EU electricity market design reform
Findings on implementation of the existing rules

This briefing is one of a series of implementation appraisals produced by the European Parliamentary Research Service (EPRS) on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law that is amended or reviewed, as envisaged in the European Commission’s annual work programme. Implementation appraisals aim at providing a succinct overview of publicly available material on the implementation and application to date of specific EU law, drawing on input from EU institutions and bodies, as well as other organisations. They are provided by the Ex-Post Evaluation Unit to assist parliamentary committees in their consideration of new European Commission proposals.

SUMMARY

On 14 March 2023, European Commission launched two legislative initiatives: one to improve European electricity market design, the other to offer better protection against market manipulation on the wholesale energy market. These targeted reforms address shortcomings revealed by the current energy crisis, in particular price volatility and security of supply. They also introduce long-term changes necessary to achieve the Green Deal targets.

EU electricity market design development started in 1996 as part of the integration of the energy market, itself driven by successive legislative packages, such as the clean energy for all Europeans package of 2019. Over the past decade, integrated electricity markets have generated a welfare benefit of around €34 billion per year. Despite this positive development, the implementation of these measures has been slower than anticipated on several fronts. Findings relating to their practical implementation and application shed light on the performance of electricity market design and underpin the revision examined in the present document. In addition to identifying room for improvement, these findings emphasise that continuous implementation of the existing measures remains crucial for reaping the benefits of an integrated electricity market.

The Commission would like to see the reforms adopted before end of the year. Given the urgency, the proposals deviate from the interinstitutional better law-making principles. They lack an evaluation that would have analysed the performance of the existing market design and an impact assessment that would have examined the economic, social and environmental impacts of possible policy options. Instead, the rationale behind the proposed interventions and related evidence is explained in a Commission staff working document.

EU electricity market design: Milestones of integration

On 14 March 2023, the Commission proposed a significant revision, through targeted amendments, to a number of pieces of legislation on protection against market manipulation in the wholesale electricity market and the Union’s electricity market design. The relevance of the current electricity market system is challenged by the ongoing power system transformation and energy crisis. Restructuring is essential for the market design to stay fit for purpose in the era of decarbonisation and to remain coherent with measures already revised or under revision.
A Bruegel think tank policy brief identifies the following drivers behind the structural shift: increase in electricity demand; decline of variable costs; decentralisation on power generation; digitalisation of power system operations; and consumers becoming active players on the market. An Oxford Institute for Energy Studies comment paper sees the reform as critical and complex and places issues such as investment costs, motivation of new investments, spatial price signals and active consumers at its core. Phasing out energy security based on fossil-fuel energy supply while bringing in renewable electricity supply requires massive investment and rethinking of the market design.

Successive packages of legislation and reforms made in response to technological development and common decarbonisation commitments have shaped the integration of the EU energy market over a number of decades. In 1996, the first energy package and in 2003 the second package opened national energy monopolies to more competition. The third energy package, introduced in 2009, focused on fostering cross-border competition through harmonised trading practices on the wholesale markets. In the 2015, the energy union shifted climate policy to the centre of European energy integration.

The 2019 clean energy for all Europeans package was adopted as a follow-up to the Paris Agreement and to successive EU decarbonisation commitments to clean energy transition. Integration of a larger share of renewables and new technologies was at the core of this revision. Rules ensuring a level playing field, affording greater flexibility to the market and giving consumers more control were other essential elements of the package. Moreover, the package sought to reap the benefits of an increasing digitalisation of the energy system.

Four of the five pieces of legislation that are presently under revision – Electricity Regulation (EU) 2019/943, Electricity Directive (EU) 2019/944, ACER Regulation (EU) 2019/942 and Renewable Energy Directive (EU) 2018/2001 – were revised as part of the clean energy for all Europeans package. The fifth piece of legislation under revision is the Regulation on wholesale energy market integrity and transparency (REMIT) (EU) No 1227/2011. Two amending proposals of this regulation are currently pending.1

By adopting the European Green Deal programme and the European Climate Law, the EU committed to climate neutrality by 2050 and to reducing at least 55 % of net greenhouse gas emissions by 2030 compared to 1990 levels. As part of the fit for 55 package, presented in 2021, the Commission launched an amending proposal (ongoing) to raise the overarching EU target of renewable energy for 2030 from 32 % to 40 %. Thus, rules on electricity market design are an essential element of the green transition that requires significant investment and acceleration of the rollout of renewable energy over the next 10-15 years.

At present, the electricity market is strongly influenced by the emergency measures taken in response to the ongoing energy crisis, which started with a gas price shock in the second half of 2021 just as the world economy was picking up after the coronavirus pandemic restrictions were lifted. Russia’s war against Ukraine and its manipulation of gas supply aggravated the situation. Furthermore, extreme weather conditions contributed to the increased volatility of energy prices as the generation of green electricity in the EU was below the usual levels. Global inflation, which was affecting EU citizens’ purchasing power, placed additional pressure on the EU energy market as a whole. Since the outbreak of the energy crisis, the EU and its Member States have developed a series of policy actions to alleviate negative impacts.

In reaction to Russia’s intentional disruptions of gas flows to the EU, which increased prices and affected supply security, the Commission introduced a Toolbox in October 2021. It contained measures to mitigate peak prices building on diversification of gas supplies, to accelerate energy efficiency and to increase deployment of renewable energy. Following Russia’s invasion of Ukraine, the Commission launched the RePowerEU plan in May 2022. Ending the EU’s dependence on Russian fossil fuels as soon as possible through energy savings, diversifying energy sources and accelerating the rollout of renewable energy are at the core of this plan.
In response to the energy crisis, the Council adopted a set of temporary emergency regulations under Article 122 of the Treaty on the Functioning of the European Union (TFEU). These included the Regulation on coordinated demand-reduction measures for gas on 5 August 2022 and the Regulation on emergency interventions to address high energy prices of 6 October 2022, which introduced common measures to reduce energy demand and to collect and redistribute the energy sector's surplus revenues to customers. On 22 December, the Council adopted a Regulation laying down a framework to accelerate the deployment of renewable energy. The Council Regulation on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks and exchange of gas across borders operationalised the EU energy platform. In addition, the Council Regulation on the market correction mechanism is an example of measures adopted under Article 122 TFEU.

Box 1 – Legal basis for EU energy policy and exceptional emergency measures

The main legal basis for EU energy policy is Article 194 TFEU on ensuring the functioning of the energy market, energy security, energy efficiency and renewable energy, and energy networks. Article 194(2)(i) TFEU is also the legal basis for the Commission proposals on the reform of the electricity market design and the REMIT Regulation. The ordinary legislative procedure applies to both proposals.

Other Treaty provisions have also been used for energy-related legislation, in particular Article 114 TFEU for measures relating to the internal energy market and Articles 216-218 TFEU (on international agreements) for measures relating to external energy policy, as well as certain other specific Treaty provisions.

Many of the temporary emergency measures in the area of energy were adopted under Article 122 TFEU, which can be activated in response to an emergency or crisis situation. It shifts the legislative power to the Council, stipulating that the Council may decide on appropriate economic policy measures based on a Commission proposal. With regard to the adoption of measures under Article 122 TFEU, the Parliament is merely informed.

Source: Article 194 TFEU; Article 122 TFEU; Energy Policy: General Principles, European Parliament Fact Sheet (09/2022).

The amendments to the Temporary Crisis Framework for State Aid covered measures accelerating the use of renewable energy and facilitating the decarbonisation of industrial processes. A communication on the Green Deal industrial plan for the net-zero age, introduced on 1 February 2023, included several measures to enhance the EU industry's competitiveness in times of high energy prices that affect manufacturing costs and energy-intensive sectors in particular. It also aims to help accelerate the green transition through the electrification of the industry.

Two legislative proposals for targeted revision

The overall aim of the proposals to improve the REMIT Regulation and the EU's electricity market design is to increase the certainty, foreseeability and flexibility of the electricity market, while also accelerating the integration of renewables and improving the predictability of their production. These two proposals presented on 14 March 2023 will amend three existing regulations and two directives. The Commission chose to implement these reforms through an amending regulation, given that they only add a limited number of new provisions and amend certain existing ones. Compared to directives, regulations do not require national implementation.
### Table 1 – Proposals to reform electricity market design and the REMIT Regulation

<table>
<thead>
<tr>
<th>Scope of the revision</th>
<th>Proposal for a Regulation to improve the Union’s protection against market manipulation in the wholesale energy market COM(2023)147</th>
<th>Proposal for a Regulation to improve the Union’s electricity market design COM(2023)148</th>
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<td>Regulation (EU) No 1227/2011 (REMIT Regulation)</td>
<td>Regulation (EU) 2019/943 (Electricity Regulation)</td>
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<td>Regulation (EU) 2019/942 (ACER Regulation)</td>
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<td>Directive (EU) 2018/2001 (RED II)</td>
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| Specific objectives | Authorisation and supervisory powers to ACER related to inside information platforms and registered reporting mechanisms. Centralise the collection of suspicious transaction or order reports to ACER and give it the mandate to monitor persons professionally arranging transactions. Complementary powers to ACER to investigate and to enforce potential cross-border market abuse cases. | Facilitate forward markets. Define the new forward market trading hubs. Facilitate flexibility solutions, in particular demand response. Ensure supplier hedging and fair rules as regards suppliers of last resort. Give customers a right to energy sharing. |

Source: COM(2023)147; COM(2023)148; EPRS briefing on Improving the design of the electricity market, April 2023.

Decoupling gas and electricity prices is an essential element of the reform. According to the Commission, this could be achieved without making changes to the market design based on the merit order system. Increasing investment in renewable energy with low variable cost and sufficient storage, while also enabling consumers to shift their demand, will push gas out of its place of marginal generator. Increased rollout of clean technologies and renewable energy will ultimately lead to lower retail prices due to their low operational costs. Thus, renewable energy entering the market and competing with fossil fuels could be sold on a long-term basis, which in turn would create a buffer between consumers and more volatile short-term markets and contribute to the phase-out of fossil fuels at an accelerated pace.

The proposed amendments to the Electricity Regulation clarify its scope. They address consumer, industry and investors’ concerns over exposure to volatile short-term prices. The amendments would optimise the electricity market design by allowing longer-term instruments to play a greater role on short-term markets. Doing so would not only help consumers benefit from more fixed priced contracts but would also facilitate investment in clean technologies. In general, the revision seeks to make the cost of energy more stable and predictable.

The targeted revision of the Electricity Directive introduces new rules to protect and empower consumers. The amendments would diversify the types of contracts offered to consumers in order to ensure that they can choose according to their circumstances and make informed choices. It also proposes to amend the rules on the free choice of supplier so that customers could have more than one supplier. New proposals include the requirement for Member States to appoint a supplier of last resort; these suppliers would be responsible for customers of failed suppliers and for protecting vulnerable customers from disconnection. In addition, the proposal introduces rules on hedging to mitigate risks. It also clarifies the role of regulatory authorities as regards the newly established single allocation platform. Finally, the proposal introduce new transparency rules for distribution system operators in terms of the capacity available for new grid connections.

The proposed changes update the REMIT Regulation to adapt it to the existing and evolving market circumstances. They revise the rules on data quality and exchange of information between national and EU authorities, by centralising collection and monitoring to ACER. Reporting
obligations are extended to new balancing markets and coupled markets as well as algorithmic trading. The proposal also introduces enhanced and better established regular cooperation between energy and financial regulators. It strengthens ACER’s mandate for investigating potential cross-border market abuse cases. It confers new supervisory and authorising powers to ACER in the area of inside information platforms and registered reporting mechanisms. The proposal also puts forward a framework for harmonisation of fines set by regulatory authorities at national level.

The amendments proposed to the ACER Regulation clarify the role and mandate of the agency in accordance with the amendments of the REMIT Regulation. They also update ACER’s role to match the new single allocation platform and the amendments introduced in the Electricity Directive on forward markets and flexibility support schemes.

The amendments to RED II target the scope and application of the rules on the types of direct support schemes for renewable energy sources that Member States may introduce.

**Findings on implementation and application of existing rules**

The main preparatory document is the staff working document (SWD) accompanying the Commission legislative initiatives. It sheds light on the rationale behind the proposed actions and analyses the functioning of the EU electricity markets at present. The SWD draws evidence from various sources including: the ACER assessment on the functioning of the electricity wholesale market and other reports; studies commissioned by the Commission; and the non-papers published

**Box 2: Better Regulation remarks on the Commission proposals**

According to the Inter-institutional Agreement on Better Law-Making (2016) and the Commission’s Guidelines and Toolbox on Better Regulation, the Commission should draw up an impact assessment for legislative initiatives that are expected to have significant economic, environmental or social impacts. As a rule, initiatives included in the Commission work programme should be accompanied by an impact assessment that maps alternative policy options (legislative and other). The goal is to provide a balanced and comprehensive analysis of the different options and their impacts in the short, medium and long term using appropriate qualitative and quantitative methods (e.g. a cost-benefit analysis).

The Commission did plan an impact assessment on the review the European electricity market design, as indicated in several documents, such as its work programme for 2023. However, the urgency of the proposal prevented it from conducting a full impact assessment. Therefore, the Commission proposals were not accompanied by an impact assessment but by a staff working document (SWD), which is more limited in scope. The SWD ‘sets out the explanation and rationale behind the Commission’s proposals … as well as presents the available evidence of relevance for the proposed measures.’ Although the available evidence includes data and evidence from various sources, it does not compensate for the lack of a full-fledged impact assessment that would have analysed the policy options and their potential impacts. An impact assessment could have provided an overarching view on the available information and tied it together with the policy options and a comprehensive intervention logic.

Ahead of a major revision, the Commission usually presents an inception impact assessment (IIA), which is used as a basis for exchange of views on different occasions, such as public consultations. In the context of the electricity market design reform, the Commission refrained from publishing an inception impact assessment. Instead, it published two non-papers during the last quarter of 2022: i) Policy options to mitigate the impacts of natural gas prices on electricity bills in October 2022; and ii) Electricity market design: lasting ways of mitigating the impact of high gas prices on electricity bills in December 2022. They followed a communication on short-term emergency market interventions and long-term improvements to electricity market design COM(2022)236 of May 2022.

Moreover, the Commission proposals are not informed by an evaluation drawing lessons from the implementation and application of the current regulatory framework. Although this goes against the ‘evaluate first’ principle, it appears justified by the urgency to act.

as background documents. The ECA audit on the internal electricity market integration provides evidence on the application of existing rules in practice.

Main findings of the preparatory documents

The SWD accompanying the two legislative proposals explains the drivers behind the need to reform the electricity market design and the REMIT Regulation. It looks at the proposed changes one by one. It presents the reasoning and evidence base underpinning the main topics of the proposed changes. These topics are as follows: ‘Making electricity bills more independent from the short-term cost of fossil fuels; Driving renewable investments; Lessons learned from short term market interventions; Better consumer empowerment and protection; Stronger protection against market manipulation’.

Successful market coupling that enables electricity to flow where it is most needed has been at the core of the EU electricity market for decades. The focus has traditionally been on the integration of national markets, on ensuring the efficiency of cross-border short-term markets, and on supporting security of supply and integration of renewables. The existing rules also provide the foundation for a consumer-centric approach. Whilst the existing electricity market design has served well during the past decades, the energy crisis over the past two years has revealed some shortcomings. According to the SWD, the crisis has pointed to the need to address the following issues:

- the predominant role of gas in the wholesale markets as the price-setting technology;
- the inability of the current framework of long-term contracts to protect industry and households against extreme price volatility;
- the fact that the crisis has enabled unexpectedly high commercial returns for inframarginal generators;
- the risk that temporary measures mitigating the crisis undermine investment signals;
- the fact that the integration of flexibility mechanisms, such as storage and demand response, lacks speed and scale;
- the failure of the system in place on the retail market to sufficiently protect and empower consumers;
- the insufficient implementation and application of the REMIT rules. Clarity of data, enforcement and investigation activities feature prominently on the list of improvements.

Continuous implementation of the existing measures is crucial in terms of keeping track and accelerating the energy transition at the least cost. Efforts to ensure coherent implementation are all the more important, as the Commission proposals do not introduce a full revision but rather present targeted amendments to the existing legal framework.

As regards the implementation and application of the clean energy package, the SWD reports that some provisions are not fully implemented or are unevenly applied across the EU. Measures of demand response and storage are one example, since non-discriminatory access to electricity markets is not guaranteed and the majority of Member States have no aggregator framework. Provisions related to permitting procedures are essential to the rapid introduction of renewables and the implementation of the trans-European networks for energy. Thus, they should be balanced and as rapid as possible, which is not currently the case in many Member States. Despite the fact that the clean energy package has empowered consumers, its practical application is lagging behind. Active participation for lower income households remains inaccessible. While the installation of decentralised renewable generation is booming, its benefits are not yet fully realised. Energy sharing provisions, among others, are implemented and applied unevenly across the EU.

In terms of the REMIT Regulation and its implementing act, the SWD reminds that the wholesale market design has significantly evolved in recent years, meaning that an update is necessary to keep it fit for purpose. Enforcement and investigation of cross border breaches, among other practices, need to be revised in order to respond to new market developments. Moreover, gaps in data and
weaknesses in reporting obligations at the EU level weaken the monitoring framework to an extent that its ability to protect against market abuse might be put into question.

To support the revision work, the Commission held a public consultation on the electricity market design from 23 January to 13 February 2023. The consultation focused on ‘possible measures aimed to build a more resilient market, providing an added value for European citizens and the industry at large in the current crisis context and beyond’. All in all, 1,369 stakeholders replied, including a large number of citizens (725), followed by companies (277), business associations (181) and NGOs (53).

The public consultation was followed by a stakeholder workshop, which was held on 15 February 2023. It brought together 70 participants representing national regulatory authorities, industry, environmental NGOs, academia and business representatives.

Stakeholders shared their views based on their experience on the application of the existing rules in practice. Overall, they considered that short-term markets and the pricing mechanism based on marginal pricing should be preserved, as it has performed well and provided correct price signals. Similarly, short-term (day ahead and intraday) markets are well developed. In terms of improvements, short-term markets should be complemented by instruments incentivising longer-term price signals. Stakeholders expressed support for power purchase agreements (PPAs), contracts for difference (CfD), and enhanced forward markets. They also underlined that the freedom of choosing the relevant contracts should be preserved and expressed reservations towards possible mandatory schemes. There was a common understanding that the share of renewable energy on the market should be increased and its rollout should be accelerated. The flexibility solutions for non-fossil productions, such as demand response and storage, were also acknowledged. In addition, stakeholders called for placing more emphasis on the local dimension and on grid development. As regards consumer protection, stakeholders highlighted the affordability of energy and effective price signals as the key elements in ensuring consumer rights. Similarly, energy communities, self-consumption and energy sharing should be fostered as emerging new solutions.

The first preparatory documents for the proposals were published in the form of non-papers in October and then again in December 2022, with the aim to trigger a discussion on the possible scope and content of the reform. Prior to that, as mentioned above, the Commission had published a communication setting out long-term improvements to optimise the functioning of the electricity market. The two non-papers developed this course of action further. The EPRS briefing on Reforming the EU electricity market design explains the context and content of these non-papers and the Commission communication in detail.

ACER assessment and market monitoring reports

In October 2021, the Commission tasked the European Union Agency for the Cooperation of Energy Regulators (ACER) to study the successes and shortcomings of the existing EU wholesale electricity market design. Although this mandate was given at a time when energy prices were rising, the scope of the ACER report was wider: to examine ‘whether the existing wholesale electricity market design is still fit-for-purpose given the significant changes needed to deliver the clean energy transition or whether, and if so, to what extent, the market design would need further adjustment’. The first findings came out in November 2021 and the final report in April 2022.

According to ACER’s assessment, the current electricity market design delivered well over the years but is now facing challenges stemming from the energy crisis. Before the crisis, the EU benefitted from lower electricity prices for years thanks to the integrated markets that channelled cheap electricity across its territory through competition between all of the technologies involved. Under normal market conditions, the integrated energy markets provided significant economic benefits by ensuring security of supply, increasing socio-economic welfare and supporting the decarbonisation process. ACER estimates that the average yearly gain over the past decade for EU consumers was up to €34 billion per year.
The **ACER analysis** concludes that the **current market design** should prevail, as the existing wholesale electricity market design ensures efficient and secure electricity supply under normal market conditions. However, it should be complemented by some longer-term improvements in order to ensure the continuity of the green transition while ensuring security of supply. ACER warns against a roll back of EU market integration and an increasing cost of the green transition due to ill-designed emergency or other measures, which might distort price signals when interfering in market price formation. ACER proposes certain improvements based on its findings and **concludes its assessment** with a set of 13 measures for policymakers to consider.

ACER points to areas where interventions could strengthen EU electricity market performance. It reminds that reforms targeting the functioning of the market should be considered carefully, especially in situations of extreme duress. Interventions should address the root causes of the problems that have been identified through the gathering of empirical evidence on how the current rules have worked in practice. ACER lists the following interventions:

- 'Making short-term electricity market work better everywhere': implementation of the acquis is essential to further reap the benefits of short-term markets. Here ACER highlights specific areas of action.
- 'Driving the energy transition through efficient long-term markets': long-term markets and improved hedging instruments need attention, as they could provide stability for consumers and industry and drive investment.
- 'Increase the flexibility of the electricity system': there is a need for freely determined and competitive price signals that can reveal the true needs for system flexibility. These signals are key to investment.
- 'Protecting consumers against excessive volatility whilst addressing inevitable trade-offs': this highlights the importance of protecting vulnerable consumers during periods of high energy prices while preserving price signalling, incentivising desired behaviour and not interfering with the functioning of energy communities and aggregators.
- 'Tackling non-market barriers': shifting the focus from a national to a more cross-border perspective requires enhanced coordination of approaches to and plans for large-scale generation and grid infrastructure deployment.
- Structural measures for hedging to alleviate concerns related to future price shocks or periods of high energy prices.

**ACER monitors** internal electricity and gas markets in accordance with its mandate. It publishes regular reports on its findings and provides guidance on how energy markets could perform efficiently to the benefit of consumers. These reports keep stakeholders informed on how the existing measures deliver in practice. In their **report** on Wholesale electricity market monitoring 2022: Key developments, ACER and the Council of European Energy Regulators (CEER) track the performance of the electricity markets in 2022, a major development being the sharp increase in electricity prices in all EU markets. While the report finds that there has been a decrease in prices from the fourth quarter of 2022 onwards, it states that prices remained higher than their levels prior to the coronavirus pandemic. As regards electricity consumption in 2022, the decrease in demand (−4.6 %) offset the previous year’s increase. Generation of energy from renewable sources remained almost stable with a slight decline, while fossil fuel production increased but remained below the volume of renewable energy generation. The trend of new installed renewable capacity continued, whereas a decreasing trend prevailed in new fossil fuel installations.

According to the report, in 2022 electricity generation represented around 20 % of total greenhouse gas emissions in Europe. Due to increased coal and gas generation, the long-term trend of decreasing emissions intensity of electricity production has changed since 2021, risking to move the EU away from the trajectory set to achieve the climate objectives. The report highlights that the EU demonstrated unity in its solidarity mechanism and its response to high prices and windfall profits.

The **report** on Wholesale electricity market monitoring: Progress of European electricity market integration 2021 highlights the importance of the efficient use of the EU electricity network for the functioning of the wholesale markets in all timeframes. Sufficient cross-zonal capacity is essential
for a more flexible and thus efficient market and for managing price volatility. In terms of use of cross-zonal capacity across timeframes, electricity market integration continued in 2021 with an increase of efficiency in the day-ahead markets and intraday markets (by 3% each) and especially the balancing markets (by 29%). According to the report, the integration of the short-term electricity market could deliver additional welfare benefits of around €1 billion per year and continued energy market integration of around €300 billion for the next decade.

State of the energy union report

The annual state of the energy union report takes stock of the EU’s energy policy and progress towards commonly agreed goals. Drawing on various sources, it provides a comprehensive view of developments on all five dimensions of the energy union: energy security; solidarity and trust; a fully integrated European energy market; energy efficiency; research innovation and competitiveness. The latest State of the Energy Union report looks at the EU’s response to the current energy crisis.

As regards developments in the electricity market, the report presents the measures taken at the EU level to alleviate record high prices. It gives an overview of the performance of the electricity market. In this context, it confirms that consumers in all EU Member States have suffered from the energy prices. The negative effects have been the strongest for low- and low-middle income households. As the share of renewables in the electricity generation is expected to grow from 37% in 2021 to 69% in 2030, the report reminds that cumbersome and slow permitting procedures, persisting lack of grid interconnections and difficulties in supply chains may challenge the continuity of this positive development.

European Court of Auditors special report

The special report 3/2023 of the European Court of Auditors (ECA) assesses the integration of the internal electricity market. In this audit, ECA examined whether the approach of complementing the legislative acts by network codes and guidelines had contributed to the effective, efficient and consistent application of the electricity market rules. It also examined the effectiveness of ACER’s surveillance and monitoring activities and investigations on potential market abuse. The audit covered activities from mid-2015 to the end of 2021 and invited the Commission and the co-legislators to take into account its findings in the context of the ongoing reform.

The ECA report revealed that despite significant progress over the past 10 years, the integration process was slow and uneven across market segments and regions. Due to the complexity of the legal framework and shortcomings of the EU governance structure, none of the binding regulatory guidelines had been fully implemented in the 7 years after the original deadline had expired. In addition, weaknesses in ACER’s mandate prevented it from ensuring consistent enforcement of the EU rules at national level. Moreover, ECA deemed ACER’s market surveillance system incomplete.

In its concluding part, the ECA report made recommendations to both the Commission and ACER. The Commission was recommended to streamline the regulatory and enforcement framework as well as to strengthen the governance structure of ACER and reflect on the need of a common frame for application of penalties. ACER was recommended to review its resources allocated to monitoring, to take action to improve the transparency and accountability of its own work, and to adopt measures to enhance its surveillance of the integrity of the wholesale electricity market.

The Commission accepted all recommendations except one on penalties in the context of ensuring compliance with EU rules and preventing regulatory arbitrage. The Commission reminded that enforcement action in general and penalties in particular depend on national administrative rules and traditions. Against that background, the Commission considered that it was not feasible to set minimum common requirements for penalties, but committed to assess the possibility for a more harmonised framework.

In its reply to ECA, ACER called for a more balanced assessment ‘of the huge efforts and achievements made in integrating national electricity markets’. It urged for caution regarding the risk of possible further fragmentation of the EU electricity markets at the time of a discussion around
the benefits and implications of energy market integration in the EU. However, ACER accepted ECA’s recommendations, except the one on the target date proposed for full implementation of the market surveillance recommendation, which it found too pressing.

**European Parliament positions**

The Parliament has addressed electricity market design in its recent own-initiative resolutions and resolutions on topical subjects. The electricity market design has also been the topic of several written parliamentary questions.

**European Parliament resolutions**

The Committee on Industry, Research and Energy (ITRE) started the discussion on the reforms of the European electricity market design on 29 March with a presentation of the package by Energy Commissioner Kadri Simson followed by a public hearing on 24 April 2023. A clear understanding of the schedule for this proposal was expressed by both the Commission and the committee; this included anticipating adoption before the end of the year. An EPRS legislative briefing tracks and reports on this procedure.

Although Parliament has not adopted any own-initiative resolutions explicitly focused on electricity market design or the REMIT Regulation during its current legislature, it has addressed related issues in the context of other topics. Examples include two own-initiative resolutions: of 10 July 2020 on a Comprehensive European approach to energy storage and of 19 May 2021 on a European strategy for energy system integration. In both resolutions, Parliament called for removing the remaining obstacles before the integration of storage into electricity markets. It furthermore stressed the benefits of an increasingly decentralised power generation mix, including more renewable energy, while also highlighting the role of demand response, storage and smart energy management. Moreover, it spoke in favour of further empowering consumers to self-generate, consume, store and sell electricity on the market.

Parliament urged the Commission to analyse the possibility of decoupling electricity and gas prices in two resolutions: a resolution of 19 May 2022 on The social and economic consequences for the EU of the Russian war in Ukraine – reinforcing the EU’s capacity to act, and a resolution of 5 October 2022 on The EU’s response to the increase in energy prices in Europe. In the latter, Parliament stressed that any electricity market reform should be aligned with the EU’s climate commitments.

**Selected parliamentary questions**

In January 2023, the Member of the Parliament (MEP) Sandra Pereira (The Left) asked the Commission in a priority question for written answer about the short timeframe of the public consultation on the EU electricity market, its suitability for such a complex reform and whether the Commission had plans to extend it. In her answer of 11 April 2023, Commissioner Kadri Simson referred to the European Council’s request for the Commission to present a reform of the electricity market design in early 2023. She also said that the public consultation seeks to contribute to the drafting of the proposals despite the short timeline.

MEP Nicolás González Casares (S&D) voiced concerns about the rise of wholesale electricity prices in his question for written answer of 27 August 2021. He asked what the Commission considered as being the drivers of the increase in prices and whether the Commission was planning to adopt any measures or proposals to cut the windfall profits of some decarbonised technologies, notably those that had come into operation before the EU emissions trading system (ETS) was put into place. In her reply of 19 November 2021, Commissioner Kadri Simson explained that the main drivers of high electricity prices were high gas prices coupled with the surge in demand as the EU economy bounced back after COVID-19-related restrictions were lifted. She reminded that the marginal pricing system could not be considered the driver of the price increase. The Commissioner also referred to mitigation measures taken by Member States to alleviate the volatility of electricity prices.
and drew attention to the Commission Toolbox introduced to support Member States' actions. In addition, she listed actions the Commission was mulling at that time, including support for investment in renewables and energy efficiency.

**European Council and Council of the EU**

In response to the changing geopolitical situation resulting from the Russian aggression on Ukraine, the European Council (EUCO) of March 2022 gave new strategic guidelines on the EU energy policy, in accordance with the Versailles Declaration of 10-11 March 2022. The EU Heads of State or Government agreed to accelerate the transition towards clean energy and to end the EU's dependency on Russian energy as quickly as possible, well before the end of the decade. The need to increase the interconnections of the European gas and electricity market together with optimising monitoring and the functioning of the electricity market has been regularly repeated by the European Council ever since Russia invaded Ukraine. In its conclusions of October 2022 and again of December 2022, the European Council specifically invited the co-legislators to advance on the revision of the electricity market design. In March 2023, the Heads of State or Government added a call for a swift adoption of the reforms by the end of 2023.

Prior to the launch of the Commission proposal, a group of seven Member States voiced concerns about the scope of the revision in a joint letter published on 13 February 2023. They called for a prudent approach that would retain the benefits of the current market rules, instead of launching an in-depth reform of the electricity market design. While emphasising the common commitment to the green transition and affordability of energy, they argued for a transition to an efficient renewables-based system at the lowest possible cost to society. Meanwhile, other countries have expressed views in favour of an extensive review with swift implementation.

The Transport, Telecommunications and Energy Council of 28 March 2023 held a first discussion on the proposed revision of the electricity market design and committed to advancing quickly on the legislative file. It highlighted the targeted nature of the review and the need to preserve the well-performing elements of the present market framework.

**European Committee of the Regions**

In its resolution of 8-9 February 2023, the Committee of the Regions (CoR) laid out its expectations towards the revision of the electricity market design. It called for measures to reduce the link between gas and electricity prices to 'a level proportionate to the extent to which gas is used in electricity generation'. In the resolution of 1 December 2022, the CoR welcomed the announcement of a comprehensive reform of the EU electricity market in the context of better preparing the EU for a carbon-neutral future. In its resolution of 28 April 2022 the CoR stated that energy security and climate neutrality can only be achieved through a fully interconnected electricity market and a well-functioning carbon market. It also highlighted that any short-term temporary actions should not create an additional lock-in effect and should be reusable for climate-friendly gaseous energy forms. Moreover, the CoR welcomed the measures of the Electricity Directive, together with the guidelines given on the possibility for Member States to intervene in setting prices for electricity supply. Temporary interventions with the objective of controlling prices should have the aim of protecting vulnerable households, SMEs and competition to the long-term benefit of consumers.

**European Economic and Social Committee**

The European Economic and Social Committee (EESC) is expected to give its opinion on the electricity market reform in its plenary session of 14-15 June 2023. In its recent opinions of 21 September 2022 and of 26 October 2022, the EESC welcomed the increase of renewable energy and energy efficiency targets and highlighted the importance of adapting electricity market design to those parameters. In its opinion of 19 January 2022, the EESC reflected on the need to change the current energy pricing system on the wholesale market and called for adjustments of the current merit-order system so that it would reflect the price of all forms of energy, not only gas.
MAIN REFERENCES

ACER (2022) Final Assessment of the EU Wholesale Electricity Market Design, April 2022.
Widuto, A. (2023) Improving the design of the EU electricity market, Briefing, EPRS, April 2023.

ENDNOTES

1 In addition to the procedure 2023/0076(COD) on the file in the scope of this briefing, the procedure 2021/0424(COD) on the internal markets for renewable and natural gases and for hydrogen (recast) also proposes some changes to the REMIT Regulation.
2 SWD(2023)58 p. 7: ‘The EU electricity market is based on a model that keeps the overall cost of the electricity system as low as possible for consumer. Generators are incentivised to reduce costs and bid as cheaply as possible into the market to ensure they are dispatched. Generators bid into the market based on their marginal costs (how much it costs them to run for a given timeframe). This creates a stack of bids that are then ranked from lowest to highest (the so-called ‘merit order’). The market price is the price of the last producer needed to meet the demand for the given timeframe. All producers who bid below that price are selected and receive that price. The producers bidding above that price are not selected.’
3 Single Allocation Platform Regulation based on Regulation (EU)2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation.
4 Examples of studies include: The future electricity intraday market design, 2019; Commercial Power Purchase Agreements, 2022.
6 The mandate to ACER was given in the Commission toolbox communication COM(2021)660.
7 A series of documents accompany the State of the Energy Union report. In 2022, they are composed of two autonomous acts, a set of reports and an implementing regulation.
8 Denmark, Estonia, Germany Finland, Latvia, Luxembourg and the Netherlands.
9 For example, France and Spain and Poland.

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