	Negative – **Such risks severely disrupting forward markets while not addressing the issues behind the current lack of liquidity**. It risks making forward hedging even more difficult/costly/uncertain because it would:	**Such proposal should be removed from the Regulation, be rather addressed as part of the Forward Guidelines review** and be subject to a thorough impact assessment.

Proposal	Art	Summary	Eurelectric's preliminary assessment	Eurelectric's preliminary proposals
			- increase the complexity of the forward market, - remove the liquidity in smaller bidding zones, shifting it to the HUBs, - but leaving market participants with a huge basis risk HUB-to-zone that they cannot hedge. **Clarifications would be welcome on some of the proposals:** - How can some bidding zones be out of virtual hubs?[1] - Why is ENTSOE in charge of drafting this proposal?	The review of the Electricity Regulation should focus instead on targeted measures to remove regulatory disincentives, widen non-cash collateral options, stimulate voluntary 'market making' and improve access to cross-border capacity on forward markets.
Alternative measures to improve liquidity in the forward market	Art. 9.4 (Reg)	NRAs may request power exchanges or TSOs to implement additional measures to improve liquidity of the forward market if it considers there are insufficient hedging opportunities available for market participants.	Such provisions should be clarified – if this include obligation on dominant producers to make forward contracts available on same terms as their supply arm forced to sell their capacity through auctions, this is something we would oppose. If such obligation would be proposed, the reallocation of capacity should be done through secondary competitive auctions where dominant players can take part to maintain competitive processes and avoid mandatory market making obligation.	**Provisions to be clarified.** ACER should develop a pan-European methodology to assess lack of flexibility in forward market to avoid ad-hoc national approaches.

[1] E.g. "calculation of the reference prices for the virtual hubs for the forward market, <u>aiming to maximise</u> the correlations between the reference price and the prices of the bidding zones constituting a virtual hub"

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Tariff methodology	**Art 18 para 2 and 8**	Tariff methodologies to incentivize the use of flexibility and DSR by system operators.	Not properly addressing the investment needs in hard and digital assets in the electricity infrastructure.	Overall system efficiency needs to be in focus, acknowledging the increasing role of SOs to integrate RES and flexible loads. A narrowing of the regulators' mandate to focus on energy efficiency related to technical losses must be avoided (also in line with EED Art 25 2). Additionally, incentives for investments in network capacity expansion should be recognized.
National objective for demand side response and storage	**19e (Reg)**	MS to define indicative national objectives for demand-side response and storage.	National objectives and target might interfere in the SO's choice to opt for the most cost-efficient solution to end and prevent congestion. Demand Side Flexibility is only one solution among various tools (e.g. implicit flexibility via the tariff, network reinforcement, flexible connection agreements…)	**Remove provision as we should not favor one flexibility option** via indicative national objectives. It fully depends on technical and economic criteria set at national level by DSOs and regulators.
Flexibility Support Schemes	**19f (Reg)**	Support schemes for storage and demand side management can be introduced either through capacity mechanisms or independently, where capacity mechanisms do not exist. These mechanisms will be applied to new investments and be allocated through competitive procedures and shall not distort the market signals.	Storage and demand-side management should take part in capacity mechanisms. There is an unjustified asymmetry between the room for maneuver by for Member States to design these flexibility schemes and the strict regulation and process needed for capacity mechanisms.	**Ensure a technology-neutral approach and to keep market-based incentives.** The proposed support schemes to storage and demand response should be integrated in the capacity mechanisms and the participation of demand and storage in all the markets, rather than establishing separate and non-harmonized mechanisms that discriminate

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				among technologies providing flexibility and firmness.
Flexibility needs	**19d (Reg)**	NRA to issue an assessment of flexibility needs every two years.	While the focus on developing flexibility assets & services to complement the uptake of variable renewables is welcome, flexibility is not the only tool (and not necessarily the most suited and cost-efficient one in all cases) available to system operators.	We would prefer to see an economic system-wide assessment to challenge the best solutions to secure adequacy and to fix and/or prevent congestion from a cost efficiency system point of view. Flexibility solutions should be compared against all the alternatives. An enhanced framework for assessing, in a forward looking way, the evolution of system needs in terms of firm and flexible resources is necessary to provide visibility for market participants and network operators. The current indicative network and adequacy planning exercises (TYNDP, ERAA) will need to be broadened to include flexibility and cross-sector needs.
Hedging requirements on suppliers	**New (Dir)**	The proposal suggests Member States ensure suppliers have adequate hedging strategies while maintaining liquidity & price signals from the short-term markets and that MS could force suppliers to cover a portion of their hedges with RES PPAs .	Negative - Hedging requirements for suppliers are not the only solution to ensure financial resilience of suppliers. Better to test the financial robustness of firms through regular stress tests by NRAs. Furthermore, even the partial normalization of hedging strategies (like requiring a certain amount to be covered by a particular instrument) risks undermining retail competition and reducing	The wording is so generic that it could include a stress testing framework such as the one we propose. **We propose a more precise wording that restricts the most intrusive approaches and focuses on stress testing and entry/exit rules for suppliers.**

Proposal	Art	Summary	Eurelectric's preliminary assessment	Eurelectric's preliminary proposals
			the variety of offers in the market, and thus reduces consumer choice and access to the most competitive offers.	
Energy Sharing Right	**New (Dir)**	New right for households, SMEs, and public bodies to participate in energy sharing as active customers (rather than exclusively as part of Energy Communities).	The proposed restriction of energy sharing to an entire bidding zone is worrying. Given the size variation of bidding zones (many countries only have one zone for the entire country), this could lead to strange energy sharing arrangements which undermines the local nature of such exchanges. We are unclear of the intention of the thresholds suggested in the proposal for being exempt from consumer protection rights. It seems to us this would exclude most households.	Proposal to be clarified.
Entitlement to fixed-price contract	**Art. 11 (Dir)**	Creating an obligation on suppliers to offer fixed price contracts without any termination fee	Fixed price contracts require a two-sided commitment between suppliers and customers to ensure suppliers can adequately hedge fixed price offers for the duration of the contract (by having the signal of regular revenue from the committed customer). This asymmetry could therefore lead to substantial negative financial impacts on suppliers and to suppliers leaving the supply business in a more or less organised way.	**Prescribing what products suppliers must offer will not ensure the best price and variety of offers for consumers which meet their individual needs and match their willingness to take risks.** The market should remain open to a variety of offers, including offers with short-term incentives such as including time-of-use tariffs, critical peak pricing, dynamic pricing, or dynamic rebates. **Obligations on supply offers should therefore ideally be removed.**

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				If maintained, it should be paired with legislation allowing termination fees. E.g. amending Article 12.3 from a derogation right of Member States to an explicit right of suppliers when consumers voluntarily terminate fixed price contracts.
Access to affordable energy during a price crisis	**66a**	The Commission may declare a price crisis. When that happens MS can apply public interventions in price setting for SME. Regulated price below cost, suppliers to be compensated.	The methodology for defining a price crisis in the leaked proposal is quite unclear and we are concerned that regular volatility which signals a healthy, functioning market, may be misconstrued as a price crisis.	Methodology to be further defined based on fair criteria.

Annex III – REMIT reform leak - Preliminary Comments

In general, Eurelectric believes that the REMIT framework has worked well as a sector specific regime in the energy industry. Eurelectric therefore does not see the need for a full fundamental review. Overall regulatory stability is key for market participants. If evolutions are considered, stakeholders should be consulted, and impact assessments considered.

We support amendments to take into account the evolution of the market participants and market activities/practices and recalibrate tools to the evolution of fundamentals in the current energy crisis period. Some lessons learned from more than 10 years of implementation can also help facilitate compliance and simplify reporting.

At this stage, five general comments:

- **We are concerned by the significant extension of ACER's powers and the implementation of a supervision framework for NRAs' activities**. While we support that the sector-specific needs to be strengthen and harmonization should be beneficial for enforcement, we also believe that it is important that surveillance, i.e. the launch and conduct of enquiries, remains a national prerogative.
- **We are concerned as regards the idea of a fully harmonized sanction regime.** Such full harmonization would disrupt national schemes set within the legal and judiciary national frameworks. Certainly, it is important to ensure that each Member State has designated a jurisdiction with effective expertise in the energy markets field, as well as relevant means and powers that can effectively and consistently sanction REMIT breaches when necessary.
- **It is key to keep REMIT as a sector specific regime in the energy industry.** We support the strengthening of the cooperation between energy and financial regulators. In this context, it is important to minimize the potential overlap of REMIT with other legislation, such as the Market Abuse Regulation.
- **Some proposals are worded very openly with open terms that could easily make any actor subject to REMIT breach.** It is essential to have as much clarity and legal certainty as possible also to avoid any risks of unintended breaches.
- **Art. 16b makes REMIT guidelines and recommendations de facto binding** without assurance of the ruling/interpretations introduced have been subject to necessary impact assessments, political considerations and stakeholder involvement.

Last but not least, we are not convinced that an extended REMIT framework will prevent further market interventions as part of the Market Design Review or at national level.