

Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Bill 2023

Bill No. 65 of 2023

Eoin McLoughlin, Senior Parliamentary Researcher (Economics)

Barry Creighton, Senior Parliamentary Researcher (Economics)

19 September 2023

Abstract

The main purpose of the *Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Bill 2023* is to implement the cap on market revenues 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 cap on market revenues in the electricity sector, where the electricity is produced from certain sources.



Contents

Glossary and abbreviations.....	2
Summary	3
Introduction	4
Table of provisions.....	7
Existing legislative framework	12
The EU's energy policy and energy market.....	12
Background to legislative framework.....	13
Key points of EU Council Regulation 2022/1854	14
Reducing electricity demand	14
Mandatory cap on energy market revenues	16
Solidarity contribution from fossil fuel producers.....	19
International approaches.....	21
Summary of Member States approaches	21
Principal provisions of the Bill	23
Pre-Legislative Scrutiny	31
Appendix 1 – Overview of cap on market revenues in Member States.....	39

This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2023, *L&RS Bill Digest: Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Bill 2023*

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as a Bill Digest, are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

Glossary and abbreviations

Table 1: Glossary & Abbreviations

Glossary & Abbreviations	
ACER	Agency for the Cooperation of Energy Regulators
CfD	Contracts for Difference
Council Regulation (EU) 2022/1854	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.
CRU	Commission for Regulation of Utilities
DECC	Department of the Environment, Climate and Communications
EPL	Energy Profits Levy
EPRS	European Parliamentary Research Service
Inframarginal generators	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.
MCA	Multi-criteria analysis
Merit Order	The sequence in which electricity producing units contribute to the supply of electricity.
MWh	Megawatt Hour
PPA	Power Purchase Agreement
RIA	Regulatory Impact Analysis
SEMO	Single Electricity Market Operator
TFEU	Treaty on the Functioning of the European Union
TSC	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 \(Windfall Gains in the Energy Sector\) \(Cap on Market Revenues\) Bill 2023](#) was published on 31 August 2023.
- The Bill comprises of four Parts and 33 Sections.
- The primary purpose of the legislation is to implement the cap on market revenues 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 cap on market revenues in the electricity sector, where the electricity is produced from certain sources.
- 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 [legislation](#) for this has already been enacted, as of the 17 July 2023, and a [Bill Digest](#) published on it.
- The cap on market revenues will operate from 1 December 2022 to 30 June 2023 inclusive, as per Article 22 of Council Regulation 2022/1854. It will apply to non-gas electricity generators with a capacity of 1 Megawatt (MW) or more as follows:
 - A cap of €120 per MWh for wind, solar and hydro based generators
 - A variable cap to fuel sources with variable cost structures, including biomass and peat
 - A cap of €180 per MWh on other non-gas generation such as geothermal, waste and lignite
- The draft [Regulatory Impact Analysis](#) accompanying the Bill estimates the level of proceeds to be raised by both the temporary solidarity contribution and the cap on market revenues at a range of €280 million to circa €600 million. Around €200 million to €450 million is estimated to come from the temporary solidarity contribution and around €80 million to €150 million from the cap on market revenues.
- 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 \(Windfall Gains in the Energy Sector\) \(Cap on Market Revenues\) Bill 2023](#) was published on 31 August 2023. The Bill contains four Parts and 33 Sections and seeks to implement the cap on market revenues 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:¹

“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 purpose of the Bill is to “fulfil Ireland’s obligations under the Council Regulation through the introduction of a cap on the revenues of specific electricity generators operating within the State and provide for the re-distribution of the collected funds back to consumers”.

Cost implications

The costs and benefits of the different options for capping the market revenue of electricity generators is shown in Table 2 below. It should be noted that these are estimates based on various assumptions around energy prices and electricity capacity.

¹ 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](#).

Table 2: Options with corresponding Cost (to firms) / Benefits (to consumers)

Option	Estimated Option Revenue (in millions)
Do nothing	€0 – this option was discounted by the multi-criteria analysis (MCA)
An Irish solution outside of the Regulation	€Unknown – as this option was discounted by the MCA, specific modelling parameters for cost estimates cannot be established.
Do Minimum – EU Regulation with all €180	€47 (within a range of €31 to €67)
Do Alternative (A) EU Regulation with Flexibilities (€180 plus Floating Cap for High Marginal Cost Units)	€48 (within a range of €32 to €68)
Policy Alternative (B) EU Regulation, partially capture upside (€120 Cap for wind and Solar, €180 of other, Floating Cap for High Marginal Cost Units)	€105 (within a range of €81 to €143)
Do Maximum - EU Regulation, fully capture upside (€90 Cap for wind and Solar), €180 for all other generation. Calculated on half hourly basis	€190 (within a range of €129 to €294)

Source: [Regulatory Impact Analysis](#)

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)
- 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](#).

Following the publication of this report by the Joint Committee, the Government decided to introduce two separate pieces of legislation to address each of the measures included in the General Scheme. The first part on the temporary solidarity contribution has already been enacted under the [*Energy \(Windfall Gains in the Energy Sector\) \(Temporary Solidarity Contribution\) Act 2023*](#). The second part on the cap on market revenues is the subject of this Bill Digest.²

² 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 3: Summary of provisions contained in the Bill

Section	Title	Effect
Part 1: Preliminary and General		
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) (Cap on Market Revenues) 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.	Regulations and Schemes	Section 3 provides that the Minister may make regulations and schemes as required in the Bill and that these regulations will be laid before both Houses of the Oireachtas
4.	Expenses	This is a standard provision enabling the expenses of the Minister to be paid out of moneys provided by the Oireachtas
5.	Service of Notices	Section 5 outlines the particulars of any notices or documents which are required to be given or sent in relation to the administration of the Bill.
Part 2: Calculation, Return, Payment and Recovery		
6.	Application of Act to certain persons	This section describes the entities that are liable to make a payment under the Bill. Such entities include producers, persons or bodies acting as intermediaries in the energy market as well as traders in the electricity market. The section also explains the different electricity markets and market operator.
7.	Application of Act to certain fuel sources	Section 7 outlines the different fuel sources from which electricity may be produced which shall be subject to the cap on market revenue. These include renewables, crude petroleum products, peat and hard coal.
8.	Market Cap	Section 8 sets out the responsibility of a person/entity to make a payment in respect of the market revenue they have earned on a monthly basis. Different sources of energy are subject to varying levels of the cap. The cap will apply to non-gas electricity generators with a capacity of 1 megawatt or more as follows:

		<ul style="list-style-type: none"> • A cap of €120 per MWh for wind, solar and hydro based generators. • A variable cap to fuel sources with variable cost structures, including biomass and peat. • A cap of €180 per MWh on other non-gas generation such as geothermal, waste, nuclear energy, and lignite. <p>It is important to note, only electricity generated using the fuel sources listed in Section 8 are subject to the cap.</p>
9.	Market Index Price	Section 9 outlines that EirGrid will act as the collection agent (as defined in Section 2) and will publish on a monthly basis the market index price (weighted average of prices associated with two ex-ante electricity markets) on their website.
10.	Monthly market revenue and monthly capped revenue	<p>Section 10 provides for the calculation of the monthly market revenue and the monthly capped revenue by the producer, intermediary or trader</p> <p>The market revenue is the quantity of electricity traded multiplied by the market index price (set out in section 9).</p> <p>The monthly capped revenue is the quantity of electricity traded multiplied by the market cap in place for that source of electricity.</p>
11.	Preliminary surplus revenue	This section provides a definition for the preliminary surplus revenue which is the monthly market revenue minus the monthly capped revenue detailed in section 10.
12.	Adjust surplus revenue	Section 12 sets out the definition of the adjusted surplus revenue which considers any gains or losses from hedging arrangements and any money owed by the producer or trader between themselves. It represents the amount a person is liable to pay in respect of the market cap.
13.	Further provision relating to adjusted surplus revenue	If the adjusted surplus revenue is nil or has already been passed directly to final consumers then this portion of the revenue does not need to be paid. The explanatory memorandum states that this must be “demonstrated to the satisfaction of the Commission for Regulation of Utilities (CRU)”.
14.	Further provision relating to hedging arrangements	Section 14 provides that hedging arrangements (both losses and gains) shall be accounted for in the calculation of all revenues set out in section 12 and sets out the conditions for taking into account these arrangements

15.	Return	Section 15 places requirements on entities make a return to the competent authority (Commission for Regulation of Utilities (CRU)) which shall include information regarding their fuel sources, production costs, monthly market revenue, level of cap, adjusted and preliminary surplus revenue, including any payments back to consumers, as well as any applicable resettlement and hedging arrangements.
16.	Direction to make a return under section 15	Section 16 allows the competent authority (CRU) to request an outstanding return. Failure to comply is an offence.
17.	Notice requiring further information	The competent authority (CRU) may also send a notice requesting further information. Failure to do so will be an offence.
18.	Requirement to revise assessment	Section 18 sets out the process whereby the competent authority (CRU) may decide that a revised assessment is required.
19.	Appeal	A person who receives a notice under Section 16 or 18 may appeal the decision to the High Court within 8 weeks.
20.	Obligation to pay	Section 20 outlines that a producer, intermediary or trader must pay their liability to the collection agent by 31 December 2023. It also states that a person must pay any balance due to a settlement rerun, hedging arrangement or power purchase agreement, on or before 31 August 2024 or 30 days after a date as may be prescribed.
21.	Surcharge for late return	In the case where a person is late in making their return or there is an error in their return, an additional charge will apply.
22.	Recovery of interest in respect of overdue amount	Where a person fails to make a return or a revised assessment, they will be liable to pay the collection agent (EirGrid), as well as the principal amount of the adjusted surplus revenue, interest on the amount until such a date that the amount is paid in full.
23.	Obligation to keep certain records	This Section outlines that all relevant records must be retained regarding making a return.
24.	Inspection	Section 24 provides that the competent authority (CRU) can appoint an inspector to confirm the details of the return and provide the competent authority with any necessary information. It also provides inspectors with the power to enter premises and take possession of any required documents or records, pertaining to the inspection.

Part 3: Market Cap Fund		
25.	Establishment of Fund	This Section sets out that the collection agent (EirGrid) will establish a fund called the 'Market Cap Fund' and ensure that all payments are paid into this fund.
26.	Accounts of Fund	<p>The collection agent (EirGrid) shall manage the fund and have overall control of them. It also lists the accounting obligations of the collection agent in this regard.</p> <p>There is also provision for the National Treasury Management Agency to perform this function if required. The section also requires that the Minister shall provide copies of the accounts to the Houses of the Oireachtas.</p>
27.	Disbursements from Fund	Section 27 states that money raised shall be paid out in accordance with a scheme detailed in Section 28 or to refund overpayments by producers, intermediaries or traders.
28.	Schemes	<p>This Section provides that the Minister shall prescribe one or more scheme for the disbursement of money in accordance with Article 10 of the Council Regulation from the Market Cap Fund via scheme(s).</p> <p>This section also details the terms and conditions of the relevant scheme and the duration of the scheme. The section concludes by stating that the breach of a provision of a scheme shall be an offence.</p>
Part 4: Offences, Penalties and Information Sharing		
29.	False or misleading information	This Section provides that it will be an offence to knowingly or recklessly provide false or misleading to the collection agent, the competent authority or an administrator of a scheme.
30.	Offences	Section 30 outlines the penalties which are associated with offences detailed in Sections 16, 17, 18, 23, 24, 28 or 29.
31.	Prosecution by competent authority	This section outlines how summary proceedings for an offence under section 16(6), 17(2), 18(5), 23(6), 24(8)(b) or 29 may be brought and prosecuted by the competent authority.
32.	Offence by body corporate	Section 32 outlines how a body corporate shall be guilty of an offence committed by a member of that

		body corporate, who shall also be guilty of an offence.
33.	Information sharing	<p>The final Section provides for the sharing of information between the competent authority and collection agent.</p> <p>The Minister may prescribe the relevant bodies with whom information may be shared and will ensure that all information sharing occurs subject to the General Data Protection Regulation.</p>

Source: Library & Research Service, 2023. Based on the Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Bill 2023 and Explanatory Memorandum.

Existing legislative framework

The main purpose of the Bill is to implement the cap on market revenues 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 cap on market revenues in the electricity sector, where the electricity is produced from certain sources.

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.³ 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.⁴

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.⁵ Its role is to assist and coordinate the work of national regulatory authorities across the EU.⁶ 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.

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

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

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

⁶ 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”.⁷

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).⁸

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”.⁹

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

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

⁹ 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 2023.¹⁰

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'¹¹).
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.¹²

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

¹⁰ 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>

¹¹ 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.

¹² 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.¹³

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.¹⁴

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".¹⁵

¹³ 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>. Article 5 provides that measures shall meet all of the following conditions : "(a) where financial compensation is paid in addition to market revenues, the amount of that compensation shall be established through an open competitive process; (b) only involve financial compensation when such compensation is paid for additional electricity not consumed compared to the expected consumption in the hour concerned without the tender; (c) not unduly distort competition or the proper functioning of the internal market in electricity; (d) not be unduly limited to specific customers or customer groups, including independent aggregators, in accordance with Article 17 of Directive (EU) 2019/944; and (e) not unduly prevent the process of replacing fossil fuel technologies with technologies using electricity".

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

¹⁵ "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/#pg_171

Mandatory cap on energy market revenues

As further explained below, 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 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”.¹⁶

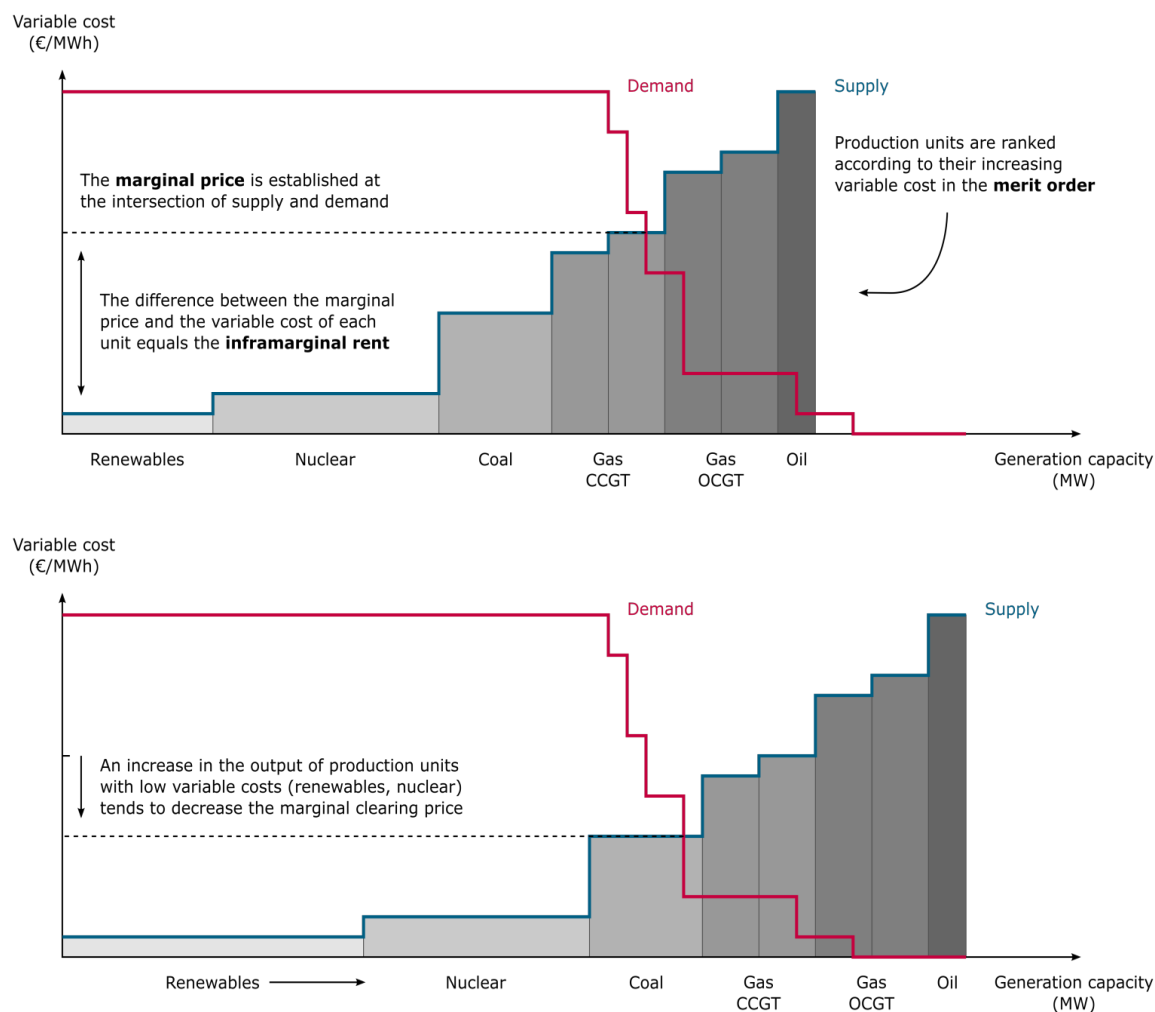
Merit Order Principle

The sequence in which electricity producing units contribute to the supply of electricity, is called the **merit order**. The units are sorted by the increasing variable cost of producing one additional MWh of electricity, also known as the marginal cost of that unit. The graphs in Figure 1 below illustrate this point.

Renewable and nuclear units have low variable costs per generated MWh of electricity. This means that they are found at the start of the merit order. In contrast, coal, gas and oil units have higher variable costs as they rely on fossil fuels whose price can vary based on world events. In order to meet demand, the lower cost units are dispatched first to generate electricity before the more expensive units are asked to run.

Going off the merit order, the variable costs of the combined generated output of all units constitute the **supply curve** for electricity in any given hour of the day-ahead timeframe.

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

Figure 1: Marginal pricing and the merit order

Source: [Commission for Electricity and Gas Regulation](#) (2022)

The marginal price is determined at the point where supply of electricity meets demand. As demand is met towards the end of the merit order, the marginal price will be determined by the price of gas-powered production at peak times. The supply constraints on gas have led to an increase in its price. This coupled with lower renewable and nuclear energy production has left a larger inframarginal rent.

One of the key features of the Council Regulation 2022/1854 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”.¹⁷ This level is designed to preserve the profitability of the operators and avoid hindering investments in renewable energies.¹⁸

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, Member States are required to 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". Member States 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).¹⁹

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”.²⁰ 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,
- hydropower without reservoirs,
- biomass (excluding biomethane),
- waste,
- nuclear energy,
- lignite,
- crude petroleum products, or

¹⁷ 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>

¹⁸ 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>

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

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

- peat.²¹

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.²²

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;
- developing energy autonomy, in particular investments in line with the [REPowerEU](https://eur-lex.europa.eu/EN/legal-content/summary/emergency-intervention-to-address-high-energy-prices.html) objectives;
- common financing of measures by Member States for protecting employment and reskilling and upskilling of the workforce.²³

²¹ 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>

²² 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>

²³ 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>

Ireland recently enacted legislation to address this aspect of the Council Regulation through the [Energy \(Windfall Gains in the Energy Sector\) \(Temporary Solidarity Contribution\) Act 2023](#).

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 4: Energy windfall tax schemes in selected countries

Country	Description of the scheme
Austria	On 18 November 2022, the government put in place a motion 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 comes into force on 1 December 2022 and is limited to 31 December 2023.
Belgium	In October 2022, the Council of Ministers approved a draft law introducing a temporary solidarity contribution to support households and businesses suffering the consequences of the energy crisis. The contribution would be provided by: (1) registered oil companies active in the refining sector with refining capacity in Belgium. The amount of the contribution to be borne by those companies shall be €6.90 per tonne of crude oil imported between 1 January 2022 and 31 December 2023 (2) registered oil companies defined as primary participants for the year 2022 for diesel, diesel and petrol products. The amount of the contribution to be borne by these companies is set at €7.80 per cubic metre of products released for consumption between 1 January 2022 and 31 December 2023.
Cyprus	On 15 November 2022, the government discussed the introduction of windfall taxes 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. However, these proposals have not yet been implemented.
Czechia	On 4 November 2022, the Czech parliament approved 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 approved 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.
Denmark	After the EU's emergency regulation on 6 October 2022, the Danish government presented a draft bill introducing a 33% tax on oil and gas companies. On 27 April 2023, the Danish Parliament adopted legislation introducing a €180/MWh market revenue cap from the electricity produced by some generators in the period from 1 December 2022 until 30 June 2023.
Greece	On 3 November 2022, the Greek government established a 90% windfall tax rate 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.
Italy	On 22 November 2022, the Italian government signed off on a 2023 budget law worth €35 billion . 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.
Portugal	On 21 December 2022, the government proposed a 33% windfall tax on excess profits.
Romania	On 28 December 2022, the government approved an emergency ordinance that introduced a 60% windfall tax on profits exceeding 20% average profits of the previous four years.
Slovakia	On 22 December 2022, the government approved windfall taxes on utilities on 55% excessive profits. It approved a temporary windfall tax on oil and a special levy on gas pipelines.
Sweden	After the EU's emergency regulation on 6 October 2022, Sweden introduced a solidarity contribution for the fossil fuel sector and the €180/MWh price cap for electricity envisaged in the EU regulation.
United Kingdom	In November 2022, the government announced 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 temporary levy of 45%. On 9 June 2023, the government further announced 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 four Parts and 33 Sections in total. A short synopsis of each section is given in [Table 3](#) 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) (Cap on Market Revenues) Act 2023 and shall be commenced by Ministerial order, and different provisions may be commenced at different times. It also provides for the making of regulations and schemes as required as well as provisions covering expenses and service of notices in relation to the administration of the Bill.

Part 2 – Calculation, Return, Payment and Recovery

Part 2 of the Bill covers the provisions relating to the calculation, return, payment and recovery of the cap on market revenues.

Section 6 lists the entities who are liable to make a payment under the Bill, including producers, persons or bodies acting as intermediaries within the energy market and traders in the electricity market, as stated in subsection 6(1)(a),(b) and(c) respectively. This includes generating units with an installed capacity of one megawatt or more which produces electricity from a source specified in section 7 below.

Section 7 contains a list of the different fuel sources used to produce electricity which are to be subject to the cap. These include:

- wind energy
- solar energy (solar thermal and solar photovoltaic)
- geothermal energy
- hydropower (with or without reservoir)
- biomass fuel (solid or gaseous biomass fuels), excluding biomethane
- waste
- nuclear energy
- lignite
- crude petroleum products
- peat
- hard coal

This list is reproduced from Article 7(1) of Council Regulation (EU) 2022/1854 and amended to include hard coal.

Box 1: PLS discussion relating to scope of cap on market revenues

During pre-legislative scrutiny, there was some discussion around the degree of flexibility on the scope of the cap. The **European Commission** stated that originally the proposal had been for one cap of €180 per MWh for all the inframarginal technologies. However, in discussions with Member States and the Council, the decision was taken to allow Member States to have a technology-specific approach and thus a lower cap than €180 per MWh. This was based on the understanding that Member States are best placed to assess what is optimal for their electricity production mix and future investments. The **European Commission** also stated that they weren't aware of any flexibility in the Council Regulation (EU) 2022/1854 to differentiate between community owned electricity generators and larger conglomerates, though if there was strong justification for this approach it would be open to considering them. The **DECC** stated that they are bound by the Council Regulation in terms of the 1 MW size limit with anything above this falling within scope of the Regulation. The timeframe to which the cap applies is also set out in the Regulation to cover the period from 1 December 2022 to 30 June 2023.

The **Joint Committee on Environment and Climate Action** recommended in its PLS report 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 aware that this may involve an examination of applying a new tax measure akin to the windfall gains as set out in the General Scheme. It also recommended that the Government actively engages in the European Commission's review of Council Regulation (EU) 2022/1854 and advocates for an extension of the Regulation should the circumstances allow.

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

Section 8 provides for the level of the cap for the different fuel sources listed under section 7 above. These include:

- A cap of €120 per MWh for wind, solar and hydro based generators.
- A cap of €180 per MWh for geothermal, waste, nuclear and lignite.
- A cap of the greater of €180 per MWh or the allowable cost of production for that calendar month plus an allowable margin of:
 - €15 per MWh for electricity produced from biomass and peat
 - €120 per MWh for electricity produced from crude petroleum products
 - €35 per MWh for electricity produced from hard coal

Where electricity is produced in a generating unit from more than one class of fuel source referred to in section 7, the producer, intermediary or trader concerned shall be liable to make a payment in relation to the market cap applying to the greatest percentage of the fuel source used in the production of electricity in the unit in a month which shall, in that month, be the market cap applying to the sale of all the electricity produced in that unit.

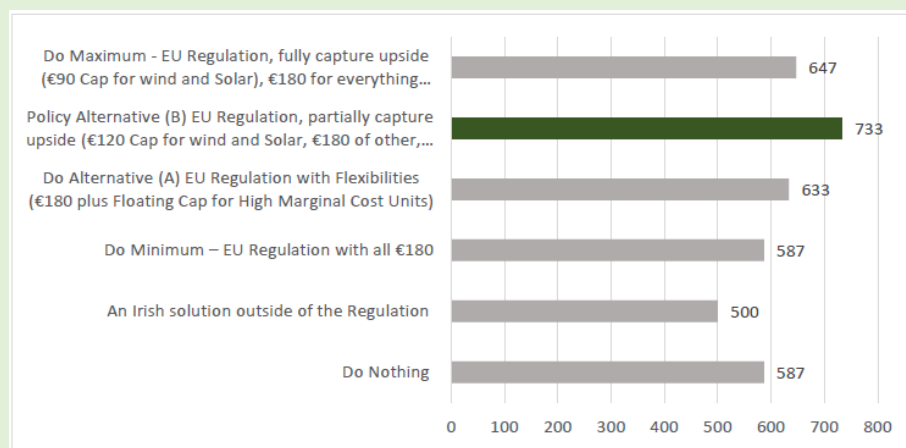
Box 2: PLS discussion relating to the level of the cap

During pre-legislative scrutiny, **DECC** outlined how the rates for the cap were set. Published reference prices for the Renewable Energy Feed-In Tariff were used to inform the €120 per MWh cap for wind and solar and put into a multi-criteria analysis along with a number of different options for all the cap rates (see Figure 2 below taken from the RIA).

According to **DECC**, the criteria in the multi-criteria analysis were to capture windfall gains but maintain positive investment signals and minimise country-specific risk. Going with €90 would capture the windfall gain to the fullest extent but it was deemed it would deliver negative investment signals. It would also be an outlier relative to other European countries (see Appendix 1). This is where the €120 figure came from as it captures the windfall gain but at an extent that maintains positive investment signals. For all of the other sectors, the €180 figure comes from the European regulation as set out under Article 6.

As explained by **DECC**, the variable cap is not a fixed figure. It is cost plus a maximum marginal limit. Recital 33 of the European regulation states there should be differential caps where there are differential marginal costs. For example, a wind farm might have smaller marginal costs and a very different cost structure to a coal plant that has fluctuating market prices that could go way beyond €180. If the cap is set at €180 while market prices are above €180, the unit would not run. The company is allowed to maintain a maximum margin limit to incentivise it to run. This is on an adjustable basis and is reflected by what the market price would be for coal, biomass or oil.

Figure 2: Aggregate score results of the multi-criteria analysis



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

Section 9 provides that the collection agent, EirGrid, will establish a website where it will publish the market index price which is the weighted average of the prices which are associated with two ex-ante electricity markets, in respect of each month. The two markets are the day-ahead market, where electricity is traded in 24 one-hour periods for the subsequent day and the intraday market where electricity is traded based on price fluctuations which occur within a single trading day. The section also provides a definition for market index price.

Section 10 provides for the calculation of monthly market revenue which is the quantity of electricity traded multiplied by the market index price (detailed in Section 9) on a monthly basis and it will be calculated by the producer, intermediary or trader. This section also provides for the

calculation of monthly capped revenue, which is the amount of electricity traded in a month, multiplied by the level of cap for that particular type of electricity source. Both monthly market revenue and monthly capped revenue refer to relevant quantity which is the amount of electricity traded in each imbalance settlement period, which refers to a half hour before and a half hour after, each hour of the relevant period.²⁴ The final part of this section explains the formula used to calculate the relevant quantity. The formula uses the different quantities of electricity which have been bid on, as well as the band, meaning a range of price quantities which have been submitted and the imbalance settlement period.

Section 11 provides for the definition of preliminary surplus revenue. Preliminary surplus revenue is calculated as the monthly market revenue (as defined in Section 10) minus the level of monthly capped revenue (also calculated under Section 10).

Section 12 provides for the definition of adjusted surplus revenue. The adjusted surplus revenue takes into account the gains or losses from hedging arrangements, as well as any money owed by the producer, intermediary or trader between themselves. It represents the amount for which a person is liable to pay in respect of the market cap. Where the adjusted surplus revenue is negative, it shall be considered zero.

Section 13 states that if the adjusted surplus revenue is zero then no payment is required but if it is above zero then the relevant person must pay the full adjusted surplus revenue. If the adjusted surplus revenue has already been passed directly to final consumers (and demonstrated to the satisfaction of the Commission for Regulation of Utilities (CRU)), then this portion of the revenue does not need to be paid to the CRU.²⁵

Section 14 states that all losses and gains incurred or earned from hedging arrangements must be accounted for in the calculation of all revenues in Section 12. This section states the conditions which must apply for hedging arrangements to be considered, in calculating the adjusted surplus revenue.

Section 15 outlines the requirements of entities to provide a return to the CRU as the competent authority in which they are to declare information in relation to:

- the fuel source from which the electricity is produced
- whether electricity is produced from more than one class of fuel source and the amount of each fuel used
- production costs
- monthly market revenue
- level of market cap
- adjusted and preliminary surplus revenue
- any hedging arrangements
- payments back to consumers

²⁴ See pg. 3 of the [Explanatory Memorandum](#).

²⁵ See pg. 4 of the [Explanatory Memorandum](#).

- any settlement rerun

Box 3: PLS discussion relating to returns

During pre-legislative scrutiny, there was some discussion around the monitoring and reporting of hedging operations and the role of the Commission for Regulation of Utilities in this regard. The **CRU** stated that under the Bill, generators and other market entities covered by the cap are required to submit self-declarations to them. These should lay out their market revenue, the capped revenue they will get to keep under the market revenue cap and their gains and losses from hedging operations, which will feed into the final amount owed under the cap. Once CRU get all of those self-declarations they will cross-check with SEMO EirGrid market data to see if they are accurate and comprehensive. They stated that they had the resources to undertake this role, including procuring expert consultancy support to help them review all the self-declarations, and the support of EirGrid and the single electricity market operator, SEMO, in checking the accuracy of the market-related data.

The **Joint Committee on Environment and Climate Action** recommended in its PLS report full and transparent visibility of hedging operations as provided by the General Scheme. It noted 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. Where necessary, the Committee recommended that further resourcing be provided to ensure that expertise is maintained on an internal basis. It also recommended that an examination be undertaken to ascertain why pricing for final consumers has not decreased in line with wholesale prices.

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

Section 16 outlines the process whereby the competent authority (CRU) can request an outstanding return. A person who fails to comply with such a request shall be guilty of an offence.

Section 17 provides that the competent authority (CRU) may send the relevant person a notice requesting further information and the failure to provide such information shall be an offence.

Section 18 provides that the competent authority (CRU), where it appears to it that an assessment is not correct, may make a determination that a revised assessment is required. Time limits for responses are set out and failure to make a new return within the period specified is an offence.

Section 19 provides that a person who receives a notice under Section 16(3) or Section 18(3) may appeal the decision to the High Court within 8 weeks. The High Court has a number of options open to it, including:

- confirm the decision of the competent authority,
- set aside the determination of the competent authority,
- set aside the determination of the competent authority and replace it with such other decision as the Court considers just or appropriate to make, or
- remit the determination for review by the competent authority, subject to such directions as the Court considers appropriate.

Section 20 provides that a person must pay their liability to EirGrid as the collection agent by 31 December 2023 and continues by stating that a person must pay any balance due to a settlement

rerun, hedging arrangement or power purchase agreement, on or before 31 August 2024 or 30 days after a date as may be prescribed. If however, the revised assessment shows that the collection agent owes money to the person, this outstanding amount has to be paid in-line with the above dates or 60 days after the giving of a notice under section 18(3)

Section 21 provides that if a person is late in making their return or makes an error in their return then an additional charge shall accrue, and interest shall also be due on the additional charge. The surcharge for returns delivered between 3 and 6 months from the specified date is 5% up to a maximum of €12,695 and for returns not delivered within 6 months from the specified date it is 10% up to a maximum of €63,485.

Section 22 provides that a person who fails to make a return or a revised assessment shall be liable to pay the collection agent (EirGrid) interest on the amount until such a date that the amount is paid in full. It also provides the formula used to determine the rate of interest.

Section 23 provides that a person must retain all relevant records in regard to making a return and sets out details concerning such records. Failure to comply with this section shall be an offence.

Section 24 provides that the competent authority (CRU) can appoint an inspector to confirm the details of the return and provide the competent authority with any necessary information. The section provides inspectors with the power to enter premises and take possession of any required documents or records, pertaining to the inspection. Obstruction or interference with an inspection shall be an offence and subsection 10 states that An Garda Síochána may accompany an inspector if required.

Part 3 – Market Cap Fund

Part 3 of the Bill covers the provisions relating to the market cap fund.

Section 25 makes provision for the establishment of the Market Cap Fund (in this Act referred to as the “Fund”). The fund is to be administered by EirGrid as the collection agent.

The collection agent shall open and maintain:

- an account (in this Act referred to as a “current account”) for all moneys paid into the Fund, and
- an account (in this Act referred to as an “investment account”) for such moneys (if any) that are not immediately required for the purposes of the current account.

The National Treasury Management Agency may, at the request in writing of the collection agent and on the collection agent’s behalf, invest moneys (if any) held in the investment account.

Section 26 lists the accounting obligations of the collection agent (EirGrid) in relation to the fund. There is also provision for the National Treasury Management Agency to perform this function if required. The section also requires that the Minister shall provide copies of the accounts to the Houses of the Oireachtas.

Section 27 provides that money raised shall be paid out in accordance with a scheme detailed in Section 28 or to refund overpayments by producers, intermediaries or traders.

Section 28 provides for the disbursement of money in accordance with Article 10 of the Council Regulation from the Market Cap Fund via scheme(s). Article 10 requires Member States to 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.

A scheme under this section of the Bill may provide for:

- the purpose for which amounts may be paid from the Fund
- the person or body who shall administer the scheme on behalf of the Minister
- the persons who may qualify for a payment under the scheme
- obligations to be complied with by a person who receives a payment under the scheme
- the duration of the scheme
- conditions applying in respect of a payment under the scheme, including maximum and minimum amounts that may be paid
- matters of procedure relating to an application for payment including information and verifying documents to be furnished
- matters of procedure relating to compliance with any relevant policy of the Government or a Minister of the Government concerning public expenditure
- arrangements for carrying out a review of the effectiveness of payments under the scheme

The section concludes by stating that the breach of a provision of a scheme shall be an offence.

Box 4: PLS discussion relating to distribution of surplus revenues

During pre-legislative scrutiny, the issue was raised of the distribution of surplus revenues generated from the market revenue cap. **DECC** confirmed that under the Council Regulation, the proceeds have to be used for the market cap in a way that is distributed directly to final electricity consumers. There are some conditions to that in that the regulation states the measures to which the revenues are put towards should be transparent, proportionate, non-discriminatory and verifiable. **DECC** commented that the specifics on how this is done will be set out as part of the budgetary process.

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

Part 4 – Offences, Penalties and Information Sharing

Part 4 of the Bill deals with matters concerning offences, penalties and information sharing.

Section 29 provides that a person who provides information which is knowingly or recklessly false or misleading to the collection agent, the competent authority or an administrator of a scheme, shall be guilty of an offence.

Section 30 provides for the penalties which are associated with offences under Sections 16(6), 17(2), 18(5), 23(6), 24(8), 28(3) or 29. A summary conviction results in a class A fine or up to 6 months imprisonment and a conviction on indictment leads to a fine of up to €126,970 or imprisonment for a term of up to 5 years.

Section 31 outlines how summary proceedings for an offence under section 16(6), 17(2), 18(5), 23(6), 24(8)(b) or 29 may be brought and prosecuted by the competent authority.

Section 32 provides that where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent, connivance or approval of, or was attributable to any wilful neglect on the part of any director, manager, secretary or other officer of the body corporate, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Section 33 provides that the competent authority and the collection agent may share information with each other and with a relevant body, where necessary and proportionate. This information may include names and contact details, data metered by the system operator relating to connection to either the distribution system or the transmission system as well as commercial information. The Minister may prescribe the relevant bodies with whom information may be shared and will ensure that all information sharing occurs subject to the General Data Protection Regulation.

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 6 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 5 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 5: 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 6 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:²⁶

- 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 6 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.

²⁶ 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 6: 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 ²⁷	
Recommendation 1		
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.
Recommendation 2		
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.
Recommendation 3		
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.

²⁷ 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 ²⁷
Recommendation 4	
<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>	<div data-bbox="758 450 821 517" data-label="Image"></div> <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 on 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>
Recommendation 5	
<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>	<div data-bbox="758 1406 821 1473" data-label="Image"></div> <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 engaging with the Energy Poverty</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill ²⁷
	<p>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"> 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; 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; 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; d. financial support measures to develop the energy autonomy, in particular investments in line with

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill ²⁷	
		<p>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>
Recommendation 6		
<p>6. 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>6. 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>
Recommendation 7		
<p>7. The Committee notes the Commission's response that it is to review the Regulation by mid-May</p>		<p>7. This recommendation applies to cap on market revenues.</p>

Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill ²⁷
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.		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.
Recommendation 8		
8. 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.		8. This recommendation applies to temporary solidarity contribution. 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.
Recommendation 9		
9. 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.		9. This recommendation applies to temporary solidarity contribution. 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.
Recommendation 10		
10. The Committee recommends that expert stakeholders from civil society and the energy poverty steering group be consulted in respect of the intended beneficiaries of the TSC are consulted		10. This recommendation applies to both temporary solidarity contribution and cap on market revenues. The Department will engage with the Energy Poverty Steering Group and other stakeholders, to propose the

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill ²⁷	
on the development of Head 11 and 29.		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 cap on market revenues in Member States

Country	Cap on market revenue	Tax rate/ 10% lump-sum deduction	Application period
EU Proposal	180 EUR/MWh	90%-100%	1.12.2022 – 30.06.2023
Austria	140 EUR/MWh	90%	1.12.2022 - 31.12.2023
Belgium	130 EUR/MWh (regular); 180 EUR/MWh (biomass, municipal waste)	90%	01.08.2022-30.06.2023
Bulgaria	Technology-specific caps	90%	01.12.2022-30.06.2023
Croatia	180 EUR/MWh	90%	01.12.2022-30.06.2023
Cyprus	Derogation		
Czech Republic	70-240 EUR/MWh	90%	01.12.2022-31.12.2023
Denmark	180 EUR/MWh	90%	01.12.2022-30.06.2023
Estonia	No decision/implementation of EU law yet		
Finland	Windfall profit tax on the electricity sector for the tax year 2023		
France	90-175 EUR/MWh	90%	01.07.2022-31.12.2023
Germany	Technology-specific caps	90%	01.12.2022-30.06.2023
Greece	Gross profit	90%	01.10.2021-30.06.2022
Hungary	General windfall profit tax at a tax rate of 65% on electricity producers		
Ireland	180 EUR/MWh (120 EUR/MWh wind/solar)	100%	01.12.2022-30.06.2023
Italy	180 EUR/MWh	.	01.12.2022-30.06.2023
Latvia	No decision/implementation of EU law yet		
Lithuania	180 EUR/MWh	90%	01.01.2023-30.06.2023
Luxembourg	No decision/implementation of EU law yet		
Malta	Derogation		
Netherlands	130 EUR/MWh (240 EUR/MWh biomass fuels)	90%	01.12.2022-30.06.2023
Poland	Technology-specific caps	100%	01.12.2022-31.12.2023

Portugal	No decision/implementation of EU law yet		
Romania	92 EUR/MWh	100% on net sale revenues	09.2022 – 31.08.2023
Slovakia	Technology-specific caps	90%	01.12.2022-31.12.2024
Slovenia	180 EUR/MWh	100%	01.12.2022-31.12.2023
Spain	67 EUR/MWh	.	.
Sweden	180 EUR/MWh	90%	01.03.2023-30.06.2023

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

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: library.and.research@oireachtas.ie

