

# Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Bill 2023

## Bill No. 51 of 2023

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### Abstract

The main purpose of the *Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Bill 2023* is to implement the solidarity contribution of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices. This will include the introduction of a temporary solidarity contribution payable by companies with activities in the fossil fuel sector on taxable profits in the years 2022 and 2023.



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## Glossary and abbreviations

Table 1: Glossary & Abbreviations

Glossary & Abbreviations	
<b>ACER</b>	Agency for the Cooperation of Energy Regulators
<b>CfD</b>	Contracts for Difference
<b>Council Regulation (EU) 2022/1854</b>	EU Regulation that establishes an emergency intervention to mitigate the effects of high energy prices through exceptional, targeted and time-limited measures. Those measures aim to reduce electricity consumption, to introduce a cap on market revenues that certain producers receive from the generation of electricity and establish a temporary solidarity contribution on surplus profits generated from activities in the fossil fuel sector.
<b>CRU</b>	Commission for Regulation of Utilities
<b>DECC</b>	Department of the Environment, Climate and Communications
<b>EPL</b>	Energy Profits Levy
<b>EPRS</b>	European Parliamentary Research Service
<b>Inframarginal generators</b>	Electricity generators that include renewables, nuclear and some solid fossil fuels, which are providing electricity to the grid at a cost below the price level set by the more expensive “marginal” producers, which tends to be natural gas.
<b>MWh</b>	Megawatt Hour
<b>PPA</b>	Power Purchase Agreement
<b>RIA</b>	Regulatory Impact Analysis
<b>SEMO</b>	Single Electricity Market Operator
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TSC</b>	Temporary Solidarity Contribution - a temporary measure intended to address surplus profits of Union companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors to mitigate exceptional price developments in the energy markets for European Union Member States, consumers and companies.

## Summary

- The [Energy \(Windfall Gains in the Energy Sector\) \(Temporary Solidarity Contribution\) Bill 2023](#) was published on 22 June 2023.
- The Bill comprises of 26 sections and 4 parts.
- The primary purpose of the legislation is to implement the solidarity contribution of [Council Regulation \(EU\) 2022/1854 of 6 October 2022](#) on an emergency intervention to address high energy prices. This will include the introduction of a temporary solidarity contribution payable by companies with activities in the fossil fuel sector on taxable profits in the years 2022 and 2023.
- In [November 2022](#), the Minister for the Environment, Climate and Communications, Eamon Ryan TD, signalled measures that will be used to address windfall gains in the energy sector through the implementation of Council Regulation (EU) 2022/1854. This included placing a cap on all market revenues of non-gas electricity generators along with a temporary solidarity contribution based on taxable profits for fossil fuel companies.
- The temporary solidarity contribution is calculated based on the portion of a company's taxable profits which are more than 20% higher than a baseline. The baseline will be the average taxable profits in respect of reference years set out in Part 24B of the Taxes Consolidation Act 1997. Taxable profits which are more than 20% above the baseline will be subject to the temporary solidarity contribution at a rate of 75% in each of the years 2022 and 2023.
- The draft [Regulatory Impact Analysis](#) accompanying the Bill estimates that there will be a cost to the Exchequer arising from administration of the temporary solidarity contribution by the Revenue Commissioners. However, these costs will be offset by the revenue accruing to the State from the collection of the proceeds which is estimated to range from €200m to €450m. The cost to industry is dependent on the amount of the temporary solidarity contribution required for payment based on the parameters of the implementation.
- The General Scheme underwent pre-legislative scrutiny (PLS) by the Joint Committee on Environment and Climate Action. One public hearing was held on [18 April](#) 2023 and the Committee issued a [report](#) in May 2023, which identified a number of key issues and included a set of 10 recommendations.
- The L&RS has also published a [Bill Briefing](#) page on this Bill [internal access only].

## Introduction

The [Energy \(Windfall Gains in the Energy Sector\) \(Temporary Solidarity Contribution\) Bill 2023](#) was published on 22 June 2023. The Bill contains 4 Parts and 26 Sections and seeks to implement the solidarity contribution of [Council Regulation \(EU\) 2022/1854 of 6 October 2022](#) on an emergency intervention to address high energy prices.

Announcing measures to address windfall gains in the energy sector through the implementation of Council Regulation (EU) 2022/1854, the Minister for the Environment, Climate and Communications, Eamon Ryan T.D. stated that:<sup>1</sup>

“The Russian invasion of Ukraine has led to unprecedented increases in wholesale natural gas prices, impacting the prices paid by consumers, but also leading to windfall gains in some areas of the energy sector. The agreement of the Council Regulation and the government’s approval on its implementation will ensure that windfall gains will be collected and redistributed to support energy consumers.”

The [Explanatory Memorandum](#) notes that the Bill will implement the solidarity contribution of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.

## Cost implications

According to the draft [Regulatory Impact Analysis](#) (RIA), there will be a cost to the Exchequer arising from administration of the temporary solidarity contribution by the Revenue Commissioners. However, these costs will be offset by the revenue accruing to the State from the collection of the proceeds which is estimated to range from €200m to €450m. The cost to industry is dependent on the amount of the temporary solidarity contribution required for payment based on the parameters of the implementation.

## Pre-legislative scrutiny (PLS)

The [General Scheme](#) of the *Energy (Windfall Gains in the Energy Sector) Bill 2023* was published and received Government approval for drafting a new law in March of 2023. The General Scheme was referred to the Joint Committee on Environment and Climate Action for pre-legislative scrutiny.

The Committee commenced pre-legislative scrutiny on the General Scheme of the Bill in April of 2023. One PLS hearing was held on [18 April](#) 2023 and included the following witnesses:

- Ms. Catharina Sikow-Magny (European Commission)
- Mr. John Burke, Ms. Laurena Leacy, and Mr. Evan Walker (Department of Environment, Climate and Communications)
- Mr. Kevin Hagan (Commission for the Regulation of Utilities)

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<sup>1</sup> See Department of Environment, Climate and Communications, Press Release, *Minister Ryan announces measures to address windfall gains in the energy sector* (22 November 2022). Available [here](#).

- Mr. Michael Kelly (EirGrid)

The Joint Committee subsequently published its PLS findings in May 2023 in its [Report on the Pre-Legislative Scrutiny of the General Scheme of the Energy \(Windfall Gains in the Energy Sector\) Bill 2023](#).

Since the Joint Committee published its report, the Government has decided to introduce two separate pieces of legislation to address each of the measures included in the General Scheme. The first Bill, which is the subject of this Bill Digest, addresses the temporary solidarity contribution (TSC), while the second Bill to follow will address the cap on market revenues.<sup>2</sup>

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<sup>2</sup> See Department of Environment, Climate and Communications, Press Release, *Government approves publication of legislation to address windfalls in the energy sector* (23 June 2023). Available [here](#).

## Table of provisions

A summary of the Bill's provisions is included in the Table below.

**Table 2: Summary of provisions contained in the Bill**

Section	Title	Effect
<b>Part 1: Preliminary and General</b>		
1.	Short title and commencement	This is a standard provision and provides that, if enacted, this Bill may be cited as the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023. It will be commenced by Ministerial order(s) and different provisions may be commenced at different times.
2.	Interpretation	Section 2 of the Bill defines key words and terms used in the Bill.
3.	Expenses	This is a standard provision enabling the expenses of the Minister to be paid out of moneys provided by the Oireachtas.
<b>Part 2: Provisions Relating to Temporary Solidarity Contribution</b>		
4.	Temporary solidarity contribution	Section 4 of the Bill provides for a "temporary solidarity contribution" on the taxable profits of an energy company which is due and payable to the Revenue Commissioners in respect of each chargeable period as defined in Section 2.
5.	Anti-avoidance	Section 5 of the Bill provides for arrangements not made for bona fide commercial reasons or made to reduce or avoid the amount of payable temporary solidarity contribution to not be taken into account in the calculation of taxable profits for the purposes of the temporary solidarity contribution.
6.	Care and management of temporary solidarity contribution	Section 6 of the Bill provides for the temporary solidarity contribution to be under the care and management of the Revenue Commissioners
7.	Notice to Revenue Commissioners	Section 7 of the Bill provides that each energy company shall be required to give notice to the Revenue Commissioners that the company is an energy company in the form and manner specified by the Revenue Commissioners.
8.	Returns	Section 8 of the Bill provides for an energy company to prepare and deliver a return in respect of the temporary solidarity contribution.
9.	Action by person acting under authority	Section 9 of the Bill provides for a person who prepares and delivers a return in respect of the temporary solidarity contribution under the authority

		of an energy company to the Revenue Commissioners.
10.	Assessments and enquiries	Section 10 of the Bill provides for certain sections of the Taxes Consolidation Act 1997 Part 41A (Assessing Rules Including Rules for Self Assessment) to be applied to the temporary solidarity contribution subject to certain modifications set out in this Bill.
11.	Revenue assessment	Section 11 of the Bill provides for assessments of the amount of the temporary solidarity contribution to be undertaken by Revenue officers.
12.	Notice of Revenue assessment	Section 12 of the Bill provides for a Revenue officer to give notice to an energy company in respect of a Revenue assessment and provides for the details that will be included in a notice of a Revenue Assessment.
13.	Amended assessment	Section 13 of the Bill provides that sections 10, 11 and 12 of this Bill shall apply to amended assessments.
14.	Application of expression of doubt	Section 14 of the Bill provides for an expression of doubt about the application of law or the treatment for any matter contained in a return, to be included with a return by an energy company to the Revenue Commissioners.
15.	Appeal to Appeal Commissioners	Section 15 of the Bill provides for an energy company to make an appeal to the Appeal Commissioners in respect of a Revenue assessment or amended assessment within thirty days after the date of notice of the assessment or amended assessment.
16.	Obligation to keep certain records	Section 16 of the Bill provides for the obligation of an energy company to retain records that are required to make a return for the temporary solidarity contribution for each chargeable period.
<b>Part 3: Enforcement</b>		
17.	Surcharge for late return	Section 17 of the Bill provides for a surcharge to be applied to the amount of the temporary solidarity contribution that would have been payable in the event that an energy company fails to deliver a return on or before the specified date.
18.	Interest on overdue amounts	Section 18 of the Bill provides for interest to be payable by an energy company from the date that a temporary solidarity contribution becomes due and payable.



19.	Penalties for failure to deliver a return etc.	Section 19 of the Bill provides for a penalty of €3,000 where an energy company fails to deliver a return required under this Bill.
20.	Penalty for failure to keep records	Section 20 of the Bill provides for a penalty of €3,000 where an energy company does not retain records relating to the temporary solidarity contribution.
21.	Other penalties	Section 21 of the Bill provides for other penalties applicable to the temporary solidarity contribution.
22.	Offences	Section 22 of the Bill provides for offences applicable to the temporary solidarity contribution.
<b>Part 4: Amendment of Other Acts</b>		
23.	Insertion of new Part 24B in Act of 1997	Section 23 of the Bill amends the Tax Consolidation Act 1997 by inserting a new Part 24B Council Regulation (EU) 2022/1854 of 6 October 2022/1854 as regards the Temporary Solidarity Contribution to provide for definitions for this Part in section 697R, taxable profits for purposes of temporary solidarity contribution in section 697S, average taxable profits for purposes of temporary solidarity contribution in section 697T and deductibility of temporary solidarity contribution for corporation tax in section 697U.
24.	Consequential amendments to Act of 1997	Section 24 of the Bill contains a number of consequential amendments to the Taxes Consolidation Act 1997 as a result of the insertion of a new Part 24B into the Taxes Consolidation Act 1997.
25.	Amendment of Ministers and Secretaries (Amendment) Act 2011	Section 25 of the Bill inserts an amendment to Section 101(3) of the Ministers and Secretaries (Amendment) Act 2011 to include the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023 in the in the definition of “relevant enactment”.
26.	Amendment of Finance (Tax Appeals) Act 2015	Section 26 of the Bill inserts an amendment to Section 2 of the Finance (Tax Appeals) Act 2015 to include the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Act 2023,” in the definition of “Taxation Acts”.

Source: Library & Research Service, 2023. Based on the Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Bill 2023 and Explanatory Memorandum.

## Existing legislative framework

The main purpose of the Bill is to implement the solidarity contribution of [Council Regulation \(EU\) 2022/1854 of 6 October 2022](#) on an emergency intervention to address high energy prices. This will include the introduction of a temporary solidarity contribution on fossil fuel production and refining.

This section looks at the existing legislative framework related to this Bill (in the form of that Regulation), following a brief introduction to this policy area in its EU context.

### The EU's energy policy and energy market

Energy is one of a number of [shared competences](#) between the EU and its Member States. Article [194](#) of the Treaty on the Functioning of the European Union (TFEU) states that energy is a shared responsibility between EU Member States and the EU.<sup>3</sup> Member States can determine their own energy mix and the general structure of its energy supply, whilst being subject to common energy market rules. The main aims of EU energy policy are to:

- ensure the functioning of the energy market;
- ensure security of energy supply;
- promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- promote the interconnection of energy networks.<sup>4</sup>

The [Agency for the Cooperation of Energy Regulators \(ACER\)](#) is responsible for regulating the EU's energy market. ACER was established in March 2011 by the [Third Energy Package legislation](#) as an independent body to foster the integration and completion of the European Internal Energy Market for electricity and natural gas.<sup>5</sup> Its role is to assist and coordinate the work of national regulatory authorities across the EU.<sup>6</sup> The [Commission for Regulation of Utilities](#) (CRU) is the national regulatory body of Ireland.

The wholesale energy market in the EU follows a [marginal pricing model](#), also known as the pay-as-clear model:

“Electricity producers across the EU, from wind farms, nuclear, coal and gas plants, bid into the market with the price of their production costs.

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<sup>3</sup> EUR-Lex webpage, *EU energy policy*. Available at <https://eur-lex.europa.eu/EN/legal-content/glossary/eu-energy-policy.html>

<sup>4</sup> EUR-Lex webpage, *EU energy policy*. Available at <https://eur-lex.europa.eu/EN/legal-content/glossary/eu-energy-policy.html>

<sup>5</sup> Agency for the Cooperation of Energy Regulators (ACER) webpage, *About ACER*. Available at <https://www.acer.europa.eu/the-agency/about-acer>

<sup>6</sup> European Movement Ireland webpage, *The Emergency EU Energy Measures Explained*. Available at <https://www.europeanmovement.ie/the-emergency-eu-energy-measures-explained/>

The cheapest electricity is bought first, which typically comes from renewable sources, as they are produced at low cost. The bidding process finishes with the most expensive sources, which in Europe is gas due to its high production costs. Once the full demand for energy has been satisfied, the price of electricity is determined by the price of the last producer".<sup>7</sup>

## Background to legislative framework

The existing legislative framework centres on **EU Council Regulation 2022/1854**, which itself builds on work by the European Commission which initiated [proposals](#) "on an emergency intervention to address high energy prices" on 14 September 2022. These consist of three strands to help European consumers pay their energy bills and to speed up the green transition:

- The first aims to reduce electricity consumption.
- The second strand introduces a temporary EU revenue cap of €180 MWh for low-cost power generation, such as renewable generation.
- The third strand of the intervention sets a temporary solidarity contribution on surplus profits generated from activities in the fossil fuel sectors in 2022 (also referred to as a windfall tax).<sup>8</sup>

The Commission's proposals have now been formally adopted by the EU. Specifically, the Council of the European Union [agreed](#) an urgent regulation to address the problem of very high energy prices in the EU on 30 September 2022 - [Council Regulation \(EU\) 2022/1854](#). This [Regulation](#) will, *inter alia*, help raise revenues for Member States to compensate energy consumers for rising prices.

As noted above, the [proposals](#) from the European Commission were agreed by the Council of the EU on 30 September 2022. They will apply from 1 December 2022 to 31 December 2023. Other key dates and related activities at EU level have been explained as follows:

"The reduction targets of energy targets will apply until 31 March 2023, whilst the mandatory cap on market revenues will apply until 30 June 2023. The solidarity contribution will apply for one year after entering into force. Throughout this period, regular reporting will be conducted by the European Commission to monitor the adoption of the measures by Member States, in order to preserve the '[functioning and integrity](#)' of the internal market".<sup>9</sup>

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<sup>7</sup> European Movement Ireland webpage, *The Emergency EU Energy Measures Explained*. Available at <https://www.europeanmovement.ie/the-emergency-eu-energy-measures-explained/>

<sup>8</sup> European Movement Ireland webpage, *The Emergency EU Energy Measures Explained*. Available at <https://www.europeanmovement.ie/the-emergency-eu-energy-measures-explained/>

<sup>9</sup> European Movement Ireland webpage, *The Emergency EU Energy Measures Explained*. Available at <https://www.europeanmovement.ie/the-emergency-eu-energy-measures-explained/>

The [European Commission](#) will review the demand-reduction and price-capping measures by 30 April 2023. The solidarity contribution measure will be reviewed by 15 October 2023.<sup>10</sup>

## Key points of EU Council Regulation 2022/1854

The Regulation introduces measures to reduce demand for electricity and redistribute the energy sector's surplus revenues and profits to households and businesses to mitigate the effects of rising energy prices. Key features of the Regulation are outlined below.

### Reducing electricity demand

The [Regulation](#) includes an electricity emergency tool with two electricity demand reduction targets for last winter (1 December 2022 – 31 March 2023) in Articles 3 and 4 respectively:

1. a **voluntary 10% monthly reduction target** in electricity consumption, as compared to the average over the past five years ('reference period'<sup>11</sup>).
2. a **mandatory 5% reduction target** in electricity consumption **during peak hours** (compared to forecasted consumption). This mandatory target would cover around three-four hours per weekday over the course of the reference period, albeit with discretion for Member States to determine the most appropriate timeframes according to national or local conditions.<sup>12</sup>

Article 5 of this [Regulation](#) provides that Member States may choose the appropriate measures to reduce gross electricity consumption to meet these targets, including extending national measures already in place, subject to certain conditions. Under Articles 4 and 5 of this Regulation, EU Member States are responsible for the following:

- **Identifying peak hours** corresponding to a minimum of 10% of all hours between 1 December 2022 and 31 March 2023, during which they will reduce demand.
- **Choosing which measures they adopt** to reduce consumption, which must:
  - be clearly defined, transparent, proportionate, targeted, non-discriminatory, and verifiable;
  - not distort [competition](#) or the proper functioning of the [electricity market](#); and

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<sup>10</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>

<sup>11</sup> The baseline for comparison is the average electricity consumption in the corresponding months of the period from November to March in the preceding 5 years. The Regulation defines the 'reference period' as meaning the period from 1 November to 31 March in the five consecutive years preceding the date of entry into force of this Regulation, starting with the period from 1 November 2017 to 31 March 2018.

<sup>12</sup> European Parliamentary Research Service (2022). [Emergency intervention to address high energy prices in the EU](#). October 2022.

- not prevent the process of replacing fossil fuel technologies with technologies using electricity.<sup>13</sup>

According to the [EPRS](#), the key aim of the mandatory target is to reduce gas consumption in the energy mix by around 1.2 billion cubic metres (bcm), equivalent to under 4% of total gas consumption over these four months. It is anticipated that these efforts should lower the marginal price for electricity (which is usually set by gas-powered generation at peak times). This electricity demand reduction is complementary to [Council Regulation \(EU\) 2022/1369](#), which seeks to lower gas consumption over the winter period voluntarily, by at least 15 % per Member State.<sup>14</sup>

Ireland's performance against these two targets has been the subject of a recent PQ, the response to which noted that the mandatory peak target was achieved while the overall target was not, in addition to providing some context to performance against these targets:

"Under the Regulation, Ireland is obliged to report to the European Commission on its performance towards achieving the two targets described above.

For the first target, overall electricity consumption increased by c. 6% for the target period compared to the historical reference period. It is worth considering however the reference period for this target is one of comparatively lower demand as Ireland's energy demand profile has increased in recent years. This makes achieving reductions in an Irish context particularly challenging in contrast to other Member States who have constant or declining consumption profiles over the past five years.

For the second target, there was an overall decrease of c.7% during peak times compared to projected consumption for this period.

It should be noted that the key difference between the overall target (which Ireland has not achieved) and the mandatory peak target (which Ireland has achieved) is that the former is compared to a historic baseline whereas the latter is against projections".<sup>15</sup>

### **Mandatory cap on energy market revenues**

As explained above, EU electricity markets work according to the marginal pricing model (or 'merit order principle'), with the most expensive energy source setting the overall price paid for electricity in wholesale markets at day-ahead auctions. Marginal pricing has certain advantages but in the context of the current energy crisis has meant that wholesale electricity prices are largely set by the price of gas (although in some countries the marginal fuel source is coal). With gas prices

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<sup>13</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>

<sup>14</sup> European Parliamentary Research Service (2022). [Emergency intervention to address high energy prices in the EU](#). October 2022.

<sup>15</sup> "Written answers - Energy Conservation". Minister for the Environment, Climate and Communications. Dáil Éireann Debate, 16 May 2023. Available at [https://www.oireachtas.ie/en/debates/question/2023-05-16/171/#pq\\_171](https://www.oireachtas.ie/en/debates/question/2023-05-16/171/#pq_171)

reaching record levels in recent times, largely due to the breakdown of energy relations between the EU and Russia, the impact on European consumers has been negative:

“This means consumers are paying far more for their electricity than is justified by the cost of production, especially in Member States where most electricity is generated by nuclear energy and/or renewable energy sources”.<sup>16</sup>

One of the key features of the Council Regulation is to oblige Member States to cap the excess revenues of electricity generators that produce energy at a cost below the marginal price ('inframarginal generators'), between 1 December 2022 and 30 June 2023. Market revenues of inframarginal electricity generators are capped at €180 per megawatt hour (MWh) with a view to temporarily limiting “extraordinary market revenues of electricity producers with lower marginal costs”.<sup>17</sup> This level is designed to preserve the profitability of the operators and avoid hindering investments in renewable energies.<sup>18</sup>

While the Council Regulation sets an upper limit of €180 per megawatt hour (MWh) on the permissible revenues of electricity generators, Member States are also able to set the cap at a lower level should they so choose. Under Article 10, any revenues above that level would pass to Member States, which will have considerable discretion in how to use these funds to support energy consumers (e.g. income transfers, rebates on bills, compensating suppliers for below-cost supply, and investment to reduce energy consumption structurally, in particular from fossil fuels).<sup>19</sup>

Member States can receive the excess revenues of electricity generators that use 'inframarginal' technologies to produce electricity, such as renewables, nuclear energy, and some solid fossil fuels. These companies are described as “obtaining windfall revenues from high electricity prices caused by the exceptional rise in gas prices, rather than from any increases in their own cost of production”.<sup>20</sup> As per Article 7, the cap applies to electricity generated from the following (although exceptions to applying the cap could apply in some circumstances such as demonstration projects):

- wind,
- solar energy (thermal and photovoltaic),
- geothermal energy,

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<sup>16</sup> European Parliamentary Research Service (2022). [Emergency intervention to address high energy prices in the EU](#). October 2022.

<sup>17</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>

<sup>18</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>

<sup>19</sup> European Parliamentary Research Service (2022). [Emergency intervention to address high energy prices in the EU](#). October 2022.

<sup>20</sup> European Parliamentary Research Service (2022). [Emergency intervention to address high energy prices in the EU](#). October 2022.



- hydropower without reservoirs,
- biomass (excluding biomethane),
- waste,
- nuclear energy,
- lignite,
- crude petroleum products, or
- peat.<sup>21</sup>

As per Article 6, Member States must:

- ensure that the cap targets all revenues, including those of intermediaries working on behalf of producers;
- put effective measures in place to prevent producers circumventing these obligations, particularly where they are controlled, or partially owned, by other undertakings.<sup>22</sup>

### Solidarity contribution from fossil fuel producers

Fossil fuel producers in the EU are subject to a solidarity contribution on their excess profits in 2022 and/or 2023. The Regulation sets a mandatory temporary solidarity contribution on the surplus profits of businesses in the petroleum, natural gas, coal and refinery sectors, unless Member States have enacted equivalent national measures (under Article 14). This is calculated on taxable profits in the fiscal year starting in 2022 and/or in 2023 which are above a 20% increase of the average yearly taxable profits in the four fiscal years between 2018 and 2021 (Article 15). Article 16 provides that the rate applicable for calculating the temporary solidarity contribution shall be at least 33% of the base referred to in Article 15.

Article 17 of the Regulation specifics how Member States should treat proceeds from the temporary solidarity contribution. Member States should use the proceeds to provide targeted financial support for:

- customers, particularly vulnerable households, and companies, to mitigate the effects of high retail electricity prices;
- reducing energy consumption through various schemes;
- promoting domestic investment in renewables, structural energy efficiency and other decarbonisation technologies;
- companies in energy-intensive industries, on the condition that they invest in renewables, energy efficiency or other decarbonisation technologies;

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<sup>21</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>

<sup>22</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>

- developing energy autonomy, in particular investments in line with the [REPowerEU](#) objectives;
- common financing of measures by Member States for protecting employment and reskilling and upskilling of the workforce.<sup>23</sup>

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<sup>23</sup> EUR-Lex webpage, *Emergency intervention to address high energy prices*. Available at <https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html>



## International approaches

A number of other EU countries have already introduced a windfall tax on energy companies. This section provides information on some of the international approaches taken to date.

### Summary of Member States approaches

The following table summarises measures taken by selected European countries (EU and UK) in relation to energy windfall tax schemes. A more complete overview is provided in Appendix 1 below.

**Table 3: Energy windfall tax schemes in selected countries**

Country	Description of the scheme
<b>Austria</b>	On 18 November 2022, the government <a href="#">put in place a motion</a> to impose 1) a ceiling on the profit of oil and gas companies, and 2) a revenue cap for electricity companies. If profits of oil and gas companies this year and next year are 20% above the average of the past four years, they would be retroactively skimmed off at 33% from 1 July 2022 to 31 December 2023. If no investments in the energy transition can be proven, this value increases to up to 40%. For electricity producers, 90% of the revenue per MWh that exceeds €140 is skimmed off. If investments in the energy transition can be proven, this value increases to up to €180. This measure <a href="#">comes into force</a> on 1 December 2022 and is limited to 31 December 2023.
<b>Cyprus</b>	On 15 November 2022, the government discussed favourably the <a href="#">introduction of windfall taxes</a> for fuel companies and renewables producers through two legislative proposals. First, an amendment to the Income Tax Law to introduce a 90% tax on “unexpected earnings” of electricity suppliers from renewables, and of distributors and oil companies for 2022. Second, a permanent fee into bilateral contracts relating to the supply of electricity generated from renewables. The fee would be set at 90% for any amount over and above the maximum market rate per kilowatt-hour.
<b>Czechia</b>	On 4 November 2022, the Czech parliament <a href="#">approved</a> the introduction of 60% windfall tax on energy firms and banks aiming to raise €3.5 billion. The tax applies to profits exceeding 120% of the 2018-2021 average and comes on top of a 19% corporate tax rate. On 18 November 2022, the Czech parliament <a href="#">approved</a> the government plan to cap revenues of power firms which is estimated to raise €3.3 billion in 2023. The caps will range from €70/MWh of electricity from nuclear power plants to €240/MWh for power production fuelled by gas from biomass. The State would then take 90% of revenue earned by firms above that cap.
<b>Greece</b>	On 3 November 2022, the Greek government established a <a href="#">90% windfall tax rate</a> on energy companies for use in helping citizens pay for rising energy bills. According to the energy minister, the sum will be around €375 million and collected retroactively from October 2021 to June 2022.
<b>Italy</b>	On 22 November 2022, the Italian government signed off on a 2023 budget law worth <a href="#">€35 billion</a> . Included were several parts addressed towards fighting

	the energy crisis. To fund the bill, a windfall profit tax was established on energy companies that raises tax rates from 25% to 35% until mid-2023.
<b>Portugal</b>	On 21 December 2022, the government <a href="#">proposed</a> a 33% windfall tax on excess profits.
<b>Romania</b>	On 28 December 2022, the government <a href="#">approved</a> an emergency ordinance that introduced a 60% windfall tax on profits exceeding 20% average profits of the previous four years.
<b>Slovakia</b>	On 22 December 2022, the government <a href="#">approved</a> windfall taxes on utilities on 55% excessive profits. It approved a temporary windfall tax on oil and a special levy on gas pipelines.
<b>United Kingdom</b>	In November 2022, the government <a href="#">announced</a> plans to increase a windfall tax on oil and gas producers, known as the Energy Profits Levy (EPL), from 25% to 35% and have it extended until the end of March 2028. The tax will be expanded to electricity generators with a <a href="#">temporary levy</a> of 45%. On 9 June 2023, the government further <a href="#">announced</a> a change to the policy that would mean that the windfall tax will end if oil and gas prices fall below a certain level for six months. For the tax to be halted, average oil prices must fall to, or below, \$71.40 per barrel, and £0.54 per therm for gas, for two consecutive quarters.

**Source:** Bruegel (2023) National fiscal policy responses to the energy crisis. Bruegel dataset. Available at <https://www.bruegel.org/dataset/national-policies-shield-consumers-rising-energy-prices> and for the UK information: UK Government (2022) Policy paper, *Energy Taxes Factsheet*. Available at <https://www.gov.uk/government/publications/autumn-statement-2022-energy-taxes-factsheet/energy-taxes-factsheet>

## Principal provisions of the Bill

This section of the Digest examines some of the main provisions of the Bill. The Bill comprises of 4 Parts and 26 sections in total. A short synopsis of each section is given in [Table 2](#) above.

### Part 1 – Preliminary and General

Part 1 of the Bill deals with general matters such as interpretation of key terms used in the Bill. It states that this Act may be cited as the *Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Bill 2023* and shall be commenced by Ministerial order, and different provisions may be commenced at different times.

### Part 2 – Provisions Relating to Temporary Solidarity Contribution

Part 2 of the Bill covers the provisions relating to the “temporary solidarity contribution”.

**Section 4** provides that a TSC shall be charged, levied and paid on the taxable profits of each energy company in respect of each chargeable period, where chargeable period is defined in section 2 of this bill as the 12 month period commencing on 1 January in each of the years 2022 and 2023.

Energy company is defined in the Bill as a company that generates at least 75% of its turnover in a chargeable period from relevant activities. Relevant activities means economic activities, carried on in the State or in a designated area (within the meaning of the Maritime Jurisdiction Act 2021), in the field of the extraction, mining or refining of natural gas, coal, petroleum or manufacture of coke oven products as referred to in [Regulation \(EC\) No. 1893/2006 of the European Parliament and of the Council of 20 December 2006](#).

This section provides for the amount of temporary solidarity contribution to be 75% of the taxable profits in 2022 and 2023 that are above 120% of average taxable profits in respect of reference years set out in Part 24B of the Taxes Consolidation Act 1997 (see discussion below on Section 23 of the Bill).

This section also provides for the temporary solidarity contribution to be due and payable to the Revenue Commissioners by a specified date, defined in section 2 of this Bill as 23 September 2023 in respect of the temporary solidarity contribution due for 2022 and 23 September 2024 in respect of the temporary solidarity contribution due for 2023.

### Box 1: PLS discussion relating to the rate of the Temporary Solidarity Contribution

During pre-legislative scrutiny, there was some discussion as to how the rate for the TSC was determined. Under Article 16 of the Council Regulation, it states that the rate applicable for calculating the temporary solidarity contribution shall be at least 33% of the four fiscal years starting on or after 1 January 2018. The regulation provides under Recital 54 that the rate must be fair and proportionate and the **Department of the Environment, Climate and Communications** (DECC) commented that a 75% rate was deemed fair when they were looking for a rate that would collect windfall revenues.

Source: Joint Oireachtas Committee PLS meeting ([18 April](#))

**Section 6** provides for the temporary solidarity contribution to be under the care and management of the Revenue Commissioners while **Section 7** requires each energy company to give notice to the Revenue Commissioners that the company is an energy company in the form and manner specified by the Revenue Commissioners.

**Section 8** provides for an energy company to prepare and deliver a return in respect of the temporary solidarity contribution for a chargeable period by a certain date and may require the following information to be included:

- a) the amount of taxable profits for the chargeable period;
- b) the amount of average taxable profits in respect of the reference years;
- c) the amount of temporary solidarity contribution payable for the chargeable period; and
- d) such further particulars as may be required by the prescribed form.

**Section 11** provides for assessments of the amount of the temporary solidarity contribution to be undertaken by Revenue officers (Revenue assessment). A Revenue assessment shall be made by a Revenue officer and shall involve an assessment of:

- a) the amount of taxable profits for the chargeable period;
- b) the average taxable profits in respect of the reference years;
- c) the amount of temporary solidarity contribution payable by the energy company for the chargeable period; and
- d) the balance of temporary solidarity contribution, taking account of any amount of temporary solidarity contribution paid directly by the energy company to the Collector-General for the chargeable period which under this Act:
  - i. is due and payable by the energy company to the Revenue Commissioners for the chargeable period, or
  - ii. is overpaid by the energy company for the chargeable period and which, subject to this Act, is available for offset or repayment by the Revenue Commissioners.

**Section 15** provides for an energy company to make an appeal to the Appeal Commissioners in respect of a Revenue assessment or amended assessment within thirty days after the date of notice of the assessment or amended assessment. No appeal may be made against a surcharge under this Bill, a self assessment or the amount of taxable profits specified in a self assessment.

**Box 2: PLS discussion relating to treatment of TSC revenues**

Under Article 17 of Council Regulation (EU) 2022/1854, Member States shall use the proceeds from the temporary solidarity contribution for any of the following purposes:

- financial support measures for final energy customers, and in particular vulnerable households, to mitigate the effects of high energy prices, in a targeted manner;
- financial support measures to help reducing the energy consumption such as through demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, promoting investments by final energy customers into renewables, structural energy efficiency investments or other decarbonisation technologies;
- financial support measures to support companies in energy intensive industries provided that they are made conditional upon investments into renewable energies, energy efficiency or other decarbonisation technologies;
- financial support measures to develop the energy autonomy, in particular investments in line with the REPowerEU objectives set in the REPowerEU Plan and in the REPowerEU Joint European Action such as projects with a cross- border dimension;
- in a spirit of solidarity between Member States, Member States may assign a share of the proceeds of the temporary solidarity contribution to the common financing of measures to reduce the harmful effects of the energy crisis, including support for protecting employment and the reskilling and upskilling of the workforce, or to promote investments in energy efficiency and renewable energy, including in cross-border projects, and in the Union renewable energy financing mechanism provided for in Article 33 of [Regulation \(EU\) 2018/1999 of the European Parliament and of the Council](#).

During pre-legislative scrutiny, one of the issues that arose was how to best target the revenues generated from the TSC to those that are most vulnerable and in need of support. The **European Commission** stated that the revenues should go to households and small and medium-size companies, though it would be the Member States responsibility to ensure this happens. The **DECC** stated that the next stage on how the proceeds are distributed will be the subject of a Government decision in the coming months, with the aim being to maximise the revenue stream available to supplement the supports given to those who most need them in the next budget.

The **Joint Committee on Environment and Climate Action** recommended in its PLS report that Head 11 and 29 of the General Scheme be more prescriptive as to the targets of the revenues raised by the Temporary Solidarity Contribution and that it is essential that these are directed to those who are most vulnerable. It also recommended that expert stakeholders from civil society and the energy poverty steering group be consulted on the development of Head 11 and 29. In the published Bill, Head 11 has been removed with no section currently addressing how the use of proceeds from the temporary solidarity contribution shall be applied.

Source: Joint Oireachtas Committee PLS meeting ([18 April](#)) and [report](#)

### Part 3 – Enforcement

Part 3 of the Bill covers the provisions relating to enforcement.

**Section 17** provides for a surcharge to be applied to the amount of the temporary solidarity contribution that would have been payable in the event that an energy company fails to deliver a return on or before the specified date. A surcharge of 5% is to be applied where a return is not delivered within three to six months of a specified date (up to a maximum amount of €12,695) and 10% where a return is not delivered within six months of a specified date (up to a maximum amount of €63,485).

**Section 18** provides for interest to be payable by an energy company from the date that a temporary solidarity contribution becomes due and payable with the rate specified in Section 1080(2)(c)(i) of the Taxes Consolidation Act 1997.

**Section 19** provides for a penalty of €3,000 where an energy company fails to provide a return on or before the specified date and **Section 20** similarly provides for a penalty of €3,000 where an energy company does not retain records relating to the temporary solidarity contribution.

### Part 4 – Amendment of Other Acts

Part 4 of the Bill deals with the amendment of other Acts.

**Section 23** amends the Tax Consolidation Act 1997 by inserting a new Part 24B Council Regulation (EU) 2022/1854 of 6 October 2022/1854 as regards the Temporary Solidarity Contribution to provide for definitions for this Part in section 697R, taxable profits for purposes of temporary solidarity contribution in section 697S, average taxable profits for purposes of temporary solidarity contribution in section 697T and deductibility of temporary solidarity contribution for corporation tax in section 697U.

Part 24B section 697S provides for the calculation of taxable profits for the temporary solidarity contribution. Taxable profits shall mean total profits of an energy company computed under section 76(3) of the Tax Consolidation Act 1997 and reduced by:

- allowable deductions under section 243(2) of the Tax Consolidation Act 1997
- capital expenditure incurred on construction or acquisition of a tangible asset in an accounting period where—
  - the tangible asset is brought into use in any of the years 2018 to 2023, and
  - the tangible asset is used in the course of carrying on relevant activities

Section 697S also provides for a recalculation of taxable profits where a tangible asset ceases to be in use within five years; provides for taxable profits to not take account of loss relief under section 396(1) on or before 31 December 2017, loss relief under section 396(2), 396A(3) or 397(1) on or after 1 January 2024, group relief under section 420 or 420A in a period on 1 January 2018 and ending on 31 December 2023 or temporary solidarity contribution incurred under the Energy (Windfall Gains In The Energy Sector) (Temporary Solidarity Contribution) Act; and provides for where an accounting period of an energy company falls wholly or partly within the calendar year.



**Box 3: PLS discussion relating to treatment of taxable profits**

During pre-legislative scrutiny, one of the main issues that arose was how taxable profits were to be treated. The **DECC** stated that under Article 15 of the Council Regulation, the contribution applies to taxable profits under national tax rules and that under Recital 55 of the same regulation Member States may account for the treatment of losses in previous years. Under the Bill, losses carrying forward from before 1 January 2018 are not deductible in the calculation of taxable profits for the fiscal years 2018 to 2023 and losses post December 2023 cannot be carried back and deducted. Losses within the period from 2018 to 2023 can be brought forward. **DECC** clarified that the reason that losses predating that period are not included is in order to maximise the return and windfall gain to the State. Group relief is also disregarded and therefore not deductible either. Capital expenditure is deductible under certain conditions. On these, **DECC** stated that it must be allowable for capital allowances and claimed with normal corporation tax and tangible assets for the purpose of activities for which the contribution relates in Ireland or within the maritime jurisdiction area and within use for a period of at least five years. This was to avoid situations where companies might buy assets or form other ways to artificially lower what would have been their contribution.

The **Joint Committee on Environment and Climate Action** recommended in its PLS report an analysis of the implications of allowing losses from 2018-2022 to be carried forward and offset against companies' profits in 2022 and 2023 for the purposes of calculating the TSC, and that estimates of TSC foregone in each year as result of this measure inform the final drafting of the Bill. It also recommended an analysis detailing the impact on the TSC arising from the decision to allow capital expenditure to be deducted for the purposes of calculating the TSC and that this analysis and estimates be considered in the final drafting of the Bill.

Source: Joint Oireachtas Committee PLS meeting ([18 April](#)) and [report](#)

Part 24B section 697T provides for the reference years in relation to relevant activities carried on by an energy company in respect of the average taxable profits for the calculation of temporary solidarity contribution. Except in cases where there is a partial year or a predecessor and a successor energy company, the average taxable profits in respect of the reference years, in relation to relevant activities carried on by an energy company, means:

- a) where the energy company commenced the relevant activities on or before 31 December 2018, the average annual taxable profits in respect of the years commencing on 1 January 2018 and ending on 31 December 2021;
- b) where the energy company commenced the relevant activities on or after 1 January 2019 but before 1 January 2020, the average annual taxable profits in respect of the years commencing on 1 January 2019 and ending on 31 December 2021;
- c) where the energy company commenced the relevant activities on or after 1 January 2020 but before 1 January 2021, the average annual taxable profits in respect of the years commencing on 1 January 2020 and ending on 31 December 2021; or
- d) where the energy company commenced the relevant activities on or after 1 January 2021 but before 1 January 2022, the taxable profits in respect of the year commencing on 1 January 2021 and ending on 31 December 2021.

Where the average taxable profits in respect of the reference years in accordance with paragraph (a), (b), (c) or (d), as the case may be, is less than zero, the average taxable profits in respect of the reference years shall be deemed to be zero.



## Pre-Legislative Scrutiny

The [General Scheme](#) of the *Energy (Windfall Gains in the Energy Sector) Bill 2023* was published and received Government approval for drafting a new law in March of 2023. The General scheme was referred to the Joint Committee on Environment and Climate Action for pre-legislative scrutiny.

The Committee commenced pre-legislative scrutiny on the Bill in April of 2023. One PLS hearing was held on [18 April](#) 2023 and included the following witnesses:




- Ms. Catharina Sikow-Magny (European Commission)
- Mr. John Burke, Ms. Laurena Leacy, and Mr. Evan Walker (Department of Environment, Climate and Communications)
- Mr. Kevin Hagan (Commission for the Regulation of Utilities)
- Mr. Michael Kelly (EirGrid)

The Joint Committee subsequently published its PLS findings in May 2023 in its [Report on the Pre-Legislative Scrutiny of the General Scheme of the Energy \(Windfall Gains in the Energy Sector\) Bill 2023](#).

The Joint Committee's PLS report made a number of recommendations related to various parts of the General Scheme of the Bill. These are detailed in Table 5 below.

As part of the Bill Digest process, the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. We do this through liaison with the Department, in this case, the Department of Environment, Climate and Communications, by asking the Department to outline the extent to which, in their view, each of recommendations of the Joint Committee influenced the drafting of the resulting Bill. Along with the Department's input, the L&RS also assess the extent to which the PLS process impacted the drafting of the Bill. We do this, as set out in Table 4 below, by means of a 'traffic light' system, which for each recommendation allocates a green, orange or red light indicating respectively the extent to which it has been accepted in full, in part or is not reflected in the published Bill.

**Table 4: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.**

L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

Source: L&RS

Table 5 below therefore shows for each recommendation the extent or otherwise it has been reflected in the Bill along with the commentary in each instance from the Department of Environment, Climate and Communications.

It should be noted that on 13th June 2023, the Government approved the division of the Energy (Windfall Gains in the Energy Sector) Bill into two separate Bills:<sup>24</sup>

- Energy (Windfall Gains in the Energy Sector) (Temporary Solidarity Contribution) Bill
- Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Bill

This division was approved on a technical point to:

- Expediate the enactment of the Temporary Solidarity Contribution Bill before the summer recess; and
- To allow for the publication of the Cap on Market Revenues Bill before the summer recess.




This approval was given in light of the complex nature of introducing two novel measures in legislation. This complexity, particularly in relation to the cap on market revenues, affected the timelines for developing the legislation.

Table 5 below refers to both the temporary solidarity contribution and the cap on market revenues. At the start of each recommendation, it is noted whether the recommendation concerns the temporary solidarity contribution, the cap on market revenues or both.



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<sup>24</sup> See Department of Environment, Climate and Communications, Press Release, *Government approves publication of legislation to address windfalls in the energy sector* (23 June 2023). Available [here](#).


**Table 5: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.**





Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>25</sup>	
<b>Recommendation 1</b>		
1. The Committee supports the EU principles and policies reflected in the General Scheme of the Bill and the introduction of a revenue stream while protecting the security of our energy supply and future industry investment.		1. This recommendation applies to both temporary solidarity contribution and cap on market revenues.  Both Bills have, and will maintain, the EU principles and policies and introduce a revenue stream from windfall gains in the energy sector while balancing security of supply concerns and future investment.
<b>Recommendation 2</b>		
2. The Committee acknowledges that final consumers are continuing to pay extremely high prices on energy bills. The Committee agrees that wholesale prices for energy should be reflected in the electricity market and recommends an examination be undertaken to ascertain why pricing for final consumers has not decreased in line with wholesale prices.		2. This recommendation applies to both temporary solidarity contribution and cap on market revenues, in terms of gas and electricity prices.  Wholesale and retail energy pricing is monitored and analysed by the Department's Economic and Evaluation (IGEES) Unit.
<b>Recommendation 3</b>		
3. The Committee supports and recommends full and transparent visibility of hedging operations as provided by the General Scheme.		3. This recommendation applies to cap on market revenues. The Bill for the cap on market revenues will provide for the hedging as per the General Scheme.

<sup>25</sup> The response text in this column is taken directly from the Department of Environment, Climate and Communication's email communication to the L&RS on 23 June 2023. The responses was received from the Department following the routine request, as part of the preparation of Bill Digests, from the L&RS to Departments in respect of Bills that have undergone PLS and the extent to which the resulting Bill has adopted the recommendations made by the relevant Joint Committee.

Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill <sup>25</sup>
<b>Recommendation 4</b>		
<p>4. The Committee notes that approximately 25% of the Commission for the Regulation of Utilities budget is allocated to external consultancy and recommends that, where practicable, in-house expertise facilitate the verification and reviewing of hedging operations and to ensure it is suitably structured and resourced to do so and the Committee asks the Minister to inform it of the above. Where necessary, the Committee recommends that further resourcing be provided to ensure that expertise is maintained on an internal basis. The Committee recommends ongoing analysis of the temporary solidarity contribution and the cap on market revenues and to explore avenues such that the return of windfall proceeds to the State is maximised.</p>		<p>4. This recommendation applies to both temporary solidarity contribution and cap on market revenues, in terms of gas and electricity prices.</p> <p>Resourcing of the administration of the cap of market revenues is a matter for the Commission for Regulation of Utilities (CRU), which is a state body under the aegis of the Department.</p> <p>During the drafting of the Bills, the Department developed the legislation in accordance with the General Scheme to maximise the return to the State, while balancing energy security and future investment concerns.</p>
<b>Recommendation 5</b>		
<p>5. The Committee recommends that Head 29 and 11 be more prescriptive as to the targets of the revenues raised by the Temporary Solidarity Contribution and that it is essential that these are directed to those who are most vulnerable.</p>		<p>5. This recommendation applies to both temporary solidarity contribution and cap on market revenues.</p> <p>The Council Regulation 2022/1854 sets out how the proceeds from the temporary solidarity contribution and cap on market revenues must be distributed. Since the Regulation is in force, the proceeds must be distributed in accordance with the Regulation. A Government decision is required for the specific distribution of the proceeds. Without this decision, it is not possible to legislate for the specific distribution of proceeds. The Department will be</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>25</sup>
	<p>engaging with the Energy Poverty Steering Group and other Departments on the distribution of the proceeds as part Budget 24.</p> <p>For reference, the Council Regulation states under Article 10(1) “Member States shall ensure that all surplus revenues resulting from the application of the cap on market revenues are used to finance measures in support of final electricity customers that mitigate the impact of high electricity prices on those customers, in a targeted manner.” And under Article 17(1) “Member States shall use the proceeds from the temporary solidarity contribution with sufficiently timely impact for any of the following purposes:</p> <ul style="list-style-type: none"> <li>a. financial support measures for final energy customers, and in particular vulnerable households, to mitigate the effects of high energy prices, in a targeted manner;</li> <li>b. financial support measures to help reducing the energy consumption such as through demand reduction auctions or tender schemes, lowering the energy purchase costs of final energy customers for certain volumes of consumption, promoting investments by final energy customers into renewables, structural energy efficiency investments or other decarbonisation technologies;</li> <li>c. financial support measures to support companies in energy intensive industries provided that they are made conditional upon investments into renewable energies, energy efficiency or other decarbonisation technologies;</li> <li>d. financial support measures to develop the energy autonomy, in</li> </ul>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>25</sup>	
		<p>particular investments in line with the REPowerEU objectives set in the REPowerEU Plan and in the REPowerEU Joint European Action such as projects with a cross-border dimension;</p> <p>e. in a spirit of solidarity between Member States, Member States may assign a share of the proceeds of the temporary solidarity contribution to the common financing of measures to reduce the harmful effects of the energy crisis, including support for protecting employment and the reskilling and upskilling of the workforce, or to promote investments in energy efficiency and renewable energy, including in cross-border projects, and in the Union renewable energy financing mechanism provided for in Article 33 of Regulation (EU) 2018/1999 of the European Parliament and of the Council (11)."</p>
<b>Recommendation 6</b>		
<p><b>6.</b> The Committee recommends that consideration should be given to extending the cap on market revenues retrospectively to include those months where the energy crisis was at its peak. The Committee is cognisant that this may involve an examination of applying a new tax measure akin to the windfall gains as set out in the General Scheme.</p>		<p><b>6.</b> This recommendation applies to cap on market revenues.</p> <p>This recommendation has been considered and the proposed bill adheres to the timelines specified within Council Regulation 2022/1854. It is not possible to retrospectively apply the cap on market revenues as the Council Regulation does not provide for this period in 2022. It is also not possible to retrospectively apply a new tax measure to an earlier period in 2022 as it may be considered unconstitutional.</p>
<b>Recommendation 7</b>		

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>25</sup>	
<p><b>7.</b> The Committee notes the Commission's response that it is to review the Regulation by mid-May including the potential of a possible extension. The Committee recommends that the Government actively engages in the review process and advocates for an extension of the Regulation should the circumstances allow.</p>		<p><b>7.</b> This recommendation applies to cap on market revenues.</p> <p>The European Commission decided not to extend the cap on market revenues, citing concerns for - regulatory uncertainty, incentives for new investment, high administration costs, reduced production by generators and potential interference with electricity market design.</p>
<b>Recommendation 8</b>		
<p><b>8.</b> The Committee recommends an analysis of the implications of allowing losses from 2018-2022 to be carried forward and offset against companies' profits in 2022 and 2023 for the purposes of calculating the TSC, and that estimates of TSC foregone in each year as result of this measure inform the final drafting of the Bill.</p>		<p><b>8.</b> This recommendation applies to temporary solidarity contribution.</p> <p>The Department has considered the implications of allowing losses from 2018-2022 to be carried forward and offset against companies' profits in 2022 and 2023 for the purposes of calculating the temporary solidarity contribution and will implement the treatment of losses as per the General Scheme.</p>
<b>Recommendation 9</b>		
<p><b>9.</b> The Committee recommends an analysis detailing the impact on the TSC arising from the decision to allow capital expenditure to be deducted for the purposes of calculating the TSC and that this analysis and estimates be considered in the final drafting of the Bill.</p>		<p><b>9.</b> This recommendation applies to temporary solidarity contribution.</p> <p>The Department has considered the implications of the capital expenditure deduction as part of the taxable profits and average taxable profits calculation for the purpose of temporary solidarity contribution and will implement the capital expenditure deduction as per the General Scheme.</p>
<b>Recommendation 10</b>		
<p><b>10.</b> The Committee recommends that expert stakeholders from civil society and the energy poverty steering group be consulted in respect of the intended</p>		<p><b>10.</b> This recommendation applies to both temporary solidarity contribution and cap on market revenues.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>25</sup>	
beneficiaries of the TSC are consulted on the development of Head 11 and 29.		The Department will engage with the Energy Poverty Steering Group and other stakeholders, to propose the specific measures for the distribution of the proceeds from the temporary solidarity contribution and cap on market revenues that will subject to a future Government decision.

**Source:** L&RS is grateful to the Department of Environment, Climate and Communications for providing their analysis of how the Committees recommendations have impacted on the Bill. The traffic light assessment represents the analysis of the L&RS.



## Appendix 1 – Overview of temporary solidarity contribution in Member States

Country	Definition of windfall profit	Tax rate	Application period
EU Regulation	profits exceeding 20% of the reference profits average taxable profits of the 3 fiscal years starting on or after January 1, 2018	33%	As of 01.01.2022 and/or 01.01.2023
Austria	same as EU regulation	40%	Retroactively as of 01.06.2022
Belgium	same as EU regulation	33%	Retroactively as of 01.01.2022 & 2023
Bulgaria	same as EU regulation	33%	Retroactively as of 01.01.2022 & 2023
Croatia	same as EU regulation	33%	Retroactively as of 01.01.2022
Cyprus		33%	
Czech Republic	same as EU regulation	60%	2023 until 2025
Denmark	same as EU regulation	33%	2023
Estonia	No decision/implementation of EU law yet		
Finland	same as EU regulation	33%	2023
France	same as EU regulation	33%	Retroactively as of 2022
Germany	same as EU regulation	33%	Retroactively as of 2022 & 2023
Greece	Oil refineries profit tax		Retroactively as of 2022
Hungary	special tax on petroleum product manufacturers at a tax rate of 25%		
Ireland	same as EU regulation	75%	Retroactively as of 2022 & 2023
Italy	profits exceeding 10% of the reference profits	50%	Retroactively as of 2022
Latvia	No decision/implementation of EU law yet		
Lithuania	same as EU regulation	33%	2023
Luxembourg	No decision/implementation of EU law yet		
Malta	Derogation		
Netherlands	same as EU regulation	33%	Retroactively as of 2022
Poland	No decision/implementation of EU law yet		
Portugal	same as EU regulation	33%	Retroactively as of 2022 & 2023
Romania	same as EU regulation	60%	Retroactively as of 2022 & 2023

Slovakia	tax base same as the one for corporate income tax purposes	55%	Retroactively as of 2022
Slovenia	same as EU regulation	33%	Retroactively as of 2022 & 2023
Spain	Net turnover generated in 2022 and 2023	1.2%	Retroactively as of 2022 & 2023
Sweden	same as EU regulation	33%	2023

Source: [European Parliament](#) (2023)

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