

## **Oesterreichs Energie Position paper on reform of the electricity market design**

Assessment of the EU Commission proposal to improve the electricity market design (EMD) from the perspective of Oesterreichs Energie

15. May 2023

### **Merit order with pay-as-clear pricing ensures optimum use of available generating capacity**

Oesterreichs Energie welcomes the fact that the proposal for a EMD reform retains the pricing mechanism for short-term markets, based on a merit order with a pay-as-clear model, as this sends the right scarcity pricing signals to market participants. These signals either result in adjustments in consumer demand and/or send signals for investment in new capacity in order to safeguard supply. Optimum use of available generating capacity prevents market distortions and also ensures that as many renewable generating stations as possible actually produce electricity, as well as minimising CO2 emissions.

### **Ensure space for non-supported and supported renewable energy (RES) business models**

The electricity market design makes provisions for the coexistence of non-supported and supported business models. Oesterreichs Energie welcomes the fact that power purchase agreements (PPAs) will not be made mandatory. The design of contracts for difference (CfDs) as a support mechanism should draw on tried-and-tested elements such as the unilateral feed-in premium, as set out in the Austrian Erneuerbaren-Ausbau-Gesetz (Renewable Energy Expansion Act), and must ensure that price signals for RES plants continue to have an effect and that distortion of the short-term use of RES plants is avoided. The possibility of holding technology-specific auctions must remain in place.

### **Price signals for investments in flexible, controllable generating capacity and demand response must be permitted**

Oesterreichs Energie believes that sources of flexibility (short-term, medium-term and seasonal) are essential as the foundation for an electricity/energy system based on renewable energy forms. With this in mind, we welcome the proposal for a near-term assessment of flexibility requirements and the definition of an indicative national target for the increase in flexibility. The energy-only market provides price signals for the expansion of flexible, controllable capacity. Oesterreichs Energie sees no discernible advantage in the peak shaving product proposed in the electricity market design. This product would compete with, and consequently drain liquidity from the intraday market.

### **Increasing liquidity on forward markets primarily through network expansion and the resulting enlargement of bidding zones**

From Oesterreichs Energie's point of view, priority should be given to driving forward network expansion and configuring the largest possible bidding zones. However, (regional) virtual hubs will not generate clear added value, as they do not address the constraints resulting from limited physical transmission capacities.

### **Amendments to the REMIT Regulation must not place disproportionate burdens on market participants**

Oesterreichs Energie believes that some of the amendments are excessive and not expedient. We also take a very critical view of the proposed expanded remit of the EU-wide regulator ACER, as well as the significant widening of the penalty framework.

### **Network expansion requires a suitable regulatory framework**

Oesterreichs Energie supports the consideration of anticipatory network expansion within the regulatory framework for electricity networks, as this underlines the economic value of expanding network infrastructure in the near term. Sub-metering regulations must not bring about fundamental change in the electricity market design.

### **The provisions on supplier risk management must not create new risks for suppliers and final customers**

Oesterreichs Energie rejects the proposal that member states may require suppliers to cover a share of their supply obligations by means of PPAs. We also have doubts regarding the actual extent to which greater regulation will have a positive impact on final customers.

### **The right to share energy must be equitable in terms of costs and benefits**

Oesterreichs Energie welcomes the proposal that active customers participating in energy communities will still be required to pay levies and system charges based on their electricity consumption, as is the case for final customers in general. When establishing new possibilities and roles, care must be taken to ensure that this does not result in parallel structures alongside the current energy market set-up.

# Oesterreichs Energie Position paper on reform of the electricity market design

## Framework and challenges for the Austrian electricity market

Austria's energy and climate policies include some ambitious targets. One of the most important is the aim of generating 100% of the country's electricity balance from renewable sources from 2030 onwards. This will require an increase of 27 TWh in annual renewable energy (RES) output by 2030, of which 11 TWh will be accounted for by photovoltaic, 10 TWh by wind, 5 TWh by hydro and 1 TWh by biomass. A stable and predictable investment environment is a vital condition for this expansion.

In Austria, hydropower will play an important part in the transformation of the energy system, alongside wind and PV. Hydro currently accounts for more than half of total electricity production. Run-of-river stations capable of generating baseload power will make a significant contribution to achieving the targeted expansion in RES output, while Austria's pumped storage power plants – which have significant capacity as well as potential for expansion – could serve as “green batteries”, providing short-term and medium-term flexibility that allows for the optimal integration of wind and PV into the energy system.

The role of “green batteries” is not limited to Austria; it should be seen in a cross-border context. In turn, this underlines the importance of the Austrian electricity market's integration with neighbouring countries. The separation of the joint bidding zone with Germany in October 2018 was a major setback in terms of integration, which resulted primarily in a lack of liquidity in the Austrian forward market. Any adjustments in Europe's electricity market design must also address the idea of integration between national markets and provide a stable framework to support the achievement of ambitious energy and climate policy goals.

## **In principle, we welcome the proposals on energy market design, but improvements are still needed**

Oesterreichs Energie welcomes the European Commission's proposal for targeted adjustments in the electricity market design, with a view to achieving climate neutrality while at the same time safeguarding both security of supply and affordability for consumers. Rejecting the significant interventions originally envisaged in proven pricing and market mechanisms is the correct approach, because all proposed reforms must take one key point into account: high electricity prices are not due to failings in the internal electricity market. The – in some cases – inordinate increases in wholesale prices were caused by the energy supply shortage resulting from Russia's decision to freeze gas supplies. A clear distinction should be made between approaches aimed at stabilising prices and those intended to protect security of supply. Therefore, it is correct that the Commission's proposal does not interfere with the pricing mechanism for supply and demand. This will ensure that market participants remain confident as regards the efficiency of the market, which will ultimately benefit final customers.

However, improvements to some of the proposals are still required so that the Commission's three stated aims – more renewables, greater consumer protection and enhanced competitiveness – are achieved in full.

### **Market mechanism – retain the merit order and avoid adjustments to the pricing mechanism**

Pricing on the day-ahead market based on a merit order with a pay-as-clear model ensures optimum use of available power station capacity, and is the standard model for pricing homogeneous commodities<sup>1</sup> (including electricity). This limits the strategic incentives for increasing bids and sends accurate scarcity pricing signals to market participants, leading either to adjustments in demand by end consumers and/or to signals for investment in new capacity. For inframarginal technologies, it is possible to cover historical and/or future investment costs, which ensures a willingness to invest.

Optimum use of available generating capacity prevents market distortions. It also ensures that as many renewable generating stations as possible actually produce electricity, and minimises CO<sub>2</sub> emissions. The EMD proposal will leave the pricing mechanism in short-term markets unchanged. This makes sense, because the current day-ahead flow-based market coupling mechanism was the result of close, years-long cooperation between all market participants and it has proved its worth. Potential entry barriers for market participants, e.g. demand response, should be removed in order to increase liquidity in short-term markets. In addition, gate closure times for intraday trading (Article 8 of the Regulation on the internal market for electricity) should be as close to real time as possible. From 2028 onwards, cross-zonal intraday trading will close 30 minutes before the start of the respective market time unit at the earliest. The strengths of this measure lie in the increased possibilities for balancing cross-zonal electricity shortages and surpluses, and in the improved integration of variable renewable energy generators across bidding zones. Oesterreichs Energie welcomes this measure, but believes that implementation before 1 January 2028 would be desirable. However, we take a critical view of the proposal for a mandatory reduction in the minimum bid to 100 kW or less. This decision should be left to the nominated electricity market operators (NEMOs).

A stable investment environment is a key requirement for the achievement of European and national energy targets. Oesterreichs Energie emphasises that interventions in pricing mechanisms for inframarginal technologies and existing generating plants, which some member states (including Spain and France) have demanded, are associated with far-reaching, negative legal and economic effects. The consequence of retaining the merit order is that electricity prices for inframarginal technologies will remain higher than the short-term marginal costs. For climate policy, legal and economic reasons, we take a very critical view of the kinds of regulatory intervention in pricing for inframarginal technologies that we are currently seeing:

- Interventions in pricing are complex and associated with significant legal and market risks (e.g. negative influence of optimum power station use, determination of production costs, influence on demand).

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<sup>1</sup> This is also stated in AEA (2023: 35) as follows: (Austrian Energy Agency, Preserve, Repair or Rebuild? Eine Diskussion vorgeschlagener Reformoptionen für den europäischen Strommarkt, Policy Paper im Auftrag des BMK, April 2023).

- Ex-post interventions have negative effects on investment certainty and the investment environment, which runs contrary to the need for decarbonisation of the energy industry.
- Political risk results in higher finance costs and has a negative impact on overall system costs, electricity prices and efforts aimed at decarbonisation.
- Companies are deprived of the funds they need for investment in renewable generating capacity, which has negative effects on the expansion of RES capacity, finance costs and the energy transformation as a whole.

### **Protect the framework for non-supported and supported RES business models**

The expansion of RES is a key element in the transition to a decarbonised energy system. This is also reflected in Austria's target of generating 100% of the country's electricity balance from renewable sources by 2030. Oesterreichs Energie is committed to promoting the transformation of the energy system and achieving the related political goals for RES expansion in Austria. Achievement of the targets for renewable expansion can be induced by means of policies that specify the annual level of expansion (quantity control) and a support mechanism for the additional capacity. This is how the RES targets should be achieved. As a result, supported business models will remain part of the market design. However, alongside quantity control there must also be sufficient leeway for unsupported business models based on price control, i.e. electricity and/or carbon prices.

The EMD provides for the coexistence of non-supported and supported business models. Non-supported business models can be implemented by removing market barriers for long-term PPAs (proposed new Article 19a of the Regulation on the internal market for electricity). In the case of long-term PPAs, risks arise in transactions between generators and consumers (e.g. credit risk, price risk) that can lead to prohibitively high risk premiums and, in turn, prevent the conclusion of agreements.

Oesterreichs Energie is generally in favour of the decision not to introduce compulsory PPAs and welcomes the EMD provision which explicitly states that any PPA-related support measures introduced by member states should be designed to avoid negative effects on the liquidity of wholesale markets (short-term and forward markets should be considered in this respect). For this reason, measures aimed at facilitating PPAs (e.g. assumption of credit risk by way of state guarantees) must always be assessed in conjunction with steps intended to increase the range of maturities of forward market products (exchange/OTC). State guarantees for credit risks arising from PPAs must not lead to a situation where, for example, exchange-traded futures (5+ years) are at a competitive disadvantage if the credit risk for such futures must be borne by the trading partners on the exchange concerned. Potential market distortion between member states as a result of unilateral measures implemented to facilitate PPAs should also be taken into account.

Oesterreichs Energie takes a critical view of the fact that even in standard PPAs, clauses that provide for premature termination of the agreement are required by law. Such clauses are inherently contradictory to the idea of enhancing investment certainty by means of long-term purchase agreements.

In the supported business model, the support mechanism must be designed in such a way that price signals for RES installations continue to have an effect and that distortion in the

short-term use of RES installations is avoided. Unilateral feed-in premiums are set out in the Austrian Renewable Energy Expansion Act and are an established instrument in this regard. The EMD states that two-way contracts for difference (CfDs) are mandatory for new investments in renewable generating capacity (including repowering or expanding power-generating facilities or prolonging their lifetime), for hydropower generation without reservoir, and for nuclear generation (proposed new Article 19b of the Regulation on the internal market for electricity). In its simplest form, the RES generator receives a fixed strike price (e.g. EUR 50/MWh) and compensation is paid for the hourly difference compared to the day-ahead price, i.e. if the day-ahead price is higher than the strike price, compensation is paid by the RES generator, and if the day-ahead price is lower, the RES generator receives compensation. In contrast to the unilateral feed-in premium, this limits the upside potential for the RES generator. As a rule, the strike price should be determined by way of competitive tenders. Oesterreichs Energie still favours the option of technology-specific auctions, which also form part of the Austrian Renewable Energy Expansion Act.

In principle, Oesterreichs Energie takes a neutral view of two-way CfDs. However, the design of two-way CfDs must ensure that they do not bring about a “produce and forget” situation and RES generators continue to respond to price signals. To this end, the CfD design should be based on key elements of the current unilateral feed-in premium as set out in the Austrian Renewable Energy Expansion Act, e.g. “The reference market price for settlement of the strike price is determined using the weighted average hourly day-ahead prices for electricity generated over a given time period (e.g. month, quarter, year) for each technology”; “suspension of payments from the CfD in case of negative prices”. In addition, CfD design options that would lead to a complete decoupling of support payments and electricity generation have also been proposed recently. However, these CfD design options are yet to be implemented in practice. Consequently, Oesterreichs Energie believes the first step in designing CfDs should be to draw on the tried-and-tested features of the unilateral feed-in premium. This will help to save valuable time when it comes to achieving RES expansion targets.

Nevertheless, this raises the question of how the mandatory introduction of a new support instrument for new generating facilities – particularly in combination with the current Austrian feed-in premium model – will affect future investments. In order to achieve the RES expansion targets in Austria, clarification should be provided as soon as possible regarding the effect that the EMD requirement for two-way CfDs will have on the current Austrian Renewable Energy Expansion Act (unilateral feed-in premium), in particular as to whether tenders under the Act can still be held in the form of a unilateral feed-in premium after the EMD comes into effect, or whether the switch to two-way CfDs must take place immediately. Early clarification is essential because RES projects involve a corresponding lead time and the expected support mechanism plays a significant role in calculations of profitability. It is important to avoid uncertainty among investors as a result of another change in the support system.

We are particularly critical of the fact that support provided through two-way CfDs also applies to new investments in nuclear energy, which involves high external costs and risks, and therefore all forms of support should be rejected.



### **Price signals for investments in flexible, controllable generating capacity and demand response must be permitted**

Even if RES accounts for a very high proportion of the technology mix, higher-price periods will occur if, for example, electricity prices are set by storage facilities, green (future) gas-fired power plants or other sources of flexibility due to lower RES generation. Pricing on the short-term markets ensures that high prices are also visible on the market and trigger a response from market participants. In this way, the energy-only market sends price signals for the expansion of flexible, controllable capacity. These price signals have an effect on storage technologies through price volatility, on (green) gas-fired stations (back-up power plants) and demand response through scarcity pricing on the day-ahead market and the risk of high balancing energy prices in case of electricity undersupply. However, it is crucial that such price signals are also permitted so that market participants can or must react to them, otherwise they will incur financial losses (e.g. by paying very high balancing energy prices).

Oesterreichs Energie believes that sources of flexibility (short-term, medium-term and seasonal) are an essential component of an electricity/energy system based on renewable energy forms, and we support the measures in the EMD aimed at removing market barriers for sources of flexibility. We also welcome the fact that member states will be required to assess their future flexibility needs in the near future and set an indicative national objective for the expansion of flexibility (proposed Article 19d-f Regulation on the internal market for electricity). Flexibility will be vital for the energy system of the future, and various options for flexibility (short-term, medium-term and seasonal) will be necessary to achieve a resilient energy market design.

Oesterreichs Energie sees no discernible advantage in the peak shaving product proposed in the EMD (proposed Article 7a of the Regulation on the internal market for electricity). Transmission system operators (TSOs) will be able to purchase peak shaving products, which will be activated after the closure of the day-ahead market and before the start of the balancing market. This means that peak shaving products will compete with the intraday market, where liquidity will consequently be reduced. This negates the function of the intraday market as a means to correct short-term changes in generation and consumption. It is unclear what additional benefits peak shaving products will deliver compared to the options currently available for marketing demand response to short-term markets. The response to the instrument recently introduced by Austrian Power Grid on the basis of the EU Regulation on an emergency intervention to address high energy prices (binding demand reduction target of 5% during peak hours) has so far been muted – and continuing to offer a product for which there is no market demand does not appear to be expedient. The peak shaving product would also turn TSOs into market participants. On the whole, flexibility should be priced and incentives for flexibility offered through existing markets rather than by means of separate products. Consequently, Oesterreichs Energie proposes dropping the peak shaving product altogether. If the peak shaving product is retained and integrated into the revised EU electricity market design, the objective and design of the product needs to be described in more detail and should in any case be the subject of a cost-benefit analysis.

The EMD includes provisions for a flexibility support mechanism for investments in certain sources of flexibility (proposed Article 19d-f Regulation on the internal market for electricity), namely in new storage facilities and demand response. In principle, we take a negative view



of the idea of restricting support to certain sources of flexibility, since all forms of flexibility (short-term, medium-term, seasonal) will be required in the renewable energy system of the future. In addition to storage facilities, (new) regulable power plants also need to be considered when discussing the required level of flexibility. In the integrated European electricity market, measures implemented in neighbouring countries can have a significant influence on the Austrian electricity market. A case in point is the power plant strategy currently being drawn up in Germany, which is intended to stimulate investment in new, flexible (H<sub>2</sub>-ready or H<sub>2</sub>) gas-fired power plants in the German electricity market by means of technology-specific support. If the results of these initiatives place significant restraints on price signals for investments in sources of flexibility, accompanying measures designed to incentivise all sources of flexibility (from demand response to regulable power plants) by way of capacity markets could also be considered in Austria. National circumstances must be taken into account when designing such measures.

The flexibility support scheme outlined in the EMD is intended to encourage new investment. It can be assumed that the introduction of flexibility support schemes will require approval under state aid law. The Austrian Elektrizitätswirtschafts- und -organisationsgesetz (Electricity Industry and Organisation Act) includes a partial exemption from the system charges for storage facilities (currently a 20-year exemption from the grid utilisation and system loss charges from the date of commissioning). This exemption should not be compromised because it also applies to existing installations, and retroactive intervention in the regulatory framework should be rejected due to its impact on legal certainty. In addition, any encroachment on existing rights would also seriously undermine planning and investment certainty when it comes to new installations.

### **Increasing liquidity on forward markets primarily through network expansion and the resulting enlargement of bidding zones**

The separation of the joint German/Austrian bidding zone in October 2018 led to a sharp fall in liquidity on the Austrian forward market. Oesterreichs Energie generally supports measures aimed at increasing liquidity on the forward markets and therefore welcomes the proposal in the EMD for the possibility of offering trading in long-term transmission rights up to calendar year t+3 (proposed new Article 9 Regulation on the internal market for electricity). This will lead to a closer matching between forward market transactions and long-term transmission rights. An actual secondary market for these products should also be established. However, it is important not to ignore physics when determining quantities for long-term transmission rights. Oesterreichs Energie also sees other possibilities for increasing liquidity on forward markets. For example, collaterals must not restrict trading on exchange forward markets too much.

Oesterreichs Energie wishes to emphasise that the size of bidding zones and the diversity of market participants on the supply and demand sides both play an important role, especially in terms of forward market liquidity. This means that enlarging bidding zones is an important method of increasing liquidity, and this can primarily be achieved through timely network expansion aimed at reducing congestion. Expansion of the electricity transmission grid will also promote the integration of renewable electricity across Europe, enhance the value of sources of flexibility and contribute to security of supply. Consequently, Oesterreichs Energie supports the EMD proposal that forward-looking network expansion should play a part in the regulation of electricity grids.

The EMD proposal also includes the establishment of regional virtual hubs as an important measure to increase liquidity on forward markets (proposed new Article 9 Regulation on the internal market for electricity). To this end, ENTSO-E is due to submit a proposal on the geographical scope of the regional virtual hubs, which may comprise several bidding zones. A virtual reference price, which serves as the basis for financial settlement of forward products, will be calculated for each regional virtual hub. A single allocation platform must be set up for each regional virtual hub. This platform will define long-term transmission rights from the regional virtual hub concerned to the bidding zones included in the geographical scope of the hub and auction these rights to market participants. Exchanges and/or NEMOs can develop forward products based on the reference price in the regional virtual hub. Regulators can stipulate additional measures designed to increase liquidity, e.g. market makers, power exchanges and TSOs.

In Oesterreichs Energie's view, the added value generated by regional virtual hubs is not clear, as they do not address the constraints resulting from limited physical transmission capacity. Oesterreichs Energie is sceptical of the proposed regional virtual hubs for various reasons:

- The regional virtual hub concept corresponds to the wholesale market design in the Nordpool region. The purpose of the regional virtual hub is to bundle liquidity from several small bidding zones. This is necessary because the Nordpool region does not have an established "anchor" bidding zone for the forward market. Central Europe does, however, have a large "anchor" bidding zone in the shape of Germany, which has a highly liquid forward market. Market participants outside Germany use forward products from the "anchor" bidding zone in order to hedge prices. The difference (basis risk) between the price in the "anchor" bidding zone and the market participant's own bidding zone is either hedged by participants using additional products (e.g. financial transmission rights) or is accepted.
- A regional virtual hub comprising the Germany/Luxembourg bidding zone, which has a highly liquid forward market, and smaller neighbouring bidding zones (e.g. Austria) will most likely have little effect. Market participants in Germany will continue to use German forward products for hedging. Hedging by means of a product from a regional virtual hub will not deliver any advantages for market participants in Germany, but rather create a decisive disadvantage, i.e. a new basis risk between the price in the regional virtual hub and the one in the Germany/Luxembourg bidding zone. As a result, liquidity from German market participants will not flow to the regional virtual hub. Market participants from the smaller bidding zones could demand forward products that relate to the regional virtual hub. However, these products will compete with the liquid forward products from the Germany/Luxembourg "anchor" bidding zone. Again, the benefits of a product related to a regional virtual hub are not clear. Basis risk remains, and liquidity will be low due to the absence of liquidity from Germany. In this regard, the division of the joint Germany/Austria bidding zone is an interesting case. Even after separation, a GER/AUT forward product (regional virtual hub) was still offered. However, liquidity moved from the GER/AUT product to the GER product, as market participants in Germany saw no advantage in using a GER/AUT product for hedging (basis risk between GER/AUT reference price and GER price) and market participants in Austria had to – and still do – use the liquid GER product for hedging purposes.

This means that a large number of small bidding zones is essential for the establishment of fully functional regional virtual hubs. This creates the impression that a lack of liquidity in smaller bidding zones could be artificially offset by virtual hubs, which is not the case, or is only possible under certain circumstances. Oesterreichs Energie believes that priority should be given to driving forward network expansion and configuring the largest possible bidding zones. These two measures will address the increase in liquidity in the forward market more effectively than through the creation of virtual hubs, which will add an additional and unnecessary level of complexity to the current system.

Oesterreichs Energie also sees a certain risk that the combination of regional virtual hubs with small bidding zones could be a precursor for more fundamental adjustments to the market design, namely the transition from a zonal to a nodal market design. With nodal pricing, prices reflect the marginal cost of generation at each node, as well as taking congestion/losses into account, which results in many different wholesale prices. The price includes an integrated local locational signal that reflects the short-term marginal cost of congestion. Nodal pricing would represent a wide-ranging intervention in the market design with unclear benefits, and Oesterreichs Energie therefore rejects this idea.

Finally, in our opinion, against the backdrop of moves aimed at strengthening the forward markets, the review/abolition of the derogations for proprietary trading in the electricity and gas market under MiFID II which is currently under discussion should definitely be put on hold. In a worst-case scenario, bank licensing for electricity companies with trading operations would be required, but this would compel them to withdraw from the market instead of having the effect of increasing liquidity on the forward market.

### **Amendments to the REMIT regulation must not place disproportionate burdens on market participants**

Alongside its proposals for the EMD, the European Commission has also put forward amendments to the Regulation on Energy Wholesale Market Integrity and Transparency (REMIT), which will result in adjustments to processes on the wholesale market. In Oesterreichs Energie's opinion, some of the changes are excessive and not expedient:

- We reject the proposed extension of the definition of organised market places, as such a move would substantially widen the obligations of smaller market participants and impose a considerable burden on them, which is not offset by any discernible benefits.
- The proposed regulations on algorithmic trading would impose responsibilities on market participants that they would not be able to fulfil. The disclosure obligations are neither appropriate nor proportionate. Under the Commission's proposals, full responsibility for the functioning of automated trading systems rests with the market participants. Instead, Oesterreichs Energie proposes introducing a requirement for mandatory authorisation of automated trading systems by exchanges or regulators. Therefore, Oesterreichs Energie believes that the proposed new Article 5a should be removed altogether.
- Extending the remit of the Union-wide regulatory authority ACER is neither expedient nor proportionate. Articles 13a-13d significantly expand ACER's rights in relation to the performance of its duties. Oesterreichs Energie rejects this move. Under the current legal framework, national supervisory authorities are required to assist ACER in carrying out investigations. In the view of Oesterreichs Energie, there are no clear

benefits to be gained from ACER interacting directly with market participants. The same applies to the proposal to delegate national regulators' responsibilities to ACER. In Austria, E-Control bears general responsibility for the energy sector. Distributing tasks among additional regulatory bodies could lead to inconsistent regulatory practices, which in turn would reduce legal certainty for market participants.

- The publication of personal data related to decisions on breaches of the REMIT Regulation must stop. The Commission's proposed amendment to Article 16(2) states that ACER will maintain a public list of national authorities' decisions on violations of the REMIT Regulation. This list will include the name of the person sanctioned, as well as details of the decision. Oesterreichs Energie believes that the obligation to publish this information is fraught with problems, especially if an effective legal remedy for the individuals concerned is not introduced at the same time. This proposal must therefore be rejected.
- The considerably harsher penalties in the proposed new Article 18 (Penalties), especially the sanctions for natural persons, are excessive. Limits on the sanctions for natural persons are definitely required.

### **The provisions on supplier risk management must not create new risks for suppliers and final customers**

The EMD envisages that national regulators will ensure that suppliers implement appropriate hedging strategies (proposed new Article 18a Directive on common rules for the internal market for electricity). Oesterreichs Energie is sceptical of the idea of national regulators imposing specific requirements for suppliers' risk management processes. Instead, the focus should be on monitoring good practice. Oesterreichs Energie rejects the proposal that member states may require suppliers to cover a share of their supply obligations by means of PPAs, in view of the fact that final customers still have the right to change their electricity supplier at short notice. This will result in asymmetrical obligations and suppliers will bear the risk associated with large, open long positions, which they will also consider in their prices if they apply good practice in their risk management systems. Consequently, such an obligation would also be detrimental to final customers. In its proposal, the Commission states that coverage of suppliers' risk exposure by means of PPAs should correspond to their risk exposure on the consumer side. However, proper interpretation of this requirement would make PPAs basically unsuitable for the coverage of supply obligations, as the terms of suppliers' contracts with providers of PPAs are generally longer than those for contracts between final customers and suppliers.

The EMD gives final customers the right to conclude fixed-term, fixed-price contracts (in addition to a dynamic electricity price) and obliges larger suppliers to offer such contracts. However, there is no clarification of what "fixed-price" actually means. Taken together, the current statutory requirements and the legislative proposal contain contradictions. On the one hand, there are demands for wholesalers to offer long-term contracts, while on the other, suppliers are required to offer flexible tariffs. However, at the end of the day, both trading strategies must square with one another. Therefore, Oesterreichs Energie takes a critical view of the proposal and has doubts regarding the extent to which increasing regulation will really deliver positive results for final customers.

### **Differing views on matters connected with final customers regarding energy sharing, the supplier of last resort and vulnerable customers**

The EMD proposal contains various additional recommendations related to final customers, and Oesterreichs Energie takes differing views on them:

- The right to share energy (proposed new Article 15a Directive on common rules for the internal market for electricity) must be balanced in terms of costs and benefits: the Commission proposes that all households, SMEs and public bodies should have the right to participate in energy sharing as active customers. Oesterreichs Energie welcomes the fact that active customers who participate in energy communities will still – like final customers in general – have to pay taxes, levies and system charges based on their electricity consumption. However, the question of whether the imbalance settlement period refers to balancing energy from balancing groups is not clearly formulated. On the whole, costs and benefits must be evenly balanced, with a view to enabling system operators to administer these measures. The associated costs should be allocated on a cost causation basis and should not be embedded in the system charges. Accordingly, when creating new possibilities and roles, care must be taken to avoid parallel structures alongside the current energy market set-up that are biased in favour of customers with significant financial and other resources, and which have corresponding options at their disposal, with the outcome that only vulnerable customers are served by the traditional energy market.
- We welcome the proposals regarding the provider of last resort (proposed new Article 27a Directive on common rules for the internal market for electricity): Oesterreichs Energie is in favour of restricting suppliers of last resort to a particular group of customers (household consumers who do not receive market-based offers). This restriction to a particular customer group should also be considered in national frameworks for universal service.
- The phrasing of the provision on protecting vulnerable customers against disconnection (proposed Article 28a Directive on common rules for the internal market for electricity) is misleading, as suppliers do not take decisions on and carry out disconnections, and we therefore have doubts regarding this proposal. Disconnections are ultimately carried out by system operators. However, the Commission's draft proposal is clearly (solely) aimed at suppliers at present. The member states' current leeway in the design of frameworks should be retained.

**Negative view of the mechanism to address an electricity price crisis** The EMD stipulates that several criteria must be met before crisis mechanisms in the form of targeted public interventions in price setting can be introduced. In the event of a Union-wide electricity price crisis, member states may impose regulated retail prices (proposed new Article 66a Directive on common rules for the internal market for electricity). Regulated retail prices for household customers may be below cost. In this case, suppliers receive compensation for the difference between their costs and the regulated retail price. However, the EMD proposal only refers to compensation for electricity supplies to household customers, but not to SMEs. In general, Oesterreichs Energie rejects such public interventions in price setting for households and SMEs. In addition, such interventions do not send an important signal that promotes energy efficiency. Instead, vulnerable households should receive direct and more targeted support by means of a state instrument which is tailored to different groups in society.



If the proposal for such interventions in price setting for households and SMEs is retained, compensation for costs should be provided at all events. However, the EMD does not provide a definition of “cost”. Various aspects must be taken into account:

- Consideration of the opportunity cost of own generation: in the opinion of Oesterreichs Energie, own generation must be measured in terms of opportunity costs, i.e. at market prices. This means that costs are based on wholesale market prices.
- Consideration of supplier risk management: suppliers’ electricity procurement costs depend on their specific procurement strategy. In a period of rising market prices, a longer-term procurement strategy results in lower procurement costs compared to a short-term strategy. As the conditions for a Union-wide electricity price crisis assume that prices are rising<sup>2</sup> there is a risk that suppliers who pursue a long-term procurement strategy that reduces price volatility for final customers will be worse off.

### **Network expansion requires a suitable regulatory framework**

The expansion of electricity networks is essential for a successful implementation of the energy transformation. This is equally true for transmission and distribution systems. Oesterreichs Energie supports the consideration of forward-looking network expansion in the regulation of electricity networks, as this underlines the economic value of expanding the electricity network at an early stage.

Distribution systems are enablers of the energy transformation at the regional level. The main challenges at present are ensuring network connections for numerous new decentralised renewable generators and consumers, as well as driving forward electricity network expansion while at the same time downsizing the gas network. A suitable regulatory framework is needed in order to safeguard security of supply in the future. Network tariffs with a large capacity element give customers incentives to optimise their consumption and production, and also contribute to boosting the efficiency of the entire energy system. Capacity-based network tariffs (Article 18 Regulation on the internal market for electricity) provide a fair tariff system for final customers, as they are cost-reflective and encourage customers to participate in demand-response activities aimed at reducing demand for capacity, which consequently allows for distribution costs to be minimised by optimising the required capacity. If distribution system operators (DSOs) are required to procure capacity and are not allowed to provide it themselves, this must be recognised by the regulator as an element of fixed costs.

### **Dedicated metering device – sub-meter regulations must not fundamentally change electricity market design**

The electricity market design is currently based on metering points. The extension of the regulations to include sub-metering, i.e. several meters behind a single metering point, would fundamentally change the electricity market design (proposed new Article 7b Regulation on the internal market for electricity and proposed new Article 4 Directive on common rules for the internal market for electricity). From an IT perspective, implementation will pose both financial and technical challenges for system operators. A longer implementation period is

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<sup>2</sup> Article 66a 1(a): “very high prices in wholesale electricity markets at least two and a half times the average price during the previous 5 years which is expected to continue for at least 6 months”



needed here, in order to ensure the usual high standards of data management and billing in accordance with the current statutory requirements. However, steps must also be taken to ensure that all installed meters are calibrated and meet the relevant calibration regulations. In addition, each meter must comply with the DSO's technical specifications and quality criteria, and interoperability must be assured in order to guarantee communication with the electricity DSO and all other relevant market participants.

#### **About Oesterreichs Energie**

Oesterreichs Energie has been working since 1953 to represent the electricity sector's interests in its interactions with political and public administrative bodies and the general public. As the first point of contact for energy-related matters, we work closely with political institutions, public authorities and associations, and provide the public with information on subjects connected with the electricity industry. The 140 or so member companies employ around 20,000 people and generate over 90% of the power produced in Austria. They have a maximum capacity of more than 25,000 MW and generate 68 TWh of electricity a year, 72% of which comes from renewable sources.

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